Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In the Matter of	)	
	)	
Request by CXR Radio, LLC	)	MB Docket No. 19-98
For Extension or Waiver of	)	
Divestiture Deadline	)	

COMMENTS OF SPANISH BROADCASTING SYSTEM, INC.

Pursuant to the Media Bureau's Public Notice of November 10, 2021,[1] Spanish Broadcasting System, Inc. ("SBS") submits these comments in opposition to CXR Radio, LLC's ("CXR") request for an extension of time to divest radio station WPYO(FM), Maitland, Florida, which CXR holds as a divestiture trustee.[2] As set forth below, SBS's interactions with CXR in the course of its efforts to purchase WPYO have made clear that CXR's failure to sell the station within the two years afforded it is not because of the pandemic, market conditions or any other reason outside CXR's control, but because of inaction by CXR that stands in contrast to the public interest in eliminating the violation of the local radio ownership limits. A one-year extension of CXR's December 17, 2021 deadline to divest WPYO is unwarranted and should not be granted.

I. INTRODUCTION

SBS owns and operates eighteen radio stations located in six top U.S. Hispanic markets as well as a national radio network with over 290 affiliated stations reaching 95% of the U.S.

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[1] *See* Public Notice, "Media Bureau Seeks Comment on Request for Extension or Waiver of Divestiture Deadline Filed By CXR Radio, LLC," MB Docket No. 19-98, DA 21-1409 (Nov. 10, 2021) (the "Notice").

[2] *See* Request of CXR for an Extension or Waiver of Divestiture Deadline, MB Docket No. 19-98 (Nov. 8, 2021) (the "Extension Request").

Hispanic audience, a television network with distribution and affiliates throughout the U.S. and Puerto Rico, and various distribution platforms for Latino-focused audio and video content. Since its formation in 1983, SBS has grown into the nation's largest Hispanic-controlled radio broadcaster.[3]

Since August of this year, SBS has actively pursued an interest in entering the Orlando, Florida market through the purchase of WPYO, one of the two stations that CXR holds in a divestiture trust pursuant to Federal Communications Commission ("FCC") authority granted on November 22, 2019, in connection with the transfer of control of Cox Radio, Inc. to Terrier Media Buyer, Inc.[4] As the Notice states, the Cox Order requires CXR to divest the two trust stations to an unrelated buyer within two years of their assignment to the divestiture trust, or by December 17, 2021.[5]

On August 30, 2021, SBS presented CXR with the first of three cash offers to purchase WPYO. CXR rejected the offer three days later without a counteroffer. The September 2, 2021 email that Mr. Richard D. Lara, SBS's Executive Vice President and General Counsel, received from CXR's principal Elliot Evers rejecting the SBS offer was surprising.[6] Despite the fact that CXR's December 17, 2021 divestiture deadline was only a matter of months away, Mr. Evers stated in his email that "we believe it is in [Cox Media Group's] best interest to continue to hold

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[3] *See* https://www.spanishbroadcasting.com/our-company (last visited Nov. 15, 2021).

[4] *See Consent to Transfer Control of Certain License Subsidiaries of NBI Holdings, LLC to Terrier Media Buyer, Inc.*, *et al.*, MB Docket No. 19-98, Memorandum Opinion and Order, 34 FCC Rcd 10554 (2019) (the "Cox Order").

[5] *See* Notice at 1.

[6] A declaration of Mr. Lara supporting the facts set forth in this pleading is attached hereto as Exhibit A.

the station off the market until such time as improvement in performance justifies a significantly higher price" than what SBS had offered. As to the approaching deadline, Mr. Evers' response was that "[w]e are aware of the December 17, 2021 deadline for [CXR] to dispose of its assets. But . . . our experience with the FCC in very similar settings leads us to believe the FCC will grant CXR an extension of that deadline."

On September 28, 2021, SBS presented CXR with a second, higher offer for WPYO. Along with that offer, SBS supplied CXR with an independent valuation of the station conducted by Bond & Pecaro, Inc., an expert valuation firm well-known in the broadcast industry.[7] On October 8, 2021, SBS supplemented its second offer with letters of support from a variety of legislators, community leaders and other advocates, attesting to SBS's qualifications and expertise in providing broadcast service to Orlando's Latino community.[8] SBS urged Mr. Evers that the public interest would be better served by expeditiously selling WPYO to an experienced Hispanic broadcaster than by seeking an extension of its divestiture deadline in hopes of obtaining a higher price.

On October 21, 2021, SBS provided Mr. Evers with a letter from Ambassador Philip L. Verveer, a veteran communications attorney and former Senior Counselor to the FCC's Office of the Chairman.[9] Ambassador Verveer's letter stated his opinion that given CXR's mandate and obligations as a divestiture trustee and the presence of an offer meeting the standards of the trust agreement and FCC precedent, an extension of the CXR trust would be unlikely and unwarranted

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[7] A copy of the Bond & Pecaro valuation is attached hereto as Exhibit B.

[8] SBS has submitted these letters of support separately in this proceeding.

[9] A copy of Ambassador Verveer's letter ("Verveer Letter") is attached hereto as Exhibit C.

under the circumstances. Nonetheless, on October 22, 2021, CXR rejected SBS's second offer, again stating (without any supporting data) that "your proposal falls well below the level at which we think the station will eventually sell."

On November 3, 2021, SBS made yet a third offer for WPYO, at a price *in excess of* the maximum valuation of the station as appraised by Bond & Pecaro. Five days later, on November 8, 2021, CXR filed its Extension Request. The next day, Mr. Evers emailed Mr. Lara with his very first counteroffer, at a price several million dollars above the highest valuation accorded to the station in the Bond & Pecaro appraisal.

II. DISCUSSION

Predictably, CXR premises its Extension Request largely on the COVID-19 pandemic. It recites the pandemic's initially severe impacts on the radio industry, the challenges that stations continue to face in seeking to return to 2019 revenue levels, and the low pace and volume of radio station sales for 2020 and 2021.[10] But the fact remains that the Commission required CXR to divest its trust stations in furtherance of the objectives that underlie the local radio ownership rule, and to do so within two years after undertaking that obligation. It is not enough for CXR to justify a full one-year extension of its deadline simply by crying "pandemic." In support of its request, CXR cites a one-year extension of the Mainstay Station Trust that the FCC granted in May 2020.[11] That request, however, was made mere weeks after COVID-19 was declared a pandemic and a national emergency, with widespread lockdowns, virtual cessation of the national economy, and no apparent end in sight. CXR's request, on the other hand, comes at a time where few would argue that society, the economy, and even radio revenues are on the

[10] *See* Extension Request at 2-4.

