

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

In re )  
 )  
Amendment of Parts 73 and 74 of the ) MB Docket No. 03-185  
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 )  
 )

To: The Secretary, Federal Communications Commission  
Attn: Audio Division, Media Bureau

**COMMENTS**

Signal Above LLC ("Signal Above"), by its attorneys, files these Comments in response to the above-referenced *Further Notice of Proposed Rulemaking and Memorandum Opinion and Order*, FCC 10-172 (the "FNPR"), released September 17, 2010. In the FNPR, the Commission seeks comment on a number of issues affecting low power television ("LPTV") operators. The Comments herein address the Commission's proposed hard deadline of June 12, 2012, for LPTV stations to cease analog operations and commence digital operations exclusively. For the reasons set forth below, Signal Above, licensee of WDCN-LP, Channel 6, Fairfax, Virginia and WDCO-LP, Channel 6, Salisbury, Maryland, respectfully proposes that no hard DTV conversion deadline is required for LPTV station's, either to complete spectrum reallocation, or to implement the National Broadband Plan's (the "Broadband Plan") goal of maximizing spectrum for broadband uses.<sup>1</sup> Furthermore, imposing an arbitrary DTV deadline for analog LPTV stations will penalize the efficient and innovative use of spectrum the Commission is committed

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<sup>1</sup> See *Connecting America: The National Broadband Plan*, at p. 92-98, released March 16, 2010.

to fostering, and it will gratuitously and seriously erode existing public broadcasting services, especially to underserved communities, with no compelling need or countervailing justification.<sup>2</sup>

In the FNPR, the Commission states that establishing an analog mandatory conversion date in 2012 would be, “consistent with the Broadband Plan’s recommendations related to increasing the efficient use of broadcast TV bands and facilitating the deployment of new mobile broadband facilities.”<sup>3</sup> The Commission suggests the yet to be finalized Broadband Plan is advanced because, “If low power television stations transition to digital in 2012, the number of channels will have to be considered with respect to the potential broadband reallocation/repacking proposals will be less . . . thus simplifying the reallocation/repacking process and promoting regulatory certainty.”<sup>4</sup>

In proposing a 2012 analog termination date the Commission recognizes a number of concerns, including:

- Whether to permit stations located in communities that rely solely on over-the-air service from low power stations additional time to continue operating in analog;
- Whether to permit delayed conversions for hardship situations;
- Whether a 2012 transition date might adversely impact low power television stations that may find that their digital channel is no longer available after the spectrum reallocation, forcing those low power television stations to transition a second time; and

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<sup>2</sup> Alternatively, if the Commission is unable to bring itself to trust the wisdom of the marketplace in each community to allocate spectrum among broadcasting, wireless broadband, and new technologies to its highest and best use, then the deadline should be the later of December 31, 2015, or twenty-four months after the Commission’s adoption of its final spectrum reallocation pursuant to the Broadband Plan.

<sup>3</sup> See FNPR at Page 5-6, Paragraph 13.

<sup>4</sup> See FNPR at Page 6, Paragraph 13.

- Whether analog termination by the end of 2015, or after the recommended reallocation of spectrum from the broadcast TV bands is complete, as envisioned by the Broadband Plan, is a more appropriate and less disruptive transition deadline.

Signal Above respectfully posits that a 2012 transition would amount to arbitrary and capricious agency action, because the public interest considerations in favor of a delayed transition far outweigh those of a 2012 transition. These considerations include the following:

- Transition prior to a final adoption of the Broadband Plan may well require many operators to build out digital facilities twice or build a digital facility only to find it can not be operated at all. Faced with these prospects, many licensees may simply choose to cease broadcasting.
- The market is a far better measure of the efficacy of a digital transition than an arbitrary date.
- Low power stations, with the exception of the few Class A stations, are secondary services, subject to displacement by full power stations. Therefore, an early reallocation of the analog operators to digital does nothing to advance or ease the repacking process.

**1. *The market is the best determiner of the transition date.***

There are currently 7,000 low power television and translator operators, not including Class A stations. Of the 7,000, 5,140 are operating analog facilities. That means that analog operators represent approximately 73% of all low power television and translator stations. It goes without saying that any business will operate in a way to best serve its customers/viewers in order to maximize profits. As such, analog operators will transition to digital when it is in the

best interest of their stations' viewers. The large number of analog operators that have determined not to convert to digital points to the fact that continued analog service is the current best use of their facilities. Forcing a mandatory transition undermines what operators believe is in the best interest of the communities they are serving.<sup>5</sup>

