

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

In the Matter of	)	MB Docket No. 07-294
	)	
Promoting Diversification of Ownership In The	)	
Broadcasting Services	)	MB Docket No. 06-121
	)	MB Docket No. 02-277
2006 Quadrennial Regulatory Review – Review	)	MM Docket No. 01-235
of the Commission’s Broadcast Ownership Rules	)	MM Docket No. 01-317
and Other Rules Adopted Pursuant to Section	)	MM Docket No. 00-244
202 of the Telecommunications Act of 1996	)	MB Docket No. 04-228
	)	

**REPLY COMMENTS OF**  
**PROMETHEUS RADIO PROJECT**  
**NATIONAL FEDERATION OF COMMUNITY BROADCASTERS**  
**NEW AMERICA FOUNDATION**

Media Access Project, on behalf of the above listed organizations (“Prometheus, *et al.*”), respectfully submits these reply comments in response to initial comments filed in the Commission’s Third Further Notice of Proposed Rulemaking in the proceedings listed above (“NPRM”). Prometheus, *et al.* commend the Commission for seeking to diversify the public airwaves, whose licensees clearly do not reflect the population they serve.

In addition to the lack of access to capital, another major obstacle contributing to this problem is the lack of available opportunities to control a broadcast license. Thus, Prometheus, *et al.* support the reallocation of analog television channels to mixed use broadcasting, which will increase the opportunities available for minorities, women, and other new entrants.

**I. INTRODUCTION**

Prometheus, *et al.* support the concept of reallocating channels 5 and 6 as an extension of the FM radio band and welcome the Commission’s receptiveness to discussing the extension of the FM

band to 76 MHz. Increasing the available spectrum will increase the opportunities available to women, minorities, and other new entrants, such as those entities seeking LPFM licenses, who have been precluded from accessing the public airwaves. It is no surprise, then, that in response to the Commission's NPRM, many parties have submitted proposals supporting the reallocation of TV Channels 5 and 6 for FM service. *See, e.g.*, Comments of the Broadcast Maximization Committee ("BMC") and Comments of Educational Media Foundation, *et al.* ("EMF"), Comments of National Public Radio, Inc. ("NPR"), and Comments of Native Public Media and the National Federation of Community Broadcasters.

In addition to supporting the reallocation, some parties have also submitted detailed proposals as to how that reallocation should take place. *See, e.g.*, Comments of BMC and Comments of EMF. Prometheus, *et al.* appreciate the proposals of BMC and EMF to open up spectrum for radio broadcasting, which could benefit minorities, women and other new entrants. However, these proposals, in some respects, fail to maximize the true potential of reallocating Channels 5 and 6 for radio broadcasting. In these Reply Comments, Prometheus, *et al.* suggest ways in which the Commission can maximize the opportunities for women, minorities, and new entrants as well as comment on the proposals put forth by BMC and EMF.

## **II. THE BMC PROPOSAL IS A POSITIVE DEVELOPMENT BUT HAS SOME DRAWBACKS.**

The BMC proposal is creative and ambitious in scope; yet, the proposal could encompass more spectrum than what is being vacated in Channels 5 and 6. Further, while there are a number of positive aspects to the BMC proposal, Prometheus, *et al.* cannot fully embrace it for a number of reasons. In particular, Prometheus, *et al.* note the following drawbacks of the BMC proposal: (1) the

Commission should not discriminate against the low power radio service and limit the LPFM service to the reallocated spectrum; (2) the need for new receivers limits the practicality of BMC's proposal; and (3) the digital transmission aspect of BMC's proposal requires greater examination.

**A. The BMC Proposal Could Be Adapted to Allow for More New Entrants Than Initially Proposed and Improving Current NCE Service.**

While the BMC proposal is ambitious in scope, with a bit more ambition it could in fact be even more beneficial in increasing the voices of women, minorities, and other new entrants. In addition to the reallocation of Channels 5 and 6 for radio broadcasting, Prometheus, *et. al.* believe that TV Channels 2 through 4 can be used also for radio broadcasting on a shared basis with those TV stations that remain in these bands.<sup>1</sup> In most areas of the country, there will generally be some completely empty TV channels inside that band, given that TV stations have generally not been allocated on the first adjacent TV channel in the same market. Of course, in allowing for the use of TV Channels 2 through 6, generous protections should be left in place for those incumbent TV stations, including LPTV stations, that were constrained unfortunately to remain in VHF. Prometheus, *et. al.* also believe these bands can be shared with "white spaces" devices, once appropriate testing is completed to prove that these devices are indeed sufficiently sophisticated to prevent interference to other spectrum users.

