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

In the Matter of)	
2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership)	MB Docket No. 09-182
Rules and Other Rules Adopted Pursuant to)	
Section 202 of the Communications Act of 1996)	

REPLY COMMENTS

Alpha Broadcasting, LLC, Asterisk Communications, Inc., Backyard Broadcasting, LLC, Beasley Broadcast Group, Inc., Benedetti Media Group, LLC, Black Crow Media Group, LLC, Debtor-In-Possession, Cumulus Licensing LLC, Cumulus Media Partners, LLC, Forever Broadcasting, LLC, Forever Communications, LLC, IW Limited Liability Company, Keymarket Communications, LLC, Long Island Broadcasting, Inc., Mapleton Communications, LLC, Media Services Group, Mid-Island Broadcasting Limited Partnership, Monticello Media, LLC, MSG Radio, Inc., New Northwest Broadcasters, LLC, Three Eagles Communications, Inc., and West Virginia Radio Corporation (together, the "Joint Parties") hereby join other commenters' calls to eliminate the "subcaps" that impose separate limits on the number of stations in the same service (AM or FM) that a company may own in a local radio market. As discussed below, the AM/FM subcaps cannot be sustained in today's terrestrial radio marketplace in light of recent technological advances and regulatory changes.

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¹ See Comments of M. Kent Frandsen, MB Docket No. 09-182, at 5-7 (July 12, 2010); Comments of Monterey Licenses, LLC, MB Docket No. 09-182, at 5-7 (July 12, 2010); Comments of Clear Channel Communications, Inc., MB Docket No. 09-182, at 37-45 (July 12, 2010); see also, e.g., Reply Comments of CBS Corporation, MB Docket No. 06-121, at 13-15 (Jan. 16, 2007).

The Joint Parties represent a wide swath of the terrestrial radio broadcast industry. For example, through subsidiaries and commonly controlled entities, Backyard Broadcasting, LLC owns 8 AM and 20 FM stations; Black Crow Media Group, LLC, Debtor-In-Possession, owns 5 AM stations and 22 FM stations; Forever Broadcasting, LLC owns 12 AM and 20 FM stations; Forever Communications, LLC owns 6 AM and 10 FM stations; Keymarket Communications, LLC owns 5 AM and 8 FM stations; Monticello Media, LLC owns 2 AM and 4 FM stations; and West Virginia Radio Corporation owns 8 AM and 15 FM stations. In aggregate, the Joint Parties represent 668 stations (196 AM stations and 472 FM stations). These broadcasters operate stations in radio markets of every size—from the largest Arbitron Metros to the smallest unrated markets. The Joint Parties also include representatives of the media brokerage sector of the terrestrial radio industry. Media Services Group is a media brokerage firm.

In the 2002 biennial review, the Commission justified maintaining the AM/FM subcaps because of "significant technical and marketplace differences between AM and FM stations." However, on review, the U.S. Court of Appeals for the Third Circuit found the FCC's decision wanting. Specifically, the court stated that the agency did not adequately support its decision and had failed to explain "why it is necessary to impose an AM subcap at all." Yet, in the 2006 quadrennial review, the Commission opted to keep the subcaps in place. Notably, the Commission did not attempt to provide any actual evidence of technical and marketplace disparities and expressly ignored record evidence to the contrary.

² 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules, 18 FCC Rcd 13620, 13733 (2003) ("2003 Order").

³ Prometheus Radio Project v. FCC, 373 F.3d 372, 434-35 (3d Cir. 2004).

⁴ 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2079-80 (2008) ("2008 Order").

⁵ Broadcasters have appealed the *2008 Order* to the Third Circuit in light of the Commission failure, in its 2006 quadrennial review, to eliminate the AM/FM subcaps. *See Prometheus Radio Project v. FCC*, Nos. 08-3078 *et al.*

In the current proceeding, the Commission once again has an opportunity to examine whether the subcaps continue to serve their underlying policy objectives in today's terrestrial radio marketplace. The Joint Parties submit that the Commission must not continue to ignore the growing body of evidence that erodes the AM/FM subcaps' original justifications. AM stations are strong and viable competitors in many local radio markets across the country. Moreover, since 2006, technological advances and regulatory changes have provided AM stations with additional means to overcome perceived signal inferiority. If the subcaps were unjustified in the 2002 biennial review, they are even more so now; they cannot remain a part of the Commission's local radio ownership rules.

One of the Commission's historical justifications for retaining the subcaps is the supposed "inferiority" of AM stations' technical characteristics and signal quality to those of their FM counterparts. However, the daytime contours of many AM stations exceed the contours of several classes of FM stations. This greater reach translates into an ability for such stations to garner strong audience ratings and revenue in their markets, as discussed below.

