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Mullaney's Modest Proposal Draws Opposition

But some signs point to possible progress

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Last month's *Memo to Clients* described a petition by Jack Mullaney in the DTV rulemaking proceeding requesting conversion of television channel 6 (and possibly channel 5, too) to FM radio service. Initial response, though limited, seemed generally supportive of the proposal. But after the *MTC* hit the stands, two parties filed pleadings with the FCC opposing that proposal.

Not surprisingly, considering its moniker, the Association for Maximum Service Television, Inc. (MSTV) posited that preserving channel 6 spectrum for television service is much more important to the public than turning it over to FM radio station operators. MSTV asked the FCC to dismiss Mullaney's petition (and a couple of other petitions urging similar re-purposing of the TV spectrum). According to MSTV, the various proposals are defective on both substantive and procedural grounds. Substantively (so MSTV claims), it's unfair for television stations currently broadcasting on, or planning to move to, channels 5 and 6 to force them to find alternative channels when available channels are already few and far between. Procedurally, according to MSTV, it's too late in the day for Mullaney and his radio-centric brethren to try to bring this up now. (According to MSTV, at least a couple of the proposals were filed beyond the deadline, and therefore shouldn't even make it to the starting gate.)

Another formal opposition was filed by the University of Alabama (full disclosure: UoA is represented by FHH's own Anne Crump and Scott Johnson). The University's objection was more specific than MSTV's: the University is the licensee of a television station in Tuscaloosa, Alabama, that has a pending proposal to move its post-transitional digital operations to channel 6. The University also pointed out that the FCC considered – and rejected – proposals to convert channel 6 to FM radio spectrum nearly ten years ago and that most current radio receivers are not capable of tuning to new FM radio stations in the channel 6 band, so consumers would be forced to buy new radios in order to listen to the proposed new stations. According to the University, the proposed

reallotment of TV spectrum is more suited for a new rulemaking procedure, separate and apart from the DTV transition.

In response, Mullaney replied he recognizes that his request will eventually need to be published in a separate rulemaking procedure – *but* the FCC in any event has a responsibility under the Communications Act to make a decision about whether channel 5 and 6 spectrum is more valuable for radio or television use. He particularly wants the FCC to put television stations on notice that channel 5 and 6 spectrum is up for review and that stations using those channels might be subject to forced relocation in the future.

One of the other let's-move-channel-6-to-the-FM-side proponents also responded, emphasizing that a mere handful of TV licensees would likely be affected by the proposed change, while a whole boatload of new FM service (particularly LPFM service, translators, and NCE stations) could be realized.

We said in last month's article that, what with all the media issues before the FCC at this point, and in view of the frankly late-in-the-game nature of Mullaney's and Lee's proposals in the DTV transition process, it would be unlikely that we will see any action on this matter in the near future. However, as reported in the article on the Commission's recently-initiated minority ownership efforts (*see* article on page 5), it appears that the alchemists at the Commission may in fact be gearing up to turn base TV spectrum into golden FM spectrum sooner rather than later. Stay tuned.