

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Amendment of Parts 73 and 74 of the )  
Commission's Rules to Establish Rules for Digital ) MB Docket No. 03-185  
Low Power Television, Television Translator, and )  
Television Booster Stations and to Amend Rules )  
for Digital Class A Television Stations )

To: The Commission

**Comments of National Public Radio, Inc.**

**Introduction**

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, National Public Radio, Inc. ("NPR") hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned matter.<sup>1</sup>

NPR is a non-profit membership corporation which produces and distributes noncommercial educational programming through more than 900 public radio stations nationwide. In addition to broadcasting award winning NPR programming, including *All Things Considered*<sup>®</sup>, *Morning Edition*<sup>®</sup>, and *Talk Of The Nation*<sup>®</sup>, NPR's Member stations are, themselves, significant producers of news, information and cultural programming. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its Member stations.

---

<sup>1</sup> Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, Further Notice of Proposed Rulemaking, 25 FCC Rcd. 13,833 (2010) [hereinafter "FNPRM"].

**I. The Analog Shutoff Date Should Occur As Soon As Possible To Complete The Digital Television Transition**

NPR supports establishing a transition deadline of December 31, 2011 for LPTV stations to complete the digital transition and terminate analog operations. As the FNPRM enumerates, there are many reasons why the LPTV digital transition can and should occur promptly and without disruption. While the FNPRM suggests a December 31, 2011 date for terminating analog operations for LPTV stations operating on channels 52-69 ("out-of-core" channels) and some time in 2012 for the remaining LPTV stations, there is no reason why the transition cannot occur uniformly for all LPTV stations, just as it did for all full-power television stations.

With the completion of the full power digital transition on June 12, 2009, "the principal obstacle to a low power television digital transition . . . has now been eliminated."<sup>2</sup> Digital television receivers and analog converters are now in place so that the public is fully capable of viewing over-the-air digital television.<sup>3</sup> Congress has provided a substantial amount of funding to facilitate the LPTV transition.<sup>4</sup> By the beginning of 2012, LPTV stations will also have had ample opportunity to plan for and take the necessary steps to complete the transition.<sup>5</sup>

Since LPTV stations currently operating on out-of-core channels will have to complete the transition by December 31, 2011, moreover, we see no reason why other LPTV stations cannot also complete the transition by that date. To the extent the Commission initiates a

---

<sup>2</sup> Id. at 13,837.

<sup>3</sup> See id.

<sup>4</sup> See id. at 13,838 (citing the \$65 million appropriated pursuant to the Digital Television Transition and Public Safety Fund).

<sup>5</sup> See id. at 13,837. Initial planning for the digital television transition commenced in 1987. See In the Matter of Advanced Television Systems And Their Impact on the Existing Television Broadcast Service, Notice of Inquiry, 2 FCC Rcd 5125 (1987).

process to reallocate the television broadcast spectrum in the interim, many LPTV stations may be unaffected, and the Commission can adjust the LPTV digital transition deadline for individual LPTV stations as necessary to avoid disruption.<sup>6</sup> For all these reasons, we believe the LPTV digital transition can and should proceed to conclusion expeditiously.

**II. The Commission Should Clarify that LPTV Stations Operating on Channel 6 And Providing Primarily An FM Radio Service Do Not Serve The Public Interest**

In addition to expediting the LPTV digital transition, the Commission should address the abuse of the Commission's Rules and policies by some entities utilizing the television Channel 6 spectrum to broadcast primarily an FM radio service. It is a gross waste of a public resource to use 6 MHz of radiofrequency spectrum to provide an ersatz FM radio service, the Commission's Rules were never intended to permit such operations, and many of these operations are violating the Commission's technical rules and causing harmful interference. The Commission's most basic statutory purpose -- to manage the radiofrequency spectrum efficiently and in the public interest<sup>7</sup> -- compels Commission action to rectify this matter, and we implore the Commission to act promptly.

The entities operating these rogue FM radio stations are doing so openly. For instance, Venture Technologies Group, licensee of KSFV, CA, Los Angeles, CA, has leased the station to Hombre Nuevo, which uses the station to broadcast "Guadeloupe Radio 87.7 FM."<sup>8</sup> Similarly, Syncom Media Group, licensee of KXDP, Denver, CO, has leased the station to Front Range

---

<sup>6</sup> See FNPRM, 25 FCC Rcd. at 13,838-39.

