

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

In the Matter of:)
)
Broadcast Applications Seeking Share Time) DA 08-2621; DA 08-2772
Licenses Authorizing Urban Television LLC)
to Broadcast on Channels Licensed to)
Subsidiaries of ION Media Networks, Inc.)

REPLY COMMENTS OF CIVIL RIGHTS ORGANIZATIONS

The thirteen Civil Rights Organizations listed in the Annex hereto respectfully submit these reply comments in support of the applications of Urban Television, LLC (“Urban”) to broadcast on channels licensed to subsidiaries of ION Media Networks, Inc. (“ION”) pursuant to Section 73.1715 of the Commission’s rules.¹ We specifically reply to concerns that may reflect some commenters’ misunderstanding of the Commission’s share time rule as it currently exists. The Civil Rights Organizations take this opportunity to highlight why the Urban and ION applications are ripe for consideration and should be granted immediately.

ION’s proposed assignment to Urban is a valid use of the Commission’s share time rule. Contrary to points raised by some parties,² the proposed transactions by Urban and ION are

¹ See Public Notice, TV Broadcast Applications Seeking Share Time Licenses Authorizing Urban Television LLC to Broadcast on Channels Licensed to Subsidiaries of ION Media Networks, Inc., DA 08-2621 (released November 26, 2008). These Reply Comments reflect the institutional views of each of the Civil Rights Organizations as amici curiae and are not intended to reflect the individual views of each of their respective officers or directors.

² See e.g., Informal Objection to Proposed Assignment and Requested Declaratory Relief by The Africa Channel, Gospel Music Channel LLC, and SiTV, Inc., File No. BALCT-20081118AGX, et seq., DA 08-2621, December 29, 2008 at 5 (“Africa Channel Objection”); Petition to Deny of DIRECTV, Inc., DA- 08-2621, December 22, 2008, at 3-4 (“DIRECTV Petition”); Entravision Petition to Deny Applications Filed by ION Media Networks, Inc., and Urban Television LLC, File No. BALCT-20081118AGX, et al., December 29, 2008, at 3-4 (“Entravision Petition”);

consistent the Commission's current rules. The Commission adopted the share time rule to allow licensees adequate flexibility in crafting share time agreements.³ The share time rule allows two or more broadcasters to come to a mutual agreement on division and use of the same spectrum.⁴ On its face, the rule allow for the sharing of time without restriction. The rule cannot be read to preclude the division of one broadcaster's digital capacity such that one set of hours - in this case, 24 hours on a portion of the channel capacity, which best serves the public interest - is used by a second broadcaster, any more than a transportation rule allowing for designated HOV hours could be read to preclude the creation of a special 24-hour HOV lane after a highway is expanded from one lane to multiple lanes.

The concept of using the share time rule to advance the Commission's goals of "ownership diversity and new entry in the broadcasting industry"⁵ did not originate with Urban

Petition to Dismiss of the National Cable and Telecommunications Association, File No. BALCT-20081118AGX, et al., December 29, 2008 at 14-17 ("NCTA Petition").

³ Id.; see also In Re HATCO-60, Memorandum Opinion & Order, 60 RR2d 1521, xx ¶17 (1986) (upholding broadcast licensees' right to determine and alter terms of a share-time agreement). The Commission's power to act in this manner has been confirmed by the Supreme Court. See Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390-91 (1969) ("[T]he Government could surely have decreed that each frequency should be shared among all or some of those who wish to use it, each being assigned a portion of the broadcast day or the broadcast week.") The share time rule has been applied, and upheld, in one form or another by the Commission or its predecessor, the Federal Radio Commission, since 1929. See City of New York v. FRC, 36 F.2d 115, 117 (D.C. Cir. 1929); see also Pacific Development Radio Co. v. FRC, 55 F.2d 540 (D.C. Cir. 1931); Reading Broadcasting Co. v. FRC, 48 F.2d 458 (D.C. Cir. 1931).

⁴ See 47 C.F.R. §73.1715 (2008) ("Operation is permitted by two or more broadcast stations using the same channel in accordance with a division of hours mutually agreed upon and considered part of their licenses.")

