

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

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| In the Matter of |) | |
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| Promoting Diversification of Ownership In the Broadcasting Services |) | MB Docket No. 07-294 |
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| 2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 |) | MB Docket No. 06-121 |
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| 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 |) | MB Docket No. 02-277 |
| |) | |
| Cross-Ownership of Broadcast Stations and Newspapers |) | MM Docket No. 01-235 |
| |) | |
| Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets |) | MM Docket No. 01-317 |
| |) | |
| Definition of Radio Markets |) | MM Docket No. 00-244 |
| |) | |
| Ways to Further Section 257 Mandate and To Build on Earlier Studies |) | MB Docket No. 04-228 |
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To: The Commission

**REPLY COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
) MB Docket No. 07-294, *et al.*
Promoting Diversification of Ownership)
In the Broadcasting Services, *et al.*)

The Association for Maximum Service Television, Inc. (“MSTV”)¹ hereby responds to the comments filed in this proceeding on the proposed reallocation of television channels 5 and 6 to radio broadcasting. This proposal could compromise the hard-won successes of the country’s transition to digital television and harm new entrants and small businesses. This proposal would upset the post-transition DTV allotments of more than 20 full-power stations and the operations of the hundreds of Class A, LPTV, and translator stations operating on channels 5 and 6. Of particular concern is the movement of channel 6 in Philadelphia, which is located in one of the most congested areas in the United States. The movements necessary to make this change would have an impact on coverage areas of surrounding stations in various markets. While MSTV is sympathetic to the concerns expressed by the Broadcast Maximization Committee (“BMC”) and others, it believes that reallocating these channels would be counterproductive and contrary to the public interest – as the Commission has already recognized.² Finally, reallocation proponents have failed to satisfy the FCC’s procedural requirements with respect to proposals to change other licensees’ channels.

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 The Commission has reiterated the importance of “the continuing allocation of channels 5 and 6 to the core spectrum for digital television service.” *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the (continued...)

I. REALLOCATION PROPONENTS OVERLOOK THE SERIOUS CHALLENGES POSED BY CHANGING STATIONS' ALLOTMENTS AT THIS STAGE OF THE DIGITAL TRANSITION.

The transition to digital television has been a long and complex process. We are now just five months away from the statutorily-mandated “hard date” of February 17, 2009. Getting to this point required the Commission and broadcasters to devote years of effort in the process of finding acceptable post-transition allotments for over 1,800 television stations in all 50 states and the U.S. territories. Throughout this process, the Commission and broadcasters have grappled with how to maximize the public’s free, over-the-air digital television service while facing the loss of 108 MHz of spectrum (television channels 52 through 69) and while ensuring that the final allotments undergo proper coordination with Canada and Mexico. As the Commission has stated, “[i]f the TV stations that elected channel 5 or 6 for their post-transition operation were now required to find new channels, the post-transition DTV Table of Allotments and the careful, complex process, including international coordination, that led to its construction would be significantly disrupted.”³

As part of the transition process, over 20 full-power stations received post-transition allotments on channels 5 and 6. BMC and other commenters assert that these stations can move to alternative channels. But, as the Commission has already noted, the proposal to reallocate channels 5 and 6 is seriously flawed. The Commission has therefore affirmed the importance of protecting television broadcasting on channels 5 and 6, reiterating the “now well-

Seventh Report and Order, MB Docket No. 87-268, 23 FCC Rcd 4220, at ¶ 26 (rel. March 6, 2008) (“*Reconsideration of the Seventh Report and Order*”).

³ See *Reconsideration of the Seventh Report and Order* at n.73. All of these problems would be magnified by the even less practical proposal to reallocate all of channels 2-6 to FM radio, as proposed by the comments of Douglas E. Smith.

established determination that the additional opportunities for increasing FM noncommercial coverage do not outweigh the costs of eliminating” these channels from the television service.⁴ These costs include possibly insurmountable hurdles caused by international coordination, congested spectrum, and the expenses of building out a new DTV station. Many viewers are at risk of losing access to the news, emergency information, network programming, and other services provided by their local television broadcasters.⁵ MSTV thus agrees with ABC that the proposed reallocation “would undermine the Commission’s substantial and diligent efforts to produce a seamless transition for the American public.”⁶

International Coordination. For stations in the zones bordering Canada or Mexico – such as KTVM-DT and KXLF-DT (both Butte, Montana), WBPP-DT, Calumet, Michigan, WDTV, Weston, West Virginia, WLMB-DT, Toledo, Ohio, and WRGB-DT, Schenectady, New

⁴ See *id.* at ¶ 27.

