

**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 )

To: Office of the Secretary  
Attention: The Commission

**REPLY COMMENTS**

Broadcast Maximization Committee (“BMC”) hereby responds to the Comments submitted in the above referenced proceeding concerning the Minority Media Telecommunications Council’s (“MMTC”) Petition for Rule Making to eliminate certain rules which present unnecessary obstacles to radio station improvements. The centerpiece of the MMTC Petition is the recommendation that an advisory committee be established to assist in the process of utilizing the vacant Channel 5 and 6 spectrum space for FM broadcasting pursuant to the proposal offered by BMC. Most commenters favor this proposal. However there were several parties expressing opposition to the BMC proposal. BMC will offer some constructive solutions to the issues opponents have raised in these Reply Comments.

All parties recognize that most of the spectrum consisting of Channels 5 and 6 (76-88 MHz) is vacant and the space should be used for broadcasting. BMC has offered a comprehensive plan which includes spectrum for new NCE stations, for new and existing LPFM stations and for all existing AM stations. BMC believes there will be

enormous benefits for the entire radio broadcast industry from its proposal. Those parties opposing the BMC plan are not offering any meaningful alternative uses for the vacant Channel 5 and 6 spectrum space. The concept of an advisory committee is one option which could assist in accommodating the few opposing interests.

### **SUPPORTING COMMENTERS**

National Public Radio (“NPR”) supports the BMC plan primarily “as a way to address the unprecedented demand for radio broadcast facilities.”<sup>1</sup> NPR notes that by opening up the spectrum immediately adjacent to the reserved band, NCE stations can improve their facilities to better serve their communities.<sup>2</sup> NPR cites technical papers which discuss the unsuitability of VHF channels for digital TV use and notes there are relatively few television stations remaining on Channels 5 and 6. NPR asserts that “reexamination of the allocation of channels 5 and 6...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.’”<sup>3</sup> NPR believes that the frequencies immediately adjacent to the current reserved portion of the FM band should be used for new and existing NCE stations which is exactly what BMC is proposing.

Educational Media Foundation (“EMF”) supports the prompt resolution of deciding the usage of Channels 5 and 6 and the appointment of an advisory committee to

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<sup>1</sup> NPR Statement at 3.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 6.

assist with the transition.<sup>4</sup> EMF's primary concern is to eliminate the conflict between LPFM and FM translator interests for more spectrum and suggests that the Commission permit the immediate use of the upper two channels for LPFM use. EMF also supports the proposed usage of the remaining spectrum for AM broadcast stations and NCE expansion to promote diversity and localism.<sup>5</sup>

Thomas R. Spencer II supports the proposed use of Channels 5 and 6 for FM broadcasting and notes that most DTV stations are rethinking their decision to remain on VHF. Dana Puopolo also supports the use of Channels 5 and 6 for FM broadcasting and believes that the remaining TV stations could be migrated elsewhere. He supports the proposed usage for AM stations within a reasonable period for simulcast and the proposed nationwide use of one or two channels for the National Weather Service and Homeland Security. Edward A. Schober says he strongly supports the BMC proposal and urges that certain steps are taken to insure that the plan is implemented properly. Arbitron supports the BMC proposed plan and notes that the radio industry is in need of creative and thoughtful ways to eliminate and modify unnecessary rules so that stations can adapt to the current economic environment and respond to market realities.

BMC, MMTC and a coalition of 20 broadcast owners (Joint Parties) fully support the concept of an advisory committee in connection with the BMC proposal. The Joint Parties stress the plight of AM stations and the pressing need to provide some hope for their future viability. They state that not only would the migration of the AM stations to

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<sup>4</sup> EMF Comments at 19-22.

