

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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 to	)	MB Docket No. 09-52
the Promotion of Diversity and Localism	)	

To: The Commission

**REPLY COMMENTS**

The Association for Maximum Service Television, Inc. (“MSTV”)<sup>1</sup> files these reply comments concerning the Minority Media and Telecommunication Council’s Radio Rescue Petition for Rulemaking (“MMTC Petition”).<sup>2</sup> As noted in MSTV’s initial comments, a reallocation of television channels 5 and 6 could seriously disrupt the public’s television service. MSTV agrees with the commenters that note the importance of preserving television broadcasting on channels 5 and 6, and disagrees with those commenters that ignore or seek to minimize the serious public interest harms inherent in the MMTC Petition’s proposal regarding these channels.

Hundreds of television broadcasters are using television channels 5 and 6 to provide millions of viewers with free, over-the-air television service. An influx of new radio stations on these channels, and/or a forced migration to new channels, would not be in the public interest and actually would harm diversity in broadcasting. It would undermine the ability of

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<sup>1</sup> 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.

<sup>2</sup> MMTC Radio Rescue Petition for Rulemaking, MB Docket No. 09-52 (filed July 19, 2009).

Class A stations, LPTV stations, and TV translator stations to provide digital television service to the public. And it would ignore the service losses, financial hardships, and other challenges inherent in the proposal to create new allotments for these stations.

As an initial matter, the statement by one commenter that “[t]hese channels are being used by about 30 TV stations, all of which could easily be migrated elsewhere” is simply incorrect.<sup>3</sup> Similarly misleading is the statement of another commenter that “eliminating TV channels 5 and 6 would hardly have much of a displacement effect as only a handful of TV stations would be affected.”<sup>4</sup>

First, as MSTV noted in its initial comments in this proceeding—and as the Commission has already recognized—relocation of these stations to new channels would be immensely difficult and harm both these stations and their viewers.<sup>5</sup> The National Association of Broadcasters (“NAB”) correctly observes that a “reallocation of TV channels 5 and 6 for radio service could cause significant disruption to post-transition digital television service, particularly given the substantial number of full-power TV stations that were assigned DTV channel 5 or 6.”<sup>6</sup>

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<sup>3</sup> See Comments of Dana Puopolo at 1.

<sup>4</sup> See Statement of National Public Radio, Inc. (“NPR”) at 5. The Educational Media Foundation also overlooks the many diverse voices that currently broadcast on channels 5 and 6. It urges the Commission to embrace the MMTC Petition’s proposal to reallocate purportedly “vacated” channel 5 and 6 spectrum, while paradoxically taking the stance that the Commission should increase diversity without “supplanting existing services that the public relies on.” See Comments of the Educational Media Foundation at 20-22.

<sup>5</sup> The Commission has noted that “[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.” 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, MB Docket NO. 87-268 23 FCC Rcd 4220, at n. 73 (2008) (“2008 Memorandum Opinion and Order”).

<sup>6</sup> See Comments of NAB at 12.

The Commission has determined that these channels “must continue to be available for use by stations in the television broadcasting service.”<sup>7</sup> For the full-power television stations alone, construction of new facilities on other channels could in some cases cause hundreds of thousands of viewers to lose service, and could impose serious financial hardship on these stations.<sup>8</sup>

MSTV notes that the Broadcast Maximization Committee (“BMC”) has pointed out the technical challenges associated with television broadcasting on these channels. BMC asserts that “[g]iven the choice, most, if not all, digital TV operators would prefer to operate in the UHF band.”<sup>9</sup> MSTV recognizes that several stations have encountered difficulty in digital broadcasting on VHF channels. But for these stations, the UHF band simply may not be a feasible option for any number of reasons (including, *e.g.*, spectrum congestion, international coordination, the financial hardship associated with constructing new facilities, and/or the desire to avoid significant service losses).<sup>10</sup> Indeed, an analysis submitted previously by MSTV noted that reallocating channels 5 and 6 to radio would result in more than 100,000 viewers losing television service due to reduced coverage areas from *each* of just ten affected stations.<sup>11</sup>

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<sup>7</sup> See 2008 Memorandum Opinion and Order at para. 27.

<sup>8</sup> 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.

<sup>9</sup> See Comments of BMC at 11.

<sup>10</sup> The BMC’s technical study concedes that most of its proposed substitute UHF channels result in smaller service areas. See Comments of BMC, Technical Statement, at 8. It also points out that in several cases, more than 0.5% new interference is caused to the operations of other full-power stations and/or Class A stations. See *id.* at 4, n.2.

