



**Minority Media &  
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November 24, 2009

Marlene H. Dortch, Esq.  
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**David Honig  
President and Executive Director  
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Re: **REQUEST FOR FILING FREEZE AND PROCESSING FREEZE**  
Commencement of Rural and Nationwide, First-Come, First-Served,  
Digital Licensing for Low Power Television and Television  
Translator Services Beginning August 25, 2009 and January 25, 2010

Dear Ms. Dortch:

The Minority Media Telecommunications Council (“MMTC”) respectfully requests that the Commission announce that during the upcoming filing window commencing on January 25, 2010 for digital low power television and television translators, no applications specifying Channels 5 or 6 will be accepted in response to the Public Notice of June 29, 2009 (DA 09-1487). In addition, the applications filed in the August 25, 2009 window period specifying Channel 5 and 6 should not be processed.

These TV channels have been proposed for FM broadcasting in the *Diversity Proceeding (In the Matter of Promoting Diversification of Ownership in the Broadcasting Services (MB Docket No 07-294), Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Rcd 5922 (2008) (“Diversity Proceeding”)*. It is critical that the Commission avoid accepting applications for new Channel 5 and 6 stations and delay processing the pending applications so as not to prejudice the Commission’s consideration of the various proposals that have been submitted for the use of this spectrum for FM broadcasting.

In the *Diversity Proceeding*, the Commission spoke favorably of the proposal from the Diversity and Competition Supporters (“DCS”) to expand the FM band to include Channels 5 and 6 by saying, “[w]e agree with DCS that this proposal could yield tremendous opportunities for new entrants, and we seek comment on it.” *Id.* at 5956.

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Several proposals were filed in response to this request for comments. MMTC filed comments supporting the comprehensive plan submitted by Broadcast Maximization Committee (“BMC”) which proposes that this spectrum be used for (1) new and existing (displaced) low power FM (“LPFM”) stations; (2) expand the NCE service with new stations; and (3) provide for the reallocation and migration of all AM stations to the remaining available space in this spectrum with digital transmissions only. As BMC demonstrated, the benefits flowing from these proposals would greatly enhance the Commission’s localism, diversity and digital radio initiatives. Further MMTC stated that these proposals would significantly assist small business, women and minority-owned stations that are located primarily in the AM band with technically inferior stations.

However, without a freeze on the filing and processing of applications for Channels 5 and 6 in the LPTV digital filing windows, the Commission will preclude the proposed uses of this spectrum space and waste the remaining spectrum space that could be much better used to save the AM service, eliminate the sharing arrangement with FM and LPFM stations and respond to the large number of interested parties wanting new NCE stations. Furthermore by accepting and granting new station authorizations in this spectrum space, the Commission would violate basic procedural due process requirements when interest has been solicited and expressed in alternative uses for the Channels 5 and 6 spectrum. *Cf. Ashbacker Radio Corp. v. FCC*, 345 US 346 (1945) (where the Supreme Court held that granting one of two mutually exclusive applications without considering the other application was to deny that applicant the procedural right to a hearing.) To accept and grant an application for spectrum that is being considered for other uses is to deny those interested in the alternative use a fair right to be heard.

Prior to the August 25, 2009, LPTV rural service window, BMC and several other parties filed requested a filing freeze on applications for Channels 5 and 6. Those requests included Global Jazz, Inc., Educational Media Foundation, National Public Radio, National Federation of Community Broadcasters, Prometheus Radio Project, Brown Broadcast Services, Inc., Finger Lakes Public Radio, Catholic Radio Association, Positive Alternative Radio, Inc, and Creative Educational Media Corp, Inc. The Commission did not act on any of these Requests.

Earlier, BMC filed a similar request for a filing freeze on LPTV or TV translator digital companion channel stations seeking to convert to Channels 5 and 6. As a result of that freeze request, on September 30, 2008, a Public Notice (DA 08-2150) was issued in Auction 85, warning applicants that “in MB Docket 07-294, the Commission sought comment on a proposal by Mullaney Engineering, Inc., to reallocate TV Channels 5 and 6 for FM broadcasting. In that proceeding, the Broadcast Maximization Committee (BMC) filed a request to adopt a freeze on the filing of applications and rule making petitions to utilize television Channels 5 and 6 pending the outcome of the proceeding. BMC has also filed a request to remove MX Group 283 from Auction 85, arguing that such action is necessary to ensure that Channels 5 and 6 remain available for future FM use as proposed in MB Docket 07-294. These matters are pending before the Commission. Participants should continue such research throughout the auction.” *Public Notice*, June 29, 2009 (DA 08-2150) at ¶14.

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In view of the fact that the Commission has previously warned applicants that the use of Channels 5 and 6 may be affected by action eventually taken in MB Docket 07-294 (the *Diversity* Proceeding), the Commission should have included the same announcement in the June 29, 2009 Public Notice. Indeed, unlike Auction 85 where only one MX group was affected, this filing opportunity has the potential to impact many applicants.<sup>1</sup> As a result of the digital transition, the spectrum for Channels 5 and 6 is widely available across the country. While it has become clear to many broadcasters that this channel (as well as all VHF channels) is not as well suited for digital operation as the UHF band, nevertheless it is expected that some applicants will be submitting applications for these channels.

Unlike Auction 85, where a warning to applicants was deemed sufficient, a freeze is required in this instance because the filing and processing of applications for Channels 5 and 6 could forever preclude a future filing by a LPFM, NCE or AM station. Only a freeze will level the playing field between similarly situated parties.

BMC has offered a comprehensive plan for the use of Channels 5 and 6 that will provide enormous benefits to NCE, LPFM and AM stations and applicants. This opportunity may be the only means to save the AM stations in a digital-only world. The Commission has offered a once in a generation opportunity to use a clean slate to solicit ideas for these channels and there are other worthy proposals that have been submitted as well. MMTC believes it would be extremely short sighted if the Commission compromised this opportunity by accepting and processing LPTV and television translator applications for these channels.

Accordingly, MMTC respectfully requests that the Commission impose a freeze on the filing of Channel 5 and 6 applications in the upcoming digital LPTV and television translator filing period commencing January 25, 2010 and a processing freeze on the pending applications filed in the rural window period until the Commission considers the use of these channels for FM broadcasting in MM Docket 07-294.

Sincerely,



David Honig  
President and Executive Director

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<sup>1</sup> In the August 25, 2009 window period for rural LPTV stations, there were 28 applications filed for Channels 5 and 6.