July 30, 2008

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Promoting Diversification of Ownership In the Broadcasting Services, *et al*., MB Docket No. 07-294, *et al*.

Dear Ms. Dortch:

The Association for Maximum Service Television, Inc. ("MSTV")[1] writes to respond to the Commission's solicitation for comment on a proposal to reallocate channels 5 and 6 from television to FM broadcasting.[2] As the Commission has already concluded, such a reallocation would disrupt the television service and would not be in the public interest. In the DTV Table of Allotments proceeding, the Commission affirmed the importance of protecting television broadcasting on channels 5 and 6,[3] reiterating the "now well-established determination that the additional opportunities for increasing FM noncommercial coverage do not outweigh the costs of eliminating" these channels from the television service.[4] MSTV hereby submits for the record in this proceeding comments previously filed on this issue, which are incorporated herein by reference.

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[1] MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

[2] *See Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Rcd 5922, MB Docket Nos. 07-294, 06-121, 02-277, 01-235, 01-317, 00-244, 04-228, at ¶ 100 (rel. March 5, 2008) ("Report and Order and Third FNPRM"). MSTV has filed a copy of this letter in all of these dockets.

[3] *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order, MB Docket No. 87-268, 23 FCC Rcd 4220, at ¶¶ 24-27 (rel. March 6, 2008).

[4] *Id*. at ¶ 27.

MSTV further notes that the reallocation proposal could harm the new entrants and small business entities whose participation the Commission seeks to promote in this proceeding. There are currently thousands of LPTV and Class A stations; these entities are presumed to be small entities.[5] The FCC's records reflect that a significant number of these stations operate on channels 5 and 6.[6] These small businesses and their viewers would be harmed by a reallocation of these channels to FM broadcasting.

Sincerely,

David L. Donovan, President

Attachments

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[5] *See* Report and Order and Third FNPRM at Appendix B, ¶ 11.

[6] *See* "TVQ TV Database Query," available online at http://www.fcc.gov/fcc-bin/audio/tvq.html.

ATTACHMENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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

OPPOSITION TO PETITIONS FOR RECONSIDERATION

The Association for Maximum Service Television, Inc. ("MSTV")[1] opposes the petitions for reconsideration filed by radio interests seeking, at this late stage of the digital transition, the elimination of protection for television broadcasting on Channel 6 (and perhaps on Channel 5 as well).[2] The Petitions are without merit and procedurally flawed. In short, eliminating protection for – or the existence of – free, over-the-air television service on Channels 5 and 6 would harm the public interest. It would hurt the viewers relying on the news and information provided over those channels, and it comes far too late in the digital transition to be a viable proposal. MSTV respectfully requests that the Commission safeguard Channel 5 and 6 operations now and after the transition, and dismiss the Petitions on substantive and procedural grounds.

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[1] MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

[2] The Petitions seek, to varying degrees, reduced protection for Channel 6 television operations. *See* Petitions for Reconsideration filed in MB Dkt No. 87-268 by Mullaney Engineering, Inc. ("Mullaney"), EME Communications ("EME"), and Robert E. Lee (collectively, "Petitions"). The Mullaney Petition queries whether "Channel 5 should also be reallocated for FM Broadcasting," Mullaney Petition at 1, a query echoed by Mr. Lee (Lee Petition at 2).

First, it is far too late in the allotment process to take one channel out of the pool of available assignments. More than 20 full-power television stations already have post-transition allotments on Channels 5 and 6. These allotments represent the conclusion of a long, complex process involving years of coordination by broadcasters, the FCC, and others (such as Mexico and Canada) to ensure that all television broadcasters have in-core allotments for their post-transition operations. It would not be fair to these stations' viewers to require them to accept interference from radio stations or to force the stations to find alternative post-transition allotments (a task that will be impossible in some crowded markets).[3] Nor would it be reasonable to remove two channels out of the available pool of channels for television broadcasting in light of the hundreds of low power television services using these channels and the requirement that the Commission create and protect 175 new DTV allotments pursuant to the Community Broadcasters Protection Act of 1999.[4]

Second, the Petitions are procedurally flawed. The EME Petition and the Lee Petition appear to have been filed after the October 26th deadline for submitting petitions for reconsideration.[5] Given that the Commission did not consider this issue in the *Seventh Report & Order* in this proceeding, it also is not surprising that none of the Petitions can provide a citation to the Commission decision for which they purportedly seek "reconsideration." The Petitions also wrongfully seek to make an end-run on the required notice-and-comment rulemaking. Instead of seeking these changes at the eleventh hour in the DTV allotments proceeding, the

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[3] Also, it appears that two thirds of these stations are moving to the stations' current NTSC channels. This suggests that the stations have a reasonable expectation of conserving resources for their post-transition buildout (*e.g.*, through the use of the stations' existing NTSC antennas) – efficiencies that would be lost if the stations are forced to find new channels.

