

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 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 effect 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*.

	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	American University
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	Clear Channel Communications
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	Clear Channel Communications
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 Communications Corp
30	WPWC	AM	Washington, DC	Dumfries-Triangle	VA	JMK Communications
31	WWGB	AM	Washington, DC	Indian Head	MD	Joo, Sun Young
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.

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

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	WXCY	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.