

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of:)	
)	
Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations)	MB Docket 03-185
)	
Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions)	GN Docket 12-268
)	
Amendment of Part 15 of the Commission’s Rules to Eliminate the Analog Tuner Requirement)	ET Docket 14-175
)	
)	

REPLY COMMENTS OF REC NETWORKS

REC Networks (REC) replies to comments made in this proceeding related to the provision of analog FM broadcast-like radio services by digital Low Power Television (LPTV) stations operating on Channel 6 (“FM6”). This includes comments filed by Educational Media Foundation (EMF), Venture Technologies Group (VTG) and Signal Above.

You can’t have it both ways. FM6 stations are either FM stations or they are TV stations

In their comments, Signal Above suggests that FM6 stations are ancillary services of LPTV stations or in other words, subsidiary communications services under §73.667 of the Commission’s Rules¹. While unlike other subsidiary communications services which must be received with special equipment by authorized users, the proposed service would be in a unique situation that it can be received with most FM broadcast receivers that can tune to 87.75 MHz.

¹ - Signal Above Comments at 7. (“Signal Above opposes applicability of FM rules or jurisdiction by the audio service since *this is an ancillary TV service.*”) [Emphasis added.]

Signal Above further suggests that because FM6 services are considered TV services and not FM services, that any compliance with FM broadcast rules should be purely voluntary². VTG states that the Commission should take a “practical view” of application of the FM broadcast rules.³ VTG compares the offering of FM6 to that of multicast channels offered by FM stations. We agree with VTG that some aspects of FM broadcast rules such as Table of Allotments would not be applicable to FM6 services just as the Table is not applicable to LPFM, FM translators or the NCE-FM stations that operate on the nearby reserved band. REC also agrees with VTG that FM6 operations should maintain a publicly accessible main studio. We do, however feel that higher powered (and especially commercial LPTV and Class A) FM6 operations should also be required to maintain a public file similar to that of a full power FM station. If the FM6 station is going to get a free ride on the FM dial, they need to be accountable to their community like their neighbors a few clicks up the dial. Of course, the FM6 operation must maintain the ability to receive EAS messages with regulation similar to that of LPFM stations.

If it is established that FM6 services are truly ancillary TV services, this means that the receiving device for the primary service would be a TV receiver and not an FM broadcast receiver. Since this ancillary TV service can not be received on a TV apparatus, FM6 service could literally be considered as a service that is not “readily accessible to the general public” as defined by 18 USC §2510(16)(c).⁴ Going on that, 18 USC §2511(2)(g)(i) further states that unless a transmission is “readily accessible to the general public” it is unlawful to intercept or access an electronic communication made through an electronic communication system that is not configured to be “readily accessible to the general public”.⁵ This raises the question whether the reception of an FM6 service with a device other than a TV receiver or a sound-only receiver specifically designed to receive all television broadcasts would be the unlawful reception of a

² - See Id. (“As such, it is not opposed to a main studio requirement, but believes the better approach is to have that determination be a market-driven decision.”)

³ - VTG Comments at 6.

⁴ - See 18 U.S.C. §2510(16)(c). (“readily accessible to the general public” means, with respect to a radio communication, that such communication is not – carried on a subcarrier or *other signal subsidiary to a radio transmission*.”) [Emphasis added.]

⁵ - See 18 U.S.C. §2511(2)(g)(1).

subsidiary communications service. 18 USC §2512 further, would make the manufacture, distribution, possession and advertising of any FM radio receiver that is capable of receiving 87.75 MHz to be a federal offense⁶.

Signal Above further states that despite these FM6 services being ancillary television services, they should not be subject to the five percent regulatory fees on gross revenues.⁷ If the service is an ancillary service to an existing [low power] television licensee and can not be received on a television receiving device, then it is a subsidiary communication and therefore should be subject to fees. We disagree with VTG and the Commission that an FM6 service should be considered a non-feeable service. If this is a television service and is licensed as a television service, the use of a special receiver to receive the signal⁸ makes it a subsidiary and/or ancillary service.

