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

In the Matter of:	)	
	)	
Petition for Rulemaking of	)	RM-11579
National Public Radio to Repeal	)	
Section 73.525 of the Commission's Rules	)	
	)	

To: The Commission, Office of the Secretary

COMMENTS OF EDUCATIONAL MEDIA FOUNDATION

Educational Media Foundation ("EMF"), by its attorneys, hereby comments on the above-referenced Petition for Rulemaking filed by National Public Radio ("NPR") on October 20, 2009 and released for public comment by Public Notice dated November 2, 2009.[1] For the reasons set forth herein, EMF believes that NPR has raised important issues that should be fully reviewed by the Commission in the context of a rulemaking proceeding looking toward the relief requested by NPR for the elimination of Section 73.525 of the Commission's rules. NPR has provided evidence that Section 73.525 is no longer necessary to protect television stations operating on Channel 6 now that the FCC and TV broadcasters have completed the digital transition, and EMF is inclined to agree with NPR's proposition, believing that there is no question that the issue demands further review through a rulemaking proceeding. The rule as originally written was already vastly over-inclusive, covering hundreds of noncommercial radio stations on channels far removed from any realistic potential to cause interference to analog Channel 6 TV stations. In today's digital world, there is even less reason for such protection. As

[1] *In the Matter of Petition for Rulemaking of National Public Radio to Repeal Section 73.525 of the Commission's Rules*, Public Notice, RM-11579, rel. November 2, 2009.

a result, the rule significantly restricts the service provided by many noncommercial FM stations; therefore, the time has come for the Commission to initiate a proceeding looking toward the elimination of that rule.

Discussion

EMF is the licensee of over 250 noncommercial FM radio stations, most of which operate in the noncommercial reserved band. In many cases, EMF has encountered issues with the application of Section 73.525 and the need to protect nearby Channel 6 TV stations. Because of the protections afforded to Channel 6 TV stations, EMF has been forced to limit the power levels or site selection of a number of FM stations of which it is the licensee - in a number of cases significantly restricting the service that these stations can provide to the public. In some cases, EMF has been able to arrive at voluntary agreements with cooperative Channel 6 TV stations to allow EMF to construct stations at higher levels than might otherwise be allowed under the rule, on the condition that power levels would be reduced should any real-world interference occur. EMF has never been forced to permanently reduce power under such an agreement, but has instead been able to resolve any complaints of interference through antenna adjustments or filters or other methods that are far less draconian than the application of the current rule applying blanket restrictions on the use of the noncommercial reserved band in areas where a Channel 6 television station is operating.

From this experience, EMF has concluded, like NPR, that the rule was outmoded in the analog world, as television receiver selectivity had become such that it prevented the vast majority of interference from FM stations operating in the reserved noncommercial band. In the digital world, EMF can see even less reason for the rule. EMF is aware of no study demonstrating that digital television stations operating on Channel 6 are affected by the

interference that the rule feared would be created to analog operations. Absent a conclusive study showing that this interference does in fact exist, the rule serves no purpose. The Commission should initiate the rulemaking proceeding requested by NPR to see if there are any convincing studies that show real-world interference to Channel 6 TV stations that cannot be resolved in any other fashion other than the restrictive blanket requirements of the current rules.

Moreover, even if such interference does exist, the rule is far too inclusive. First, some remaining Channel 6 analog TV stations chose to remain on Channel 6 even though there were other alternative channels on which they could operate. The FCC, in its orders on digital television, had made clear that one of the opportunities offered by the transition was the clearing of Channel 6 so that there would be no interference from NCE FM stations.[2] Those stations that nevertheless voluntarily decided to remain on Channel 6 should not be protected from the consequences of their choice, and should not be protected from interference from NCE FM stations.

In those few instances where TV stations had no choice but to remain on Channel 6, even if interference is shown to exist in the digital world, the rule still protects too much. There is no substantial likelihood of interference from FM stations operating at or above 88.5 MHz. In standard FM engineering, FM stations are given interference protection from other FM stations only through the third-adjacent channel.[3] With analog Channel 6 audio appearing on 87.75 MHz, and only permitted 25 kHz modulation deviation, there was no reason in the analog world to protect the service beyond the third adjacent FM channel – just as is protected under the FM

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[2] *See, e.g., Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418 (1998) at para 46 ("With regard to the concerns of noncommercial radio interests regarding the use of channel 6, we first note that in developing the initial DTV Table we have sought to minimizing [sic] the potential for interference between DTV and FM radio service by avoiding the use of channel 6 for DTV wherever possible.").

[3] See 47 C.F.R. §73.207 (2009).

rules themselves. Why should FM stations need to provide greater protection to adjacent band TV stations than they do to other FM radio stations? While EMF believes that no protections are necessary in the digital world, even if retained, they should not apply beyond 88.3 MHz on the FM dial.

EMF looks forward to other comments to be filed in this proceeding, and to analyzing any claims that may exist for the need to continue to protect TV Channel 6 operations. Though EMF believes that the Commission's original intent to protect television stations from interference is appropriate and well-intentioned, based on its own experience and the studies submitted by NPR, EMF currently can see no reason that the rule should be retained, and urges the Commission to proceed further on the NPR Petition and issue a Notice of Proposed Rulemaking seeking to abolish Section 73.525 of the Commission's rules.

Respectfully submitted,

EDUCATIONAL MEDIA FOUNDATION

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Dated: December 2, 2009

CERTIFICATE OF SERVICE

I, Rhea Lytle, a secretary with the law firm of Davis Wright Tremaine LLP, do hereby certify that I have this 2nd day of December 2009, mailed by first-class United States mail, postage prepaid, copies of the foregoing "**Comments**" to the following:

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Rhea Lytle

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