

**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

RESPONSE TO BMC’S FREEZE REQUEST FILED AT THE REPLY DEADLINE

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

The Association for Maximum Service Television, Inc. (“MSTV”)¹ and the National Association of Broadcasters (“NAB”)² file this response to the Request for Filing Freeze filed by the Broadcast Maximization Committee (“BMC”) at the reply deadline in this proceeding.³ BMC proposes that the Commission “adopt a freeze on the filing of applications and rule making petitions to utilize television Channels 5 and 6 pending the outcome of BMC’s proposal.”⁴ A freeze of the type proposed by BMC is unwarranted. MSTV and NAB respectfully ask that the Commission reject that request as ill-considered and procedurally improper.

First, the Commission should reject BMC’s belated request, submitted at the close of the reply comment stage, separate from its reply comments. The Commission did not propose

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 NAB is a nonprofit trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission, the Courts, and other federal agencies.

³ *Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket Nos. 07-294 *et al.*, Request for Filing Freeze (filed Aug. 29, 2008).

⁴ Request for Filing Freeze at 2.

or even seek comment on such a freeze in the Notice of Proposed Rulemaking.⁵ Therefore, interested parties – including the licensees of full power analog and digital television stations as well as the licensees of analog and digital low power television stations (“LPTVs”), Class A television stations, and television translator stations – had no opportunity to demonstrate at the comment stage why a freeze would be unwarranted. Notably, BMC did not request a freeze in its comments and reply comments, although there is no reason why it could not have done so.

Second, even if the Commission were to consider the request on the merits, it is clear that a freeze would not be in the public interest. The Commission has emphasized the importance of “the continuing allocation of channels 5 and 6 to the core spectrum for digital television service.”⁶ The proposed freeze assumes that the Commission will reverse its firm and clear conclusion that a reallocation would be contrary to the public interest.⁷ The attached engineering analysis, prepared by Meintel, Sgrignoli, & Wallace, shows that the majority of the stations forced to relocate would lose a significant number of viewers, with ten stations losing

⁵ *Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket Nos. 07-294 et al., Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922 (2008).

⁶ *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 ¶ 26 (rel. March 6, 2008) (“*Reconsideration of the Seventh Report and Order*”).

⁷ *See id.* at n.73 (ruling that “[i]f 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”). In contrast, the freeze cited by BMC as precedent was implemented in order to facilitate the channel election and repacking process. *See* “Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes,” Public Notice, 19 FCC Rcd 14810 (2004). The Commission was required to coordinate that process in order to comply with the statutorily-mandated transition to digital television.

over 100,000 viewers each. Indeed, in one case, BMC's proposal would cause over three million people to lose service.

Hundreds of full and low power stations use channels 5 and 6 to provide free, over-the-air television service to the public. A freeze would mean that the full-power television stations and Class A stations using these channels would be unable to maximize their service areas. Thus, a freeze would deprive viewers of the full benefits of the transition to digital television.⁸ Moreover, it would be discriminatory and inequitable to treat the stations on channels 5 and 6 differently and to impose a selective freeze on them during a time when all other full power and Class A stations are able to make adjustments to their service areas in connection with the digital transition.

Third, the Commission will likely need to use channels 5 and 6 to create a significant number of new, full-power DTV allotments.⁹ A freeze would preclude the use of these channels to fulfill the statutory mandate, forcing new entrants into the more congested channels. Even if the Commission is able to create all 175 new allotments without using channels 5 and 6 in the first instance, LPTVs and translators may be displaced by the new stations. The displaced stations may need to relocate to channels 5 and 6 or be forced to go dark. A freeze would harm all of these stations and their viewers.

Finally, the additional reasons that BMC proffers in support of the freeze are without merit. BMC suggests that a freeze is justified (1) because of "reasons related to the relationship between the non-commercial education FM band and Channels 5 and 6," (2) because

⁸ It is ironic that the chief proponent of this proposal calls itself the Broadcast Maximization Committee, as one consequence of adopting the proposal would be to limit broadcast television stations from maximizing their digital television service.

⁹ See *Reconsideration of the Seventh Report and Order* at n.73.

“new digital television stations could cause interference to existing FM stations,” and (3) because digital Class A, LPTV, and television translator stations “can also create interference to adjacent band FM stations.” Television and radio stations have been operating on their respective channels in this spectrum for years, and none of these reasons justify the requested freeze. With respect to BMC’s first reason, MSTV and NAB note that the Commission has already determined that existing rules “provide adequate protection for new DTV stations on new channel 6 allotments.”¹⁰ BMC’s second and third reasons are entirely speculative and implicitly ask the Commission to reconsider its ten-year-old decision that channels 5 and 6 should remain allocated for television.¹¹

* * *

For the reasons discussed above, MSTV and NAB respectfully request that the Commission reject BMC’s freeze proposal.

¹⁰ *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*”). See also *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) (stating that “no changes in Section 73.525 governing TV channel 6 protection are necessary at this time”).

¹¹ See *Reconsideration of the Seventh Report and Order* at n.70.

