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

In the Matter of:	)	
	)	
Promoting Diversification of Ownership In the Broadcasting Services	)	MB Docket No. 07-294
	)	
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	)	MB Docket No. 06-121
	)	MB Docket No. 02-277
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	)	
	)	MM Docket No. 01-235
Cross-Ownership of Broadcast Stations and Newspapers	)	
	)	MM Docket No. 01-317
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	
	)	MM Docket No. 00-244
Definition of Radio Markets	)	
	)	MB Docket No. 04-228
Ways to Further Section 257 Mandate and To Build on Earlier Studies	)	

To: The Commission

COMMENTS OF THE JOINT PETITIONERS

Bryan Broadcasting Corporation
Chisholm Trail Broadcasting Co.
Entercom Kansas City License, LLC
Fife Communication Co., LLC
Mid-West Management, Inc.
Mortenson Broadcasting Co. of Texas, Inc.
Multicultural Radio Broadcasting Licensee, LLC
Starboard Media Foundation
Waitt Omaha, LLC
Way Broadcasting Licensee, LLC
Independent Spanish Broadcasters Association
Minority Media and Telecommunications Council

Joint Petitioners

Dated: July 30, 2008

SUMMARY

In March 2006, the Joint Petitioners submitted a Petition seeking to modify the Commission's Expanded Band policy. Under that policy, broadcasters that are licensed for the Expanded Band must surrender one of their AM licenses – either the original band license or the Expanded Band license – five years after the initial license date of the Expanded Band authorization. The Commission established this requirement with the goal of reducing congestion and interference in the AM band. The Commission now seeks comment on questions related to the Petition in the above-captioned Notice of Proposed Rulemaking. The Joint Petitioners respectfully comment in support of the Commissions proposal that would allow licensees of AM stations holding Expanded Band authorizations to avoid forfeiting those licenses if they are held by or conveyed to a qualifying small business.

The Joint Petitioners believe that the technical improvements sought by the Commission's Expanded Band policy have not been realized as intended, and that any technical gains that may be realized pale in comparison to the significant public interest diversity benefits that would result from the Joint Petitioners' proposals. To date, only 61% of the stations that the Commission intended to operate in the Expanded Band are doing so. The five-year transition period will not terminate for a number of Expanded Band authorizations for several years. Thus, with regard to those stations, it will be several years until any technical benefits are realized. Further, at the time of surrender, a licensee may choose to return the Expanded Band station, thereby diminishing the Commission's goal of reducing interference in the AM service..

Moreover, when the Commission first adopted rules in furtherance of its Expanded Band policy, they were intended to be one portion of a more comprehensive proceeding to reduce congestion and interference within the AM band. However, no additional proceedings were

commenced. With the advent of digital "HD radio" in the AM band and new proposals to be considered in this docket to expand the FM band, the wind seems to have left the sails of the proposals for further reform of the AM band. Any technical benefits which were to have been achieved by the Expanded Band policy have not and apparently will not result.

By contrast, the Petition presents an opportunity for the Commission to expand opportunities for small businesses to own broadcasting outlets, which is directly consistent with the goal of the instant diversification proceeding. The Petition addresses the concerns raised by a recent GAO report criticizing the state of ownership diversity in broadcasting through measures that include: (1) avoiding the competitive concerns of large scale ownership by conditioning the sale of one of the AM licenses to a qualifying small business; and (2) responding to the need of small businesses for access to capital in broadcast transactions by placing a limitation on the sale price of the stations.

Further, the Commission has long-held that any loss of service is *prima facie* inconsistent with the public interest unless such loss is outweighed by other public interest considerations. Under the current Expanded Band policy, the operation on the original band station is expected to "go silent" following the five-year transition period. The Joint Petitioners' proposal would avoid this and permit broadcasters to continue providing service to the public over existing AM stations.

Finally, the Joint Petitioners believe that the length of time licensees operating paired stations should be given to dispose of one station as stated in these comments should be the <u>later</u> of: (1) the conclusion of the pertinent five-year transition period under the Expanded Band policy; or (2) two years after the Commission adopts a measure in this proceeding conferring authority for the broadcaster to dispose of one of its licenses, and such authority becomes final.

TABLE OF CONTENTS

Page

SUMMARY ii

TABLE OF CONTENTS iv

BACKGROUND 2

I TECHNICAL VIABILITY OF THE AM SERVICE AND PROMOTING OWNERSHIP DIVERSITY ARE NOT COMPETING GOALS WITH REGARD TO USE OF THE EXPANDED BAND 5

II. LICENSEES OPERATING PAIRED STATIONS SHOULD HAVE UNTIL FIVE YEARS FROM THE GRANT OF THEIR EXPANDED BAND LICENSE TO DISPOSE ONE STATION TO A QUALIFYING SMALL BUSINESS OR TWO YEARS FROM THE DATE THE COMMISSION GRANTS THE JOINT PETITION, WHICHEVER IS LATER 11

CONCLUSION 13

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

In the Matter of:	)	
	)	
Promoting Diversification of Ownership In the Broadcasting Services	)	MB Docket No. 07-294
	)	
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	)	MB Docket No. 06-121
	)	MB Docket No. 02-277
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	)	
	)	MM Docket No. 01-235
Cross-Ownership of Broadcast Stations and Newspapers	)	
	)	MM Docket No. 01-317
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	
	)	MM Docket No. 00-244
Definition of Radio Markets	)	
	)	MB Docket No. 04-228
Ways to Further Section 257 Mandate and To Build on Earlier Studies	)	

To: The Commission

COMMENTS OF THE JOINT PETITIONERS

The Joint Petitioners identified in Attachment A hereto, consisting of radio broadcasters operating in the expanded AM band (1605-1705 kHz) ("Expanded Band"), as well as public interest organizations that support diversity of programming, respectfully comment in support of the Commission's proposal in the above-captioned Notice of Proposed Rulemaking that would allow licensees of AM stations holding Expanded Band authorizations to avoid forfeiting those

licenses if they are held by or conveyed to a qualifying small business.[1] Many of the Joint Petitioners either joined in the original filing in support of this proposal, or filed statements in support of that proposal, and hereby evidence their continuing support for this proposal.

As set forth herein, the benefits of allowing Expanded Band station operators to avoid turning in one license if that license is held by a qualifying small business outweigh the technical improvements sought from the Expanded Band policy. The Joint Petitioners believe that broadcasters operating in the Expanded Band should be required to make such a transfer at the close of its five year transition period or two years from the date the Commission grants authority for current holders of Expanded Band licenses to transfer one of their licenses to designated entities, whichever is later.

BACKGROUND

Under the Commission's Expanded Band policy, broadcasters that are licensed for the Expanded Band must surrender one of the AM licenses – either the original band license or the Expanded Band license – five years after the initial license date of the Expanded Band authorization.[2] The Commission established this requirement with the goal of reducing

---

[1] *In re Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rule Making, 23 FCC Rcd. 5922 (rel. March 5, 2008) ("NPRM"). The issues explored in the Notice arise from a Petition for Stay of Effective Dates and Request for Waiver of Rules Requiring Return of AM Licenses filed by the Joint Petitioners, in MM Docket 87-267 ("Petition"), which are attached hereto as **Attachment B**, and incorporated by reference as if fully set forth herein.

[2] *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd. 6273, 6274 (1991) ("*Expanded AM Band Order*"), *recon. granted in part and denied in part*, 8 FCC Rcd. 3250 (1993) ("*Expanded AM Band First Recon. Order*"), *recon. granted in part and denied in part*, 10 FCC Rcd. 12143 (1995), *recon. denied*, 11 FCC Rcd. 12444 (1996), *recon. granted in part and denied in part*, 12 FCC Rcd. 3361 (1997), *recon. denied*, 13 FC Rcd. 21872 (1998), *appeal docketed sub nom. Sunrise Broadcasting of New York, Inc. v. FCC*, No. 97-1412 (D.C. Cir. June 25, 1997); *FCC Motion for Remand of the Record Granted Without Hearing*, NO. 97-1412, 1998 WL 202138 (D.C. Cir. March 6, 1998), *on remand* 15 FCC Rcd. 17018 (2000). Although the Commission adopted the five-year deadline in the Expanded Band Order, it never

congestion and interference in the AM band. In so doing, however, the Commission did not establish an alternate use for the spectrum, intending instead that following the five-year transition period, the operation on the original frequency of a licensee that migrated to the expanded band would "go silent."[3]

Importantly, the "five-year" transition period was ultimately left somewhat open-ended. In the *Expanded AM Band Order*, the Commission explained that the five-year term was only the "initial time frame," acknowledged the need for flexibility in enforcing the time limit, and committed to "monitor progress in the use of the expanded band during this period and grant an appropriate extension if factors affecting the overall development of the band warrant such action."[4] Although the Commission said it would establish further rules to govern the use and licensing of additional operations in the Expanded Band,[5] no such proceedings were ever commenced.

