

**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

**OPPOSITION TO
PETITIONS 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 opposes certain petitions for reconsideration of the Second Report and Order in the above-captioned matter.¹

NPR is a non-profit membership corporation that produces and distributes noncommercial educational ("NCE") programming through more than 900 public radio stations nationwide. In addition to broadcasting award winning NPR programming, including *All Things*

¹ 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, 26 FCC Rcd 10732 (rel. July 15, 2011) ["Second Report and Order"]. NPR opposes the petitions for reconsideration filed by Hammett & Edison, Inc., MB Docket No. 03-185 (filed Aug. 9, 2011) ["Hammett & Edison Petition"], Signal Above LLC, MB Docket No. 03-185 (filed Aug. 26, 2011) ["Signal Above Petition"], Cohn and Marks LLP, MB Docket No. 03-185 (filed Aug. 5, 2011) ["Cohn and Marks Petition"], and the National Translator Association, MB Docket No. 03-185 (filed Aug. 25, 2011) ["NTA Petition"]. See Public Notice, 2011 FCC LEXIS 4359 (Oct. 25, 2011).

Considered[®], *Morning Edition*[®], and *Talk Of The Nation*[®], NPR's Member stations are significant producers 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.

Argument

I. The Hammett & Edison Petition Does Not Justify Commission Reconsideration of the Second Report and Order

In the Second Report and Order, the Commission authorized LPTV stations to operate with increased power.² To address concerns raised by NPR about potential interference to NCE FM stations, the Commission affirmed the secondary status of LPTV stations and their obligation to protect primary services, including NCE FM radio stations, from interference.³ While the Hammett & Edison Petition agrees that such protection is required,⁴ it seeks reconsideration of the Second Report and Order based on a lack of technical criteria for predicting when such interference might occur.⁵ The Commission should reject the Hammett & Edison Petition.

The Commission expressly imposed the same protection mandate when it established the digital television ("DTV") transition for full power television stations.⁶ The Commission

² Second Report and Order, 26 FCC Rcd at 10750-51.

³ Id. at 10751.

⁴ Hammett & Edison Petition at 1.

⁵ Id. at 1-2.

⁶ 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).

subsequently reaffirmed the protection obligation and formally made it part of the Commission's Rules.⁷ NPR is not opposed to the development of further technical standards to predict the occurrence of LPTV-to-NCE FM interference, but that is a matter separate from an obligation to ameliorate interference that an LPTV station actually causes.

Nor is such an obligation novel under the Commission's Rules. The Commission licenses FM translator stations as secondary services with standards to predict interference.⁸ The Rules separately obligate FM translator station licensees to remedy any actual interference to the transmission or reception of other broadcast stations, even to the point of discontinuing service.⁹ Thus, the FM translator rules address both predicted and actual interference.

In this case, the Second Report and Order merely confirms the secondary status of LPTV stations.¹⁰ That status has always had a direct consequence: an obligation to protect primary services, such as NCE FM radio stations, from interference. Particularly given the adjacent operations of LPTV Channel 6 stations and reserved FM band NCE radio stations, eliminating the interference protection obligation would threaten substantial harm to many NCE FM radio services across the country. The Hammett & Edison Petition offers no support for such an extraordinary policy change and should be rejected.

⁷ 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, 1373-74 n.66 (1998). 47 C.F.R. § 73.623(f). In its Petition for Reconsideration of the Second Report and Order, NPR has requested that the Commission also formalize the LPTV protection obligation in its Rules. Petition for Reconsideration of National Public Radio, Inc., MB Docket No. 03-185 (filed Aug. 26, 2011).

⁸ 47 C.F.R. § 74.1204.

⁹ Id. § 74.1203(a).

¹⁰ 26 FCC Rcd at 10751.

II. The Petitions Submitted by the National Translator Association and Signal Above Plainly Do Not Warrant Commission Consideration And Should Be Dismissed by the Media Bureau

Section 1.429(l) of the Commission's Rules directs the appropriate Commission Bureau or Office to dismiss any petitions for reconsideration that plainly do not warrant Commission consideration.¹¹ As an example, the Rules cite petitions that "[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding."¹² Because the NTA and Signal Above Petitions rely exclusively on arguments that were fully considered and expressly rejected by the Commission, summary Bureau dismissal of the Petitions is warranted.

The NTA Petition once again seeks to delay or eliminate the transition for stations occupying out-of-core channels.¹³ It argues that the prior approach -- a 120-day deadline based on a carrier's purchase of the relevant spectrum -- provided a more workable approach,¹⁴ and, if a hard deadline were imposed, it suggests a liberal waiver policy and an 18-month extension of the current deadline.¹⁵ NTA's comments and reply comments in this proceeding offered the same arguments.¹⁶ The Second Report and Order fully considered and rejected those arguments:

¹¹ 47 C.F.R § 1.429(l) (2011).

¹² Id. § 1.429(l)(3).

¹³ NTA Petition at 1.