[4] *See* Pub. L. No. 106-113, § 1000(a)(9), 113 Stat. 1536 (1999); *see* 47 U.S.C. § 336(f)(6)(B).

[5] *See* 47 C.F.R. § 1.429.

Petitioners should petition for a rulemaking so that the interested public has a full opportunity to comment on the sweeping, and harmful, changes that the Petitioners seek.

* * *

For the reasons discussed herein, MSTV respectfully requests that the Commission dismiss the Petitions and protect the viewing public's ability to receive over-the-air television programming on Channels 5 and 6.

Respectfully submitted,

THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

By:_____

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December 19, 2007

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Written Ex Parte
MB Docket No. 87-268

Dear Ms. Dortch:

The Association for Maximum Service Television ("MSTV") hereby submits this *ex parte* letter to summarize the main substantive and procedural flaws of proposals to reallocate certain television spectrum to FM radio.[1] The Commission should protect the public's ability to receive free, over-the-air television programming on Channels 5 and 6, as noted in MSTV's Opposition to these proposals.[2]

The reallocation proposals are without merit. Among the other flaws that MSTV cited in its Opposition, reallocating these channels would disrupt the operations of both full- and low-power television stations and would seriously jeopardize the carefully crafted DTV table of allotments. And, in addition to the hundreds of full- and low-power television stations that currently operate on these channels and/or will operate on them after the transition, the Commission is required by the Community Broadcasters Protection Act of 1999 to protect 175 new DTV allotments for assignment after the cessation of analog broadcasting.[3] Many of the

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[1] *See* Response (Dec. 3, 2007) and Further Response (Dec. 5, 2007) of Mr. Robert E. Lee, and Reply to Oppositions of Mullaney Engineering, Inc. (Dec. 14, 2007), MB Dkt. No. 87-268.

[2] *See* MSTV's Opposition to Petitions for Reconsideration, MB Dkt No. 87-268 (Dec. 3, 2007).

[3] *See* the Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, § 1000(a)(9), 113 Stat. 1536 (1999); *see* 47 U.S.C. § 336(f)(6)(B) (requiring the Commission to protect 175 additional DTV allotments created by expansion of the DTV core in 1998 to include channels 4-

(continued…)

new allotments can be created on Channels 5 and 6. Finally, the FCC should not permit radio interests to make an end-run on the rulemaking proceeding that would be required before making such a major spectrum reallocation. Indeed, Mullaney's Reply concedes that a rulemaking is required.

Sincerely,

THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

By:_____
Jonathan D. Blake
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Its Attorneys

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6 and 47-51). *See also Establishment of a Class A Television Service*, Report and Order, 15 FCC Rcd 6355, 6397, ¶¶ 104-05 (2000).

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

To: The Commission

OPPOSITION TO PETITIONS FOR RECONSIDERATION

The Association for Maximum Service Television, Inc. ("MSTV")[1] opposes the petitions for reconsideration filed by Hammett & Edison, Inc. ("Hammett & Edison") and by National Public Radio, Inc. ("NPR").[2] In the *Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order*, the Commission reiterated "the importance of maintaining the reciprocal system of protections we established between television stations using channel 6 and noncommercial educational ("NCE") FM radio stations."[3] It also affirmed the importance of retaining television broadcasting on channels 5 and 6. Continuing protection for core television broadcast spectrum, including channels 5 and 6, is critical to the success of the digital transition, and there is no basis for reconsidering these protections that the Commission has determined to provide.

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[1] MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

[2] *See* Petitions for Reconsideration filed in MB Dkt No. 87-268 by Hammett & Edison (March 25, 2008) and by NPR (April 21, 2008).

