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Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Request for Clarification of Low Power Television Broadcast Rules and Delayed Filing Commencement for Nationwide Low Power Television and Television Translators for Channels 5 and 6

Dear Ms. Dortch:

Common Frequency, Inc., a non-profit encouraging diverse community and student non-commercial radio, asks the Commission to provide clarification regarding current issues concerning low power television. The following summarizes our concerns:

The availability of LPTV UHF channels: Common Frequency is currently performing outreach to nonprofits interested in starting LPTV stations. In urban areas the availability of open channels is known to be limited. Recently the Commission's *National Broadband Plan* put forth a recommendation that "the FCC should initiate a rulemaking proceeding to reallocate 120 megahertz from the broadcast television (TV) band."¹ The entire LPTV application process would be considered futile if the Commission intends to reclaim spectrum shortly after organizations pursue the costly route of hiring an engineer and lawyer, and paying associated filing and auction fees. For this reason, the Commission may want to make a statement concerning the speculative use of channels before the filing commencement so the limited funds of nonprofits are not wasted due to the uncertainty of near future use of the UHF band.

Delay the filing commencement for channels 5 and 6: We would like the Commission to consider delaying the commencement of nationwide filing for low power and translator use of channels 5 and 6 specifically. We are asking for this delay due to the following reasons:

Technical Reasons: Making channel 6 available in urban markets will mean there could be at least one channel 6 licensed in every market. Unlike full power channel 6's, low power and translator 6's require less spacing, meaning many markets could potentially

¹ See FCC's *National Broadband Plan*, Chapter 5 ("Spectrum"), Recommendation 5.8.8, page 88.

accommodate them. This could create an implicit permanent technical burden on all future NCE-FM modifications. If channel 6 and NCE channels impose known interference to each other, it may be worth questioning why the Commission intends to allow entities to apply for channel 6 now that most digital television stations have elected to move off the channel.

So far, the regulations designed to address digital television interference to NCE-FM are ambiguous. Section 73.623(f) states that parties applying for channel 6 are required to submit an engineering study “demonstrating that no interference would be caused to existing FM radio stations on FM channels 200-220.” However, FCC form 346 (*Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station*) makes no reference to the applicant providing such study.

As for NCE’s protecting channel 6, FCC is still imposing the use of crudely estimated techniques to gauge interference from NCE-FM to television channel 6’s based upon the interference received on a standard analog television set made in the 1970’s. According to NPR Labs’ recent assessment, “on average, a potential interference area that was evaluated in 1985 had shrunk to nearly one-tenth its size by 2007 with the use of digital receiver technology.”² Additionally, the Commission stipulates that NCE stations protect LPTV service on Channel 6 while Section 73.525 does not even reference protection specific to LPTV.³

The Commission should take adequate time to address these issues before it has to deal with potentially hundreds of channel 6’s at odds with thousands of NCEs, or even legal challenges regarding the rules.

Regulatory Reasons: The FCC has a pending proceeding in which the Commission has asked for comments regarding whether to reallocate channels 5 and 6 for FM broadcasting.⁴ Allowing applicants to apply for channels 5 and 6 is essentially at odds with any future decision to utilize this bandwidth for any other purpose. It is also worth noting that broadcast television viewership has been in steady decline due to the increase of competing services (cable, satellite, and internet), and it is worth questioning whether granting large chunks of bandwidth to such few TV operators and speculators is in the public interest. The band could be alternately opened to a diversity of uses or/and owners. If the frequencies are allotted as television channels, it will be difficult, if not impossible, to reclaim these frequencies afterwards for any other use.

² *Petition for Rulemaking of National Public Radio to Repeal Section 73.525 of the Commission’s Rules.* (RM-11579) submitted by National Public Radio October 20, 2009.

³ *Letter to Southern Nevada Educational Broadcasters January 13, 2009 from Rodolfo F. Bonacci, Asst. Audio Chief concerning KEKL:* “An Engineering review of the application reveals that the application fails to comply with 47 C.F.R. 73.525 with respect to TV Channel Six station KVPX-LP, Las Vegas, NV.”

⁴ *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).

We ask the Commission to delay the availability of applying for channels 5 and 6 until these issues are addressed. Because there is an open-ended filing window for these channels, there would be no repercussion whatsoever in delaying the commencement date specifically for channels 5 and 6 so that technical and regulatory details could be appropriately dealt with.

Sincerely,

Todd Urick
Program Director
Common Frequency

CC: Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Meredith Atwell Baker
Commissioner Mignon Clyburn
William T. Lake, Chief of Media Bureau
Barbara Kreisman, Chief of Video Division
Peter Doyle, Chief of Audio Division
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