In March 2006, the Joint Petitioners submitted a Petition seeking modification of the Commission's Expanded Band policy. In the Petition, the Joint Petitioners maintain that the benefit the Commission expected to realize from a licensee's returning its initial AM band authorization – reducing congestion and interference in the AM band – does not justify requiring Expanded Band stations to return one of their authorizations when doing so would invariably

---

codified this obligation in a rule. Rather, the Commission imposes this requirement only through (1) a condition in expanded AM band licenses, and (2) a note to its multiple ownership rule forbearing, for a five-year period, from applying the radio duopoly and national market limit rules to AM licensees holding expanded band authorizations. *See* 47 C.F.R. § 73.3555, Note 10.

[3] *Expanded AM Band Order* at 6320. Expanded Band licensees were also prohibited from assigning or transferring control of only one of its AM band authorizations during the transition period. 47 C.F.R. § 73.1150(c).

[4] *Expanded AM Band Order* at 6320.

[5] *Expanded AM Band Order* at 6308.

deprive the listening public of a broadcast service - often one longstanding in nature and relied on by thousands of listeners. The Petition advances four proposed modifications to the Commission's Expanded Band policy that would promote the public interest by allowing broadcasters to continue providing service to the public over existing AM stations in furtherance of the Commission's long-held belief that any loss of service is *prima facie* inconsistent with the public interest, unless such loss is outweighed by other public interest considerations.[6] The details of the Joint Petitioner's proposal in its entirety are stated in the Petition, which is attached hereto as **Attachment B.**

The Commission now seeks comment on specific questions related to the Petition, specifically: (1) How to properly balance the competing goals of improving the technical viability of the AM service and promoting ownership diversity; (2) The length of time licensees operating paired stations should be given to dispose of one station to a qualifying small business; (3) Whether the Commission should reinstate the twenty (20) licenses which were surrendered by licensees in accordance with the terms of their authorizations; and (4) Whether successor licensees should be permitted to seek reinstatement of a surrendered license. The Joint Petitioners submit comments principally on the first two points.[7]

---

[6] Petition at 5-7.

[7] Joint Petitioners all currently operate both Expanded Band and core band stations as a result of waivers granted after the filing of the Petition. Thus, the Joint Petitioners are not affected by Questions 3 and 4, and take no formal position with regard to those inquiries, but observe that the benefits of diversity that would result from the proposals set forth herein would be increased were some of the cancelled licenses to be reinstated and treated in the manner suggested herein.

I. TECHNICAL VIABILITY OF THE AM SERVICE AND PROMOTING OWNERSHIP DIVERSITY ARE NOT COMPETING GOALS WITH REGARD TO USE OF THE EXPANDED BAND

The Commission seeks comment on "how to properly balance the competing goals of improving the technical viability of the AM service and promoting ownership diversity."[8] The Joint Petitioners believe that "technical viability of the AM service" and "promoting ownership diversity" are not competing goals with regard to the Expanded Band. Indeed, when the Expanded Band was first created, promoting ownership diversity was one of the Commission's stated intentions.[9] The proposal advanced by the Joint Petitioners would permit the FCC to take a positive step towards that goal, which would pose no detriment to the technical viability of the AM service since the Commission's goal of reducing congestion and interference via signal migrations to the Expanded Band has not developed as it intended.[10]

The Government Accountability Office ("GAO") released a study on broadcast ownership in March 2008 that was very critical of the current state of ownership diversity in broadcasting. The GAO found:

> According to the industry stakeholders and experts we interviewed, the level of ownership by minorities and women is limited. Recent studies generally support

---

[8] NPRM at ¶ 91.

[9] *See Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, 78 FCC 2d 1235, 1256 (1980) (Comm'r Brown, concurring).

[10] The Seguin Media Group, Ltd. filed a comment opposing the Petition on the grounds that the lower AM band stations create the most interference and that the Expanded Band authorizations are a "gift" that are sufficient to compensate the licensees for loss of the interfering lower band stations. Comments of Seguin Media Group, Ltd, MM Docket No. 87-267 (filed June 6, 2006). As explained herein, the Commission's policy on the Expanded Band has not resulted in far-reaching reductions of signal congestion and interference that were originally envisioned, and the Petition is not aimed at compensation for loss of a license within the non-expanded portion of on the AM band. Rather, the Petition is focused on avoiding the loss of established service to communities when the substantial technical gains initially underpinning the surrender scheme will not result.

> this conclusion. Three reports commissioned by the FCC as part of its broadcast ownership proceeding found relatively limited levels of ownership of television and radio stations by minorities and women . . . Free Press estimated that women owned approximately 629 of 10,506 (or 6 percent) of full-power radio stations and minorities owned 812 stations (or 8 percent) of full-power radio stations.[11]

The barriers to entry by minority and female owners identified by the GAO include: (1) large scale ownership in the media industry, (2) a lack of easy access to sufficient capital for financing the purchase of stations, and (3) the repeal of the tax certificate program that provided for the deferral of capital gains taxes and created a financial incentive to sell stations to minorities.[12] The Petition presents a plan to encourage ownership diversity that specifically addresses these concerns.

First, by conditioning the sale of the one of the AM licenses to a qualifying small business, the Joint Petitioners' proposal avoids the competitive concerns of large scale ownership in the broadcast industry (*e.g.*, trades between incumbents, multiple station sales, market share, disparate advertising revenues).[13] Second, the Joint Petitioners have proposed a limitation on the sale price for the disposition of the stations that is comparable to the distress sale policy adopted by the Commission, *i.e.*, the price for which a licensee could sell its authorization may not exceed 75% of the station's fair market value.[14] This sale price limitation responds to the

---

[11] GAO Report to the Chairman, Subcommittee on Telecommunications and Internet, Committee on Energy and Commerce, House of Representatives, *Media Ownership: Economic Factors Influence the Number of Media Outlets in Local Markets, While Ownership by Minorities and Women Appears Limited and is Difficult to Assess*, GAO 08-383 at 23 (March 12, 2008) ("GAO Report").

[12] GAO Report at 5.

[13] GAO Report at 23.

[14] Petition at 6; *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979, 983 (1978); *In re Lee Broadcasting*, 76 FCC 2d 462 (1980). In addition, an anti-trafficking period of three years would be imposed on the assignee/transferee to ensure that the

documented need of minorities and small entrepreneurs for access to capital in broadcast transactions.[15] Third, while the Commission recommended reinstatement of the statutory authority required for the Tax Certificate Policy in its Triennial Report to Congress,[16] levels of minority ownership have suffered since the FCC lost its "single most effective program in lowering market entry barriers and providing opportunities for minorities to acquire broadcast licenses in the secondary market" in 1995.[17] The proposal of the Joint Petitioners would create a counterbalance to the loss of this critical program by establishing a secondary market for small businesses to acquire broadcast signals.[18]

Moreover, by implementing these measures, the Commission would not compromise significant technical improvements sought under its Expanded Band policy. Indeed, the

---

public interest benefits of the price discount provided to the assignee/transferee inure to the public for a substantial period of time. Petition at 6.

[15] *See* GAO Report at 24-25; Report of the Financial Issues Subcommittee, Advisory Committee on Diversity for Communications in the Digital Age, Approved by the full Committee May 2004.

[16] *See Section 257 Triennial Report to Congress – Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses*, Report, 18 FCC Rcd. 3034 (February 12, 2004).

[17] GAO Report at 25-26 (quotations omitted). The tax certificate policy, carried out pursuant to 26 U.S.C. § 1071, permitted an owner of a radio or television station or cable system to sell to a minority owned enterprise and thereby defer capital gains and/or reduce the basis of certain depreciable property. *See Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979, 983 (1978). Congress repealed the policy in Deduction for Health Insurance Costs of Self-Employed Individuals, Pub. L. No. 104-78, § 2, 109i Stat. 93, 93-94 (1995). Between 1978 and 1995, over 200 stations were sold to minorities pursuant to the tax certificate policy, more than tripling the number of minority owned broadcast stations.

[18] In the past, the Commission has not hesitated to revise its policies to eliminate barriers to access to capital by minorities and small broadcasters. *See, e.g., Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301) and Modification of Processing Standards for Determining the Financial Qualifications of Broadcast Station Purchasers*, 87 FCC 2d 200, 201 (1981).

technical improvements sought have not been realized as intended. Out of the 88-station allotment planned for the Expanded Band in 1997, only 54 expanded band stations have been licensed.[19] Thus, to date, only 61% of the intended stations are operating in the Expanded Band. Much of the perceived benefit from the proposal has not materialized, and likely never will. Some of these licenses were issued as recently as 2005,[20] and the Commission states that some authorizations are still awaiting a decision.[21] For these stations with still-pending authorizations, it will be several years until any additional benefit would result. Further, at the time of surrender, licensees have the option of retaining their original band station and returning the Expanded Band station; each instance when a licensee retains its original band station and surrenders its Expanded Band station diminishes any relief in congestion and interference within the local AM service envisioned by the Commission's Expanded Band policy.[22]

But, most importantly, when the rules for the Expanded Band surrender were first adopted, they were intended to be one portion of a more comprehensive proceeding to reduce congestion and interference within the AM band.[23] But, to date, no further steps have been taken nor has the Commission issued any further proposals to take advantage of the Expanded Band.

