

**MULLANEY ENGINEERING, INC.**

9049 SHADY GROVE COURT  
GAITHERSBURG, MD 20877



**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of: ) MB Docket No. **87-268**  
 ) Seventh Report and Order  
Advance Television Systems and ) and  
their Impact Upon the Existing ) Eighth Further Notice of  
Television Broadcast Service ) Proposed Rule making

To the Commission:

**REPLY TO OPPOSITIONS**

Mullaney Engineering, Inc. (“MEI”), hereby submits a reply to oppositions to its petition for reconsideration on portions of the above report and order.

In its Petition for Reconsideration MEI asked the Commission to reconsider its decision to permit DTV operations on Channel 6 and potentially Channel 5 so that it (the FCC) can investigate the potential re-allocation of spectrum from TV broadcast to FM broadcast. It is recognized that such a request would have to eventually be published in a separate Notice of Proposed Rule Making. However, it is hoped that at this point of the DTV conversion that the Commission **would direct full-service television facilities to seek other alternate channels on their own and only use TV Channel 5/6 as a last resort.** This direction from the Commission would be constructive notice to those TV facilities that pending the outcome of a new NPRM to evaluate if the suggested re-allotment of spectrum serves the public interest their use of Channels 5 & 6 could be modified at their expense.

MEI wishes to point-out that compliance with the Communications Act of 1934 (as amended) is a requirement that the United States Senate and the United States House of Representative entrusted to the Federal Communications Commission (FCC). So contrary to statements made in opposition to this petition for reconsideration, **it is not the “general public” but it is the FCC that has the responsibility, no obligation to start whatever proceedings are necessary to insure the efficient use of the spectrum.** MEI submits the exclusive use of TV Channel 6 by some 9 DTV facilities and of TV Channel 5 by some 13 DTV facilities is hardly an efficient use of the spectrum. Remember, less than 25% of the public receives its TV service through over-the-air broadcasts while AM & FM radio stations still serve the vast majority of their listeners (estimated at 85%) via over-the-air broadcasts. **So which service needs the spectrum more.**

The FCC has recently acknowledged demand for FM radio spectrum is exceedingly high (see MM 99-25, Third Report & Order, Released 12/11/2007) and they are now considering certain rule changes to avoid potential loss of “secondary” Low Power FM (LPFM) stations. Similarly, the FCC is also evaluating changing the eligibility rules to permit FM translators to rebroadcast the audio of AM radio stations (see MM 07-172, NPRM, Released 08/11/2007). What isn’t being said is that the “available or unused” FM radio spectrum in the top 50 markets is **virtually non-existent**. Thus, the end result is that few, if any, new stations will result from either of these dockets and proposals to simply relax the protection criteria will only result in the perception by the public of additional interference. **Or said another way, relaxing the technical standard is one giant step “backward” for mankind or the AM’ization of the FM band.**

MEI calls on the FCC to create a **single entity** within the FCC to open a proceeding to evaluate the resulting service to the public by re-allotting TV channels 5 & 6 (and any other channel that is necessary) for FM radio service. Technology has changed too much for the FCC to continue to manage AM, FM & TV as totally separate services. It should also be remembered that early in the evaluation process of creating the digital television service the Commission indicated that it might decide (at some future time) to remove TV Channel 6 (82 to 88 MHz) from the Television service and add it on to the bottom of the existing FM band (88-108). However, lacking the required single entity to manage the broadcast spectrum this was never explored in any further detail.

Wait a minute - - stop the presses, 90% of the battle is already done, the FCC already has a single entity - - **the Media Bureau**. So the next question is why hasn't this happened already.

