

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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 No. 03-185
	)	
	)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions	)	GN Docket No. 12-268
	)	
	)	
Amendment of Part 15 of the Commission’s Rules to Eliminate the Analog Tuner Requirement	)	ET Docket No. 14-175
	)	
	)	

**REPLY COMMENTS OF VENTURE TECHNOLOGIES GROUP, LLC**

Venture Technologies Group, LLC (“VTG”) the licensee of numerous Class A, low power television (“LPTV”), and TV translator stations, hereby submits reply comments in response to the above-captioned Notice of Proposed Rulemaking (“NPRM”).<sup>1</sup> Commenters overwhelmingly support the Commission’s proposal to allow LPTV stations on digital TV channel 6 to operate analog FM radio services on an ancillary or supplementary basis pursuant to Section 73.624(c) of the Commission’s rules.<sup>2</sup> The record is replete with myriad public interest benefits currently provided by analog Channel 6 stations at 87.7 MHz, chief among them

---

<sup>1</sup> *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Notice of Proposed Rulemaking, FCC 14-151 (rel. Oct. 10, 2014) (“NPRM”).

<sup>2</sup> *See* Comments of Metro TV, Inc.; Comments of Byron W. St. Clair; Numerous Comments filed by the Law Office of Dan J. Alpert; Comments of Educational Media Foundation; Comments of George S. Flinn; Comments of Juan Carlos Matos Barreto; Comments of Signal Above, LLC; Comments of Island Broadcasting LLC and Richard D. Bogner.

offering underserved audiences uniquely-tailored and otherwise unavailable programming. Therefore, the Commission should act promptly to ensure that this vital, innovative, free service continues to thrive as LPTV stations transition to digital broadcasting.

VTG also appreciates the opportunity to comment on other measures designed to meet the agency's goal of "preserv[ing] the important services LPTV and TV translator stations provide."<sup>3</sup> *First*, VTG agrees with the International Communications Network's ("ICN") proposal that the FCC should negotiate a streamlined international coordination process with Mexico. *Second*, the Commission should afford LPTV stations fortunate enough to survive displacement after the incentive auction the opportunity to seek the protections of Class A status. *Finally*, VTG opposes the Commission's proposal to prioritize digital replacement translators over other LPTV and translator applications in repacking as an inefficient use of valuable, limited spectrum.

## **I. THE RECORD DEMONSTRATES TREMENDOUS SUPPORT FOR DIGITAL CHANNEL 6 FM BROADCASTING**

All but one commenter addressing the NPRM's proposal to allow LPTV stations on digital TV channel 6 to operate analog FM radio services on an ancillary or supplementary basis supported it. The near-unanimous record confirms the public interest of these FM services and lack of countervailing harm.

By contrast, the arguments of National Public Radio, Inc. ("NPR"), the lone commenter to oppose the Commission's proposal, ring hollow. *First*, NPR's comments should be put in the proper context -- NPR is a programmer, not a station licensee or station owner. Not one of the more than 900 NPR-affiliated stations opposed digital Channel 6 FM operations. And Educational Media Foundation ("EMF"), one of the largest non-commercial educational

---

<sup>3</sup> NPRM, ¶ 4.

licensees, supports the proposal, stating “[i]f technology permits such operations to continue, and EMF has been advised that it does, EMF sees no reason that the FCC should forbid such operations as they contribute to the programming diversity that the FCC has long sought to foster through its broadcast rules.”<sup>4</sup> EMF also acknowledges that these “FM stations have been operating on channel 6 television stations for years to provide diverse, niche radio programming to underserved audiences throughout the country.”<sup>5</sup> As EMF and the voluminous record demonstrates, NPR has egg on its face for asking whether these “stations provid[e] an important public service, including to underserved communities.”<sup>6</sup>

*Second*, NPR’s arguments about spectrum efficiency miss the point.<sup>7</sup> LPTV stations can and do provide video programming separate and apart from their aural stream. Rule 73.653 clearly provides that “aural and visual transmitters may be operated independently of each other or, if operated simultaneously, may be used with different and unrelated program material.”<sup>8</sup> NPR’s comments ignore that an ancillary FM analog audio signal can coexist in the same 6 MHz channel with a full 19.4 mbps DTV signal. Indeed, current technology allows digital LPTV operators to broadcast up to five streams AND the ancillary FM aural signal in their 6 MHz allotment. If anything, the ancillary FM service adds to an LPTV operator’s spectrum efficiency.

*Third*, NPR argues that the digital Channel 6 FM proposal is “premature and potentially irrelevant” to discuss before the outcome of the incentive auction and repacking process.<sup>9</sup> If that logic were true – which it is not – the entire NPRM would be fruitless because of the uncertain fate of all LPTV stations. Instead, the Commission rightly has committed to “consider additional

---

<sup>4</sup> Comments of Educational Media Foundation, at 2.

<sup>5</sup> *Id.*

<sup>6</sup> Comments of NPR, at 10.

<sup>7</sup> *Id.*, at 10-12.

<sup>8</sup> 47 C.F.R. § 73.653.

