

Columbus Club of Florence
FORM 318 APPLICATION FOR PERMIT TO CONSTRUCT LPFM STATION
EXHIBITS 4 - 6: Attribution and Ownership Restrictions

DIVESTITURE PLEDGE & WAIVER REQUESTS
RE: BNPED 20071022ASA, New NCE FM Station, Latta, South Carolina
(Facility ID 175632)

Pursuant to the instructions in Form 318, Applicant has answered in the positive inasmuch as neither it, nor any party to the application (the “Latta Station”), has any application that the FCC has not already dismissed. We reference specifically the dismissal on November 29, 2010, of the above-referenced application. However, that decision was appealed, and inasmuch as the dismissal is not yet final, in an abundance of caution, we disclose the application here.

To the extent the agency deems it necessary or appropriate, we hereby commit the Applicant will not own any other broadcast facilities since the Applicant:

(1) pledges to divest the Latta Station in such manner as to permit the awarding of the LPFM authorization sought in the instant Application; and

(2) requests a waiver of any Rule that would otherwise result in the attribution of the Latta Station application in the agency’s analysis of Applicant’s Form 318 with respect to compliance with ownership restrictions, as well as the ownership diversity criterion in the agency’s point system determination, or waiver of any Rule that would otherwise place Applicant at a competitive disadvantage arising only because of its supposed interest in the contemplated NCE FM facility.

Waiver is an appropriate relief¹ where “the underlying purposes of the rules . . . would be frustrated by application to the instant case” and that waiver relief would be in the public interest.² Waiver also may be granted where “unique or unusual factual circumstances” suggest that strict, unyielding adherence to the Rules “would be inequitable, unduly burdensome or contrary to the public interest, or that [the requestor of the waiver] has no reasonable alternative.”³ As explained below, the Applicant satisfies both prongs of the waiver standard.

¹ See 47 C.F.R. §1.3. The Commission may exercise its discretion where “strict compliance” would be “inconsistent with the public interest” and where warranted by “special circumstances.” *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

² 47 C.F.R. §1.925.

³ *Id.*

The FCC has previously concluded, in a full power NCE FM comparative analysis, that credit for local diversity of ownership may be awarded to the owner of a FM translator facility so long as that facility is divested prior to the initiation of the new full power station's operations. Likewise, the limitation on LPFM licensees was observed in the 2007 application filing window for new full power NCE FM permits simply by requiring that the low power authorization be divested or cancelled prior to initiation of a new full power station. Since achieving the Commission's policy goals can be achieved just as well, the requested relief is appropriate. In view of the foregoing, requiring the divestiture or cancellation of a NCE FM authorization prior to issuance of a permit for a new LPFM to the Applicant is an adequate means of achieving the Commission's policy objectives without preventing otherwise qualified applicants from seeking a LPFM permit.

Accordingly, this waiver request should be granted and the Applicant should be allowed to claim comparative criteria points for local diversity notwithstanding the LPFM application, so long as divestiture or cancellation of the authorization for the full power facility occurs promptly upon a positive outcome to the pending request for Commission review.