One TV channel is capable of creating 30 additional full service FM channels which equates to more than 2,000 new or improved full service FM facilities or tens of thousands of the smaller LPFM & FM translator facilities. It also has the ability to provide renewed competitive life to existing AM radio stations - - that after all created the original concept of a broadcast service. Given that the existing FM band consists of only 100 channels the use of either one or two TV channels would be a **staggering expansion** of the existing FM band. Now is the optimum time to design this new spectrum to meet the needs of the **21<sup>st</sup> Century**:

1. Create an all digital band using an emission specifically designed to do that – such as Digital Radio Mondiale (DRM).

2. **Reserve spectrum** for new entrants into broadcasting (minorities, females). This will permit needed content to the top 50 markets.
3. **Permit existing AM stations** to migrate to this new band so as to be competitive while also improving the stations that remain in the AM band (such as Class A AMs) to re-establish a truly wide area service which would potentially enhance National Security. Re-establish prudent protection by eliminating the many waivers to receive interference that were granted.
4. **Re-farm portions of the existing FM spectrum** to eliminate many of the existing, very severe pre-1964 short spacings and advance the establishment of a **digital only band** (potentially reducing adjacent channel interference currently experienced).
5. Offer the opportunity to **provide better compliance with 307(b)** of the Act by giving certain states (such as **New Jersey**) a more appropriate share of the FM spectrum (through higher power for existing stations or additional stations).
6. Ability to **allot groups of contiguous channels blocks** for translator only use, for LPFM only use, for limited use under an STA by events (local fairs & national events - - the Olympics). Authorizing secondary facilities within the normal full service FM band has resulted in many thousands of petitions to deny being filed, thus, creating an undue burden on the limited resources & staff of the FCC.
7. Ability to create a specific channel for **“pirate radio”** operators. This group of channels would be an **open authorization** for anyone to use provided they complied with the specified limits in ERP & HAAT. Similar to Part 15 but with larger facilities.

In any event, the Commission should at a minimum take this opportunity to clarify what, if any, **future protection TV channel 6 facilities** should be provided by FM stations.

**February 17, 2009**, is when all existing analog full service TV operations are currently scheduled to cease transmission. However, we all know that an **FCC deadline is not really a deadline** that one can count on. Given the history of past TV deadlines established by the FCC, it is highly likely that several analog stations will seek and **will be granted waivers** for continued operations beyond February 2009. The Commission should take this opportunity to clearly state that **all protection of analog TV 6 facilities will cease February 17, 2009** notwithstanding any authorized extensions permitting continued analog operations. Such TV 6 analog facilities will be operating as a secondary facility and will no longer receive protection from any FM operation.

**Conclusion:** MEI believe that the current digital allotment table constitutes an **inefficient use of the spectrum** and is in **direct conflict with the FCC's mandate** for a fair and efficient distribution of services. The **severe under utilization** of TV Channels 2-6 and specifically of Channel 6 demands the Commission to consider a reallocation on an exclusive basis or on a shared basis of one or more TV channels to FM Broadcasting. MEI understands that a further NPRM will be necessary before the spectrum can be re-allotted. The Commission should serve clear constructive notice to those TV facilities that pending the outcome of a new NPRM to evaluate if the suggested re-allotment of spectrum

serves the public interest their use of Channels 5 & 6 could be modified at their expense.

**Should this proposal be considered to be outside the scope of the existing proceeding then it should be deemed a request for a further notice of proposed rule making.**

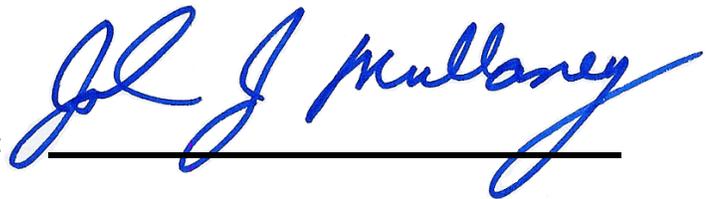
Now is the time for the Commission to write rules for the 21<sup>st</sup> Century rather than rules in reaction to the past.

Respectfully submitted,

MULLANEY ENGINEERING, INC.

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