

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

In the Matter of)	
)	
Review of Technical Policies and Rules)	
Presenting Obstacles to Implementation)	RM-11565
of Section 307(b) of the Communications)	
Act and to the Promotion of Diversity)	
and Localism)	
)	

To: The Commission

**STATEMENT OF
NATIONAL PUBLIC RADIO, INC.**

Introduction

Pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. § 1.405, National Public Radio, Inc. ("NPR") hereby submits its Statement regarding the petition for rulemaking filed by the Minority Media and Telecommunications Council ("MMTC") proposing certain changes to the Commission's Rules to promote diversity of broadcast ownership and localism.¹

NPR is a nonprofit membership corporation that produces and distributes noncommercial educational programming through more than 860 NCE FM radio stations.² NPR and its member stations originate several hundred thousand hours of news, music and specialized audience programming annually, including signature programs like *All Things Considered*®, *Morning Edition*®, *Marketplace*, *A Prairie Home Companion*®, *Classical 24*®, *This American Life*, *the*

¹ Petition for Rulemaking of the Minority Media and Telecommunications Council Public Notice, Comments of Minority Media and Telecommunications Council, RM-11565, filed July 19, 2009) [hereinafter MMTC Petition].

² About NPR, <http://www.npr.org/about/>.

Takeaway and *Talk Of The Nation*®. Public radio's listenership continues to grow every year: in 2008, growth was up seven percent for a total of 32 million listeners weekly.³ NPR also manages the Public Radio Satellite System ("PRSS"), the nation's first satellite interconnection service for radio which now delivers nearly 400,000 hours of programming annually to NCE-FM stations throughout the United States.

NPR and its members support the Commission's ongoing efforts to promote diversity in broadcasting. As the Commission is bound by a duty to serve diversity,⁴ so is public radio.⁵ NPR has long produced quality programming for under-served audiences, including racial and ethnic minority groups. Over a number of years, for example, NPR has worked with the African American Public Radio Consortium, representing independent public radio stations that serve predominantly black communities, to develop programming, such as *Tell Me More*®, that has a multicultural focus and a particular appeal to African-American audiences. Aside from

³ Press Release, NPR Reaches New Audience High, as Listeners Seek In-Depth News on Election, Economy, (Mar. 24, 2009) *available at* <http://www.npr.org/about/press/2009/032409.AudienceRecord.html> (citing Arbitron ratings from Fall 2008 and further reporting that ratings reflected new audience records for all NPR news programs).

⁴ Section 257 of the Communications Act of 1934 directs the FCC to promote a "diversity of media voices." 47 U.S.C. § 257(b).

⁵ The Public Telecommunications Act of 1988 requires that the Corporation for Public Broadcasting (CPB) address "the needs of racial and ethnic minorities." 47 U.S.C.S § 396 (m)(1). CPB must report annually on the provision of services to minority and diverse audiences by public broadcasting and public telecommunications entities. 47 U.S.C.S. §396 (m)(2). *See* Corporation for Public Broadcasting, Public Broadcasting's Service to Minority and Diverse Audiences, A Report to the 111th Congress and the American People pursuant to P.L. 100-626, June 2009, <http://www.cpb.org/aboutcpb/reports/diversity/08diversity.pdf> ("CPB fosters a culture that embraces multiculturalism and pluralism as core values. We remain focused on facilitating a public service media system that draws on the widest possible range of cultural and social perspectives of the people that make up our nation. But assembling diverse content is not enough; we believe that it is our responsibility to integrate diversity at all levels, through the policies we make, the resources we provide and the education we promote.").

programming, the public radio system values minority ownership or control and employment. Public radio includes a significant number of minority-controlled stations and continues to demonstrate its commitment to drawing minorities into public broadcasting.⁶

I. NPR Strongly Supports The Proposal to Reallocate Television Channels 5 and 6 Spectrum For FM Broadcasting.

The Commission has correctly recognized that reallocating TV channels 5 and 6 for FM broadcasting would “yield tremendous opportunities” for new FM broadcast entrants.⁷ NPR has long advocated the reallocation of spectrum adjacent to the current FM band,⁸ as a way to address the unprecedented demand for radio broadcast facilities.⁹ Reallocating TV channels 5 and 6 spectrum would allow public radio and other NCE-FM stations to modify their facilities to better serve their communities, as NCE-FM stations would no longer be hindered by cumbersome regulations that limit NCE-FM signals. For these reasons, NPR urges the Commission to reallocate TV channels 5 and 6 to FM radio broadcasting.

