

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

In the Matter of	)	
	)	
Advanced Television Systems and	)	MB Docket No. 87-268
Their Impact Upon the Existing	)	
Television Broadcast Service	)	
	)	

To: The Commission

**OPPOSITION TO PETITIONS FOR RECONSIDERATION**

The Association for Maximum Service Television, Inc. (“MSTV”)<sup>1</sup> opposes the petitions for reconsideration filed by radio interests seeking, at this late stage of the digital transition, the elimination of protection for television broadcasting on Channel 6 (and perhaps on Channel 5 as well).<sup>2</sup> The Petitions are without merit and procedurally flawed. In short, eliminating protection for – or the existence of – free, over-the-air television service on Channels 5 and 6 would harm the public interest. It would hurt the viewers relying on the news and information provided over those channels, and it comes far too late in the digital transition to be a viable proposal. MSTV respectfully requests that the Commission safeguard Channel 5 and 6 operations now and after the transition, and dismiss the Petitions on substantive and procedural grounds.

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<sup>1</sup> 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.

<sup>2</sup> The Petitions seek, to varying degrees, reduced protection for Channel 6 television operations. See Petitions for Reconsideration filed in MB Dkt No. 87-268 by Mullaney Engineering, Inc. (“Mullaney”), EME Communications (“EME”), and Robert E. Lee (collectively, “Petitions”). The Mullaney Petition queries whether “Channel 5 should also be reallocated for FM Broadcasting,” Mullaney Petition at 1, a query echoed by Mr. Lee (Lee Petition at 2).

First, it is far too late in the allotment process to take one channel out of the pool of available assignments. More than 20 full-power television stations already have post-transition allotments on Channels 5 and 6. These allotments represent the conclusion of a long, complex process involving years of coordination by broadcasters, the FCC, and others (such as Mexico and Canada) to ensure that all television broadcasters have in-core allotments for their post-transition operations. It would not be fair to these stations' viewers to require them to accept interference from radio stations or to force the stations to find alternative post-transition allotments (a task that will be impossible in some crowded markets).<sup>3</sup> Nor would it be reasonable to remove two channels out of the available pool of channels for television broadcasting in light of the hundreds of low power television services using these channels and the requirement that the Commission create and protect 175 new DTV allotments pursuant to the Community Broadcasters Protection Act of 1999.<sup>4</sup>

Second, the Petitions are procedurally flawed. The EME Petition and the Lee Petition appear to have been filed after the October 26th deadline for submitting petitions for reconsideration.<sup>5</sup> Given that the Commission did not consider this issue in the *Seventh Report & Order* in this proceeding, it also is not surprising that none of the Petitions can provide a citation to the Commission decision for which they purportedly seek "reconsideration." The Petitions also wrongfully seek to make an end-run on the required notice-and-comment rulemaking. Instead of seeking these changes at the eleventh hour in the DTV allotments proceeding, the

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<sup>3</sup> Also, it appears that two thirds of these stations are moving to the stations' current NTSC channels. This suggests that the stations have a reasonable expectation of conserving resources for their post-transition buildout (*e.g.*, through the use of the stations' existing NTSC antennas) – efficiencies that would be lost if the stations are forced to find new channels.

<sup>4</sup> See Pub. L. No. 106-113, § 1000(a)(9), 113 Stat. 1536 (1999); see 47 U.S.C. § 336(f)(6)(B).

<sup>5</sup> See 47 C.F.R. § 1.429.

Petitioners should petition for a rulemaking so that the interested public has a full opportunity to comment on the sweeping, and harmful, changes that the Petitioners seek.

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For the reasons discussed herein, MSTV respectfully requests that the Commission dismiss the Petitions and protect the viewing public's ability to receive over-the-air television programming on Channels 5 and 6.

Respectfully submitted,

**THE ASSOCIATION FOR MAXIMUM  
SERVICE TELEVISION, INC.**

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