¹⁴ Id. at 4.

¹⁵ Id. at 4-5.

¹⁶ See Comments of the National Translator Association at 3-4 (filed Dec. 17, 2010) (contending that "[t]he present plan of requiring out of core translators to vacate on notice from a new user has been working satisfactorily," and "recommend[ing] no deadline be established"); Reply Comments of the National Translator Association at 6-9 (filed Jan. 18, 2011) (contending that no good cause had been shown for a close-in terminal date for out-of-core analog operations).

"We reject the alternative proposals of NTA . . . that we either adopt a later out-of-core transition date or not adopt any deadline for out-of-core stations to transition."¹⁷

In explaining its reason for this conclusion, the Commission pointed to changed circumstances such that "the rapid deployment of new commercial wireless and public safety facilities in the 700 MHz band now must take priority and will be best facilitated by clearing all remaining low power television stations from the 700 MHz band by December 31, 2011."¹⁸ The NTA Petition does not address the basis for the Commission's decision; it simply regurgitates arguments the Commission had considered and rejected. Accordingly, summary dismissal of the Petition is warranted under the Rules.

Similarly, the Signal Above Petition once again asks the Commission to avoid a fixed transition date for in-core DTV channels or defer the transition date until after implementation of the National Broadband Plan.¹⁹ Indeed, Signal Above appears to have cut and pasted relevant sections of its comments in this proceeding into the Signal Above Petition.²⁰ In the Second

¹⁷ Second Report and Order, 26 FCC Rcd at 10746.

¹⁸ Id. at 10747.

¹⁹ Signal Above Petition at 1.

²⁰ Compare id. at 1 ("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 LPTVs either to complete spectrum reallocation or to implement the National Broadband Plan goal of maximizing spectrum for broadband uses or that at the very least any deadline should be fixed to the later of September 1, 2011 or twelve months after final adoption of a Broadband Plan.") with Comments of Signal Above LLC at 1 (filed Dec. 17, 2010) ("For the reasons set forth below, Signal Above, licensee of WDCN-LP, Channel 6, Fairfax, Virginia and WECO-LP, Channel 6 Salisbury, Maryland, respectfully proposes that no hard DTV conversion deadline is required for LPTV station's [sic], either to complete spectrum reallocation, or to implement the National Broadband Plan's (the "Broadband Plan") goal of maximizing spectrum for broadband uses.") ["Signal Above Comments"]. Compare also Signal Above Petition at 4 ("There are no persuasive

Report and Order, the Commission considered and expressly rejected both requests so that the benefits of digital broadcast technology would be realized by low power television viewers.²¹ Having already addressed Signal Above's arguments, Commission reconsideration of the same arguments is precisely what the Commission's procedural rule was intended to avoid. Accordingly, the Signal Above Petition should be dismissed.

III. The Cohn and Marks Petition Is Without Merit And Should Be Dismissed

The Cohn and Marks Petition seeks reconsideration of the Commission's decision not to apply the September 1, 2015 transition deadline to construction permits for new, digital-only facilities.²² Permittees of such facilities have 3 years in which to complete construction and may seek an extension of the construction permit based on their particular circumstances under the Commission's Rules.²³ Cohn and Marks contends that the same factors warranting an extension of the deadline for existing analog LPTV stations justify extending the deadline for new, digital-only LPTV facilities.²⁴

What Cohn and Marks ignores, however, is the critical distinction between the two. An applicant for a new, digital-only facility applied to construct the facility with the understanding that it had 3 years to complete construction. Licensees of existing analog facilities, having constructed and operated a facility, now face the prospect of converting the facility to digital

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.") with Signal Above Comments at 6 (same).

²¹ 26 FCC Rcd. at 10737-38 & 10738-39.

²² Cohn and Marks Petition at 1-2.

²³ 47 C.F.R. § 74.788(c); Second Report and Order, 26 FCC Rcd. at 10739 n.37.

²⁴ Cohn and Marks Petition at 1-2.

operation. While the September 1, 2015 deadline provides a generous transition period to accommodate a variety of circumstances facing licensees of existing analog facilities, the 3-year period for constructing a new, digital-only facility is exactly what the permittee expected when it applied to construct the facility. Accordingly, there is no justification for automatically extending the construction deadline for all new, digital-only facilities, and the Cohn and Marks petition should be denied.

Conclusion

For the foregoing reasons and as set forth more fully herein, NPR urges the Commission to deny the petitions for reconsideration.

Respectfully Submitted,



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November 30, 2011

CERTIFICATE OF SERVICE

I, Gregory A. Lewis, hereby certify that a copy of the foregoing Opposition of National Public Radio, Inc. to certain Petitions for Reconsideration, was sent this 30th day of November, 2011, by first class mail, postage prepaid to the following petitioners:

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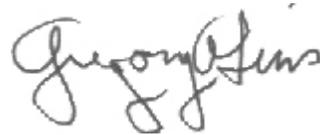
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