

Before the
Federal Communications Commission
Washington, D.C. 20554

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

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COMMENTS OF ABC, INC.

ABC, Inc. ("ABC"), by its attorneys, submits these comments ("Comments") in the above-captioned proceeding in which the Federal Communications Commission ("FCC" or "Commission") is considering various proposals of the Minority Media and Telecommunications Council ("MMTC") intended to increase participation in the broadcasting industry by minorities and women – a goal which ABC wholeheartedly supports.¹ In these Comments, ABC responds to MMTC's proposal to establish an AM Transition Federal Advisory Committee ("Channel 5/6 Committee" or "Committee") for the purpose of determining the best uses of television channels 5 and 6 in the digital television ("DTV") era.² For example, MMTC suggests tasking the Channel 5/6 Committee with evaluation of a proposal by the Broadcast Maximization Committee ("BMC") to relocate certain incumbent digital television stations operating on television channels 5 and 6 to new television channels in order to accommodate the migration of radio

¹ See Minority Media and Telecommunications Council Radio Rescue Petition for Rulemaking, Review of Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism, RM 11565 (filed Jul. 20,2009) ("Petition").

² See Petition at 7-10.

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stations to television channels 5 and 6.³ As set forth in more detail below, the Committee is unnecessary because the Commission already has determined that continued use of channels 5 and 6 for television service is in the public interest. Moreover, adoption of any recommendation by the Channel 5/6 Committee to reallocate channels 5 and 6 to radio services would be disruptive to both the DTV transition process and viewers and, therefore, would be contrary to the public interest.

I. THE CHANNEL 5/6 COMMITTEE IS UNNECESSARY AT THIS TIME

The Commission consistently has determined that continued use of channels 5 and 6 by television stations is in the public interest and this determination continues to remain valid in the DTV era.⁴ Indeed, the FCC has ruled that channels 5 and 6 must be reserved for full-power stations that made the transition to all digital broadcasts on June 12, 2009, as well as for Class A, low power television, and television translator stations that will transition to digital in the future.⁵

³ See Petition at 8 (“One proposal, submitted by [BMC], is of particular interest to MMTC. BMC suggested that within the spectrum vacated by the analog TV Channel 5 and 6 stations post transition, there would be enough space for a major expansion of the noncommercial educational service . . . , a reallocation of the low power FM service . . . , and enough space for all interested AM stations to migrate to the Channel 5 and 6 band”). See Comments of Broadcast Maximization Committee, MB Docket 07-294, *et al* (filed July 20, 2008) (“BMC Reallocation Proposal”) (recognizing the “impact” of its plan on television stations remaining on channels 5 and 6 after June 12, 2009 and assuming that such stations “will have alternative channels available to them after the DTV transition is complete”).

⁴ See *In the Matter of 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*, FCC 08-72, MB Docket No. 87-268, ¶ 27 (rel. Mar. 6, 2008) (“*Seventh Reconsideration Order*”) (“[W]e 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.”); *In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC Rcd 7418, ¶¶ 42-43 (1998); *In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348, ¶¶ 54, 57 (1998).

⁵ See, e.g., *Seventh Reconsideration Order*, at note 73 (“Maintaining channels 5 and 6 for TV service will also protect 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.”).

The proposal to create the Channel 5/6 Committee appears to be based on the speculative presumption that the Commission will modify its rules with respect to the use of channels 5 and 6 by television stations. As an initial matter, to date, the FCC has made no such determination. Moreover, it is not necessary to create the Channel 5/6 Committee to enable the FCC to consider the merits of reallocation of television channels 5 and 6 to another use. In fact, the FCC already has before it proposals to amend its rules to permit channels 5 and 6 to be used for radio services.⁶ The FCC can address any issues relating to channels 5 and 6 through its pending rulemaking proceedings. Indeed, it simply is not necessary to establish a special committee to address matters already before the FCC.

II. THE ESTABLISHMENT OF THE CHANNEL 5/6 COMMITTEE IS CONTRARY TO THE PUBLIC INTEREST TO THE EXTENT THE COMMITTEE SEEKS TO REALLOCATE TELEVISION CHANNELS 5 AND 6 TO RADIO SERVICES

Based on the Commission's decisions to retain channels 5 and 6 for television services, pursuant to a multi-step channel election process, a number of television stations elected, and were assigned, channels 5 or 6 for their post-transition DTV operations. Each of these stations independently selected channel 5 or 6 as the best means to serve their former over-the-air analog viewers ("Viewers") following the DTV transition. Indeed, in many cases, channels 5 and 6 were the only available channels by which television stations believed they could reach their Viewers while still complying with the Commission's rules regarding interference and other technical matters.⁷ Although choosing channels 5 or 6 likely involved certain tradeoffs,

⁶ See, e.g., BMC Reallocation Proposal, MB Docket 07-294; Comments of Ace Radio Corporation, Auburn Network, Inc., Great South Wireless, LLC, Matinee Radio, LLC, Radio K-T, Inc., Scott Communications, Inc., and Great Scott Broadcasting, MB Docket 99-25, at 8-9 (Apr. 7, 2008); Comments of Cox Radio, Inc., MB Docket 99-25, at 3 (Apr. 7, 2008).