[11] *Id.* at 5 & n.8.

rebound from the crisis. Even CXR admits that it is seeing "incremental month-to-month improvement" in its stations' operations.[12] Moreover, as Ambassador Verveer points out in his letter to Mr. Evers, the disruptions caused by the pandemic have not prevented the successful completion of transactions in the media space—between March 2020 and the present there have been 332 radio station and 36 television transactions.[13]

Regardless of general assertions regarding the pandemic and its effects on the radio industry and deal market at large, CXR *has* an interested buyer for WPYO—SBS, which has presented three viable offers for the station, each successively more generous. SBS is an established commercial broadcaster—just the type of buyer that CXR asserts is likely to provide the highest value in a sale, and precisely the kind of broadcaster which CXR is seeking as a buyer for WPYO.[14] Faced with this fact, CXR grudgingly admits that it has received offers for both of its trust stations but maintains that "these offers are at prices far below what would have been marketplace offers at the time that the Trust was established and below what the Stations likely will be able to sell for as the radio market and greater economy continue to recover from the COVID-19 pandemic."[15] Tellingly, in its May 13, 2020 written request for an extension that

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[12] *Id.* at 5. CXR also cites *Buckley Broadcasting/WOR, LLC*, 27 FCC Rcd 15219 (Med. Bur. 2012), for the proposition that the Media Bureau has "accepted [a] trustee's claim" of difficult economic conditions affecting its ability to sell stations in a divestiture trust. The Bureau, however, made no such "acceptance"; quite the contrary, it expressly "decline[d] to assess the [trustee's] performance as a trustee in carrying out timely divestitures. . . . " *Id.* at 15222. Rather, the Bureau held that the trustee's alleged dilatory performance had no bearing on an objector's challenges to renewal and assignment applications for stations that were not in the trust.

[13] Verveer Letter at 4.

[14] Extension Request at 4. SBS notes that the Mainstay Station Trust divested station WTOD(FM) earlier this year, *during the pandemic*.

[15] *Id.*

was ultimately granted, the Mainstay trustee advanced to the FCC that it "ha[d] yet to locate a viable buyer" and that "*no bidder ha[d] yet submitted a qualifying, fully financed offer*."[16] Here, the existence of a qualifying, fully financed offer for WPYO is a stark factual distinction that renders CXR's reliance on the Mainstay grant inapt.

The Media Bureau has expressly rejected the notion that a divestiture trustee may defer its required station sales while awaiting optimum market conditions. In a March 2018 decision involving the Aloha Trust, the Bureau made clear that a radio transaction marketplace which had failed to regain its level of robustness prior to the 2008 economic downturn did not justify the trustee's failure to make its required divestitures in a timely manner.[17] The Bureau first cited a provision of the trust agreement requiring the trustee to "consummate a sale or sales of each of the Stations as soon as reasonably practicable after the Closing . . . at prices that render . . . the maximum consideration reasonably attainable"—a provision virtually identical to one in the CXR trust agreement.[18] It then explained:

> . . . [W]e do not find persuasive the justification that the radio station market has not yet returned to "vibrant" pre-2008 levels. The Trust Agreement language concerning the "maximum consideration reasonably attainable" is a forward-looking reasonableness standard that does not include station prices that may have been attainable at some previous point in time under market conditions that no longer exist. **Aloha Trust must take the market as it finds it, not as it wishes it to be.**[19]

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[16] Letter to Albert Shuldiner, Chief, Audio Division, from Nancy A. Ory, Esq. re The Mainstay Station Trust LLC, Request for Waiver of Divestiture Deadline, Station WTOD(FM), Delta, OH (May 13, 2020) at 2 (emphasis added).

[17] *See* Letter to Richard J. Bodorff *et al.*, File Nos. BRH-20110531AKT *et al.* (Med. Bur. Mar. 16, 2018) ("Bodorff Letter").

[18] *Id.* at 6-7; *see also* File No. BALH-20190702ADV, Attachment 5 (Engagement Agreement and Form of Trust Agreement, ¶ 4(a)).

[19] Bodorff Letter at 7 (emphasis added).

SBS's dealings with Mr. Evers to date suggest that CXR has decided to ignore this precedent, even though Ambassador Verveer cited it in a letter that SBS provided to Mr. Evers. CXR's actions suggest that it has no intention whatsoever of seriously negotiating with a qualified buyer and it has been complacently confident that the FCC will extend the divestiture deadline so that the trust may stay in place past its mandated term. That is clear from Mr. Evers' September response to SBS's first offer, in which he amazingly stated that WPYO would "continue to [be held] . . . off the market" until a higher price could be justified, and even then expressed his confidence in an FCC grant of an extension request.

This is not what CXR's obligations as trustee or the Cox Order contemplate or permit. CXR may not legitimately defer the sale of WPYO until it receives "what would have been" a marketplace offer before the pandemic, or a price for which the station "likely will be able to sell" once the market fully recovers to 2019 levels (if ever it does). Moreover, CXR is obligated to sell the station at the maximum price "reasonably attainable," not necessarily what it might consider WPYO's "full market value" to be under the most ideal of conditions. SBS's current offer *exceeds* the station's *maximum* value as determined by a reputable valuation specialist. And while CXR indicates that it intends to begin a "meaningful marketing process" for its trust stations in early 2022,[20] which suggests that the trustee has completely ignored its obligations over the past two years, it is difficult to see what such a process would achieve with respect to WPYO other than extending its time in the hands of the trustee. Two of the top three groups operating station clusters in the Orlando market are "maxed out" from acquiring additional FM stations. Given the extremely limited pool of buyers likely to substantially exceed SBS's current

[20] Extension Request at 4, 5.

offer price, there is no need to extend CXR's deadline for a full year while it undertakes a prolonged marketing process.

