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Federal Communications Commission  
Office of the Secretary

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Advanced Television Systems ) MM Docket No. 87-268  
and Their Impact upon the )  
Existing Television Broadcast Service )

To: The Commission

PETITION FOR RECONSIDERATION

Introduction

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, National Public Radio, Inc. ("NPR") hereby petitions for reconsideration of the Commission's Reconsideration of the Seventh Report and Order in the above-captioned proceeding.<sup>1</sup>

NPR is a non-profit membership corporation that produces and distributes noncommercial educational ("NCE") programming through more than 800 public radio stations nationwide. In addition to broadcasting award winning NPR programming, including *All Things Considered*<sup>®</sup> and *Morning Edition*<sup>®</sup>, NPR stations are significant producers of local, regional, and national news, information, and cultural programming. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its Member stations.

<sup>1</sup> Advanced Television Systems and Their Impact upon the Existing Television Service, Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order, MM Docket No. 87-268, rel. Mar. 6, 2008, 73 Fed. Reg. 15,284 (Mar. 21, 2008) [hereinafter "Seventh Report and Order Reconsideration Order"].

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## Argument

### **I. Petitioner Is A Proper Party to Petition for Reconsideration, and Reconsideration Is In The Public Interest**

The Commission's rules permit "[a]ny interested person [to] petition for reconsideration of a final action in a [rulemaking] proceeding."<sup>2</sup> As a membership organization representing hundreds of NCE station licensees, NPR has a fundamental interest in the application of the Commission's rules and policies to the operation of radio broadcast stations, particularly the rules and policies obligating stations to avoid interference to other stations and the rules and policies allocating spectrum for use by radio broadcast stations. Independently, as a producer of news, cultural, and informational programming distributed over NCE stations nationwide, NPR is also adversely affected by the Commission's decision to restrict the public's ability to receive NPR produced and distributed programming.

The Commission's Seventh Report and Order Reconsideration Order purports to resolve two issues: the retention of Section 73.525 of the Commission's Rules and the reallocation of spectrum currently used for television channels 5 and 6 to radio broadcast station use.<sup>3</sup> The Commission recently raised both issues in other proceedings with a promise to collect and review public comment on the proposals. Resolving those issues in the Seventh Report and Order Reconsideration Order is, therefore, premature and reconsideration is in the public interest.<sup>4</sup>

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<sup>2</sup> 47 C.F.R. § 1.429(a).

<sup>3</sup> Seventh Report and Order Reconsideration at ¶ 24.

<sup>4</sup> In the Matter of Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability, Fourth Order On Reconsideration, 22 FCC Rcd.8047; 8050 (2007).

**II. The Seventh Report and Order Reconsideration Order Is Contrary To The Commission's Recent Decisions To Reconsider the Continuing Viability of Section 73.525 Of The Commission's Rules And To Solicit Public Comment On the Reallocation of Television Channels 5 and 6 Spectrum to Radio Broadcast Station Use**

NPR seeks reconsideration of the portion of the Seventh Report and Order Reconsideration Order that addresses proposals to eliminate the obligation of reserved-FM band NCE stations to protect television channel 6 stations from interference under Section 73.525 of the Commission's rules and to reallocate the television channel 5 and 6 spectrum to radio broadcast use.<sup>5</sup> In that decision, after declaring the proposals to be beyond the scope of the Reconsideration of the Seventh Report and Order, the Commission proceeded to address the merits of the proposals. In so doing, the Commission has circumvented and inappropriately resolved outstanding proceedings to address those very same issues.

The proposal to modify or eliminate the interference protection mandates set forth in Section 73.525 is the subject of the Commission's Second Report and Order and Second Further Notice of Proposed Rulemaking in the Digital Audio Broadcasting ("DAB") proceeding. The DAB decision recognized the questionable basis underlying Section 73.525.<sup>6</sup> Specifically, the protection requirements set forth in Section 73.525 were developed to address interference caused by *analog* FM radio stations to *analog* television station reception based on *analog* television receivers tested more than twenty years ago.<sup>7</sup> Accordingly, the Commission

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<sup>5</sup> Seventh Report and Order Reconsideration at ¶ 24.

