

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

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| In the Matter of  | ) |                      |
|   | ) |                      |
| Promoting Diversification of Ownership<br>In the Broadcasting Services  | ) | MB Docket No. 07-294 |
|   | ) |                      |
| 2006 Quadrennial Regulatory Review –<br>Review of the Commission’s Broadcast<br>Ownership Rules and Other Rules Adopted<br>Pursuant to Section 202 of the<br>Telecommunications Act of 1996 | ) | MB Docket No. 06-121 |
|   | ) |                      |
| 2002 Biennial Regulatory Review – Review of<br>the Commission’s Broadcast Ownership Rules<br>and Other Rules Adopted Pursuant to Section<br>202 of the Telecommunications Act of 1996       | ) | MB Docket No. 02-277 |
|   | ) |                      |
| Cross-Ownership of Broadcast Stations and<br>Newspapers   | ) | MM Docket No. 01-235 |
|   | ) |                      |
| Rules and Policies Concerning Multiple<br>Ownership of Radio Broadcast Stations in<br>Local Markets   | ) | MM Docket No. 01-317 |
|   | ) |                      |
| Definition of Radio Markets   | ) | MM Docket No. 00-244 |
|   | ) |                      |
| Ways to Further Section 257 Mandate and To<br>Build on Earlier Studies  | ) | MB Docket No. 04-228 |
|   | ) |                      |

**REPLY COMMENTS OF HISPANIC INFORMATION  
AND TELECOMMUNICATIONS NETWORK, INC.**

Hispanic Information and Telecommunications Network, Inc (“HITN”), by its attorneys,  
hereby submits these reply comments in response to the *Third Further Notice of Proposed  
Rulemaking* in the above-captioned proceeding<sup>1</sup> in which the Federal Communications  
Commission (“FCC” or “Commission”) seeks comment on a number of proposals designed to

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<sup>1</sup> In the Matter of Promoting Diversification of Ownership in the Broadcasting Services, *Report and Order and Third Further Notice of Proposed Rulemaking*, MB Dkt. No. 07-294 *et al.*, FCC 07-217 (rel. March 5, 2008) (“Third FNPRM”).

encourage ownership diversity and new entry in broadcasting. In its earlier comments, HITN recommended that the Commission permit broadcast licenses to sublicense one or more of their digital channels to qualified non-commercial educational entities.<sup>2</sup> At an FCC *En Banc* hearing, the Media Access Project (“MAP”) raised a similar proposal that would create a new license category (the “Class S Proposal”).<sup>3</sup> HITN applauds elements of MAP’s proposal and believes that the Class S license is conceptually consistent with HITN’s recommendation. With some modifications, the Class S Proposal offers an excellent means for promoting greater diversity in broadcast ownership.

## **I. Overview of HITN.**

Founded in 1981, HITN is a charitable, not-for-profit 501(c) corporation whose mission is to promote educational opportunities for Hispanic Americans through multiple media outlets and telecommunications services. HITN holds 85 station authorizations in the Educational Broadband Service (“EBS”) for facilities throughout the United States and Puerto Rico and is the largest holder of EBS licenses in the United States. In 1987, HITN formed HITN-TV, the first and only independent 24-hour-a-day Spanish language public interest television channel in the United States. HITN-TV offers instructional, educational and informational programming designed to educate, empower and enrich its audience. Today, HITN-TV is carried by DirecTV, Dish Network, Comcast Cable, Time Warner Cable, and Charter Communications and is

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<sup>2</sup> See Comments of Hispanic Information and Telecommunications Network, Inc., to the *Third Further Notice of Proposed Rule Making* in MB Dkt. No. 07-294 *et al.* (July 30, 2008) (“HITN Comments”).

<sup>3</sup> See *A Proposal for Diversifying Access to Digital TV Spectrum* Presented by Andrew Jay Schwartzman, President and CEO, Media Access Project to the Federal Communications Commission’s *En Banc* Meeting, Bernard College, July 29, 2008, filed as an attachment to Letter of the Minority Media & Telecommunications Council in MB Dkt. No. 07-294 *et al.* (August 8, 2008).

presently available in more than 30 million U.S. households. HITN remains the first and only non-profit Latino-managed and controlled public interest television network offering educational content to the nation's largest minority group and to all who share an interest in Hispanic news, information, and culture.