⁵ For example, MSTV understands that WPVI in Philadelphia, which is one of the television stations that is subject to BMC’s reallocation proposal, currently broadcasts nearly 35 hours of original local news and public affairs programming per week. MSTV further understands that WPVI consistently achieves the highest audience ratings in the Philadelphia market for its weekday 5 a.m. to 7 a.m. and 5 p.m. to 6 p.m. local newscasts, and that WPVI historically has aired Pennsylvania, New Jersey, and Delaware gubernatorial debates, as well as senatorial and congressional debates. See Comments of The Walt Disney Company, MB Docket 04-233 (filed Apr. 28, 2008) (“TWDC Localism Comments”) (detailing WPVI’s extensive efforts to serve its local community). For example, on May 30, 2008, WPVI co-sponsored (and aired on June 1, 2008) the Democratic and Republican New Jersey Senatorial debates with the League of Women Voters of New Jersey. WPVI also broadcasts between 300 to 400 public service announcements per month and, since 1970, WPVI has aired the longest-running Hispanic public affairs show in the nation. See TWDC Localism Comments. If WPVI were required to relocate from channel 6, in order to comply with the Commission’s interference standard, it would be required to modify its facilities in a manner that would result in a loss of nearly 2 million of its existing analog viewers in the densely populated corridor between Philadelphia and New York. See Reply Comments of ABC, Inc., MB Docket 07-294, *et al.* (filed Aug. 29, 2008) (“ABC Reply Comments”). Accordingly, these viewers would be deprived of the significant amount of local content broadcast on WPVI, which is clearly contrary to the public interest.

⁶ See Comments of ABC, Inc. at 3 (filed July 30, 2008). See also Comments of the National Association of Broadcasters at 6-7, noting the proposal’s “potential to cause significant disruption to digital television” (filed July 30, 2008).

York – the Commission would need to complete another round of international coordination. It would be impossible to complete this coordination prior to the DTV transition date of February 17, 2009. Indeed, given the history of international coordination, it may take years to complete this process. Further, the compromises that may become necessary in the coordination process could result in significant reductions to the border stations’ service areas. This would cause viewers to lose access to free, over-the-air television service. The BMC plan also fails to take account of other serious problems.

Congested Markets. Moving to a new channel may be virtually impossible in crowded markets. At best, substitutions contingent on other stations changing channels impose significant burdens on all involved (including, as discussed below, the need to purchase and install expensive equipment); at worst, contingent substitutions create a risk that certain incumbent stations may be forced to go off the air. For example, the BMC comments note that for WPVI-DT, Philadelphia, Pennsylvania to move to the proposed substitute channel (39), three contingencies would need to occur: WLVT-DT, Allentown, Pennsylvania would need to move to Channel 48; WNEP-DT, Scranton, Pennsylvania, would need to move to channel 50; and WJAL-DT, Hagerstown, Maryland, would need to move to Channel 22.⁷ If any of these contingencies does not occur, then WPVI-DT, the Philadelphia ABC affiliate, would be unable to move to channel 39. At no point does BMC indicate that any of these stations wish to give up their current channels, which were selected pursuant to carefully crafted and complex FCC rules.

⁷ *Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket Nos. 07-294 *et al.*, BMC Comments at 11. The BMC Comments have ignored the significant legal, business, and technical challenges that would be necessary to overcome in order to implement its proposal with respect to Philadelphia. In addition, WPVI cannot operate facilities on channel 39 that both serve its existing viewers and satisfy the Commission’s interference standards. *See* ABC Reply Comments.

Moreover, there is no evidence to suggest that any of these stations could bear the costs of making such a move.

Reduced Service to the Public Due to Interference. As a technical matter, forcing these stations to move to new channels could seriously reduce their service areas. Indeed, BMC concedes that the majority of the suggested substitute UHF facilities would serve fewer viewers.⁸ Further, BMC concedes that, contrary to the Commission's rules, its proposal would result in more than 0.5% interference caused to several other full-power DTV stations and Class A stations.⁹ In short, these other television stations and their viewers would also be forced to bear the burdens of the reallocation of channels 5 and 6 to radio.

