

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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)	MB Docket No. 04-228
)	

To: The Commission

Reply Comments of National Public Radio, Inc.

Introduction

Pursuant to Section 1.415 of the Commission’s Rules, 47 C.F.R. § 1.415, National Public Radio, Inc. (“NPR”) hereby replies to the comments on the Commission's Notice of Proposed Rulemaking filed in the above-captioned proceeding.¹

¹ Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922 (2007) [hereinafter "Ownership Diversification NPRM"]. Unless otherwise indicated, all citations to comments are

NPR's initial comments were primarily directed to the proposed reallocation of the television channels 5 and 6 spectrum to FM broadcasting.² NPR supports the reallocation proposal because of the tremendous, unremitting demand for FM broadcast facilities dating back decades³ and the fact that the reallocation of the television channel 6 spectrum, in particular, would enable many noncommercial educational ("NCE") radio stations operating on the NCE reserved FM spectrum to improve their service to local communities across the country.⁴ Many initial commenters also endorsed the reallocation proposal.

Significantly, the reallocation proposal was endorsed by a broad variety of television and radio broadcast interests and other noteworthy interest groups.

- The National Translator Association ("NTA"), which represents television translator stations, among others, concluded that "on balance, NTA believes the public interest would be better served if the spectrum currently allocated to Television Channels 5 and 6 were reallocated to the FM band."⁵

to comments filed in this proceeding in response to the Ownership Diversification NPRM.

² NPR's comments also questioned proposals to permit the formal division and assignment of a station's digital bitstream to independent third parties as well as a proposal to require stations to subsidize the licensing, construction, and operation of new LPFM stations for unrelated entities in certain circumstances. Comments of National Public Radio, Inc. at 5-6 [hereinafter "NPR Comments"]. Authorizing the division and assignment of a station's digital bitstream could create significant burdens for the Commission, call into question who is ultimately responsible for the content of what is broadcast, and actually hinder the transfer of broadcast facilities, including to minority interests, all without offering a demonstrable benefit to ownership diversity. Id. at 5-6. Requiring a licensee to subsidize the licensing, construction, and operation of a new broadcast facility as a condition of modifying an existing one could adversely affect NCE licensees, which, as non-profit or governmental entities, 47 U.S.C. § 397(6), typically operate with limited financial resources. NPR Comments at 6. Little comment was directed to these proposals, and these reply comments do not address them further.

³ See NPR Comments at 3-4.

⁴ See id. at 4.

⁵ Comments of the National Translator Association at 2 [hereinafter "NTA Comments"].

- The Broadcast Maximization Committee, on behalf of a number of consulting engineers and other broadcast industry representatives, recognized that a reallocation of the television channels 5 and 6 spectrum could provide substantial benefits to LPFM, AM, and NCE broadcasting.⁶
- Common Frequency advocated the proposed reallocation as a means of promoting NCE broadcasting.⁷
- Native Public Media and the National Federation of Community Broadcasters supported the proposal as a means of "enhanc[ing] ownership diversity and new entry into the non-commercial broadcasting sector."⁸
- The Diversity and Competition Supporters, a coalition of national organizations devoted to advancing the cause of minority ownership, called the proposal "simply the greatest proposal on the table anywhere to save radio."⁹
- Charles Keiler, CPBE, observed that "[t]he FM spectral crowding is almost unimaginably intense," the impact on DTV broadcasters is likely to be minimal, and many radios constructed for distribution outside the United States are already designed to receive the television channels 5 and 6 spectrum.¹⁰

Although NPR is not prepared to endorse any specific proposal for assigning the spectrum once it is reallocated, the groundswell of support among a diverse range of interested parties provides compelling testimony in favor of reallocating the spectrum. We are convinced that the details of how the spectrum would be best put to use can be accomplished fairly, expeditiously, and in a manner that accommodates the digital television ("DTV") transition.

⁶ See Comments of the Broadcast Maximization Committee at 3-10.

⁷ Comments of Common Frequency at 2.

⁸ Comments of Native Public Media and The National Federation of Community Broadcasters at 10.

⁹ Initial Comments of the Diversity and Competition Supporters in Response to the Third Further Notice of Proposed Rulemaking at 24.

¹⁰ Comments of Charles Keiler at 3.

Not surprisingly, some of the incumbent television channels 5 and 6 interests oppose the reallocation proposal, but none of their arguments withstand scrutiny. Thus, several commenters point to the Commission's decision in the ongoing DTV proceeding rejecting the reallocation proposal, but that decision concluded that consideration of the reallocation proposal was beyond the scope of *that* proceeding.¹¹ As NPR explained in seeking reconsideration of the decision, the Commission's disposition of the reallocation proposal was procedural, and any purported resolution of the merits of the proposal was arbitrary and capricious given the pendency of the issue in this proceeding.¹² It is therefore disingenuous for these commenters to now claim that the merits of the matter have already been resolved.

With regard to the merits of the reallocation proposal, NAB and ABC argue that maintaining the status quo is necessary to assure a smooth DTV transition,¹³ but the DTV transition will be completed in a matter of months. NAB and ABC also argue that stations, such as ABC's Philadelphia station, have expended considerable resources based on the assumption that the television channels 5 and 6 spectrum would continue to be used for television broadcasting.¹⁴ It is a fundamental precept of Federal broadcast law dating to the original

¹¹ See Comments of the National Association of Broadcasters at 6 (citing 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, MB Docket No. 87-268, 44 Comm. Reg. (P & F) 731, at ¶¶24-27) [hereinafter "NAB Comments"]. See also Comments of ABC, Inc. at 2 (same) [hereinafter "ABC Comments"]; Letter of David L. Donovan, President, Association for Maximum Service Television to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 07-294, at 1 (dated July 30, 2008) (same).

¹² Petition for Reconsideration of National Public Radio, Inc., MB Docket No. 87-268, at 3-5 (filed Apr. 21, 2008).

¹³ NAB Comments at 6-7; ABC Comments at 2-4.

¹⁴ NAB Comments at 7; ABC Comments at 4-6.

Communications Act of 1934, however, that no broadcast licensee has a claim to a particular frequency.¹⁵ The suggestion that TV translators, among others, "would be severely affected by the proposed reallocation"¹⁶ is belied by the endorsement of the proposal by the trade association representing TV translator stations.¹⁷ Reduced to its essence, moreover, the argument that spectrum, once allocated, cannot be reallocated based a substantial change in circumstances is unsustainable.

That is not to diminish the potential disruption that could occur if a reallocation of the television channels 5 and 6 spectrum were mishandled. We are confident, however, that the spectrum can be reallocated in a way that reasonably facilitates a transition of incumbent television channels 5 and 6 stations to different channel positions. One thing is certain: the Commission's statutory obligation to promote a national system of terrestrial broadcasting must advance the public interest, first and foremost,¹⁸ and NPR believes, based on the record of this proceeding, that the proposed spectrum reallocation would best serve the public interest.

¹⁵ "No station license shall be granted by the Commission until the applicant therefor shall have waived any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise." 47 U.S.C. § 304. See also *id.* § 301 ("It is the purpose of this chapter, among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right beyond the terms, conditions, and periods of the license.").

¹⁶ NAB Comments at 7.

¹⁷ See NTA Comments at 2.

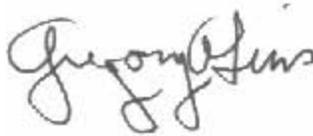
¹⁸ 47 U.S.C. §§ 303, 307.

Conclusion

NPR applauds the Commission for seeking to increase the diversity of broadcast ownership and urges the Commission to take the actions proposed herein.

Respectfully submitted,

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