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April 8, 2008

Mark Lipp
202.719.7503
mlipp@wileyrein.com

VIA ELECTRONIC FILING

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

Re: **Request for Special Temporary Authority**
Multicultural Radio Broadcasting Licensee, LLC
Station WJDM(AM), Elizabeth, New Jersey
Facility Identification Number: 54563

Dear Ms. Dortch:

Multicultural Radio Broadcasting Licensee, LLC (“Multicultural”), licensee of Station WJDM(AM), Elizabeth, New Jersey, hereby requests Special Temporary Authority (“STA”) to continue operation of WJDM pending action on (i) its modification of license application (BML-20071011AEH), and (ii) the outcome of the “Request for Waiver of Rules Requiring Return of AM Licenses” that was jointly filed by Multicultural and various other parties on March 27, 2006 (collectively, the “Waiver Proceedings”).

By separate letter, Multicultural will surrender the license for the station conditioned on the outcome of the Waiver Proceedings. As discussed more extensively in the Waiver Proceedings, the public interest will be served by permitting Multicultural to retain its expanded and existing band licenses.

The public interest would benefit from the grant of this STA because WJDM(AM) provides ethnic programming to the Hispanic community in the Elizabeth, New Jersey area.¹ This programming provides a valuable public interest benefit to a large minority group and Multicultural would like to continue to operate WJDM(AM) during the pendency of the Waiver Proceedings. Because it is unclear how long the Commission will take to decide the issues raised in the Waiver Proceedings, permitting Multicultural to continue to operate a station that would

¹ The U.S. Census indicates that 73,354 persons or 57% of Elizabeth’s population is Hispanic or Latino.



Marlene H. Dortch
April 8, 2008
Page 2

otherwise remain dark, clearly serves the public interest.² Further, grant of a STA will not adversely impact any other party because it only maintains the status quo until the Commission considers the Waiver Proceedings. Multicultural, therefore, respectfully requests that the Commission grant the STA to permit it to continue to operate WJDM(AM) until finality of the Waiver Proceedings.

If there are any questions about this Request, please contact undersigned counsel for Multicultural Radio Broadcasting Licensee, LLC

Sincerely,


Mark Lipp

Enclosures

12827988.1

² In its recent *Third Further Notice of Proposed Rule Making* in its diversity proceeding, the Commission seeks comment on the "Request for Waiver of Rules Requiring Return of AM Licenses" that was jointly filed by Multicultural and various other parties on March 27, 2006. *See Promoting Diversification of Ownership in the Broadcasting Services*, FCC 07-217 (2007). The comment date in this proceeding has not yet been established.



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April 8, 2008

Mark Lipp
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VIA HAND DELIVERY

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

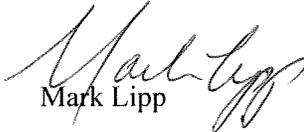
Re: **Notification of Conditional Surrender of License**
Multicultural Radio Broadcasting Licensee, LLC
Station WJDM(AM), Elizabeth, New Jersey
Facility Identification Number: 54563
File Number BL-19930719AB/BZ-19960726AE

Dear Ms. Dortch:

This letter, filed on behalf of Multicultural Radio Broadcasting Licensee, LLC (“Multicultural”), licensee of Station WJDM(AM), Elizabeth, New Jersey, notifies the Federal Communications Commission that Multicultural surrenders the license of WJDM (BL-19930719AB/BZ-19960726AE) conditioned upon the “Surrender of License Conditioned Upon the Outcome of Waiver Proceedings” and “Request for Stay” (collectively the “Waiver Proceeding”). Copies of these pleadings are enclosed. The Commission’s rules require that Multicultural must surrender either its expanded band license or its existing band license at the end of the five year period that commences with the date on which its expanded band facility was originally licensed. Station WWRU(AM), the companion expanded band station for WJDM, was originally licensed on April 9, 2003 (BL-20030206ADU). Multicultural has chosen, therefore, to surrender the license of WJDM conditioned on the outcome of the Waiver Proceeding.