Maximization Problems. The spectrum available on the proposed substitute channels is dwindling due to the maximization of digital service areas.¹⁰ The FCC has started to grant – and will continue to grant – maximization applications for both full-power and Class A stations. Indeed the FCC has already received nearly 700 maximization applications. The importance of these applications cannot be understated. As the FCC recognizes, it was not possible for stations to replicate their analog service in the digital world in all cases. There has been a pent up demand for years to maximize service and provide such coverage. For some, these requests are essential to serve viewers who are in the market, but reside at significant

⁸ *Id.* at Technical Statement, p. 7.

⁹ *Id.*

¹⁰ Further, the FCC has clarified that low power auxiliary licensees with operations in the 700 MHz band must vacate that band by February 17, 2009. *See Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band*, Notice of Proposed Rulemaking and Order, WT Docket No. 08-166 *et al.*, FCC 08-188, at ¶ 14 (rel. Aug. 21, 2008). Virtually all of the alternative spectrum for such operations is in the rest of the broadcast television spectrum. *See id.* at ¶ 4.

distances from the broadcast tower. Service to these communities should not be undermined by a last minute *post hoc* reallocation of channels 5 and 6.

Low VHF Impulse Noise Problems. BMC also suggests that some stations could use lower VHF channels 2-4.¹¹ However, as the studies conducted by MSTV and referenced by BMC indicate, the low VHF impulse noise interference problem is worse at the lower VHF channels 2-4. Stations should not be compelled to accept more low VHF impulse noise interference by being forced to move to channels 2-4.

Huge Expenses to Change Channels. Even in cases where a substitute channel is available, it would be hugely expensive to move to that channel. A digital transmitter and a digital antenna each cost hundreds of thousands of dollars. Other equipment needs, and the tower crew costs of removing the old equipment and installing the new equipment, can push the costs to well over a million dollars for each station.¹² This would be a particularly devastating blow to any station that already bought new equipment, such as a new digital transmitter, and perhaps already installed it, in anticipation of post-transition operations on channel 5 or 6. Facing these daunting expenses, some stations may be forced to go dark. And stations that are able to make such a significant investment will be forced to make significant cuts in other expenses, such as their employment of news reporters and their maintenance of electronic newsgathering (“ENG”) facilities. These costs would be imposed not just on the stations with post-transition allotments on channels 5 and 6 but also on other stations forced to move to new channels in order to accommodate the proposed channel substitutions.

¹¹ See ABC Reply Comments at 8-9 and Engineering Statement at 2-3.

¹² It is for this reason that many stations chose to return channels 5 or 6, which they currently use for analog broadcasting: they can use the existing antenna for post-transition operations, thereby realizing significant efficiencies.

Increased Operational Costs. Stations that move to the UHF spectrum will be forced to vastly increase their power to cover equivalent service areas.¹³ Thus, forcing stations to move, against their will, to higher UHF channels will increase their day-to-day operational costs. Indeed, this is precisely the reason many stations chose to stay in the VHF band. Power bills constitute a significant portion of a station's operational costs. Confronted with this economic reality, a station may be forced to reduce power, and hence its coverage area. BMC offers no plan to compensate stations for these increased operational costs.

II. REALLOCATION PROPONENTS FAIL TO RECOGNIZE THAT THIS PROPOSAL WOULD HARM NEW AND SMALL ENTRANTS.

The commenters that support the proposed reallocation of channels 5 and 6 overlook the fact that this proposal would harm new and small entrants. The Commission has already observed that “[m]aintaining channels 5 and 6 for TV service will also protect the service of the many Class A, low power TV, and TV translator stations that use the low VHF channels and are expected to continue to use those channels when they switch to digital operation.”¹⁴ Many operators of Class A and low power television stations are small businesses, or are recent entrants that had to accept smaller service areas in crowded markets.¹⁵ Moreover, the Commission will likely need to use channels 5 and 6 to create a significant number of new, full-power DTV allotments, and their reallocation to radio would make it much more difficult for the Commission to create the new allotments. In light of these serious harms, it is clear that the

¹³ The BMC plan provides for 250 kW UHF facilities, whereas the highest effective radiated power (“ERP”) for any of the stations right now is 45 kW.

¹⁴ See *Reconsideration of the Seventh Report and Order* at n.73.