⁵ See Promoting Diversification of Ownership in the Broadcasting Services, Second Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5924 ¶5 (2008). See also Comments of Media Access Project and Common Cause in Support of Application to Transfer Filed by ION Networks, Inc., and Urban Television LLC, File No. BALCT-20081118AGX, et al., December 29, 2008, at 3 ("Common Cause Comments") ("[t]he concept underlying the applications is sound, and their grant could materially assist the Commission in fulfilling its obligations under Sections 151 and 257. They address a fundamental dilemma of

and ION and thus was not created by them to circumvent the traditional licensing process. Numerous parties, including many of the Civil Rights Organizations, advanced this concept long before Urban and ION submitted their applications.⁶ In 2007, without objection, the Commission's Advisory Committee on Diversity for Communications in the Digital Age ("Diversity Committee") adopted a similar proposal for use of DTV sub-channels.⁷ Further, as noted in comments by Common Cause, this arrangement resembles the "Class S" license proposal that the Media Access Project ("MAP") presented to the Diversity Committee in July of 2008.⁸ The Class S proposal was first suggested by MAP in 1992 and adopted by the Diversity Committee in October of 2008.⁹ Urban and ION should be commended for their innovativeness in putting the share time concept to productive use.

communications policy, which is how to increase the number and diversity of broadcast licensees and, thereby, the diversity of the programming they carry.")

⁶ See, e.g., Initial Comments of Diversity and Competition Supporters in Response to the Second Further Notice of Proposed Rulemaking, MB Docket No. 06-121, October 1, 2007, at 41-47; see also Initial Comments of Diversity and Competition Supporters in Response to the Third Further Notice of Proposed Rulemaking, MB Docket No. 07-294, July 30 2008, at 14-16. The Diversity and Competition Supporters is a coalition of 31 national organizations created in 2002 to advance the cause of minority ownership in MB Docket No. 02-277 and subsequent dockets. Id. at app., p. 1.

⁷ See Recommendation on Leasing or Ownership of FM or DTV Subchannels Under the Share-Time Rule, Advisory Committee on Diversity for Communications in the Digital Age, September 27, 2007, available at <http://www.fcc.gov/DiversityFAC/meeting092707.html>, and follow link to Subcommittee Proposals (last visited January 6, 2009).

⁸ See Common Cause Comments at 3-4 (stating that a "grant of the applications would be consistent with the scheme endorsed with the Advisory Committee.")

⁹ See Recommendation on S-Class Television Licenses, Advisory Committee on Diversity for Communications in the Digital Age, October 28, 2008, available at <http://www.fcc.gov/DiversityFAC/adopted-recommendations/s-class-licenses-102808.pdf> (last visited January 6, 2009). (The undersigned lead counsel was a member of the Diversity Committee and drafted the Recommendation.)

As noted in our initial Comments, a limiting principle for use of the share time rule may need to be established for subsequently filed applications.¹⁰ We are hopeful that a means can be found to fairly accommodate the cable industry's understandable concerns going forward. However, every party is entitled to take full advantage of the rules as they are written at the time it files an application.¹¹ Therefore, the Commission should grant the current applications based on the rules as they stand.

Respectfully submitted,

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¹⁰ See Initial Comments of Civil Rights Organizations, DA 08-2112, December 29, 2008 at 4 n. 13.

¹¹ As discussed *supra* n. 3, the share time rule is valid in its current form and has been applied, and upheld, in one form or another since 1929. Additionally, Congress did not intend for share time agreements to be subject to auction rules under 47 U.S.C. 309(j) as some commenters suggest. See NCTA Petition at 17-20. Section 309(j) was intended for initial applications for license and construction permits. See Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 312 (1993); see also H.R. REP. 103-111, at 246, 1993 U.S.C.A.A.N. 378, 573 (May 25, 1993). Section 309(j) applies to situations where there is more than one mutually exclusive applicant for a license, rather than situations where transfer of control to a single entity is proposed. See 47 U.S.C. §309(j)(1) (mandating competitive bidding for mutually exclusive applications).

ANNEX

Civil Rights Organizations

Black Entertainment and Sports Lawyers Association
International Black Broadcasters Association
Lawyers' Committee for Civil Rights Under Law
Minority Media and Telecommunications Council
National Association for the Advancement of Colored People
National Association of Black Journalists
National Association of Black Owned Broadcasters
National Association of Black Telecommunications Professionals */
National Association of Multicultural Media Executives */
National Bar Association
National Urban League
Rainbow PUSH Coalition
Video Access Alliance

*/ Theses organizations joined the Civil Rights Organizations after the original eleven Civil Rights Organizations filed their initial Comments.