Signal Above is the licensee of WDCN-LP, an analog Channel 6, operating in the Washington, D.C. metropolitan area.<sup>6</sup> Signal Above and its operator, MediaOne Communications, Inc. ("MediaOne"), serve Washington, D.C.'s Hispanic population, a traditionally underserved market and a market that will no longer be served if WDCN-LP is forced to convert to digital operation. Signal Above's audio service on 87.7 FM is reaching nearly 900,000 Hispanics in the DC metro area. WDCN-LP provides localized and diverse audio programming and serves businesses and firms of modest size by preserving a primary medium of communication with the Hispanic market.<sup>7</sup> Other analog Channel 6 operators are likewise providing important programming to significant, oftentimes minority, audiences in other major markets.<sup>8</sup>

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<sup>5</sup> Analog low power television operators have not converted in large numbers even with the Digital Television Transition and Public Safety Fund's provision of federal funding to assist with the cost of analog-to-digital conversion.

<sup>6</sup> Signal Above is the licensee WDCN-LP, Fairfax, Virginia (Facility ID No. 20450) ("WDCN-LP"). WDCN-LP is operated by MediaOne Communications, Inc. ("MediaOne") pursuant to a Lease Management Agreement. MediaOne is a 100% minority-owned corporation that provides continuous Hispanic programming. Please see the letter, attached as Exhibit A, from Representative Connolly, 11<sup>th</sup> District, Virginia, more fully describing the services provided by WDCN-LP.

<sup>7</sup> See *An Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, 47 Fed. Reg. 21468, 21526 (1982). LPTV was considered "a rich, if distant, opportunity to promote diversity of ownership generally and to widen opportunities for minority ownership in particular; it also may serve as a testing ground for new regulatory approaches." *Id.* at Separate Statement of Commissioner Henry M. Rivera.

<sup>8</sup> Chang Broadcasting Hawaii, LLC's KESU-LP, Hanamaulu, HI (Facility ID No. 1311005); Venture Technologies Group, LLC's KNNN-LP, Redding, CA (Facility ID No. 129249), KFMP-LP, Lubbock, TX (Facility ID No. 129734), and KSFV-CA, Los Angeles, CA (Facility ID No. 49704); Fireweed Communications, LLC's KNIK-LP, Anchorage, AK (Facility ID No. 21492); Syncom Media Group, Inc.'s KXDP-LP, Denver, CO (Facility ID No. 67552); Delta Media Corporation's KXKW-LP, Lafayette, LA (Facility ID No. 33177); WLFM, LLC's WLFM-LP, Chicago, IL (Facility ID No. 128239); and Island Broadcasting Co.'s WNYZ-LP, New York, NY (Facility ID No. 56043).

**2. Any mandatory LPTV conversion deadline should be tied with final implementation of any final spectrum reallocation.**

The Commission acknowledges in the FNPR the danger of a premature mandatory conversion deadline, stating that, “an earlier transition date in 2012 might adversely impact low power television stations. Such stations may transition to digital only to find that their digital channel is no longer available as a result of the spectrum reallocation that is one of the recommendations in the Broadband Plan.”<sup>9</sup> The Commission’s announced plan is to re-purpose up to 20 channels of broadcast television spectrum by reallocating them to wireless broadband.<sup>10</sup> Requiring a licensee to incur the significant construction costs associated with building a digital facility, only to learn that it must cease broadcasting altogether due to a lack of available channels, is a risk which low power licensees should not be required to take. Even if an alternate channel is available after a reshuffling of channels, many, if not most, low power operators would not have the resources to finance a second expensive buildout. It is difficult to imagine that any lender would provide funding to any low power operator with such an uncertain future.<sup>11</sup> As such, a forced digital transition could force many low power operators to go out of business or simply to turn in their licenses, to the detriment of the community and the populations they serve

Just as misguided as requiring low power television operators to invest in an uncertain future, is the fact that there is no public interest benefit in a 2012 transition deadline. The Commission’s stated purpose – that a mandatory digital transition prior to adoption of its final

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<sup>9</sup> See FNPR at Page 6, Paragraph 17.

<sup>10</sup> See *In the Matter of Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rule Making in ET Docket No. 10-235, FCC 10-196, rel. Nov. 30, 2010, as well as the Broadband Plan.

<sup>11</sup> Government funding is not the solution, or at least it should not be. In this era of huge government deficits, the notion that the government will fund economically unsound buildouts is not in the public interest.