We also note that these FM6 operations are getting away as commercial operations and they are not paying their fair share of regulatory fees that would be expected of a full power FM station of a similar signal strength. For example, let's take VTG's KSFV in Los Angeles. This station is located on Mount Wilson, the primary site for TV and many radio stations in the #2 market. This station is currently operating analog with a visual power output of 1.398 kW⁹. This would normally make the aural power output of 140 watts at around 890 meters HAAT. This would give a 60 dBu service contour of 34.8 km for the aural carrier. If this station is permitted to operate 3 kW digitally with a 1.5 kW FM6 carrier as they are proposing, this would give them a 57.3 km service contour which would give them a signal equivalent to a Class B station which would have an annual regulatory fee of \$12,025. That is a huge jump from the \$410 they would pay as a LPTV, Class A, translator or booster.¹⁰ Does not seem fair for the minority-owned full

⁶ - See 18 U.S.C. §2512.

⁷ - Signal Above Comments at 8.

⁸ - Since the signal can not be received with a television set (especially considering that the requirement for analog tuning is being proposed to be repealed), the use of an FM radio is a "special" receiver as it is not common to receive digital television broadcasts or its ancillary services with an FM broadcast receiver.

⁹ - See *Venture Technologies Group, LLC. KSFV-CD*. BLTVA-20041104AKL (granted July 28, 2008).

¹⁰ - See *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, 29 FCC Rcd 10767 at Appendix C.

power stations that are paying just for the privilege of reaching their communities and maintaining a sustainable operation.

Reserved band FM services do not interfere with digital TV channel 6

EMF and Signal Above have argued that analog broadcasts on 87.7 MHz have not caused any interference to NCE stations operating in the reserved band.¹¹ REC agrees with EMF that with the advent of digital for full-power TV, the requirements that FM stations operating in the reserved band (88.1 through 91.9 MHz) being required to protect DTV Channel 6 operations are no longer necessary.¹² We do feel that restrictions to LPFM stations, such as §73.825 which presents spacing tables for protection to full power and low power Channel 6 DTV stations by LPFM stations are no longer necessary based on findings of both NCE FM (EMF) and LPTV (Signal Above) interests. Signal Above cites studies that reach the conclusion that even with an FM carrier, the digital signal was received properly where the digital signal was (at least) 7 dB above the FM power level.¹³

The solution is to license secondary radio services on 87.7 in areas near LPTV Channel 6 stations

REC does feel that in order for these FM6 services to be not considered as ancillary services and therefore not subject to 18 USC §2510-2521, they need to be separately licensed as secondary FM radio stations. Currently, there are only two established FM radio broadcast services that are of a secondary nature, FM translators and LPFM. Operating as an FM translator, an FM6 station can be commonly-owned by the LPTV licensee but can not originate its own programming other than underwriter acknowledgements and emergency information¹⁴.

¹¹ - EMF Comments at 3, Signal Above Comments at 7.

¹² - EMF Comments at 3 and footnote 1 (While the protection rules remain on the books, it has been EMF's experience that FM NCE stations and digital Channel 6 TV stations do not pose any interference issues to each other since the digital conversion of TV stations, yet the requirement for coordination has not been eliminated by the FCC.)

¹³ - Signal Above at 6.

¹⁴ - See 47 C.F.R. §74.1231(b), (f) and (g).

As a LPFM station, the FM6 service can originate its own non-commercial educational programming however it can not be commonly-owned by the LPTV licensee¹⁵.

REC feels that it would be in the public interest for 87.7 to be considered wherever possible for new LPFM stations as well as for an opportunity for existing LPFM stations facing potential displacement and those currently in time-share agreements. Since the studies that have been conducted relate to only co-located digital LPTV and analog ancillary audio services as opposed to full power DTV, we must limit such operations to that standard at this time until more research is done on this subject.

