

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

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

To: The Commission

REPLY COMMENTS OF CATHOLIC RADIO ASSOCIATION

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SUMMARY

In the *Diversification NPRM*, the FCC considers proposals to expand opportunities for new entrants to obtain spectrum rights and to make available for FM radio operations the spectrum being vacated by licensees of television channels 5 and 6. Several of those filing Comments on these proposals endorsed them as a means of increasing the diversity of programming available in communities.

CRA opposes any suggestion of a causal link between superficial indications of diversity, *i.e.*, ownership or control by a person or persons with ethnic or racial minority heritage, and true diversity of programming options. The merit of these proposals arises from increasing the substantial diversity of programming options available to listeners.

The FCC's efforts to safeguard priorities under Section 307(b) of the Communications Act should accommodate broadcasters and would-be broadcasters able to craft creative solutions allowing licensees to serve their target audiences while delivering programming to the underserved. A "safe harbor" sponsorship period of 4 years, rather than the proposed single year, would prove consistent with the timeline applied to dispositive fair distribution claims in the context of NCE comparative cases.

In addition, the proposed expansion of the FM band should be reserved for noncommercial operations. The recent filing windows for LPFM and NCE FM facilities indicates a ravenous appetite for new noncommercial programming formats persists.

Finally, no broadcasters should be compelled to relocate their operations. Rather, relocation should be voluntary and open to same creativity that CRA encourages with respect to geographic relocations.

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The Catholic Radio Association (“CRA”), by counsel, hereby replies to the Comments submitted in response to the *Report and Order and Third Further Notice of Proposed Rulemaking* (the “*Diversification NPRM*”),¹ in which the Commission announced it is considering measures that would increase the availability of FM radio

¹ *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, MB Docket No. 07-294, 23 FCC Rcd 5922 (2008) (“*Diversity NPRM*”).

spectrum in such a manner as to facilitate increased diversity of programming available to communities across America.

As explained below, CRA finds substantial merit in two of these proposals in particular, with the following caveats: First, the FCC's efforts to safeguard fair distribution priorities under Section 307(b) of the Communications Act should prove flexible enough to accommodate licensees willing to craft creative solutions that permit reaching a target audience while fostering the delivery of programming to the underserved. Second, the FM band should be expanded to satisfy pronounced demand for new services, but the increased spectrum availability should be reserved for noncommercial operations. Third, relocation to the expanded FM band should be voluntary.

Moreover, superficial indications of diversity should not guide a policy aimed at substantial diversity of programming options for Americans. Rather, the merit of these proposals arises from the promise of increasing the availability of spectrum to new entrants, which will serve the public interest in increasing genuinely distinct programming options for listeners and which would therefore contribute to a robust marketplace of ideas.

Accordingly, CRA urges the Commission to reject any regulatory mindset that proceeds from the notion that a causal link exists between superficial diversity in the ethnic or racial heritage of those who own or control broadcast authorizations. Instead, CRA urges the Commission to embrace and adopt proposals that aim to increase programming diversity simply by making spectrum available to for noncommercial

operation by those who do not already own or control a broadcast facility with primary service protections.

A. BACKGROUND

CRA serves as the trade association for radio station licensees (among others)² who provide Catholic programming in their local communities. Just a few years ago, very few radio stations offered substantial amounts of Catholic programming. Today, roughly 130 members of CRA now operate in communities across America. Hundreds of additional CRA members (and potential members) recently participated in the October 2007 filing window for those seeking permits to build new noncommercial educational (“NCE”) FM stations. These applicants anticipate launching new Catholic radio stations as soon as the FCC processing of their applications allows.

In addition, many more Catholic radio apostolates in urban markets -- where congested spectrum bars the authorization of new radio stations -- are attempting to launch Catholic programming formats on existing stations. This phenomenal growth of Catholic radio reflects an enthusiastic response to the 1997 observation of Pope John Paul the Great that "Radio offers perhaps the closest equivalent to what Jesus was able to do with large groups through his preaching."

This explosive growth of the Catholic radio format presents a genuine opportunity to dramatically increase the availability of a unique radio format not already present in most communities historically. Although most noncommercial educational formats

² Working on behalf of official Church institutions, as well as ministries founded and operated by lay members, CRA supports the efforts of Catholic radio programming producers, distributors, and broadcasters alike. Association members include not only broadcast licensees but also program providers, the U.S. Conference of Catholic Bishops, and several Archdioceses. A nine member Episcopal Advisory Board supports CRA's efforts to operate in a manner true to the inherited body of authoritative Catholic teachings.

predominantly air inspirational music from a religious perspective or news-talk programming from a secular perspective, Catholic radio offers listeners a predominantly talk format that is both intellectually robust and profoundly influenced by faith. This programming format is uniquely responsive to listeners and fills a void that has existed for far too long.

* * *

The only real limit on the greater availability of this tremendous enhancement of programming diversity is the limited amount of spectrum that has been reserved for noncommercial use. Many of the Catholic radio apostolates who do not prove successful in their applications submitted in the October 2007 filing window, as well as many more apostolates still forming who did not apply in October of 2007, would take advantage of the increased availability of spectrum for new entrants and for noncommercial educational operations.

