

RESPONSE TO SECTION II, ITEM 4(b)

This application requests approval of a minor change in the facilities for WHFS(FM), Annapolis, Maryland (the “Station”). Specifically, the application proposes to move the transmit facilities for the Station to a tower only 8.1 kilometers west northwest of the licensed facility. This application does not seek to change the Station’s frequency or community of license, and it will not create new or increased concentration of ownership among commonly owned, operated or controlled media properties. Therefore, as explained below, the multiple ownership rules do not apply to this application.

I. The Multiple Ownership Rules Do Not Apply to Minor Change Applications that Do Not Involve a Change in Community of License or Create New or Increased Media Concentration.

This application is a “minor change” application because it does not propose a change in either the Station’s frequency or its community of license. *See* 47 C.F.R. § 73.3573(a). Note 4 to 47 C.F.R. § 73.3555 (2003) provides that the multiple ownership rules apply only to applications for minor changes to existing stations that implement an approved change in an FM radio station’s community of license or create new or increased concentration of ownership among commonly owned, operated, or controlled media properties. As shown below, grant of the application will not create any new or increased concentration of ownership. Therefore, the multiple ownership rules do not apply to this application.

II. Grant of the Application Will Not Create New or Increased Media Concentration.

The applicant, Infinity Broadcasting East Inc., is an indirect wholly-owned subsidiary of Viacom Inc. (“Viacom”), which controls a number of other radio and television stations. Viacom’s control of the Station implicates two of the Commission’s multiple ownership rules: the local radio ownership rule and the radio-television cross-ownership rule. Grant of this application will not create any new or increased concentration of ownership under either rule.

A. Compliance with Local Radio Ownership Rule.

For purposes of the local radio ownership rule, the Station is deemed to be a part of both the Baltimore and the Washington, D.C. radio markets. The Station is licensed to Annapolis, Maryland, which is located in Anne Arundel County, which in turn is located in the Baltimore Metro as defined by Arbitron. Arbitron, however, designates the Station as “home” to the Washington, D.C. Metro. Therefore, the Station is counted as participating in both markets for purposes of the local radio ownership rule. *2002 Biennial Regulatory Review*, 18 FCC Rcd 13,620, 13728 n. 592 (2003) (the “*Ownership R&O*”). A grant of this application will have no affect on these market designations.

As demonstrated below, (1) Viacom complies with the local radio ownership rule in the Washington, D.C. Arbitron Metro; and (2) although Viacom exceeds the ownership limits prescribed by the local radio ownership rule in the Baltimore Arbitron Metro, the combination is “grandfathered.” The application does not create new or increased concentration in either market.

1. Washington, D.C. Market

The attached Exhibit A was compiled on November 2, 2004 using BIA Research, Inc.'s *Media Access Pro* database. The exhibit lists all radio stations, including the Station, that are licensed to communities within the counties comprising the Washington, D.C. Arbitron Metro or that Arbitron designates as "home" to the Washington, D.C. Metro. As demonstrated in Exhibit A, there are 63 stations in the Washington, D.C. market as so defined. Under the local radio ownership rule, a person or single entity (or entities under common control) in a radio market with 45 or more full-power, commercial and noncommercial radio stations may have a cognizable interest in not more than 8 commercial radio stations in total, and not more than 5 commercial stations in the same service (AM or FM).

As shown in Exhibit A, Viacom controls 5 radio stations in the Washington market (1 AM, and 4 FM), including the Station, which is less than the eight (no more than five in one service) permitted. Therefore, Viacom's radio ownership in the Washington market fully complies with the local radio ownership rule.

2. Baltimore Market

The attached Exhibit B was compiled on November 2, 2004 using BIA Research, Inc.'s *Media Access Pro* database. The exhibit lists all radio stations, including the Station, that are licensed to communities within the counties comprising the Baltimore Arbitron Metro or that Arbitron designates as "home" to the Baltimore Metro. As demonstrated in Exhibit B, there are 38 stations in the Baltimore market as so defined. Under the local radio ownership rule, a person or single entity (or entities under common control) in a radio market with between 30 and 44 (inclusive) full-power, commercial and

noncommercial radio stations may have a cognizable interest in not more than 7 commercial radio stations in total, and not more than 4 commercial stations in the same service (AM or FM).