In the Report and Order that implemented Section 7 of the Local Community Radio Act for LPFM stations, the Commission accepted REC's proposal that a co-location can also include any area "very close" to the (third-adjacent channel) station and the Commission determined that 500 meters was a reasonable distance to still be considered co-located.¹⁶

REC would propose that LPFM stations be able to propose operation on "Channel 199" (87.7 MHz)¹⁷ at a location that is within 500 meters of a LPTV, TV Translator or Class A TV station operating on Channel 6. Operating power by the LPFM station would be limited to -7

¹⁵ - See 47 C.F.R. §73.853(a).

¹⁶ - See *Creation of a Low Power Radio Service*. MM Docket 99-25. 27 FCC Rcd 15402 at 119. We also note that some LPTV stations are located higher than 450 meters height above average terrain (HAAT) where 100-watt LPFM stations would not be possible under §73.811(a) of the Commission's Rules. REC is currently working on developing a petition for rulemaking that would propose a 250-watt at 32 meter HAAT LPFM service. If implemented, LPFM stations would be able to operate from any HAAT.

¹⁷ - This is 50 kHz lower than the current Channel 6 aural carrier frequency of 87.75 MHz. We are concerned though about aural services operating at 87.75 (or 87.76 as proposed by Venture Technologies in their Comments at 3) as most radios manufactured for the North American market tune in 200 kHz increments, they are not capable of providing the best quality of reception as opposed to a station operating on a carrier frequency of 87.7 MHz. Some radios do tune down to 87.5 since the FM broadcast band in ITU Region 1 includes 87.5 as a carrier frequency. We are also concerned about the interference to a "second adjacent channel" station (on Channel 201, 88.1 MHz) by 340 kHz. Is a 100 dBu interfering contour enough? If the Commission is going to permit analog signals within the Channel 6 spectrum, we should have proponents explain why 87.75 MHz as opposed to 87.70 MHz should be used as the center carrier frequency. 87.75 was necessary to accommodate the aural subcarrier of the analog television service. This would be a good opportunity to move the aural services to 87.7, which would be a full 400 kHz from NCE-FM operations on Channel 201 thus reducing the concern about "first-and-three-quarters-adjacent channel" interference.

dBm of the digital LPTV station. For example, for an LPFM station to operate at a full 100 watts (50 dBm)¹⁸, the LPTV station must operate at least 502 watts (57 dBm). LPFM stations would still be required to maintain a maximum service contour of 5.6 km per §73.811(a) and therefore would still be restricted from operating at heights more than 450 meters above average terrain.¹⁹ LPFM stations operating on Channel 199 would still be required to meet §73.807 minimum spacing in respect to NCE stations on Channel 201 (as a second-adjacent channel) as well as NCE stations with radio reading services on Channel 202. LPFM should be available regardless of distance to international border since the LPTV station has already been coordinated with the foreign administration to use the 82-88 MHz spectrum. For areas not within the border coordination zones that are not served by an LPTV or full power DTV Channel 6 station, Channel 199 as well as “Channel 198” (87.5 MHz) should be made available to LPFM stations.

Likewise, we do also feel that if FM6 service is licensed as a translator or if the Commission does allow LPTV stations to operate FM6 facilities, such facilities must be required to protect Channels 201 and 202 if there is contour overlap between the 100 dBu interference contour of the FM6 carrier and the service contour of the full-power Channel 201 or 202 facility. Like with FM translators and LPFM, FM6 facilities should be afforded the opportunity to make a showing that any prohibited contour overlap will not reach any potential listeners of the Channel 201 or 202 facility.²⁰ LPTV stations operating on Channel 6 would be required to use technology such as the Axcera Bandwidth Enhancement as described by Venture Technologies Group (VTG) that is being proposed at KFMP-LP in Lubbock, TX.²¹ This will permit the allocation of channels 199 and 200 (87.9 MHz) for low power FM broadcast stations.

¹⁸ - $(10 * \log_{10}((\text{watts} * 1000)/1))$.

¹⁹ - See 47 C.F.R. §73.811(a).

