

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 73 and 74 of the)	MB Docket No. 08-253
Commission's Rules to Establish Rules for)	
Replacement Digital Low Power Television)	
Translator Stations)	

**OPPOSITION OF THE
NATIONAL ASSOCIATION OF BROADCASTERS AND
THE ASSOCIATION OF MAXIMUM SERVICE TELEVISION, INC.
TO THE PETITION FOR RECONSIDERATION OF KMCE, INC.**

The National Association of Broadcasters (“NAB”)¹ and the Association for Maximum Service Television, Inc. (“MSTV”)² respectfully submit this opposition to the petition for reconsideration of KMCE, Inc. (“Petition”) in the above-captioned proceeding. KMCE seeks reconsideration of the Report and Order³ establishing a new, “replacement” digital television (“DTV”) translator service to permit full-service television stations to continue to provide service to viewers within their coverage areas who have lost service as a result of those stations’ digital

¹ 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.

² 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.

³ Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations, MB Docket No. 08-253, Report and Order, FCC 09-36 (rel. May 8, 2009) (“Report and Order”).

transition. Petitioner objects to many of the provisions of the Report and Order and seeks a substantial overhaul of the rules establishing this new service, claiming a deleterious effect on low power television stations' ("LPTV") ability to obtain digital channels and expressing doubt about the need for this new service. Petition at 8, 9. As discussed in detail below, replacement translators are useful tools in ameliorating consumers' loss of valuable full power digital television service. NAB and MSTV therefore support the Commission's decisions in the Report and Order and urge the FCC to deny the KMCE Petition.

I. The Commission Acted Appropriately In Establishing a Replacement Translator Service As a Tool to Fill In Digital Service Losses.

In this proceeding, the Commission correctly anticipated potential reception shortfalls in post-transition DTV service, and expeditiously put in place a "replacement" translator system as a tool to address potential service losses.⁴ The Commission believed it a priority for "all Americans [to] continue to receive the television broadcast service that they are accustomed to receiving following the digital transition." Notice at ¶ 3. In essence, the instant Petition opposes this priority and the replacement service generally.

In particular, Petitioner complains that the new replacement translator service will take channels that it and other LPTV stations could use for their digital service. Petition at 3. It contends that LPTVs and translators are more

⁴ Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations, MB Docket No. 08-253, Notice of Proposed Rulemaking, 23 FCC Rcd 18534, ¶ 2 (2008) ("Notice").

important than the transmission issues the new service is intended to correct.
Petition at 9,10.

NAB and MSTV submit that the Commission acted properly to anticipate and ameliorate DTV coverage shortfalls and that the Commission's goals and priorities in creating the replacement translator service are appropriate. In fact, the National Translator Association ("NTA"), in comments in this proceeding,⁵ opposed the new replacement service and urged unrestricted TV translator filings, as Petitioner now does. In responding to NTA, the Report and Order makes clear that, while the Commission is "sympathetic to the desires of the low power television community to provide new and expanded low power digital service, [it] continue[s] to believe that [it] must place a priority on the facilitation of the full-service television digital transition and the avoidance of the loss of service that may result from the transition." Report and Order at ¶ 6.⁶

NAB and MSTV appreciate as well the need for digital service in the translator and low power television services, but we agree with the Commission that loss of full power service must be dealt with directly and expeditiously.⁷ As

⁵ Comments of the National Translator Association, MB Docket 08-253, January 15, 2009, at 1.

⁶ The Report and Order notes that the Commission does "not believe that this approach will unduly diminish new low power digital service opportunities because we will shortly announce a near-term date upon which we will begin accepting applications pursuant to the first come-first serve licensing scheme for new digital translators and low power television stations originally envisioned in our 2004 LPTV digital order." Report and Order at 6. The Commission subsequently announced January 25, 2010 as the opening date of a nation-wide filing opportunity for new digital-only low power and TV translator applications. See Public Notice, DA 09-1487, released June 29, 2009.