---

[19] NPRM at ¶ 89.

[20] *See* WNRP, Gulf Breeze, FL (licensed August 3, 2005); *see also* WDHP, Frederiksted, VI (licensed September 27, 2004); KTFH, Seattle, WA (licensed June 15, 2004); KFXY, Enid, OK (licensed June 21, 2004); WFNA, Charlotte, NC (licensed March 15, 2004).

[21] NPRM at ¶ 98.

[22] *See "Life on Expanded Band is (Pretty) Good,"* RW Online (March 1, 2006), *available at http://www.rwonline.com/reference-room/special-report/2006.03.01-04_rw_am_4.shtml* (last visited July 29, 2008) (noting that not all broadcasters were convinced that a move to the Expanded Band would be beneficial and quoting a Commission source as stating that some licensees have chosen "for a variety of reasons to keep their existing frequency").

[23] *Expanded AM Band Order*, 6 FCC Rcd. at 6308.

With the advent of digital "HD radio" in the AM band, and new proposals to be considered in this docket to expand the FM band, the wind seems to have left the sails of the proposals for further reform of the AM band. Any technical benefits which were to have been achieved by this docket have not and apparently will not result. Any technical benefits that will likely result from the continuation of the current Commission policy are, at best, minimal.

These minimal and uncertain technical ambitions for improvement to the AM service pale in comparison to the direct and immediate public interest diversity benefits that would arise from allowing broadcasters with dual operating authority to dispose of one of their licenses to a small business entity. The Commission's initial expectation was that "once a station is licensed to operate in the expanded band and the transition period has expired, the existing band station [will] go silent . . . ."[24] However, this "decluterring" expectation was immediately undercut by providing licensees the choice of maintaining their current licenses, and operating both stations for a lengthy transition period. Allowing stations to go silent is itself directly at odds with the Commission's long-held belief that any loss of service is *prima facie* inconsistent with the public interest, unless such loss is outweighed by other public interest considerations.[25] As discussed above, the Commission's intent to reduce congestion and interference is not being significantly advanced by its current rules for the Expanded Band, further proceedings are not underway, and any real, substantiated interference reduction will be minimal. By contrast, the Expanded Band

---

[24] *Review of the Technical Assignment Criteria for the AM Broadcast Service*, Notice of Proposed Rulemaking, 5 FCC Rcd. 4381, 4382 (1990).

[25] *See West Michigan Telecasters, Inc. v. FCC*, 460 F.2d 883 (D.C. Cir. 1972); *Coronado Communications Co.*, 8 FCC Rcd. 159, 162 (Video Services Div. 1992) (citing *Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956).

licensees are currently serving active, often urban communities that would *lose* that important service if these stations were simply compelled to go silent.[26]

The Commission has recognized the importance of increased diversity in radio broadcasting, and should advance the greatest public interest opportunity before it in connection with the Expanded Band. The Commission will not lose significant technical advances by adopting the measures set forth in the Petition, but would achieve great ends with regard to ownership diversity, which is directly consistent with the goal and intent of the diversification proceeding in which the NPRM is embodied. As the Commission recognizes:

> [I]t has long been a basic tenant of national communications policy that the widest dissemination of information from diverse and antagonistic sources is essential to the welfare of the public . . . we seek to further this important policy goal by expanding opportunities for new entrants and small businesses, including minority- and women-owned businesses, to own broadcasting outlets.[27]

The adoption of the proposals of the Joint Petitioners will further those basic tenets by immediately making available a number of stations specifically for small businesses.

The Commission may implement the mechanisms proposed by the Petition through waiver of the multiple ownership rule,[28] wherever such is necessary or appropriate, or a

---

[26] For example, in Kansas City, a local Hispanic group has entered into a programming agreement with Entercom Kansas City License, LLC under which the market is provided Spanish language programming on an in-band AM station. That programming may well disappear if that station's in-band license is required to be surrendered under the current Expanded Band policy. KCRC in Enid, Oklahoma provides live coverage of all Enid High School football and baseball games, daily local newscasts, two daily local sportscasts, forty-eight daily weather updates, a daily local interview program, and service as the FEMA designated primary station for a five county area. Other licenses at risk by the FCC's Expanded Band policy are both owned by, and provide programming tailored to the needs of, minorities in the markets of Huntsville, Alabama, Miami, New York City, San Francisco and Seattle. *See* Petition at 7-8.

[27] NPRM at ¶ 2.

[28] 47 C.F.R. § 73.3555, Note 10; *see, e.g.*, *Entercom Kansas City License, LLC,* 17 FCC Rcd 24197 (rel. November 20, 2002).

modification of the license conditions through which the Commission currently enforces the surrender of one of the AM stations.[29] Because of the substantial public interest benefits which would be advanced by the proposals of the Commission and supported herein, the Joint Petitioners urge the Commission to adopt the measures proposed by the Petition.

II. LICENSEES OPERATING PAIRED STATIONS SHOULD HAVE UNTIL FIVE YEARS FROM THE GRANT OF THEIR EXPANDED BAND LICENSE TO DISPOSE ONE STATION TO A QUALIFYING SMALL BUSINESS OR TWO YEARS FROM THE DATE THE COMMISSION GRANTS THE JOINT PETITION, WHICHEVER IS LATER

In the NPRM, the Commission states that it "tentatively conclude[s] that any licensee, which itself is not a qualifying small business and which fails to consummate the sale of one station by the disposition date, must surrender one of the two licenses by the disposition date."[30] The Joint Petitioners agree that, if the party holding the paired channels is itself a qualifying small business, it need not dispose of either license. For all other licensees, the Joint Petitioners suggest that the disposition of one of the licenses to a qualified entity should occur within two years of the finality of the FCC order on this matter, or on the date set for the return of the

---

[29] The conditional language contained in the licenses contains language substantially similar to the following: "Pursuant to MM Docket 87-267, after the 5 year period starting from the date the facility specified herein is initially licensed, licensee will surrender either the expanded band license or its existing band license." A modification of this language could provide for the disposition of one of the licenses to a qualifying small business as the end of the pertinent transition period or one year after Commission action on the Petition, whichever is later. (*See* Section II, below).

[30] NPRM at ¶ 91. The Commission also states that it "tentatively conclude[s] that in the event that a licensee fails to take any action by the disposition date, the lower band station shall automatically expire on that date." *Id.* The Joint Petitioners believe that a licensee should retain the ability to choose which station it returns to the Commission at the disposition date, as defined by the Joint Petitioners in Section II herein. The Joint Petitioners agree that if no action is taken by a licensee by the disposition date, the Commission may compel a current holder of an Expanded Band license to surrender one of its licenses. However, the Joint Petitioners oppose any measure that would remove a licensee's expectation that it may continue operation of its original band station and surrender the Expanded Band station.

station's license under current rules (five years after grant of the licensed for the Expanded Band stations), whichever is later.

Licenses for the Expanded Band have been issued on a staggered basis. There are some licensees whose five-year transition period has already ended, some for whom the transition period will end imminently, and some for whom it will be years until the term comes to a close. In order to provide all of the licensees a reasonable opportunity to transfer one of their licenses to a qualifying small business, the Joint Petitioners propose that the length of time licensees operating paired stations should be given to dispose of one station as stated above should be the <u>later</u> of the conclusion of the pertinent five-year transition period or two years after the Commission adopts a measure in this proceeding conferring authority for the broadcaster to dispose of one of its licenses, and such authority becomes final. A two year period is necessary for the licensee to adequately advertise for a small business buyer, and for such a buyer to locate and secure financing to acquire the station. As the Commission is well aware, financing is often the greatest impediment to the acquisition of a broadcasting station by a company new to the broadcasting industry. Thus, these parties must be given a sufficient period of time in which to be informed of the purchase opportunity and to secure financing. It is believed by the Joint Petitioners that a minimum two year disposition period is required to accomplish these ends.

Further, since the five-year transition period has passed for some licensees or may fall while the FCC is considering these measures, the Commission should toll its requirement that licensees operating stations in the Expanded Band surrender one of its licensees at the close of the transition period until the Commission issues a decision on the Petition, *i.e.*, decides one way or another on whether such transfers will be authorized. This has been informally done through a waiver process that should continue while this matter is being considered to avoid rendering

any relief which might be granted hereunder illusory if all the licensed were returned prior to Commission action in this proceeding.

CONCLUSION

For the reasons set forth herein, the Joint Petitioners strongly urge the Commission to back the proposals made two years ago to use the Expanded Band stations to contribute to diversity of ownership, but not forcing the surrender of a viable broadcast license if it can be provided to a qualified small business.