III. CONCLUSION

Notwithstanding the Extension Request's façade of broad claims about the pandemic and the general state of the radio industry in its wake, a careful examination of the Extension Request reveals an absence of any legitimate justification for the one-year extension CXR seeks. CXR's delay is of its own doing. SBS's serious attempts to purchase WPYO have made it clear that CXR has had no serious intention of selling the station before the trust's FCC-mandated December 17, 2021 deadline, and for months has been banking on Commission approval to extend the deadline under the guise that the pandemic is precluding viable offers. The facts belie CXR's position and its actions are inconsistent with CXR's duties as a divestiture trustee.

While CXR is not necessarily required to accept SBS as a buyer, it is also not entitled to defer a sale of WPYO without adequate justification. SBS has presented itself as a qualified and willing buyer of the station at a reasonably attainable price (*i.e.,* a cash offer that exceeds a credible station valuation). Therefore, the Commission should not countenance CXR's suggestion that the circumstances surrounding the pandemic would unfairly result in a fire sale of the station during the existing two-year divestiture period. While SBS would not object to a more limited extension that would allow CXR to complete negotiations and finalize a definitive

purchase agreement, CXR's has offered no legitimate basis for the Commission to extend the trust arrangement for another twelve months, and its request should be denied.

Respectfully submitted,

SPANISH BROADCASTING SYSTEM, INC.

By: _/s/ Kathleen A. Kirby_____
Kathleen A. Kirby
Gregory L. Masters

Its Attorneys

Wiley Rein LLP
1776 K Street NW
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November 17, 2021

EXHIBIT A

Declaration of Richard D. Lara

DECLARATION OF RICHARD D. LARA

I, Richard D. Lara, hereby state as follows:

1. I am Executive Vice President and General Counsel of Spanish Broadcasting System, Inc.

2. I have read the foregoing "Comments of Spanish Broadcasting System, Inc." I declare under penalty of perjury that the facts contained therein are true and correct.

Dated: November 17, 2021

Richard D. Lara

EXHIBIT B

Bond & Pecaro Valuation Letter

BOND & PECARO

TIMOTHY S. PECARO
JOHN S. SANDERS
JEFFREY P. ANDERSON
ANDREW R. GEFEN
BENJAMIN K. STEINBOCK
MATTHEW H. LOCHTE
STEPHANIE M. WONG
SANDA Y. BLANK
JAMES R. BOND, JR., EMERITUS

September 12, 2021

BY E-MAIL

Mr. Raúl Alarcón, Jr.
Chief Executive Officer and Chairman
Spanish Broadcasting System, Inc.
7007 NW 77th Avenue
Miami, FL 33166

Dear Mr. Alarcón:

At your request, Bond & Pecaro, Inc. has performed an analysis of the fair market valuation of Radio Station WPYO(FM), licensed to Maitland, Florida and serving the Orlando radio market. The effective date of this valuation is September 10, 2021.

Property Identification and Information Reviewed

We did not receive station-level financial information as part of this engagement. We have based our analysis on Orlando market-level information, including Miller Kaplan Arase & Co. ("Miller Kaplan") market radio revenue reports, Nielsen Audio ratings data, and market revenue and radio station transaction data from S&P Global Market Intelligence.

WPYO is a class C3 FM station that broadcasts at an effective radiated power of 12 kW on 95.3 MHz. Based on recent Nielsen Audio radio ratings data, WPYO is the 10th ranked station in the Orlando market, garnering an average of approximately 5.4% of the total audience share[1] over five recent quarterly Nielsen ratings periods (see Appendix 1).

In addition to the Nielsen ratings data, Bond & Pecaro also reviewed total radio market revenue data from Miller Kaplan for 2020 and May year-to-date 2021, as well as market radio revenue estimates for 2020 from S&P Global. Based on this information, the total 2020 market net radio revenues for the Orlando radio market have been estimated to be $85.7 million. The May 2021 Miller Kaplan information indicates that Orlando market radio revenue has grown 16% over the

[1] Stations that received a share from Nielsen Audio but were not home to the market – and thus do not compete for revenue in that market – were removed from the analysis. The adjusted share is based on 100%.

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same period in 2020; based on this rate of recovery, the implied Orlando market net radio revenues for 2021 are forecasted to be $97.8 million (see Appendix 2).

While certain radio stations are more (or less) effective at converting their audience share into revenue, for the purposes of this analysis, WPYO's share of audience was assumed to be equivalent to its total share of market revenues. The adjusted Nielsen Audio audience share was applied to the total Orlando market revenues for 2020 and 2021 to derive the estimated WPYO net revenues.

We understand that, prior to the global pandemic, the market cluster that WPYO is currently part of had a broadcast cash flow (BCF) margin of approximately 25%. With consideration of the fact that WPYO is among the weaker stations in the cluster (ratings-wise) and a stand-alone radio station does not enjoy the expense saving synergies of a market cluster, we have estimated a BCF margin of 18% for WPYO. The calculations to determine the WPYO BCF are summarized in the table below:

	2020	2021	Average
Orlando Net Market Revenues ($M)	$85,700.0	$98,555.0	
WPYO Audience Share	5.4%	5.4%	
Estimated WPYO Revenues	$4,600.0	$5,300.0	
Estimated BCF Margin	18.0%	18.0%	
Estimated WPYO BCF	$800.0	$1,000.0	$900.0

Fair Market Valuation Analysis

We reviewed the S&P Global broadcast M&A database and compiled a list of FM radio station transactions involving rated, cash-flowing stations in the top-50 ranked radio markets since January of 2019 (see Appendix 3). It should be noted that the recent acquisition of WPYO as part of the Cox Media Group is included in the transaction analysis and, at the time of the acquisition by Apollo Global Management, S&P Kagan estimated the BCF of the station to be $0.4 million and the fair value of the station to be approximately $2.7 million.

The results of the transaction analysis for Top-50 market cash-flowing FM radio stations indicate that the average and weighted average transactional BCF multiple over this time period is 6.7x, with a median of 7.0x. We applied the average transaction multiple to the two-year average estimated WPYO BCF of $0.9 million. This would indicate that the fair market value of WPYO is approximately $6.0 million.