⁷ Petitioner's assertion that NAB and MSTV advocated for a full three year construction period for replacement translators is inaccurate. We argued that the

the Commission foresaw, full service DTV reception issues and coverage shortfalls have occurred in many markets and are continuing today.⁸

Broadcasters must have available to them a variety of potential tools to restore service losses and to “maintain broadcast service that the public has come to depend upon and enjoy.” Report and Order at ¶ 4; *id.* at ¶ 7 (Commission “seek[s] to provide full-service stations with the flexibility to employ the technical means they find most feasible to replace service to potential loss areas”).

Accordingly, the Commission is working with stations experiencing transmission

proposed six month construction period was too restrictive, because unforeseen circumstances as well as routine steps required to construct could easily delay completion of construction beyond six months. We thus advocated a construction period of at least a year. The Association of Public Television Stations provided reasons, specific to public television and more generally, that supported adoption of the standard three year construction deadline. These arguments, which the Commission found persuasive, hardly indicate that broadcasters “will be in no rush to build these facilities,” as Petitioner asserts without support. Petition at 6. To the contrary, as NAB and MSTV explained, broadcasters will be motivated to quickly and efficiently set up translator services to fill in digital loss areas. Comments of the National Association of Broadcasters and the Association of Maximum Service Television, Inc., filed in MB Docket No. 08-253, January 12, 2009 (“NAB/MSTV Comments”) at 6. The Commission agreed. Report and Order at ¶ 31.

⁸ See, e.g., “Mixed Signals,” Columbia Daily Tribune, October 24, 2009, available at <http://www.columbiatribune.com/news/2009/oct/24/mixed-signals/>; “FCC Continues Working On DTV-Related Reception Issues; Solutions include moving stations from VHF to UHF channel positions, boosting power,” Broadcasting & Cable, August 17, 2009, available at http://www.broadcastingcable.com/article/327804-FCC_Continues_Working_On_DTV_Related_Reception_Issues.php; “Digital television is literally passing over some disgruntled households in New Jersey,” The Star-Ledger, August 17, 2009, available at http://www.nj.com/business/index.ssf/2009/08/digital_television_passing_ove.htm?FORM=ZZNR9; “VHF Throws Wrench In DTV Transition,” TVNewsCheck, June 18, 2009, available at <http://www.tvnewscheck.com/articles/2009/06/18/daily.5/>.

issues and reception losses by facilitating power increases, channel changes,⁹ service area maximizations, implementations of distributed transmission system technologies and, as established in this proceeding, replacement translators to fill in service loss areas.¹⁰

Objections to the new replacement translator service similar to those of Petitioner have been raised and addressed in this proceeding.¹¹ Because the Commission appropriately found that the replacement translator service serves an important public policy goal, and Petitioner has offered no basis for a reversal of course, the Petition should be denied.

II. The Commission Should Maintain the Processing Priority for the Replacement Translator Service.

Petitioner specifically objects to the processing priority the Commission has afforded the new “replacement” translator service over new digital LPTV stations and translator applications. The Petition requests that the Commission change its rules to put new digital LPTV and translator applications on equal

⁹ See, e.g., “FCC Allowing WGHP to Move Signal To Pre-DTV Transition Channel; Station found a sizeable number of viewers could no longer get the station over the air,” *Broadcasting & Cable*, October 29, 2009, available at http://www.broadcastingcable.com/article/366814-FCC_Allowing_WGHP_To_Move_Signal_To_Pre_DTV_Transition_Channel.php; “WVUE moves a step closer to ending DTV reception woes,” *Broadcast Engineering*, August 20, 2009, available at http://enews.penton.com/enews/broadcastengineering /rfupdate/2009_august_20_august_20_2009/view.html

¹⁰ See “DTV reception remains an issue with stations and OTA viewers alike,” *BroadcastEngineering*, August 24, 2009, available at <http://broadcastengineering.com/news/dtv-reception-remains-issue-0824> (various solutions adopted, including digital translators).

