

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

In the Matter of)
)
Petition for Rulemaking of National Public) RM-11579
Radio to Repeal Section 73.525 of the)
Commission’s Rules)
)

To: The Commission

OPPOSITION TO PETITION FOR RULEMAKING

The Association for Maximum Service Television, Inc. (“MSTV”)¹ and the National Association of Broadcasters (“NAB”)² oppose the Petition for Rulemaking filed by National Public Radio, Inc. (“NPR”). The Petition seeks repeal of Section 73.525 of the Commission’s rules.³ That rule requires transmitters operating in the reserved non-commercial educational (“NCE”) FM band to protect from interference television stations operating on adjacent channel 6 spectrum. NPR’s petition is based on two arguments: first, that the digital transition renders the channel 6 protection rule unnecessary as a technical matter; and second, that only about 10% of the population now relies on over-the-air television, making the rule unnecessary as a policy matter. Both arguments are flawed, and grant of the Petition would harm the public interest. Accordingly, the Commission should deny the Petition.

¹ MSTV is a nonprofit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system.

² NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

³ 47 C.F.R. § 73.525.

I. CHANNEL SIX PROTECTIONS ARE STILL NEEDED AS A TECHNICAL MATTER.

The technical arguments and assumptions that NPR makes in support of its request for repeal of Section 73.525 are flawed.

First, in calculating the risk of interference from NCE FM stations to television stations, NPR's study assumed that television stations would operate at maximum facilities, while assuming that NCE FM stations would operate with limited facilities.⁴ This assumption is unwarranted and presents an unduly rosy view of the risk of interference that an NCE FM station could pose to a television station. The facilities of many television stations operating on channel 6 are limited.⁵ A request to repeal a rule that is critical in protecting the public's free, over-the-air television service should compare apples to apples; it should not assume that NCE FM stations will have limited facilities while television stations will have maximized facilities.

Second, although NPR's studies focus on the improved interference rejection abilities of new digital televisions, millions of households rely on older, analog television sets that are connected to digital converter boxes. NPR's study included only two digital-to-analog converter boxes. It is not at all clear that a viewer using an older analog television set and a converter box would experience the same, more robust interference rejection as a viewer using a new digital television set. Over 34 million households were approved to receive converter

⁴ See Petition at Appendix B, page 3 (referencing a hypothetical television facility using "maximum facilities for an analog TV channel 6 operation in Zone II or Zone III" but referencing a hypothetical Class B1 NCE FM station (the second-smallest possible class of FM station)).

⁵ Even for stations that are maximized, MSTV and NAB have cited coverage limitations and interference concerns, in recommending that such stations have the flexibility to increase power. See Opposition to Broadcast Maximization Committee's "Emergency Request for Filing Freeze," DA 09-1487 (Aug. 14, 2009), at 2-3.

boxes.⁶ In addition, while newer digital television sets generally are better at rejecting interference, the signal levels for digital television stations are low relative to analog signal levels. The lower digital signal levels, together with the fact that man-made noise makes reception problematic in the VHF band, indicate that the Commission should continue to protect channel 6 TV operations.⁷

II. NPR'S POLICY ARGUMENTS WITH RESPECT TO THE SIGNIFICANCE OF POTENTIAL INTERFERENCE ON CHANNEL 6 TO THE VIEWING PUBLIC ARE INACCURATE AND SHOULD BE REJECTED.

The viewing public relies on the service provided by full-power DTV stations as well as hundreds of Class A stations, low power television stations, and television translator stations broadcasting on channel 6. Many of these stations continue to provide an analog television signal, and the Commission has not yet set a date by which Class A stations, low power television stations, and television translator stations must convert to digital television. Section 73.525 protects these stations,⁸ which provide valuable services to the public.⁹ It is

⁶ According to the National Telecommunications and Information Administration ("NTIA"), 34,761,46 households were approved to receive DTV converter box coupons. *See* <https://www.ntiadtv.gov/docs/programstats.pdf>. The number of households that actually rely on set-top boxes is greater when one accounts for the fact that many households purchased a DTV converter box at full price (without using an NTIA coupon).

⁷ The problems with reception of digital television in the VHF band have been well documented, and the Commission has expended considerable resources working with stations experiencing reception losses and coverage shortfalls to restore service losses and maintain the public's broadcast service. *See, e.g.,* Opposition of NAB and MSTV to Petition for Reconsideration of KMCE, Inc., MB Docket 08-253 (filed Nov. 4, 2009), at 4-5. Grant of the Petition would only exacerbate these reception problems and further imperil the public's service by increasing interference.