If there are any questions about this Notification, please contact undersigned counsel for Multicultural Radio Broadcasting Licensee, LLC.

Sincerely,


Mark Lipp

Enclosures

12827919.1

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

In re

Multicultural Radio Broadcasting Licensee, LLC)	
Station WJDM(AM), Elizabeth, New Jersey)	Facility ID No. 54563
)	
Multicultural Radio Broadcasting Licensee, LLC)	
Station WWRU(AM), Jersey City, New Jersey)	Facility ID No. 87123
)	

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

**SURRENDER OF LICENSE CONDITIONED UPON
OUTCOME OF WAIVER PROCEEDINGS**

Multicultural Radio Broadcasting Licensee, LLC (“Multicultural”), licensee of Station WJDM(AM), Elizabeth, New Jersey, hereby surrenders the license for Station WJDM(AM) conditioned on the outcome of its pending modification of license application, which was accompanied by the “Request for Waiver and Removal of Special Condition” filed by Multicultural on October 11, 2007 (the “WJDM Waiver Request”).¹ In the alternative, if the Commission denies this modification of license application, Multicultural requests that the surrender of its license be conditioned on the outcome of the “Request for Waiver of Rules Requiring Return of AM Licenses” that was jointly filed by Multicultural and various other parties on March 27, 2006 (collectively, the “Expanded Band Waiver Proceeding”).² In support hereof, Multicultural states as follows:

1. Station WJDM(AM) is licensed to operate on 1530 kHz and is paired with Station WWRU(AM), which is licensed to operate on 1660 kHz. Pursuant to the Commission’s decision

¹ See BML-20071011AEH. A copy of this application is attached hereto as Attachment 1.

² A copy of the “Request for Waiver of Rules Requiring Return of AM Licenses” is attached hereto as Attachment 2.

in the expanded band proceeding, licensees of expanded band stations must surrender either their expanded band license or their regular band license on or before the end of the 5 year period commencing with the date that the expanded band facility was licensed.³ Thus, because the license for Station WWRU(AM) was granted on April 9, 2003, Multicultural must surrender the license for either WJDM(AM) or WWRU(AM) by April 9, 2008.

2. Multicultural is filing a separate letter surrendering its license for Station WJDM(AM). That surrender is conditioned on the outcome of the WJDM Waiver Request. As discussed more extensively in the WJDM Waiver Request, Station WWRU is one of only two remaining expanded band stations that was licensed to bring a first full-time aural service to certain large communities. The vast majority of expanded band stations were licensed to minimize interference and congestion in the standard AM band. Thus, WJDM(AM) is a member of a very small minority of stations for which interference reduction played no role at all when such stations were granted a paired expanded band station. Further, grant of the WJDM Waiver Request will permit the retention of a first local service to Elizabeth (US Census pop. 129,337) (and one of two stations to Jersey City (US Census pop. 242,845)). It is Multicultural's position that its waiver may therefore be granted in the public interest and, consistent with Congressional intent, without any impact on the Commission's overall plan to reduce interference and congestion in the AM band.

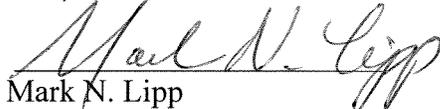
3. In the alternative, if the Commission ultimately denies the WJDM Waiver Request, Multicultural conditions its surrender on the Expanded Band Waiver Proceeding. As

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).

discussed more extensively in the Expanded Band Waiver Proceeding, the public interest will also be served by permitting licensees to retain their expanded and existing band licenses for the purpose of selling one of these licenses to recognized small businesses. In the Expanded Band Waiver Proceeding, Multicultural and other parties have requested that the Commission waive certain rules and policies that require AM licensees operating in the expanded band to surrender one of their AM licenses. The Commission acknowledged this request in its recent *Third Further Notice of Proposed Rule Making* in its diversity proceeding where the Commission seeks comment on the proposal to retain both paired stations if one is sold to an eligible entity.⁴ The parties believe that the licenses of the stations which would otherwise be surrendered could serve a valuable public interest goal of increasing ownership diversity, and therefore have joined together to support the requests submitted in the Expanded Band Waiver Proceeding and the diversity proceeding.

