

**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

REPLY COMMENTS OF SIGNAL ABOVE LLC

Signal Above LLC (“Signal Above”) files these Reply 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. The Reply Comments herein note the overwhelming support among the Comments for either setting a deadline far beyond the Federal Communication Commission’s (the “FCC” or the “Commission”) proposed hard deadline of June 12, 2012, or imposing no artificial deadline for low power television (“LPTV”) stations to cease analog operations and commence digital operations exclusively. Fortified by this strong consensus, Signal Above reiterates its position that imposing such a deadline is unnecessary to accomplish the Commission’s laudable goal of maximizing spectrum allocation to broadband and other innovative uses. Moreover, imposing such a deadline would be the death-blow to the significant public service that hundreds of thousands of minorities are now depending on from the niche stations that have found a home on these low power outlets. Additionally, Signal Above files these Reply Comments opposing the extraneous Comments of National Public Radio, Inc. (“NPR”) regarding Channel 6 stations.

1. *The vast majority of Comments support a delayed mandatory digital transition date or letting the market determine the highest and best use of the spectrum.*

Only four Comments filed in response to the FNPR support the Commission's proposed mandatory analog-to-digital transition date of June 2012.¹ Only one of those four Comments was filed by a LPTV operator. Two other Comments support a June 2012 deadline but are also agreeable to a later transition date.² None of the few Comments that support a June 2012 transition offer a persuasive rationale.³ That fact is particularly evident when taking into account the compelling arguments offered in the Comments filed by over *twenty-one* supporters of setting a transition date beyond June 2012, thereby avoiding unnecessary market manipulation and cessation of valuable programming where there is no offsetting benefit.⁴

Those supporting the June 2012 transition date make the following arguments:

¹ Comments of National Public Radio, Inc. (propose December 31, 2011 as the mandatory digital transition date. The rationale behind NPR's proposal is the erroneous statement that, "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."); Comments of Elizabeth Trinkle; Comments of Entravision Holdings, LLC; and Comments of Cellular South, Inc.

² Comments of Harris Corporation (support both the proposal of a June 2012 transition deadline and the proposal of a 2013 transition deadline); and Comments of Consumer Electronics Retailers Coalition (support a 2012 deadline, subject to a later date, based on Comments received).

³ Several Comments filed dealt only with the proposed December 31, 2011 deadline for clearing operations in the 700 MHz band. These include Comments filed by AT&T Inc., National Public Safety Telecommunications Council, and CTIA – The Wireless Association. Signal Above takes no position on the 700 MHz transition date.

⁴ Although a few Comments support a transition date not too far beyond June 2012, the vast majority of Comments support a date in 2015 or sometime after finalization of the Commission's spectrum repackaging. See Comments of Minority Media and Telecommunications Council; Comments of Inspiration Television, Inc.; Comments of Folse Communications, LLC; Comments of Low Power Television Licensee Group; Comments of Renard Communications Corp.; Comments of Idaho Public TV; Comments of SpectrumEvolution.org; Comments of Smartcomm, L.L.C.; Comments of Public Broadcasting Service, et al.; Comments of Obidia Porras; Comments of WLFM, LLC; Comments of Venture Technologies Group, LLC; Comments of Liberty University, Inc.; Comments of Island Broadcasting Company; Comments of Hatfield & Dawson Consulting Engineers, LLC; Comments of Signal Above LLC; Comments of Cordillera Communications, Inc.; Comments of National Translator Association; Comments of Nicholas E Leggett; Comments of du Treil, Lundin & Rackley, Inc.; and Comments of George S. Flinn, Jr.

1. A June 2012 deadline would more effectively support the National Broadband Plan (the “Broadband Plan”) because the Commission would have to consider fewer channels with respect to reallocating and/or repacking the spectrum.⁵
2. For those “lacking the requisite will or means” or those “who may only be holding onto spectrum in hopes of an eventual payout,” the June 2012 deadline “will force decisive action, i.e., do what it takes to transition to digital or relinquish your spectrum.”⁶
3. Additional time beyond June 2012 is not necessary to complete the full digital television transition.⁷

As noted, the vast majority of Comments, including *all* Comments filed by LPTV operators with one exception, oppose the June 2012 mandatory transition date. Those opposing the June 2012 date make the following arguments:

1. Many translator systems are under serious financial strain, especially those supported by state and county governments, and cannot raise capital quickly. The Department of Commerce funds are for reimbursement only and do not address the difficulty in securing advanced funding. Also, NTIA funding is limited to no more than \$20,000.00 per buildout, which is only a fraction of the real world conversion costs, i.e., between \$50,000.00 to \$150,000.00.⁸
2. A June 2012 deadline does not provide the minimal three years notice, as suggested in the NOPR, since actual notice would run from adoption of a final timetable.⁹ The June 2012

⁵ See *Connecting America: The National Broadband Plan*, released March 16, 2010; and Comments of Elizabeth Trinkle at 6.

⁶ Comments of Entravision Holdings, LLC at 4.

⁷ Comments of Cellular South, Inc. at 4.

⁸ *Id.*; Comments of Low Power Television Licensee Group at 4.