⁷ For example, ABC-owned television station WPVI-TV ("WPVI") struggled to find a channel for WPVI that would permit it to reach its Viewers and, reluctantly, chose channel 6, despite well-documented technical concerns about the channel's post-transition feasibility. ABC has explained the

television stations electing either of these channels relied on the certainty provided by the FCC's allocation of channels 5 and 6 for television service and expended significant time and resources to construct post-transition DTV facilities on these channels by June 12, 2009.

The DTV transition now is substantially complete and television stations operating on channels 5 and 6 have been providing their Viewers with a digital-only signal for over four months. Nevertheless, MMTC seeks to establish the Channel 5/6 Committee to "make recommendations" as to "the best use of Channels 5 and 6" which use likely would include reallocating television channels 5 and 6 to radio services and migrating incumbent television stations to alternative channels (whether pursuant to the BMC proposal or otherwise).⁸ To mandate that incumbent television stations relocate to a new channel as a result of any recommendations by the Channel 5/6 Committee to reallocate Channels 5 and 6 to radio services would essentially require such stations to start the DTV transition process over again.

Reinitiating the DTV transition process at this time would be contrary to the public interest for three primary reasons. First, since June 12, 2009, the FCC has been working diligently with a significant number of television stations to restore over-the-air television service to Viewers who have been unable to receive a reliable digital signal after the transition. Such television stations have considered a number of technical solutions, including modification

factors that it considered when selecting channel 6 for WPVI's post-transition operations in multiple pleadings filed with the Commission, which pleadings are hereby incorporated by reference. *See, e.g.*, Comments of ABC, Inc., MB Docket 07-294, *et al.*, 2-4 (filed July 30, 2008); *Ex Parte* Letter to Ms. Marlene H. Dortch, FCC, from Susan L. Fox, The Walt Disney Company, and Tom W. Davidson, Counsel to ABC, Inc., MB Docket No. 99-25 (filed July 9, 2008); ABC, Inc., Opposition to Petitions for Reconsideration of National Public Radio, Inc. and Hammett & Edison, Inc., MB Docket 87-268 (filed May 20, 2008) (collectively, the "ABC Channel 6 Pleadings").

⁸ *See* Petition at 7-10.

of existing facilities to increase power or the implementation of replacement translators.⁹ The potential for the removal of channels 5 and 6 from the television bands would handicap the FCC and affected full-power television stations from freely identifying the best solutions to resolve reception and other technical problems resulting from the DTV transition.¹⁰

Second, the spectrum on television channels 5 and 6 is necessary to enable Class A, low power, and television translator stations to transition to digital.¹¹ For example, in the Northeast corridor, where spectrum already is highly congested, it is likely to be quite difficult for Class A, low power, and television translator stations that operate analog facilities on channels 5 or 6 to locate alternative channels for their digital broadcasts.

Third, the mandated relocation of incumbent channel 5 and 6 television stations to new television channels as a result of any recommendations made by the Channel 5/6 Committee would be disruptive and confusing to Viewers. This is particularly true of those Viewers who experienced reception challenges after June 12 and, as a result of the efforts of the FCC and the affected television stations, only recently have been able to receive a reliable digital signal from certain television stations operating on channels 5 and 6.

⁹ ABC, for example, worked with neighboring television stations to implement a mutual power increase to enable WPVI to restore over-the-air television service to many of its Viewers who were not able to receive a reliable digital signal from WPVI after the DTV transition. See FCC File No. BLDSTA-20090619ABQ. As discussed in the ABC Channel 6 Pleadings, WPVI evaluated a number of options other than operation on channel 6 and has consistently determined that, despite the well-documented technical challenges, channel 6 was the best option available from which WPVI could reach its Viewers with a digital signal following the DTV transition. See, e.g., Reply Comments of ABC, Inc., MB Docket 07-294, *et al*, 2-4 (filed August 39, 2008). The pleadings referenced in this footnote also are incorporated herein by reference.

¹⁰ It also is important to note that full-power stations expended significant financial and other resources to build digital facilities on channels 5 and 6. In making such expenditures, these stations relied on the fact that the FCC had allocated such channels for digital services in the DTV Table of Allotments. To require such stations to again make the large capital expenditures that would be required to relocate to new channels so soon after the DTV transition would be inequitable.

¹¹ See note 5, *supra*.

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For the reasons set forth above, the Commission should not adopt MMTC's proposal to establish the Channel 5/6 Committee.

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CERTIFICATE OF SERVICE

I, Dayle Jones, of Akin Gump Strauss Hauer & Feld, LLP, certify that a copy of the foregoing Comments filed on behalf of ABC, Inc., was served via first-class mail (except as designated) on this 23rd day of October 2009, upon the following:

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