Respectfully submitted,

MULTICULTURAL RADIO BROADCASTING
LICENSEE, LLC

By: 

Mark N. Lipp
Scott Woodworth
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7500

Its Counsel

April 8, 2008

⁴ See *Promoting Diversification of Ownership in the Broadcasting Services*, FCC 07-217 (2007). The comment date in this proceeding has not yet been established.

ATTACHMENT 1



1776 K STREET NW
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STAMP & RETURN

October 11, 2007

Mark Lipp
202.719.7503
mlipp@wileyrein.com

VIA MESSENGER

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
Media Bureau
P.O. Box 358190
Pittsburgh, Pennsylvania 15251-5190

FCC/MELLON

OCT 11 2007

Re: **Application for AM Broadcast Station License**
Multicultural Radio Broadcasting Licensee, LLC
Station WJDM(AM), Elizabeth, New Jersey
Facility Identifier Number: 54563

Dear Ms. Dortch:

Transmitted herewith on behalf of Multicultural Radio Broadcasting Licensee, LLC, licensee of Station WJDM(AM), are an original and two copies of its application for an AM broadcast station license accompanied by a Request for Waiver and Removal of Special Condition from the renewal authorization of WJDM. Also enclosed is FCC Form 159 Remittance Advice.

If there are any questions about this Application, please contact undersigned counsel for Multicultural Radio Broadcasting Licensee, LLC.

Sincerely,


Mark Lipp

ML/eo

Enclosure

12722004.1

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE
FORM 159

Approved by OMB
3060-0589
Page No 1 of 1

(1) LOCKBOX # 358190	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) Wiley Rein LLP	(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$585.00	
(4) STREET ADDRESS LINE NO. 1 1776 K Street NW		
(5) STREET ADDRESS LINE NO. 2		
(6) CITY Washington	(7) STATE DC	(8) ZIP CODE 20006
(9) DAYTIME TELEPHONE NUMBER (include area code) 202-719-7000	(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED		
(11) PAYER (FRN) 0002-1517-44	(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 Multicultural Radio Broadcasting Licensee, LLC		
(14) STREET ADDRESS LINE NO. 1 449 Broadway		
(15) STREET ADDRESS LINE NO. 2		
(16) CITY New York	(17) STATE NY	(18) ZIP CODE 10013
(19) DAYTIME TELEPHONE NUMBER (include area code) 212-431-4300	(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED		
(21) APPLICANT (FRN) 0010-2158-12	(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET		
(23A) CALL SIGN/OTHER ID WJDM	(24A) PAYMENT TYPE CODE MMR	(25A) QUANTITY 1
(26A) FEE DUE FOR (PTC) \$585.00	(27A) TOTAL FEE \$585.00	FCC USE ONLY
(28A) FCC CODE 1 54563	(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>Albert Ortiz</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>Albert Ortiz</u>	DATE <u>10/11/07</u>	
SECTION E - CREDIT CARD PAYMENT INFORMATION		
ACCOUNT NUMBER <u>379477713894007</u> MASTERCARD <input type="checkbox"/> VISA <input type="checkbox"/> AMEX <input checked="" type="checkbox"/> DISCOVER <input type="checkbox"/>		
EXPIRATION DATE <u>06/2011</u>		
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.		
SIGNATURE <u>Maclapp</u>	DATE <u>10/11/2007</u>	

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)

Wiley Rein LLP

MAILING ADDRESS (Line 1) (Maximum 35 characters)

1776 K Street, NW

MAILING ADDRESS (Line 2) (Maximum 35 characters)

