

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

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

To: The Commission

Reply To Oppositions for Petition for Reconsideration

Hammett & Edison, Inc., Consulting Engineers (H&E), hereby respectfully submits its Reply to the *Oppositions for Petition for Reconsideration* filed by The Association of Maximum Service Television, Inc. (MSTV) and by ABC, Inc. (ABC). The MSTV and ABC comments oppose the Petition for Reconsideration filed by H&E on March 25, 2008 (H&E Reconsideration Petition). The H&E Reconsideration Petition asked the Commission to rule that Section 73.525 of the FCC Rules, regarding the obligation of non-commercial educational FM (NECFM) stations to protect full-service Channel 6 TV stations, applies only to analog Channel 6 stations and not to DTV Channel 6 stations.

I. MSTV Opposition

1. The MSTV opposition claims that it is “well established” that Section 73.525 of the NECFM rules applies to DTV Channel 6 TV stations, but H&E disagrees. Such regulatory treatment is *not* well established, and until the ruling in the March 6, 2008, MB Docket 87-268 *Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order* (Eighth MO&O), we considered it obvious that because Section 73.525 was so clearly an analog-specific rule that it came under the entirely reasonable policy established in Paragraph 14 of the February 23, 1998, *Memorandum Opinion and Order on Reconsideration of the Fifth Report & Order* (Fifth MO&O) that FCC rules clearly specific to analog TV operations and “inapplicable to digital technology” did not apply to DTV operations.¹

¹ Paragraph 14 of the Fifth MO&O reads as follows:
In addition, such a new permittee of licensee’s DTV facility must generally comply with the analog operation rules, such as minimum operating hours, except where the analog rule is inconsistent with the digital rules or inapplicable to digital technology.

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2. The MSTV filing even acknowledges that “the Commission has not yet commenced the separate proceeding to evaluate Section 73.525,” referring to a promised Commission rulemaking to examine what changes to the technical parameters in Section 73.525 are needed to make that rule applicable to DTV; or, indeed, whether there is even a need for NCEFM stations to protect eight-level vestigial sideband (8VSB) DTV receivers when tuning to TV Channel 6, let alone TV Channel 5.

3. Thus, MSTV is simply incorrect when it claims that it is “well established” that Section 73.525 applies to DTV Channel 6 stations; to the contrary, the wording in Paragraph 14 of the Fifth MO&O, and the lack of a successor DTV Channel 6 protection rulemaking, can only lead to the conclusion that Section 73.525 does *not* apply to full-service DTV Channel 6 stations.

4. Moreover, Section 73.525 was written to protect the F(50,50) 47 dBu Grade B contour of NTSC Channel 6 TV stations, not the F(50,90) 28 dBu DTV Threshold contour of DTV Channel 6 stations. Also, the undesired-to-desired (U/D) ratios in Section 73.525 are all based on the characteristics of NTSC analog receivers, not 8VSB digital receivers.

II. ABC Opposition

5. ABC argues that the Sixth MO&O superseded the Fifth MO&O, but this is incorrect, since both orders are dated February 23, 1998. Thus, the Sixth MO&O did *not* supersede the Fifth MO&O; that is, the policy adopted in the Fifth MO&O that rules clearly applicable only to analog operations do not apply to digital TV operations was not “a statement from a previous Commission order.” It was a statement from a concurrent, and therefore co-equal, Commission order.

6. Nor is ABC’s argument that because Section 73.525 is in Subpart D of the FCC Rules, applying to NCEFM stations, the policy established in the Fifth MO&O, that rules which are “inapplicable to digital technology” do not apply to DTV operations, is in any way invalidated. The purpose of the Paragraph 14 Fifth MO&O policy of not applying analog-specific rules to DTV operations did not include a restriction that it applied only to Subpart E of the FCC Rules, and it would be illogical to read Paragraph 14 so narrowly. Indeed, one of the cited examples in our Petition for Reconsideration was a Subpart H rule section, where the power tolerances for AM, FM and TV stations are addressed. ABC’s interpretation of only having analog-specific rules in Subpart E as inapplicable to DTV operations would result in the nonsensical situation that DTV stations are, for example, in violation of the FCC rules because they are not maintaining their aural power at no more than 22% of their visual power, or are not maintaining

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their aural carrier frequency 4.5 MHz \pm 1 kHz above their visual carrier frequency. These Subpart H FCC rules are clearly inapplicable to DTV operations, and had the Commission issued ABC a violation notice to one of its DTV stations for not complying with these rule sections, we are sure that ABC would object with great indignation (as would we). It is exactly the same situation for Section 73.525, a Subpart D rule.

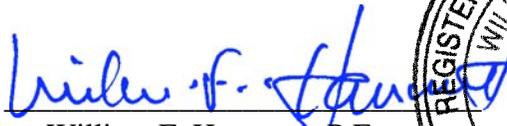
7. It was for this reason that our Petition for Reconsideration noted, at its first paragraph, that the Paragraph 14 policy should be deemed as applicable “throughout Parts 1, 2 73 and 74 of the FCC rules.” Thus, the fact that Section 73.525 is a Subpart D NCEFM rule is irrelevant.

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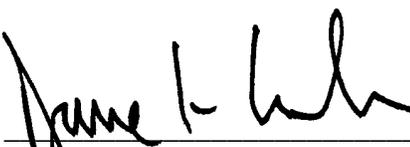
III. Summary

8. Both the MSTV and ABC Oppositions are flawed, either in their facts or their logic. It would be the height of technical inconsistency for the Commission to apply to DTV operations a rule such as Section 73.525 that is so clearly specific to NTSC operation. None of the technical parameters in Section 73.525 are applicable or appropriate to DTV. While we can appreciate ABC's desire for protection of its WPVI-DT, FCD06, Philadelphia, Pennsylvania, allotment, the proper course under the Administrative Procedures Act (APA) is for the Commission to complete its promised rulemaking to create a new rule that protects full-service DTV Channel 6 operations. And, we note, it is entirely possible that such a rulemaking will find that 8VSB tuners are inherently immune to degradation from adjacent-band NCEFM operations to the degree that no special protection rules are even needed. The bottom line is that it would be an engineering embarrassment, which surely the Commission should avoid, to apply the analog-specific technical parameters in the current Section 73.525 to DTV operations.

Respectfully submitted,

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Certificate of Service

I, Dane Ericksen, hereby certify that a copy of the foregoing Reply to Oppositions for Petition for Reconsideration have been sent by first class mail on this date to the following parties:

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