

DICKSTEINSHAPIRO_{LLP}

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June 22, 2009

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Request for Special Temporary Authorization**
Chisholm Trail Broadcasting Co.
KFXY(AM), Enid, OK (Facility ID 87168)

Dear Ms. Dortch:

Chisholm Trail Broadcasting Co. ("CTBC"), licensee of station KFXY(AM), Enid, Oklahoma, hereby requests a Special Temporary Authorization ("STA") for a period of one hundred eighty (180) days to continue operating station KFXY pending the Commission's action on (i) its modification of license application filed contemporaneously herewith (File No. BML-20090622___) (a copy of which is annexed hereto), (ii) the attached Motion for Stay, and (iii) the pending "Request for Waiver of Rules Requiring Return of AM Licenses," filed by CTBC and various other parties on March 27, 2006, which now is now under consideration by the Commission in its ownership diversity proceeding. *See Promoting Diversification of Ownership In the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rule Making, MB Docket No. 07-294, *et al.*, 23 FCC Rcd 5922, 5953 (2008).

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

DICKSTEIN SHAPIRO LLP
Attorneys for
Chisholm Trail Broadcasting Co.

By: 
Andrew S. Kersting

Enclosures

COPY

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June 19, 2009

VIA FEDEX

Federal Communications Commission
c/o U.S. Bank
Government Lockbox #979089
SL-MO-C2-GL
1005 Convention Plaza
St. Louis, MO 63101
Attention: FCC Government Lockbox

Re: **Application for AM Station License**
Chisholm Trail Broadcasting Co.
KFXY(AM), Enid, OK (Facility ID 87168)

Dear Sir/Madam:

Transmitted herewith on behalf of Chisholm Trail Broadcasting Co., licensee of station KFXY(AM), Enid, Oklahoma, are an original and two copies of its application for an AM broadcast station license which is accompanied by a Request for Waiver and Removal of a Condition from the station license and renewal authorization for KFXY. Also enclosed is an FCC Form 159 Remittance Advice along with a check made payable to the Federal Communications Commission in the amount of \$615.00 in payment of the requisite filing fee (Fee Code MMR).

An extra copy of this filing is enclosed. Please date-stamp this copy and return it in the enclosed envelope.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

DICKSTEIN SHAPIRO LLP
Attorneys for
Chisholm Trail Broadcasting Co.

By: 
Andrew S. Kersting

Enclosures

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE
FORM 159

Approved by OMB
3060-0589
Page No. 1 of 1

(1) LOCKBOX # 979089		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Dickstein Shapiro LLP		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$615.00	
(4) STREET ADDRESS LINE NO. 1 1825 Eve Street, NW			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY Washington		(7) STATE DC	(8) ZIP CODE 20006-5403
(9) DAYTIME TELEPHONE NUMBER (include area code) (202) 420-2200		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0004-2711-10		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME CHISHOLM TRAIL BROADCASTING CO.			
(14) STREET ADDRESS LINE NO. 1 316 EAST WILLOW			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY Enid		(17) STATE OK	(18) ZIP CODE 73701
(19) DAYTIME TELEPHONE NUMBER (include area code) (580) 237-1390		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0004-0710-31		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID KFXV	(24A) PAYMENT TYPE CODE MMR	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$615.00	(27A) TOTAL FEE \$615.00	FCC USE ONLY	
(28A) FCC CODE 1 87168		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <u>Andrew Kersting</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. SIGNATURE <u>Andrew Kersting</u> DATE <u>6/19/09</u>			
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

DICKSTEIN SHAPIRO LLP

1825 Eye Street NW Washington, DC 20006-5403

ACCOUNT NUMBER**2000026568223****Date****06/19/09****Check No.****366323**

Description & Invoices That This Check is Written For

cr061909	06/19/09	615.00	FCC Filing Fee for Form 159 for a license application for station KFXV (Chisholm Trail Broadcasting Co.)
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FEDERAL COMMUNICATIONS COMMISSION

Check Amount Total

615.00

THIS CHECK IS VOID WITHOUT A GREEN & BLUE BACKGROUND AND AN ARTIFICIAL WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

DICKSTEIN SHAPIRO LLP

1825 Eye Street NW | Washington, DC 20006-5403

Wachovia Bank, N.A.
15-122/540**Check No.****366323****Date****06/19/09****Amount****\$615.00**

VOID AFTER SIX MONTHS

PAY Six Hundred Fifteen and 00/100 DollarsTO
THE
ORDER
OF
FEDERAL COMMUNICATIONS COMMISSION

2 Signatures Required if \$10,000 or Above



SIGNATURE HAS A COLORED BACKGROUND - BORDER CONTAINS MICROPRINTING

⑈ 366323 ⑈ ⑆ 054001220 ⑆ 2000026568223 ⑈

FOR
FCC
USE
ONLY

FCC 302-AM
APPLICATION FOR AM
BROADCAST STATION LICENSE

(Please read instructions before filling out form.)