As shown in the attached Exhibit B, Viacom controls 8 stations in the Baltimore market (3 AM and 5 FM), including the Station, which exceeds the limit prescribed by the rule. However, the Commission decided to “grandfather” existing combinations of radio stations in the *Ownership R&O*, i.e., not to require entities to divest their current interests in stations in order to come into compliance with the new ownership rule.

Ownership R&O, 18 FCC Red at 13808. Note 4 to 47 C.F.R. § 73.3555 (2003) provides that the local radio ownership rule will not be applied so as to require divestiture by any licensee of existing facilities, and will apply to an application for minor changes to existing stations only if a grant of such application would create new or increased concentration of ownership among commonly owned, operated or controlled media properties. Because this application does not create any new or increased concentration of ownership among commonly owned, operated or controlled media properties, Viacom’s control of three AM and five FM radio stations in the Baltimore market remains “grandfathered” and the local radio ownership rule does not apply to this application.

B. Compliance with Radio-Television Cross-Ownership Rule.

In the *Ownership R&O*, the Commission concluded that the radio-television cross-ownership rule no longer serves the public interest and repealed the rule.

Ownership R&O, 18 FCC Red at 13768. However, the Third Circuit’s stay of the multiple ownership rules imposed on September 3, 2003 remains in effect as to the repeal

of the radio-television cross-ownership rule. *See Prometheus Radio Project v. FCC*, No. 03-3388 (3d Cir. Oct. 21, 2004) (denying motion to lift stay as it concerns the radio-television cross-ownership rule). The old rule therefore remains in effect.

The radio-television cross ownership rule is triggered when either (a) the Grade A contour of a television station encompasses the community of license of a commonly owned radio station, or (b) when the 1 mV/m contour of an FM station or the 2 mV/m contour of an AM station encompasses the community of license of a commonly owned television station. Viacom's control of the Station triggers the rule because Viacom also controls television station WJZ-TV, Baltimore, Maryland. As demonstrated on Figure 1, the Grade A contour of WJZ-TV encompasses the communities of license of the following eleven radio stations controlled by Viacom, including the Station:

WBMD(AM), Baltimore, MD
WBGR(AM), Baltimore, MD
WWMX(FM), Baltimore, MD
WQSR(FM), Catonsville, MD
WJFK(AM), Baltimore, MD
WLIF-FM, Baltimore, MD
WXYV(FM), Baltimore, MD
WHFS(FM), Annapolis, MD
WPGC(AM), Morningside, MD
WPGC-FM, Morningside, MD
WARW-FM, Bethesda, MD

Although the radio-television cross-ownership rule is triggered by contour encompassment, the Commission determines compliance with the rule on an Arbitron Metro basis. In *Review of the Commission's Regulations Governing Television Broadcasting*, 16 FCC Rcd 1067, 1081 (2000), the Commission explained that it does not count toward an entity's radio-television cross-ownership limit any radio station assigned to an Arbitron Metro other than to the Metro in which a commonly owned television

station is licensed unless the contour of that distant radio station encompasses the community of license of the television station in question. *See also Shareholders of Hispanic Broadcasting Corporation*, 18 FCC Rcd 18834, 18837 n. 13 (2003).

Three of the eleven Viacom-controlled radio stations (WPGC(AM), WPGC-FM, and WARW-FM) are located in the Washington, D.C. Arbitron Metro. As shown on Figure 1, the relevant contours of these stations do not encompass the entire community of license of WJZ-TV. Therefore, these three radio stations are not counted as part of the same market as the other eight radio stations for purposes of determining compliance with the radio-television cross-ownership rule. *See also Shareholders of CBS Corporation*, 15 FCC Rcd 8230, 8241 (2000) (“*Merger Order*”). Viacom does not control any television station in the Washington, D.C. Metro.

The remaining eight Viacom-controlled radio stations and WJZ-TV are located in the Baltimore Arbitron Metro. Under the radio-television cross-ownership rule, an entity may control one television station and seven radio stations (to the extent permitted by the local radio multiple ownership rule) in a market containing at least 20 independently owned and operated media “voices” if the common ownership of two commercial television stations in that market is permitted under the local television ownership rule. If the common ownership of two commercial televisions in the market is not permitted, then the radio-television cross-ownership limit is one television station and six radio stations. 47 C.F.R. § 73.3555(c) (2002).

