

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matters of:)
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Public Notice, DA 09-1487)
“Commencement of Rural, First-Come, First-Served)
Digital Licensing for Low Power Television and)
Television Translators Beginning August 25, 2009”)
)
and)
)
Public Notice, DA 09-744)
“Media Bureau Provides Guidance)
to NCE FM Stations Regarding Television)
Channel 6 Protection Requirements”)
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and)
)
Promoting Diversification of Ownership) MB Docket No. 07-294
in the Broadcasting Services)
)
and)
)
Emergency Request for Filing Freeze)
Submitted by the Broadcast Maximization Committee)
)

To: Office of Secretary
Attention: The Commission

**PETITION FOR DECLARATORY RULING
AND COMMENTS ON EMERGENCY REQUEST FOR FILING FREEZE**

Catholic Radio Association (“CRA”), by counsel, hereby petitions, pursuant to
Section 1.2 of the FCC’s Rules, for a declaratory ruling clarifying the following:

(1) That applicants participating in the “digital filing opportunity” described in the above-captioned June 29, 2009, Public Notice, DA 09-1487 (the “*June 29th Notice*”), may not propose use of television channel six merely because such channel has been recently vacated by a full power television licensee’s analog operations pursuant to the digital television transition;

(2) That the above-captioned April 1, 2009, Public Notice, DA 09-744 (the “*April 1st Notice*”) puts all applicants before the FCC – and not just noncommercial educational FM applicants – on notice that efforts to seek authorization to use the recently vacated spectrum will not be entertained unless and until the FCC determines the best use for this spectrum and appropriate procedures whereby mutually exclusive uses may be resolved; and

(3) That no applicant before the FCC may properly propose use of Channel 5 or 6 unless and until the FCC determines the best use of that spectrum, as well as the proper procedures for resolving mutually exclusive uses, pursuant to Comments submitted in the above-captioned Third Further Notice of Proposed Rulemaking, MB Docket 07-294, 23 FCC Rcd 5922 (2008) (the “*Diversity NPRM*”).

CRA also hereby comments on the August 5, 2009, Emergency Request for Filing Freeze, submitted by the Broadcast Maximization Committee (“BMC”) (the “*August 5th Request*”) in response to the *June 29th Notice*.

BACKGROUND

CRA serves as the trade association for radio station licensees and applicants (among

others)¹ who provide, or who wish to provide, Catholic programming in their local communities. Just a few years ago, very few radio stations offered substantial amounts of Catholic programming. Today, CRA members operate in more than 150 communities across America, and hundreds of additional CRA members (and potential members) are awaiting action on pending noncommercial educational (“NCE”) FM applications submitted pursuant to the October 2007 Filing window. These applicants anticipate launching new Catholic radio stations as soon as the FCC processing of their applications allows. Many more Catholic radio apostolates in urban markets -- where congested spectrum bars the authorization of new radio stations -- are attempting to launch Catholic programming formats on existing stations. This phenomenal growth of Catholic radio reflects an enthusiastic response to the 1997 endorsement of radio as an evangelistic tool by none other than Pope John Paul the Great.

The explosive growth of the Catholic radio format presents a genuine opportunity to dramatically increase the availability of a unique radio format not historically present in most communities. Although most noncommercial educational formats air inspirational music from a religious perspective or news-talk programming from a secular perspective, Catholic radio offers listeners a predominantly talk format that is both intellectually robust and profoundly influenced by faith. This programming format is uniquely responsive to listeners

¹ Working on behalf of official Church institutions, as well as ministries founded and operated by lay members, CRA supports the efforts of Catholic radio programming producers, distributors, and broadcasters alike. Association members include not only broadcast licensees but also program providers and several (Arch)dioceses. An Episcopal Advisory Board supports CRA’s efforts to operate in a manner true to the inherited body of authoritative Catholic teachings.

and fills a void for this underserved minority that is not otherwise met by other broadcasters.

* * *

As CRA explained in its *Comments* submitted in the *Diversity NPRM* rulemaking proceeding, the only real limit on the greater availability of this tremendous enhancement of programming diversity is the limited amount of spectrum that has been reserved for noncommercial use. For this reason, CRA has supported the BMC proposal to expand the reserved band into television channels 5 and 6. We herein support the *August 5th Request* of BMC for the same reasons, as well as the additional reasons set forth below. Accordingly, we hereby join in the *August 5th Request*, as well as incorporate that *Request* herein by this reference.

THE URGENT NEED FOR A DECLARATORY RULING

The combined weight of the captioned Public Notices and of the *Diversity NPRM* evidences the Commission's current uncertainty as to how best to utilize the vacated television channel six spectrum, or for that matter whether to expand – as BMC and CRA, among others, have urged – the reserved FM band to include both television channels 5 and 6. Recent history manifests how highly problematic it can be to wait until after a significant filing opportunity before clarifying the unwelcome nature of new proposals relying on the recently vacated channels.

For example, as helpful as the *April 1st Notice* has been to NCE FM applicants seeking increased certainty to facilitate settlement discussions and build-out plans, the clarification of

the agency's approach to television channel six protection requirements surely would have been even more useful if it had been released prior to the 2007 Filing Window, instead of 18 months afterward. A public announcement prior to October of 2007 that the agency would insist upon rigid adherence to the television channel six protection Rules, notwithstanding the anticipated vacating of that spectrum, would have helped the agency, applicants, and television channel six licensees alike prepare for the 2007 Filing Window with a clear understanding of how the digital television transition might – or might not – affect the competitive evaluation of mutually exclusive proposals. Likewise, prudence calls for a public announcement that makes LPTV and television translator applicants aware that any assumption that television channels 5 and 6 are available is not a safe assumption.

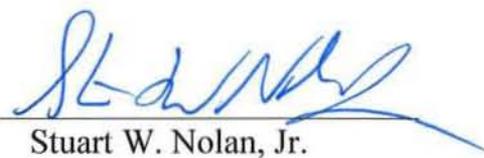
Furthermore, it would be patently unfair to NCE FM applicants, permittees and licensees if the agency was to dismiss technical proposals for interfering with full power television use of channel six that does not, in fact, exist, while allowing low power television and television transmitter proposals to interfere with actual FM radio facilities, either as authorized already, or for which authorization has already been sought, or for which authorization may have been anticipated eventually due to the vacating of television channel six. Accordingly, the FCC must ensure that applicants taking advantage of the filing opportunity described in the *June 29th Notice* receive in a timely way the sort of guidance that NCE FM radio applicants received in the *April 1st Notice*.

CONCLUSION

In view of the foregoing, participants in the upcoming filing opportunity for LPTV and television translator licensees, as well as NCE FM reserved band permittees, licensees, and pending applicants, will benefit immensely from FCC guidance as to the availability of television channels 5 and 6. The agency should extend such guidance by issuing a declaratory ruling to clarify that applications proposing use of television channel 5 or 6 are not appropriate at this time inasmuch as the FCC has not yet determined the best use of the spectrum, or the proper procedures for resolving mutually exclusive proposed uses of the spectrum.

Respectfully submitted,

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