

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

To: The Commission

OPPOSITION COMMENTS

Signal Above LLC (“Signal Above”) files these Opposition Comments limited to the proposal of Minority Media and Telecommunications Council (“MMTC”) to reallocate TV channels five and six to provide for an expanded radio service band to include additional FM channels to benefit AM broadcasters and/or LPFM service. Any alleged need to expand the FM band to provide relief for AM broadcasters and LPFM has been significantly addressed already by the Commission’s new rules allowing the use of FM translators by AM stations as well as legislation well on its way to passage that would allow for greatly enhanced opportunities for expanded LPFM service. Lastly, the transition to digital has effectively allowed for the tripling of the number of radio signals as more and more stations go digital and broadcast on channel HD1- HD3. The need to expand the band does not exist and certainly not at the expense of eliminating existing channel 5 and 6 LPTV broadcasters who are already providing valuable service.

Signal Above is the licensee of low power television station WDCN-LP, Fairfax, Virginia, serving the DC metro area on Channel 6. It is currently operating as an analog facility and has expended considerable resources to construct and operate its facility. WDCN-LP is providing Hispanic programming in a market with a significant Hispanic population.

The proposal to use channels five and six for radio service has been raised before and rightly rejected by the Commission in *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order, 23 FCC Rcd 4220 (released March 6, 2008). The Commission, in rejecting the proposal, noted, “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.” *Id.* at ¶ 27. The Commission also noted, “Providing 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 CBP Act. Maintaining channels five and six for TV service will also protect the service of the many Class A, low power TV, and TV translator stations that use the low VHF channels and are expected to continue to use those channels when they switch to digital operation.” *Id.* at n.73. The transition has been a ten year process. Elimination of two channels at this stage of the game before the transition is even complete will fatally effect those stations, especially in crowded markets with no alternative channels. Furthermore, elimination of channels five and six effects far more than the approximately 20 full power television stations that already have post-transitional licenses on channels five and six. It effects hundreds of low power stations like Signal Above and their viewers.

Contrary to the suggestion of MMTC, there has never been less of a need to expand the FM band. AM stations will be on an equal footing with FM stations as the transition to digital progresses. Furthermore, the Commission has provided immediate relief to AM broadcasters by allowing the use of translators which doubles the signals for many AM stations by providing both an AM and FM signal of the same programming in a market. Noting problems faced by AM broadcasters including nighttime and electronic interference, the Commission found that FM translators rebroadcasting AM stations ameliorates the results of these problems and “advance[s] the Commission’s interest in localism, competition and diversity.” *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 24 FCC Rcd 9642 at ¶ 19 (2009). Further, the answer to the argument that not all AM stations have access to available translators is to open a translator window for AM stations, not to grab spectrum already being used by LPTV operators.

There also has never been less of a need to address the claim that that there is insufficient spectrum for LPFM. New legislation is making its way through Congress that would greatly expand opportunities for LPFM operators. On October 15, 2009, the House Energy and Commerce Committee passed the Local Community Radio Act (“LCRA”). *LPFM Skeptics Become Supporters*, INSIDE RADIO, Oct. 16, 2009. The LCRA permits the Commission to grant authorizations for LPFM stations on full power FM third-adjacent channels, and if passed by Congress, could result in up to 3,000 new LPFM stations. *Id.*

As a general proposition, there has also never been less of a need to expand the noncommercial band or commercial FM band. The transition to digital is allowing for a three fold increase in the number of signals in a given market. This transition to digital would only be delayed and hindered by making available more analog spectrum in an already very competitive

radio market. The need for further expanding the dial is further undercut by available and ever increasing online radio services allowing virtually anyone a voice.

As a low power television station, Signal Above is not subject to mandatory transition to digital broadcasting. As such, it will likely continue to broadcast an analog signal in an effort to continue to provide an important service to a significant audience which otherwise still has no service after the transition. As noted in an article in the Washington Post, *Move to Digital TV Faces Language Barrier*, Wash. Post, July 19, 2008, A01, a significant Hispanic population that receives over the air television will no longer receive any television service due to the economics of the transition. The proposed elimination of channel 6 in the congested DC market may well mean the end of Signal Above's continued important service to this Hispanic audience.

The fact is that Signal Above and many other channel 6 and 5 LPTV operators are already providing the very type of service that MMTC advocates by providing minority oriented programming. It makes no sense to eliminate an existing service only to have it replaced by a form of the same service. In that regard, Signal Above is using its analog audio signal to provide a very important local Hispanic format to the DC metro area as are other channel 6 stations in other markets.

Signal Above proposes that the Commission reject the MMTC proposal or consider alternatives which will both protect LPTV broadcasters and their viewers and provide for expanded radio service. One suggested option is that all full power and low power stations licensed on channel 5 or 6 be grandfathered and that otherwise any available frequency in the 76-88 MHz band could be used for expanded radio service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Stephanie Patton, in the law offices of Gammon & Grange, P.C., hereby certify that I have sent this 23rd day of October, 2009, by first-class, postage prepaid, U.S. Mail, copies of the foregoing OPPOSITION COMMENTS to the following:

David Honig, Executive Director
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A handwritten signature in cursive script that reads "Stephanie Patton". The signature is written in black ink and is positioned above a solid horizontal line.

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