As demonstrated in Exhibit C, there are at least 20 independently owned media voices in the Baltimore Metro. However, there are fewer than 8 independently owned and operating full-power commercial and noncommercial television stations in the

Baltimore Nielsen Designated Market Area, which is the relevant market for purposes of the local television ownership rule, as currently in effect. *See* 47 C.F.R. § 73.3555(b) (2002). Therefore, the common ownership of two commercial television stations in the market is not permissible, and Viacom is permitted to control no more than one television station and six radio stations in the Baltimore Metro under the radio-television cross-ownership rule.

In approving the merger of Viacom and CBS Corporation, the Commission directed Viacom to file an application necessary to bring Viacom into compliance with the radio-television cross-ownership rules in the Baltimore market within six months after consummation of the CBS/Viacom merger. *See Merger Order*, 15 FCC Rcd at 8241. Viacom satisfied this condition when, within six months of the closing of the CBS/Viacom merger, it filed an application to assign radio stations WBGR and WBMD to Expanse Communications, Inc. *See* FCC File Nos. BAL-20001103ABO and BAL-20001103ABP. The Commission approved the assignment on December 27, 2000, but the proposed assignee was unable to secure the financing necessary to consummate the transaction, and the agreement was ultimately terminated.

Since that date, Viacom has actively marketed WBGR and WBMD to prospective buyers. However, as yet, none of the discussions has progressed to a definitive purchase agreement. Although Viacom has a request for extension of time within which to come into compliance with the radio-television cross-ownership rule in the Baltimore market pending before the Commission,¹ Viacom continues to pursue a buyer of the stations.

¹ *Letter from Infinity Radio Operations Inc. to Marlene Dortch, Secretary, Federal Communications Commission, dated November 18, 2002* (updating Commission as to status of sale of stations to Expanse Communications, Inc., and requesting an extension of time within which to come into compliance with the radio/television cross-ownership rule in the Baltimore market).

The instant application requests a minor modification of the Station's facilities, and does not create new or increased concentration in the Baltimore market under the radio-television cross-ownership rule. A grant of the instant application is therefore not precluded by the radio-television cross-ownership rule as Viacom remains subject to the condition imposed in the *Merger Order*.

Washington, D.C. Market

Exhibit A

| | Call Sign | Service | Home Market | City | State | Parent |
|----|-----------|---------|--------------------------|-------------------|-------|---|
| 1 | WMAL | AM | Washington, DC | Washington | DC | ABC/Disney |
| 2 | WJZW | FM | Washington, DC | Woodbridge | VA | ABC/Disney |
| 3 | WRQX | FM | Washington, DC | Washington | DC | ABC/Disney |
| 4 | WACA | AM | Washington, DC | Wheaton | MD | AC Communications |
| 5 | WAMU | FM | Washington, DC | Washington | DC | <u>American University</u> |
| 6 | WDMV | AM | Salisbury-Ocean City, MD | Damascus | MD | Bay Bcstg Inc |
| 7 | WGOP | AM | Washington, DC | Poolesville | MD | Birach Broadcasting Corporation |
| 8 | WTOP | AM | Washington, DC | Washington | DC | Bonneville International Corp |
| 9 | WXTR | AM | Frederick, MD | Frederick | MD | Bonneville International Corp |
| 10 | WGMS | FM | Washington, DC | Washington | DC | Bonneville International Corp |
| 11 | WTOP | FM | Washington, DC | Warrenton | VA | Bonneville International Corp |
| 12 | WWVZ | FM | Washington, DC | Braddock Heights | MD | Bonneville International Corp |
| 13 | WWZZ | FM | Washington, DC | Waldorf | MD | Bonneville International Corp |
| 14 | WFMD | AM | Frederick, MD | Frederick | MD | Clear Channel Communications |
| 15 | WTEM | AM | Washington, DC | Washington | DC | Clear Channel Communications |
| 16 | WTNT | AM | Washington, DC | Bethesda | MD | Clear Channel Communications |
| 17 | WWRC | AM | Washington, DC | Washington | DC | Clear Channel Communications |
| 18 | WASH | FM | Washington, DC | Washington | DC | Clear Channel Communications |
| 19 | WBIG | FM | Washington, DC | Washington | DC | Clear Channel Communications |
| 20 | WFRE | FM | Frederick, MD | Frederick | MD | <u>Clear Channel Communications</u> |
| 21 | WIHT | FM | Washington, DC | Washington | DC | Clear Channel Communications |
| 22 | WMZQ | FM | Washington, DC | Washington | DC | Clear Channel Communications |
| 23 | WWDC | FM | Washington, DC | Washington | DC | <u>Clear Channel Communications</u> |
| 24 | WGTS | FM | Washington, DC | Takoma Park | MD | Columbia Union College |
| 25 | WDCT | AM | Washington, DC | Fairfax | VA | Family Radio Ltd |
| 26 | WAFY | FM | Frederick, MD | Middletown | MD | Frederick Broadcasting LLC |
| 27 | WETA | FM | Washington, DC | Washington | DC | Greater Washington Educational Telecomm Assoc Inc |
| 28 | WHUR | FM | Washington, DC | Washington | DC | Howard University Board |
| 29 | WMET | AM | Washington, DC | Gaithersburg | MD | IDT Beltway <u>Communications Corp</u> |
| 30 | WPWC | AM | Washington, DC | Dumfries-Triangle | VA | JMK Communications |
| 31 | WWGB | AM | Washington, DC | Indian Head | MD | <u>Joo, Sun Young</u> |
| 32 | WKDL | AM | Washington, DC | Alexandria | VA | Mega Communications Inc |
| 33 | WBPS | FM | Washington, DC | Warrenton | VA | Mega Communications Inc |
| 34 | WBZS | FM | Washington, DC | Prince Frederick | MD | Mega Communications Inc |
| 35 | WPLC | AM | Washington, DC | Silver Spring | MD | Metro Radio Inc |
| 36 | WMTB | FM | Frederick, MD | Emmitsburg | MD | Mount St. Mary's College |