Respectfully submitted,

Bryan Broadcasting Corporation
Fife Communication Co., LLC
Mid-West Management, Inc.

By: /s/
David D. Oxenford
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006
(202) 973-4200
Their Attorney

Chisholm Trail Broadcasting Co.

By: /s/
Hiram Champlin
P.O. Box 952
Enid, OK 73702
(580) 237-1390

Entercom Kansas City License, LLC

By: /s/
Brian M. Madden
Leventhal Senter & Lerman PLLC
2000 K Street, N.W., Suite 600
Washington, DC 20006
(202) 416-6770
Its Attorney

Mortenson Broadcasting Co. of Texas, Inc.

By: /s/
Jerrold D. Miller
Miller and Neely, PC
6900 Wisconsin Avenue, Suite 704
Bethesda, MD 20815
(301) 986-4160
Its Attorney

Multicultural Radio Broadcasting Licensee, LLC
Way Broadcasting Licensee, LLC

By: _____/s/_____
Mark N. Lipp
Wiley Rein, LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7503
Their Attorney

Waitt Omaha, LLC

By: _____/s/_____
Lawrence Bernstein, Esq.
3510 Springland LN, NW
Washington, DC 20008
(202) 296-1800

Minority Media and Telecommunications Council

By: _____/s/_____
David Honig, Esq.
3636 16th Street, N.W., #B-366
Washington, DC 20010
(202) 332-7005

Starboard Media Foundation

By: _____/s/_____
Denise B. Moline
358 Pines Blvd.
Lake Villa, IL 60046
(847) 245-7414
Its Attorney

Independent Spanish Broadcasters Association

By: _____/s/_____
Francisco Montero, Esq.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
(703) 812-0480

Dated: July 30, 2008

ATTACHMENT A

Broadcast Joint Petitioner's Name (in alphabetical order)	Original Band Station Call Sign	Expanded Band Station Call Sign	Five Year Expiration Date
Bryan Broadcasting Corporation	KZNE	WTAW	2/27/06#
Chisholm Trail Broadcasting Co.	KCRC	KFXY	6/21/2009
Entercom Kansas City License, LLC	KKHK	KXTR	11/19/2006#
Fife Communication Co., LLC	KDNZ	KCNZ	3/29/2006#
Mid-West Management, Inc.	WLMV	WTDY	4/10/2006#
Mortenson Broadcasting Co. of Texas, Inc	KHVN	KKGM	8/21/2007#
Multicultural Radio Broadcasting Licensee, LLC	WNMA WHWH	WJCC WTTM	4/07/06# 4/06/06#
Starboard Media Foundation	WVOI	WCNZ	9/04/2006#
Waitt Omaha, LLC	KYDZ	KOZN	2/28/06#
Way Broadcasting Licensee, LLC	KLIB	KFSG	4/07/06#

- Expiration Dates already past; extended by STA grants

Public Interest Group Joint Petitioner's Name (in alphabetical order)
Independent Spanish Broadcasters Association
Minority Media and Telecommunications Council

ATTACHMENT B

RECEIPT COPY

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

RECEIVED

MAR 27 2006

Federal Communications Commission
Office of Secretary

In the matter of	)	
	)	
Implementation of the AM Expanded Band Allotment Plan	)	MM Docket No. 87-267
	)	
	)	

To: The Commission

PETITION FOR STAY OF EFFECTIVE DATES

The Joint Petitioners identified in Attachment A hereto, consisting of radio broadcasters operating in the expanded AM band (1605-1705 kHz), as well as public interest organizations that support diversity of programming, pursuant to Section 1.43 of the Commission's Rules, 47 C.F.R. § 1.43, herein petition the Commission to stay the effective date of its requirement that a licensee operating a radio station in the expanded AM band return one of its AM allotments for cancellation on the fifth anniversary of the date on which the Commission issued the expanded AM band license. The Commission implements this requirement through a condition placed on expanded AM band licenses as well as through Note 10 to Section 73.3555 of the rules, 47 C.F.R. § 73.3555, Note 10. The Joint Petitioners believe that the licenses of the stations which would otherwise be surrendered could serve a valuable public interest goal of increasing broadcast diversity, and therefore have joined together in this broadcaster/public interest organization coalition to support the requests submitted herein.

Simultaneous with filing this Petition for Stay, Joint Petitioners have also filed a "Request For Waiver Of Rules Requiring Return Of AM Licenses," (the "Waiver Request") asking the Commission to waive its rules to: (a) delay, for one year, the date by which AM licensees operating in the expanded band must return one of their AM allotments, and (b) specify that prior to the extended date on which one allotment must be returned, an AM licensee holding an expanded band authorization could sell its original allotment to a small business entity for a discounted price. After that transaction, both the expanded band station and the original band station could continue to operate throughout their respective license terms, with no requirement that either license be returned to the Commission after the transition period.[1]

---

[1] The specific waivers requested in the Waiver Request ask that the Commission:

1. Temporarily waive the multiple ownership rule by extending the disposition required by Note 10 to Section 73.3555, 47 C.F.R. § 73.3555, so that the exemptions to the multiple ownership rule established in Note 9 would not apply during the period when an AM licensee is permitted to hold both an expanded band AM license and a paired in-band AM license;
2. Modify the five-year disposition condition imposed on all expanded AM band stations for at least one year;
3. Waive Section 73.1150(c), 47 C.F.R. § 73.1150(c), so that prior to the extended disposition date, the licensee of an expanded band AM station could assign or transfer control of one of its stations to an entity qualifying as a "small business" as that term applies to radio broadcasters in the Small Business Association's regulations, 13 C.F.R. § 121.201 (2006) (*i.e.,* an entity having annual gross receipts under $6.5 million). Pursuant to this waiver,
    - The price for which a licensee could sell its authorization could not exceed 75% of the station's fair market value, using a system comparable to that which exists under the Commission's distress sale policy.[1] Further, the assignee or transferee would be subject to a anti-trafficking period of three years to ensure that the public interest benefits of the price discount enjoyed by the assignee or transferee will be enjoyed by the public for a substantial period of time.

The arguments presented in the companion Waiver Request provide adequate justification for a stay, based on long-standing Commission precedent finding that a stay is warranted where a petitioner demonstrates that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest favors granting a stay. *See, e.g., Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); *Washington Metropolitan Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

As an initial matter, the justification provided for the Waiver Request proves the likelihood of its success on the merits and need not be repeated here. Second, Joint Petitioners will suffer irreparable harm absent grant of a stay, due to the impending deadlines for many expanded band stations to return one of their AM allotments to the Commission. Absent a stay, the majority of expanded band licensees will be required to return one of their licenses in the coming months, thereby mooting the waivers that Joint Petitioners have requested. In the Waiver Request, Joint Petitioners explained that the substantial benefits of the local service delivered by the stations compel that the licenses be

---

- After a station's assignment or transfer, both the expanded band station and the original band station could operate throughout their respective license terms, with neither license having to be returned to the Commission following the transition period; and
- Any licensee already qualifying as a "small business" (or attaining that status during the pre-divestiture year) would not need to dispose of its station at all, although if it sells one of the stations within the three year anti-trafficking period it would be expected to sell to another small business at a price not to exceed 75% of fair market value.

4. Reinstate AM band authorizations that have already been returned to the Commission in reliance on the existing policy, extending their disposition dates by the same one year period specified in paragraph 2 above.

preserved. If the stations are forced to terminate operations before the Waiver Request is decided, those local service benefits will disappear. Accordingly, granting a stay will maintain the *status quo* so that the Commission has adequate time to consider the proposals in the Waiver Request without sacrificing the benefits to be gained if the Request is granted.

Third, grant of a stay would not cause substantial harm to any party because it only maintains the longstanding *status quo* for a brief period while the Commission considers the Waiver Request. Granting a stay will not result in any additional frequency congestion beyond that which already exists and will not exacerbate the concerns that initially prompted the Commission to adopt the five-year deadline. Moreover, to the extent some of the AM licensees plan to turn in their expanded band stations and continue to operate their original stations, the continued effectuation of current policy will have no public interest benefit whatsoever. Finally, in the absence of a stay, many AM stations providing valuable service to the public will be forced to terminate their operations. The Commission's belief that any loss of service is *prima facie* inconsistent with the public interest proves the need for granting the requested relief.[2]

Accordingly, the Commission should stay the five-year deadline by which expanded AM band licensees must return one of their authorizations, until such time as the

---

[2] *See West Michigan Telecasters, Inc. v. FCC*, 460 F.2d 883 (D.C. Cir. 1972); *Coronado Communications Company,* 8 FCC Rcd. 159, 162 (Video Services Div. 1992), *citing Hall v. FCC,* 237 F.2d 567 (D.C. Cir. 1956).

Commission has addressed the issues raised in Joint Petitioners' "Request For Waiver Of Rules Requiring Return Of AM Licenses" in this proceeding.