⁶ See, e.g. Corporation for Public Broadcasting, Public Broadcasting’s Service to Minority and Diverse Audiences, A Report to the 111th Congress and the American People pursuant to P.L. 100-626, June 2009, <http://www.cpb.org/aboutcpb/reports/diversity/08diversity.pdf> at 29-36 (Section D. Public Broadcasting Activity in Employment, Hiring, and Program Production in Minority-Controlled Stations).

⁷ *In the Matter of Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, MB Docket 07-294, 23 FCC Rcd 5922, 5956 (rel. Mar. 5, 2008).

⁸ See, e.g. Comments of National Public Radio, Inc., *In the Matter of Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, MM Docket No. 99-325, at 7-12 (filed Jan. 24, 2000).

⁹ A 2003 filing window for translator stations drew over 13,000 applications. *In the Matter of Creation of a Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Docket No. 99-25, 20 FCC Rcd 6763, 6777 (rel. Mar. 17, 2005). There were over 3,500 applications for new NCE-FM stations in 2007. *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the October 2007 Filing Window for Noncommercial Educational FM Stations*, Public Notice, DA Docket No. 08-2259, (MB rel. Oct. 9, 2008).

Demand for radio broadcast facilities has been unparalleled in recent years, and available NCE-FM spectrum can no longer facilitate the growth. A 2003 filing window for translator stations drew over 13,000 applications – an “extraordinary volume”¹⁰ considering there were only 3,818 translator stations even in existence at that time.¹¹ This spectrum logjam unnecessarily limits opportunities for minorities and other under-represented groups to construct radio stations that would effectively serve their communities.

Usage of the TV channel 5 and 6 spectrum, particularly after the DTV switch, is paltry in comparison to the robust interest in NCE-FM stations. The lower VHF channels are ill-suited for over-the-air broadcast use;¹² technical papers authored on the subject indicate there are several issues that impair lower VHF reception more than UHF or the higher VHF channels.¹³ Indeed, one technical paper found that impulse noise makes the lower-VHF channels “undesirable for digital television.”¹⁴

Indeed, the Commission has sought to “avoid the use of channel 6 in developing DTV

¹⁰ *In the Matter of Creation of a Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Docket No. 99-25, 20 FCC Rcd 6763, 6777 (rel. Mar. 17, 2005).

¹¹ FCC Audio Division, Broadcast Station Totals as of March 31, 2003, *available at* http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-234087A1.pdf.

¹² *See, e.g.*, Jonathan Make, *DTV Stations Seek FCC Changes to Overcome VHF Problems*, COMMUNICATIONS DAILY, Aug. 19, 2009.

¹³ *See, e.g.* FOX TECHNOLOGY GROUP, REASONS CHANNEL 2 THROUGH 6 ARE NOT COMMERCIALY VIABLE FOR DTV, Oct. 4, 2004, *available at* <http://www.mstv.org/docs/techinfo.pdf>; VICTOR TAWIL AND CHARLES W. EINOLF, JR., IMPACT OF IMPULSE NOISE ON DTV RECEPTION AT LOW VHF, 2004, *available at* <http://www.mstv.org/docs/techinfo.pdf> [hereinafter IMPACT OF IMPULSE NOISE].

¹⁴ IMPACT OF IMPULSE NOISE, *supra* note 13.

allotments,”¹⁵ and it has been successful in its endeavor: there are currently only three full-service DTV channel 6 stations,¹⁶ and less than two dozen full-service DTV channel 5 stations.¹⁷ Since as many as thirty distinct licensees could take the place of just one TV station on channels 5 or 6, the potential to diversify radio programming and ownership is self-evident.

Further, eliminating TV channels 5 and 6 would hardly have much of a displacement effect as only a handful of TV stations would be affected. Indeed, some broadcasters have already requested to vacate their positions on channels 5 and 6 of their own volition.¹⁸ A study undertaken by the Broadcast Maximization Committee found that for the few remaining channel 5 and 6 stations, a viable “substitute channel was found for everyone one of them.”¹⁹ Moreover, multicasting now allows DTV licensees to broadcast a variety of programming, assuring an abundant supply of broadcast services to the public.

In addition to meeting the great demand for NCE-FM spectrum, reallocating TV channels 5 and 6 would render the onerous interference protection requirements on NCE-FM stations

¹⁵ *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Sixth Report and Order, Docket No. 87-268, 12 FCC Rcd 14,588, 14,658 (rel. Apr. 21, 1997).

¹⁶ Channel 6 TV Query, <http://www.fcc.gov/mb/video/tvq.html> (select “6” as both the lower and upper channel; then select “Digital Television” under “Service”). The query lists construction permits for six more.