Average BCF Transaction Multiple	6.7x
2-Year Average WPYO BCF	$900.0
Implied WPYO Fair Market Value	**$6,000.0**

Additional Factors and Considerations

The indicated fair value of $6 million for WPYO is based on typical transactional metrics; this value does not consider a number of important market-specific factors that could depress the transactional value of the station. These factors include:

1) WPYO is held in a trust; the number of media properties owned by Apollo Global Management in the Orlando market exceeds FCC media ownership limitations, and as such, WPYO must be divested. There is a two-year grace period on all FCC mandated divestitures and this grace period expires in less than 3 months. The forced nature of this transaction – i.e. the seller's legal requirement to divest the station – significantly reduces it's fair value.
2) The radio station ownership structure in the Orlando market severely limits the marketplace of potential and willing buyers. All but two of the Nielsen-rated commercial stations are owned by large corporate broadcasters (Audacy, iHeartMedia, and Apollo Cox). In addition to the fact that FCC ownership limitations prohibit iHeartMedia and Apollo Cox from acquiring the station, any other buyer would have to be willing to face running a stand-alone FM station against competitors who enjoy major operating and sales synergies.

While it's difficult to quantitatively assess the impact of these factors on the fair market value of WPYO, it is unquestionable that they would serve to depress the purchase price. Certainly, the market-based $6 million value reflects the maximum that a buyer would pay.

Mr. Alarcón, we hope that this letter is responsive to your needs at this time. Please do not hesitate to let me know if we can be of further assistance.

Sincerely,

Benjamin K. Steinbock

APPENDIX 1

Orlando Nielsen Radio Ratings

Station	A/F	Class	Frequency	5-Book Avg. Share[2]	Adj. Avg. Share	Format	Owner
WRSO	AM	B	810	0.7	1.0	Spanish News-Talk	Star Development Grp, Inc.
WYGM	AM	B	740	1.1	1.5	Sports	iHeartMedia, Inc.
WONQ	AM	B	1030	1.8	2.4	Tropical	Florida Broadcasters
WFLF	AM	B	540	2.4	3.3	Talk	iHeartMedia, Inc.
WDBO	AM	B	580	3.8	5.2	News/Talk	APOLLO COX
WOEX	FM	C	96.5	0.8	1.1	Spanish CHR	APOLLO COX
WQMP	FM	C	101.9	3.1	4.3	Modern/Alternative Rock	Audacy
WTKS	FM	C	104.1	4.8	6.6	Talk	iHeartMedia, Inc.
WOMX	FM	C	105.1	4.8	6.6	Hot AC	Audacy
WWKA	FM	C	92.3	4.9	6.8	Country	APOLLO COX
WCFB	FM	C	94.5	6.0	8.2	Urban Adult Contmp.	APOLLO COX
WMGF	FM	C	107.7	6.5	8.9	Adult Contmp.	iHeartMedia, Inc.
WRUM	FM	C	100.3	6.6	9.0	Tropical	iHeartMedia, Inc.
WOCL	FM	C	105.9	9.3	12.7	Classic Hits	Audacy
WXXL	FM	C1	106.7	6.1	8.3	CHR	iHeartMedia, Inc.
WMMO	FM	C2	98.9	6.3	8.7	Classic Hits	APOLLO COX
WPYO	**FM**	**C3**	**95.3**	**3.9**	**5.4**	**CHR**	**APOLLO COX**
			Total	72.9	100.0		
			Adjustment Factor	1.37			

[2] The average share is the 12+ average quarter hour share from the Summer 19-Summer 20 ratings periods.

APPENDIX 2

Orlando Net Market Revenue Calculation[3]

Market	2020 Gross MK Revenue	Estimated Unreported Revenue Share	Adjusted 2020 Gross MK Revenue	2020 Net MK Revenue	S&P Global 2020 Gross Revenue	S&P Global 2020 Net Revenue Estimate	2020 Market Revenue Estimate (Average)
Orlando	$102,429	4.8%	$107,346	$94,500	$87,285	$76,800	$85,700

Miller Kaplan 2021 Orlando Market

Market Total Revenues Performance Summary

Months of January through May 2021

Market	Total Market (in $Thousands)		
	01/21 - 05/21	01/20 - 05/20	% Change
Orlando	$43,122	$37,171	16.0%

[3] Gross revenues adjusted for agency and rep commissions at a rate of 12.0%.