Respectfully submitted,

AMFM Radio Licenses, LLC
Capstar TX Limited Partnership
CC Licenses, LLC
Clear Channel Broadcasting Licenses, Inc.

By: /s/
Richard J. Bodorff
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-3145
Its Attorney

Entercom Kansas City License, LLC

By: /s/
Brian M. Madden
Leventhal Senter & Lerman PLLC
2000 K Street, N.W., Suite 600
Washington, DC 20006
(202) 416-6770
Its Attorney

Chisholm Trail Broadcasting Co.

By: /s/
Hiram Champlin
P.O. Box 952
Enid, OK 73702
(580) 237-1390

Fife Communication Co., LLC

By: /s/
James Coloff
721 Shirley Street
Cedar Falls, IA 50613
(319) 277-5202

Hundley Batts, Sr. and Virginia Caples

By: /s/
Hundley Batts, Sr.
P.O. Box 920
Huntsville, AL 35804

Mid-West Management, Inc.

By:
David D. Oxenford
Davis Wright Tremaine LLP
1500 K Street, N.W., Suite 450
Washington, DC 20005
(202) 508-6656
Its Attorney

Mortenson Broadcasting Co. of Texas, Inc.

By: /s/
Jerrold D. Miller
Miller and Neely, PC
6900 Wisconsin Avenue, Suite 704
Bethesda, MD 20815
(301) 986-4160
Its Attorney

Multicultural Radio Broadcasting Licensee, LLC
Way Broadcasting Licensee, LLC

By: /s/
Mark N. Lipp
Vinson & Elkins, LLP
The Willard Office Building
1455 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 639-6771
Its Attorney

Starboard Media Foundation

By: /s/
Denise B. Moline
1212 South Naper Boulevard, #119-215
Naperville, IL 60565
(630) 753-0112
Its Attorney

Waitt Omaha, LLC

By: /s/
Lawrence Bernstein
Lawrence Bernstein Law Offices
3510 Springland Lane, N.W.
Washington, DC 20008
(202) 296-1800
Its Attorney

Independent Spanish Broadcasters Association

By: /s/
Amador Bustos, President
1300 North 17th Street, 11th Floor
Arlington, VA 22209
(703) 812-0480

Minority Media and Telecommunications Council

By: /s/
David Honig
3636 16th Street, N.W., #B-366
Washington, DC 20010
(202) 332-7005
Its Attorney

National Association of Black Owned Broadcasters

By: /s/

James Winston
Rubin Winston Diercks Harris
& Cooke, LLP
1155 Connecticut Avenue, N.W., 6th Floor
Washington, DC 20036
(202) 861-0870
Its Attorney

Office of Communication of the United Church of Christ, Inc.

By: /s/

Rev. Lee Foley
700 Prospect Avenue
Cleveland, OH 44115
(216) 736-2173

Of Counsel:

Jeneba Ghatt
Nicolaine Lazarre
The Ghatt Law Group LLC
2 Wisconsin Circle
Suite 700
Chevy Chase, MD 20815
(301) 807-7936

March 27, 2006

ATTACHMENT A

Broadcast Joint Petitioner's Name (in alphabetical order)	Original Band Station Call Sign	Expanded Band Station Call Sign	Five Year Expiration Date
AMFM Radio Licenses, LLC	WAXP	WVVM	2/10/2009
Capstar TX Limited Partnership	KVHN	KWHN	5/16/2006
CC Licenses, LLC	WDDD	WRLL	License application pending
Chisholm Trail Broadcasting Co.	KCRC	KFXY	6/21/2009
Clear Channel Broadcasting Licenses, Inc.	KZRA	KVNS	2/26/2006[#]
Entercom Kansas City License, LLC	KKHK	KXTR	11/19/2006
Fife Communication Co., LLC	KDNZ	KCNZ	3/29/2006
Hundley Batts, Sr. and Virginia Caples	WEUV	WEUP	10/12/2006
Mid-West Management, Inc.	WLMV	WTDY	4/10/2006
Mortenson Broadcasting Co. of Texas, Inc.	KHVN	KKGM	8/21/2007
Multicultural Radio Broadcasting Licensee, LLC	WNMA WHWH	WJCC WTTM	2/20/2006[#] 4/06/2006
Starboard Media Foundation	WVOI	WCNZ	9/04/2006
Waitt Omaha, LLC	KYDZ	KOZN	2/28/2006[*#]
Way Broadcasting Licensee, LLC	KLIB	KFSG	3/29/2006

[*]KOZN is licensed to Waitt Omaha LLC, following a recent Form 316 assignment. KXDZ remains licensed to Waitt Corp Investments, LLC.

[#]Expiration Dates already past

Public Interest Group Joint Petitioner's Name (in alphabetical order)
Independent Spanish Broadcasters Association
Minority Media and Telecommunications Council
National Association of Black Owned Broadcasters
Office of Communication of the United Church of Christ, Inc.

RECEIPT COPY

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

RECEIVED

MAR 27 2006

Federal Communications Commission
Office of Secretary

In the matter of	)	
	)	
Implementation of the AM Expanded Band Allotment Plan	)	MM Docket No. 87-267
	)	
	)	

To: The Commission

REQUEST FOR WAIVER OF RULES REQUIRING RETURN OF AM LICENSES

The Joint Petitioners identified in Attachment A hereto, consisting of radio broadcasters operating in the expanded AM band (1605-1705 kHz), as well as public interest organizations that support diversity of programming, pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, herein request that the Commission waive its policies requiring that AM licensees operating in the expanded AM band return one of their AM allotments for cancellation on the fifth anniversary of the date on which the Commission issued the license for the expanded AM band station. The Joint Petitioners also request that the Commission waive related requirements prohibiting the sale of a station during that period, to allow the transfer of stations to recognized small businesses. The Joint Petitioners believe that the preservation of the licenses of the stations which would otherwise be surrendered would serve a valuable public interest goal by increasing broadcast diversity, and therefore have joined together in this broadcaster/public interest organization coalition to support the requests submitted herein.[1]

---

[1] This common effort by broadcasters and public interest groups to improve broadcast service and simultaneously promote diversity should call to mind the *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC2d 979, 983 (1978) ("*Minority Ownership Policy Statement*") in which the Commission noted with favor the support for its tax certificate and

As Joint Petitioners discuss further herein, due to the loss of service that would result (and in some cases has already resulted), the requirement that dual AM band licensees return one of their AM allotments after the conclusion of an arbitrary "transition period" no longer promotes the public interest, nor does this policy reflect the most effective use of AM band spectrum. Rather than requiring this result, the Commission should waive its rules to delay the return date for at least one year, during which time each AM licensee holding an expanded band authorization could transfer one of its allotments to a small business entity for a discounted price so that, at the end of the transition period, all the stations which would otherwise go silent would be held by qualified small businesses, which could continue their service to the public. These stations, which in many cases are already providing unique programming to the public, will contribute to overall broadcast diversity. Given the fact that the AM band has not developed in the manner envisioned by the FCC when these rules were first developed, this change in the ultimate disposition of these stations is in the public interest. Thus, for the reasons set forth in more detail below, the Joint Petitioners request that this waiver be granted.[2]

BACKGROUND

Nearly 16 years ago, the Commission released a decision significantly revising the regulatory environment for the AM radio service as part of its comprehensive program "for the

---

distress sale policies by, *inter alia*, the American Broadcasting Companies, General Electric Broadcasting Company, the Congressional Black Caucus and the National Association of Broadcasters. Recognizing that much more needed to be done to advance minority ownership, the Commission added that it "welcome[d] petitions for rulemaking or other submissions from concerned parties as to other actions we might take to reach our objectives." *Id.* at 984.

[2] Simultaneous with the filing of the instant Request, Joint Petitioners are also filing a Request for Stay of the same AM divestiture requirement.

transformation and revitalization of the AM broadcast service by the year 2000."[3] In that proceeding, the Commission adopted a series of proposals designed to improve the condition of the AM radio service, including opening ten frequencies in the expanded AM band, 1605-1705 kHz, and allowing only existing AM band licensees to apply for those frequencies. The Commission explained that this "migration" process would allow the relocated stations to operate in a less congested frequency environment where they could provide "Model I" service, allowing for fulltime operation with stereo, competitive technical quality, 10 kW daytime power, 1 kW nighttime power, non-directional antennas, and 400-800 km spacing between co-channel stations. *Id.* at 6303.