¹⁷ Channel 5 TV Query, <http://www.fcc.gov/mb/video/tvq.html> (select “5” as both the lower and upper channel; then select “Digital Television” under “Service”).

¹⁸ For example, WEDY applied in July 2009 to vacate their DTV channel 6 positions and move to channel 41 instead. *In the Matter of Amendment of Section 73.622(i), Final DTV Table of Allotments, Television Broadcast Stations*, Notice of Proposed Rulemaking, MB Docket No. 09-123 (rel. July 16, 2009).

¹⁹ Comments of the Broadcast Maximization Committee, *In the Matter of Promoting Diversification of Ownership in the Broadcasting Services*, at 10, MB Docket No. 07-294, (filed July 30, 2008) [hereinafter BMC Comments].

unnecessary. For almost twenty-five years, the Commission has placed rigorous requirements on NCE-FM licensees to protect the signals of adjacent channel 6 analog television stations.²⁰ These regulations greatly and unnecessarily force NCE-FM transmitters to reduce their signal strength where it might interfere with reception of TV Channel 6 transmissions. Reallocating TV channel 6 would itself obviate the need for the protection rule.²¹ In turn, NCE-FM stations could easily increase their service areas, better equipping them to serve more of their surrounding community.

A reexamination of the allocation of channels 5 and 6, we submit, is now virtually compelled by the Commission's statutory responsibilities for managing the radio frequency spectrum congruent with its duty to "generally encourage the larger and more effective use of radio in the public interest."²² NPR urges the Commission to consider the potential for FM expansion and diversity when reviewing the now largely unused TV channel 5 and 6 spectrum.

II. The Commission Should Not Limit the Reallocated Channels 5 and 6 Spectrum to the Migration of AM Stations.

Reallocating the television channel 5 and 6 spectrum to FM radio broadcast use offers an unprecedented opportunity to promote the diversity of broadcast ownership. We therefore support the proposal by the Broadcast Maximization Committee and now the MMTTC. To the extent the MMTTC Petition proposes to reallocate the spectrum exclusively to accommodate the migration of current AM licensees, however, we do not support that aspect of the Petition.

²⁰ 47 C.F.R. § 73.525. *See* Changes in the Rules Relating to Noncommercial, Educational FM Broadcast Stations, 50 Fed. Reg. 27,954 (July 9, 1985) (to be codified at 47 C.F.R. pt. 73).

²¹ NPR recently submitted a Petition for Rulemaking, asking the Commission to repeal Section 73.525. *See Petition for Rulemaking of the National Public Radio to Repeal Section 73.525 of the Commission's Rules*, filed Oct. 20, 2009.

²² 47 U.S.C. § 303(g) (2009).

NCE-FM stations, particularly because they have been hindered for so long by Section 73.525, should also be able to utilize the current TV channel 5 and 6 spectrum. As the current reserved NCE-FM band is immediately adjacent to channel 6 spectrum, expansion in this direction would not only allow a myriad of new voices and viewpoints to be heard on new NCE-FM stations, but it would allow existing NCE-FM stations to improve their coverage areas.

While the Petition cites diversity and localism as the main impetus for opening FM spectrum to AM stations;²³ NCE-FM expansion would also meet these goals. The Broadcast Maximization Committee proposal, which the Petition endorses,²⁴ enumerates a number of other reasons for AM stations to the reallocated spectrum. These include problems with interference; news, cultural, and local programming is extremely valuable to the community at large; many stations are minority-owned and thus should be protected; and the economic downturn.²⁵ All of these factors equally affect NCE-FM stations. Accordingly, NPR urges the Commission to consider the expansion potential for *all* radio services and not just for AM migration.

Conclusion

Congress has long held that it is “within the public interest to encourage the growth and development of public radio.”²⁶ Indeed, “expansion and development of public telecommunications and of diversity of its programming depend on freedom, imagination, and initiative on both local and national levels.”²⁷ NPR urges the Commission to seize the TV

²³ MMTC Petition at 9.

²⁴ *Id.* at 8.

²⁵ BMC Comments at 7-8.

²⁶ 47 U.S.C.S. § 396(a)(1).

²⁷ 47 U.S.C.S §396(a)(3).

channel 5 and 6 spectrum initiative and to take the actions proposed herein.

Respectfully submitted,

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October 23, 2009

CERTIFICATE OF SERVICE

I, Gregory A. Lewis, hereby certify that a copy of the foregoing Statement of National Public Radio, Inc. was sent this 23rd day of October, 2009, by first-class U.S. mail, postage prepaid, to the following:

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A handwritten signature in black ink, appearing to read "Gregory A. Lewis". The signature is written in a cursive style with a large initial "G".

Gregory A. Lewis