

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Revitalization of the AM Radio Service ) MB Docket No. 13-249  
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To: Office of the Secretary  
Attn: The Commission

**COMMENTS OF MULTICULTURAL RADIO BROADCASTING LICENSEE, LLC**

Multicultural Radio Broadcasting Licensee, LLC (“Multicultural”) hereby submits these Comments in response to the *Further Notice of Proposed Rule Making* in the above-referenced proceeding (the “FNPRM”) released by the Federal Communications Commission (“FCC” or “Commission”) on October 23, 2015.<sup>1</sup> In the FNPRM, the Commission proposes requiring AM radio licensees with dual standard/Expanded Band authorizations to surrender one of the two authorizations within one year of the release of a *Report and Order* adopting such a proposal.<sup>2</sup> Multicultural is the licensee of standard band Station WJDM(AM), Elizabeth, New Jersey, and Expanded Band Station WWRU(AM), Jersey City, New Jersey.

1. WWRU was licensed as an Expanded Band station pursuant to Section 331(b) of the Communications Act. In the FNPRM, the Commission fails to mention the Section 331(b) stations in its surrender proposal. Comments are requested only on the dual standard band and Expanded Band stations inasmuch as interference reduction will occur from surrender of the standard band stations. There are only two remaining Section 331(b) stations, neither of which causes any interference. Station WJDM remains licensed to Elizabeth, NJ as the only station

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<sup>1</sup> *In re Revitalization of the AM Radio Service, First Report and Order, Further Notice of Proposed Rule Making and Notice of Inquiry*, MB Docket No. 13-249, FCC 15-142 (rel. Oct. 23, 2015).

<sup>2</sup> FNPRM at ¶ 77.

providing local service to this underserved community with a population over 100,000. Station WJDM is uniquely situated among dual stations and should therefore be exempt from the Commission's proposal to require surrender of a paired station.

**I. SECTION 331(b) LICENSES**

**A. Requiring Multicultural to Surrender a License Would Not Reduce Problematic Interference but Would Deprive an Underserved Community of its Only Local Service and Harm the Public Interest**

2. When the Commission adopted the Expanded Band plan, eligibility for station allotments was based on two separate and independent criteria meant to effectuate two disparate goals. The first goal, mandated by Congress and implemented by the Commission in 1993, was to provide full time service to underserved communities.<sup>3</sup> The second, advanced by the Commission, was interference reduction.<sup>4</sup> Forcing Multicultural to surrender one of its dual band stations would effectuate neither of these goals.

**1. Expanded Band Eligibility Criteria and Goals**

3. The first criterion for Expanded Band operations was the provision of local full-time service to underserved communities. In 1991, Congress amended Section 331 of the Communications Act of 1934 by adding sub-section (b).<sup>5</sup> Sub-section (b) directed the Commission to provide certain licensees of daytime-only AM stations the opportunity to apply for an Expanded Band authorization in order to bring full-time aural service to certain

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<sup>3</sup> See P.L. 102-243, 105 Stat. 2394, approved Dec. 20, 1991, amending Section 331 of the Communications Act of 1934 (47 U.S.C. § 331) and *Memorandum Opinion and Order, Review of the Technical Assignment Criteria for the AM Broadcast Service*, 8 FCC Rcd 3250, 3255 (1993).

<sup>4</sup> See, *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273 (1991), *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993), *review denied sub nom. N.A.A.C.P. v. FCC*, 40 F.3d 474 (D.C. Cir. 1994) (subsequent history omitted).

<sup>5</sup> Specifically, Section 331(b) provides that "It shall be the policy of the Commission, in any case in which the licensee of an existing AM daytime-only station located in a community with a population of more than 100,000 persons that lacks a local full-time aural station licensed to that community and that is located within a Class I station primary service area notifies the Commission that such licensee seeks to provide full-time service, to ensure that such a licensee is able to place a principal community contour signal over its entire community of license 24 hours a day, if technically feasible." 47 U.S.C. § 331(b).

communities with populations of 100,000 or more. Congress' underlying policy goal was not interference reduction, but rather to facilitate the provision of service to underserved communities. Only four stations were awarded Expanded Band authorizations pursuant to Section 331(b), and only two stations (including WWRU) remain today. The surrender of one of the paired stations issued pursuant to Section 331(b) was not mentioned in the legislation and would not serve to reduce problematic interference.