<sup>7</sup> 47 U.S.C. § 151.

<sup>8</sup> See <http://www.hombrenuevo.net/site/>; [www.guadaluperadio.com](http://www.guadaluperadio.com).

Sports Network, which uses the station to broadcast "87.7 The Ticket."<sup>9</sup> Neither of these operations make any pretense of providing a television service, and they are far from unique.<sup>10</sup>

The Commission's technical rules governing LPTV were designed for reception of the service by analog television receivers, not to permit an audio service comparable to those offered by FM radio stations and aimed for reception by FM radio receivers. To attempt compatibility with FM radio receivers, these ersatz FM radio stations tend to circumvent the technical rules governing stereo pilot tone frequency, audio modulation levels, aural carrier frequency and maximum aural power limits in an effort to extend the reach of the station's audio signal and to be comparable to regular FM broadcasting. Furthermore, some LPTV stations are not even operating visual signals, in clear violation of the Commission's Rules.<sup>11</sup> While the Commission has acted on some of the violations of its technical rules,<sup>12</sup> it needs to enforce the rules vigorously, particularly when an LPTV station is causing interference to adjacent NCE FM service.<sup>13</sup>

---

<sup>9</sup> See <http://877theticket.com>.

<sup>10</sup> See, e.g., <http://www.smooth877.com/aboutus.aspx> ("About 87.7 Chicago's Smooth Jazz").

<sup>11</sup> See 47 C.F.R. § 73.653.

<sup>12</sup> See In the Matter of Venture Technologies Group, LLC, Licensee of Class A Television Station KSFV-LP, Facility ID No. 49704, Los Angeles, File No. EB-08-LA--0309, Notice of Violation No. V200932900004 (Nov. 17, 2008) (finding that the effective radiated power of the aural transmitter was 171% of the station's visual transmitter, well above the 22% maximum peak set by the Commission's Rules).

<sup>13</sup> We understand an adjacent LPTV Channel 6 station is causing interference to the reception of Colorado Public Radio, see <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020918505>, a situation that so far remains unresolved.

Even assuming complete and consistent compliance with the LPTV technical rules, the Commission still should address the matter now rather than waiting for the elimination of analog LPTV service to solve it. When the Commission promulgated the current rule permitting full power television stations to operate independent aural and visual transmitters in providing a television service,<sup>14</sup> it did not purport to authorize television Channel 6 stations to provide a general entertainment FM radio service instead. Rather, the purpose of the Rule was to permit specialized "visual information services," such as news, weather, time and other informational reports, during overnight hours when such information had otherwise been unavailable.<sup>15</sup>

The Commission noted that, prior to the change, the Rule had remained virtually unchanged since its adoption in 1941: "Its focus and intent are to preclude such a large spectrum allocation required for TV to be used for aural programming."<sup>16</sup> Indeed, the Commission adopted the proposal to allow "visual transmissions (the principal and dominant half of the TV visual/aural pair) to be complemented by aural transmissions of the licensee's choice during after-hours programming."<sup>17</sup> Clearly, the Commission was addressing the transmission of television programming for reception by television receivers.<sup>18</sup>

---

<sup>14</sup> 47 C.F.R. § 73.653.

<sup>15</sup> In the Matter of Operation of Visual and Aural Transmitters of TV Stations, Report and Order, 82 F.C.C.2d 193 (1980).

<sup>16</sup> 1980 Report and Order, 82 F.C.C.2d at 195-96. The Commission further explained that a single 6 MHz television channel allotment "is the equivalent of 600 AM or 30 FM channels." Id. at 196 n.9.

<sup>17</sup> Id. at 196 (emphasis added).

<sup>18</sup> See id. at 193 (The Commission sought comments on the rule change which was proposed as a result of requests for waivers from TV licensees seeking authority to broadcast informational programming on their visual transmitters only.)

When the Commission modified the rule in 1989, it also had a specific purpose in mind: to eliminate the time of day restriction that heretofore had limited non-synchronized audio and visual transmissions to the "grave yard" hours between midnight and 6:00 a.m.<sup>19</sup> The Commission adopted the change because it believed there were instances when the separate transmission of unrelated audio and visual programming material could serve particular needs.

