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April 12, 2007

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Natek, Inc.  
236 Massachusetts Avenue, NE, Suite 110  
Washington, DC 20002

**FILED/ACCEPTED**

**APR 12 2007**

Federal Communications Commission  
Office of the Secretary

Re: Lehigh Valley Community Broadcasters Association, Inc.  
Reply to Opposition to Application for Review  
File No. BPED-19990823IA

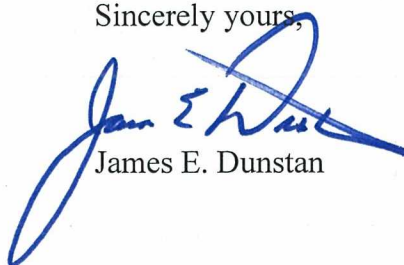
Dear Ms. Dortch:

Transmitted herewith, on behalf of Lehigh Valley Community Broadcasters Association, Inc. are an original and four copies of its "Reply to Opposition to Application for Review" in connection with the above-referenced proceeding.

Additional copies of the pleading are also being delivered, either by hand or by U.S. first-class mail, to each of those listed on the attached Certificate of Service.

If there are any questions concerning this matter, kindly communicate directly with this office

Sincerely yours,

  
James E. Dunstan

Enclosures  
JED:cl

2007 APR 13 P 3:01

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FILED/ACCEPTED

APR 12 2007

Federal Communications Commission  
Office of the Secretary

In the Matter of Application of

LEHIGH VALLEY COMMUNITY  
BROADCASTERS ASSOCIATION, INC.

File No. BPED-19990823IA

To: The Commission

**REPLY TO OPPOSITION TO APPLICATION FOR REVIEW**

Lehigh Valley Community Broadcasters Association, Inc. ("Lehigh"), by its attorneys and pursuant to Section 1.115(d) of the FCC's rules, hereby files its Reply to the Opposition to Application for Review filed by ABC, Inc., licensee of television station WPVI-TV, Philadelphia, PA ("ABC"), regarding the above-referenced application. Lehigh also addresses herein the Comments of National Public Radio, Inc. ("NPR"). In support, Lehigh submits:

Lehigh's Application is procedurally sound. ABC admits that this is a case of first impression – there have been no other cases addressing alternative means for demonstrating a lack of interference to Channel 6 operations.<sup>1</sup> Contrary to ABC's assertions, Lehigh does not seek a change to Section 73.525, but rather an interpretation of that rule allowing noncommercial stations to back out digital viewers in the same manner stations back out viewers who receive the signal via translators and satellite stations. It is certainly within the FCC's adjudicatory powers to give new interpretations to its rules without requiring a formal change to those rules.<sup>2</sup>

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<sup>1</sup> ABC Opposition, p. 2.

<sup>2</sup> "It is well settled that an agency 'is not precluded from announcing new principles in an adjudicative proceeding....' NLRB v. Bell Aerospace Co., 416 U.S. 267, 294 (1974). Rather, 'the choice between rulemaking and adjudication lies in the first instance within the [agency's] discretion.' Id." *Cassell v. FCC*, 154 F.3d 478, 484 (D.C. Cir. 1998). Should the Commission conclude a formal rulemaking proceeding is necessary, Lehigh requests that the Commission hold the pending application in abeyance pending the outcome of such a rulemaking proceeding.

NPR's comments support the pending application. In addition, NPR argues that the FCC is long overdue in reexamining Channel 6 interference protection, adopted before there was a digital television service.<sup>3</sup> Rules originally adopted on an interim basis to rectify a perceived “relatively minor design flaw” in analog television receivers in the early 1980’s have now become cast in stone due to regulatory neglect.<sup>4</sup> Broadcasters themselves argued over ten years ago that the industry was well on its way to rectifying this problem in urging that Channel 6 could be used for digital operations, despite the Commission’s early reluctance to allow such operations.<sup>5</sup> NPR notes that the receiver landscape has “fundamentally changed” since 1985, removing, or at least significantly lessening, the need for Section 73.525.<sup>6</sup> NPR thus supports Lehigh’s interpretation of Section 73.525, to allow it the opportunity to moderately increase power and forestall impending interference from WPVI-DT on Channel 6.<sup>7</sup> Indeed, as Lehigh demonstrated in its Application for Review, the Commission has recognized the looming interference danger that will flow from digital Channel 6 stations to NCE FM stations with power levels below 3 kW.<sup>8</sup> WDIY’s current authorized power is 100 Watts; the pending

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<sup>3</sup> NPR Comments, p. 2.