CITY
Washington

STATE OR COUNTRY (if foreign address)
DC

ZIP CODE
20006

TELEPHONE NUMBER (include area code)
202-719-7503

CALL LETTERS
WJDM

OTHER FCC IDENTIFIER (if applicable)
54563

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)	(B)	(C)	
FEE TYPE CODE	FEE MULTIPLE	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
M M R	0 0 0 1	\$ 585.00	

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)	(C)	
	0 0 0 1	\$	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	FOR FCC USE ONLY
\$ 585.00	

SECTION II - APPLICANT INFORMATION		
1. NAME OF APPLICANT Multicultural Radio Broadcasting Licensee, LLC		
MAILING ADDRESS 449 Broadway		
CITY New York	STATE NY	ZIP CODE 10013

2. This application is for:

- Commercial Noncommercial
 AM Directional AM Non-Directional

Call letters WJDM	Community of License Elizabeth, NJ	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

Exhibit No.
Not Applicable

If No, explain in an Exhibit.

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

Yes No

Exhibit No.
Not Applicable

If No, state exceptions in an Exhibit.

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

Exhibit No.
Not Applicable

If Yes, explain in an Exhibit.

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

Exhibit No.

If No, explain in an Exhibit.

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

Exhibit 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.

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.
1

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).

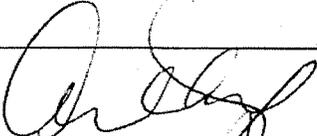
The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in

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 Arthur S. Liu	Signature 	
Title President	Date 10/11/2007	Telephone Number 212-431-4300

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 - Page 2

9. Description of antenna system ((f drectional 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 °
----------------------------	----------------------------

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

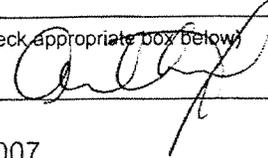
10. In what respect, if any, does the apparatus constructed differ from that described in the application for construction permit or in the permit?

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) Arthur Liu	Signature (check appropriate box below) 
Address (include ZIP Code) 449 Broadway New York, NY 10013	Date 10/11/2007
	Telephone No. (Include Area Code) 212-431-4300

- Technical Director
- Chief Operator
- Other (specify)
- Registered Professional Engineer
- Technical Consultant

REQUEST FOR REMOVAL OF SPECIAL CONDITION AND WAIVER

Multicultural Radio Broadcasting Licensee, LLC (“Multicultural”),¹ the licensee of expanded band Station WWRU(AM), Jersey City, New Jersey and paired Station WJDM(AM), Elizabeth, New Jersey, hereby requests a waiver of the Commission’s Rules, and a modification of the WJDM(AM) renewal authorization,² to remove the Condition , so that both stations can continue to operate beyond the date -- April 9, 2008 -- which is five years subsequent to the issuance of the April 9, 2003 expanded band license for WWRU(AM). The following is submitted in support of this waiver request and the license modification:

I. Background

In 1983, the Commission initiated the process to improve and revitalize the AM broadcast radio service.³ Subsequently, the Commission “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

¹ Multicultural has been the licensee of Stations WWRU(AM) and WJDM(AM) since February 4, 2004. The previous licensee of these stations was Radio Unica of New York License Corp. (“Radio Unica”), which obtained the expanded band license for WWRU(AM). For purposes of this pleading, Radio Unica and Multicultural will be referred to as Multicultural.

² See BR-20060131BHQ. The referenced condition also appears on the license and renewal authorization for WWRU(AM) (BL-20031001CGF; BR-20060131BHP) and to the extent necessary should also be removed from those authorizations. Multicultural is filing a separate license modification application to request removal of the same special condition on the WWRU license and renewal 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)*, DA 03-2413, para. 5 (ASD 2003), 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) 12721735.1

allotting stations in the expanded band was based on two unrelated criteria. One was to minimize interference and congestion in the standard AM band. The other was to bring a first full-time aural service to certain large communities, as was the case with WWRU(AM). Unlike WWRU(AM), the vast majority of eligible applicants fell into the former category.