APPENDIX 3
Comparable Sales Analysis

Buyer	Deal Announcement Date	Radio Market Name	Market Rank	FCC Call Sign	Station Price ($000)	Revenue ($000)	Annualized Cash Flow ($000)	Broadcast Cash Flow Multiple (x)
Investor group	02/25/20	New York, NY	1	WQBU-FM	934	535	160	5.8
Investor group	02/25/20	New York, NY	1	WXNY-FM	11,887	6,595	1,979	6.0
Entercom Communications Corp.	02/13/19	New York, NY	1	WNSH	4,910	2,344	703	7.0
Standard General L.P.	07/01/19	New York, NY	1	WQHT	45,737	14,152	5,661	8.1
Standard General L.P.	07/01/19	New York, NY	1	WBLS	50,763	15,662	6,265	8.1
Investor group	02/25/20	Los Angeles, CA	2	KSCA	22,087	12,302	3,691	6.0
Investor group	02/25/20	Los Angeles, CA	2	KLVE	28,347	15,774	4,732	6.0
Investor group	02/25/20	Los Angeles, CA	2	KRCD	12,226	6,792	2,038	6.0
Meruelo Group LLC	04/15/19	Los Angeles, CA	2	KLOS	43,000	23,475	6,338	6.8
Investor group	02/25/20	Chicago, IL	3	WOJO	24,062	13,369	4,011	6.0
Investor group	02/25/20	Chicago, IL	3	WPPN	9,559	5,295	1,589	6.0
Alpha Media LLC	02/11/19	Chicago, IL	3	WZSR	1,494	802	221	6.8
Alpha Media LLC	02/11/19	Chicago, IL	3	WFXF	3,175	1,693	466	6.8
Investor group	02/25/20	San Francisco, CA	4	KSOL	9,734	6,158	1,847	5.3
Investor group	02/25/20	San Francisco, CA	4	KBRG	8,442	4,677	1,403	6.0
Investor group	02/25/20	Dallas-Ft. Worth, TX	5	KDXX	4,933	2,749	825	6.0
Investor group	02/25/20	Dallas-Ft. Worth, TX	5	KFZO	8,759	4,879	1,464	6.0
Investor group	02/25/20	Dallas-Ft. Worth, TX	5	KLNO	11,365	6,322	1,897	6.0
Investor group	02/25/20	Houston-Galveston, TX	6	KAMA-FM	1,071	597	179	6.0
Investor group	02/25/20	Houston-Galveston, TX	6	KOVE-FM	13,555	7,548	2,264	6.0
Investor group	02/25/20	Houston-Galveston, TX	6	KLTN	25,661	14,254	4,276	6.0
Investor group	02/25/20	Houston-Galveston, TX	6	KQBU-FM	8,541	4,740	1,422	6.0
Apollo Global Management, LLC	06/26/19	Houston-Galveston, TX	6	KKBQ	25,960	13,951	3,711	7.0
Apollo Global Management, LLC	06/26/19	Houston-Galveston, TX	6	KGLK	19,150	10,267	2,731	7.0
Apollo Global Management, LLC	06/26/19	Houston-Galveston, TX	6	KTHT	5,707	3,057	813	7.0
Apollo Global Management, LLC	06/26/19	Atlanta, GA	8	WTSH-FM	1,154	627	167	6.9
Apollo Global Management, LLC	06/26/19	Atlanta, GA	8	WALR-FM	26,149	14,049	3,737	7.0
Apollo Global Management, LLC	06/26/19	Atlanta, GA	8	WSB-FM	26,123	14,020	3,729	7.0
Apollo Global Management, LLC	06/26/19	Atlanta, GA	8	WSRV	20,132	10,800	2,873	7.0
Entercom Communications Corp.	11/05/20	Philadelphia, PA	9	WPHI-FM	5,309	2,380	761	7.0
Investor group	02/25/20	Miami-Ft. Lauderdale-Hollywood, FL	11	WRTO-FM	10,383	5,785	1,736	6.0
Investor group	02/25/20	Miami-Ft. Lauderdale-Hollywood, FL	11	WAMR-FM	23,010	12,778	3,834	6.0
Apollo Global Management, LLC	06/26/19	Miami-Ft. Lauderdale-Hollywood, FL	11	WFEZ	7,246	3,893	1,036	7.0
Apollo Global Management, LLC	06/26/19	Miami-Ft. Lauderdale-Hollywood, FL	11	WFLC	15,801	8,490	2,258	7.0
Apollo Global Management, LLC	06/26/19	Miami-Ft. Lauderdale-Hollywood, FL	11	WHQT	18,072	9,696	2,579	7.0
Apollo Global Management, LLC	06/26/19	Miami-Ft. Lauderdale-Hollywood, FL	11	WEDR	17,652	9,469	2,519	7.0
Lotus Communications Corp.	06/03/21	Seattle-Tacoma, WA	12	KPLZ-FM	7,934	4,529	1,245	6.4
Bustos Asset Management, LLC	05/06/19	Seattle-Tacoma, WA	12	KFNY	3,000	1,331	399	7.5
Beasley Broadcast Group, Inc.	06/10/19	Detroit, MI	13	WDMK	9,640	3,723	1,117	8.6
Investor group	02/25/20	Phoenix, AZ	14	KQMR	7,610	4,236	1,271	6.0
Investor group	02/25/20	Phoenix, AZ	14	KHOT-FM	9,681	5,378	1,613	6.0
Investor group	02/25/20	Phoenix, AZ	14	KOMR	193	99	30	6.5
Investor group	02/25/20	San Diego, CA	16	KLQV	6,628	3,683	1,105	6.0
Investor group	02/25/20	San Diego, CA	16	KLNV	11,608	6,446	1,934	6.0
Apollo Global Management, LLC	06/26/19	Tampa-St. Petersburg-Clearwater, FL	18	WPOI	7,631	4,103	1,091	7.0
Apollo Global Management, LLC	06/26/19	Tampa-St. Petersburg-Clearwater, FL	18	WWRM	11,104	5,962	1,586	7.0
Apollo Global Management, LLC	06/26/19	Tampa-St. Petersburg-Clearwater, FL	18	WHPT	10,468	5,618	1,494	7.0
Apollo Global Management, LLC	06/26/19	Tampa-St. Petersburg-Clearwater, FL	18	WXGL	8,572	4,599	1,223	7.0
Apollo Global Management, LLC	06/26/19	Tampa-St. Petersburg-Clearwater, FL	18	WDUV	7,444	3,993	1,062	7.0
Apollo Global Management, LLC	06/26/19	Tampa-St. Petersburg-Clearwater, FL	18	WSUN	3,140	1,680	447	7.0
Investor group	02/25/20	Puerto Rico, PR	19	WUKQ-FM	1,642	914	274	6.0
Investor group	02/25/20	Puerto Rico, PR	19	WKAQ-FM	5,969	3,316	995	6.0
Apollo Global Management, LLC	06/26/19	Nassau-Suffolk, NY	20	WBLI	14,929	8,019	2,133	7.0
Apollo Global Management, LLC	06/26/19	Nassau-Suffolk, NY	20	WBAB	7,603	4,082	1,086	7.0
Red Apple Group, Inc.	07/08/20	Nassau-Suffolk, NY	20	WLIR-FM	900	302	121	7.4
WAY Media, Inc.	06/05/19	Portland, OR	22	KWEE	3,500	1,542	463	7.6
Entercom Communications Corp.	11/05/20	St. Louis, MO	24	WHHL	4,777	2,381	762	6.3
Investor group	02/25/20	San Antonio, TX	25	KVBH	10,284	6,492	1,948	5.3
Investor group	02/25/20	San Antonio, TX	25	KBBT	6,841	3,804	1,141	6.0
Investor group	02/25/20	San Antonio, TX	25	KROM	6,733	3,736	1,121	6.0
Investor group	02/25/20	San Antonio, TX	25	KMYO	3,413	1,891	567	6.0
Apollo Global Management, LLC	06/26/19	San Antonio, TX	25	KTKX	4,273	2,301	612	7.0
Apollo Global Management, LLC	06/26/19	San Antonio, TX	25	KISS-FM	1,818	977	260	7.0
Apollo Global Management, LLC	06/26/19	San Antonio, TX	25	KSMG	6,605	3,548	944	7.0
Apollo Global Management, LLC	06/26/19	San Antonio, TX	25	KONO-FM	12,182	6,544	1,741	7.0
Apollo Global Management, LLC	06/26/19	San Antonio, TX	25	KCYY	9,371	5,027	1,337	7.0
Investor group	02/25/20	Las Vegas, NV	31	KISF	5,715	3,174	952	6.0
Investor group	02/25/20	Las Vegas, NV	31	KRGT	2,141	1,187	356	6.0
Apollo Global Management, LLC	06/26/19	Orlando, FL	31	WPYO	2,738	1,474	392	7.0
Apollo Global Management, LLC	06/26/19	Orlando, FL	31	WMMO	7,464	4,011	1,067	7.0
Apollo Global Management, LLC	06/26/19	Orlando, FL	31	WDBO-FM	12,298	6,605	1,757	7.0
Apollo Global Management, LLC	06/26/19	Orlando, FL	31	WWKA	10,051	5,394	1,435	7.0
Apollo Global Management, LLC	06/26/19	Orlando, FL	31	WCFB	10,138	5,439	1,447	7.0
Investor group	02/25/20	Austin, TX	32	KLQB	2,015	1,121	336	6.0
Investor group	02/25/20	Austin, TX	32	KLJA	3,745	2,078	623	6.0
Sinclair Telecable Inc.	06/10/19	Austin, TX	33	KBPA	3,833	1,241	496	7.7
Sinclair Telecable Inc.	06/10/19	Austin, TX	33	KGSR	6,424	2,077	831	7.7
Sinclair Telecable Inc.	06/10/19	Austin, TX	33	KLBJ-FM	7,370	2,383	953	7.7
Sinclair Telecable Inc.	06/10/19	Austin, TX	33	KROX-FM	5,741	1,852	741	7.7
Sinclair Telecable Inc.	06/10/19	Austin, TX	33	KLZT	3,491	1,124	450	7.8
Investor group	02/25/20	San Jose, CA	37	KVVF	3,923	2,191	657	6.0
Cumulus Media Inc.	02/13/19	Indianapolis, IN	39	WZPL	5,790	2,857	846	6.8
Cumulus Media Inc.	02/13/19	Indianapolis, IN	39	WNTR	3,100	1,529	453	6.9
Core Radio Group VA, LLC	08/17/20	Norfolk-Virginia Beach-Newport News, VA	45	WXTG-FM	550	441	88	6.2
Apollo Global Management, LLC	06/26/19	Jacksonville, FL	46	WEZI	1,742	936	249	7.0
Apollo Global Management, LLC	06/26/19	Jacksonville, FL	46	WOKV-FM	4,046	2,173	578	7.0
Apollo Global Management, LLC	06/26/19	Jacksonville, FL	46	WJGL	5,387	2,892	769	7.0
Apollo Global Management, LLC	06/26/19	Jacksonville, FL	46	WXXJ	4,697	2,521	671	7.0
Apollo Global Management, LLC	06/26/19	Jacksonville, FL	46	WAPE-FM	5,543	2,974	791	7.0
							Average	6.7
							Median	7.0
							Weighted Average	6.7