Similarly, Prometheus, *et. al.* encourage the exploration of yet other spectrum for opportunities to increase diversity in broadcasting. Since 26 MHz is largely unused for the international broadcasting purposes for which it was first allocated, but is already allocated for broadcasting, this would seem to be another intelligent space to use for local broadcasting. Since tests appear to reveal

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<sup>1</sup>Pursuant to testing and regulatory approval, Prometheus, *et. al.* believe the use of TV Channels 2-6 for radio broadcasting will not compete with the current white spaces proposals submitted by PISC.

that skywave problems that disturb analog transmissions are not a problem for digital transmissions, 26 MHz could be very beneficial for increasing diversity in broadcasting.

Additionally, the current rules for FM non-commercial interference with TV channel 6 are long overdue for an overhaul. With most TV channel 6 stations moving to other channels, *See Comments of BMC at 10-12*, and the remaining few will be operating digitally and thus less subject to analog interference, the minimum spacing distances and power limits between NCE stations and TV channel 6 should be recalculated or abolished. In other words, if the spectrum for FM broadcasting is expanded, there should be equitable distribution of the opportunities created by this between new entrants and existing NCE stations that would like to raise their power levels.

**B. The LPFM Service Should Not Be Limited to the Reallocated Spectrum.**

BMC proposes dividing up the reallocated spectrum in special segments for LPFM service, NCE operations, and AM migration. *See Comments of BMC at 2*. While Prometheus, *et. al.* are not opposed to identifying a special band for LPFM operations in the reallocated spectrum, the Commission should not discriminate against and limit LPFMs to solely a portion of the reallocated spectrum. That is, LPFMs must be allowed to continue to operate in the 88-108 MHz band as they currently operate. Moreover, migration to the reallocated spectrum should be strictly optional for LPFMs. As the Commission has already recognized, an efficient use of the scarce spectrum can be accomplished by filling in small vacant holes in the existing band with an LPFM service. *See Report and Order*, MM Docket No. 99-25, 15 FCCRcd 2205, 2228 (2000) (the Commission decided to authorize LPFMs “throughout the FM Band, where the stations will fit...”). Thus, there is no reason to leave open available spectrum in the current band that could be occupied by smaller services such as the LPFM service.

**B. The Need For New Receivers Limits the Practicality of BMR's Proposal for NCEs and LPFMs.**

The viability of BMC's proposal is predicated on the availability and pervasiveness of new receivers. Currently, the single most significant positive characteristic of radio in competition with other media sources is the ubiquity of analog radio receivers. Thus, no service in the existing FM band should be forced to relocate.<sup>2</sup> Additionally, to ensure that the services allotted on the reallocated spectrum can succeed, no migration should be forced until sales figures for receivers demonstrate that a certain percentage of the population has new receivers.<sup>3</sup>

Further, because of the lack of adequate receivers, the BMC proposal is not, despite its assertions, a solution to the issues raised in *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCCRcd 21912 (2007) (that proceeding has raised such issues as the priority of LPFMs and translators, encroachment of LPFMs by full-power stations, and the resolution of second and third adjacent interference). While the concept of moving the LPFM service to Channels 5 and 6 - where most receivers cannot access these channels - may appeal to incumbent broadcasters, such a proposal is not acceptable to low power advocates. Thus, while Prometheus, *et. al.* acknowledge that a reallocation of Channels 5 and 6 would be helpful in addressing the great demand for spectrum on the current FM band and opening up more possibilities for women, minorities, and other new entrants in the far distant future, the BMC proposal is simply not a solution to the issues raised in the LPFM proceeding.

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<sup>2</sup>In light of the many years given for analog migration to DTV, reallocation of Channels 5 and 6 should require a similar transition.

<sup>3</sup>Receivers should be available universally, *e.g.*, in cars, mobile phones, home stereos, etc.

**C. The Digital Transmission Aspect of BMC's Proposal Requires Greater Examination.**

Different commenters take different approaches as to whether the reallocated spectrum should be analog or digital. Since the benefits of analog use of this spectrum could be more immediate,<sup>4</sup> Prometheus, *et. al.* suggest the Commission allow for analog use of those channels immediately upon reallocation while the Commission determines how to implement a digital regime.