As a part of the migration plan, the Commission also required broadcasters that were licensed for the expanded AM band to surrender one of their AM licenses -- either the existing band license or the expanded band license -- five years after the initial license date of the expanded band authorization.[4] The Commission based this requirement on its belief that

---

[3] *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273, 6274 (1991) ("*Expanded AM Band Order*"), *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993) ("*Expanded AM Band First Recon. Order*"), *recon. granted in part and denied in part*, 10 FCC Rcd 12143 (1995), *recon. denied*, 11 FCC Rcd 12444 (1996), *recon. granted in part and denied in part*, 12 FCC Rcd 3361 (1997), *recon. denied.* 13 FCC Rcd 21872 (1998), *appeal docketed sub nom. Sunrise Broadcasting of New York, Inc. v. FCC*, No. 97-1412 (D.C. Cir. June 25, 1997); *FCC motion for remand of the record granted without hearing* No. 97-1412, 1998 WL 202138 (D.C. Cir. Mar. 6, 1998), *on remand* 15 FCC Rcd 17018 (2000).

[4] Although the Commission adopted the five-year deadline in the *Expanded AM Band Order*, it never codified this obligation in a rule. Rather, as discussed *infra,*, the Commission imposes this requirement only through (1) a condition imposed expanded AM band licenses and (2) a note to its multiple ownership rule forbearing, for a five-year period, from applying the radio duopoly and national market limit rules to AM licensees holding expanded band authorizations, 47 C.F.R. § 73.3555, Note 10. Accordingly, the Commission may effect the result sought by Joint Petitioners through a temporary waiver of the multiple ownership rule, a modification of the license conditions, and the related relief discussed herein. However, if the Commission would prefer to treat this Request as a petition for rulemaking under 47 C.F.R. § 1.401, Joint Petitioners would not object as long as their Request for Stay is granted and a stay would remain in effect while the rulemaking is in progress.

returning AM authorizations would reduce congestion and interference in the AM band. However, the Commission established no alternate use for the spectrum, expecting that following the five-year transition period, the existing band station of a licensee operating in the expanded band "will go silent." *Id.* at 6320. The Commission also prohibited an expanded band licensee from assigning or transferring control of only one of its AM band authorizations during this transition period. 47 C.F.R. § 73.1150(c). In addition, the Commission said that it would establish further rules in connection with use and licensing of additional operations in the expanded band. *Id.* at 6308. However, the Commission has never initiated any proceedings for this purpose.

In order for AM broadcasters to operate both their existing band and expanded band stations during the five year period, the Commission created an exception to its broadcast ownership rules so that operation of dual AM stations would neither violate the duopoly rule, 47 C.F.R. § 73.3555(a)(1), nor exceed the national ownership caps, 47 C.F.R. §§ 73.3555(d)(1)(i), 73.3555(d)(1)(ii). *See* 47 C.F.R. § 73.3555, Note 9. The mechanism by which the Commission implemented the five year deadline was to add another note to its ownership rule, as follows:

> Authority for joint ownership granted pursuant to NOTE 9 will expire at 3:00 a.m. local time on the fifth anniversary of the date of issuance of a construction permit for an AM radio station in the 1605-1705 kHz band.

47 C.F.R. § 73.3555, Note 10. The Commission has also notified expanded band licensees of the deadline through a condition imposed on their licenses reading:

> Pursuant to MM Docket 87-267, after the 5 year period starting from the date the facility specified herein is initially licensed, licensee will surrender either the expanded band license or its existing band license.

The Commission explained that this five year term would constitute only the "initial time frame" for the transition period, acknowledging the need for flexibility in enforcing this time limit and

committing to "monitor progress in the use of the expanded band during this period and grant an appropriate extension if factors affecting the overall development of the band warrant such action." *Expanded AM Band Order*, 6 FCC Rcd at 6320. Joint Petitioners submit that an examination of the progress in the use of the expanded band, the AM radio band in general, advances in receiver technology, and broadcast ownership diversity compels the conclusion that the five-year termination period should be modified as set forth herein.

DISCUSSION

The benefit the Commission expected to realize from a licensee's returning its initial AM band authorization – reducing congestion and interference in the AM band – does not justify requiring expanded band stations to return one of their authorizations when doing so would invariably deprive the listening public of a broadcast service-often one longstanding in nature and relied on by thousands of listeners. Rather than having those licenses returned to the Commission, with the expectation that those stations will simply "go silent," Joint Petitioners request that the Commission take the following actions:

1. Temporarily waive the multiple ownership rule by extending the disposition required by Note 10 to Section 73.3555, 47 C.F.R. § 73.3555, so that the exemptions to the multiple ownership rule established in Note 9 would not apply during the period when an AM licensee is permitted to hold both an expanded band AM license and a paired in-band AM license;
2. Modify the five-year disposition condition imposed on all expanded AM band stations for at least one year;
3. Waive Section 73.1150(c), 47 C.F.R. § 73.1150(c), so that prior to the extended disposition date, the licensee of an expanded band AM station could assign or transfer control of one of its stations to an entity qualifying as a "small business" as that term applies to radio broadcasters in the Small Business Association's regulations, 13 C.F.R. § 121.201 (2006) (*i.e.,* an entity having annual gross receipts under $6.5 million[5]). Pursuant to this waiver,

[5] This definition of "small business" was applied in *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 (Report and Order and Notice of Proposed*

- The price for which a licensee could sell its authorization could not exceed 75% of the station's fair market value, using a system comparable to that which exists under the Commission's distress sale policy.[6] Further, the assignee or transferee would be subject to a anti-trafficking period of three years to ensure that the public interest benefits of the price discount enjoyed by the assignee or transferee will be enjoyed by the public for a substantial period of time.

- After a station's assignment or transfer, both the expanded band station and the original band station could operate throughout their respective license terms, with neither license having to be returned to the Commission following the transition period; and

- Any licensee already qualifying as a "small business" (or attaining that status during the pre-divestiture year) would not need to dispose of its station at all, although if it sells one of the stations within the three year anti-trafficking period it would be expected to sell to another small business at a price not to exceed 75% of fair market value.

Rulemaking), 18 FCC Rcd 13620, 13810-12 (2003) ("*2003 Broadcast Ownership Report")* (making small businesses the eligible parties for purchasing radio clusters that must be broken up if sold). The *2003 Broadcast Ownership Report* was affirmed in part and reversed in part *sub nom. Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004) ("*Prometheus*"). In *Prometheus*, MMTC and other minority organizations asked the Court to require the Commission to use, instead of the small business classification, the potentially race-conscious classification "socially and economically disadvantaged business" ("SDBs") to define the target group for a pro-diversity initiative. The Court upheld the Commission's use of the small business classification, adding that "[w]e anticipate, however, that by the next quadrennial review the Commission will have the benefit of a stable definition of SDBs, as well as several years of implementation experience, to help it reevaluate whether an SDB-based waiver will better promote the Commission's diversity objectives." *Id.* at 428 n. 70. Toward that end, the Commission has undertaken an inquiry, MB Docket No. 04-228 ("Ways to Further Section 257 Mandate and to Build on Earlier Studies," PN , DA 04-1690 (Media Bureau, June 15, 2004) in response to which it has received a wealth of comments that are presently under consideration. Consequently, in this Request, Joint Petitioners are not calling on the Commission to adopt a race conscious classification. Nonetheless, on their own motion some of the Joint Petitioners plan to assist minority broadcasters to take advantage of such relief as the Commission might provide in response to the instant Request.

[6] The distress sale policy (still in effect although seldom used anymore) was created in the *Minority Ownership Policy Statement*, 68 FCC2d at 983. In 1980, the Commission held that a distress sale price should not to exceed 75% of fair market value. *See Lee Broadcasting*, 76 FCC2d 462 (1980). Joint Petitioners believe that a comparable discount for the dispositions of stations as contemplated here would serve two valuable purposes: (1) respond to the well documented need of minorities and small entrepreneurs for access to capital in broadcast transactions (*see* n. 12 *infra*) and (2) substantially eliminate the possibility that the sales of any of these stations to small businesses would not take place within the one year time frame proposed herein.

4. Reinstate AM band authorizations that have already been returned to the Commission in reliance on the existing policy, extending their disposition dates by the same one year period specified in paragraph 2 above.[7]

The primary benefit of this approach is that it would allow broadcasters to continue providing service to the public over existing AM stations, thereby furthering the Commission's long-held belief that any loss of service is *prima facie* inconsistent with the public interest, unless such loss is outweighed by other public interest considerations.[8] AM broadcasters operating in the expanded band provide valuable programming over their original band stations, in recognition of the loyalty some listeners feel to their "old" AM stations and the inability of some listeners to receive expanded band broadcasts. In addition, numerous AM broadcasters have specifically targeted the programming on their original band stations to serve the needs of minorities and other niche audiences, in a way that was impractical before AM stations had a second outlet for serving the market.

The public interest benefits of these stations are evident from an examination of the programming carried on stations which would be surrendered to the FCC if the current policy is not amended. For instance, in both Madison, Wisconsin and Cedar Falls, Iowa, local community

---

[7] Reinstatement of these facilities *nunc pro tunc* would ensure that broadcasters who quickly constructed facilities that were fully in compliance with Commission rules, and had to surrender their licenses because the five years had already elapsed before this Request was filed, will not be penalized for having acted expeditiously. Licenses reinstated in this manner should be reinstated with the facilities with which they were operating at the time the licenses were tendered to the FCC for cancellation or when these stations otherwise went silent. For instance, joint petitioner Waitt Omaha, LLC, licensee of expanded band station KOZN, Bellevue, Nebraska, was recently compelled to discontinue operations of Station KYDZ, which had provided a local service to its community for almost two decades.

