

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

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| In the Matter of |) | |
| |) | |
| Review of Technical Policies and Rules |) | RM 11565 |
| Presenting Obstacles to Implementation of |) | |
| Section 307(b) of the Communications Act to |) | MB Docket No. 09-52 |
| the Promotion of Diversity and Localism |) | |

To: The Commission

**COMMENTS ON MINORITY MEDIA AND TELECOMMUNICATION COUNCIL'S
PETITION FOR RULEMAKING**

The Association for Maximum Service Television, Inc. (“MSTV”)¹ files this response to the Minority Media and Telecommunication Council’s Radio Rescue Petition for Rulemaking (“MMTC Petition”).² The MMTC Petition proposes that the Commission establish an “AM Transition Federal Advisory Committee” to explore the possibility of using television channels 5 and 6 to accommodate an “exodus” of AM radio. In particular, the MMTC Petition cites the proposal of the Broadcast Maximization Committee (“BMC”) to use television channels 5 and 6 for a major expansion of the noncommercial educational service, a reallocation of the low power FM service, and a migration of AM radio stations.³ MSTV submits that such a reallocation could seriously disrupt the public’s television service. Therefore, we respectfully make the following observations for the Commission’s consideration.

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 MMTC Radio Rescue Petition for Rulemaking, MB Docket No. 09-52 (filed July 19, 2009).

³ *See id.* at 8-9.

First, MMTC should not presuppose the outcome of any advisory committee recommendation to the Commission. For example, the MMTC Petition contemplates that the committee would “make suggestions on how to best achieve the exodus of AM radio to the 5/6 band.”⁴ This statement presupposes that this still-speculative committee would conclude that AM radio should relocate to channels 5 and 6. Given that hundreds of television stations—including full-power stations and Class A, low power television stations, and translator stations—already operate on these channels, there is no basis to presuppose that these two channels can accommodate a massive influx of radio stations. As both MSTV and the National Association of Broadcasters (“NAB”) have already noted, expanded radio operations on these channels could harm viewers trying to receive the signals of digital television stations operating on channels 7-13.⁵

Second, neither the Commission nor any advisory committee should compromise the hard-won successes of the transition to digital television, nor should they ignore the “lessons learned” as part of this transition. The successful transition to digital television required years of coordination by the Commission and broadcasters in order to find acceptable allotments for over 1,800 television stations nationwide, while facing the loss of 108 MHz of spectrum (channels 52-69) and ensuring proper international coordination. As a result of this process, over 20 full-power stations received post-transition allotments on channels 5 and 6, and the Commission has affirmed the importance of protecting these stations.⁶ It has stated that it:

⁴ *See id.* at 9.

⁵ *See* MSTV and NAB’s Opposition to the BMC’s “Emergency Request for Filing Freeze,” DA 09-1487 (Aug. 14, 2009) at 3-4 (citing evidence of harmonic interference from FM signals).

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, (continued...)

will not reallocate TV channels 5 or 6 for use by FM radio broadcasting stations because these channels must continue to be available for use by stations in the television broadcasting service. In this regard, we stand by our now well-established determination that the additional opportunities for increasing FM noncommercial coverage do not outweigh the costs of eliminating channel 6 from TV service.⁷

Channels 5 and 6 play an important role in the public's continued ability to receive free, over-the-air broadcast television. An influx of new radio stations on channels 5 and 6 could impair the ability of LPTV stations and TV translators to provide digital television service to the public. For example, it could undermine the ability of analog LPTV stations and TV translators operating on these channels to flash-cut to digital operations. And it could preclude the use of these channels for digital companion channel facilities.

Relatedly, and as the Commission has stated, “[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.”⁸

MB Docket NO. 87-268 23 FCC Rcd 4220, at para. 26 and n.70 (2008) (“*2008 Memorandum Opinion and Order*”) (summarizing the history of this issue and noting that in 1998 the Commission stated its “continuing belief that channel 6 should stay available for television service and that the additional opportunities for noncommercial FM coverage through use of the channel were outweighed by the costs of eliminating it”).

⁷ See *2008 Memorandum Opinion and Order* at para. 27.