BOND & PECARO

PROFESSIONAL EXPERIENCE AND QUALIFICATIONS

BOND & PECARO, INC.

The professional staff of Bond & Pecaro has been retained to appraise over 5,000 media and technology properties, including broadcasting, cable, publishing, satellite, telecommunications, and technology businesses. Members of the firm have extensive experience in the areas of market research, valuation related tax matters, financial and economic analysis, demand forecasting, strategic consulting, communications engineering, acquisition evaluation, and litigation support. Members of the staff testify routinely as expert witnesses on economic issues related to broadcasting companies and their assets. Senior members of our staff generally have approximately 25 years of professional experience in finance, economics, and communications engineering which enables the firm to respond to a wide variety of client needs. The firm publishes *The Television Industry: Market by Market* Review, a joint venture with the National Association of Broadcasters.

Members of the firm also hold professional designations and participate actively in industry associations. Three members of the firm have served on the Executive Committee or Board of Directors of the Media Financial Management Association ("MFM"). The firm or its employees are also members of the American Society of Appraisers ("ASA"), National Cable Television Association ("NCTA"), National Association of Broadcasters ("NAB"), Society of Broadcast Engineers ("SBE"), Society of Motion Picture and Television Engineers ("SMPTE"), and Broadband Tax Institute ("BTI"). The firm has presented research and spoken as experts at the annual conferences of many of these organizations.

Our clients range from the largest media companies in the world to smaller family-owned broadcasters. The the firm's major clients include A&E, Alpha Media, AT&T, Audacy, Beasley, Bonneville, Cable One, CBS, Comcast, Cox Enterprises, Cumulus, Disney/ABC Television, FOX, Gannett, Graham Holdings, Gray Television, The Hearst Corporation, Hubbard, iHeart Media, ION, National Geographic, NBC Universal, Newhouse, The New York Times, Nexstar, Salem, Schurz, TEGNA, Time-Warner Cable, Tribune Publishing, Univision, Urban One, The Washington Post, and many others.

EXHIBIT C

Letter to Elliot Evers
Statement of Ambassador Philip L. Verveer

Richard D. Lara
Executive Vice President & General Counsel
Phone: 305-644-4824
rlara@sbscorporate.com

October 21, 2021

Via email (eevers@hl.com) and regular mail
Elliot B. Evers, Senior Advisor
Houlihan Lokey
333 Bush Street
San Francisco, CA 94104

Re: Proposal to Purchase the Assets of Radio Station
WPYO-FM, Frequency: 95.3 MHz, Located in Maitland, FL
(Facility ID No. 1186)
(the "*Station*")

Dear Mr. Evers:

Once again, we write to you to reiterate our [redacted] offer to Apollo Media for the acquisition of WPYO-FM in Orlando which, as you are aware, must be divested before December 17, 2021 by order of the Federal Communications Commission (FCC). Please note that this is our *fourth* correspondence to you on this matter for which we have yet to receive any response.

We take this opportunity to again emphasize that this all-cash offer is being submitted by SBS, a recognized and respected Hispanic-owned broadcaster in good standing at the FCC during the last 38 years and with the overwhelming support of the Orlando community.