¹¹ See *supra* at 3.

footing with new replacement translators, Petition at 6, or otherwise severely restrict the new replacement translator service. *Id.* at 6, 7.

The Commission, however, has already addressed these same objections in the rulemaking and concluded that “applications for replacement translators must be given processing priority to ensure that stations are quickly able to obtain the necessary authorization to begin constructing their replacement facility.” Report and Order at ¶ 12. The Commission explained that, unlike the digital transition of full-power television stations, low power television and TV translator stations have no digital conversion deadline and thus “do not require the expedited processing needed for replacement translators.”¹² *Id.* at ¶ 12 and fn. 29.

The Commission also previously rejected a proposal for full “displacement” privileges for pending but ungrantable LPTV or translator applications, concluding that such a proposal “would increase the number of co-equal applications and delay processing for full-service stations seeking this service.” *Id.* at ¶ 12. Giving all new LPTV and TV translator applications the same processing priority as new replacement translator applications, as Petitioner requests, would similarly vastly increase the number of co-equal applications, seriously delay processing for replacement applications and

¹² The Commission did find, however, that displaced low power television and television translator applicants do warrant co-equal processing priority because their viewers have lost television service that they are accustomed to receiving, and “we seek to assist all television stations to maintain their existing analog service coverage through the digital transition.” Report and Order at ¶ 12. Thus, the Commission’s policy goals are consistent in favoring amelioration of service losses before authorizing new service.

frustrate the goal the Commission has established as a priority. For these reasons, the Commission should deny the Petition.

III. Petitioner's Claim of Improperly Filed Replacement Translator Applications Does Not Justify Changing the Rules for the New Service.

Petitioner claims that several replacement translator applications have been improperly filed, and asserts that they require staying the grant of any pending applications and changing the service rules in specific, substantial ways. NAB and MSTV disagree.

First, the few examples cited by Petitioner do not demonstrate a widespread problem, nor do they “foretell egregious abuses,” as Petitioner claims. Petition at 4.¹³ Second, citing a small number of applications does not show why the service rules should be changed, even if Petitioner’s contentions about those specific applications are correct. The required showings for replacement translator applications are clear, and the FCC staff can and should enforce the specific requirements as detailed in the rules. Third, Petitioner’s remedy for the alleged “abuses” (rolling this new service into a generalized LPTV and TV translator filing opportunity) sweeps too broadly and defeats the

¹³ Petitioner asserts a “spectrum grab” by some full power stations on the basis of a few applications that Petitioner claims are over-stating *de minimus* extensions of service beyond analog loss areas. Petition at 4, 5, 7. The Commission found that some post-transition full power stations should be allowed a *de minimus* expansion of their analog service areas in order to properly engineer their replacement translators. Report and Order at ¶18. It will allow stations to propose a *de minimus* expansion of their analog service areas upon a showing, through an engineering exhibit, that it is necessary to replace service in their post-transition analog loss areas. *Id.* at ¶18; fn. 48. Petitioner’s claims of inadequate showings in some applications do not justify revision of this rule. FCC staff processes will be sufficient to examine the required showings and determine each applicant’s *de minimus* threshold on a case-by-case basis as intended, restricting it to that which is necessary to provide service to loss areas.

important public policy goals that the Commission has held paramount throughout the DTV transition. In sum, Petitioner has shown no basis for altering the rules of the new replacement translator service recently established to aid in restoring full power service losses.

Conclusion

For the foregoing reasons, the Commission should deny KMCE's petition for reconsideration.

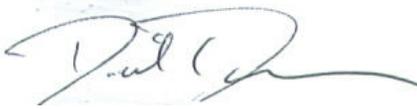
Respectfully submitted,

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November 4, 2009

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing "OPPOSITION OF THE NATIONAL ASSOCIATION AND BROADCASTERS AND THE ASSOCIATION OF MAXIMUM SERVICE TELEVISION, INC. TO THE PETITION FOR RECONSIDERATION OF KMCE, INC." was served by first-class mail, postage prepaid, on this 4th day of November, 2009, upon:

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