To achieve interference and congestion reduction in the standard AM band, the Commission announced that eligible licensees would receive dual operating authority for a five-year period.⁵ At the end of the five-year term, the licensee was to surrender to the Commission — at the licensee's discretion — either the existing band or expanded band authorization. The general plan was to migrate stations out of the existing AM band:

[W]e must strictly manage migration to maximize the interference reduction benefits of each allotment awarded.⁶

With respect to license surrender:

(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 Band R&O*, 6 FCC Rcd at 6306-6308. The Commission also set forth a summary of the steps it would take to develop and implement the Allotment Plan as follows: (a) open a window for existing AM stations to file petitions to migrate to the expanded band; (b) extract relevant data concerning these stations from the petitions and enter the information into the AM database; (c) rank all such stations based on established priority groups and interference improvement factors (the more interference a station causes and receives, the higher its ranking, i.e., migration is based on the degree to which the new frequency allocation will reduce interference in the existing band); (d) produce an allotment plan which identifies stations eligible to migrate; (e) call for applications to migrate and issue a cut-off list (subjecting applicants to petitions to deny, but not competing applications), and (f) issue construction permits and licenses where appropriate. *Id* at 6316-6319.

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

Plainly the Commission prefers licensees to surrender the high-interference existing band authorization.⁷

However another reason for permitting stations to operate in the expanded band — to bring full-time aural service to certain large underserved communities — was recognized by the act of Congress. In 1991, § 331 of the Act was amended by the addition of new sub paragraph (b) establishing a new policy regarding AM stations.⁸ New sub paragraph (b):

directed [the Commission] to ensure that the licensee of an AM daytime-only station in a community with a population of more than 100,000 persons that lacks a local full-time aural station licensed to that community and that is located within a Class I station primary service area would be given the opportunity to provide full-time service to that community, if so requested by the licensee and if technically feasible.⁹

The Commission subsequently amended its rules to provide that stations defined in Section 331(b) of the Communications Act be given the first priority for migration to the expanded band.¹⁰

⁷ *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Marion and Johnston City, Illinois)*, DA 03-2413 at para. 5.

⁸ P.L. 102-243, 105 Stat. 2394, approved December 20, 1991, Section 331 of the Communications Act of 1934 (47 U.S.C. 331).

⁹ *Policy Statement in the Matter of Amendment of Section 331 of the Communications Act of 1934*, 7 FCC Rcd 4905 ¶ 1 (1992). Specifically, Section 331(b) provides that:

in any case in which the licensee of an existing AM daytime-only station located in a community with a population of more than 100,000 persons that lacks a local full-time aural station licensed to that community and that is located within a Class I station primary service area notifies the Commission that such licensee seeks to provide full-time service, to ensure that such a licensee is able to place a principal community contour signal over its entire community of license 24 hours a day, if technically feasible.

¹⁰ *Expanded Band Reconsideration*, 8 FCC Rcd at ¶ 41. See also, § 73.30 (Note 1) of the Commission's rules.

The policy behind § 331(b) was not interference or congestion reduction. Rather, its primary purpose was to advance the provision of additional service to underserved communities (such as Elizabeth, New Jersey) without regard to interference considerations.¹¹ Following the implementation of § 331(b), the Commission issued sixty-five permits for AM expanded band stations in 1997 and 1998. Multicultural's predecessor was one of two recipients of an authorization based on §331(b) for what would eventually become WWRU(AM), operating on 1660 kHz.

Thus, WWRU(AM) is a member of a very small minority of expanded band stations for which interference reduction played no role at all. Grant of this waiver request will permit the retention of a first local service to Elizabeth (US Census pop. 129,337) and one of two stations to Jersey City(US Census pop. 242,845). Interference was not a concern with Station WJDM(AM), daytime only. This waiver may therefore be granted in the public interest and consistent with Congressional intent without any impact on the Commission's overall plan to reduce interference and congestion in the AM band.