Respectfully submitted,

/s/ _____
Marsha J. MacBride
Jane E. Mago
JERIANNE TIMMERMAN
Ann W. Bobeck
THE NATIONAL ASSOCIATION OF
BROADCASTERS
1771 N Street N.W.
Washington, D.C. 20036
(202) 429-5300

/s/ _____
David L. Donovan
ASSOCIATION FOR MAXIMUM
SERVICE TELEVISION, INC.
4100 Wisconsin Avenue, NW
Washington, D.C. 20016
(202) 966-1956



Jennifer A. Johnson
Eve R. Pogoriler
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004-2401
(202) 662-6000
*Counsel for the Association of Maximum
Service Television, Inc.*

September 18, 2008

Attachment



**Analysis of Proposed Re-allotment of Television Channels 5 and 6
September 18, 2008**

This analysis is being provided in response to a proposal submitted in MB Docket No. 07-294, *In the Matter of promoting Diversification of Ownership in the Broadcasting Services*. The Broadcast Maximization Committee (BMC) submitted a proposal to reallocate television channels 5 and 6 and use the spectrum to expand the FM broadcast band. The proposal seeks to move these television allotments to the UHF band or alternatively to television channels 2 through 4. This proposal will lead to a loss of DTV service in dozens of television markets. Accordingly, the proposal, and BMC's attempt to impose a freeze on any channel 5 and 6 applications and modifications, is inconsistent with the public interest.

This proposal would affect dozens of full-power television stations, including those forced to move to new channels and those forced to accept reduced facilities in order to accommodate those channel substitutions. Most of these stations would suffer a significant loss of service. Indeed, ten of the stations would lose over 100,000 viewers each under the UHF substitute allotments developed by BMC:

CALL SIGN	PROPOSED SERVICE		CURRENT SERVICE		SERVICE GAIN / LOSS	
	POPULATION	AREA (SQ. KM)	POPULATION	AREA (SQ. KM)	POPULATION	AREA (SQ. KM)
WPVI-TV	7,111,213	19,285.2	10,185,096	32,269.0	-3,073,883	-12,983.8
WCYB-TV	1,032,543	27,130.4	1,932,239	46,423.1	-899,696	-19,292.7
WGVK	1,374,301	16,890.2	2,246,060	26,287.6	-871,759	-9,397.4
WLMB	1,449,803	15,699.0	2,235,118	18,266.7	-785,315	-2,567.7
KCWX	2,586,700	27,379.8	2,966,872	38,961.2	-380,172	-11,581.4



CALL SIGN	PROPOSED SERVICE		CURRENT SERVICE		SERVICE GAIN / LOSS	
	POPULATION	AREA (SQ. KM)	POPULATION	AREA (SQ. KM)	POPULATION	AREA (SQ. KM)
WTVF	1,822,368	28,189.6	2,075,852	38,320.7	-253,484	-10,131.1
WDTV	413,091	20,642.0	640,752	29,745.8	-227,661	-9,103.8
WMC-TV	1,376,533	22,235.8	1,584,417	32,403.5	-207,884	-10,167.7
WRGB	1,427,048	24,038.9	1,565,827	30,324.2	-138,779	-6,285.3
KOBI	358,531	30,129.0	483,769	49,279.4	-125,238	-19,150.4

Further, the proposal does not address the low power television stations that currently operate on channels 5 and 6. The following analysis identifies some significant problems with this proposal.

The Proposed UHF Allotments Are Inadequate. There are significant problems with respect to forcing these stations to move to UHF channels. First, in most instances, such moves are predicted to result in significantly reduced DTV coverage. Under BMC's plan, 21 of the 26 proposed new facilities are predicted to provide service to fewer people than those served by their current allotments. The predicted losses range into the hundreds of thousands or even millions of people. This analysis is based on BMC's proposal that each proposed facility will have an effective radiated power (ERP) of 250 kW non-directional at its currently allotted location and elevation. Second, seven of the proposed substitute allotments appear to be infeasible due to the increased interference that they would cause to other allotments:

CALL SIGN	CITY	STATE	PROPOSED CHANNEL
WCYB-TV	Bristol	VA	35
WGVK	Kalamazoo	MI	32



WJAL*	Hagerstown	MD	22
WLMB	Toledo	OH	33
WLTV*	Allentown	PA	48
WPVI-TV	Philadelphia	PA	39
WRGB	Schenectady	NY	19

The Proposed VHF Allotments Are Also Unacceptable. The proposal suggests that the channel 5 and 6 allotments can readily be moved to lower VHF channels (channels 2-4). But, as the proposal concedes, the low VHF television band (channels 2-6) is not a desirable location for digital television operation due the presence of man-made noise. Indeed, the reason there are relatively few DTV allotments on channel 2-4 is because of man-made interference issues. A number of studies have demonstrated that the effects of man-made noise are worse on channels 2-4 than on channels 5 and 6. A move from channels 5 and 6 to channels 2-4 can be expected to subject the station to more interference, not less. Thus, moving to these channels may not be a viable option, even if there are vacant channels in this band.

The specific details concerning the problems with the proposed changes as well as service comparisons are contained in the attached spreadsheet.