<sup>5</sup> *Id.*

the FM band provide that needed encouragement but would also provide tremendous benefits for diversity of ownership and localism throughout the country

### **OPPOSING COMMENTS**

The opponents are primarily concerned about the remaining full service television and LPTV Channel 5 and 6 stations. ABC, Inc. (“ABC”), The Association of Maximum Service Telecasters (“MSTV”) and the National Association of Broadcasters (“NAB”) state that the formation of a committee is premature and would be disruptive to the DTV transition process. ABC is concerned about its Station WPVI-TV, Philadelphia, PA. It claims that the station has no other channel available and any forced channel change would be disruptive, confusing to viewers and costly. MSTV and NAB voice similar concerns and, along with ABC, they note the impact to hundreds of LPTV stations operating on these channels. NAB states that the impact to post transition DTV stations on Channels 5 and 6 and the presence of more than 250 LPTV and TV translator stations are not outweighed by the additional opportunities for increasing FM service, including noncommercial educational stations.<sup>6</sup>

Venture Technologies Group, LLC (“VTG”), Signal Above, LLC (“Signal Above”) and Island Broadcasting Company (“Island”), all operators of Channel 6 LPTV stations, also oppose the BMC plan and the MMTC suggestion of an advisory committee. VTG argues that adding new stations would ruin the market for IBOC at a time when there is shrinking ad revenue. It believes that the impact would be felt the most by minority and foreign language broadcasters who will not have the financial ability to take

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<sup>6</sup> NAB Comments at 11-13.

advantage of the BMC proposal.<sup>7</sup> VTG also asserts that by creating so many new stations, the economic model will be so fragmented that few stations will be able to afford local programming. On the other hand, VTG notes that its stations provide local programming and serve minority audiences.

Signal Above asserts there is no need to expand the FM band for AM or LPFM stations because AM broadcasters have already benefited from the use of FM translators and the LPFM service will expand from the elimination of 3<sup>rd</sup> adjacent channel spacing requirements. In addition, stations that operate with IBOC have multiple signals and online radio services will provide even more choices for the listener. Signal Above notes that it has a LPTV station on Channel 6 which provides Hispanic programming. It supports the status quo for Channels 5 and 6. However, Signal Above adds that if the MMTC proposal is considered, Signal Above urges that all full power and LPTV stations on Channels 5 and 6 be grandfathered. Island states that it agrees with the comments of Signal Above.

## **DISCUSSION**

BMC notes that no full service TV Channel 5 and 6 station, other than ABC's WPVI, filed an opposition pleading in this proceeding voicing concerns with the BMC plan.<sup>8</sup> Despite the objections submitted by ABC, MSTV and NAB, BMC believes that its proposal offers enormous public interest benefits to so many broadcast services that it deserves serious consideration. In that regard, the appointment of an advisory committee to deal with the type of issues that these opponents raise is exactly why an advisory

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<sup>7</sup> VTG Comments at 1.

<sup>8</sup> In a related proceeding (MB Docket 07-294), Bolten Media Group, Inc, licensee of two Channel 5 and one Channel 6 TV stations also objected to the BMC plan.

committee would be helpful to the FCC in providing needed consultation. Nevertheless, BMC believes that it can accommodate WPVI-TV on Channel 6 by adjusting the AM, NCE and LPFM allocations to concentrate these services within the available Channel 5 space around the Philadelphia area. This can be done in a few other markets as well where necessary. This is not an ideal arrangement particularly with the desire to have a continuous NCE reserved band extending from 87.1 MHz to 91.9 MHz and with the existing NCE stations that must continue to protect WPVI-TV. However the protection standards with respect to digital Channels 5 and 6 stations should become less restrictive than the current analog protections and it is expected that most if not all the other Channel 5 and 6 digital TV stations can be more easily accommodated in the UHF band.

As for the Channel 6 LPTV stations that have expressed concerns with their existing operations, BMC also believes that they can be accommodated within the BMC plan by having their existing operations grandfathered. BMC does not expect that all LPTV Channel 5 and 6 stations will want to remain on these two channels when they convert to digital but there is room to accommodate a significant number of these current operations within the plan. Based on conversations that BMC has had with various affected parties, BMC is hopeful that this accommodation will satisfy the concerns that have been expressed by the LPTV stations and those concerns made by other parties on behalf of the LPTV stations.

BMC would like to clarify a couple of misconceptions about its plan that have become apparent from the oppositions. VTG and Signal Above assert that advertising sources will be spread too thin and the competition for listeners will affect minority and small business stations disproportionately if there are a large number of new stations

authorized under the BMC plan. But BMC does not propose any new commercial stations within the Channel 5 and 6 spectrum. Only the existing AM stations would migrate to this space along with new NCE stations and new and existing LPFM stations which are not generally considered as competitors for ad revenue. BMC recognizes that there are some LPTV stations that provide minority and local programming but the AM service has numerous minority and local news stations throughout the country.