⁹ Comments of National Translator Association at 2.

proposal allows significantly less than the three years normally allowed to construct permitted facilities. The now less-than-18 month period proposed is patently insufficient time for most of the remaining 5,140 analog LPTV stations – three-quarters of licensed LPTV stations -- to obtain FCC authority, necessary funding and to purchase and install new equipment to transition to digital. Additional time would also be necessary to process an avalanche of digital permits, some involving Canadian clearance and mutual exclusivity.¹⁰

3. With any DTV channel spectrum repacking, many of the television stations would be displaced, requiring a duplicative and equally expensive second buildout.¹¹
4. There still exists a significant portion of poor and underserved areas that rely on analog LPTV service. An earlier than market-driven transition, let alone a precipitous transition will result in gratuitous, and economically-depressing loss of local broadcast services, especially in rural communities and to minorities.¹²
5. Freed from deadlines, the market is well able to determine community by community, and station by station, the most efficient and effective transition date since the local community operators are best positioned to determine the needs of their audience. Normal market forces in each community will inexorably lead analog LPTVs to convert to digital unless there is (a) still sufficient local demand for analog service; (b) the licensee does not have or cannot obtain the significant financial resources needed for

¹⁰ *Id.*; Comments of du Treil, Lundin & Rackley, Inc. at 4.

¹¹ Comments of Low Power Television Licensee Group at 4.

¹² Comments of George S. Flinn, Jr. at 5.

conversion; and/or (c) terrain issues make digital service reliable. Any of these reasons is just cause for allowing each station to determine its own conversion timetable.¹³

6. A top-down regulatory imposed June 2012 conversion deadline would be the ultimate death-blow, forcing many LPTV licensees off the air due to cost. Best estimates indicate that LPTV licensees face approximately \$71,000.00 in costs without a channel move, and over \$200,000.00 in costs with a channel move. No licensee would be able to absorb the impact of the financial loss that would result from its license being taken away.¹⁴ Kicking the legs out from under thousands of small business struggling to get their footing in a stumbling economy could only be justified by clear and compelling economic and public policy rationale, which here is lacking.
7. The Commission's plan to repurpose twenty channels of the broadcast television spectrum by reallocating them to wireless broadband radically impacts channel availability for LPTV broadcasting. Until that plan is finalized, LPTV licenses as secondary services do not have the security of knowing if there will be an available channel. The more logical and less draconian deadline would be sometime after repackaging is promulgated, beyond all appeals, and settled. At that point, availability of channels will be known and, at least, uncertainty will no longer be an issue.¹⁵

The Comments filed in this proceeding, as in any rulemaking proceeding, are intended to give guidance and direction to the FCC. In this instance, on the issue of a mandatory conversion

¹³ Comments of Lower Power Television Licensee Group at 2; Comments of Signal Above LLC at 3-4.

¹⁴ Comments of LPTV Entrepreneurs at 6.

¹⁵ Comments of Minority Media and Telecommunications Council at 7; Comments of Low Power Television Licensee Group at 3; and Comments of One Ministries, Inc. at 1 (prior to the finality of spectrum repackaging, "LPTV stations have no way to know if their investment to convert to digital will be money flushed down the toilet due to their spectrum being taken away by full power stations being moved to their frequency or to a wireless carrier taking away their channel.").

date, the question is not close. The overwhelming majority opposes the proposed June 2012 deadline, and this opposition is supported by compelling reasons.

On the other hand, the sole reason for fixing a June 2012 date, supported by only four Comments and only one LPTV operator, is the notion that an early conversion would assist the Broadband Plan. There would be fewer channels to consider in any repacking plan. This argument might have some merit if the Commission were dealing with LPTV stations as full power stations where channels had to be accommodated. That is not the case here. All the channels at issue, other than the few Class A LPTV stations, are secondary services. Therefore, the Commission's efforts will be in finding new channels for the already well-known full power stations, not for the displaced LPTV stations. Given the secondary nature of LPTV stations, it is predictable that there will be LPTV stations bumped to accommodate full power stations. In view of that impending sizeable economic and service slicing, it is evident that the vast majority of LPTV operators would rather have LPTV channel amputation inflicted once, and not twice – that is not *first* in 2012, and then, *again*, after any repacking is final. Once the full power stations are accommodated, then any displaced low power stations could file for what will then be known, available channels. In the meantime, LPTV stations will have provided market-driven service to their audiences (typically underserved rural and minority communities) with minimum disruption to ongoing service. The Commission's role for displaced low power stations would be to process displacement applications. This scenario would not in any way materially delay the National Broadband Plan, nor would an early mandatory transition date hasten an early inauguration of the Broadband Plan. However, a delayed transition date would serve the public

interest by allowing maximized ongoing LPTV service to the public, much of it to underserved rural and minority communities.¹⁶

2. *Response to Comments of National Public Radio, Inc. on LPTV Channel 6 Operators*

