



erode existing public broadcasting services, especially to underserved communities, with no compelling need or countervailing justification.

Although Signal Above is gratified that the Commission rejected the notion of a 2012 hard deadline, the same reasons articulated for rejection of the 2012 deadline are also applicable to reject a fixed hard deadline in 2015. The Commission states,

We share the concern, expressed by George Flinn, that “an accelerated push to force a digital conversion, without any overwhelming need (again, since LPTV stations are secondary services and the National Broadband Plan effort is still in its infancy), will only artificially pressure both LPTV owners and viewers (in a time of prolonged financial headwinds).” Thus, we disagree with those commenters who believe that a 2012 hard deadline is appropriate and would provide stations with sufficient time to complete their transition. A transition deadline more than four years into the future will allow time for low power operators to learn more about the direction of the *Broadband Innovation* proceeding. Even if the reallocation is not concluded before the conversion deadline, a 2015 deadline will permit low power operators to take specific proposals into account when finalizing their transition plans. It will also be further removed from the prolonged economic downturn that began in late 2007, and will provide more time for operators to secure the necessary funding (footnotes omitted).

Order at Para 8.

If the Broadband Plan is not in final form by 2015, LPTV operators will be subject to the same jeopardy that they would have faced with a 2012 hard deadline. 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 that prospect many licensees may simply choose to cease broadcasting. 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.

The Commission in setting a firm date has now explained its rationale:

We previously concluded that the Communications Act compelled low power television stations ultimately to convert to digital operation. Therefore, the statute forbids permitting low power television stations to forever avoid converting to digital. Furthermore, allowing low power stations to continue operating in analog and to substantially delay or forgo completing their conversion to digital would prevent consumers from enjoying the benefits of digital broadcast technology, including improved picture and sound quality, and additional program offerings through multicasting (footnotes omitted).

Order at paragraph 12. Signal Above respectfully posits that setting a firm 2015 transition amounts to arbitrary and capricious agency action, because the public interest considerations, in favor of a delayed transition, far outweigh those of a mandatory 2015 transition. The Commission has determined what would best benefit consumers as opposed to the market. If consumers would be best served by digital broadcast technology with spectrum utilized by LPTV operators, those operators would provide that service.

There are currently 7,000 low power television and translator operators, not including Class A stations. Of those 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 and thus, maximize profits. As such, analog operators will transition to digital when it is in the best interest of their stations' viewers. The fact that a large number of analog operators that have determined not to convert to digital indicates 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.

Signal Above is the licensee of WDCN-LP, an analog Channel 6 operating in the Washington, D.C. metropolitan area.<sup>1</sup> Signal Above and its operator, MediaOne, serve

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<sup>1</sup> Signal Above is the licensee WDCN-LP, Fairfax, Virginia (Facility ID No. 20450) (the "Station"). The Station is operated by MediaOne Communications, Inc. ("MediaOne") pursuant to a Lease Management Agreement. MediaOne is a minority-owned corporation that provides continuous Spanish programming.

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. According to the most recent Arbitron data, Signal Above's audio service on 87.7 FM is reaching many thousands of people and listened to by thousands of mostly Hispanics. 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>2</sup> Other analog Channel 6 operators are likewise providing important programming to significant, oftentimes minority, audiences in other major markets.

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 of the Commission's final Broadband Plan. 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>3</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 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.

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<sup>2</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, at 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. (Separate Statement of Commissioner Henry M. Rivera).

<sup>3</sup> See *Digital LPTV Order*, 19 FCC Rcd at 19388

WHEREFORE, Signal Above respectfully requests that the Commission impose no mandatory transition deadline or delay the mandatory digital transition deadline for low power stations until the later of September 1, 2015, or one year after the Commission's adoption of its Broadband Plan.

Respectfully submitted,

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