

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Promoting Diversification of Ownership In the Broadcasting Services	)	MB Docket No. 07-294
	)	
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	)	MB Docket No. 06-121
	)	
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	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244
	)	
Ways to Further Section 257 Mandate and To Build on Earlier Studies Advanced Television Systems and their Impact upon the Existing Television Broadcast Service	)	MB Docket No. 04-228
	)	

**COMMENTS OF ABC, INC.**

ABC, Inc. (“ABC”), by its attorneys, submits these comments (“Comments”) in the above-captioned proceeding in which the Federal Communications Commission (“FCC” or “Commission”) is considering various proposals intended to increase participation in the broadcasting industry by new entrants and small businesses. ABC wholeheartedly supports this laudable Commission goal and many of the Commission’s specific proposals for increasing

diversity of ownership in the broadcasting services. However, ABC is concerned that one party's proposal under consideration—reallocation of TV/DTV channels 5 and 6 for FM service—would jeopardize the DTV transition without any material benefit from a diversity of ownership or other public interest perspective. There is no reason to reverse course from previous Commission decisions finding that it is in the public interest—and even necessary—to retain channels 5 and 6 for TV/DTV use. Removing channels 5 and 6 from the TV band at this time also is particularly unwise given that we are less than seven months from the final DTV transition date.

**I. THE COMMISSION SHOULD NOT CONSIDER REALLOCATING CHANNELS 5 AND 6 GIVEN PREVIOUS COMMISSION DECISIONS AND THE CONTINUING PUBLIC INTEREST IN A SMOOTH DTV TRANSITION**

The Commission previously has determined that continued use of channels 5 and 6 by television stations is in the public interest and this determination remains valid today.<sup>1</sup> In its previous decisions, the Commission chose to maximize the number of channels available for DTV service in order to promote the public interest in continuity of service. Now that the multi-step channel election process has concluded, it is clear that some stations must operate on channel 5 or 6 in order to reach a substantial portion of their current analog viewers given current Commission rules regarding interference. It was not in the public interest or appropriate to

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<sup>1</sup> See In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order*, FCC 08-72, MB Docket No. 87-268 (rel. Mar. 6, 2008) (“*Seventh Reconsideration Order*”) (“[W]e stand by our 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.”); 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*, FCC Rcd 7418, ¶¶ 42-43 (1998); In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service, *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348, ¶¶ 54, 57 (1998).

reallocate channels 5 and 6 during the DTV channel election given the possibility that stations would select such channels. It is definitively unwise and contrary to the public interest to reallocate those channels now when many more than 20 full-power television stations have elected those channels as the “best fit” for their station, service area and viewers in an all digital world.<sup>2</sup>

Perhaps more importantly, the Commission’s previous decisions promoted the public interest by providing necessary certainty and interference protection to stations approaching the end of the DTV transition. This certainty and protection, in turn, facilitated a smooth transition for these stations’ and their millions of viewers. Reallocating channels 5 and 6 at this time would undermine the Commission’s substantial and diligent efforts to produce a seamless transition for the American public.

The Commission has worked with all stakeholders for over a decade to implement the DTV transition in a manner consistent with the public interest. One impressive achievement the Commission made was to assign a post-transition channel to each station that best balances several interests, including interference protection and continuity of service. As part of this complex, multi-step process, the Commission assigned channel 5 or 6 to more than 20 full-power television stations for their post-transition DTV operations.<sup>3</sup> Each allocation of channel 5 or 6 involved a separate balancing of interests.<sup>4</sup> Reallocating channels 5 and 6 at this time would

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<sup>2</sup> Additionally, many low power television stations operate on channel 5 or 6.

<sup>3</sup> *Seventh Reconsideration Order* at ¶ 25 (citing opposition of Maximum Service Television, Inc.). Many more low power television stations use these channels as well. *Seventh Reconsideration Order* at

<sup>4</sup> The Commission endorsed this position—that reallocating channels 5 or 6 would upset a delicate balance—as recently as 2007 in its *Seventh Reconsideration Order*. *Seventh Reconsideration Order* at n.73 (“If the TV stations that elected channel 5 or 6 for their post-transition operation were now required to find new channels, the post-transition DTV Table of Allotments and the careful, complex process, including international coordination, that led to its construction would be significantly disrupted.”).

upset this balance and threaten the viewers of these many stations, at precisely the wrong time—less than seven months from the final DTV transition date.

It also is possible, if not likely, that other stations will seek to use channels 5 and 6 in lieu of their current DTV channel assignments, especially if *actual* post-transition DTV-to-DTV interference exceeds *predicted* interference.<sup>5</sup> For example, a station with a post-transition channel of 9 may realize—after the transition has been fully implemented—that a station that relocated to channel 8 causes more actual interference than predicted. Thus, such a station may need to move to channel 5 or 6 in order to avoid interference and serve more of its pre-transition viewers. Although it is impossible to predict how many stations may need to change channels, it would not be prudent to prematurely remove two channels from the possible pool of channels.<sup>6</sup> Instead, given the important public interest in a smooth DTV transition, the Commission should not consider reallocating TV channels 5 and 6 at this time.

