

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
Auction of LPTV and TV Translator )  
Digital Companion Channels )

AU Docket No.  
08-22  
Auction No. 85

FILED/ACCEPTED

SEP 17 2008

Federal Communications Commission  
Office of the Secretary

To: The Commission

**OPPOSITION TO REQUEST TO REMOVE TV CHANNELS 5-6 APPLICATIONS  
FROM AUCTION NO. 85 AND TO IMPLEMENT A FREEZE ON NEW  
APPLICATIONS FOR THOSE CHANNELS**

1. The Community Broadcasters Association ("CBA") hereby opposes the request by the Minority Media and Telecommunications Counsel and the Broadcast Maximization Committee ("MMTC-BMC") to remove two applications for TV Channel 6 (MX Group 283) from the upcoming auction for Low Power Television ("LPTV") digital companion channels and to place a freeze on filing any further applications for TV and LPTV stations on these channels. No freeze has been adopted by the Commission, so there is no basis for barring these two LPTV applicants from entering the digital age because of a desire to take two channels away from television broadcasting in the future.

2. CBA is the trade association of the nation's Class A and LPTV stations. CBA participates regularly in Commission proceedings to represent the interests of the LPTV industry.

3. The digital transition has been extremely difficult for the LPTV industry. The Commission spent a decade hunting ceaselessly to find companion digital channels for all full power television stations. It has undertaken no similar effort for LPTV stations. A single digital companion channel application window was opened for LPTV stations in 2006. It has taken two years to come to the point of resolving mutual exclusivities among those applications that could not be resolved by settlement. Meanwhile, full power stations are scheduled to stop analog operation in only a few months, and an increasingly intensive educational campaign is in

progress telling the public that their analog TV sets “will not work” after February 17, 2009, unless equipped with a digital converter box, of which most models bought with government subsidy coupons block access to analog LPTV signals.

4. The two LPTV applicants in question are in the top 160 Metropolitan Statistical Areas and thus have no cable carriage rights under Section 614(h)(2)(E) of the Communications Act, 47 USC Sec. 534(h)(2)(E). They face loss of access to part of their already-small potential over-the-air audience unless they broadcast digital signals. They need digital channels, and they need those channels now.

5. The only justification offered by MMTC-BMC for their request is to advance their quest to make the 76-88 MHz band (TV Channels 5 and 6) available for Low Power FM (LPFM) broadcasting and/or full power FM broadcasting in the future. But with all due respect for the virtues of the LPFM Service, why should the Commission favor LPFM over LPTV? It is simply wrong to impair the transition of LPTV to the digital age, which is a matter of immediate urgency, because of a desire to expand the LPFM service in the future. The full power FM sector has the IBOC digital system available to expand its services and thus is not without means to grow and expand without additional frequencies.

6. The MMTC-BMC petition, unfortunately, may be an example of a public interest group going further than many of its constituents might choose. Putting LPFM stations in the 76-88 MHz band will leave them without access to a majority of consumer FM radio receivers until the population of receivers gradually turns over to new models. Just as LPTV stations struggle without access to receivers that have antenna terminals wired to MVPD services, LPFM stations will struggle without access to a majority of radio receivers and may find themselves unable to amass enough financial support to survive until new receiver penetration grows to critical mass.

7. This particular situation is one where the Commission should pay attention to the direct comments of licensees and not the comments of public interest groups or trade associations in deciding which frequencies to allocate for broadcast stations.<sup>1</sup> There is an LPFM Internet listserv<sup>2</sup> where LPFM operators post comments and exchange ideas. A number of LPFM operators have commented recently that they would be harmed by being placed in the 76-88 MHz band because of loss of access to radio receivers. In other words, it is not so clear that a majority of the LPFM industry supports the MMTC-BMC idea.

8. In sum, the LPTV applicants in Auction No. 85 are there because they have no alternative way to gain companion digital channels at a critical time when so many DTV converter boxes without analog pass-through capability have been sold and just before full power stations shut down analog operation. The auction must go forward, and the two applicants for Channel 6 must not be denied the ability to participate in the digital transition.<sup>3</sup> The MMTC-BMC request should thus be denied.

Community Broadcasters Association  
3605 Sandy Plains Rd., Suite 240462  
Marietta, GA 30066  
Tel, 800-215-7655  
Fax 214-572-9755  
E-mail: [amy@communitybroadcasters.com](mailto:amy@communitybroadcasters.com)  
[www.dtvnow.org](http://www.dtvnow.org); [www.keepuson.com](http://www.keepuson.com)

Respectfully submitted,



Ronald J. Bruno, President  
Amy Brown, Secretary & Executive Director

September 17, 2008

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<sup>1</sup> "Trade associations" includes CBA. It is appropriate to listen to ideas from MMTC-BMC and CBA and to include those ideas in rule making proposals; but the Commission should listen to applicants for particular frequencies before shutting them out or moving them into another band.

<sup>2</sup> [ccbroadcasters@yahogroups.com](mailto:ccbroadcasters@yahogroups.com)

<sup>3</sup> CBA has urged in other proceedings that the Commission allow pending companion channel applicants to amend to specify another channel to avoid mutual exclusivity. The right to amend might also allow some applicants to move away from Channels 5 and 6. However, CBA has opposed the entire Channel 5-6 reallocation proposal in MB Docket No. 07-294 and adheres to the position it took in that proceeding.

**CERTIFICATE OF SERVICE**

I, Evelyn Thompson, do hereby certify that I have, this 17<sup>th</sup> day of September, 2008, caused a copy of the foregoing "Opposition to Request To Remove TV Channels 5-6 Applications from Auction No. 85 and To Implement a Freeze on New Applications for those Channels" to the following:

David Honig, Esq.  
Executive Director  
Minority Media and Telecommunications Council  
3636 16<sup>th</sup> St., N.W., Suite B-366  
Washington, DC 20036

Commercial Broadcasting Corp.  
1901 S. Greeley Highway #127  
Cheyenne, WY 82007

Mako Communications, LLC  
518 Peoples St.  
Corpus Christi, TX 78401

  
Evelyn Thompson