[8] *See West Michigan Telecasters, Inc. v. FCC*, 460 F.2d 883 (D.C. Cir. 1972); *Coronado Communications Company*, 8 FCC Rcd 159, 162 (Video Services Div. 1992), *citing Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956). In other contexts, the Commission has recognized the public's legitimate expectation that existing service will continue. *See, e.g., Letter to Fort Bend Broadcasting Company, DA 06-631, (Chief, Audio Division, March 21, 2006).*

groups have approached the station owners about the need for local Spanish-language programming, which was not previously available in those markets. In both communities, the stations that would be surrendered are now operating with Spanish language formats, have received widespread acceptance in their communities, but would disappear if the current policies are not changed. Similarly, in Kansas City, a local Hispanic group has entered into a programming agreement with Entercom Kansas City License, LLC by which this major market is provided Spanish language programming on an in-band AM station. That programming may well disappear if that station's in-band license is required to be surrendered under the current policies. Other licenses at risk for surrender or cancellation are both owned by and provide programming tailored to the needs of minorities in the Huntsville, Alabama; Miami, New York City; San Francisco and Seattle markets. Other stations to be lost provide significant local service. KCRC in Enid, Oklahoma provides live coverage of all of Enid High School's football and baseball games, all Enid American Legion baseball games for the 2005 World Champion team, 7 daily local newscasts, two daily local sportscasts, 48 daily weather updates, a daily local interview program, and service as the FEMA designated primary station for a 5 county area.

In these and other cases, valuable services providing a diversity of local programming may be lost if those broadcasters must terminate service on one of their stations at the conclusion of the current five-year transition period. Furthermore, it is unclear to what extent the return of the spectrum would create any additional opportunities for new outlets in other markets, or for real benefits to the AM band. As set forth in more detail below, the benefits which the Commission foresaw for this migration have not come to pass. Moreover, no plans have been made for any further exploitation of the Expanded Band, notwithstanding the Commission's initial intention. *See Expanded AM Band Order*, 6 FCC Rcd. at 6308. Accordingly, absent grant

of the waivers requested herein, there would be little or no public interest benefit from the loss of diversity contemplated by current policy, and little or no justification for the termination of service from these operational broadcast stations.

Second, allowing an AM authorization held by an expanded band licensee to be sold to a small business entity directly furthers the Commission's goal of promoting diversity of ownership by encouraging station ownership by small businesses and minorities.[9] Diversity has been and remains an important goal of the Commission.[10] Unfortunately, the most important tool to promote minority ownership that was available to the Commission in 1991 – the tax certificate policy -- is no longer available.[11] For this and other reasons, minority ownership has stagnated at about 4.2% of radio ownership and 1.5% of television ownership, representing only about 1.3% of industry asset value. *See* Minority Media and Telecommunications Council, "The Disparity between Minority and Nonminority Radio Ownership," October 30, 2003, p. 1. This

---

[9] Interestingly, one of the Commission's original goals in creating the expanded band was to promote ownership diversity. *See Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments,* 78 FCC 2d 1235, 1256 (1980) (Comm'r Brown, concurring) (discussing role of diversity in U.S. position at the 1979 WARC, resulting in the creation of expanded AM band). Thus, a grant of this Request would be consistent with the Commission's original purposes when it developed the expanded band.

[10] *See, e.g., 2003 Broadcast Ownership Report,* 18 FCC Rcd at 13628. It is well established that diversity (specifically, minority ownership) should be considered in spectrum management proceedings. *See, e.g., Garrett v. FCC*, 513 F.2d 1056 (D.C. Cir. 1975); *Clear Channel Broadcasting in the AM Broadcast Band (Report and Order)*, 78 FCC2d 1345, 1368-69 (1980), *recon. denied*, 83 FCC2d 216 (1980), *aff'd sub nom. Loyola University v. FCC*, 670 F.2d 1222 (D.C. Cir. 1982) (including minority ownership as one justification for waivers of acceptance criteria for construction permit applications that proposed new service on domestic Class I-A clear channel AM frequencies).

[11] The tax certificate policy, carried out pursuant to 26 U.S.C. § 1071, permitted an owner of a radio or television station or cable system to sell to a minority owned enterprise and thereby defer capital gains and/or reduce the basis of certain depreciable property. *See Minority Ownership Policy Statement*, 68 FCC2d at 983. Congress repealed the policy in Deduction for Health Insurance Costs of Self-Employed Individuals, Pub. L. No. 104-78, § 2, 109 Stat. 93, 93-94 (1995). Between 1978 and 1995, over 200 stations were sold to minorities pursuant to the tax certificate policy, more than tripling the number of minority owned broadcast stations.

level of participation in ownership is of course far less than the approximately 32% of the population now comprised of members of minority groups. Further, as the Commission's Advisory Committee on Diversity for Communications in the Digital Age has found, minority broadcasters continue to lack access to capital needed to enter the market and grow their companies.[12]

Weighed against these significant public interest benefits, the reasons underlying the Commission's decision to require dual AM licensees to return one of their authorizations to the Commission within five years seem far less significant in 2006 than they did in 1991. To the extent that frequency congestion and interference in the AM band remain valid concerns today, any benefits to be derived from returning an AM allotment will be significantly diminished simply because the expanded AM band has not developed as the Commission hoped when it adopted the *Expanded AM Band Order*. According to a recent *Radio World* article, out of the 88 AM stations originally allowed to file for expanded band authorization, only 56 stations or about 64% are currently operating in the expanded AM band. Only 66 licensees even elected to file construction permit applications, and the FCC ultimately issued permits to 65 stations. Thus, nine stations allowed their CPs to expire without construction or turned in their expanded-band

---

[12] *See* Report of the Financial Issues Subcommittee, Advisory Committee on Diversity for Communications in the Digital Age, Approved by the full Committee May 2004 (describing, in detail, the barriers to access to capital that face minority broadcasters). The Commission has not hesitated to revise its policies to eliminate barriers to access to capital by minorities and small broadcasters. *See, e.g., Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301) and Modification of Processing Standards for Determining the Financial Qualifications of Broadcast Station Purchasers*, 87 FCC2d 200, 201 (1981) (repealing the excessive financial qualifications standards in *Ultravision Broadcasting Co.*, 1 FCC2d 544 (1965) because it "conflicts with Commission policies favoring minority ownership and diversity because its stringency may inhibit potential applicants from seeking broadcast licenses").

license.[13] While the bundle of stations eligible for surrender under the five year rule is very substantial in the context of small business ownership opportunity, it is negligible as a means to transform the quality of AM reception. Accordingly, the interference and congestion relief the Commission expected to realize from the returning AM band stations is much less dramatic than anticipated.

Another factor minimizing that relief is that some stations operating in the expanded AM band were not licensed until relatively recently and will not need to vacate their frequencies for years.[14] In fact, in several cases, licenses have not even been granted, meaning that each of those stations will be operating on both their original and expanded frequencies for another five years.[15] In effect, those parties that quickly constructed facilities that were fully in compliance with Commission rules would be penalized for their prompt actions, if they now have to turn in one of their licenses while other similarly situated stations continue to operate.

Moreover, it has also become clear that some AM licensees holding dual authorizations will choose to turn in their expanded band authorizations, rather than their original band ones, further limiting the interference and congestion benefits the Commission expected. According to a recent FCC filing by Salem Media of Colorado, which also seeks relief from the five-year condition, were the Commission to require Salem to relinquish a license at the end of its five-

---

[13] *See* "Life on Expanded Band Is (Pretty) Good," RW Online, March 1, 2006, at http://www.rwonline.com/reference-room/special-report/2006.03.01-04_rw_am_4.shtml (accessed March 16, 2006).

[14] *E.g.,* WNRP, Gulf Breeze, FL (licensed August 3, 2005); WDHP, Frederiksted, VI (licensed Sept. 27, 2004); KTFH, Seattle, WA (licensed July 15, 2004); KFXY, Enid, OK (licensed June 21, 2004); WFNA, Charlotte, NC (licensed March 15, 2004).

[15] See, e.g. WDSS, Ada, Michigan, FCC File Number BL-19990331DC, which is still pending. *See, also,* the varying expiration dates set out on Attached 1 hereto.

year term, Salem would shut down operations on its expanded band station.[16] The *Radio World* article similarly observed that "[n]ot all broadcasters were convinced a move to the expanded band would have proved beneficial," quoting a Commission source as saying some licensees "have already chosen for a variety of reasons to keep their existing frequency." "Life on Expanded Band Is (Pretty) Good," note 14, *supra.* The likelihood that other dual AM band licensees will return their expanded band stations, rather than their initial band ones, further demonstrates the minimal benefits to be gained by strictly enforcing the five-year term.