[3] *See* Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order*, MB Docket No. 87-268, FCC 08-72, at para. 26 (rel. March 6, 2008) ("*Memorandum Opinion and Order*").

Despite Hammett & Edison's inaccurate claim, it is well-established that § 73.525[4] applies to DTV channel 6 stations. Ten years ago, referring to § 73.525, the Commission concluded that:

> [a]nalysis by our staff indicates that the current rules for protection of analog TV channel 6 service from interference caused by FM radio service are adequate to protect DTV operations on existing analog channel 6 allotments as long as DTV coverage on these channels is the same as, or does not significantly exceed, the coverage of the analog service it would replace. The existing rules will similarly provide adequate protection for new DTV stations on new channel 6 allotments.[5]

Thus, whether the issue is protecting DTV stations moving to new channel 6 allotments or protecting DTV stations moving to channel 6 after the station's analog operations cease, the Commission has already determined § 73.525 is applicable.[6]

The Commission recently stated that "no changes in Section 73.525 governing TV channel 6 protection are necessary at this time."[7] It also has, as NPR noted, stated that it intends to "initiate a separate proceeding" to evaluate § 73.525 in light of the transition to digital television.[8] Nothing in the Commission's statements in the digital audio broadcast ("DAB")

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[4] 47 C.F.R. § 73.525.

[5] In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, MM Docket No. 87-268, 13 FCC Rcd 7418, at para. 45 (1998) ("*Reconsideration of the Sixth Report and Order*").

[6] As the Commission noted, the protection for television stations is provided through minimum mileage spacings (or power limitations on co-located FM stations). *See id.* at n.30. There is no reason why such protections would not apply to DTV stations.

[7] In the Matter of Digital Audio Broadcasting Systems And Their Impact on the Terrestrial Radio Broadcast Service, *Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, MM Docket No. 99-325, 22 FCC Rcd 10344 at para. 96 (2007).

[8] *Id.*

proceeding suggest that § 73.525 is inapplicable to DTV stations. The Commission has not yet commenced the separate proceeding to evaluate § 73.525. Thus, the rule—and the decade's-old conclusion that it applies to DTV stations—still stands.

Finally, there is no basis for reconsidering the decision to retain channels 5 and 6 for television broadcast use. Ten years ago, in the *Reconsideration of the Sixth Report and Order*, the Commission:

> determined that expanding the core to channels 2-6 would reduce the number of out-of-core allotments, promote competition in the provision of DTV services, help alleviate overall adjacent DTV channel interference, and, importantly, reduce the impact on low power television stations and translators who occupied a significant number of low VHF positions and who would otherwise have been displaced or lost the opportunity to utilize that spectrum.[9]

Presented with another request to remove channel 6 from the DTV spectrum, the Commission again demurred, reiterating its "continuing belief that channel 6 should stay available for television service and that the additional opportunities for noncommercial FM coverage through use of the channel were outweighed by the costs of eliminating it."[10] There simply is no basis for rehashing already-rejected arguments against the Commission's "now well-established determination that the additional opportunities for increasing FM noncommercial coverage do not outweigh the costs of eliminating channel 6 from TV service."[11] Further, the Commission's conclusions with respect to channel 6 apply equally to channel 5.[12]

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[9] *See Memorandum Opinion and Order* at n.70.

[10] *Id.*

[11] *See id.* at para. 27.

[12] *See id.* at n.73 (noting that a reallocation at this stage of the digital transition and displacing television stations would disrupt the complex DTV Table of Allotments process and the related international coordination process, inhibit the provision of 175 DTV allotments for new TV (continued…)

* * *

For the reasons discussed herein, MSTV respectfully requests that the Commission deny the Hammett & Edison and NPR Petitions and maintain existing protections for the public's over-the-air television programming on channels 5 and 6.

Respectfully submitted,

/s/_____

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May 20, 2008

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stations as required under the CBP Act, and harm the numerous Class A, low power TV, and TV translator stations that use these channels).

CERTIFICATE OF SERVICE

I, Kathryn Bowers, a secretary at the law firm of Covington & Burling LLP, do hereby certify that on this 20th day of May, 2008, I caused a copy of the foregoing "Opposition to Petitions for Reconsideration" to be sent via first-class U.S. Mail, postage prepaid, to the following:

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