In this context, the *Diversity NPRM* requested feedback on two proposals that concern CRA: first, the FCC solicited comment on a proposal to open the FM band to new entrants;³ and second, the FCC sought comment on a proposal to dedicate television channels 5 and 6 in the digital era to additional opportunities for noncommercial educational FM operations.⁴ We herein examine the Comments that were submitted with respect to these two proposals and offer our reactions to those Comments.

³ *Diversity NPRM* at ¶ 98.

⁴ *Id.* at ¶ 100.

B. GREATER FLEXIBILITY

The *Diversity NPRM* invited comments on a proposal that the Commission authorize stations to change their community of license to any community within the same market, provided that “if the community of license being vacated (the “Original Community”) has no other full power AM or FM or LPFM station licensed to it and which originates local programming for at least 15% of its airtime (a “local service LPFM”), the licensee vacating the Original Community must underwrite the cost of licensing, construction and one full year of operation of a new Local Service LPFM to be licensed to the Original Community.”⁵

I. Comments

The Minority Media and Telecommunications Council (“MMTC”) and others weighed in with a perspective that favored a superficial approach to diversifying the media.⁶ Specifically, MMTC reasoned that the current rules result in inferior service to residential areas populated mostly by those belonging to a racial minority group.⁷ Due in part to a history of racism or poverty, MMTC claims, such radio listeners are largely confined to central cities, and the congested spectrum in such areas prevents adequate service by new facilities in distant locations.⁸ MMTC seeks relaxation of the FCC’s rules to permit station relocation closer to their audiences so long as the moving licensee funds construction and initial operation of a replacement low power facility in the community

⁵ *Id.* at ¶ 98.

⁶ Comments of Minority Media and Telecommunications Council, Ex Parte Communications Filing (MMTC Roadmap for Telecommunications Policy, July 21, 2008), 16-17 (August 8, 2008). *See also* Comments of Diversity and Competition Supporters, 22-23 (July 31, 2008).

⁷ *Id.*

⁸ *Id.*

of license being vacated.⁹ Other Comments likewise urged the Commission to encourage diversification by allowing new entrants to acquire spectrum rights that would not be available to incumbents.¹⁰

II. Reply Comments of CRA

Generally, CRA supports any proposal that would allow greater flexibility by licensees to reach their desired audiences so long as: (1) fair distribution principles are not abandoned in the process, and (2) substantial, rather than superficial, diversity of programming options is the likely result. Thus, we reject MMTC's underlying assumption that only so-called "minority-owned" stations are responsive to the needs of residential areas comprised mostly of individuals with a minority racial classification. The Catholic radio programming format -- without any regard for the ethnic or racial classification of those launching a new radio ministry -- would in fact increase substantial diversity anywhere that such programming does not already exist.

We strongly concur with the policy goal of allowing licensees to satisfy Section 307(b) concerns in creative and alternative ways that result in service for the community being vacated, as well as the ability of incumbent broadcasters to target more effectively the audiences they are trying to reach. CRA is not convinced that a one year funding requirement with respect to operations of a replacement LPFM licensee is appropriate or consistent with a creative way of safeguarding fair distribution concerns. Rather,

⁹ *Id.*

¹⁰ Comments of Native Public Media and National Federation of Community Broadcasters, 8 (July 30, 2008).

vacating and replacing parties should be allowed to reach an agreement that, if reasonably likely to result in two viable relocated facilities, could proceed with FCC approval.

The Commission should remain flexible as to how long the vacating licensee would need to underwrite operations of the replacing licensee. However, a “safe harbor” of four years would prove consistent with the timeline applied to protect 307(b) interests when imposing the consequences of winning a NCE FM permit on fair distribution grounds in the comparative process.

B. FM BAND EXPANSION

The *Diversity NPRM* also sought comments on a proposal by Mullaney Engineering¹¹ to reallocate TV Channels 5 and 6 for FM broadcasting, creating tremendous opportunities for new entrants.¹² We refer herein to this proposal as the “FM Band Expansion”. The Commission agreed that this proposal “could yield tremendous opportunities for new entrants” by allowing ample space for AM stations, including minority and women owned AM stations, to be reassigned to operate on new FM frequencies.¹³

I. Supportive Comments

National Public Radio, Inc. (“NPR”) favored the FM Band Expansion as a means of addressing the voracious demand for radio broadcast facilities.¹⁴ NPR also noted that the proposal would enable numerous reserved band operators to modify their facilities to

¹¹ *Petition for Reconsideration and/or Comment of Mullaney Engineering, Inc.*, MM Docket No. 87-268 (Oct. 26, 2007).

¹² *Diversity NPRM*, ¶ 100.