4. The second criterion for Expanded Band operations was an existing AM station that caused a high degree of interference. The Commission conducted studies to identify AM stations causing high levels of co- or adjacent channel interference and then invited licensees of such stations to apply for an Expanded Band authorization. In total, the Commission issued 66 construction permits for Expanded Band facilities, which were to be operated concurrently with licensees' standard band facilities.<sup>6</sup> As originally envisioned, dual authorizations would be held for a five year "transition" period, after which licensees would select either their standard or Expanded Band license to surrender. The Commission hoped that entities holding dual band operating authority would elect to turn-in their standard band license, which would effectuate the Commission's underlying goal of reducing congestion and interference in the standard band.

2. **Forcing Multicultural to Surrender a Dual Band License Would Result in a Loss of Service to a Community with No Other Aural Service**

5. At the present time, if forced to choose between WWRU and WJDM, Multicultural would more likely choose to surrender its authorization for standard band Station WJDM. The reason is that Station WJDM recently lost its tower site, was forced to relocate on a temporary basis, and is operating with temporary facilities. The station has a permit for permanent facilities but construction costs are estimated to be as much as \$500,000, a sum

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<sup>6</sup> FNPRM at ¶ 76, n. 198.

Multicultural is less likely to spend if the Commission requires surrender of one of its paired stations. Once the Commission's decision is made, Multicultural will evaluate its options.

6. WJDM was never identified by the Commission as causing any interference. Unlike licensees of other standard band stations that were originally eligible for Expanded Band authorizations due to problematic interference characteristics, WJDM's eligibility was based on Congress's mandate that the Expanded Band be used to bring first full-time aural service to an underserved community.<sup>7</sup> Thus, requiring Multicultural to surrender its license for WJDM would not advance any Commission or public interest purpose.

7. WJDM is the only broadcast station licensed to Elizabeth, New Jersey.<sup>8</sup> Elizabeth is the fourth largest city in New Jersey, the County Seat for Union County, and home to nearly 125,000 people.<sup>9</sup> Forcing Multicultural to surrender its license for WJDM would result in Elizabeth losing its only broadcast station. Indeed, WJDM is the only Section 331(b) station still in existence that provides first local service to its community of license.

8. WJDM is one of only two stations still in existence that was awarded an Expanded Band frequency pursuant to Section 331(b). Nowhere in the legislation amending Section 331 did Congress signal its intent that stations awarded pursuant to Section 331(b) should be subject to the same five year transition period as stations awarded pursuant to the Commission's interference reduction criteria. No mention of Section 331(b) stations is made in the FNPRM, yet the Commission is treating these stations in the same manner as the high

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<sup>7</sup> See FCC File No. BML-2007011AEH. WWRU has fulfilled its mandate to provide service to Jersey City by broadcasting valuable minority programming. The station broadcasts a variety of talk, religious, and music programming in both Korean and English. The Korean population within Jersey City and WWRU's listening area is large, and it relies upon the station to provide news and information not readily available from other sources.

<sup>8</sup> WWRU, like WJDM, was originally licensed to Elizabeth, New Jersey. By 2003 when Multicultural purchased Stations WJDM and WWRU, however, WWRU had already changed its community of license to a larger unserved community – Jersey City, New Jersey. The population of Jersey City (approx. 250,000) is nearly twice that of Elizabeth (approx.. 125,000). In approving the change in community of license, the FCC recognized that Jersey City was in need of a first local service while WJDM would continue to serve Elizabeth.

<sup>9</sup> See <http://www.elizabethnj.org/about/welcome> (last visited March 4, 2016).

interfering stations. The Commission's intent in awarding Expanded Band stations was to reduce interference in the standard band, effectuated by requiring the surrender of one of the paired stations at the end of the transition period. The interference reduction rationale behind the transition deadline simply does not apply to stations awarded pursuant to Section 331(b).

9. WJDM and WWRU are uniquely situated to further Congress's goal of using dual band authorizations to improve service to underserved communities. Even if other licensees are required to surrender one of their dual band licenses, Multicultural should not be compelled to do so given the unique position of WJDM and WWRU.