FOR COMMISSION USE ONLY

FILE NO.

SECTION I - APPLICANT FEE INFORMATION

1. PAYOR NAME (Last, First, Middle Initial)

Dickstein Shapiro LLP

MAILING ADDRESS (Line 1) (Maximum 35 characters)

1825 Eye Street, NW

MAILING ADDRESS (Line 2) (Maximum 35 characters)

CITY

Washington

STATE OR COUNTRY (if foreign address)

DC

ZIP CODE

20006-5403

TELEPHONE NUMBER (include area code)

(202) 420-2200

CALL LETTERS

KFXV

OTHER FCC IDENTIFIER (If applicable)

87168

2. A. Is a fee submitted with this application?



Yes



No

B. If No, indicate reason for fee exemption (see 47 C.F.R. Section



Governmental Entity



Noncommercial educational licensee



Other (Please explain):

C. If Yes, provide the following information:

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter fee amount due in Column (C).

(A)

FEE TYPE CODE		
M	M	R

(B)

FEE MULTIPLE			
0	0	0	1

(C)

FEE DUE FOR FEE TYPE CODE IN COLUMN (A)
\$ 615.00

FOR FCC USE ONLY

To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A)

--	--	--

(B)

0	0	0	1
---	---	---	---

(C)

\$

FOR FCC USE ONLY

ADD ALL AMOUNTS SHOWN IN COLUMN C, AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED WITH THIS APPLICATION

\$ 615.00

FOR FCC USE ONLY

SECTION II - APPLICANT INFORMATION		
1. NAME OF APPLICANT CHISHOLM TRAIL BROADCASTING CO.		
MAILING ADDRESS 316 EAST WILLOW		
CITY ENID	STATE OK	ZIP CODE 73701

2. This application is for:

- ☒ Commercial
 ☐ Noncommercial
☒ AM Directional
 ☐ AM Non-Directional

Call letters KFXV	Community of License ENID, OK	Construction Permit File No.	Modification of Construction Permit File No(s).	Expiration Date of Last Construction Permit
----------------------	----------------------------------	------------------------------	---	---

3. Is the station now operating pursuant to automatic program test authority in accordance with 47 C.F.R. Section 73.1620?

☐ Yes ☐ No

If No, explain in an Exhibit.

Exhibit No.
NOT APPLICABLE

4. Have all the terms, conditions, and obligations set forth in the above described construction permit been fully met?

☐ Yes ☐ No

If No, state exceptions in an Exhibit.

Exhibit No.
NOT APPLICABLE

5. Apart from the changes already reported, has any cause or circumstance arisen since the grant of the underlying construction permit which would result in any statement or representation contained in the construction permit application to be now incorrect?

☐ Yes ☐ No

If Yes, explain in an Exhibit.

Exhibit No.
NOT APPLICABLE

6. Has the permittee filed its Ownership Report (FCC Form 323) or ownership certification in accordance with 47 C.F.R. Section 73.3615(b)?

☐ Yes ☐ No

☒ Does not apply

If No, explain in an Exhibit.

Exhibit No.

7. Has an adverse finding been made or an adverse final action been taken by any court or administrative body with respect to the applicant or parties to the application in a civil or criminal proceeding, brought under the provisions of any law relating to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?

☐ Yes ☒ No

If the answer is Yes, attach as an Exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers), and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.65(c), the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing; and (ii) the disposition of the previously reported matter.

Exhibit No.

8. Does the applicant, or any party to the application, have a petition on file to migrate to the expanded band (1605-1705 kHz) or a permit or license either in the existing band or expanded band that is held in combination (pursuant to the 5 year holding period allowed) with the AM facility proposed to be modified herein?

☒ Yes ☐ No

If Yes, provide particulars as an Exhibit.

Exhibit No.

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because use of the same, whether by license or otherwise, and requests and authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended).


The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in

CERTIFICATION

1. By checking Yes, the applicant certifies, that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862, or, in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. Section 1.2002(b).

☒ Yes ☐ No

2. I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Name Hiram H. Champlin	Signature 	
Title President	Date 6/18/2009	Telephone Number (580) 237-1390

**WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT
(U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR
CONSTRUCTION**

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine whether grant of the application is in the public interest. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authorization.

