

**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

**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.<sup>1</sup>

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<sup>1</sup> 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.<sup>2</sup>

### **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

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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.

<sup>2</sup> 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.”<sup>3</sup> 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.<sup>4</sup> The Commission based this requirement on its belief that

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<sup>3</sup> *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).

<sup>4</sup> 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<sup>5</sup>). Pursuant to this waiver,

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<sup>5</sup> 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.<sup>6</sup> 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.

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*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.

<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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

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<sup>7</sup> 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.

<sup>8</sup> 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.<sup>9</sup> Diversity has been and remains an important goal of the Commission.<sup>10</sup> 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.<sup>11</sup> 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

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<sup>9</sup> 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.

<sup>10</sup> *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).

<sup>11</sup> 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.<sup>12</sup>

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

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<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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-

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<sup>13</sup> 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](http://www.rwonline.com/reference-room/special-report/2006.03.01-04_rw_am_4.shtml) (accessed March 16, 2006).

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

<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> That premise no longer applies. These changed circumstances dramatically demonstrate that the

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<sup>16</sup> See Station KBJD(AM), Denver, CO, Facility ID 87151, “Request for Relief from License Condition,” filed January 9, 2006, at 3.

<sup>17</sup> 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.<sup>18</sup> 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;<sup>19</sup> (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";<sup>20</sup> 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*,

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<sup>18</sup> 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)).

<sup>19</sup> 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.

<sup>20</sup> 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.<sup>21</sup>

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,

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<sup>21</sup> 47 U.S.C. §151 (*italicized language added in the 1996 Telecommunications Act*).

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March 27, 2006



**ATTACHMENT A**

<b>Broadcast Joint Petitioner's Name (in alphabetical order)</b>	<b>Original Band Station Call Sign</b>	<b>Expanded Band Station Call Sign</b>	<b>Five Year Expiration Date</b>
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 <sup>#</sup>
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 <sup>#</sup> 4/06/2006
Starboard Media Foundation	WVOI	WCNZ	9/04/2006
Waitt Omaha, LLC	KYDZ	KOZN	2/28/2006 <sup>*#</sup>
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.

<sup>#</sup>Expiration Dates already past

<b>Public Interest Group Joint Petitioner's Name (in alphabetical order)</b>
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.