### **3. Surrendering WJDM is Contrary to the Public Interest**

10. In addition to conflicting with Congressional intent, depriving Elizabeth of its only local service runs directly counter to the Commission's policy goal of promoting broadcast localism. The Commission has repeatedly stressed the importance of localism and sought to improve the amount and nature of broadcast programming targeted to local needs and interests.<sup>10</sup> WJDM provides exactly the type of programming the Commission has worked so fervently to promote in other proceedings. WJDM broadcasts in Spanish and features a wide-variety of Spanish-language Christian music. This choice of format and programming is designed to serve the needs and interests of the nearly 60% of Elizabeth residents who are Hispanic or Latino.<sup>11</sup> WJDM is not simulcast on WWRU, and therefore the loss of WJDM would result in the loss of this programming. Decreasing locally responsive programming by forcing WJDM off the air is contrary to the public interest and simply makes no sense, particularly in the context of the AM *Revitalization* processing, which is meant to invigorate AM radio, not further weaken it.

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<sup>10</sup> See, e.g., *Broadcast Localism*, Report on Broadcast Localism and Notice of Proposed Rulemaking, MB Docket No. 04-233, FCC 07-218 (rel. January 24, 2008).

<sup>11</sup> U.S. Census, 2010 Census Interactive Population Search, NJ – Elizabeth City, available at <http://www.census.gov/2010census/popmap/ipmtext.php?fl=34> (last visited March 9, 2016).

11. In addition, surrender of WJDM would negatively impact the Commission's policy goal of diversity in broadcast ownership.<sup>12</sup> Both Multicultural, the licensee of WJDM, and its parent, Multicultural Radio Broadcasting, Inc., are owned and controlled by Asian Americans.<sup>13</sup>

4. **If the Commission Will Not Allow Multicultural to Retain its Dual Band Authorizations, Multicultural Should be Allowed to Sell WJDM**

12. Rather than require Multicultural simply to surrender WJDM with the expectation that the station go silent, Multicultural should be allowed to sell the station to a qualified minority-owned entity.<sup>14</sup> Doing so would preserve the Commission's localism and ownership diversity goals, while also allowing Multicultural to realize some monetary return on a station that it has invested in and successfully operated for nearly two decades.

13. Indeed, as the Commission itself notes, it has made exceptions to its dual band relinquishment policy before. In 2010, the Media Bureau approved the assignment of Expanded Band Station KYHN from Capstar TX LLC to MMTC Broadcasting LLC ("MMTC"). MMTC planned to use KYHN to train women and minorities in broadcasting and broadcast management. Because the transaction advanced the Commission's diversity goals, the Media Bureau approved the sale.<sup>15</sup> Allowing Multicultural to sell WJDM to a qualified minority broadcaster would similarly advance the Commission's diversity goal and continue to provide a first local service to a community of over 100,000 persons.

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<sup>12</sup> See, e.g., *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*, Further Notice of Proposed Rulemaking and Report and Order, MB Docket No. 14-50, FCC 14-28 (rel. Apr. 15, 2014). WJDM and WWRU are not counted separately for purposes of the Commission's multiple ownership rules. See 47 C.F.R. § 73.3555, n. 9.

<sup>13</sup> See FCC File Nos. BOA-20151130CUR and BOA-20151130CRB.

<sup>14</sup> The details of such a sale, including the price of the station and qualifications an entity would need to possess in order to purchase WJDM, could be worked out at a later date if the Commission is agreeable in principal to the sale of WJDM.

<sup>15</sup> FNPRM at ¶ 75, n. 197.

**B. Multicultural Supports Baybridge’s Retention of Dual Band Stations KDIA and KDYA**

14. Baybridge Communications, LLC (“Baybridge”) is the licensee of the other Section 331(b) stations—Expanded Band Station KDIA, 1640 kHz, Vallejo, California, and associated standard band AM Station KDYA, 1190 kHz, Vallejo, California. Like Multicultural, Baybridge was not given an Expanded Band station because its standard band station caused any interference. Instead, Vallejo was identified as a city with a population over 100,000 without a full time local station. Baybridge responded to the need for a station by investing its funds and resources in order to provide more than a decade’s worth of quality programming that is responsive to the needs and interests of the people of Vallejo. Baybridge has not been unjustly enriched by its continued ownership of both KDIA and KDYA, but has instead advanced the Commission’s localism goals. Multicultural supports Baybridge’s efforts to retain both KDIA and KDYA; doing so will allow Baybridge to continue to serve the local community and the public interest.