In addition, BMC believes, that contrary to VTG's assertion that BMC's plan would "ruin the market for IBOC", just the opposite should occur. Detractors of IBOC have said that the lack of compelling programming or new features may ultimately cause it to fail. At least one major manufacturer has avoided building receivers because they do not see a viable market yet. However, with thousands of "new" program streams under BMC's plan, the market for IBOC should drastically improve. Existing AM and NCE listeners would be more likely to buy a digital receiver and, in turn, these AM and NCE stations could reach the technology-minded younger generation which are not current listeners.

The valuable service that AM stations have provided in the past has been recognized by NAB in various pleadings filed in *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, MB Docket No. 07-172. For example, in its Comments in that proceeding, NAB describes "the important role that AM radio service plays in Americans' lives, noting that AM service has long been a 'unifying force through the country;' one that has 'revolutionized the fabric of our daily lives, our dialogue and our democracy.'"<sup>9</sup> NAB continued by saying that,

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<sup>9</sup> NAB Comments in MB Docket 07-172 at 1.

“AM radio service is also vital to fulfilling the Commission's goal of broadcast localism. AM broadcasters air programming that is responsive to the needs and interests of their communities every day. AM broadcasters especially serve a local 'niche'... broadcasting such things as local high school sporting events, evening town meetings, and local emergency information.”

“However, AM service faces several unique technical obstacles to delivering a high quality signal to listeners. Many stations must reduce, or turn off, their power at night to avoid interference among AM broadcasts, causing some of these stations to lose as much as 80% to 95% of their coverage areas during the nighttime hours. As a result, many AM stations are unable to broadcast during the critical morning and evening drive times or may serve only a small fraction of their audience. These stations cannot relay timely information on weather emergencies, traffic conditions, school closings, live candidate debates and town hall meetings. Importantly, this directly impacts consumer choice among sources of local information.”<sup>10</sup>

“Regarding diversity, we note that ownership of AM stations is very diverse. As noted in NAB's Petition, there are some 2,452 different owners of the 4,814 AM stations licensed. The Commission's most recent reports on minority and female broadcast ownership (which do not include information on licenses held by sole proprietors or partnerships composed solely of natural persons) show that there are at least 154 minority owners and at least 161 female owners that hold the licenses for approximately 438 AM stations. Improving the service these diverse owners can provide will help them succeed in their markets and improve the public's access to information from diverse sources.”<sup>11</sup>

In view of how supportive NAB was when it urged the Commission to adopt rules to allow AM stations to rebroadcast on FM translators, it is disappointing that NAB has not supported AM stations in this effort. Unlike the use of FM translators where only about 250 AM stations are rebroadcast over an FM translator, the BMC plan will assist all 4,789 AM stations across the country.<sup>12</sup> Unfortunately, NAB has not offered any suggestions as to how AM stations can benefit from the spectrum that is available on

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<sup>10</sup> *Id* at 2.

<sup>11</sup> *Id* at 4.

<sup>12</sup> AM station total is from the FCC News release of September 4, 2009.

Channels 5 and 6. Instead, NAB has spoken only for the few remaining full service TV stations and the current analog LPTV stations.

### **CONCLUSION**

BMC believes that it can accommodate most if not all of the objections to its plan by working around stations such as WPVI-TV which demonstrate they must remain on Channels 5 and 6 and by grandfathering Channel 6 LPTV stations while they remain analog. BMC urges the Commission to consider the benefits offered to the NCE and LPFM services and, to quote NAB again, “given the changing marketplace and technology advances, AM radio's limitations are now simply unacceptable to many consumers...this is a rare opportunity for the Commission to help increase diversity of ownership, including minority ownership, of broadcasting properties via race-neutral rule changes.”<sup>13</sup>

### **BROADCAST MAXIMIZATION COMMITTEE**

\_\_\_\_\_/s/\_\_\_\_\_  
**John J. Mullaney**  
**Mark Lipp**  
**Paul H. Reynolds**  
**Bert Goldman**  
**Joseph Davis**  
**Clarence Beverage**  
**Laura Mizrahi**  
**Lee Reynolds**  
**Alex Welsh**

November 9, 2009

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<sup>13</sup> NAB Reply Comments in MB Docket 07-172 at pp. 2 and 5.