Source: Information based on most current industry data available from BIA Research, Inc.

Washington, D.C. Market

Exhibit A

| | | | | | | |
|----|------|----|--------------------|--------------------|----|--------------------------------------|
| 37 | WKDV | AM | Washington, DC | Manassas | VA | Multicultural Radio Broadcasting Inc |
| 38 | WLXE | AM | Washington, DC | Rockville | MD | Multicultural Radio Broadcasting Inc |
| 39 | WZHF | AM | Washington, DC | Arlington | VA | Multicultural Radio Broadcasting Inc |
| 40 | WCSP | FM | Washington, DC | Washington | DC | National Cable Satellite Corp |
| 41 | WUST | AM | Washington, DC | Washington | DC | New World Radio Incorporated |
| 42 | WFAX | AM | Washington, DC | Falls Church | VA | Newcomb Broadcasting |
| 43 | WPFW | FM | Washington, DC | Washington | DC | Pacifica Foundation |
| 44 | WOL | AM | Washington, DC | Washington | DC | Radio One Inc |
| 45 | WYCB | AM | Washington, DC | Washington | DC | Radio One Inc |
| 46 | WKYS | FM | Washington, DC | Washington | DC | Radio One Inc |
| 47 | WMMJ | FM | Washington, DC | Bethesda | MD | Radio One Inc |
| 48 | WAGE | AM | Washington, DC | Leesburg | VA | Radio WAGE Inc |
| 49 | WABS | AM | Washington, DC | Arlington | VA | Salem Communications Corporation |
| 50 | WAVA | FM | Washington, DC | Arlington | VA | Salem Communications Corporation |
| 51 | WKIK | AM | Washington, DC | La Plata | MD | Somar Communications Inc |
| 52 | WGRX | FM | Fredericksburg, VA | Falmouth | VA | Telemedia Broadcasting |
| 53 | WTRI | AM | Frederick, MD | Brunswick | MD | Tricaster Communications LLC |
| 54 | WMUC | FM | Washington, DC | College Park | MD | University of Maryland |
| 55 | WPGC | AM | Washington, DC | Morningside | MD | Viacom Inc |
| 56 | WARW | FM | Washington, DC | Bethesda | MD | Viacom Inc |
| 57 | WHFS | FM | Washington, DC | Annapolis | MD | Viacom Inc |
| 58 | WJFK | FM | Washington, DC | Manassas | VA | Viacom Inc |
| 59 | WPGC | FM | Washington, DC | Morningside | MD | Viacom Inc |
| 60 | WTHU | AM | Frederick, MD | Thurmont | MD | Walmer, Charles |
| 61 | WCTN | AM | Washington, DC | Potomac-Cabin John | MD | Win Radio Broadcasting Corporation |
| 62 | WJTM | FM | Frederick, MD | Frederick | MD | Your Public Radio Corporation |
| 63 | WILC | AM | Washington, DC | Laurel | MD | ZGS Broadcast Holdings Inc |

Source: Information based on most current industry data available from BIA Research, Inc.