Opportunities inherent in the digitization of newly allocated spectrum are too enormous to ignore. Digital transmission would allow for more efficient use of the reallocated spectrum, thereby creating more channels for new entrants and increasing diversity. Thus, while Prometheus, *et. al.* support the idea of digital transmission on the reallocated spectrum, Prometheus, *et. al.* strongly caution that the digitization of the 76 MHz to 88 MHz band should not take place in the same manner as has occurred in the .5 MHz to 1.8 MHz or 88 MHz to 108 MHz bands.<sup>5</sup>

For instance, Prometheus, *et. al.* urge the Commission to consider a range of digital standards for the reallocated spectrum. Prometheus, *et. al.* also urge the Commission to refrain from adopting a closed monopoly software standard with licensing fees and commend BMC for advocating the use

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<sup>4</sup>Some receivers can receive a few channels below the standard FM band, and, in Japan, receivers already exist that can receive channels broadcasting in the 76 MHz to 90 MHz band.

<sup>5</sup>As a practical matter, the Commission will have to fully consider the breath of digital coverage and will have to create a record demonstrating the lack of digital interference with adjacent channels. In HD radio, current transmissions are already causing small amounts of interference to existing analog operation, digital coverage is far smaller than promised, and now, many years later, broadcasters are seeking an increase in power of 10 db to fix the shortcomings of the system. See Letter by Joint Parties, *In the Matter of Digital Audio Broadcasting Systems and Their Impact On the Terrestrial Radio Broadcast Service*, MM Docket No. 99-325 (June 10, 2008).

of an open standard.<sup>6</sup> The adoption of an open standard would promote genuine competition in the software underlying digital radio, which could hasten the improvement and development of digital radio technology.

Prometheus, *et. al.* also support BMC's recommendation for the use of 100 kHz channels rather than the traditional 200 kHz channel. Indeed, depending on many factors, even smaller bandwidth allocations may be warranted if technology allows. Thousands of small groups around the United States continue to clamor for and be denied access to the use of a single broadcast channel in a single locality, thus, the use of 100 kHz channels would allow for more new entrants and diverse voices on the public airwaves.<sup>7</sup> However, allocation of these 100 kHz channels should have strict ownership caps, in both commercial and non-commercial contexts. Further, stations that pledge to broadcast significant portions of well defined local origination programming should have a substantial advantage in the allocation process. This would help to address the widely observed deleterious effect that has arisen from the overuse of non-local content in radio today, and help to balance out the economic disincentives for stations of incurring the expense of producing local programming when network feeds are often cheaper.

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<sup>6</sup>To that end, Prometheus, *et. al.* would be concerned with the Commission considering iBiquity as the sole standard. While the expertise of iBiquity Corporation could be very useful and iBiquity Corporation could have a significant role to play in the digitization of the 76 MHz to 88 MHz band, the iBiquity software should only be considered if iBiquity Corporation opens their standards.

<sup>7</sup>This would be very unlike the current digital scheme, which effectively doubles the traditional incumbent broadcaster's channel of a 200 kHz channel to a 400 kHz channel, without providing any opportunity to a new entrant.

1. *Digital Operation of LPFM.*

The BMC plan calls for LPFM facilities that would be shared by four separate entities. *See* Technical Statement of BMC at 12. Since this is an early draft of the proposal and without more specific information, Prometheus, *et. al.* can neither endorse nor oppose this recommendation, but believe that it merits exploration.<sup>8</sup> In considering the recommendation, a number of issues will need to be resolved to determine whether this proposal is viable. Some of these issues include:<sup>9</sup>

1. If four stations are to share each channel, how will this be coordinated?
2. Will one group get a license and then have the opportunity or obligation to share with three others?
3. Will four separate groups be required in their initial application to specify what they are sharing?
4. If four groups do not want to share, what happens?
5. If four strangers file in the same area, will the Commission require they to share a transmission facility?
6. If there are differing opinions on sharing, who makes the final decision?

2. *Digital Operation of NCE Stations.*

BMC also makes recommendations regarding NCE operations. However, there appears to be some inconsistencies in the proposal. For instance, BMC suggests some of the channels should be similar to Class D stations, which are 10 watts analog, but also suggests the power should not exceed 250 watts (digital), in which case the coverage would be greater than a traditional Class D station. Additionally, no proposed HAAT is named and no proposed coverage is specified. Thus, to fully comment, Prometheus, *et. al.* would require the correct details of the NCE proposal.

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<sup>8</sup>However, allocation of new digital channels is not a legitimate solution to spectrum availability or LPFM encroachment concerns until the new digital channels share the salient characteristic of analog FM radio - the ubiquity of receivers.

<sup>9</sup>These issues were raised by John Broomall of the Christian Community Broadcasters in an on-line discussion.

