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Federal Communications Commission
Office of the Secretary

In the Matter of Application of

LEHIGH VALLEY COMMUNITY
BROADCASTERS ASSOCIATION, INC.

For a Minor Change to WDIY(FM)
Allentown, Pennsylvania
Facility ID No. 36992

FCC File No. BPED-19990823IA

To: The Commission

**COMMENTS OF
NATIONAL PUBLIC RADIO, INC.**

Introduction

Pursuant to Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, National Public Radio, Inc. ("NPR") hereby comments in support of the Application for Review filed by Lehigh Valley Community Broadcasters Association, Inc. ("Lehigh") seeking Commission review of the denial of Lehigh's application to increase the station's effective radiated power and thereby improve its noncommercial educational service to the public.¹

NPR is a non-profit membership corporation that produces and distributes such noncommercial educational ("NCE") programming as *All Things Considered*[®] and *Morning Edition*[®] for broadcast by more than 700 NPR member licensed public radio stations, including WDIY(FM). NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its member stations.

¹ Application for Review, FCC File No. BPED-19990823IA, filed Mar. 15, 2007.

**Section 73.525 of the Commission's Rules,
On Which Dismissal of the Lehigh Application is Based,
Requires Reexamination**

In the interest of improving its public service to Allentown, Pennsylvania area residents, Lehigh has sought a modest increase in the effective radiated power at its licensed transmission site. The Bureau has dismissed the application and denied reconsideration of that dismissal based on Section 73.525 of the Commission's Rules, which restricts the permissible facilities of NCE FM stations operating on reserved spectrum adjacent to television channel 6 stations. In this case, WDIY(FM) operates adjacent to WPVI-TV, Philadelphia, PA. By dismissing the application based on Section 73.525, however, the Bureau has failed to account for the fundamentally changed circumstances since the rule was adopted as a temporary measure based on then-prevailing television receiver designs and analog television broadcasting more than 20 years ago. As such, this matter exemplifies the urgent need for the Commission to reexamine Section 73.525 because it demonstrates the significant adverse harm the rule inflicts on just one of the many reserved-FM NCE stations operating in a television channel 6 market.

Since 1985, Section 73.525 has required reserved FM band NCE stations to protect the signals of adjacent channel 6 television licensees.² In particular, new reserved FM band NCE stations and stations that have sought to modify their facilities since 1985 have been required to demonstrate that the modified facility would not result in new interference to the television channel 6 reception of no more than a specified number of persons.³

² 47 C.F.R. § 73.525; see Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations, Memorandum Opinion and Order, 58 R.R.2d 629, at 630-31 (1985) [hereinafter "Channel 6 Memorandum Opinion and Order"].

³ 47 C.F.R. § 73.525(b)-(c).

The Commission adopted Section 73.525, even though the evidence before it established that interference by a reserved FM NCE station to reception of an adjacent television channel 6 station was attributable to a relatively minor design flaw in television receivers.⁴ As the Commission previously noted: "The problem is widely recognized as a problem in the design of the television receiving system. Television sets have been designed in such a way that under certain conditions they are unable to reject the undesired FM signal."⁵ Notwithstanding the actual cause of the problem, the Commission adopted a regulatory provision generally requiring NCE broadcast stations to limit their facilities and coverage areas to avoid interference to the reception of television channel 6 stations. The direct consequence of Section 73.525 has been to limit the service that NCE stations throughout the reserved portion of the FM band can offer to the public in the more than fifty television channel 6 markets that exist across the country,⁶ covering nearly two thirds of the area of the United States.⁷

The decision to sacrifice NCE service to protect television channel 6 reception was intended to be a temporary one.⁸ Indeed, the Commission declined to address the actual cause of the interference problem -- the need for improved receiver performance -- because it believed

⁴ Channel 6 Memorandum Opinion and Order, 58 R.R.2d at 631.

⁵ Public Notice, FCC 81-340, rel. July 22, 1981.

⁶ See 47 C.F.R. § 606.

⁷ Comments of the University of Northern Iowa at 2, MM Docket No. 95-31 (filed Apr. 3, 2002).

⁸ Channel 6 Memorandum Opinion and Order, 58 R.R. 2d at 629 ("[T]his proceeding has attempted to provide an interim solution.")

private industry was in the process of developing voluntary standards.⁹ In the more than twenty years since adopting Section 73.525, however, the Commission has never reexamined the issue to determine whether the adjacent channel interference that occurred at that time remains a problem.