We again also confirm that SBS has the funds on hand to immediately close on the proposed transaction, which would result in the first and only Latino-owned FM facility in the market.

In further support of the transaction, we are enclosing the written opinion of Ambassador Philip L. Verveer, the former Senior Counselor to the FCC Office of the Chairman, a position which the Ambassador held until as recently as 2017.

As you will note, Ambassador Verveer is unambiguous in his opinion that there exists no precedent upon which an argument can be made in support of an extension of the WPYO divestiture period beyond December 17 of 2021.

Hopefully, this formal legal opinion authored by a respected FCC legal scholar of the tenure and stature of Ambassador Verveer will assist you and Apollo in arriving at the correct conclusion as respects the mandated divestiture of WPYO-FM - a conclusion that will be enthusiastically supported by all parties.

A copy of Ambassador Verveer's resumé is included for your review.

Very truly yours,

Richard D. Lara
Executive Vice President & General Counsel

October 21, 2021

Richard D. Lara
Executive Vice President & General Counsel
Spanish Broadcasting System, Inc.
7007 NW 77th Avenue
Miami, FL 33166

Dear Richard,

I have been asked to consider the FCC's requirement that WPYO(FM), Maitland, Florida, be divested prior to the end of 2021 and more specifically if there are any apparent circumstances that would warrant an extension of the obligation.

Background

The FCC ordered the divestiture of WPYO in connection with its consideration and approval of a series of transactions in which affiliates of Apollo Global Management ("Apollo") acquired a majority interest in the Cox Radio and Cox Enterprises radio and television stations for approximately $3.6 billion.[1] One factor complicating the transaction was that Cox Radio licensees exceeded the local radio ownership limitation in two markets, including Orlando where WPYO enjoyed grandfathered status. The transfer of the Cox Radio properties to Apollo required the companies to arrange an Orlando market divestiture. This resulted in the assignment of WPYO to a divestiture trust, the CXR Radio Station Trust, simultaneously with the consummation of the Apollo transaction, which occurred December 17, 2019.

The FCC order establishes a deadline of December 17, 2021, for the divestiture:

> [W]e require [CXR] to assign the licenses of the Trust Stations to an unaffiliated buyer within two years and to provide the Commission with a detailed explanation of its efforts to sell such stations in the confidential report referenced in Section 4(g) of the Trust Agreement submitted with the Divestiture Applications, at six-month intervals until the stations held by [CXR] are sold.[2]

Section 4(g) of the Trust Agreement reflects an expectation that the divestiture trustee would undertake efforts to sell WPYO and the other affected station promptly upon receipt of its mandate. Among other things, it requires

[1] Memorandum Opinion and Order, Transfer of Control of Certain License Subsidiaries of NBI Holdings, LLC to Terrier Media Buyer, Inc., et al. MB Docket No. 19-98, DA 19-1206 (*rel*. November 22, 2019).
[2] *Id*. at para. 39.

> If the Trustee has not consummated the sale of the Stations within the earlier of (i) six (6) months from the Closing Date or (ii) ten (10)days prior to any date set by the FCC for [Apollo] to report on the status of such sales, [CXR] shall promptly provide [Apollo] with a confidential report setting forth in reasonable detail (i) any supplement to the prior reports concerning [CXR's] efforts to sell the Station Assets; (ii) the reasons, in [CXR's] judgment, why the required sales have not been consummated; and (iii) [CXR's] recommendations for consummating the required sales without further delay. [CXR] shall also file with the FCC such reports setting forth [CXR's] efforts to sell the Station assets as the FCC may direct.

The Trust Agreement and the FCC conditions align in requiring divestiture within two years and with requiring regular, detailed reports on the efforts to make that happen. The Trust Agreement has one additional salient requirement, that the divestiture trustee effect the sale "as soon as reasonably practicable after [December 17, 2019] … at prices that render [Apollo] the maximum consideration reasonably obtainable …".[3]

The quoted phrases are terms of art. The Commission explicated their meaning in a case in which coincidentally the same divestiture trustee as here was engaged. In the 2018 case, the Chief of the Audio Division noted that the Commission in granting the transfer application relied upon the "express commitment … 'to consummate a sale or sales of each of the Stations *as soon as reasonably practicable* after the Closing … at prices that render to [the private equity funds] the maximum consideration *reasonably attainable …'* ." (Emphasis in original, citation omitted). He went on to explain that the trustee's excuse for rejecting offers—"that the radio station market ha[d] not yet returned to 'vibrant' pre-2008 levels"--was not "persuasive."

> The Trust Agreement language concerning the "maximum consideration reasonably attainable" is a forward-looking reasonableness standard that does not include station prices that may have been attainable at some previous point in time under market conditions that no longer exist. *[The divestiture trust] must take the market as it finds it, not as it wishes it to be.*[4]

At least one offer to buy WPYO is pending. Spanish Broadcasting System, the licensee of seventeen Spanish language stations around the United States, lodged an all-cash offer of $5.25 million with the divestiture trustee on September 28, 2021, with the stated intention of serving the Hispanic residents of the Orlando area.

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[3] Trust Agreement at para 4(a).

[4] Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau to Richard J. Bodorff, Esq., *et al.,* re Application for Renewal and Petition to Deny WJJS(FM) (March16,2018). (Emphasis supplied)

Deadline Considerations

Several factors make the CXR divestiture trust an unlikely candidate for an extension beyond December 17, 2021.

First is the importance of liquidating the violation of the local ownership limit.[5] The present local radio ownership rule has been in effect since passage of the Telecommunications Act of 1996. Notwithstanding the obligation to review and the opportunity to amend the rule pursuant to Section 202(h) of the Act, the Commission has chosen to maintain it. In its most recent determinations, undertaken by majorities comprising both Republicans and Democrats, the Commission found that considerations of competition required that the rule be maintained.[6] This is unsurprising since prevention of unacceptable concentration in broadcast radio has been an important policy from the beginning of the Communications Act.[7]

In the case of the Orlando market, the two-year dispensation has enabled Cox Media to continue to provide WPYO's sales and management functions[8]—a continuing circumstance inconsistent with the Commission's concern about local radio market competition. This underscores the importance of the two-year deadline, which supplements in a precise way Apollo's instruction to the divestiture trustee to consummate a sale "as soon as reasonably practicable." The imposition of the monitoring condition—the requirement that the trustee provide detailed reports on efforts to market the property to the Chief of the Media Bureau's Audio Division every six months—further evinces the importance of liquidating the ownership violation.[9] The fact that an offer is pending indicates that the time the Commission has allowed the parties to come into compliance has been sufficient to enable the trustee to meet its obligation.