Nothing in the NOPR requested or sought comment on the use or operation of LPTV Channel 6 stations. In fact, issues raised by NPR in its Comments are the subject of a separate proposed rulemaking.¹⁷ NPR's Comments, therefore, need not and should not be addressed by the Commission in the context of this proceeding, where the issue is not germane to the NOPR, and therefore, has not had the benefit of full public comment. Nevertheless, Signal Above will comment and respectfully believes its comments herein would be supported by many who benefit from minority-oriented programming offered by Signal Above on its Channel 6 stations.¹⁸

In its Comments, NPR claims, "The Commission should address the abuse of the Commission's rules and policies by some entities utilizing the television Channel 6 spectrum to rebroadcast primarily an FM radio service."¹⁹ NPR goes on to state, "The entities operating these rogue FM stations are doing so openly."²⁰ NPR's primary thrust is to allude to rule violations without actually pointing to any. NPR states, "To attempt compatibility with FM radio receivers these FM radio stations tend to circumvent the technical rules governing stereo pilot tone frequency, audio modulation levels, aural carrier frequency and maximum aural power

¹⁶ For example, Signal Above LLC's LPTV station, WDCN-LP, Fairfax, Virginia (Facility ID No. 20450) ("WDCN-LP") serves an audience of several hundred thousand Spanish-speakers with diverse, local programming.

¹⁷ *Review of Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism*, RM-11565 (2009)

¹⁸ Signal Above is the licensee of WDCN-LP and WDCO-LP, Salisbury, Maryland (Facility ID No. 130439).

¹⁹ Comments of National Public Radio, Inc. at 3.

²⁰ *Id.*

limits in an effort to extend the reach of the station's audio signal and to be compatible to regular FM broadcasting.” NPR cites no examples of such ongoing rule violations. NPR goes on to state, “Furthermore, some LPTV stations are not even operating visual signals, in clear violation of the Commission's rules.”²¹ NPR cites no instance where this, in fact, is the case.²² NPR argues that the Commission should strictly enforce its rules particularly where LPTV stations are causing interference.²³ Except for NPR’s unsubstantiated claim that, “it understands an adjacent LPTV Channel 6 in Denver is causing interference to the reception Colorado public radio,” it can point to no ongoing interference problem.²⁴ Without a single fact documented, or specific rule violation cited, NPR’s degenerates into ad hominem attacks against the bona fides of service providers to minority communities. Such arguments are surprising at the least coming from the otherwise public-service minded NPR.

Signal Above fully agrees that Channel 6 operators should comply with Commission rules. Where rules are being violated, the Commission should enforce its rules, as it should in any situation where there are rule violations. Despite NPR's unfortunate name calling as “rogue FM stations” and “ersatz FM radio stations,” Channel 6 operators are complying with Commission rules and providing a market-driven, valuable public service.

NPR implicitly acknowledges that Commission rules permit Channel 6 operators to operate as they are, so it spends the bulk of its argument proposing that the Commission

²¹ *Id.*

²² WDCN-LP is programming silent movies on its analog Channel 6 station. This programming is understood by a myriad of diverse speaking populations residing in the DC metropolitan area.

²³ Comments of National Public Radio, Inc. at 4.

²⁴ *Id.* at n.13 (the interference complaint NPR cites was filed electronically as a Comment in MM Docket No. 99-25, which deals with the low power FM service. Further, nowhere in the comment does the filer state what station was causing the interference, only that the Denver Colorado Public Radio station “was regularly interrupted by another station that sounded like a talk show and advertising of some casino (‘great specials’).”)

reinterpret 47 C.F.R. § 73.653 (the “Rule”), which allows full power television stations to operate independent aural and visual transmitters. NPR imaginatively claims that allowing separate audio and video was intended to be limited to the graveyard hours between midnight and six a.m. The Rule, however, does not make any such limitations. In fact, the decision on whether to provide separate audio and video feeds was an acknowledgment of competitive pressure and need for television operators to decide how to best serve the public through their video and audio streams. The Commission hoped that the rule change would “enhance and encourage experimentation and innovation by licensee.”²⁵ Signal Above has determined that its audio stream serves the public interest best by broadcasting to an underserved, Hispanic listening audience -- an acknowledged public interest need.²⁶ There are no LPTV rules that require synchronization of audio and visual signals.

Signal Above’s stations provide much-needed service to a significantly underserved Hispanic audience in the DC metropolitan area, reaching nearly 900,000 Hispanics in the DC metropolitan area. It provides localized, diverse audio programming, and serves businesses and firms of modest size by preserving a primary medium of communication with the Hispanic market. Like Signal Above, other Channel 6 operators are providing much-needed and appreciated programming. In NPR's view, however, the public would be better served without this programming offered by Channel 6 operators on their video and audio channels. NPR’s stance against programming that is serving the public interest is both troubling and unsupported.

²⁵ *Operation of Visual and Aural Transmitters of TV Stations*, Report and Order, 82 F.C.C.2d 193, 197 (1980).

²⁶ 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)

WHEREFORE, Signal Above respectfully requests that the Commission delay the mandatory digital transition deadline for low power stations until the later of December 31, 2015, or twenty-four months after the Commission's adoption of its Broadband Plan.

Respectfully submitted,

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