<sup>11</sup> 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 3-4 and attached engineering analysis (noting that ten stations would each lose over 100,000 viewers, with one station losing over 3 million viewers).

Moreover, even in markets with no TV stations currently operating on channels 5 and 6, there is the potential for additional harmonic interference if radio stations are placed on these channels.<sup>12</sup> Such interference could affect DTV channels 7-13.<sup>13</sup>

Second, in addition to the full-power TV stations that currently broadcast on these channels, there are hundreds of Class A television stations, low power stations, and TV translator stations that broadcast on channels 5 and 6. As NAB points out, the MMTC Petition “discounts the potential impact on the more than 250 Class A, low power and TV translator stations that currently utilize DTV channels 5 and 6, and would reduce the potential for protecting 175 new DTV allotments, as required under the Community Broadcasters Protection Act of 1999.”<sup>14</sup> The Commission has stated that many stations use these channels “and are expected to continue to use those channels.”<sup>15</sup>

The comments of Signal Above LLC (“Signal Above”) illustrate the important role that television stations operating on channels 5 and 6 play in fostering diversity. Signal Above is the licensee of WDCN-LP, an LPTV station that provides Hispanic programming to viewers in the D.C. metropolitan area.<sup>16</sup> It asserts that the “proposed elimination of channel 6 in the congested DC market may well mean the end of Signal Above’s continued important service

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<sup>12</sup> See MSTV Comments at 1. See also MSTV and NAB’s Opposition to the BMC’s “Emergency Request for Filing Freeze,” DA 09-1487 (Aug. 14, 2009) at 3-4 (discussing evidence of harmonic interference from FM signals and citing Rhodes, Charles, “Testing for DTV Interference,” 32-33, *TV Technology* (June 10, 2009)).

<sup>13</sup> See *id.*

<sup>14</sup> See Comments of NAB at 12. See also 2008 Memorandum Opinion and Order at n.73 (recognizing that “[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]”).

<sup>15</sup> See 2008 Memorandum Opinion and Order at n.73

<sup>16</sup> See Comments of Signal Above at 2.

to this Hispanic audience.”<sup>17</sup> Signal Above points out that it “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.”<sup>18</sup> Signal Above correctly observes that the Commission should not expand radio broadcasting “at the expense of eliminating existing channel 5 and 6 LPTV broadcasters who are already providing valuable service.”<sup>19</sup>

Relatedly, as ABC points out, “the spectrum on television channels 5 and 6 is necessary to enable Class A, low power, and television translator stations to transition to digital.”<sup>20</sup> MSTV noted in its initial comments that “[a]n 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.”<sup>21</sup> It pointed out that the MMTC Proposal could prevent analog LPTV stations and TV translators operating on channels 5 and 6 from flash-cutting to digital operations, and that it could undermine other stations’ ability to use these channels for digital

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<sup>17</sup> *See id.* at 4.

<sup>18</sup> *See id.* at 4 (adding that “[i]t makes no sense to eliminate an existing service only to have it replaced by a form of the same service”).

<sup>19</sup> *See id.* at 1. Signal Above also suggests that the radio industry has inflated its claim of needing more spectrum. For example, Signal Above notes that the Commission recently decided to allow AM stations to use FM translators, and it asserts that the transition to digital radio “has effectively allowed for the tripling of the number of radio signals.” *See id.* at 1. *See also id.* at 3 (noting that legislation pending in Congress concerning the third-adjacent channel rule could result in the creation of thousands of new LPFM stations). *See also* Comments of Venture Technologies Group, LLC at 3 (noting that recent and pending reforms render the reallocation of channels 5 and 6 unnecessary, and adding that the licensees currently broadcasting on those channels would be “devastated” by a reallocation).

<sup>20</sup> *See* Comments of ABC, Inc. (“ABC”) at 5.

<sup>21</sup> Comments of MSTV at 2.

companion channel facilities. ABC's comments indicate that these problems would be magnified "in the Northeast corridor, where spectrum already is highly congested."<sup>22</sup>

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<sup>22</sup> See Comments of ABC at 5.

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 these stations' role in providing diverse program services.

Respectfully submitted,

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November 9, 2009

## **CERTIFICATE OF SERVICE**

I, Kathryn Bowers, a secretary at the law firm of Covington & Burling LLP, do hereby certify that on this 9th day of November, 2009, I caused a copy of the foregoing "Reply Comments" to be sent via first-class U.S. Mail, postage prepaid, to the following:

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