Public reporting burden for this collection of information is estimated to average 639 hours and 53 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, can be sent to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project (3060-0627), Washington, D. C. 20554. Do NOT send completed forms to this address.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

SECTION III - LICENSE APPLICATION ENGINEERING DATA

Name of Applicant

CHISHOLM TRAIL BROADCASTING CO.

PURPOSE OF AUTHORIZATION APPLIED FOR: (check one)



Station License



Direct Measurement of Power

1. Facilities authorized in construction permit					
Call Sign KFXY	File No. of Construction Permit (if applicable)	Frequency (kHz) 1640	Hours of Operation Unlimited (no change)	Power in kilowatts	
				Night 1.0	Day 10.0
2. Station location					
State Oklahoma			City or Town Enid		
3. Transmitter location					
State OK	County Kingfisher		City or Town near Hennessey	Street address (or other identification) 8.2 miles west of Hennessey, OK on State Hwy 51	
4. Main studio location					
State OK	County Garfield		City or Town Enid	Street address (or other identification) 316 East Willow	
5. Remote control point location (specify only if authorized directional antenna)					
State	County		City or Town	Street address (or other identification)	

6. Has type-approved stereo generating equipment been installed?



Yes



No

7. Does the sampling system meet the requirements of 47 C.F.R. Section 73.68?



Yes



No



Not Applicable

Attach as an Exhibit a detailed description of the sampling system as installed.

Exhibit No.

8. Operating constants:						
RF common point or antenna current (in amperes) without modulation for night system No Change			RF common point or antenna current (in amperes) without modulation for day system No Change			
Measured antenna or common point resistance (in ohms) at operating frequency Night No Change			Measured antenna or common point reactance (in ohms) at operating frequency Night No Change			
Day No Change			Day No Change			
Antenna indications for directional operation						
Towers	Antenna monitor Phase reading(s) in degrees		Antenna monitor sample current ratio(s)		Antenna base currents	
	Night	Day	Night	Day	Night	Day
Manufacturer and type of antenna monitor:						

SECTION III - Page 2

9. Description of antenna system (if directional antenna is used, the information requested below should be given for each element of the array. Use separate sheets if necessary.)

Type Radiator	Overall height in meters of radiator above base insulator, or above base, if grounded.	Overall height in meters above ground (without obstruction lighting)	Overall height in meters above ground (include obstruction lighting)	If antenna is either top loaded or sectionalized, describe fully in an Exhibit.
No Change	No Change	No Change	No Change	Exhibit No. Not Applicable

Excitation

☐

Series

☐

Shunt

Geographic coordinates to nearest second. For directional antenna give coordinates of center of array. For single vertical radiator give tower location.

North Latitude	No Change	West Longitude	No Change
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If not fully described above, attach as an Exhibit further details and dimensions including any other antenna mounted on tower and associated isolation circuits.

Exhibit No.
Not Applicable

Also, if necessary for a complete description, attach as an Exhibit a sketch of the details and dimensions of ground system.

Exhibit No.
Not Applicable


10. In what respect, if any, does the apparatus constructed differ from that described in the application for construction permit or in the permit?

Not Applicable

11. Give reasons for the change in antenna or common point resistance.

Not Applicable

I certify that I represent the applicant in the capacity indicated below and that I have examined the foregoing statement of technical information and that it is true to the best of my knowledge and belief.

Name (Please Print or Type)	Signature (check appropriate box below)		
Hiram H. Champlin			
Address (include ZIP Code)	Date		
316 East Willow	6/18/2009		
Enid, OK 73701	Telephone No. (Include Area Code)		
	(580) 237-1390		

☐

Technical Director

☐

Registered Professional Engineer

☐

Chief Operator

☐

Technical Consultant

☒

Other (specify)

REQUEST FOR WAIVER AND REMOVAL OF SPECIAL CONDITION

Chisholm Trail Broadcasting Co. (“CTCB”),¹ licensee of expanded band station KFX Y(AM), Enid, Oklahoma (Facility ID 87168) and paired lower band station KCRC(AM), Enid, Oklahoma (Facility ID 10856), hereby requests a waiver of the Commission’s rules and a modification of the KFX Y license and renewal authorization² to remove a condition thereby permitting both KFX Y and KCRC to continue to operate beyond June 21, 2009, which is five (5) years from the date the license for expanded band station KFX Y was issued. In support of this request, the following is stated:

I. Background

In 1983, the Commission initiated a process designed to improve and revitalize the AM broadcast radio service.³ The Commission later adopted a “national 88-station expanded band allotment plan (1605 kHz – 1705 kHz) as part of a multifaceted initiative to reduce interference in the AM band and to help revitalize the AM service.”⁴ Eligibility for station allotments in the expanded band was based on the following objectives: (1) minimize interference and congestion

¹ CTBC has been the licensee of stations KCRC and KFX Y since June 21, 2004.