Baltimore Market

Exhibit B

| | Call Sign | Service | Home Market | City | State | Parent |
|----|-----------|---------|----------------|----------------|-------|-----------------------------------|
| 1 | WBJC | FM | Baltimore, MD | Baltimore | MD | Baltimore City Community College |
| 2 | WYRE | AM | Baltimore, MD | Annapolis | MD | Bay Bcstg Inc |
| 3 | WJSS | AM | Baltimore, MD | Havre de Grace | MD | Benjamin-Dane LLC |
| 4 | WCAO | AM | Baltimore, MD | Baltimore | MD | Clear Channel Communications |
| 5 | WPOC | FM | Baltimore, MD | Baltimore | MD | Clear Channel Communications |
| 6 | WSMJ | FM | Baltimore, MD | Baltimore | MD | Clear Channel Communications |
| 7 | WXCX | FM | Wilmington, DE | Havre De Grace | MD | Delmarva Broadcasting Company |
| 8 | WRNR | FM | Baltimore, MD | Grasonville | MD | Empire Broadcasting Systems |
| 9 | WFSI | FM | Baltimore, MD | Annapolis | MD | Family Stations Inc |
| 10 | WAMD | AM | Baltimore, MD | Aberdeen | MD | First Broadcasting Company LP |
| 11 | WHFC | FM | Baltimore, MD | Bel Air | MD | Harford Community College |
| 12 | WBAL | AM | Baltimore, MD | Baltimore | MD | Hearst-Argyle TV Incorporated |
| 13 | WIYY | FM | Baltimore, MD | Baltimore | MD | Hearst-Argyle TV Incorporated |
| 14 | WCBM | AM | Baltimore, MD | Baltimore | MD | Mangione, Nick |
| 15 | WWLG | AM | Baltimore, MD | Pikesville | MD | Mangione, Nick |
| 16 | WJRO | AM | Baltimore, MD | Glen Burnie | MD | Metro Radio Inc |
| 17 | WEAA | FM | Baltimore, MD | Baltimore | MD | Morgan State College |
| 18 | WNST | AM | Baltimore, MD | Towson | MD | Nasty 1570 Sports LLC |
| 19 | WBIS | AM | Baltimore, MD | Annapolis | MD | Nations Radio LLC |
| 20 | WRBS | FM | Baltimore, MD | Baltimore | MD | Peter & John Radio |
| 21 | WOLB | AM | Baltimore, MD | Baltimore | MD | Radio One Inc |
| 22 | WWIN | AM | Baltimore, MD | Baltimore | MD | Radio One Inc |
| 23 | WERQ | FM | Baltimore, MD | Baltimore | MD | Radio One Inc |
| 24 | WWIN | FM | Baltimore, MD | Glen Burnie | MD | Radio One Inc |
| 25 | WNAV | AM | Baltimore, MD | Annapolis | MD | Sajak Broadcasting Corporation |
| 26 | WTTR | AM | Baltimore, MD | Westminster | MD | Sajak Broadcasting Corporation |
| 27 | WITH | AM | Baltimore, MD | Baltimore | MD | Salem Communications Corporation |
| 28 | WZBA | FM | Baltimore, MD | Westminster | MD | Times-Shamrock Communications Inc |
| 29 | WTMD | FM | Baltimore, MD | Towson | MD | Towson University |
| 30 | WBGR | AM | Baltimore, MD | Baltimore | MD | Viacom Inc |
| 31 | WBMD | AM | Baltimore, MD | Baltimore | MD | Viacom Inc |
| 32 | WJFK | AM | Baltimore, MD | Baltimore | MD | Viacom Inc |
| 33 | WHFS | FM | Washington, DC | Annapolis | MD | Viacom Inc |
| 34 | WLIF | FM | Baltimore, MD | Baltimore | MD | Viacom Inc |
| 35 | WQSR | FM | Baltimore, MD | Baltimore | MD | Viacom Inc |
| 36 | WWMX | FM | Baltimore, MD | Baltimore | MD | Viacom Inc |
| 37 | WXYV | FM | Baltimore, MD | Catonsville | MD | Viacom Inc |
| 38 | WYPR | FM | Baltimore, MD | Baltimore | MD | Your Public Radio Corporation |

Source: Information based on most current industry data available from BIA Research, Inc.