CONCLUSION

Throughout its protracted expanded AM band proceedings, the Commission recognized the need for flexibility in connection with the deadline for returning an authorization, including acknowledging its "responsibility to reevaluate regulatory standards over time and modify policies in response to changes in the broadcast industry." *Review of the Technical Assignment Criteria for the AM Broadcast Service,* 13 FCC Rcd 21872, 21874 (1998). In the 15 years since the Commission adopted its rules for the migration to the expanded band, the circumstances have changed. In 1991, the Commission expected that the expanded band and other technical changes would reinvent the AM band. These changes have not occurred. In 1991 the Commission knew that minority ownership was growing steadily due largely to the tax certificate policy.[17] That premise no longer applies. These changed circumstances dramatically demonstrate that the

---

[16] *See* Station KBJD(AM), Denver, CO, Facility ID 87151, "Request for Relief from License Condition," filed January 9, 2006, at 3.

[17] *See Expanded AM Band First Recon. Order,* 8 FCC Rcd at 3261 (declining to adopt minority ownership incentives for expanded band ownership because it had "address[ed] the need to increase opportunities for minority ownership" when it adopted *Revision of Radio Rules and Policies (Reconsideration)*, 7 FCC Rcd 6387 (1992), in which the Commission simply reaffirmed its earlier holding that the existence of the tax certificate and distress sale policies justified relaxation of the local radio ownership rules. *See Revision of Radio Rules and Policies (Report and Order)*, 7 FCC Rcd 2755, 2569-70 (1992).

benefits of the Joint Petitioners' proposal to allow these stations to be placed in the hands of small businesses, and the diversity that would be created from such holdings, far outweigh the limited results the Commission has seen from its migration plan. [18] These circumstances demonstrate that the loss of service that would result by requiring AM licensees to discontinue service is not in the public interest, and mandate that the Commission grant the requested waivers of its rules. As discussed herein, the benefits of granting these waivers, and permitting qualified small businesses to retain and operate these stations, far outweigh any detriment from enforcing the current disposition requirements. In light of these benefits, a grant of this Request would faithfully respond to three key commands of Congress in the 1996 Telecommunications Act: (1) that the Commission periodically review its regulations to ensure that they remain "necessary in the public interest" and, if they do not meet this test, to "repeal or modify" those regulations;[19] (2) that the Commission actively promote the "National Policy" of "diversity of media voices" and report triennially on "any regulations prescribed to eliminate barriers within its jurisdiction";[20] and that the Commission itself exists, *inter alia,* "so as to make available, so far as possible, to all the people of the United States, *without discrimination on the basis of race,*

---

[18] *See Geller v. FCC*, 610 F.2d 983, 980 (D.C. Cir. 1979) ("Even a statute dependent for its validity on a premise extant at the time of enactment may become invalid if suddenly that predicate disappears" (*quoting Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547-48 (1924)).

[19] *See* 1996 Telecommunications Act, § 202(h), 110 Stat at 110-12 (instructing the Commission to review biennially its broadcast ownership rules "to determine whether any of such rules are necessary in the public interest as the result of competition." Section 202(h) also requires the Commission to "repeal or modify any regulation it determines to be no longer in the public interest." *Id.* A new multiple ownership rulemaking notice might be issued soon, and therein the Commission will certainly want to show that whatever deregulatory steps it might propose are being thoughtfully balanced with steps like those proposed here that would promote diversity and stimulate new entry.

[20] *See* 47 U.S.C. §§ 257(a), (c). The next Section 257 triennial report to Congress is due in 2006.

color, religion, national origin, or sex, a rapid, efficient, Nation-wide and world-wide wire and radio communication service.[21]

To be sure, the Commission should never lose sight of the desirability of better AM sound quality. Joint Petitioners will cooperate with the Commission as it finds other ways to satisfy this important objective.

Accordingly, the Commission should grant the waivers and related relief requested herein.

Respectfully submitted,

AMFM Radio Licenses, LLC
Capstar TX Limited Partnership
CC Licenses, LLC
Clear Channel Broadcasting Licenses, Inc.

By: /s/
Richard J. Bodorff
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-3145
Its Attorney

Entercom Kansas City License, LLC

By: /s/
Brian M. Madden
Leventhal Senter & Lerman PLLC
2000 K Street, N.W., Suite 600
Washington, DC 20006
(202) 416-6770
Its Attorney

Chisholm Trail Broadcasting Co.

By: /s/
Hiram Champlin
P.O. Box 952
Enid, OK 73702
(580) 237-1390

Fife Communication Co., LLC

By: /s/
James Coloff
721 Shirley Street
Cedar Falls, IA 50613
(319) 277-5202

[21] 47 U.S.C. §151 (italicized language added in the 1996 Telecommunications Act).

Hundley Batts, Sr. and Virginia Caples

By: /s/
Hundley Batts, Sr.
P.O. Box 920
Huntsville, AL 35804

Mid-West Management, Inc.

By: _____
David D. Oxenford
Davis Wright Tremaine LLP
1500 K Street, N.W., Suite 450
Washington, DC 20005
(202) 508-6656
Its Attorney

Mortenson Broadcasting Co. of Texas, Inc.

By: /s/
Jerrold D. Miller
Miller and Neely, PC
6900 Wisconsin Avenue, Suite 704
Bethesda, MD 20815
(301) 986-4160
Its Attorney

Multicultural Radio Broadcasting Licensee, LLC
Way Broadcasting Licensee, LLC

By: /s/
Mark N. Lipp
Vinson & Elkins, LLP
The Willard Office Building
1455 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 639-6771
Its Attorney

Starboard Media Foundation

By: /s/
Denise B. Moline
1212 South Naper Boulevard, #119-215
Naperville, IL 60565
(630) 753-0112
Its Attorney

Waitt Omaha, LLC

By: /s/
Lawrence Bernstein
Lawrence Bernstein Law Offices
3510 Springland Lane, N.W.
Washington, DC 20008
(202) 296-1800
Its Attorney

Independent Spanish Broadcasters Association

By: /s/
Amador Bustos, President
1300 North 17th Street, 11th Floor
Arlington, VA 22209
(703) 812-0480

Minority Media and Telecommunications Council

By: /s/
David Honig
3636 16th Street, N.W., #B-366
Washington, DC 20010
(202) 332-7005
Its Attorney

National Association of Black Owned Broadcasters

By: /s/
James Winston
Rubin Winston Diercks Harris
& Cooke, LLP
1155 Connecticut Avenue, N.W., 6th Floor
Washington, DC 20036
(202) 861-0870
Its Attorney

Office of Communication of the United Church of Christ, Inc.

By: /s/
Rev. Lee Foley
700 Prospect Avenue
Cleveland, OH 44115
(216) 736-2173

Of Counsel:

Jeneba Ghatt
Nicolaine Lazarre
The Ghatt Law Group LLC
2 Wisconsin Circle
Suite 700
Chevy Chase, MD 20815
(301) 807-7936

March 27, 2006

ATTACHMENT A

Broadcast Joint Petitioner's Name (in alphabetical order)	Original Band Station Call Sign	Expanded Band Station Call Sign	Five Year Expiration Date
AMFM Radio Licenses, LLC	WAXP	WVVM	2/10/2009
Capstar TX Limited Partnership	KVHN	KWHN	5/16/2006
CC Licenses, LLC	WDDD	WRLL	License application pending
Chisholm Trail Broadcasting Co.	KCRC	KFXY	6/21/2009
Clear Channel Broadcasting Licenses, Inc.	KZRA	KVNS	2/26/2006[#]
Entercom Kansas City License, LLC	KKHK	KXTR	11/19/2006
Fife Communication Co., LLC	KDNZ	KCNZ	3/29/2006
Hundley Batts, Sr. and Virginia Caples	WEUV	WEUP	10/12/2006
Mid-West Management, Inc.	WLMV	WTDY	4/10/2006
Mortenson Broadcasting Co. of Texas, Inc.	KHVN	KKGM	8/21/2007
Multicultural Radio Broadcasting Licensee, LLC	WNMA WHWH	WJCC WTTM	2/20/2006[#] 4/06/2006
Starboard Media Foundation	WVOI	WCNZ	9/04/2006
Waitt Omaha, LLC	KYDZ	KOZN	2/28/2006[*#]
Way Broadcasting Licensee, LLC	KLIB	KFSG	3/29/2006

[*]KOZN is licensed to Waitt Omaha LLC, following a recent Form 316 assignment. KXDZ remains licensed to Waitt Corp Investments, LLC.

[#]Expiration Dates already past

Public Interest Group Joint Petitioner's Name (in alphabetical order)
Independent Spanish Broadcasters Association
Minority Media and Telecommunications Council
National Association of Black Owned Broadcasters
Office of Communication of the United Church of Christ, Inc.