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FILED/ACCEPTED

August 25, 2009

AUG 25 2009

Federal Communications Commission  
Office of the Secretary

## **BY HAND DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Ex Parte Letter  
Commencement of Rural, First-Come, First-Served, Digital  
Licensing for Low Power Television and Television  
Translators Beginning August 25, 2009  
DA 09-1487**

Dear Ms. Dortch:

The Association for Maximum Service Television, Inc. (“MSTV”)<sup>1</sup> and the National Association of Broadcasters (NAB)<sup>2</sup> hereby respond to the recent filings by the Educational Media Foundation (“EMF”), National Public Radio, Inc. (“NPR”), and the Land Mobile Communications Council (“LMCC”) respecting the above-referenced proceeding. A freeze on channels 5 and 6 would not be in the public interest and would be unfair.<sup>3</sup> The Commission also should reject the LMCC’s eleventh-hour stay request.

EMF suggests that the Commission could address MSTV and NAB’s concerns “simply by exempting from the [proposed] freeze existing Channel 5 and Channel 6 stations” that are seeking to flash-cut or seeking to use on-channel boosters or translators.<sup>4</sup> NPR also

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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 National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the Courts.

<sup>3</sup> See MSTV and NAB’s Opposition to Broadcast Maximization Committee’s “Emergency Request for Filing Freeze,” DA 09-1487 (filed August 14, 2009).

<sup>4</sup> See EMF Comments, DA 09-1487 (filed August 20, 2009), at 2-3.

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supports the Broadcast Maximization's freeze request.<sup>5</sup> Any freeze, even partial, would still be contrary to the public interest. Not only would it deprive other television stations of needed flexibility, but it would implicitly assume that the Commission will add additional radio stations to TV channels 5 and 6, despite the fact that this could create serious interference problems for the public's reception of TV channels 7-13.<sup>6</sup> As previously noted, frequency modulated harmonic interference from FM signals can create reception problems for television viewers.<sup>7</sup> For example, a radio station operating at 88.5 MHz could cause harmonic interference to the public's reception of channel 7, and, together with a radio station operating at 107.3 MHz, could cause harmonic interference problems for reception of channel 10.<sup>8</sup> Until we know more about the nature of the harmonic interference problem, there is no basis for the Commission to take steps that could result in an influx of radio stations operating on channels 5 and 6.

The Commission also should reject the LMCC's stay request.<sup>9</sup> The Commission announced this filing window at the end of June. It is not timely or appropriate to request a raft of changes just days before the filing window is scheduled to open. This proceeding will enable broadcasters to better serve the public by flash-cutting to digital operations, building digital companion channel or new digital LPTV/TV translator facilities, and otherwise modifying their low-power digital facilities. The Commission should allow this proceeding to move forward as planned.

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<sup>5</sup> See NPR Comments, DA 09-1487 (filed August 19, 2009).

<sup>6</sup> EMF states the Commission has proposed reallocating channels 5 and 6 for radio use. That is incorrect. The Commission merely has sought comment on this proposal. It also has noted repeatedly the importance of preserving these channels for television operations. See *Opposition of ABC, Inc.*, DA 09-1487 (filed August 19, 2009) at 2 and n.5.

<sup>7</sup> See MSTV and NAB's Opposition at 3-4.

<sup>8</sup> See *id.* (citing Rhodes, Charles, "Testing for DTV Interference," 32-33, *TV Technology* (June 10, 2009)).

<sup>9</sup> See *Petition for Stay of the LMCC*, DA 09-1487 (filed August 19, 2009).

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Respectfully submitted,

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August 25, 2009

**CERTIFICATE OF SERVICE**

I, Kathryn Bowers, a secretary at the law firm of Covington & Burling LLP, do hereby certify that on this 25th day of August, 2009, I caused a copy of the foregoing "Ex Parte Letter" to be sent via first-class U.S. Mail, postage prepaid, to the following:

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