<sup>9</sup> Comments of NPR, at 4.

means to mitigate the potential impact of the incentive auction and the repacking process on LPTV and TV translator stations to help preserve the important services they provide.”<sup>10</sup> The Channel 6 FM proposal achieves this goal.

*Fourth*, NPR’s claim that promulgating rules for a digital Channel 6 FM services is “unrelated” to the “final conversion of LPTV and TV translator stations to *digital* service” defies logic.<sup>11</sup> To state the obvious, the NPRM’s proposals address allowing LPTV stations to “continue[] FM radio-type operation following their conversion to digital.”<sup>12</sup> For the same reason, the proposal is, contrary to NPR’s claim, consistent with the “broader DTV policy objective[s]” set forth in the NPRM.<sup>13</sup> Providing a path forward to digital for stations wishing to continue to provide an ancillary Channel 6 FM service will incentivize their transition to digital. Moreover, as explained in detail in VTG’s comments, the FM service is consistent with the Communications Act and the Commission’s rules for ancillary or supplementary services and. Again, digital LPTV stations will continue to transmit an over-the-air video program signal when offering the FM radio service, and the FM radio service will not derogate co-channel digital operation.

*Fifth*, NPR misconstrues the applicability of Rule 73.682(d).<sup>14</sup> As VTG stated in prior applications, Rule 74.795(b)(1) requires that digital LPTV systems be “satisfactorily viewed” on consumer digital TV receivers that operate based on Section 73.682(d). The reference to Rule 73.682(d) in Rule 74.795(b)(1) does not require the LPTV transmission system to comply with all aspects of Rule 73.682(d), just the “satisfactorily viewed” standard.

---

<sup>10</sup> NPRM, ¶ 1.

<sup>11</sup> Comments of NPR, at 3 (emphasis in original).

<sup>12</sup> NPRM, ¶ 48.

<sup>13</sup> Comments of NPR, at 3-4.

<sup>14</sup> *Id.*, at 5.

Further, NPR's technical arguments are divorced from real-world experience and valid engineering studies. VTG's comments made clear that a supplementary FM radio service provided along with digital LPTV service will not compromise any part of the ATSC signal.<sup>15</sup> VTG reiterates that it "has submitted extensive testing of its proposed system, and the results demonstrate that the simultaneous operation of the channel 6 ATSC service and the supplementary 87.76 MHz audio signal does not derogate the ability of any current ATSC television receivers to decode the digital television signal, provided that the Effective Radiated Power ("ERP") of the audio is no greater than the ERP of the digital signal."<sup>16</sup> Moreover, the absence of interference to NCE FM stations will continue after the Channel 6 stations transition to digital. Again, "because this existing CP for the station is for 3.0 kW ERP omnidirectional, there is already a showing that a total ERP of 3.0 kW -- 1.5 kW plus 1.5 kW -- will not cause any interference. In addition, as explained in the application, the proposed modification fully complies with the published DTV into DTV D/U ratios."<sup>17</sup>

VTG's comments proposed using existing ATSC compression technology to allow for DTV-to-FM carrier ratios of 0 dB without any interference or degradation of the ATSC or other signals.<sup>18</sup> However, even without the compression technology proposed for use on Channel 6 ATSC signals, FM carriers will not cause interference to other stations if properly scaled. Therefore, VTG supports the demonstration in the comments of Island Broadcasting/Richard D. Bogner and Linley Gumm/Charles Rhodes that an ancillary FM carrier will not interfere with the underlying DTV signal even if the DTV signal is uncompressed, provided that the DTV-to-FM

---

<sup>15</sup> Comments of Venture Technologies Group, at 2.

<sup>16</sup> *Id.*, at 3.

<sup>17</sup> *Id.*, at 6.

<sup>18</sup> *Id.*, at 2-3.

carrier ratio is a minimum of 7 dB.<sup>19</sup> Indeed, at that level, even the oldest ATSC television receivers will not perceive any interference.

VTG also agrees that an LPTV station with an auxiliary FM service would be required to eliminate interference or immediately suspend its operations if it caused actual interference to any authorized FM broadcast station, provided that the interference is more than *de minimis*, *i.e.*, more than 0.5% of the population within their service area. However, VTG reiterates its opposition to the proposed prohibition on “overlap between the 100 dBu interfering contour of the channel 6 LPTV station and the 60 dBu protected contour of [an] NCE FM station.”<sup>20</sup> This proposal aims to fix a problem that does not exist -- as long as the FM carrier is limited to below 3.0 kW ERP, interference should not occur.

*Finally*, NPR’s argument that the FCC has failed to provide an explanation for why it included its Channel 6 FM proposal in the NPRM diverges from the Administrative Procedure Act (“APA”) and established caselaw.<sup>21</sup> The FCC satisfied the APA’s requirements that agencies must give adequate notice in their NPRMs, including “(1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.”<sup>22</sup> The APA does not require agencies to explain a proposal’s inclusion in an NPRM. Indeed, NPR’s point is moot -- as evidenced by the number of pages spent on the issue, NPR certainly “anticipated” the issue and “filed [its] comments on the subject during the notice-and-comment period.”<sup>23</sup>

---

<sup>19</sup> Joint Comments of Island Broadcasting LLC and Richard D. Bogner, at ; Comments of Linley Gumm and Charles Rhodes.