² See BL-200320031203AKC; BR-20050131AMC. The referenced condition also appears on the renewal authorization for KCRC (BR-20050131ALV). The condition should also be removed from that authorization.

³ See *Amendment of Part 2 of the Commission's Rules Regarding Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979*, General Docket No. 80-739, Second Report and Order, FCC 83-511, rel. December 8, 1983, 49 FR 2357 (January 19, 1984).

⁴ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Marion and Johnston City, Illinois)*, 18 FCC Rcd 15346, 15347 (ASD 2003) (“*Marion and Johnston City, Illinois*”), rev. denied, 21 FCC Rcd 14724 (ASD 2006), citing *Review of the Technical Assignment Criteria for the AM Service*, 6 FCC Rcd 6273 (1991) (“*Expanded Band R&O*”), recon. granted in part and denied in part, 8 FCC Rcd 3250 (1993) (“*Expanded Band Reconsideration*”), review denied sub nom. *N.A.A.C.P. v. FCC*, 40 F.3d 474 (D.C. Cir. 1994) (subsequent history omitted). See also *Implementation of the AM Band Allotment Plan*, 12 FCC Rcd 3361 (1997), recon. denied, 13 FCC Rcd 21872 (1998). The Commission limited initial eligibility to occupy the expanded band to existing AM licensees, concluding that allowing new applicants in the expanded band would not achieve the level of interference and congestion reduction in the existing band which the Commission thought desirable to improve the competitive standing of AM broadcasters. See *Expanded R&O*, 6 FCC Rcd at 6306-6308.

in the standard AM band, and (2) bring a first full-time aural service to certain large communities. Like the majority of eligible applicants, CTBC satisfied the Commission's former objective.

The Commission announced that eligible licensees would be entitled to a five-year dual operating period.⁵ At the end of that five-year period, licensees were required to surrender the license for either their expanded band or lower band station. The Commission's desire, however, has been for stations to migrate out of the lower AM band by "... surrender[ing] the high-interference existing band authorization."⁶ The Commission also stated that it "must strictly manage migration to maximize the interference reduction benefits of each allotment awarded."⁷

II. Surrender of Either the KCRC or KFXY License Would Harm the Public Interest

CTBC filed its initial application for a construction permit for an expanded band AM station on June 16, 1997.⁸ The Media Bureau granted CTBC's modified application⁹ and later issued a covering license for KFXY on June 21, 2004. As stated above, under the terms of the *Expanded Band R&O*, CTBC was allowed to operate both its existing band AM station – KCRC – and its expanded band station – KFXY – for a transition period of five years from the date its expanded band license was issued. The transition period expires on June 21, 2009.

Requiring CTBC to surrender the license for either KCRC or KFXY would not serve the public interest. As stated above, the Commission's primary objective in the allotment of

⁵ See *Public Notice, Mass Media Bureau Announces Revised AM expanded band Allotment Plan and Filing Window for Eligible Stations*, 12 FCC Rcd 3185 (MMB 1997) (The Bureau stated that "[f]ollowing the grant of a construction permit application and construction of the authorized facilities, each expanded band permittee will be required to file an application for covering license on FCC Form 302. Expanded band licensees will receive authorizations permitting dual frequency operation for a period not to exceed five years").

⁶ *Marion and Johnston City, Illinois*, 18 FCC Rcd at 15347-48.

⁷ *Expanded Band R&O*, 6 FCC Rcd at 6306.

⁸ BP-19970616BI.

⁹ BMP-20021125ABM, granted March 26, 2003.

expanded band AM stations was to reduce interference and congestion in the existing AM band.¹⁰ The Commission would much prefer that licensees surrender their lower band AM authorizations at the end of the five-year dual operating period.¹¹

CTBC has no desire to surrender its expanded band license for KFXV. Accordingly, CTBC will be filing a Request for a Special Temporary Authorization to continue operating KFXV pending the Commission's action on (i) its license modification application filed contemporaneously herewith requesting that the condition on its license and renewal authorization requiring the surrender of its license be removed, and (ii) a pending "Request for Waiver of Rules Requiring Return of AM Licenses," filed by CTBC and various other parties on March 27, 2006 (a copy of which is annexed hereto as Appendix A).