Broadband Plan will simplify the adoption of the policy ultimately adopted – does not hold water. The Commission would need to expend considerable resources to process over 5,000 applications from current analog operators, only to have to reprocess an unknown number of additional applications after the Broadband Plan is adopted. Since all low power television operators, with the exception of Class A operators, are secondary services subject to displacement, attempting to fix the digital low power playing field prior to adoption of final rules is pointless.<sup>12</sup>

**3. *Adoption of an early mandatory conversion date is arbitrary and capricious.***

There are no persuasive reasons, much less a compelling basis, to require thousands of low power television operators to expend the resources to construct digital facilities prior to adoption the Commission's final Broadband Plan. In making decisions, the Commission is, “to examine the relevant data and articulate a satisfactory explanation for its action.”<sup>13</sup> If this analysis is not performed, the Commission’s actions are deemed to be arbitrary and capricious.

Even the initial recommendations in the Broadband Plan contemplated a digital conversion sometime at the end of 2015, not three years earlier. In the Commission’s *Digital LPTV Order*, the Commission determined it would be irrational and arbitrary to set a deadline for the low power DTV transition at that time, “given the uncertainties relating to the full service DTV transition.”<sup>14</sup> It would be equally irrational and arbitrary to set a deadline for low power DTV transition at this time, given the uncertainties related to the Commission’s Broadband Plan. The Plan, which contemplates using much of existing television spectrum for broadband, clearly

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<sup>12</sup> Requiring an early transition makes some sense only for Class A stations, since Class A stations are protected and not subject to displacement. However, even in the case of a protected Class A station, to require a digital conversion to a channel which may ultimately be taken away for broadband use is illogical.

<sup>13</sup> *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983); see *Federal Communications Commission v. Fox Television Stations, Inc.*, 129 S.Ct. 1800, 1811 (2009) (noting that, “a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by [a] prior policy”).

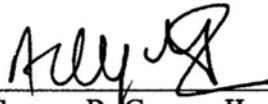
<sup>14</sup> See *Digital LPTV Order*, 19 FCC Rcd at 19388.

creates a fundamental ambiguity about available TV spectrum. Requiring buildouts on channels that may well be taken away or no longer available creates an uncertainty even more acute than at the time of the DTV full power transition.

WHEREFORE, Signal Above respectfully requests that the Commission not set a mandatory digital transition deadline for low power stations or at most that any hard date be the later of December 31, 2015, or twenty-four months after the Commission's adoption of its Broadband Plan.

Respectfully submitted,

**SIGNAL ABOVE LLC**

By: 

George R. Grange II  
A. Wray Fitch III  
Its Attorneys

Gammon & Grange, P.C.  
8280 Greensboro Drive, 7<sup>th</sup> Floor  
McLean, VA 22102-3807  
(703) 761-5013

December 17, 2010

**EXHIBIT A**

GERALD E. CONNOLLY  
11TH DISTRICT, VIRGINIA

COMMITTEE ON THE BUDGET

COMMITTEE ON  
OVERSIGHT AND GOVERNMENT REFORM

SUBCOMMITTEES:

FEDERAL WORKFORCE, POSTAL SERVICE,  
AND THE DISTRICT OF COLUMBIA

GOVERNMENT MANAGEMENT, ORGANIZATION,  
AND PROCUREMENT

COMMITTEE ON FOREIGN AFFAIRS

SUBCOMMITTEES:

TERRORISM, NONPROLIFERATION AND TRADE

MIDDLE EAST AND SOUTH ASIA

**Congress of the United States**  
**House of Representatives**

Washington, DC 20515-4611

327 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-1492

FAIRFAX OFFICE:

4115 ANNANDALE ROAD  
SUITE 103  
ANNANDALE, VA 22003  
(703) 256-3071

PRINCE WILLIAM OFFICE:

4308 RIDGEWOOD CENTER DRIVE  
WOODBIDGE, VA 22192  
(703) 670-4989

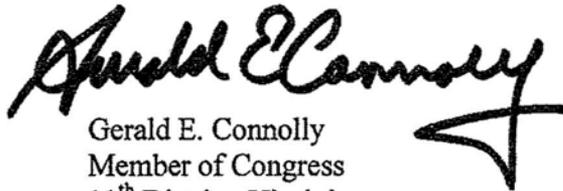
October 22, 2010

The Honorable Julius Genachowski  
Chairman  
Federal Communications Commission  
445 12th St NW  
8-B201  
Washington, DC 20554

Dear Chairman Genachowski,

Thank you for your visionary leadership of the Federal Communications Commission. I am writing to request that you consider the enclosed comments from a Northern Virginia company that provides radio programming to a largely Hispanic audience. This station, La Nueva 88.7, broadcasts throughout the National Capital Region. As you will see from the enclosed letter, the radio station's owners are concerned about the shift from analog to digital radio broadcasting. I know you share my strong support for radio stations that serve minorities in our community, and would appreciate your consideration of the enclosed comments. Thank you again for your leadership of the FCC and your consideration of this request.