⁸ See *2008 Memorandum Opinion and Order* at n.73 (adding that many stations use these channels “and are expected to continue to use those channels”). As MSTV has pointed out earlier, the international coordination process may take years to complete and could result in significant reductions to the border stations’ service areas. See MSTV’s Reply Comments, In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, MB Docket No. 07-294 *et al.* (Aug. 29, 2008) (“*Ownership Reply Comments*”), at 3-4. Full-power stations in border zones include KTVM-DT and KXLF-DT (both Butte, Montana); WBKP-DT, Calumet, Michigan; WDTV, Weston, West Virginia; WLMB-DT, Toledo, Ohio; and WRGB-DT, Schenectady, New York.

Relocation of these stations to new channels would face a number of obstacles (such as congested spectrum in many markets, the potential need for other nearby stations to change channels, and the need for international coordination) and would impose significant harms on stations and viewers (including the potential for widespread service losses and the expenses of building new facilities).⁹ For example, if WPVI in Philadelphia, Pennsylvania were required to relocate, it would need to modify its facilities in a manner that would result in a loss of service to 3 million viewers.¹⁰ It also would not be able to move without three other stations also changing channels.¹¹ Channel changes would impose significant burdens on the viewing public that relies on the nation's free, over-the-air television service for news, emergency information, and entertainment programming. Indeed, ten stations would lose over 100,000 viewers each.¹²

Third, any proposal adopted in the name of fostering diversity in broadcasting should not undermine that diversity by playing "musical chairs" between radio and television broadcast licensees. Many of the television stations currently broadcasting on channels 5 and 6, including Class A and low power television station licensees, are small business entities, recent entrants, and/or voices serving unique, underserved markets. For example, KTVW-CA and

⁹ See *Ownership Reply Comments* at 6 (observing that a digital transmitter and a digital antenna can each cost hundreds of thousands of dollars, with other equipment needs and the costs of removing old equipment and installing new equipment easily pushing costs for some stations over a million dollars).

¹⁰ See MSTV's "Response to BMC's Freeze Request Filed at the Reply Deadline," In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, MB Docket No. 07-294 *et al.* (Sept. 18, 2008) ("*Response to BMC's Freeze Request*"), at 3 and attached engineering analysis. See also *Ownership Reply Comments* at 5 (noting that the majority of the BMC's proposed alternative UHF facilities would serve fewer viewers and that several of the proposals would cause more than 0.5% interference to other full-power and Class A stations).

¹¹ See *id.* at 4 (noting that the proposal for WPVI entailed three contingent channel-changes, for WLVT-DT, Allentown, Pennsylvania; WNEP-DT, Scranton, Pennsylvania; and WJAL-DT, Hagerstown, Maryland).

¹² See *Response to BMC's Freeze Request* at 3-4.

KEVC-CA provide Spanish-language programming to communities in Arizona and California, respectively; WJGN-CA provides religious programming to viewers in Virginia; and WABW-TV provides public broadcasting in Georgia. Neither these stations nor the viewers they serve should be forced to bear the burden of relocating or accepting new interference in order to accommodate an influx of radio stations. Further, as the Commission has recognized, “[p]roviding for the full availability of these channels for new TV stations will help enable the Commission to provide for the 175 DTV allotments for new TV stations required under the [Community Broadcasters Protection Act of 1999].”¹³

In short, television channels 5 and 6 are home to many diverse voices that provide unique programming services to their communities, and these channels will have an important role to play in providing opportunities to enhance television service for the future. Preserving these stations and new opportunities for television broadcasters is critical.

* * *

¹³ See 2008 Memorandum Opinion and Order at n.73. See also *id.* at n. 67 (noting that “[c]onsideration of these new allotments will be appropriate sometime after the current filing freeze is lifted”). The filing freeze was lifted several months later, in May 2008.

For the reasons discussed above, MSTV urges the Commission to continue to protect the hundreds of television stations that already operate on channels 5 and 6 (and nearby VHF channels), thus preserving the role that these channels will play in increasing diversity in television broadcasting.

Respectfully submitted,

/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 (tel.)
(202) 662-6291 (fax)
Its Attorneys

October 23, 2009

CERTIFICATE OF SERVICE

I, Kathryn Bowers, a secretary at the law firm of Covington & Burling LLP, do hereby certify that on this 23rd day of October, 2009, I caused a copy of the foregoing "Comments On Minority Media And Telecommunication Council's Petition For Rulemaking" to be sent via first-class U.S. Mail, postage prepaid, to the following:

David Honig
Joycelyn F. James
Jacqueline Clary
Joycelyn Tate
MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL
3636 16th Street, N.W.
Suite B-366
Washington, D.C. 20010


Kathryn Bowers