¹⁵ Indeed, the Commission deems all Class A, LPTV, and translator station licensees to be “small businesses.” See *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Rcd 5922, MB Docket Nos. 07-294, 06-121, 02-277, 01-235, 01-317, 00-244, 04-228, at Appendix B, ¶ 11 (2008).

proposed reallocation is not in the public interest—not simply “premature” as it has been characterized by the BMC.¹⁶

The Class A and low power television stations operating on channels 5 and 6 provide a valuable service to their viewers. For example, KTVW-CA provides Spanish-language programming on Channel 6 to the Flagstaff Arizona area. WJGN-CA provides Christian programming on Channel 5 to the Virginia Beach/Norfolk Virginia area. MSTV agrees with the commenters who stated that “[r]egulatory measures in the name of diversity ought not rely solely, or even heavily, on merely playing ‘musical chairs’ with licensees, station authorizations, or already-occupied spectrum.... [T]hese measures also risk that the displaced licensees/services were themselves diverse and/or provided unique or under-represented programming formats.”¹⁷ MSTV objects to NPR’s suggestion that, because DTV stations can multicast, the reallocation of channels 5 and 6 to radio would not harm diversity.¹⁸ NPR’s statement is neither here nor there. Digital radio stations can also multicast. For example, the Washington, D.C. NPR station (WAMU) has two multicast signals in addition to its main HD signal. A reallocation would simply play “musical chairs” with licensees, forcing many diverse television stations serving niche cultural markets to go dark so that radio stations can take their place.¹⁹

¹⁶ See BMC Comments at 2.

¹⁷ See Comments of the Educational Media Foundation, E-String Wireless, Ltd., Horizon Christian Fellowship (San Diego), Liberty University, Inc., Living Proof, Inc., Victoria Radioworks, Ltd., Positive Alternative Radio, Inc., and Calvary Chapel of Twin Falls, Inc., at 3 (filed July 30, 2008). Despite this insight, the commenters support the reallocation proposal. Indeed, the commenters go so far as to state that the reallocation of channels 5 and 6 for FM use “would displace no one,” a statement that is patently false. See *id.* at 11.

¹⁸ See Comments of National Public Radio, Inc. at 4-5 (filed July 30, 2008).

¹⁹ Moreover, Congress has mandated that the FCC create 175 new DTV allotments. See *Reconsideration of the Seventh Report and Order* at n.73. Given this statutory mandate, MSTV is perplexed by the comments that purport to tally the number of FM stations that could be created in various cities. As the (continued...)

III. THE COMMISSION'S PROCEDURAL REQUIREMENTS HAVE NOT BEEN SATISFIED.

At this stage in the transition to digital television, the FCC has already allocated DTV channels. Accordingly, any change in channels assigned to television stations would require a separate, specialized rulemaking for each of the TV channel changes proposed by BMC.²⁰ MSTV notes that the Commission's rules require that petitions to amend allotments must be served by the petitioner on "any Commission licensee or permittee whose channel assignment would be changed by grant of the petition. The petition shall be accompanied by a certificate of service on such licensees or permittees."²¹ To MSTV's knowledge, neither the full-power stations nor the hundreds of Class A, low power, and translator stations whose channels would be changed as a result of the proposed reallocation has been individually notified of the proposal to change their channel assignments. In any event, such changes could not be accomplished in the context of the instant proceeding.

* * *

For the reasons discussed herein, MSTV respectfully requests that the Commission protect the public's free, over-the-air television programming on channels 5 and 6.

Commission has stated, "[p]roviding for the full availability of these channels for new TV stations will help enable the Commission to provide for the 175 DTV allotments for new TV stations required under the [Community Broadcasters Protection Act of 1999]." These new allotments would create opportunities for many new entrants, increasing competition and diversity in the television market. Without the availability of channels 5 and 6, new entrants will be forced into the more congested channels. Thus, these new stations and their viewers may be subject to increased interference and smaller service areas.

²⁰ See 47 C.F.R. §§ 1.420, § 73.616, and § 73.623. See also *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Seventh Further Notice of Proposed Rule Making, 21 FCC Rcd 12100, at ¶ 25 (2006) (noting that, except in certain circumstances, changes to the DTV Table of Allotments must be made through allotment rulemakings).

²¹ See 47 C.F.R. § 1.401(d).

Respectfully submitted,

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