Despite the Commission's desire to reduce interference in the AM band, KCRC is not a source of interference to any other station. Therefore, requiring the surrender of the license authorization for the lower band AM station in this instance would not promote the Commission's goal of minimizing interference and congestion in the lower AM band.

Furthermore, KCRC – which was the first station licensed to its community – is one of the few radio stations with a demonstrated commitment of serving the needs and interests of its local residents. KCRC regularly airs a substantial amount of local programming, including local news, weather, and other non-satellite delivered programming. Specifically, KCRC airs seven (7) 90-second local newscasts per day. Three of these newscasts air during the station's morning drive (6:00 a.m. – 9:00 a.m.), another two air during midday (12:00 p.m. – 1:00 p.m.), and

¹⁰ See *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 8 FCC Rcd 3250, 3256 (1993), citing *Policy Statement In the Matter of Amendment of Section 331 of the Communications Act of 1934*, 7 FCC Rcd 4905 (1992).

¹¹ *Marion and Johnston City, Illinois*, 18 FCC Rcd at 15347-48.

another two newscasts air during the afternoon drive (4:00 p.m. – 6:00 p.m.). The station also airs two (2) 30-second local weather reports each hour, 24 hours per day.

In addition to KCRC's local news and weather reports, the station airs a daily talk show in which it interviews representatives of local non-profit organizations such as the Red Cross, March of Dimes, Oklahoma Blood Institute, and local government officials concerning issues of importance to the local Enid community. Through its daily interview program, KCRC has played an important role in fundraising events for many local organizations. Station KCRC's daily talk program has also provided a forum for U.S. Senator James Inhofe¹² (R-Okla.) and U.S. Congressman Frank Lucas¹³ (R-Okla.) to address issues of importance to Enid-area residents.

As indicated above, KCRC covers both local and state political issues, including election coverage.

Station KCRC also provides substantial coverage of local high school sports, including high school football, basketball and baseball games. In addition, the station broadcasts local American Legion baseball games during the summer. KCRC also airs talk shows with local high school coaches and players, including those involved with other sports such as track and swimming. In connection with its coverage of local high school sports, KCRC promotes fundraising activities for high schools in the Enid area.

¹² Sen. Inhofe is the Ranking Member of the Full Committee on Environment and Public Works, Subcommittee on Superfund, Toxics and Environment Health. He also serves on the U.S. Committee on Armed Services, Subcommittee on Airland; U.S. Committee on Armed Services, Subcommittee on Readiness and Management Support; U.S. Committee on Armed Services, Subcommittee on Strategic Forces.

¹³ Congressman Lucas serves as the Ranking Member of the House Committee on Agriculture. He also serves on the Committee on Financial Services, Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises; Committee on Financial Services, Subcommittee on Domestic Monetary Policy and Technology; Committee on Science and Technology, Subcommittee on Space and Aeronautics.

Like KCRC, expanded band AM station KFX Y also provides local programming that serves the needs and interests of local residents. KFX Y airs the same daily talk program broadcast by KCRC, but the program is aired during a different time period. Station KFX Y provides local traffic and weather reports together, three (3) minutes per hour, during each morning and evening drive period (6:00 a.m. – 9:00 a.m. and 4:00 p.m. – 6:00 p.m.). KFX Y covers local and state political issues, including elections. KFX Y also provides coverage of local high school sports, including baseball and basketball tournaments. In addition, KFX Y airs its own locally-produced public service announcements for local non-profit organizations.

III. Conclusion

In the Commission’s diversification of ownership rulemaking proceeding,¹⁴ the Commission acknowledged the competing policy objectives that had been raised by the proposal to permit licensees to extend the five-year dual operating period. CTBC respectfully submits that because KCRC does not cause interference to any other station, forcing the licensee to surrender its license and take the station off the air would not improve the interference situation with respect to any other station in any material way, but would deprive Enid-area residents of a service they have come to rely upon and would result in an inefficient use of spectrum. Accordingly, in this instance, the prospect of promoting ownership diversity substantially outweighs the Commission’s objective of reducing the overall interference in the lower AM band and its attempt to revitalize the AM service. Therefore, a grant of the requested waiver and license modification would further the public interest because it would permit KCRC’s existing AM service to continue to meet the needs and interests of the Enid community which, as

¹⁴ *Promoting Diversification of Ownership In the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rule Making, MB Docket No. 07-294, *et al.*, 23 FCC Rcd 5922, 5953 (2008) (subsequent history omitted).

demonstrated herein, the station has been serving abundantly well for a substantial period of time.