### 3. *Digital Operation of AM radio.*

One of the most innovative aspects of the BMC proposal is the migration of AM stations to the expansion of the FM band. BMC proposes a slow migration from the AM band to the reallocated spectrum. *See* Technical Comments of BMC at 12-20. BMC also suggests an eventual repurposing of the AM band or moving some AM stations to relieve the congestion on the band. *See id.* BMC also speculates upon possible low power AM use of old band, along with possibilities for use by public safety.

While Prometheus, *et al.* heartily support this type of thinking,<sup>10</sup> the apportionment of this new spectrum deserves greater examination. For instance, in considering this proposal, the Commission should note that the large existing receiver base in AM is an extremely valuable asset that should not be forgotten lightly.<sup>11</sup> Further, it would be a mistake to distribute ten megahertz to incumbent AM stations (all of which currently occupy together 1.3 MHz) and less than 2 MHz to public safety, LPFM and NCE stations. Deeper engineering examination is appropriate to discover how much spectrum actually is necessary to accommodate incumbent AM stations and new AM entrants, while leaving new spectrum available for LPFM, NCE, and public safety services.<sup>12</sup>

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<sup>10</sup>Indeed, this would have the enormous benefit of aggregating demand for the new receivers, in some ways diminishing the potential “stepchild” status of those broadcasting on the reallocated spectrum.

<sup>11</sup>Further, while there may be many interesting uses of a de-crowded AM band, any action taken in the AM band is not a substitute for fair management of the existing analog FM band.

<sup>12</sup>It appears many efforts were taken in the proposal to maximize the benefits to AM station in this transition. Thus, Prometheus, *et al.* believe that it is possible that under more reasonable criteria, more spectrum could be allocated for new entrants. Prometheus, *et al.* suspect that with a slightly less generous approach to coverage and multicasting possibilities for AM broadcasters, or the expansion of the plan to include Channels 2 to 6 rather than just 5 and 6 for shared use broadcasting, the benefits of this proposal can be more equitably shared.

## **II. THE EMF PROPOSAL IS A POSITIVE DEVELOPMENT BUT HAS SOME DRAWBACKS.**

In supporting a reallocation of Channels 5 and 6, EMF, *et al.* have recommended that channels 87.5, 87.7, and 87.9 be reserved for LPFM operations. Prometheus, *et al.* agree with the Comments submitted by Common Frequency regarding the flaws of EMF, *et al.*'s proposal. In addition, Prometheus, *et al.* would suggest that these channels in particular should be licensed on the condition that they will be expected to reduce bandwidth upon implementation of a digital plan.

Further, as discussed above, limiting LPFM use to channels 87.5, 87.7, and 87.9 is not an adequate response to the issues raised in the current LPFM proceeding. Further, LPFMs should not be forced to, though a LPFM might voluntarily choose to, use these channels if the population that they serve did not have access to receivers that could receive the channel. Finally, 87.9 should be considered a viable alternative to LPFMs facing encroachment; LPFMs currently facing encroachment without an alternative channel to move to should have first priority of use of this channel, or LPFMs currently encountering drastic interference, even if it is not fatal, should get the first option for use of this channel.

## **III. THE COMMISSION SHOULD CONSIDER ALLOCATING DIFFERENT PORTIONS OF THE SPECTRUM TO DIFFERENT TYPES OF ENTITIES.**

The Commission should consider allocating different portions of the reallocated spectrum to different types of entities. The distinction made between commercial and non-commercial programming, though not without some issues, has been one of the most successful policies instituted by the Commission. Radio audiences know that if they tune into channels 88 to 92 they are more likely to hear programming of an educational or cultural nature than that which is found in the commercial

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band. Similarly, in the new digital space, spectrum could be allocated for different services such as: religious broadcasting, public radio, schools and colleges, public safety, organizations serving minority constituencies, and other new non-profit entrants. In other words, if different types of services had reasonable access to a given number of available channels based on the nature of the broadcasting, the politicized spectrum battles between unequal opponents could become a thing of the past. While in the past some entities have challenged similar attempts because of alleged content differentiation, the non-commercial/commercial distinction is an excellent example of a similar plan that has worked. These matters deserve their own full Notice of Proposed Rulemaking where details would be addressed, but such an allocation could ensure that women, minorities, and other new entrants have the opportunity to access the public airwaves.

#### **IV. CONCLUSION**

While the current proposals are good starting point in the allocation of that spectrum, the proposals do have some drawbacks. Nonetheless, Prometheus, *et al.* wholly support the expansion of Channels 5 and 6 for FM broadcasting as a means to increase the ability of women, minorities, and other new entrants to obtain broadcast licenses. Thus, the Commission should move forward with the reallocation.

Respectfully submitted,

/s/

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