For instance, there are some communities where certain news or special interest reports, e.g., farm crops index reports, may be of significant public benefit at certain times of the regular broadcast day. Rather than broadcasting such information with an on-air announcer, stations could elect to transmit these reports more cost effectively via a video text bulletin board-like service. In general, we believe that competitive pressures from competing stations and from viewers will create incentives for broadcasters to decide whether to transmit regular integrated sound and video signal programming or to transmit non-associated audio and video informational services, depending upon the interest and desires of their viewers.<sup>20</sup>

Thus, while the rule change accorded television broadcasters greater flexibility over their broadcast service, the touchstone was and is service to their television viewers, which is consistent with the definition of the LPTV service and the authorized service of LPTV stations generally.<sup>21</sup>

Clarifying Section 73.653 is important for several reasons. An individual station's use of 6 MHz of spectrum to provide a general interest audio service is, as the Commission has long recognized, an unjustifiable waste of a scarce public resource. The Commission has also long

---

<sup>19</sup> In the Matter of Review of Technical and Operational Regulations of Part 73, Subpart E, Television Broadcast Stations, Report and Order, 4 FCC Rcd 2004, 2004-05 (1989).

<sup>20</sup> In the Matter of Review of Technical and Operational Regulations of Part 73, Subpart E, Television Broadcast Stations, Notice of Proposed Rulemaking, 3 FCC Rcd 2480, 2480 (1988) (emphasis added).

<sup>21</sup> See 47 C.F.R. § 74.701(f), (g) (defining authorized LPTV service in terms of television program signals).

promoted spectrum efficiency and diversity of ownership as core principles underlying the allocation of broadcast spectrum.<sup>22</sup> If additional FM radio service is warranted, and we believe it is, the appropriate solution would be to re-allocate the Channel 6 spectrum for FM broadcast use as a more efficient use of the spectrum and one that promotes a diversity of voices.<sup>23</sup>

Clarifying Section 73.653 is also important to LPTV station licensees, who are entitled to greater certainty regarding the permissible use of the television Channel 6 spectrum. Assessing the cost of the digital transition requires LPTV licensees to assess how they can generate sufficient revenue to profit from the service they offer. Indeed, since LPTV stations have no specific obligation to serve the public interest beyond providing a service that attracts sufficient viewers and advertisers, the economic calculus is even more important to LPTV stations than to other broadcast stations.<sup>24</sup> It dis-serves LPTV licensees if they are led to believe by the

---

<sup>22</sup> See, e.g., In the Matter of Advanced Television Systems and Their Impact Upon the Existing Broadcast Service, Fifth Report and Order, 12 FCC Rcd 12809, 12811-12(1997) (identifying spectrum efficiency as one of the important goals underlying the digital television transition); In the Matter of Promoting Diversification of Ownership In the Broadcasting Services, Report and Order and Third Further Notice Of Proposed Rule Making, 23 FCC Rcd 5922 (2007) ("seek[ing] to further this important policy goal [of diversity of ownership] by expanding opportunities for new entrants and small businesses, including minority- and women-owned businesses, to own broadcasting outlets.").

<sup>23</sup> The Commission recognized more than 25 years ago that the radio broadcast spectrum in many parts of the country was severely congested. Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments, 94 F.C.C.2d 152, 153 (1983). The Commission has sought to address this demand through the establishment of additional classes of radio broadcast facilities, see id. at 153, and the modification of interference standards. See In the Matter of Creation of a Low Power Radio Service, Report and Order, 15 FCC Rcd 2205, 2241 (2000). The demand for radio broadcast facilities has, nonetheless, continued to outpace available spectrum. See In the Matter of Creation of a Low Power Radio Service, Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6763, 6777 (2005). This lack of spectrum for FM radio broadcast use necessarily limits the opportunities for minorities and other under-represented groups to own or operate radio stations.

<sup>24</sup> In the Matter of An Inquiry into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System, Report and Order. 51

Commission's inaction that LPTV stations now operating on television Channel 6 spectrum may continue providing an analog ersatz FM radio service for the foreseeable future.