**II. Allowing Full-Power Broadcasters to Assign Digital Channels to New Licensees Would Promote Diversity in Broadcast Ownership.**

HITN supports a policy that permits full-power broadcasters to assign one or more of their digital channels to independent qualified noncommercial, non-profit, educational entities. In its earlier comments, HITN recommended a variation on the Share-Time rule presented in the Third FNPRM that would permit qualified noncommercial educational entities to acquire partitioned digital channels from noncommercial educational stations or commercial stations and thereby hold a Commission license for the same and qualify for must carry on cable television systems.<sup>4</sup> Commission confirmation that this variation is permissible will bring new voices to the broadcast industry, while assisting existing noncommercial and other stations in covering the costs of the digital transition.

At a recent FCC *En Banc* Meeting, MAP proposed that the Commission create a new class of full-power commercial TV licenses (the "Class S license") which would broadcast using the multiplexed facilities of full-power commercial digital TV licensees.<sup>5</sup> Interested full-power licensees would voluntarily assign a portion of their bitstream to a qualified applicant in an arm's-length transaction following the procedures set forth in Section 309 of the

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<sup>4</sup> HITN Comments at 3. The FCC sought comment on proposals by the Diversity and Competition Supporters to the Share-Time rule. Third FNPRM, para 87, *citing* 47 C.F.R. § 73.1715.

<sup>5</sup> Class S Proposal at 1.

Communications Act.<sup>6</sup> HITN applauds MAP's proposal and believes that with a few modifications it is consistent with HITN's recommendation to sublicense a digital channel using a variation of the Share-Time rule. Most importantly, the Commission must rule that noncommercial, non-profit, educational entities shall be eligible for assigned digital channel licenses, that those new licenses shall be eligible without reservation for must carry on cable networks, and that parties may negotiate the assignment of those digital channel license without mandatory conditions for high definition broadcasting.

**A. Noncommercial Educational Entities Must be Eligible for Assigned Digital Channel Licenses.**

HITN's recommendation in its earlier comments specifically made the new licenses available to qualified noncommercial, non-profit, educational entities.<sup>7</sup> MAP's proposal would limit the Class S licenses to qualified socially and economically disadvantaged business entities ("SDBs") or to Class A licensees.<sup>8</sup> Whether intentional or not, MAP's proposal unnecessarily denies its benefits to one of the longest standing sources of media diversity – non-profit entities – and should be expanded to provide eligibility for noncommercial, non-profit, educational entities.

In the Third FNPRM, the Commission is seeking comment on the recommendation by DCS to use SDBs for the purposes of promoting diversity in broadcasting.<sup>9</sup> The current

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<sup>6</sup> *Id.*

<sup>7</sup> HITN Comments at 3.

<sup>8</sup> Class S Proposal at 1; DCS states that while the details still need to be fleshed out, they enthusiastically approve of the Class S Proposal. Initial Comments of the Diversity and Competition Supporters to the *Third Further Notice of Proposed Rule Making* in MB Dkt. No. 07-294 *et al.*, at 15, fn 59 (July 30, 2008).

<sup>9</sup> Third FNPRM, para. 81.

definition is that of the U.S. Small Business Administration (“SBA”) which defines an SDB as a small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged.<sup>10</sup> Small business must be organized for profit and meet SBA size standards.<sup>11</sup> Many minority groups, including Hispanic Americans, are presumed to qualify as socially disadvantaged while other individuals can qualify if they can show that they are similarly disadvantaged.<sup>12</sup> Economically disadvantaged individuals are those who are socially disadvantaged and whose ability to compete has been impaired due to diminished capital and credit opportunities.<sup>13</sup>

While HITN supports use of SDBs in the Commission’s efforts to promote diversity in broadcasting, it must not be used to preclude non-profit entities from benefitting from the sub-licensing, and qualified noncommercial, non-profit, educational entities must be eligible for assigned digital channel licenses in addition to SDBs. Noncommercial, non-profit, educational entities present a unique viewpoint and serve a crucial role in the diversity of voices. As the Commission recently recognized “We are aware that ‘attractive’ programming is not necessarily the same as ‘profitable’ programming, particularly where it concerns programming of an

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<sup>10</sup> 13 C.F.R. § 124.105.