WHEREFORE, in light of the foregoing, CTBC respectfully requests that its request for waiver be granted and that the license and renewal authorization for KFXV be modified to remove the condition requiring the surrender of the license authorization for either KFXV or KCRC by June 21, 2009.

APPENDIX A

Request for Waiver of Rules Requiring Return of AM Licenses

DOCKET FILE COPY DUPLICATE

DUPLICATE

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

RECEIVED

MAR 27 2006

Federal Communications Commission
Office of Secretary

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.¹

¹ 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.²

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

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.

² 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.”³ 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.⁴ The Commission based this requirement on its belief that

³ *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).

⁴ 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 million⁵). Pursuant to this waiver,

⁵ 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.⁶ 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.

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.

⁶ 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.⁷

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.⁸ 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

⁷ 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.

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

⁹ 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.

¹⁰ 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).

¹¹ 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.¹²

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

¹² 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.¹³ 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.¹⁴ 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.¹⁵ 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-

¹³ 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 (accessed March 16, 2006).

¹⁴ 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).

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

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

¹⁷ 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.¹⁸ 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;¹⁹ (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";²⁰ 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*,

¹⁸ 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))).

¹⁹ 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.

²⁰ See 47 U.S.C. §§ 257(a), (c). The next Section 257 triennial report to Congress is due in 2006.

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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	KLJB	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.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re

Chisholm Trail Broadcasting Co.)	
Station KCRC(AM), Enid, Oklahoma)	Facility ID No. 10856
)	
Chisholm Trail Broadcasting Co.)	
Station KFX Y(AM), Enid, Oklahoma)	Facility ID No. 87168

To: Office of the Secretary
Attn: Audio Division, Media Bureau

MOTION FOR STAY

Chisholm Trail Broadcasting Co. ("CTBC"), licensee of radio station KCRC(AM), Enid, Oklahoma and paired expanded band station KFX Y(AM), Enid, Oklahoma, pursuant to Section 1.44(e) of the Commission's rules, 47 C.F.R. §1.44(e), hereby moves for a stay of the effectiveness of the requirement established in the expanded band rulemaking proceeding¹ that CTBC surrender the license for station KFX Y. In support of this Motion, CTBC states as follows:

Pursuant to the Commission's decision in the expanded band proceeding, licensees of expanded band stations were required to surrender the license for either their expanded band station or their lower band station on or before the date that is five years after the license for the expanded band facility was granted. The five-year dual operating period for stations KCRC and KFX Y ended on June 21, 2009. Thus, contemporaneously with the filing of this Motion, CTBC

¹ *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273, 6274 (1991), *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993), *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).

is filing a separate Motion for Stay for station KCRC. CTBC is also filing an application to modify the KFX Y station license, which is accompanied by a “Request for Waiver and Removal of Special Condition” (“Waiver Request”), requesting that the condition on the KFX Y license and renewal authorization requiring the surrender of either the KCRC license or the KFX Y license by June 21, 2009 be removed.

Consistent with the Commission’s primary objective in the expanded band proceeding to have stations migrate out of the lower AM band, CTBC has no desire to surrender the license for KFX Y, its expanded band station. If it were forced to surrender the license for one of its AM stations, CTBC would surrender the license for its lower band station, KCRC. CTBC would much prefer, however, not to surrender the license for either station. Accordingly, CTBC has filed the instant Request for Special Temporary Authorization to continue operating KFX Y pending the Commission’s action on (i) its Waiver Request and (ii) the instant Motion. Moreover, as demonstrated herein, KCRC provides substantial public interest benefits to the residents of its service area and the loss of KCRC’s local programming would not serve the public interest.

As stated in its Waiver Request, CTBC is part of a coalition of broadcasters and public interest organizations (collectively, the “Waiver Parties”) that previously requested the Commission to waive its requirement that expanded band licensees surrender the license for either their lower band station or their expanded band station at the end of their five-year dual operating period.² Accordingly, in the Waiver Pleadings the Waiver Parties requested the Commission to stay the effect of the requirement that they surrender one of their AM licenses.

² The Waiver Parties filed a “Request for Waiver of Rules Requiring Return of AM Licenses” and a “Petition for Stay of Effective Dates” on March 27, 2006 (together, the “Waiver Pleadings”). A copy of the Petition for Stay of Effective Dates (“Petition for Stay”) is annexed hereto as Appendix A. In the Commission’s *Third Further Notice of Proposed Rule Making* in its diversification of ownership proceeding, the Commission sought comment on the “Request for Waiver of Rules Requiring Return of AM Licenses” that was jointly filed by the Waiver Parties on March 27, 2006. *See Promoting*

CTBC believes that the arguments presented in the Waiver Pleadings provide an adequate justification for a stay based on Commission precedent. Nevertheless, CTBC is filing the instant Motion out of an abundance of caution since it is not surrendering the license for either KCRC or KFXV at this time.