II. Return of the WWRU(AM) Authorization will not Serve the Public Interest, but will in fact Harm the Public Interest

Multicultural, applied for a construction permit for an AM broadcast station in the expanded band.¹² The Media Bureau granted the application and later issued WWRU(AM)'s license on April 9, 2003. Under the terms of the *Expanded Band R&O*, Multicultural is allowed to operate both its existing band AM station — WJDM(AM) — and the expanded band station

¹¹ See § 73.30 of the Commission's Rules, Notes 1, 2 and 4.

¹² See BP-19970613AM.

— WWRU(AM) — for a defined “transition period” of five years. Pursuant to Special Condition 3 on the April 9, 2003 issued license for station WWRU(AM), “after the five year period starting from the date the facility specified herein is initially licensed, licensee will surrender either the WWRU, 1660 kHz expanded band license or its existing band license (WJDM 1530 kHz, Elizabeth, NJ).”¹³ The five-year transition period for dual operation began to run as of the date of license issuance.¹⁴ As a result, the license for WWRU(AM) effectively expires on April 9, 2008, at which time either Elizabeth or Jersey City will lose a valuable AM service.

Removing the service of either WWRU(AM) or WJDM(AM) will not serve the public interest. As noted, the construction permit and license for expanded band Station WWRU(AM) was granted to Multicultural because it fit the criteria of § 331(b), enacted to provide local service to communities such as Elizabeth and Jersey City and not because it fit within the Commission’s interference/congestion reduction policy objective. In contrast to most paired existing/expanded band stations, not only was the license for WWRU(AM) not granted with the intent to reduce interference in the AM band, but that consideration played no role in its grant.

The Commission reordered its expanded band allotment priorities to give licensees defined in § 331(b), such as Multicultural, a first priority based upon its finding that “this reordering will not impede our main policy objective of interference and congestion reduction in

¹³ See BL-20030206ADU. The special condition was condition 3 on the original license. On the current license for the special condition is condition 4. See BL-20031001CGF.

¹⁴ See Letter to Jennifer Wagner, Esq. 16 FCC Rcd 21398, DA 01-2844 (December 07, 2001) (clarifying the erroneously worded Special Condition on Expanded Band licenses).

the existing AM band.”¹⁵ Since interference considerations played no role in WWRU(AM)’s grant, the authorization should not be subject to a condition imposed specifically to address and mitigate levels of interference in the band. Accordingly, a waiver to remove the inapplicable condition is particularly appropriate under the circumstances.

Both WWRU and WJDM provide valuable programming to minority populations in their service areas. Station WWRU offers Spanish language programming to a large Hispanic population¹⁶ while Station WJDM provides Korean programming.¹⁷ The Commission has, in the past, granted waivers predicated upon the resulting program diversity and it should do likewise here.¹⁸ WWRU(AM) and WJDM(AM) provide needed program diversity to their communities and service areas.¹⁹ Grant of the requested waiver will also advance the public interest by promoting minority and female ownership and employment.²⁰ Multicultural is owned entirely by

¹⁵ *Review of the Technical Assignment Criteria for the AM Broadcast Service*, 8 FCC Rcd 3250 para. 42 (1993), citing *Policy Statement In the Matter of Amendment of Section 331 of the Communications Act of 1934*, 7 FCC Rcd 4905 (1992).

¹⁶ The US Census indicates that 73,354 persons or 57% of Elizabeth’s population is Hispanic or Latino

¹⁷ The US Census indicates that 45,827 persons or 19% of Jersey City’s population is of Asian descent [there is no breakdown for Korean heritage].

¹⁸ *See Amendment of Section 73.658(i) of the Commission’s Rules Concerning Network Representation of TV Stations in National Spot Sales*, 5 FCC Rcd 7280 (1990) (temporary waivers made permanent, in part, because of the public interest benefits derived from increased program diversity).

¹⁹ *See 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*, 29 CR 564, para. 308 (2003) (“program diversity promotes the public interest by affording consumers access to a greater array of programming choices;” “greater variety of differentiated programming advances the public interest by giving consumers in a local community more selection from which they can obtain programming to meet their varied interests”).