Independently Owned Media Voices
Baltimore Market
TV/Radio

Exhibit C

| # | Parent | Call Sign | Service | City | State |
|----|---|-----------|---------|----------------|-------|
| 1 | Baltimore City Community College | WBJC* | FM | Baltimore | MD |
| 2 | Bay Bcstg Inc | WYRE | AM | Annapolis | MD |
| 3 | Benjamin-Dane LLC | WJSS | AM | Havre de Grace | MD |
| 4 | Clear Channel Communications | WCAO | AM | Baltimore | MD |
| | | WPOC | FM | Baltimore | MD |
| | | WSMJ | FM | Baltimore | MD |
| 5 | Delmarva Broadcasting Company | WXCY | FM | Havre De Grace | MD |
| 6 | Empire Broadcasting Systems | WRNR | FM | Grasonville | MD |
| 7 | Family Stations Inc | WFSI* | FM | Annapolis | MD |
| 8 | First Broadcasting Company LP | WAMD | AM | Aberdeen | MD |
| 9 | Harford Community College | WHFC | FM | Bel Air | MD |
| 10 | Hearst-Argyle TV Incorporated | WBAL | AM | Baltimore | MD |
| | | WIYY | FM | Baltimore | MD |
| | | WBAL-TV | TV | Baltimore | MD |
| 11 | Mangione, Nick | WCBM | AM | Baltimore | MD |
| | | WWLG | AM | Pikesville | MD |
| 12 | Maryland Public Broadcasting Commission | WMPB* | TV | Baltimore | MD |
| | | WMPT* | TV | Annapolis | MD |
| 13 | Metro Radio Inc | WJRO | AM | Glen Burnie | MD |
| 14 | Morgan State College | WEAA* | FM | Baltimore | MD |
| 15 | Nasty 1570 Sports LLC | WNST | AM | Towson | MD |
| 16 | Nations Radio LLC | WBIS | AM | Annapolis | MD |
| 17 | News Corp. | WUTB | TV | Baltimore | MD |
| 18 | Peter & John Radio | WRBS | FM | Baltimore | MD |
| 19 | Radio One Inc | WOLB | AM | Baltimore | MD |
| | | WWIN | AM | Baltimore | MD |
| | | WERQ | FM | Baltimore | MD |
| | | WWIN | FM | Glen Burnie | MD |
| 20 | Sajak Broadcasting Corporation | WNAV | AM | Annapolis | MD |
| | | WTTR | AM | Westminster | MD |
| 21 | Salem Communications Corporation | WITH | AM | Baltimore | MD |
| 22 | Scripps Howard Inc. | WMAR-TV | TV | Baltimore | MD |
| 23 | Sinclair Broadcast Group Inc. | WBFF | TV | Baltimore | MD |
| | | WNUV | TV | Baltimore | MD |
| 24 | Times-Shamrock Communications Inc | WZBA | FM | Westminster | MD |
| 25 | Towson University | WTMD* | FM | Towson | MD |
| 26 | Viacom Inc | WBGR | AM | Baltimore | MD |
| | | WBMD | AM | Baltimore | MD |
| | | WJFK | AM | Baltimore | MD |
| | | WHFS | FM | Annapolis | MD |
| | | WLIF | FM | Baltimore | MD |
| | | WQSR | FM | Baltimore | MD |
| | | WWMX | FM | Baltimore | MD |
| | | WXYV | FM | Catonsville | MD |
| | | WJZ-TV | TV | Baltimore | MD |
| 27 | Your Public Radio Corporation | WYPR* | FM | Baltimore | MD |

* Non-commercial station

Source: Information based on most current industry data available from BIA Research, Inc.