¹³ *Id.*

¹⁴ Comments of National Public Radio, Inc., 3-5 (July 30, 2008).

better serve their communities by eliminating the need for onerous interference protection requirements with respect to television channel 6 licensees.¹⁵

MMTC and others projected that the FM Expansion, albeit race-neutral, would result in radically expanded access to the FM band, including expanded access for licensees owned by individuals with a racial minority heritage.¹⁶ Educational Media Foundation, et. al., also supported the FM Band Expansion and urged the reservation of the top two or three new FM channels for use by low power FM (“LPFM”) licensees as a means to circumvent conflicts between LPFM facilities, current FM translator operations and applications, and upgrades of NCE FM stations.¹⁷

The National Translator Association favored the FM Band Expansion notwithstanding the fact that many of its members rely on television translators operating on the subject spectrum, provided that certain grandfathering protections be extended to incumbent operators.¹⁸ Significantly, NTA concluded that any negative impact on the rather small number of digital television licensees electing to broadcast on channel 5 or 6 was outweighed by the overall benefits to the public interest by satisfying demand for additional FM spectrum on what will be underutilized channels 5 and 6 in a digital era.¹⁹ Common Frequency, Inc. (“CFI”), likewise argued that the expanded FM band would prove more efficient use of the spectrum than reserving it for digital television, but CFI

¹⁵ *Id.*

¹⁶ Comments of MMTC, 17-18; *see also* Comments of Diversity and Competition Supporters, 23-27, and Native Public Media and National Federation of Community Broadcasters, 10.

¹⁷ Comments of Educational Media Foundation, et al, 2 (July 31, 2008).

¹⁸ Comments of National Translator Association, 2-3 (July 30, 2008).

¹⁹ *Id.*

emphasized that the expanded portion of the FM band should be reserved for digital operations.²⁰

II. Comprehensive Proposal

The Broadcast Maximization Committee (“BMC”) not only favored FM Band Expansion but presented a comprehensive proposal for how the transition should occur.²¹ The BMC proposed mandatory relocation of the LPFM service to a portion of this spectrum space; expansion of the NCE service into the adjacent portion of this band; and provision for the conversion and migration of all AM stations into the remaining portion of the band over an extended period of time and with digital transmissions only.²² Under the BMC plan, LPFM stations could operate free from interference caused to their limited signals, avoid conflicts with FM translators, resolve the 2nd and 3rd adjacent interference questions that have instigated litigation and legislation, and allow the inclusion of many more new entrants to the FM service.²³ The proposed expansion would help satisfy the pronounced demand for spectrum reserved for noncommercial operations and relocate AM licensees to a superior portion of the spectrum making their operations more viable.²⁴

III. Television Station Opposition

The National Association of Broadcasters (“NAB”) joined with several television station operators in opposing the proposed expansion of the FM band due to its potential

²⁰ Comments of Common Frequency, Inc., p. 2 (July 31, 2008).

²¹ Comments of Broadcast Maximization Committee, ii-iii (July 30, 2008).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

to cause significant disruption to digital television and low power television licensees.²⁵ In addition, Venture Technologies Group, LLC, argued that adding so many new FM channels might devastate the demand for IBOC digital radio and might negatively impact foreign-language broadcasters, spawning greater consolidation instead of diversity.²⁶

IV. Reply Comments of CRA

Those favoring the more efficient use of spectrum in a manner that simultaneously helps resolve conflicts between FM translators, incumbent FM licensees seeking to upgrade their facilities, and LPFM facilities are simply more persuasive than are those relatively few television broadcasters who will be using the subject channels after February of 2009. BMC's recommended approach to relocating television licensees, along with grandfathering low power television as appropriate and necessary where displacement frequencies are not available, strike us as a sensible means of expanding the FM band without imposing too great a burden on television broadcasters.

We urge the Commission to reserve all, or nearly all, of the expanded FM spectrum for noncommercial use. This will allow for the satisfaction of incredible demand for new NCE FM and LPFM facilities. Any AM stations seeking relocation to the expanded FM band for commercial operation should instead be permitted to stay on the AM band or, if possible, to re-locate to the commercial FM band.

We also urge the Commission to adopt a voluntary framework for the relocations that are being proposed. Here again, CRA favors an approach that maximizes the

²⁵ Comments of National Association of Broadcasters, 6-8 (July 31, 2008); see also Comments of ABC, Inc., 1-2 (July 30, 2008), and of Association for Maximum Service Television (incorporating comments of December 3, 2007), 4-6 (July 30, 2008).

²⁶ Comments of Venture Technologies Group, LLC, 6 (August 1, 2008).

flexibility and creativity of licensees and new entrants. No LPFM or AM licensee should be compelled to relocate. Rather, the advantages of relocation should attract licensees to the expanded FM band, and any who are not so attracted should be permitted to maintain operations subject to the current challenges of doing so.

CONCLUSION

In view of the foregoing, the proposal to favor new entrants with increased flexibility in how they and other licensees cooperate to preserve fair distribution principles, as well as the proposal to expand the FM band, present unique opportunities for the Commission to promote increased access to substantively diverse programming. Accordingly, the FCC should adopt the proposals in a manner that allows *noncommercial* operations to voluntarily relocate on, or to, the expanded FM band, or to relocate geographically in order to reach a target audience, provided that fair distribution principles are preserved.

Respectfully submitted,

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