<sup>4</sup> *Id.*, at p. 3.

<sup>5</sup> *Advanced Television Systems, Sixth Report and Order*, 12 FCC Rcd. 14588, 14657 (1997) (“the Joint Broadcasters submit that, with proper engineering design and safeguards, channel 6 can be used for DTV during the transition. They indicate that the lower power DTV transmitters, the improved performance of DTV transmitters with regard to out-of-band emissions, and improved performance capabilities of DTV receivers will reduce the potential for interference between DTV channel 6 and FM radio service.”)

<sup>6</sup> NPR Comments, p. 2. *See also* “Interference Rejection Thresholds of Consumer Digital Television Receivers Available in 2005 and 2006,” OET Report 07-TR-1003, released March 30, 2007, p. vii (“while the use of single-conversion tuners implies the possibility of interference susceptibilities at the same frequency offsets as those experienced by analog TV, it should be noted that such interference vulnerabilities are lower for digital TV than for analog TV because the ASTC DTV system is inherently more resistant to interference than the NTSC analog system”).

<sup>7</sup> *Id.* at p. 5.

<sup>8</sup> *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd. 7418, ¶ 46 (1998) (“*DTV Sixth Memorandum Opinion and Order*”) (“Our staff

application seeks authority to increase power to 400 Watts, still well below the threshold where WDIY is in danger of suffering interference from a digital Channel 6 operation.<sup>9</sup> In other words, the tables are now turned. With 21<sup>st</sup> Century television receivers able to reject the interference between FM stations and analog Channel 6, it is now time to address the converse – the damage digital Channel 6 operations will have on noncommercial FM stations.

ABC's Opposition boils down to an argument of "tough luck." Not only does ABC oppose WDIY's ability to counteract impending interference by a very modest power increase, it actually goes a step further, arguing that it should have the right to force WDIY to *decrease* power in the event that its digital Channel 6 operations suffer interference from WDIY.<sup>10</sup> ABC argues that since its digital Channel 6 power will be significantly less than its analog Channel 6 power, the FCC must be extra careful to protect its lucrative commercial turf. ABC's argument is disingenuous at best. First, the FCC has long recognized that digital television operations require far less power than analog operations; digital television signals carry far further and more robustly than analog transmissions at the same power levels.<sup>11</sup> More importantly, a comparison of WPVI's existing analog service parameters, compared to its proposed digital Channel 6 service, reveals something ABC attempts to hide by arguing that its digital power is far lower

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analysis also indicates that a DTV station operating on a new channel 6 allotment would not cause interference to an existing FM radio service in most cases, particularly where the FM station is operating at or near its maximum allowed power. In other cases, particularly where the FM station operates significantly below 3 kW, some interference may occur.")

<sup>9</sup> While the FCC currently is looking at digital television receiver performance, *see supra* note 6, there has been no similar analysis of the ability of FM radio receivers to reject digital Channel 6 interference, the only protection against which is increasing the power of adjacent NCE FM stations.

<sup>10</sup> ABC Opposition, Engineering Statement, p. 2. *See also* ABC Opposition, p. 10, where ABC unilaterally extends the Bureau's finding that analog WPVI-TV should enjoy interference protection under Section 73.525 to its digital operations on Channel 6.

<sup>11</sup> *See, e.g., DTV Sixth Memorandum Opinion and Order*, 13 FCC Rcd. at ¶ 46 (noting robust nature of the DTV signal with regard to interference and the lower transmission power requirements of DTV systems).

than its analog power: WPVI will actually *increase* its coverage once it begins operations on digital Channel 6, to the tune of over 800,000 viewers, a more than 10 percent increase!