²⁰ - See *Living Way Ministries, Inc.* Memorandum Opinion and Order, 17 FCC Rcd 17054, 17056 (2002) at 5. *Recon denied* 23 FCC Rcd 15070 (2008).

²¹ - VTG Comments at 2.

LPFM use of Channel 200 (87.9 MHz)

Going further on the findings that NCE-FM stations do not cause interference to DTV stations operating on Channel 6, REC feels that the Commission should look at the potential of allowing LPFM stations to operate on “Channel 200” (87.9 MHz) at locations more than 500 meters from a LPTV station. Such a station would, of course be subject to §73.807 minimum spacing in respect to stations on Channels 201, 202 and 203 including foreign stations. Operations on Channel 200 would not be permitted within 402 km of the Canadian and within 320 km of the Mexican border as well as a considerable distance from full power DTV Channel 6 stations. This is somewhat similar to the secondary use of Channel 200 by Class-D educational stations subject to displacement under §73.512 of the Commission’s Rules.²²

What’s good for the goose

Another thing we must consider as we review the comments of the proponents of FM6, is why should this offering be limited to Channel 6 stations only? What about if a LPTV station operating on Channel 13 wishes to place an analog audio carrier on 215.75 MHz which can be received on a legacy “TV band” audio only receiver or receivers developed especially for the reception of the analog carrier in Channel 13 spectrum? REC feels that the ability for LPTV stations on Channel 6 to operate audio carriers is a special privilege for these stations and to not allow other VHF LPTV stations to be able place such carriers on their channels would be discriminatory and preferential treatment. LPTV Spectrum Rights Coalition (LSRC) even suggests that LPTV stations carrying FM6 services should be given preferential treatment during the repacking process.²³ If the Commission allows this service for Channel 6 LPTV stations, it should allow them for all LPTV stations that wish to operate such services and at the same time, they should not give any preferential treatment those who run such services.

²² - See 47 C.F.R. §73.512(a)(2), also 47 C.F.R. §73.525(f).

²³ - LSRC Comments at 12. (“We urge the Commission to literally put the channel-6 aural services to the back of the repacking line...”)

Conclusion

REC agrees with the National Translator Association that the Commission is putting such a high priority on this issue to the point where it is overshadowing more important issues such as the future of TV translators in underserved rural areas.²⁴

REC feels that LPTV stations operating on Channel 6 have too much control already such as VTG's sweetheart deal in Los Angeles with Life On The Way Ministries where it comes to the ability to operate translators and their lack of response from other applicants seeking similar considerations.²⁵ Some in the broadcast industry call these services "Franken-FMs" because the FM broadcast service recognizes that these stations are not true FM broadcast stations and that they are getting a "free ride" on the FM dial at the expense of other stations that are subject to a higher standard of rules, auctions and regulatory fees. For the past 20+ years, these operations have been skirting the rules by broadcasting audio with unrelated video (and in isolated cases, no video at all). While we commend the diversity of some of the services provided by recent FM6 operations, they should not be at the expense of lower powered non-commercial community stations.

We feel that the public would be better served if Channel 5 and 6 spectrum is reallocated to provide 60 FM broadcast channels.

REC is also concerned about the loss of translator services, especially in rural areas that are still outside of the footprint of legacy cable systems. We feel that this should be the priority where it comes to channel repacking, not which stations operate non-video services. TV translator stations in these areas should be permitted to share channels to provide basic TV services.

²⁴ - National Translator Association Comments at 12.

²⁵ - See *Life On The Way Communications, Inc.* K220FR, Simi Valley, CA. BPFT-20130730ANJ (Granted, February 4, 2014) at Exhibit 14. In 2014, VTG completely ignored requests by REC for assistance in achieving requests to attempt a waiver of §73.825 in the crowded Los Angeles area during the recent remediation window for mutually exclusive LPFM applicants.

If the LPTV stations want to play FM radio, then we need to also treat them like FM stations. If they don't want to play by FM's rules, we are pretty sure there are many community organizations that can fill that slither of spectrum and play by the rules.

Respectfully Submitted,

/S/

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