Other Impacts on Service. BMC does not take into consideration other factors that would harm the public, including:

* The two stations marked with an asterisk in the table are changes to existing UHF allotments needed to accommodate moving WPVI, Philadelphia, PA to channel 39. Many of the other proposals would also result in substandard facilities.



1. The service loss to other stations. For example, moving WCYB in Bristol VA, from channel 5 to channel 35 would not only result in a loss of service to nearly 900,000 viewers in WCYB's service area, but it would also cause additional interference to WTNZ, Knoxville, TN (.58%) and to Class A station WAPK, Kingsport TN (13.63%). Moving WRGB in Schenectady NY from channel 6 to 19 would not only significantly reduce the station's coverage area, it would also cause additional interference to class A station WNYA, Albany, NY (1.41%) and to WSYT-TV in Syracuse, NY (2.57%).
2. The fact that the FCC is processing approximately 700 maximization applications for the DTV service. It is likely that the BMC proposal would have a preclusive impact on many maximization applications. Unfortunately it is difficult to fully assess this impact at this time.
3. The potential displacement of currently authorized low power TV stations and translators (excluding Class A's). These stations offer the public critical access to over-the-air television service, and the potential loss of their service must be included in the FCC's public interest calculus.
4. The existing and future needs of low power television stations and translators. Many of these stations now operate on out-of-core channels (52-69) and will be moving into the in-core channels after the transition, further contributing to the congestion in the UHF band post-transition.
5. The statutory requirement for the FCC to provide 175 new full service television allotments.
6. The cost of the channel changes, estimated to be several million dollars. These costs will need to be paid either by those who will benefit from the reclaimed spectrum and/or by the taxpayers. In addition, the operational costs for a UHF station are in general significantly more than for a station operating on a low VHF channel. In fact there are some stations that selected a VHF channel for exactly that reason. BMC provides no analysis whether stations will be able to afford these increased costs resulting from its proposed channel changes.

Given the loss of service and engineering complexities, the Commission should reject the BMC proposal.



The above was prepared by:

William R. Meintel
Partner, Meintel, Sgrignoli & Wallace

Predicted Loss of Service

CALL SIGN	PROPOSED CHANNEL	PROPOSED PREDICTED SERVICE		CURRENT PREDICTED SERVICE		SERVICE GAIN / LOSS	
		POPULATION	AREA (SQ. KM)	POPULATION	AREA (SQ. KM)	POPULATION	AREA (SQ. KM)
KBSD	23	95,168	19,133.9	155,603	35,374.3	-60,435	-16,240.4
KCWX	35	2,586,700	27,379.8	2,966,872	38,961.2	-380,172	-11,581.4
KHAS	24	195,165	19,208.7	229,765	28,719.5	-34,600	-9,510.8
KIDA	26	158,664	28,935.0	163,770	32,684.6	-5,106	-3,749.6
KIVV	24	157,534	33,362.6	164,313	43,278.2	-6,779	-9,915.6
KOBI	35	358,531	30,129.0	483,769	49,279.4	-125,238	-19,150.4
KPTW-DR	8	70,457	16,693.7	70,936	20,136.7	-479	-3,443.0
KTVM	27	94,412	22,521.7	192,472	42,931.0	-98,060	-20,409.3
KXLF	32	89,941	21,705.3	183,244	43,135.4	-93,303	-21,430.1
KYES	24	318,367	23,065.6	348,432	45,176.4	-30,065	-22,110.8
WABW	18	833,682	33,409.4	843,235	30,455.7	-9,553	2,953.7
WBKP	30	55,963	22,622.3	55,809	23,406.4	154	-784.1
WCES-TV	26	789,281	30,306.4	782,076	25,426.4	7,205	4,880.0
WCYB-TV	35	1,032,543	27,130.4	1,932,239	46,423.1	-899,696	-19,292.7
WDTV	22	413,091	20,642.0	640,752	29,745.8	-227,661	-9,103.8
WEDY	42	3,563,943	12,265.0	2,686,060	8,988.6	877,883	3,276.4
WGVK	32	1,374,301	16,890.2	2,246,060	26,287.6	-871,759	-9,397.4
WJAL	22	1,152,764	22,002.9	812,203	13,881.8	340,561	8,121.1
WLMB	33	1,449,803	15,699.0	2,235,118	18,266.7	-785,315	-2,567.7
WLVT-TV	48	6,133,620	17,350.7	4,857,540	15,373.1	1,276,080	1,977.6
WMC-TV	46	1,376,533	22,235.8	1,584,417	32,403.5	-207,884	-10,167.7
WOI-TV	29	946,641	37,795.5	987,367	43,150.2	-40,726	-5,354.7
WPVI-TV	39	7,111,213	19,285.2	10,185,096	32,269.0	-3,073,883	-12,983.8
WRGB	19	1,427,048	24,038.9	1,565,827	30,324.2	-138,779	-6,285.3
WTVF	35	1,822,368	28,189.6	2,075,852	38,320.7	-253,484	-10,131.1
WUOA	39	553,295	20,046.7	595,117	18,093.3	-41,822	1,953.4