<sup>11</sup> 13 C.F.R. § 121.105; 13 C.F.R. § 121.102. What qualifies as a small business varies with the industry. The SBA produces a table of size standards organized by North American Industry Classification System (“NAICS”). Television broadcasting is listed under NAICS Code 515120 and are considered small if they have \$14 million or less in average annual receipts. Available at <[http://www.sba.gov/idc/groups/public/documents/sba\\_homepage/serv\\_sstd\\_tablepdf.pdf](http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf)> (last visited Aug. 29, 2008).

<sup>12</sup> 13 C.F.R. § 124.103.

<sup>13</sup> 13 C.F.R. § 124.104.

educational and informational nature.”<sup>14</sup> With its theme “*educa y entretiene*” HITN-TV offers viewers educational programming such as *Easy ESL*, a Graduate Equivalency Diploma course, and coverage of events of importance to Hispanic Americans that are not covered on mainstream news. Accordingly, the FCC must permit qualified noncommercial, non-profit, educational entities<sup>15</sup> in addition to Class A stations and SDBs to qualify for assigned digital channel licenses.

MAP also proposes that any Class S licensees would have the same public interest obligations as other full power TV licensees, except that Class S licensees would not be permitted to carry commercial matter for more than 50% of their broadcast day.<sup>16</sup> HITN supports MAP’s goal to increase opportunities for noncommercial broadcasters and programmers. If the FCC permits noncommercial, non-profit, educational broadcasters to hold assigned digital channels, the licensee would be subject to the same restrictions as are current noncommercial broadcasters.

**B. Assigned Digital Channel Licenses Must Qualify for Must Carry.**

An important component of both HITN’s sublicensing clarification and MAP’s Class S proposal is that these new licenses be eligible for must carry pursuant to Section 614 of the Communications Act.<sup>17</sup> If the FCC adopts either proposal, the Commission must make clear that

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<sup>14</sup> See In the Matter of Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor to Sirius Satellite Radio inc., Transferee, *Memorandum Opinion and order and Report and Order*, MB Dkt. No. 07-57, FCC 08-178, para. 142 (rel. Aug. 5, 2008).

<sup>15</sup> A noncommercial educational broadcast station is defined at 47 U.S.C. § 397(6).

<sup>16</sup> Class S Proposal at 1.

<sup>17</sup> *Id.*; HITN Comments at 3. Cable systems carry the signals of qualified noncommercial educational television stations in accordance with the provisions of 47 U.S.C § 535(a).

this is an actual license and not a lease, and thereby qualifies for all rights incumbent upon any other full-power station, including must carry on cable systems.

Commenters addressed the importance of must carry in this proceeding when discussing must carry for Class A stations, but these comments are equally applicable to Class S. ZGS Communications, Inc. (“ZGS”) states that must carry is absolutely essential for its Class A stations to survive and without it 70% to 90% of the market is unreachable and their stations will become second-class citizens.<sup>18</sup> Community Broadcasters Association states that the importance of cable carriage to the economic viability of Class A stations is obvious and critical as cable TV controls access to 65% of television’s homes.<sup>19</sup>

While the need for must carry is applicable regardless of classification of the broadcaster, many of the objections raised by commenters to must carry of Class A stations would not apply to the HITN’s recommendation or to the Class S proposal. Assigned digital channel licenses would be operating at full power<sup>20</sup> and cover the same area as a full power station.<sup>21</sup> Furthermore, these channels are digital and will not frustrate cable’s digital transition efforts.<sup>22</sup> Since even the combination of HITN’s recommendation and the Class S proposal would limit the

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<sup>18</sup> Comments of ZGS Communications, Inc. to the *Third Further Notice of Proposed Rule Making* in MB Dkt. No. 07-294 *et al.* at 2, 17 (July 30, 2008).

