

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

In re Petition of)	
NPR)	
)	RM-11597
To repeal Section 73.525)	

Comments

Smile FM and Michigan Community Radio (referred to collectively as the Joint Parties), pursuant to Section 1.405 of the rules and the Commission's Public Notice, Report No. 2903, released November 2, 2009, hereby file their comments in support the petition of National Public Radio to repeal Section 73.525. In support thereof, the following is shown:

1. The Joint Parties are licensees of numerous noncommercial educational (NCE) radio stations in Michigan. These facilities have been authorized and constructed over a period of some 13 years. Since 1996, Smile FM and Michigan Community Radio president Edward Czelada has prepared applications and engineering exhibits for NCE stations, including those licensed to the Joint Parties. In total, Mr. Czelada has been involved with construction of over 16 NCE stations since that time. In 12 of those cases, the licensees have had to provide protection to Station WLNS-TV Lansing, MI channel 6 and WCML Alpena, MI channel 6, as required by Section 73.525 of the rules applicable to the analog operation of Channel 6 television stations, which was adopted in the 1980s, long before the advent of digital television. The impact of required compliance with this rule has been dramatic, frequently necessitating relatively low power operations and precluding circular polarization. Moreover, over the years, new

stations that otherwise could not have been constructed have been shoe-horned into the spaces that most of these 12 stations would have served were it not for the limitations imposed by 73.525.

2. In the Joint Parties' view, Section 73.525 was already out of date when it was adopted. The engineering underlying it was based on testing of television receivers manufactured six years before the rule was adopted. While the rule among other things permitted interference to up to 3,000 persons, in fact there has been little interference at all. Indeed, since the rule's adoption, the Joint Parties have provided a total of twenty filters to affected members of the public, and these filters were essentially an adjunct of blanketing interference inasmuch as they were provided to TV viewers near to the blanketing contour.

3. Section 73.525 unfairly and unnecessarily constrained NCE service in the analog world. For a number of reasons, continued application of the rule is even more unfair and unnecessary in the digital age. First, the robust nature of digital television receivers, as demonstrated in NPR tests, has completely changed the dynamic of potential interference between DTV Channel 6 and NCE FM facilities such that NCE FM and DTV TV 6 operations can easily co-exist without Section 73.525.¹ Second, the heavy household penetration cable, telephone and satellite providers in tandem with the very limited number of DTV Channel 6 television operations has dramatically reduced

¹ The Joint Parties agree that Channel 6 interference issues can be effectively handled on a case-by-case basis under the blanketing interference rules in light of the engineering studies conducted by NPR which clearly reveal that interference, if any, would likely occur very near the NCE transmitter site. In light of these tests, existing rules pertaining to blanketing interference would adequately afford protection to digital channel 6 television stations. In this regard, for example, it would not be unreasonable to require, on a case by case basis, that an FM station provide filtering to the cable, telephone or satellite provider headends where a local channel 6 signal is received for transmission via one of these services and such signal is receiving interference from an FM station.

the universe of television viewers who might even conceivably be affected by NCE FM operations.² Finally, as NPR correctly observes, NCE FM service has proliferated since 1985 while the use of channel 6 has diminished to a total of eight stations nationwide. The Joint Parties submit that, in this environment, Section 73.525 only serves to inhibit NCE radio while affording no protection whatsoever to digital channel 6 operations; this circumstance is patently unfair, unnecessary and unwise insofar as it prevents expansion of NCE FM service to the public with no countervailing public benefit.³

.4 In conclusion, Section 73.525 is an analog rule based upon protection to analog television that has no place in the current digital environment. The rule needs to be repealed.

WHEREFORE, for the foregoing reasons, the Joint Parties urge the Commission to commence an appropriate rulemaking proceeding to repeal Section 73.525 of the rules consistent with NPR's proposal.

Respectfully submitted,

Smile FM/Michigan Community Radio

By:



Edward Czelada
Its President
December 2, 2009

² It may be noted that Section 73.525 as adopted in 1985 did not even consider the issue of multichannel video program distributor penetration and that satellite service did not exist at that time.

³ In this regard, the Joint Parties observe that the Commission has promptly permitted WPVI to increase power to overcome signal problems related to nulls in the elevation pattern of the WPVI antenna. It should be comparably responsive in the case of NCE FM licensees, which have been required to operate inferior facilities for some 25 years as a consequence of Section 73.525.