To the extent television receivers remain incapable of rejecting adjacent reserved FM-band NCE signals, the Commission's policy actually removes any incentive for television receiver manufacturers to address the issue. Specifically, while the Commission assumed television receiver manufacturers would correct the design flaw in television sets, the Commission adopted a regulatory policy that required reserved FM stations to avoid causing interference to the reception of adjacent television channel 6 stations, thereby "remedying" the interference problem -- at least as far as the receiver manufacturers were concerned.

While operation of Section 73.525 may be a case of unintended consequences, continued application of the rule in cases such as this one renders the matter far from academic. The continuing presence of Section 73.525 has imposed a direct and significant cost on NCE FM radio service, including Lehigh's, contrary to a strong Federal interest in extending such service to all.¹⁰ Indeed, with spectrum efficiency as one of the Commission's principal strategic goals,¹¹ it is hard to imagine a less efficient spectrum policy. NPR therefore believes the time has come for the Commission to redress a flawed regulatory policy so that Lehigh and other NCE stations

⁹ See *id.*, 58 R.R.2d at 632 ("[T]he [consumer electronics] industry appears to have every intention of developing improved immunity standards on its own.").

¹⁰ 47 U.S.C. § 396(a).

¹¹ See Federal Communications Commission, Strategic Plan 2006-2011, 2005 FCC LEXIS 5325, at 10 (Sept. 30, 2005), <http://www.fcc.gov/omd/strategicplan/>.

operating throughout the reserved FM spectrum can improve their public service.

Significantly, we believe improvements in television set design in the two decades since adoption of Section 73.525 have already eliminated the need to require reserved FM radio stations to protect adjacent television channel 6 stations to the same extent, if at all. As a threshold matter, the design flaw that rendered television sets in 1985 insufficiently immune to adjacent interference was understood at the time to be a relatively minor one to remedy. With the advent of digital television ("DTV"), moreover, television sets were promised to be more immune to the type of interference posed by an upper adjacency service.¹² We note, in that regard, that the Commission initiated an inquiry into the performance of radio receivers, including DTV receivers, more than 3 1/2 years ago.¹³

Whatever explains the delay in acting on the record established in that proceeding, we believe the Commission cannot continue to apply Section 73.525 in the face of fundamentally changed circumstances, when the direct result is the denial of improved noncommercial educational service to the American people. Accordingly, we urge the Commission to review the Lehigh application and direct the Media Bureau to process the application based on current receiver and broadcast technology to determine what, if any, actual harm the proposed facilities

¹² See In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order, 12 FCC Rcd 14,588, 14657-58 (1997) (noting that, according to television industry representatives, "improved performance capabilities of DTV receivers will reduce the potential for interference between DTV channel 6 and FM radio service.").

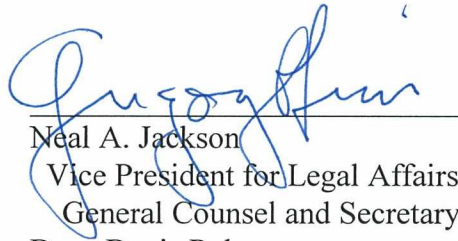
¹³ See In the Matter of Interference Immunity Performance Specifications for Radio Receivers, Notice of Inquiry, ET Docket No. 03-65, 18 FCC Rcd 6039, 6052 (2003) ("What minimum interference immunity parameter values should be specified for DTV broadcast receivers and how would those minimums compare to the performance of existing equipment used in this service?").

would cause to the reception of WPVI-TV.

Conclusion

For the foregoing reasons, NPR urges the Commission to review the Lehigh application.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Neal A. Jackson", is written over a horizontal line.

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March 27, 2007

Certificate of Service

I, Gregory A. Lewis, hereby certificate that, a copy of the foregoing Comments of National Public Radio was sent this 27th day of March 2007, by overnight mail, to the following persons:

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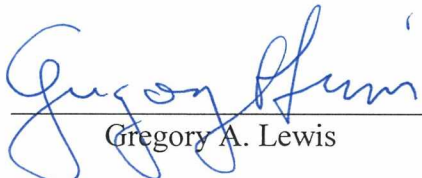
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