Second, Apollo provided an additional assurance that the required divestitures would be accomplished "as soon as reasonably practicable." It retained a prominent media broker, Elliot Evers of

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[5] Telecommunications Act of 1996, Section 202(b)(1); 47 CFR 73.3555(a)(1).
[6] *See* 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al., MB Docket No. 14-50 et al., Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802 (2017) adopting the perspective set forth in 2014 Quadrennial Review Order – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al., MB Docket No. 14-50 et al., Second Report and Order, 31 FCC Rcd 9864, paras. 82-128 (2016).
[7] *See* National Broadcasting Co. v. United States, 319 US 190 (1943).
[8] Adam Jacobson, Radio + Television Business Report (August 17, 2020).
[9] Order, *supra* note 1 at para. 46.5.

MVP Capital, LLC, to serve both as broker and as divestiture trustee. It sought Commission approval of the arrangement on the explicit representation that this would "enable the divestiture process to commence at an earlier time and will assure continuity and expedite the divestiture of those stations."[10] The reference to "an earlier time" reflects the fact that Mr. Evers was engaged by the Apollo interests as of June 28, 2021, effectively providing a six-month head start on the two-year divestiture deadline.[11]

Third, there are no apparent obstacles to the presentation of the stations to potential buyers nor to the negotiation of contracts of sale. The severe disruptions caused by the pandemic, to take the most serious difficulty posed to business as usual, have not in fact prevented the successful completion of transactions in the media space.[12] The experience of Mr. Evers' company provides sufficient evidence. As the member of Mainstay Station Trust, LLC, he has concluded the transfer of trust property during the pandemic. Even more telling, he and his colleagues at MVP effected the sale of their firm to the major investment bank Houlihan Lokey in August, 2021. The success Mr. Evers enjoyed during the pandemic was not unique. Between March, 2020, and the present there have been 332 radio station and 36 television transactions.[13] The Commission, of course, is aware of this because it approved every one of the transfers and assignments.

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[10] Transfer Application at 5, n. 7:

> [Buyer] has retained Elliot Evers in his capacity as media broker to identify potential buyers of the stations to be divested, a role consistent with his role as sole member of [CXR]. Because his role as sole member of [CXR] will require Mr. Evers to identify buyers of divestiture stations, his engagement by [Buyer] prior to the Divestiture Stations being assigned to the Divestiture Trust *will enable the divestiture process to commence at an earlier time and will assure continuity and expedite the divestiture of those stations*. (Emphasis supplied).

[11] *See* Engagement Agreement. See also Trust Agreement at 4(b) enabling Mr. Evers as the sole member of CXR to retain MVP Capital, LLC, "notwithstanding that Trustee is an affiliate of MVP Capital LLC."

[12] The continuation of very high levels of merger and acquisition activity throughout the economy has been one of the counterintuitive aspects of the pandemic. *See, e.g.,* Lannah Nguyen, "Wall St. Sees Record Deal Spree as a Reason for Optimism," New York Times (October 16, 2021).

[13] Station transaction data compiled by the Nielsen Company. Radio station sales during the period amounted to approximately $200 million and television sales amounted to approximately $1.8 billion.

In summary, because of the importance that the Commission ascribes to the local radio rule, particularly for its significance in preserving competition in over-the-air radio, because the brokerage and trust arrangements have been combined on the assurance that this would facilitate the divestiture in a timely and competent fashion, and because an offer has been tabled that meets the "reasonably" timely and "reasonably obtainable" pricing conditions, there does not appear to be any warrant for an extension of the divestiture deadline.

Sincerely,

/Philip L. Verveer/
_____
Philip L. Verveer

PHILIP L. VERVEER

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Washington, DC 20008
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PROFESSIONAL EXPERIENCE

Harvard Kennedy School

Senior Research Fellow, *2018 to present*

Venable LLP

Senior Counsel, *2017to 2018*

Federal Communications Commission

Senior Counselor, *2013 to 2017*

U.S. Department of State

Deputy Assistant Secretary and

U.S. Coordinator, International Communications & Information Policy

Ambassadorial Rank, *2009 to 2013*

Jenner & Block LLP

Of Counsel, *2009*

Willkie Farr & Gallagher LLP

Partner*, 1983 to 2009*

Pierson, Ball & Dowd

Partner*, 1981 to 1983*

Federal Communications Commission

Chief, Cable Television Bureau*, 1978 to 1979*

Chief, Broadcast Bureau, *1979*

Chief, Common Carrier Bureau, *1979 to 1981*

Federal Trade Commission

Supervisory Attorney, Bureau of Competition*, 1977 to 1978*

U.S. Department of Justice

Trial Attorney, Antitrust Division*, 1969 to 1977*

U.S. Army

Captain, Military Intelligence*, 1969 to 1971*

Professional experience consists of practice of communications, antitrust, and administrative law. Noteworthy professional occurrences:

- serving as the first lead counsel in the Justice Department's investigation and prosecution of the Bell System for monopolization that eventuated in the 1984 divestiture;
- participating in a series of decisions as Chief of the FCC's Common Carrier and Cable Television Bureaus that enabled increased competition in the sectors and limited regulation of information services;
- establishing the Willkie Farr & Gallagher communications practice;
- serving as chairman of the Federal Advisory Committee that identified the spectrum requirements necessary to afford the public safety community efficient and interoperable wireless communications; and
- serving as the United States' senior diplomat responsible for technology, information and communications issues.

EDUCATION

University of Chicago*, Juris Doctor, 1969*

Georgetown *University**, Bachelor of Science in Foreign Service, 1966*

PROFESSIONAL RECOGNITION AND ACTIVITIES

Senior Executive Service Distinguished Presidential Rank Award (1980)

Charter Member, Senior Executive Service (1979)

Visiting Committee, University of Chicago Law School

Alumni Board of Governors, Georgetown University

Advisory Board, Archdiocesan Legal Network

BAR MEMBERSHIP

District of Columbia, admitted 1969