<sup>6</sup> In the Matter of Digital Audio Broadcasting Systems And Their Impact on the Terrestrial Radio Broadcast Service, Second Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344, 10382 (2007).

<sup>7</sup> See id., 22 FCC Rcd at 10382.

announced its intention to initiate a proceeding to address whether to alter or eliminate Section 73.525 of the Commission's Rules.<sup>8</sup> Despite this pronouncement, the Seventh Report and Order Reconsideration Order purports to reject any reconsideration of Section 73.525 based on the Commission's "belie[f] in the effectiveness of the[] protections."

As NPR has articulated on prior occasions, we believe Section 73.525 should be substantially revised, if not eliminated, based on the substantial change in circumstances since the rule was promulgated, including the widespread deployment of *digital* television receivers and the public's overwhelming reliance on cable and satellite services to receive television broadcast channels.<sup>9</sup> Fully addressing the questionable viability of Section 73.525, as promised in last year's DAB Report and Order, is not merely an academic exercise. NPR, through its NPR Labs, has spent substantial time and resources examining the interference immunity characteristics of digital television receivers in anticipation of the promised proceeding. We have been intending to submit the results of that work once the proceeding is initiated. Continuing to apply Section 73.525 to restrict the service of reserved FM-band stations for the foreseeable future, as purportedly decided in the Seventh Report and Order Reconsideration Order, is therefore arbitrary, capricious, an abuse of discretion, contrary to law and the public interest, and should be reconsidered.

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<sup>8</sup> The proceeding "will . . . evaluate the existing NCE FM channel 6 TV protection requirements, and seek public input on their continued viability, following the completion of the DTV transition, a review of the immunity characteristics of DTV receivers, and the widespread deployment of DAB transmitting facilities". Id.

<sup>9</sup> See, e.g., Comments of National Public Radio, Inc., MM Docket No. 99-325, at 24-28 (filed June 16, 2004) (recounting the derivation of the rule as a "temporary" measure to address a minor design flaw in analog television sets imposed with the understanding that it would soon be remedied by television receiver manufacturers).

With respect to the Commission's decision to retain the television channel 5 and 6 spectrum for television broadcast use, that decision directly contradicts a Commission decision to solicit public comment on whether to reallocate the spectrum for radio broadcast station use. Specifically, in a decision released *one day prior* to the Seventh Report and Order Reconsideration Order, the Commission announced that it agreed that the proposal "could yield tremendous opportunities for new entrants" and solicited public comment on it.<sup>10</sup> Having sought public comment on the proposed reallocation of the television channel 5 and 6 spectrum on March 5, it is arbitrary and capricious, an abuse of discretion, contrary to law and the public interest, and a matter warranting reconsideration to have rejected the proposal one day later in the Seventh Report and Order Reconsideration Order.

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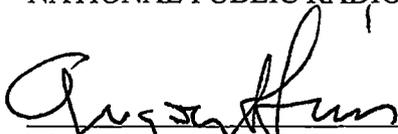
<sup>10</sup> In the Matter of Promoting Diversification of Ownership In the Broadcasting Services; 2006 Quadrennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; 2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition Of Radio Markets; Ways To Further Section 257 Mandate And To Build On Earlier Studies, Report And Order And Third Further Notice Of Proposed Rule Making, MB Docket No. 07-294; MB Docket No. 06-121; MB Docket No. 02-277; MM Docket No. 01-235; MM Docket No. 01-317; MM Docket No. 00-244; MM Docket No. 04-228, at ¶ 100 (rel. Mar. 6, 2008).

**Conclusion**

For the foregoing reasons, the Commission should reconsider and withdraw the Seventh Report and Order Reconsideration Order to the extent it purported to determine the applicability and continuing viability of Section 73.525 of the Commission's Rules and the possible reallocation of the television channel 5 and 6 spectrum to radio broadcast station use.

Respectfully submitted,

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