Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2006 Quadrennial Regulator Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations And Newspapers	)	MB Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations In Local Markets	)	MB Docket No. 01-317
	)	
Definition of Radio Markets	)	MB Docket No. 00-244

To: The Commisison

REPLY COMMENTS

Nassau Broadcasting II, L.L.C. and Nassau Broadcasting III, L.L.C. (hereinafter, "Nassau") sister companies ultimately controlled by Nassau Broadcasting Partners, L.P. that hold authorizations for fifty three radio stations in Maine, New Hampshire, Vermont, Massachusetts, New Jersey, Pennsylvania, and Maryland, hereby submit reply comments on the local radio

ownership portion of the Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

Nassau supports the Commission's review of all aspects of the local radio ownership limits. To the extent that the Commission retains limits on the number of stations owned, Nassau requests that the Commission remedy one aspect of implementation of those limits. Specifically, the Commission should uniformly impose a two-year waiting period for all Arbitron Metro Market changes, regardless of whether the change is in a particular owner's favor. The Commission currently applied the two-year rule only when it perceives such change to be to the owner's advantage.

The FCC's Media Ownership Order prohibits station owners from taking advantage of any change in Arbitron market definitions until two years from the date of the change. In adopting the rule, the Commission stated:

> [W]e will not allow a party to receive the benefit of a change in Arbitron Metro boundaries unless that change has been in place for at least two years. This safeguard includes both enlarging the Metro (to make a market larger) and shrinking the Metro (to split a party's non-compliant station holdings into separate markets).[2]

Nassau has pending before the Commission a petition to reconsider dismissal of an assignment application[3] because the Commission applies a two-year waiting period before applicants may take advantage of a change in an Arbitron Metro Market definition that would cure a multiple ownership problem, but it imposes no corresponding waiting period for the imposition of an adverse Arbitron Metro Market change.

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[1] The reply comments are timely filed. See 2006 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, *Order*, 21 FCC Rcd. 14460 (2006) extending the reply comment date in this proceeding to January 16, 2007.

[2] See Report and Order on Broadcast Ownership Rules, 18 FCC Rcd 13620, 13727 (¶ 278) (2003) (subsequent history omitted) (hereinafter, "Media Ownership Report and Order").

[3] See, CDBS File No. BTCH- 20050105ACS, Petition for Reconsideration filed March 10, 2006.

If an applicant cannot take advantage of market changes for two years that would cure a multiple ownership problem, then the Commission should not immediately apply market changes that would cause a multiple ownership problem without a commensurate waiting period. The Commission's justification for the two-year waiting period was to prevent parties from trying to manipulate Arbitron Metro Markets in order to circumvent the Commission's multiple ownership rules.[4] Since the two-year waiting period is designed to prevent applicants from circumventing the Commission's multiple ownership rules, any changes to Arbitron Metro Markets, regardless if they improve or hamper an applicant's multiple ownership position, should be subject to a two-year waiting period. A two-year waiting period for *any* Arbitron Metro Market change allows applicants to complete transactions that may be pending at the Commission through no fault of the applicant's diligence to prosecute the application. Without such a waiting period, pending applications are unfairly subject to adverse Arbitron Metro Market changes simply because the Commission has not acted on an application for assignment of license or transfer of control prior to the change in the market definitions.

The Commission's blanket prohibition on parties benefiting from a favorable change in Arbitron market definitions, but no comparable two year waiting period for similar changes that adversely affect an owner, unfairly penalizes parties such as Nassau. As currently implemented, whether the two year waiting period applies depends on the Commission's determination whether such change is favorable or unfavorable to a particular licensee. Such a policy is unfair, arbitrary and amounts to the Commission choosing which parties will compete in a particular market. The unfairness of the rule is underscored by the Commission's presumption that all "favorable" market

[4] Media Ownership Report and Order, at 13729 (¶ 278).

boundary changes result from owners gerrymandering Arbitron boundaries, which is not always true.[5] The Commission must impose the rule uniformly to avoid impairing competition.

Nassau is not the only party encountering anti-competitive effects of the Commission's decision to use Arbitron market definitions for ownership analysis. Several commenters in this proceeding noted similar problems with Arbitron markets. For example, Spanish Broadcasting System, Inc. found that the Arbitron boundary adopted for Puerto Rico is unworkable, and that imposition of a strict Arbitron definition would ultimately impair service to the public and diminish competition.[6] Galaxy Communications, L.P. notes that under Arbitron definitions, commonly owned stations within an Arbitron Metro are counted towards the local ownership limit without considering "technical differences among stations or whether the stations serve different non-overlapping segments of the market."[7] Galaxy concludes that the effect of the rule is to restrict small broadcasters from acquiring clusters of lower power stations, which will impair competition with larger broadcasters.

Another area where the Commission has undermined competition is attribution of Joint Sales Agreements ("JSAs"). Nassau also agrees with the Comments filed by Monterey Licenses, LLC,[8] that the Commission's decision to attribute JSAs under the ownership rules has potential anticompetitive effects. JSAs involve advertising only and do not implicate programming diversity. In certain circumstances, JSAs permit small and mid-sized station owners to better compete with large media conglomerates. If the Commission declines to modify the JSA attribution rule,

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[5] Nassau was recently forced to file a waiver of the two-year rule for WXLF because the Commission imposes a two year waive for all "favorable" market boundary and home market changes, even though Nassau had no input on any of the changes at issue. See CDBS File No. BPH-20070105ADO.

[6] Spanish Broadcasting System, Inc. Comments filed October 23, 2006 at 6.

[7] Galaxy Communications, L.P. Comments filed October 23, 2006 at 3.

[8] Comments of Monterey Licenses, LLC filed October 23, 2006.

fundamentally fairness dictates that JSAs that existed before adoption of the Media Ownership Report and Order should be permanently grandfathered.

In conclusion, while the Third Circuit upheld the Commission's decision to use Arbitron Metro markets for local ownership purposes, the Commission must modify the rule's implementation to address inequalities and remove regulatory impediments to fair competition. In order to avoid the anticompetitive effects of the two year waiting period, the Commission should uniformly apply the two year waiting period to all market boundary changes. The Commission should also modify the JSA attribution rule to allow small and medium sized broadcasters to compete with large media conglomerates.

Respectfully submitted,

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