⁸ Section 73.525 protects all "TV broadcast stations" authorized to operate on channel 6. A television broadcast station is "[a] station in the television broadcast band transmitting simultaneous visual and aural signals intended to be received by the general public." *See* 47 C.F.R. § 73.681. Although the Commission initially limited the application of Section 73.525 to full-power stations, the FCC has applied the rule more broadly. *Compare Changes in the Commission's Rules Relating to Noncommercial, Educational FM Broadcast Stations*, Final (continued...)

premature to discuss repealing this rule in light of the digital transition when so many of these stations are broadcasting in analog format.

The Petition repeatedly cites a statistic that less than ten percent of viewers rely on over-the-broadcasting.¹⁰ As an initial matter, it is important to note that tens of millions of viewers rely exclusively on free, over-the-air television—the number is closer to 14 percent of all U.S. television households.¹¹ And this figure does not include the millions more that rely on over-the-air television service on one or more televisions, in addition to a television connected to a subscription video service. The Commission should protect these viewers. Disenfranchising millions of households from the ability to receive critical, free, local television service would not be in the public interest.¹² Broadcast television stations also remain a leading source of local

Rule, 49 Fed. Reg. 45146, 45171 (1984) with *Southern Nevada Educational Broadcasters*, Letter Re: KEKL(FM), Mesquite, NV, FCC File No. BPED-20081110AAD) (Jan. 13, 2009) (denying application to modify an FM station on the grounds that interference to a low power station would violate Section 73.525); Broadcast Maximization Committee “Emergency Request for Filing Freeze” (Aug. 25, 2009), at 3 (citing Media Bureau policy requiring all NCE stations to protect Class A and LPTV stations that originate programming and noting that “NCE stations who may be planning to file for a facility change may be precluded from doing so due to the need to protect new Channel 6 LPTV facilities”).

⁹ As has been noted in previous proceedings, many small business entities, including minority-owned firms, operate Class A and LPTV stations, and provide important services such as foreign language programming. *See, e.g.*, Reply Comments of NAB in RM-11565, MB Docket 09-52 (filed Nov. 9, 2009), at 3.

¹⁰ *See* Petition at i and at 4.

¹¹ The most recent video programming report cited a 2007 Nielsen estimate that “15.5 million households, or about 14 percent of the 111.4 million total U.S. television households, rely on over-the-air television broadcasts for video programming.” *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd 542, at para. 108 (2009) (“Thirteenth Annual Report”).

¹² The Commission has repeatedly recognized the importance of access to broadcast services, particularly news and emergency information. *See, e.g.*, *FCC Requires Public Interest Conditions for Certain Analog TV Terminations on February 17, 2009*, Public Notice, FCC 09-7 (Feb. 11, 2009) (establishing “enhanced nightlight” service to ensure that “viewers relying on (continued...)”).

news and other local programming and vital public safety information for those millions of households that subscribe to a pay television service.

Moreover, NPR is incorrect in its assumption that the homes that pay to subscribe to cable or satellite services “are not affected by NCE-FM interference problems.”¹³ First, as noted above, many cable or satellite households have additional television sets that are not connected to pay services. There are estimated to be millions of cable and satellite households that collectively own more than 23 million television sets that are not connected to MVPD service.¹⁴ These additional sets rely on antennas to receive free, over-the-air service, and these households would be affected by NCE FM interference problems. Second, nearly 50 percent of cable and satellite systems pick up the signals of local television stations by using over-the-air reception. Fiber or other alternative signal delivery mechanisms are extremely expensive to build and are not always feasible in remote or difficult terrain. One hundred percent of the subscribers to these systems would be harmed if the systems could no longer carry the signals of local stations due to interference from NCE FM stations. The Commission therefore cannot simply dismiss concerns about interference with valued local broadcast television service, as the Petition urges.

over-the-air television do not lose access to local news, public affairs and emergency information before they are ready for the full power television transition to all-digital television service”).

¹³ See Petition at 4.

¹⁴ See Thirteenth Annual Report at para. 108 (citing NAB’s estimates that “there are as many as 19.6 million households containing 45.5 million television sets that do not subscribe to an MVPD and that there are an additional 14.7 million MVPD households with 23.5 million television sets that are not connected to MVPD service”). NAB’s estimates result in a total of 34.3 million households that rely on over-the-air television in whole or in part. That number is in alignment with the number of households that sought NTIA converter box coupons (*see* n.5 *supra*), and represents approximately one third of the United States (before one accounts for the millions of households that purchased digital televisions, without the need for set-top boxes).

* * *

The Petition unduly minimizes the importance of local, free, over-the-air television service and it relies on flawed assumptions. Grant of the Petition would not be in the public interest, and for the reasons discussed above, the Commission should deny it.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Kathryn Bowers, a secretary at the law firm of Covington & Burling LLP, do hereby certify that on this 2nd day of December, 2009, I caused a copy of the foregoing "Opposition to Petition for Rulemaking" to be sent via first-class U.S. Mail, postage prepaid, to the following:

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Kathryn Bowers