<sup>20</sup> NPRM, ¶ 51.

<sup>21</sup> *Id.*, at 4.

<sup>22</sup> 5 U.S.C. § 553(b).

<sup>23</sup> *Ne. Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 952 (D.C.Cir.2004) (citations omitted)

## **II. LPTV LICENSEES WOULD BENEFIT FROM NEGOTIATED INTERNATIONAL COORDINATION MEASURES.**

In negotiating international coordination with the Mexican government, the voice of the Commission is undeniably more persuasive than individual LPTV operators. For this reason, VTG supports ICN's proposal that the FCC "develop a streamlined approach to interference and application approval coordination with the government of Mexico."<sup>24</sup> In doing so, the FCC may rely on the Memorandums of Understanding with Mexico that establish a 60-day window for objections to LPTV channel assignments.<sup>25</sup> VTG agrees that "LPTV stations are small businesses" and that "it would be naive to assume that any border area LPTV stations will survive post-repack at all if displacement forces them off the air" for extended periods of time "while waiting on piecemeal Mexican approval."<sup>26</sup> Establishing coordination procedures will save time and money and allow LPTV operators to devote scarce resources toward programming.

## **III. THE COMMISSION SHOULD OPEN A NEW CLASS A ELIGIBILITY WINDOW AFTER THE AUCTION FOR SURVIVING LPTV STATIONS**

It is no secret that many LPTV stations will not survive the post-auction repacking process. The stations lucky enough to endure their looming displacement should be afforded an opportunity to apply for Class A status after the auction concludes. Qualifying stations would avoid future uncertainty and be more likely to secure capital from risk-wary investors. VTG agrees with ICN that the Community Broadcasters Protection Act of 1999 authorizes the

---

<sup>24</sup> Comments of ICN, at 3.

<sup>25</sup> See, e.g., Agreement Relating to Assignments and Usage of Television Broadcasting Channels in the Frequency Range 470-806 MHz (Channels 14-69) Along the United States-Mexico Border. Signed: 1982, at § I.4.

<sup>26</sup> *Id.*

Commission to open a new Class A eligibility window and to grant Class A upgrades to qualifying stations.<sup>27</sup>

#### **IV. DIGITAL REPLACEMENT TRANSLATOR SERVICE IS AN INEFFICIENT USE OF VALUABLE, LIMITED SPECTRUM**

The Commission’s proposal to “afford applications for new digital-to-digital replacement translators (“DRTs”) . . . processing priority over all other LPTV and TV translator applications including new, minor change and displacement applications” conflicts with the overarching goals of the instant proceeding.<sup>28</sup> VTG objects to the creation of this new DRT service. The Spectrum Act tasks the FCC with making “all reasonable efforts to preserve . . . the coverage area and population served of each broadcast television licensee” in the repacking process.<sup>29</sup> Accordingly, in the *Incentive Auction Order*, the Commission “conclude[d] that section 6403(b)(2) directs us to protect stations’ existing coverage areas.”<sup>30</sup> Thus, a station’s new channel assignment should moot the need for DRTs.

Nevertheless, to the extent the FCC allows the opportunity for full power broadcasters to claim a second channel for a DRT, these stations should not receive a higher priority than other LPTV or translator stations. VTG agrees with LaSEA that such priority “prejudices non-replacement translators and LPTV stations needing to modify their facilities or find new channels after the auction.”<sup>31</sup> In the game of musical chairs for channel positions that will follow the incentive auction, all stations should compete on an equal footing. Favoring DRTs over LPTV and TV translators will not work to efficiently distribute the remaining slots.

---

<sup>27</sup> *Id.*, at 5.

<sup>28</sup> NPRM, ¶¶ 35-36.

<sup>29</sup> 47 U.S.C. § 1452(b)(2).

<sup>30</sup> *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd 6567, ¶ 119 (2014).

<sup>31</sup> Comments of LaSEA, at 2.

If the Commission were to favor a service, VTG believes that displaced LPTV channels should be prioritized over all DRT applications and that applications for DRT stations should be accepted only after existing licensed LPTV stations are successfully displaced to other channels. Full power stations modified in the auction already will have been provided full and equivalent coverage on their new channels, mitigating the need for DRTs to compete with LPTV for precious channel slots.

**V. CONCLUSION.**

Comments overwhelmingly support the FCC's proposal to allow LPTV stations on digital TV channel 6 to operate analog FM radio services on an ancillary or supplementary basis. In addition to moving swiftly to authorize this service, the Commission should take steps to mitigate the impact of the incentive auction on LPTV stations. Specifically, the Commission should negotiate international coordination parameters with Mexico, authorize a new Class A eligibility window after the auction's conclusion, and place all LPTV and translator stations on equal footing with regard to displacement applications.

Respectfully submitted,

By: \_\_\_\_\_

Paul Koplin  
Chief Executive Officer  
Venture Technologies Group, LLC  
5670 Wilshire Blvd., Suite 1300  
Los Angeles, CA 90036

February 2, 2015