²⁰ *Expanded Band R&O*, 6 FCC Rcd at 6307 (“[w]e recognize, of course, that increasing the levels of minority and female ownership promotes diversity and therefore advances the public interest”).

Arthur and Yvonne Liu, who are both Asian. In addition many of Multicultural's directors and employees are of Asian descent or represent other minority groups.

Furthermore, the citizens of Elizabeth and Jersey City have a legitimate expectation that existing service will continue. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service.²¹ As discussed above, no public interest factors exist here to offset the expectation of continued service.

The Commission received a Congressional mandate to provide a first local service to Elizabeth, Jersey City²² and similarly situated communities. It did not, however, receive a mandate to deprive communities of existing local service in the achievement of that goal. By requiring that WWRU(AM) or WJDM(AM) cease operations, the Commission will be acting contrary to Congressional intent and its own long standing commitment to provide the best local service possible to underserved communities. Grant of the requested waiver will serve the public interest.

III. Waiver is Particularly Appropriate in this Case

The condition here was imposed to prevent (or minimize) interference in the AM band. As discussed previously, that purpose will not be served by requiring the WWRU(AM) or WJDM(AM) authorization to be returned. The stations are not a source of interference to any station, and taking it off the air will not improve any interference situation. Of course, surrender

²¹ *Community of License, Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990).

²² At the time, Station WWRU became licensed to Jersey City, it was the only local service. Subsequently, Station WSNR(AM) changed its city of license to provide a second local service to Jersey City.

of the daytime only WJDM(AM) authorization “will not reduce the interference situation at night at all.”²³

The condition is intended to promote efficient frequency use. Allowing these stations to remain on the air will not create a precedent for any of the other expanded band pairs of stations that were granted in order to relieve significant interference or congestion in the band. On the other hand, maintenance of the condition will require an otherwise usable frequency to lay fallow — an inefficient use of the spectrum.

IV. Multicultural’s Proposal Does Not Prejudice the Rights of Any Other Parties

The proposed actions would not be in conflict with the Commission’s policy of permitting as many qualified applicants as possible to compete for authority to operate broadcast stations, as required by Ashbacker v. FCC, 326 US 327 (1945). By the plain language of §331(b) of the Communications Act, Multicultural (and other similarly situated licensees in other communities meeting the statutory requirements) is the sole qualified applicant/licensee in this situation. As a result, there is no need for a filing window or auction process to permit the continued operation of these existing services. Thus, grant of this waiver will provide the public with additional service without any burden on Commission resources.

V. Conclusion

Multicultural submits that grant of the requested waiver and license modifications furthers the public interest in that it permits existing AM services to continue to meet the needs of the communities in which they are already well-established. Wherefore, the premises

²³ *Expanded Band R&O*, 6 FCC Rcd at 6309.

considered, Multicultural respectfully requests that its waiver request be granted and the renewal authorization of WJDM(AM) be modified to remove the condition.

ATTACHMENT 2

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.

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 Mid-West Management, Inc.	WEUV	WEUP	10/12/2006
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. 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

Multicultural Radio Broadcasting Licensee, LLC)	
Station WJDM(AM), Elizabeth, New Jersey)	Facility ID No. 54563
)	
Multicultural Radio Broadcasting Licensee, LLC)	
Station WWRU(AM), Jersey City, New Jersey)	Facility ID No. 87123
)	

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

REQUEST FOR STAY

Multicultural Radio Broadcasting Licensee, LLC (“Multicultural”), licensee of Station WJDM(AM), Elizabeth, New Jersey, pursuant to Section 1.43 of the Commission’s Rules, hereby petitions the Commission to stay the effect of the requirement that Multicultural surrender its license for Station WJDM(AM). In support hereof, Multicultural states as follows:

1. Pursuant to the Commission’s decision in the expanded band proceeding, licensees of expanded band stations must surrender either their expanded band license (WWRU(AM)) or their existing band license (WJDM(AM)) on or before the end of the 5 year period commencing with the date that the expanded band facility was licensed.¹ This 5 year period for WWRU(AM) and WJDM(AM) ends on April 9, 2008. Thus, contemporaneously with this filing, Multicultural is surrendering its license for Station WJDM(AM).² However,

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).

