

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

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

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

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- 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,

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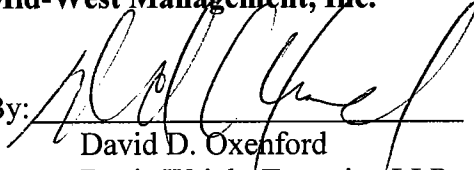
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March 27, 2006

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	KFXV	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.