

**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

REPLY COMMENTS

The Association for Maximum Service Television, Inc. ("MSTV")¹ and the National Association of Broadcasters ("NAB")² hereby file these reply comments concerning the Petition for Rulemaking filed by National Public Radio, Inc. ("NPR"), in which NPR requests that the Commission revoke Section 73.525 of its rules.³ Section 73.525 requires transmitters operating in the reserved non-commercial educational ("NCE") FM band to protect from interference television stations operating on adjacent channel 6 spectrum. This rule remains necessary as a technical matter and to avoid harm to the public interest.

MSTV and NAB agree with those commenters that point out the important role that channel 6 television service continues to play in many homes across the country, and that note the threat that repealing Section 73.525 would pose to the public's free, over-the-air

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.

television service. A number of full-power, digital TV stations continue to operate on channel 6, including several of the commenters in this proceeding, such as the University of Alabama, licensee of WUOA-DT, Tuscaloosa, Alabama (“WUOA”), and ABC, Inc. (“ABC”), the licensee of WPVI-TV, Philadelphia, Pennsylvania (“WPVI”). The local news, public affairs programming, popular entertainment programming, and vital public safety/emergency information provided by stations operating on channel 6 require continued protection from interference from NCE FM stations. Further, the Commission has not yet set a date by which Class A stations, low power television stations, and television translator stations broadcasting on channel 6 must convert to digital television; many of these stations continue to provide analog television signals and will do so for some time.⁴ The valuable services these stations provide to the public would be threatened by a repeal of Section 73.525.

As explained in the comments submitted by ABC, viewers care intensely about preserving their access to channel 6 television programming. Following a disruption to WPVI’s over-the-air television service in connection with the DTV transition, the station received thousands of telephone calls from viewers. “These viewers complained that . . . they could not receive WPVI’s DTV signal on channel 6 and no longer had access to ABC network or locally-produced programming (including news, emergency information, and other public affairs programming) received prior to the DTV transition.”⁵ If viewer access to channel 6

⁴ As has been noted in previous proceedings and in MSTV and NAB’s initial comments, 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.

⁵ Comments of ABC at 4.

programming is similarly disrupted by NCE FM interference, viewers will again lose access to these critical services.

In recognizing that “a substantial demand for over-the-air, broadcast programming remains nationwide,” the University of Alabama highlights an important consideration.⁶ Tens of millions of viewers -- close to 14 percent of all U.S. television households -- continue to rely exclusively on free, over-the-air television.⁷ This reliance is particularly high in minority communities and in less affluent areas where financial constraints limit the ability of families to replace their analog sets with digital models or to subscribe to a pay-TV service. Indeed, more than 23 percent of households with incomes under \$30,000 per year, more than 20 percent of African American television households, and more than 25 percent of Hispanic television households rely solely on over-the-air broadcasting.⁸ And, as noted in MSTV and NAB’s initial comments and reinforced in comments submitted by the University of Alabama, millions of additional households have one television hooked up to a cable or satellite service but have additional television sets which rely on over-the-air programming.⁹ In fact, 35 percent of U.S. households have television sets that only receive signals over-the-air.¹⁰

⁶ Comments of Board of Trustees of the University of Alabama (“University of Alabama”) at 3-4.

⁷ A 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”).

⁸ See Comments of Association of Public Television Stations (“APTS”) at 3, *citing* Comments of NAB, *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269 (filed July 29, 2009).

⁹ See Comments of University of Alabama at 3. The University of Alabama raises an important additional concern: these statistics are national figures that include households in markets that are not served by channel 6 facilities. To the extent that the number of households that receive (continued...)

Moreover, even viewers who do not rely on free, over-the-air television may lose access to channel 6 in the event of NCE FM interference. As noted in MSTV and NAB's initial comments, many cable and satellite systems continue to pick up the signals of local television stations by using over-the-air reception. It has been estimated that nearly 45 to 50 percent of the 8,177 cable headends in this country rely on the signal of over the air television stations to obtain local television stations. Further, both DirecTV and the DISH network place heavy reliance on over-the-air signals in order to provide broadcast television programs to their subscribers. Satellite receive sites in 182 of the 210 broadcast markets installed new off-air receiving equipment in connection with the digital transition. According to DirecTV, 73% of all of the television station signals carried by DirecTV were received at satellite receive sites via over-the-air transmission. Thus, a significant portion of television households could be deprived of channel 6 programming in the event of a repeal of Section 73.525.