Sincerely,

  
Gerald E. Connolly  
Member of Congress  
11<sup>th</sup> District, Virginia

GC/ZF

## SIGNAL ABOVE LLC

A. WRAY FITCH III  
JAMES A. GAMMON  
GEORGE R. GRANGE II

SEVENTH FLOOR  
8280 GREENSBORO DRIVE  
McLEAN, VA 22102-3807

TELEPHONE (703) 761-5013  
FACSIMILE (703) 761-5023  
EMAIL DEG@SIGNALABOVE.COM

October 8, 2010

The Honorable Gerald E. Connolly  
327 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Connolly,

Would you take 3 minutes to read this letter? It concerns the interests of hundreds of thousands of Hispanic citizens of Maryland, Virginia, and the District of Columbia.

Signal Above, LLC (licensee of WDCN-LP) and Media One Communications, Inc. are engaging in a united effort to preserve the localized and diverse audio programming services provided free of charge to the Hispanic D.C. metropolitan public by the Arlington station WDCN-LP, known affectionately over the air as "La Nueva 87.7," and simulcasted on WDCO-LP to Maryland's Eastern Shore. There are nearly 900,000 Hispanics in the D.C. metro area, and over 450,000 of these reside in Virginia.<sup>1</sup> Thousands of these residents are tuning into WDCN-LP programming every day. With the growth of the Spanish-speaking population across the US, and especially in the metro markets like D.C., businesses and business opportunities are growing even in a recessionary market, for those ready to serve this minority community.

This minority voice in Virginia, Maryland and the District exists because at the same time that full power TV stations were required to convert to digital last summer, low power stations (LPTVs) in the thousands have been allowed to continue broadcasting in analog. This provided a unique opportunity for the over 150 Channel 6 LPTVs across the nation to maximize public service. Since the channel 6 audio signal is received at 87.7 on most FM radios, millions of listeners can be served instead of the fractional viewing audience that might be interested in solely "rabbit ears" television programming. Local, religious, and minority populations have been enjoying new representation on the airwaves.

Regrettably, the Federal Communications Commission's September 17, 2010 Further Notice of Proposed Rulemaking calls for a mandatory shutoff date for LPTV analog transmissions in 2012. This would permanently silence the local minority voice of WDCN-LP/WDCO-LP in Virginia, Maryland and the District.

We are writing to express our strong support for the inclusion of language in any legislative vehicle that will preserve the minority voice in Virginia provided by WDCN-LP to the underserved Hispanic community by grandfathering its status as an analog LPTV station. Aside from assuring the right of Hispanic voters to receive these services, this language will also enhance competition in an industry afflicted by a deficit in audio programming for minorities, and will additionally help businesses and firms of modest size by preserving a primary medium of communication with the Hispanic DC metro market.

The most important mission of the FCC is to ensure that spectrum is used in a way that maximizes service to the American public. Reaching underserved minority communities is deeply important to both the FCC and members of the House and the Senate. WDCN-LP has been faithfully fulfilling this mission from our

Nation's capital since 2009 and has become a venue not only for Latin musical entertainment but also for public dialogue on issues of concern to the community. We ask that WDCN-LP not be penalized with a forced cessation of its transmissions after having effectively championed the FCC's mission and having successfully demonstrated that it represents the interests and voices of thousands of Hispanic minorities in Virginia and in the D.C. metro area.

Thank you for your consideration of our request. Michael Berson, of Kinghorn, Hilbert & Associates, LLC will be contacting your office shortly to schedule a brief meeting on this issue. Please feel free to contact Michael at (202) 464-1729 or mberson@khaconsultants.com with any questions you might have or should you need any additional information.

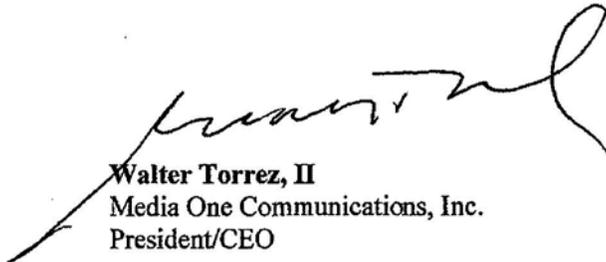
Many thanks for your consideration and your anticipated support.

Sincerely,



**A. Wray Fitch, III**  
Signal Above, LLC  
Principal

And



**Walter Torrez, II**  
Media One Communications, Inc.  
President/CEO

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<sup>1</sup> *Washington Hispanic*, study in 2010 rate card. <[http://www.washingtonhispanic.com/documentos/17\\_documento.pdf](http://www.washingtonhispanic.com/documentos/17_documento.pdf)> accessed October 8, 2010