CTBC Meets Applicable Standard for Stay.

Stay requests require consideration of four (4) separate factors: (a) the likelihood of the movant incurring irreparable harm if the stay is not granted; (b) the harm to other interested parties; (c) the public interest; and (d) the movant's likelihood of success on the merits.³ Each of those factors favors a grant of the instant stay request.

A. Irreparable Harm.

There can be no dispute that CTBC would suffer irreparable harm if it were required to surrender the license for KCRC and thereby immediately terminate the station's on-air broadcast service. As noted above, the Petition for Stay was filed by the Waiver Parties on March 27, 2006. It therefore has been pending before the Commission for over three (3) years. Moreover, although the Commission solicited comments on the Waiver Parties' proposal⁴ in the *Third Further NPRM* in the diversification of ownership proceeding in March 2008, the Commission did not address that issue in its Report and Order and Fourth Further Notice of Proposed

Diversification of Ownership In the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rule Making, MB Docket No. 07-294, *et al.*, 23 FCC Rcd 5922, 5953 (2008) ("*Third Further NPRM*") (subsequent history omitted).

³ See *Liberty Productions*, 16 FCC Rcd 18966, 18970 (2001), citing *Washington Metropolitan Area Transit System v. Holiday Tours*, 559 F.2d 841 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921 (D.C. Cir. 1958); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669 (D.C. Cir. 1985).

⁴ The Waiver Parties proposed, *inter alia*, to permit expanded band licensees to assign one of their stations to a qualifying eligible entity for 75% of its fair market value, rather than being forced to surrender the station license. The Waiver Parties also proposed that, if the expanded band licensee is itself an eligible entity, it should be entitled to retain both stations. These two proposals are collectively referred to herein as the Waiver Parties' "Proposal."

Rulemaking released on May 5, 2009.⁵ Thus, the Commission is not likely to act on the Waiver Parties' Proposal anytime soon. If CTBC were to surrender the license for KCRC and the Commission does not act on either the instant Motion or the Waiver Pleadings filed by the Waiver Parties, the surrender of the KCRC license will become final. At that point, CTBC will be irreparably harmed because CTBC will be unable to have the KCRC license reinstated if the Commission subsequently grants the relief requested by the Waiver Parties.⁶

B. Harm to Other Parties.

A grant of this stay request would only maintain the *status quo* until the Commission has an opportunity to evaluate the important policy considerations presented in the Waiver Pleadings and CTBC's separate Waiver Request. Therefore, no cognizable harm would be suffered by any other party if the instant stay request is granted.

C. The Public Interest.

The public interest favors a grant of the requested stay. Station KCRC has broadcast local news, weather and sports programming to meet the needs and interests of Enid-area residents for many years. KCRC – which was the first station licensed to its community – airs seven (7) 90-second local newscasts per day. Three of these newscasts air during the station's morning drive (6:00 a.m. – 9:00 a.m.), another two air during midday (12:00 p.m. – 1:00 p.m.), and another two newscasts air during the afternoon drive (4:00 p.m. – 6:00 p.m.). The station also airs two (2) 30-second local weather reports each hour, 24 hours per day.

In addition to KCRC's local news and weather reports, KCRC covers both local and state political issues, including elections. The station also airs a daily talk show in which it interviews representatives of local non-profit organizations such as the Red Cross, March of Dimes,

⁵ *Promoting Diversification of Ownership In the Broadcasting Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking, MB Docket No. 07-294, FCC 09-33 (rel. May 5, 2009).

⁶ See, e.g., 47 C.F.R. §1.117; 47 U.S.C. §312(g); 47 C.F.R. §1740(c).

Oklahoma Blood Institute, and local government officials concerning issues of importance to the local Enid community. Through its daily interview program, KCRC has played an important role in fundraising events for many local organizations. Station KCRC's daily talk program has also provided a forum for U.S. Senator James Inhofe⁷ (R-Okla.) and U.S. Congressman Frank Lucas⁸ (R-Okla.) to address issues of concern to Enid-area residents.

