

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

In the Matter of )  
 )  
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 Commission

**PETITION FOR RECONSIDERATION**

**Introduction**

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, National Public Radio, Inc. ("NPR") hereby petitions for reconsideration of the Second Report and Order in the above-captioned matter.<sup>1</sup>

NPR is a non-profit membership corporation that 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 originate

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<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, Second Report and Order, 2011 FCC LEXIS 2809 (rel. July 15, 2011) ["Second Report and Order"]. For purposes of the filing of petitions for reconsideration, public notice of the Second Report and Order was given on July 27, 2011. See 76 Fed. Reg. 44,821 (July 27, 2011).

significant amounts of news, informational, and cultural programming. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its Member stations.

NPR fully participated in the instant proceeding<sup>2</sup> and, therefore, is an interested party.<sup>3</sup> In response to the Further Notice of Proposed Rulemaking in this proceeding,<sup>4</sup> NPR urged the Commission to (1) adopt an expeditious digital transition for low power television ("LPTV") stations, (2) clarify that LPTV stations using television channel 6 to provide an FM radio service in lieu of a bona fide television service are operating without Commission authority, and (3) assure the protection of reserved-FM band noncommercial educational ("NCE") radio stations from adjacent LPTV channel 6 stations, particularly if the Commission authorized such LPTV stations to operate with increased power.<sup>5</sup> The instant Petition seeks reconsideration of the Commission's decision to authorize increased LPTV operating power on the grounds that, as written, it fails to adequately protect NCE radio stations from LPTV interference.<sup>6</sup>

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<sup>2</sup> See Comments of National Public Radio, Inc., MB Docket No. 03-185, filed Dec. 17, 2010 ["NPR Comments"]; Reply Comments of National Public Radio, Inc., MB Docket No. 03-185, filed Jan. 18, 2011.

<sup>3</sup> See 47 C.F.R. § 1.429(a).

<sup>4</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, 25 FCC Rcd 13833 (2010).

<sup>5</sup> NPR Comments at 2-9.

<sup>6</sup> In the Second Report and Order, the Commission has chosen to substantially delay the LPTV digital transition and ignore the operation of so-called "Franken FM" LPTV stations despite their grossly inefficient and unauthorized use of the radio frequency spectrum. Second Report and Order, 2011 FCC LEXIS 2809, at \*3-4 and \*108-09.

## Argument

### **As a Secondary Service Newly Initiating Digital Operations, LPTV Stations Are Obligated To Protect NCE FM Radio Stations From Interference, Not Just First Adjacent NCE FM Radio Stations**

Paragraph 38 of the Second Report and Order addressed NPR's comments regarding the authorization of increased LPTV operating power.<sup>7</sup> The Second Report and Order noted NPR's concerns about the efficacy of improving LPTV coverage by increasing operating power and the likelihood of increased interference to adjacent NCE FM stations.<sup>8</sup> The Commission responded by confirming the secondary status of LPTV stations, but, in doing so, the Commission appears to have inappropriately limited the extent of the LPTV interference protection obligation.

As NPR noted, we authorize digital low power television stations on a secondary basis. Therefore, regardless of their power level, low power television stations are required to protect the first adjacent NCE radio stations if there is actual interference to these stations.<sup>9</sup>

To the extent the Commission intended to limit the interference obligation, we are aware of no Commission precedent supporting a distinction between first adjacent and other stations in a primary service, and the Second Report and Order offered no justification for adopting such a distinction in this case.

As NPR recounted in its comments, the LPTV service was established as a secondary service obligated to protect primary services, including NCE FM stations.<sup>10</sup> In addition, the

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<sup>7</sup> Id., 2011 FCC LEXIS 2809, at \*64.

<sup>8</sup> Id.

<sup>9</sup> Id. (emphasis added).

<sup>10</sup> NPR Comments at 9 (*citing* 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 Rad. Reg. 2d (P & F) 476, at ¶¶ 17, 29 (1982) ["LPTV Report and Order"]).

Commission long ago obligated analog television stations converting to digital operation to protect incumbent radio stations from interference.<sup>11</sup> The protection mandated in those decisions and, as a general matter, when authorizing a service on a secondary basis, is not limited by the relative channel position of the primary station.<sup>12</sup>

In addition, there is no technical reason why LPTV television channel 6 stations operating with substantially increased power would cause interference to first adjacent NCE FM stations but not second-, third-, or other adjacent NCE FM stations. Indeed, testing conducted by NPR demonstrated a substantial likelihood of interference throughout the reserved portion of the FM band.<sup>13</sup> In positing the secondary status of LPTV stations as the antidote to the interference concerns NPR raised, moreover, the Second Report and Order does not suggest a technical or other basis for distinguishing first and other adjacent NCE FM stations.

In attempting to clarify the obligations of LPTV to protect adjacent NCE radio stations from interference, the Commission also failed to incorporate the protection obligation in its Rules as the Commission had done in authorizing full-service television stations to utilize the channel 6 spectrum for digital operations.<sup>14</sup> The Rules governing LPTV operation should expressly obligate

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<sup>11</sup> NPR Comments at 9 (*citing* 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)).

<sup>12</sup> See LPTV Report and Order, 51 Rad. Reg. 2d (P & F) 476, at ¶ 17.

<sup>13</sup> NPR Labs, Engineering Report Regarding a Study of the Impact of Increased Transmission Power As Proposed for Channel 6 DTV Stations On Noncommercial Educational FM Station Reception, Table 1, at 8 (Mar. 18, 2011), *available at* [www.nprlabs.org/media/publications/20110318%20DTV-to-NCEFM%20Interference.pdf](http://www.nprlabs.org/media/publications/20110318%20DTV-to-NCEFM%20Interference.pdf).

<sup>14</sup> 47 C.F.R. § 73.623(f). See also In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Second Memorandum Opinion And Order On Reconsideration Of The Fifth And Sixth Report And Orders, 14 FCC Rcd 1348, 1373-

LPTV stations to protect all adjacent NCE FM radio stations.

**Conclusion**

For the foregoing reasons, NPR urges the Commission to reconsider and revise its Second Report and Order to (1) clarify that LPTV stations are obligated to protect all NCE FM radio stations from interference and (2) include such obligation in the Commission Rules governing the LPTV service.

Respectfully Submitted,



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