## **II. STATIONS LIKE WPVI(TV) CURRENTLY MUST USE TV CHANNELS 5 OR 6 TO REACH VIEWERS IN THE CONGESTED NORTHEAST CORRIDOR**

The experience of ABC's Philadelphia station, WPVI(TV), in particular, demonstrates the absolute need for retaining TV channels 5 and 6 as stations transition over to DTV operation. WPVI(TV) struggled to find a channel that would permit it to reach its current analog viewers and, reluctantly, chose channel 6, despite well-documented technical concerns about the channel's post-transition feasibility. For WPVI(TV) and many other stations in the congested

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<sup>5</sup> Likewise, it is possible that, post-transition, stations will seek to move from channel 5 or 6 to another channel, especially if alternative channels become available through interference agreements, Commission rule modifications or other changed circumstances.

<sup>6</sup> *Seventh Reconsideration Order* at n.73 (“Providing for the full availability of these channels for new TV stations will help enable the Commission to provide for the 175 DTV allotments for new TV stations required under the CBP Act. Maintaining channels 5 and 6 for TV service will also protect the service of the many Class A, low power TV, and TV translator stations that use the low VHF channels and are expected to continue to use those channels when they switch to digital operation.”).

northeast corridor, choosing channel 5 or 6 involved certain tradeoffs but the one primary benefit was certainty—certainty that the channel would be available post-transition versus the uncertainty involved with seeking another channel. As discussed below, reallocation of channels 5 and 6 would further complicate these stations’ situations and further threaten viewers of stations in the congested northeast corridor.

WPVI(TV)’s analog channel is 6 and its allotted, pre-transition DTV channel is 64. WPVI-DT has been on the air with a digital signal on channel 64 since November 1998. WPVI-DT could not operate permanently on channel 64, however, because channel 64 was outside the “core,” and thus unavailable for post-transition DTV operation. Because of the well-known issues surrounding the suitability of channel 6 and other low-VHF channels for DTV operations,<sup>7</sup> ABC was compelled to forego making a channel election for WPVI-DT in round one of the Commission’s channel election procedure and instead elected to participate in the second round of DTV channel elections (in lieu of selecting channel 6). ABC also protected its rights to select another channel in the second round by objecting to a negotiated channel election agreement (“NCA”) between two other Philadelphia-area stations.<sup>8</sup>

ABC conducted multiple technical studies over an extended period of time in an attempt to locate another suitable channel for its post-transition DTV operations. However, due to various factors—including congested spectrum in the northeast corridor—ABC was unable to

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<sup>7</sup> See Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television, *Report and Order*, 19 FCC Rcd 18279, n.129 (2004).

<sup>8</sup> The NCA between NBC Telemundo License Co., licensee of WCAU, Philadelphia, Pennsylvania and permittee of DTV station WNJU-DT, Linden, New Jersey, and Independence Public Media of Philadelphia, Inc., licensee of noncommercial television station WYBE, Philadelphia, Pennsylvania, would have assigned one of WYBE’s in-core channels to WCAU, and thus prevented WPVI from selecting that channel in the second round. The Media Bureau rejected this NCA in part due to the effect it would have on WPVI given the few available channels in the congested northeast corridor. See *Negotiated Channel Election Arrangements*, *Report and Order*, DA 05-1619 (2005).

identify another suitable, unoccupied channel. ABC also balanced several other interests in reaching its decision to amend its channel election to channel 6, including (i) the interests of WPVI(TV)'s viewers (including their interest in continuity of service), (ii) ABC's interest in certainty and a speedy resolution, (iii) the interests of other stations and the absence of available post-transition DTV channel options in the nation's fourth largest television market, (iv) the NCA that effectively removed the only suitable replacement channel from the pool of available channels (which ABC initially opposed),<sup>9</sup> and (v) the general public interest.<sup>10</sup> Re-allocation of channels 5 and 6 would upset this delicate balance and leave WPVI and its viewers in limbo at the most critical time in the DTV transition. Reallocation likely would have similarly devastating effects on several other stations and their viewers. To avoid these and other public interest harms, the Commission should refrain from reallocating TV channels 5 and 6 at this time.

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<sup>9</sup> See *supra* n. 6.

<sup>10</sup> ABC also relied upon the continued application of section 73.525's interference protections in reaching its decision to request channel 6. ABC has addressed the continued application of section 73.525 in a previous pleading, incorporated by reference herein. See *Opposition to Petitions for Reconsideration*, MB Docket No. 87-268 (filed May 20, 2008).

### **III. CONCLUSION**

The final DTV transition date is less than seven months away. Post-transition, more than 20 full-power broadcast television stations (and many more low power stations) will operate on TV/DTV channels 5 or 6 and more stations may request such channels. Continued use of these channels is critically important to these many stations and their millions of viewers.

Accordingly, the Commission should not entertain any proposal to reallocate channels 5 and 6 to another service at this time.

Respectfully submitted,

**ABC, Inc.**

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