Station KCRC also provides substantial coverage of local high school sports, including high school football, basketball and baseball games. In addition, the station broadcasts local American Legion baseball games during the summer. KCRC also airs talk shows with local high school coaches and players, including those involved with other sports such as track and swimming. In connection with its coverage of local high school sports, KCRC promotes fundraising activities for high schools in the Enid area.

The residents within KCRC's service area – many of whom have come to rely on the station's coverage of local events – should not be deprived of KCRC's programming service by forcing the station to go off the air prematurely. In other contexts, the Commission has recognized that the public has a legitimate expectation that existing service will continue.⁹ The preservation of that programming through a grant of the instant stay request is especially important because, in the absence of a stay, KCRC and its valuable local programming will

⁷ Sen. Inhofe is the Ranking Member of the Full Committee on Environment and Public Works, Subcommittee on Superfund, Toxics and Environment Health. He also serves on the U.S. Committee on Armed Services, Subcommittee on Airland; U.S. Committee on Armed Services, Subcommittee on Readiness and Management Support; U.S. Committee on Armed Services, Subcommittee on Strategic Forces.

⁸ Congressman Lucas serves as the Ranking Member of the House Committee on Agriculture. He also serves on the Committee on Financial Services, Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises; Committee on Financial Services, Subcommittee on Domestic Monetary Policy and Technology; Committee on Science and Technology, Subcommittee on Space and Aeronautics.

⁹ See, e.g., *Fort Bend Broadcasting Company*, 21 FCC Rcd 2953, 2954-55 (MB 2006), *rev. denied*, 23 FCC Rcd 11026 (MB 2008).

likely be gone forever. The Commission has made clear that any loss of service is *prima facie* inconsistent with the public interest which supports the grant of the requested stay.¹⁰

As the Commission stated in the ownership diversity proceeding, it must determine how to “properly balance the competing goals of improving the technical viability of the AM service and promoting ownership diversity.”¹¹ Until that question has been resolved, the listening public in the Enid market should not be deprived of KCRC’s local non-entertainment programming. Their interests should guide the Commission’s evaluation of the public interest factor.¹²

D. Substantial Showing on the Merits.

If the first three factors favor a grant of the stay, the moving party needs only to make “a substantial showing” on the merits. *Liberty Productions*, 16 FCC Rcd at 18970. The instant stay request satisfies this standard for the reasons demonstrated above.

The Waiver Parties’ Proposal¹³ has been under consideration by the Commission in the ownership diversity proceeding for well over a year.¹⁴ The substantial public interest benefits presented by the Proposal are reflected in the Commission’s acknowledgment that, in seeking to promote ownership diversity in the broadcast industry, it must attempt to balance its competing objectives of attempting to revitalize the AM service and enhancing ownership diversity. The Commission’s recognition of those competing public interest objectives demonstrates that

¹⁰ See *West Michigan Telecaster, Inc. v. FCC*, 460 F.2d 883 (D.C. Cir. 1972), *Coronado Communications Company*, 8 FCC Rcd 159, 162 (Vid. Serv. Div. 1992), citing *Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956).

¹¹ *Third Further NPRM*, 23 FCC Rcd at 5953.

¹² See, e.g., *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d at 925 (public interest factor requires that “[t]he interests of private litigants must give way to the realization of public purposes,” which include “fostering competition and preserving the economic viability of existing public services”); *Cumulus Licensing Corp.*, 16 FCC Rcd 1052, 1055 (2001) (public interest factor requires consideration of “potential spill-over effect on both the employees [of the other party] and listening audience”).

¹³ The Proposal was contained in the Waiver Parties’ “Request for Waiver of Rules Requiring Return of AM Licenses,” filed March 27, 2006.

¹⁴ *Third Further NPRM*, 23 FCC Rcd at 5953.

CTBC, along with the other Waiver Parties, has made the requisite substantial showing on the merits.

Conclusion

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that the Commission stay the effectiveness of the requirement that CTBC surrender the license for KFXV until the Commission has decided the issues raised in the Waiver Pleadings and CTBC's separately filed Waiver Request.

Respectfully submitted,

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By: 
Andrew S. Kersting

June 22, 2009

APPENDIX A

Petition for Stay of Effective Dates

DOCKET FILE COPY ORIGINAL
DOCKET FILE COPY DUPLICATE
DOCKET FILE COPY DUPLICATE

DUPLICATE

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

RECEIVED

MAR 27 2006

Federal Communications Commission
Office of Secretary

In the matter of

Implementation of the AM Expanded
Band Allotment Plan

MM Docket No. 87-267

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 mooted 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

-
- 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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CC Licenses, LLC
Clear Channel Broadcasting Licenses, Inc.

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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. KYDZ 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.