**III. The Commission Should Not Authorize Increased Power, Other Technical Changes, or New LPTV Channel 6 Stations At the Expense Of Adjacent NCE Radio Stations Operating On The Reserved Portion Of The FM Band**

In the FNPRM, the Commission considers authorizing LPTV stations to increase power or implement other technical changes in the interest of overcoming the poor suitability of the lower VHF channels, including the television Channel 6 spectrum, for over-the-air digital television use.<sup>25</sup> If the Commission's technical staff has undertaken any testing or engineering analysis of the potential interference to adjacent NCE FM service, it is incumbent on the Commission to release the results publicly so that potentially affected parties may make an assessment.<sup>26</sup> Absent evidence to the contrary, however, there is significant reason to doubt the efficacy of increasing transmission power.<sup>27</sup> It is therefore essential that the Commission not adopt measures that result in interference to NCE FM radio station reception.

---

Rad. Reg. 2d (P & F) 476, at ¶¶ 14-15 (1982) [hereinafter "LPTV Report and Order"]. In establishing the LPTV service, the Commission decided not to impose specific public interest obligations, such as the regular ascertainment of community interests and needs. Id. at ¶ 106.

<sup>25</sup> FNPRM, 25 FCC Rcd. at 13,848 ("We also seek comment as to whether the power levels and interference protection criteria currently specified in the rules are appropriate to ensure that post-transition low power TV signals provided to consumers will be of an estimable quality?").

<sup>26</sup> It appears that no such testing has been conducted. See id. (inquiring whether there is "specific testing necessary to test out such modifications or to determine the digital signal strength in distinct geographic locations?").

<sup>27</sup> See In the Matter of Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, ET Docket No. 10-235, at ¶45 (rel. Nov. 30, 2010) ("Their general opinion was that the effect of a power increase would not be sufficient to compensate for reception problems caused by the increased RF noise level in the band and physical limitations on the size and efficiency of the transmit and receive antennas.") (citing *Investigation of High VHF Band DTV Reception, Report: TR 09-1004*, Thomas W. Philips, Laboratory Division,

The LPTV service was and has always been a secondary service, obligated not to cause interference to primary broadcast services.<sup>28</sup> Even were that not the case, the Commission long ago decided that analog television stations converting to digital operations were obligated to protect existing broadcast services, including NCE FM radio stations operating on the reserved portion of the FM band.<sup>29</sup> Analog television LPTV Channel 6 stations converting to digital operations must likewise protect adjacent NCE FM stations from interference, including by reducing power if and as necessary.

In addition, since LPTV interference to NCE FM service may be difficult to identify and address, the Commission should require new LPTV Channel 6 stations and stations authorized to increase power to notify adjacent reserved-band NCE FM stations prior to implementing the newly authorized operation. Notification requirements are already a part of the LPTV rules, which the Commission is proposing to extend in this proceeding to analog LPTV stations.<sup>30</sup> Digital television transmitters produce levels of out-of-channel products that may significantly affect reception of adjacent NCE-FM stations. Prior notification is necessary for the potentially affected NCE FM stations to anticipate and address the potential interference, and it should be made to all NCE-FM stations encompassing the LPTV station with a 60 dBu contour.

---

Office of Engineering and Technology, Federal Communications Commission, Slide 27, August 12, 2009 (revised September 15, 2009)).

<sup>28</sup> LPTV Report and Order, 51 Rad. Reg. 2d (P & F) 476, at ¶¶ 17, 29.

<sup>29</sup> See In the Matter of 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, 7437 (1998) ("Accordingly, as a general matter and consistent with our longstanding policy regarding new stations, it will be the initial responsibility of a DTV licensee to protect against or eliminate harmful interference to any FM radio stations that are in operation at the time the DTV station commences operation.").

<sup>30</sup> See 47 C.F.R. § 74.703(g); FNPRM, 25 FCC Rcd. at 13,842.

## Conclusion

NPR urges the Commission to complete the LPTV digital transition by 2012 and, in the meantime, to clarify that LPTV stations using television Channel 6 to provide ersatz FM radio service are operating in an unauthorized manner.

Respectfully submitted,

NATIONAL PUBLIC RADIO, INC.



Joyce Slocum

Vice President for Legal Affairs  
General Counsel and Secretary

Michael Riksen

Vice President, Policy & Representation

Michael Starling

Chief Technology Officer and  
Executive Director, NPR Labs

John Kean

Senior Technologist

Rishi Hingoraney

Director of Public Policy and Legislation

Gregory A. Lewis

Associate General Counsel

635 Massachusetts Avenue, N.W.

Washington, DC 20001

202/513-2040

December 17, 2010