**II. OTHER MATTERS--FM CROSS-SERVICE FILL-IN TRANSLATORS AND THE MAIN STUDIO RULE**

**A. The Commission Should Expand the Area Within Which an FM Fill-In Translator May Be Located**

15. Currently, an FM cross-service fill-in translator must be located such that its 60 dBμ contour is contained within the *lesser* of (1) an AM station’s 2 mV/m daytime contour or (2) a 25-mile radius centered at the AM transmitter site.<sup>16</sup> In the FNPRM, the Commission acknowledges that “some additional degree of flexibility is appropriate, especially given the factual situations (e.g., highly directional antenna patterns with deep signal nulls) described by

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<sup>16</sup> 47 C.F.R. § 74.1201(g).

some commenters.”<sup>17</sup> Multicultural agrees that more flexibility is necessary, and supports the Commission’s proposal to allow an FM translator to be located within the *greater* of the AM station’s 2 mV/m daytime contour or a 25-mile radius centered on the AM transmitter site.<sup>18</sup> However, in order to address signal loss issues associated with high ground conductivity, Multicultural urges the Commission to increase the distance the translator’s contour may extend.

16. These changes will allow AM stations with oddly-shaped contours or limited tower options to better utilize FM translators for fill-in service. This, in turn, will promote both the public interest and the continued economic viability of AM stations by permitting AM stations to provide better service to their communities.

**B. The Main Studio Rule Should be Relaxed to Allow AM Broadcasters Greater Flexibility in Serving their Communities**

17. In the NOI that accompanies the FNPRM, the Commission seeks comment on whether to modify the main studio rule in light of advances in technology that obviate the need for members of the public to physically visit a station’s main studio. One such advance is the online public file, the requirements for which the Commission recently expanded to radio licensees.<sup>19</sup> Once fully implemented, members of the public will be able to access any station’s public file at any time and from anywhere simply by going online. Requiring broadcasters to maintain a main studio so as to provide the public with a means for accessing the public file is no longer necessary. Given the diminished role of the main studio, Multicultural supports modifying the main studio rule in several respects.

18. First, commonly owned AM stations (whether commercial, non-commercial educational, or a mix of the two) that are located in the same market should be allowed to co-

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<sup>17</sup> FNPRM at ¶ 68.

<sup>18</sup> *Id.*

<sup>19</sup> *In re Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, MB Docket No. 14-127, FCC 16-4 (rel. Jan. 29, 2016).

locate their main studios upon filing a notice with the Commission at least 30 days prior to any move.<sup>20</sup> If, in the alternative, the Commission decides to continue to address all co-location requests through its case-by-case waiver process, commonly owned AM stations located in the same market should be entitled to a presumption in favor of co-location unless it can be shown that co-locating would have a material adverse effect on the public interest. No limit should be placed on the number of stations that can co-locate so long as each station (1) maintains its online public file, (2) continues to place a signal contour over its community of license; (3) serves that community with programming responsive to local needs and interests, and (4) maintains a toll-free number to allow residents in the station's community of license to contact the station.<sup>21</sup>

19. Second, the Commission should relax the staffing requirement for stand-alone AM stations. Employing a full time manager and staff-level employee for each main studio is increasingly expensive and unnecessary in our interconnected world. To ensure timely responses to inquiries from the public, Multicultural supports a rule requiring publication<sup>22</sup> of an attended number at which station personnel can be reached during normal business hours.<sup>23</sup> Relaxing main studio staffing requirements serves the public interest by allowing stations to re-direct the substantial cost savings gained from reduced staffing into programming.

### **III. CONCLUSION**

20. Multicultural appreciates the opportunity to submit these Comments and urges the Commission to allow for continued dual authorization of WJDM and WWRU. WJDM is the only remaining dual band station providing first local service to Elizabeth, New Jersey. Should

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<sup>20</sup> See 47 C.F.R. § 73.3555 for commonly owned stations not assigned to a market.

<sup>21</sup> See also *In the Matter of Revitalization of the AM Radio service*, Comments of Starboard Media Foundation, Inc., at 3 (filed Mar. 10, 2016).

<sup>22</sup> The number could be published on the homepage of the station's website or, for stations without websites, on a dedicated page on the state broadcasters' association website.

<sup>23</sup> The number should be attended at least Monday through Friday during normal business hours.

Multicultural be required to surrender its authorization for WJDM, New Jersey's fourth largest city will be deprived of its only broadcast service – a result directly counter both to Congress's goal of promoting service to underserved communities, and to the Commission's goals of promoting broadcast localism and diversity. In the alternative, if the Commission compels Multicultural to give-up a dual band authorization, Multicultural should be allowed to sell the station to a qualified minority entity.

Respectfully submitted,

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Dated: March 21, 2016