

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

In the Matter of)
)
PETITION FOR RULE MAKING) RM-11579
OF NATIONAL PUBLIC RADIO)
TO REPEAL SECTION 73.525)
OF THE COMMISSION’S RULES)

Directed to: The Commission

COMMENTS

The Board of Trustees of the University of Alabama (“University”), by its attorneys, hereby respectfully submits its Comments with regard to the petition of National Public Radio (“NPR”) to amend the Commission’s rules to repeal Section 73.525 (“NPR Petition”). With respect thereto, the following is stated:

University is the licensee of digital television station WUOA(DT), Tuscaloosa, Alabama, which operates on digital television Channel 6. As the licensee of a Channel 6 station, University is vitally concerned with the outcome of NPR’s rule making proposal. Further, University believes that NPR has overstated the positive aspects of its proposal and understated the negative consequences. Section 73.525 has served the public interest by protecting the ability of viewers to receive television Channel 6 without major degradation from interference, and the Commission should be slow to repeal it on the very heels of the transition to all-digital television. Rather, Channel 6 viewers should be able to continue to rely upon the protections they have previously enjoyed as they move forward in the digital world.

In order to support its position, NPR has noted that the total number of stations operating on Channel 6 has dropped considerably. WUOA, of course, is among those stations continuing on Channel 6. NPR notes that the Commission's Consolidated Data Base System ("CDBS") indicates that only a handful of full-power, digital TV stations will operate on Channel 6. Assuming, *arguendo*, that NPR's assertion is correct, then it is unclear why there is need for any change or repeal of Section 73.525. In light of the decreased use of Channel 6, the Commission has already acted to relieve reserved band applicants from the need to protect the former Channel 6 analog facilities of stations that have now moved to operation on other channels. *See, Media Bureau Establishes October 27,2009, Initial Filing Date for Acceptance of Certain Noncommercial Educational FM Station Minor Change Applications*, Public Notice, DA 09-2214, released Oct. 13, 2009. Thus, the only protection requirements that are now in place are with regard to currently existing digital Channel 6 facilities. If, as NPR itself argues, there are few such facilities left, then it necessarily follows that, in much of the country, Section 73.525 no longer imposes any burden on noncommercial FM stations. In those areas, such stations are now free to go ahead and seek expansions of their facilities through minor change applications at any time. Therefore, the claimed benefits of the repeal of Section 73.525 are greatly overstated , and no further action by the Commission is needed at this time.

The countervailing detriments of the proposed repeal remain quite real, however, and the potential extent of the harm to the public interest remains unknown to a significant degree. First and foremost is the impact on current Channel 6 viewers that no longer would receive the same protection from interference. NPR claims that only approximately ten percent of Americans now receive television programming over-the-air as opposed to from multi-channel video providers. Ten percent is hardly insignificant as each percentage represents many households

made up of important family viewers. Moreover, even if accurate, and the figure appears low, NPR's claimed national figure does not reflect the number of households within each specific market served by an existing Channel 6 facility that receive their television over-the-air. Those figures are the only ones that are relevant to assessing the impact on Channel 6 viewers. In a station's coverage area, the percentage of multichannel video provider penetration can vary wildly. Therefore, the percentage of viewers that would feel the effects of increased interference is likely to be far greater than ten percent, and the impact on stations will vary. Also going uncounted are those households which may have one television hooked up to a multichannel video provider but which have additional television stations which receive programming only over-the-air. It should be noted that NTIA's latest figures for the digital to analog converter box coupon program indicate that a total of 64,105,127 coupons were mailed, and 34,879,122 have been redeemed. www.ntia.doc.gov/dtvcoupon/reports/NTIA_DTVWeekly.112509.pdf, viewed December 2, 2009. Thus, it is clear that a substantial demand for over-the-air, broadcast programming remains nationwide. Moreover, it is in the less affluent areas that the need to keep analog sets rather than replace them is highest, and the financial ability to subscribe to a multichannel video provider is lowest. Thus, the decision to allow greater levels of Channel 6 interference would have the greatest adverse effect on the economically disadvantaged.

Furthermore, it must be noted that the country is at the very dawn of the digital television age. Television stations are only beginning to realize the benefits of their new ability to broadcast multiple streams of programming. One subject of speculation has been whether cable and satellite subscription rates may fall as broadcast stations offer multiple channels of free, over-the-air programming. This possibility seems more likely given the current state of the economy and consumers' desire to cut whatever expenses they can. Clearly, the addition of new

interference to broadcast stations would have some detrimental effect on this possible resurgence of over-the-air viewing, but its extent cannot be known at this time. More time is needed for such a development to have an opportunity to play out.

NPR argues that the likelihood of interference has been reduced or eliminated by the capabilities of new television receivers. It also is far from clear that this assertion is necessarily correct. While it has attached a 2008 report and 2007 description of experiments undertaken at the NPR lab, the tests involved only two, NTIA coupon-eligible digital to analog converters. Moreover, the 2007 report indicates in its test description, that one of those two was an engineering sample, rather than a consumer model with a model number. NTIA Petition at Appendix A, p. 2. Therefore, it is unclear whether the same results would obtain if other converter box models, available to consumers, were tested, or if additional models were tested. Further, all tests were conducted in the NPR lab. As the Commission has experienced in connection with the DTV transition, real world implementation can lead to results not predicted by lab tests. In addition, it does not appear that tests were conducted with multiple FM signals simultaneously or intermodulation interference considered, as would be likely to occur in actual operations in a market.

Finally, the value of continued Channel 6 broadcasts to the public must also be considered. The NPR Petition implies that its programming is somehow more valuable than other programming. Leaving aside the obvious First Amendment implications of having a government agency make technical policy based upon the content of programming, this attitude completely overlooks the substantial public interest contribution made by local television stations' news, information, Emergency Alert System alerts and other emergency programming.

Taking all of these considerations into account, University urges the Commission to deny NPR's Petition.

Respectfully submitted,

THE BOARD OF TRUSTEES OF THE
UNIVERSITY OF ALABAMA

By: _____ /s/
M. Scott Johnson
Anne Goodwin Crump

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 N. 17th Street - Eleventh Floor
Arlington, Virginia 22209
(703)-812-0400

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