Contrary to the assertion that Section 73.525 "serves no real interference protection purpose,"¹¹ NCE FM interference remains a meaningful threat to channel 6 signals. MSTV and NAB disagree with the commenters who asserted that improved technology renders the risk of interference from NCE FM stations low enough to justify repeal of Section 73.525.¹²

over-the-air television programming is greater within markets that have a channel 6 station, repeal of Section 73.525 will have a far more pronounced impact on channel 6 viewers than suggested by the national statistics.

¹⁰ See Statement of Mark L. Goldstein, Director, Physical Infrastructure Issues, GAO, "Broadcasters' Transition Status, Low-Power Station Issues, and Information on Consumer Awareness of the DTV Transition," GAO-08-881T (Sept. 23, 2008), at 11 (noting that about 65 percent of homes have all televisions connected to a pay-TV service, while the remaining 35 percent rely on over-the-air television for at least one television set).

¹¹ See Comments of San Diego State University at 3.

¹² See, e.g., Comments of Communications Technologies, Inc. ("CTI") at 1; Comments of Moody Bible Institute of Chicago, *et al.* at 4.

As ABC points out in its comments, the studies submitted by NPR in support of its contention that Section 73.525 has been rendered unnecessary by the digital transition are flawed in several respects and are inconclusive.¹³ NPR's studies tested the performance of DTV receivers using signal levels that are not representative of those encountered in a typical over-the-air viewing environment.¹⁴ The December 2007 study conducted by NPR evaluated the risk of interference to channel 6 broadcasting using signal strengths for DTV channel 6 that are higher than real-world channel 6 DTV signal strengths.¹⁵ The study's estimate of resistance to interference was thus artificially high.¹⁶

Further, as noted by the University of Alabama, the 2007 study failed to sufficiently test the likelihood of interference to digital-to-analog converter boxes.¹⁷ The study tested only two converter boxes, one of which was an engineering sample rather than a consumer model with a model number.¹⁸ This is an important failing because, as noted above, millions of households continue to rely on older, analog television sets that are connected to digital converter boxes.¹⁹ Viewers using older analog television sets with converter boxes may not experience the same interference rejection as viewers using new digital television sets. As the

¹³ See Comments of ABC, Inc. ("ABC") at 2.

¹⁴ *Id.* at 2-3.

¹⁵ *Id.* at 2. DTV signal strengths received with commonly used antennas can range down to -85 dBm. The lowest signal strength tested by NPR was -68 dBm. As ABC explains, the higher signal levels assumed by NPR are more resistant to interference than the lower signal levels that are a more realistic scenario for many viewers. *Id.*

¹⁶ As NPR's September 2008 study relied on measurements taken in the flawed December 2007 study, its findings are also questionable. See Comments of ABC at 2.

¹⁷ Comments of University of Alabama at 4.

¹⁸ *Id.*

¹⁹ More than 34 million households were approved to receive DTV converter box coupons. See <https://www.ntiadtv.gov/docs/programstats.pdf>.

University of Alabama also notes, the lab conditions under which the tests were conducted failed to account for various real-world factors that would tend to create further interference to reception of channel 6 broadcasts, such as the existence of multiple FM signals or intermodulation interference.²⁰

* * *

²⁰ See Comments of University of Alabama at 4.

CONCLUSION

Channel 6 television stations provide an important service to their viewers, and the operations of adjacent NCE FM stations pose a threat to that service. 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 17th day of December, 2009, I caused a copy of the foregoing "Reply Comments" to be sent via first-class U.S. Mail, postage prepaid, to the following:

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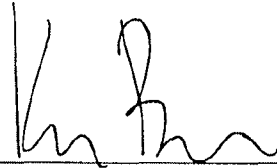
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