Channel	Area (sq. miles)	Population	ERP (kW)
6 Analog	27,002.4	8,277,752 <sup>12</sup>	74.1
6 Digital	27,704.0	9,114,000 <sup>13</sup>	2.55
Difference	701.6	836,248	
	2.60%	10.10%	

So while ABC steadfastly objects to a power increase to stave off impending interference and allow WDIY to better serve its listeners, ABC gets to enjoy a windfall of an additional 836,248 viewers. Somehow ABC's "difficult" decision in choosing digital Channel 6<sup>14</sup> somehow seems a lot less difficult. Given that it had to find another digital channel, since its initial allocation was outside of the core spectrum, why not go to a *digital* channel that is protected on one side by antiquated rules adopted because of a design flaw in *analog* television receivers, and increase coverage by nearly a million viewers in the process?<sup>15</sup> ABC's argument is tantamount to a finding that the commercial interests of one of the richest media companies is superior to the statutory mandate to encourage the establishment and delivery of a robust noncommercial service.<sup>16</sup>

<sup>12</sup> *DTV Channel Election Information, Public Notice*, DA 04-3922, released December 21, 2004, Table I.

<sup>13</sup> *Advanced Television Systems, Seventh Further Notice of Proposed Rule Making*, FCC Rcd. 12100, Appendix B (2006).

<sup>14</sup> ABC Comments, p. 9.

<sup>15</sup> Lehigh is not privy to ABC's thinking and motivation in seeking out and choosing a digital channel, but it appears, for example, that Channel 5 might be available as a post-transition home for WPVI. Since ABC has made it clear that it will "flash cut" to its final home on the last day of the digital transition (ABC Opposition, n. 8), it is unclear just how hard ABC looked for an alternative, given how well it will fare on digital Channel 6.

<sup>16</sup> 47 U.S.C. Sec. 396(a).

Allowing Lehigh in this instance to back out digital viewers would not render the protections contained in Section 73.525 meaningless, as ABC claims.<sup>17</sup> As noted above, when Section 73.525 was adopted in 1985, there was no digital television service, so delivery of an analog Channel 6's signal by digital means was not even possible.<sup>18</sup> Now that it is, such digital delivery should now be considered in the same way that delivery via translators and satellite stations is considered. And soon, there will be no analog service at all. It is clear that ABC will want an interpretation of Section 73.525 that considers digital signals at that point, so why not now, other than to do so may protect the commercial interest of ABC?

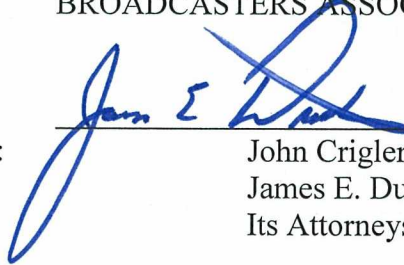
The transition to digital television is nearly complete. It is high time to begin allowing WDIY and other noncommercial FM stations the opportunity to protect themselves against impending digital interference and better serve their listeners. Lehigh respectfully requests the chance to provide such service without the further encroachment of digital Channel 6 operations of WPVI by reversing the Bureau and granting the pending application for a modest power increase.

Respectfully submitted,

LEHIGH VALLEY COMMUNITY  
BROADCASTERS ASSOCIATION, INC.

April 12, 2007

By:



John Crigler  
James E. Dunstan  
Its Attorneys

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<sup>17</sup> ABC Opposition, p. 7.

<sup>18</sup> Because digital replication, while the goal, is unachievable in many instances, backing out actual digital viewers would not eliminate Section 73.525, as ABC claims. *Id.* Nor is it unreasonable to count digital viewers because some of them can't merely "turn the dial" to get the alternative programming. More and more digital televisions are being sold every month as prices come down, and the deadline for the cessation of analog service looms, and soon the Federal government will be handing out coupons for digital set top receivers to be used in conjunction with existing analog sets.



### CERTIFICATE OF SERVICE

I, Cindy Lloyd, hereby certify that on this 12th day of April, 2007, copies of the foregoing "Reply to Opposition to Application for Review" have been served by U.S. first-class mail, postage prepaid, or by hand delivery\*, upon the following:

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Washington, D.C. 20554

Monica Desai, Bureau Chief \*  
Media Bureau  
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The Honorable Michael J. Copps \*  
Commissioner  
Federal Communications Commission  
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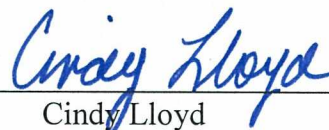
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