² See Letter from Mark N. Lipp, Counsel for Multicultural Radio Broadcasting Licensee, LLC, to Marlene H.

Multicultural has separately filed a modification of license, which was accompanied by its “Request for Waiver and Removal of Special Condition” based on the fact that WWRU is one of only two remaining expanded band stations that was licensed to bring a first full-time aural service to certain large communities.³ Multicultural is also part of a coalition of broadcasters and public interest organizations that have requested that the Commission waive its rules that require the return of either the AM expanded band or existing band license.⁴ In the Waiver Pleadings, the parties request that the Commission stay the effect of the requirement that the parties surrender one of their licenses.

2. Multicultural is separately requesting that the Commission issue a stay so that the surrender of Multicultural’s license for Station WJDM(AM) is not irreversible. The arguments presented in the Waiver Pleadings and in Multicultural’s separate waiver request provide adequate justification for a stay based on 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.⁵

3. These requirements are met here. First, the reasons provided in the Waiver Pleadings and in Multicultural’s request demonstrate the likelihood of success on the merits. Second, Multicultural will suffer irreparable harm if this stay is not granted because, once it

Dortch, Secretary, Federal Communications Commission (April 8, 2008).

³ See BML-20071011AEH.

⁴ These 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 (the “Waiver Pleadings”). A copy of the Petition for Stay of Effective Dates is attached hereto as Attachment 1. In its recent *Third Further Notice of Proposed Rule Making* in its diversity proceeding, the Commission seeks comment on the “Request for Waiver of Rules Requiring Return of AM Licenses” that was jointly filed by Multicultural and various other parties on March 27, 2006. See Promoting Diversification of Ownership in the Broadcasting Services, FCC 07-217 (2007).

⁵ 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).

surrenders the license for WJDM(AM) and the time for reconsideration has expired, Multicultural will not be able to have the license reinstated for WJDM(AM) if the Commission grants the relief requested by the parties. Third, grant of a stay will not cause substantial harm to any other party because it only maintains the *status quo* until the Commission considers the Waiver Pleadings and Multicultural's separate waiver request. Finally, the public interest clearly favors granting this stay request because if it is not granted Multicultural will be forced to permanently terminate operation to the detriment of the public. The Commission's belief that any loss of service is *prima facie* inconsistent with the public interest proves the need for granting a stay.⁶ In addition, Station WJDM(AM) provides ethnic programming to the Hispanic community in the Elizabeth, New Jersey area and,⁷ if the Commission denies this stay request, it will result in the loss of this valuable programming to a minority community, which clearly does not advance the public interest.

⁶ 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)).

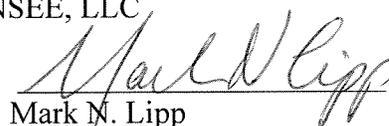
⁷ The U.S. Census indicates that 73,354 persons or 57% of Elizabeth's population is Hispanic or Latino.

For the reasons stated above, Multicultural respectfully requests that the Commission stay the effect of the requirement that Multicultural surrender its license for Station WJDM(AM) until the Commission has decided the issues raised in the Waiver Pleadings and Multicultural's separate waiver request.

Respectfully submitted,

MULTICULTURAL RADIO BROADCASTING
LICENSEE, LLC

By:



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1776 K Street NW
Washington, DC 20006
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April 8, 2008

Its Counsel

ATTACHMENT 1

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) MM Docket No. 87-267
Band Allotment Plan)
)

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 mooting 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).

**National Association of Black Owned
Broadcasters**

**Office of Communication of the United
Church of Christ, 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 [#]
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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. KXDZ remains licensed to Waitt Corp Investments, LLC.

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Public Interest Group Joint Petitioner's Name (in alphabetical order)
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