<sup>19</sup> Comments of the Community Broadcasters Association to the *Third Further Notice of Proposed Rule Making* in MB Dkt. No. 07-294 *et al.* at 5 (July 30, 2008).

<sup>20</sup> Comments of Time Warner Cable, Inc. to the *Third Further Notice of Proposed Rule Making* in MB Dkt. No. 07-294 *et al.* at 10 (July 30, 2008); Comments of the National Cable & Telecommunications Association to the *Third Further Notice of Proposed Rule Making* in MB Dkt. No. 07-294 *et al.* at 4 (July 30, 2008) (“NTCA Comments”); Comments of Cablevision Systems Corporation to the *Third Further Notice of Proposed Rule Making* in MB Dkt. No. 07-294 *et al.* at 4 (July 30, 2008) (“Cablevision Comments”).

<sup>21</sup> NTCA Comments at 9.

<sup>22</sup> Cablevision Comments at 7, 11.

ability to qualify for these licenses to either qualified noncommercial educational entities or small and disadvantaged businesses (including Class A licensees),<sup>23</sup> the number of qualifying entities would be a manageable number and would not overwhelm the cable operator's networks.<sup>24</sup>

**C. Qualified Parties Should Be Permitted to Freely Negotiate All Conditions for Assigned Digital Channels.**

Under MAP's proposal, Class S licenses would be conditioned on a requirement that if the 'main' licensee wishes to broadcast in high definition, the Class S licensee must lease spectrum to the 'main' licensee for that purpose, for a maximum of six hours per day.<sup>25</sup> HITN believes that mandating this condition is unnecessary and would undermine the economic viability of the Class S licensees. The loss of up to six hours a day is a significant reduction in programming time in itself, and the hours chosen will most likely be during evening prime time when broadcasters have their largest audiences. Mandating this condition will weaken the appeal of Class S licenses, diminish the value of the digital channel to prospective programmers, and reduce the likelihood that new entrants make use of Class S licenses. Parties should be free, however, to negotiate terms for high definition broadcasts if they wish.

If the main licensee wishes to retain rights to use the spectrum to broadcast high definition signals at particular times, it can negotiate that condition as part of the arms' length transaction envisioned by MAP. There are too many varied possibilities to the needs of the parties for the Commission to impose such a condition – not all of the main licenses will want to broadcast in high definition, some may want more or less than six hours a day, and some may

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<sup>23</sup> Class S Proposal at 1; HITN Comments at 3-4.

<sup>24</sup> Cablevision Comments at 6; NTCA Comments at 8-9.

<sup>25</sup> Class S Proposal at 1.

only need the spectrum a few times a week. With so many disparate preferences contingent upon numerous factors, the Commission should allow the parties to negotiate the conditions of their contract to suit their individual needs, including if and when the spectrum would revert for the provision of high definition.

**III. Conclusion.**

HITN supports a policy that permits full-power broadcasters to assign one of their digital channels to independent qualified noncommercial educational entities. HITN believes that with a few modifications the Class S license proposal is consistent with HITN's earlier recommendation for a variation of the Share-Time rule. The Commission must ensure that qualified noncommercial, non-profit, educational entities are eligible for any assigned digital channels, and the Commission must make clear that these assignments are actual licenses and therefore qualify for must carry. Lastly, qualified parties should be permitted to freely negotiate all conditions for the assigned digital channels.

Respectfully submitted,

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August 29, 2008

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I, Norman Liu, hereby certify that copies of the foregoing *Reply Comments of Hispanic Information and Telecommunications Network, Inc.* were served this 29<sup>th</sup> day of August, 2008 on the following parties via electronic mail at the following addresses:

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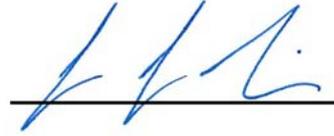
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