As for audio quality, the introduction and implementation of digital HD Radio technology has the potential to ameliorate present limitations on AM audio quality. In 2002, HD Radio was speculative, and at the time of the 2006 quadrennial review, radio stations were just beginning to implement HD Radio technology. Now, however, HD Radio is common on both AM and FM stations. As more and more AM stations begin to offer digital broadcasts, it is clear that terrestrial HD Radio is living up to its early promise of improving AM signal quality.

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(3d Cir. May 17, 2010).

⁶ See 2003 Order, 18 FCC Rcd at 13733-34.

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Further, through a 2009 rule change, the Commission has also provided AM stations with a new way to overcome perceived technical limitations. AM stations may now use authorized FM translators to rebroadcast their signals within their 2 mV/m daytime contours (or 25 miles, whichever is smaller). The new rules also allow Class D daytime AM stations to originate programming on FM translators at night. Many AM stations have already sought and received Commission consent to use FM translators under the new rule. In sum, as it considers whether to retain the AM/FM subcaps in this current quadrennial review, the Commission must account for the growing prevalence of AM HD Radio stations as well as AM stations' newfound access to FM translators as means to improve signal quality.

Just as with perceived technical deficiencies, the subcaps' second justification—supposed marketplace inferiority—is not a valid basis to maintain the current AM/FM subcaps. The Commission need only look at current Arbitron ratings, such as those reported in *Inside Radio*, to see that AM stations are strong competitors to their FM counterparts. For example, in Arbitron's May 2010 ratings, at least one AM station is ranked among the top five stations in nine out of the top ten Arbitron Metros. In the Joint Parties' experience, the same is true in many smaller markets, as well.

It is also worth noting that, except for the local radio ownership rules, the Commission treats AM and FM stations interchangeably. The radio/television cross-ownership rule permits common ownership of same-market radio and television stations in the presence of a sufficient

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⁷ See Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Report and Order, MB Docket No. 07-172, FCC 09-59 (Jun. 29, 2009).

⁸ See May Arbitrons – PPM, Inside Radio, Jun. 17, 2010, at 6 (reporting ratings for stations in the New York, NY and Los Angeles, CA Metros); May Arbitrons – PPM, Inside Radio, Jun. 18, 2010, at 5 (reporting ratings for stations in the Chicago, IL and San Francisco, CA Metros); May Arbitrons – PPM, Inside Radio, Jun. 21, 2010, at 5 (reporting ratings for stations in the Dallas-Ft. Worth, TX Metro); May Arbitrons – PPM, Inside Radio, Jun. 22, 2010, at 5 (reporting ratings for stations in the Atlanta, GA and Philadelphia, PA Metros); May Arbitrons – PPM, Inside Radio, Jun. 23, 2010, at 4 (reporting ratings for stations in the Washington, D.C. and Boston, MA Metros).

number of "independently owned media voices," and the Commission's rules do not distinguish between AM and FM stations in counting such voices.⁹ In addition, both the radio/television and newspaper/broadcast cross-ownership rules can be triggered by the ownership of *either* an AM or FM station that has the required contour overlap with the respective cross-owned medium.¹⁰ With its cross-ownership rules treating AM and FM stations as substitutes, the Commission should use the present quadrennial review to do the same in its local radio ownership rules.

In addition to being both legally and factually fraught, the AM/FM subcaps also place unnecessary constraints on the radio industry. A number of leading radio group owners have broadcast portfolios that are comprised of mostly AM stations. These companies include minority-owned entities and other groups that provide niche programming targeted to minority populations. The subcaps artificially constrain the growth of groups for which AM stations are the backbone. Other broadcasters, including several of the Joint Parties are similarly constrained by the FM subcap, which prevent the acquisition of additional FM stations up to the applicable limits for their markets.

Today, the acquisition market for radio stations is stagnant, and the subcaps' elimination could provide an important stimulus to the terrestrial radio industry. Lifting the subcaps will trigger significant acquisition activity by creating a market of divested stations, as broadcasters seek to modify station groups by acquiring certain in-market stations and selling others. To be sure, in many cases, the divested stations will be in the AM band. Because AM stations often serve minority populations in certain cities, the new transactional activity will likely provide opportunities for station purchases by minorities, women and small businesses. This increase in deal flow will also allow group owners to strengthen station clusters through strategic

⁹ 47 C.F.R. § 73.3555(c).

adjustments. The strengthened clusters will be in a position to devote additional resources for programming that addresses local needs and concerns. Moreover, *any* uptick in transactions involving terrestrial radio stations should allay financiers' concerns about the terrestrial radio industry, which, in turn, will cause credit to flow once more to broadcasters that are in sore need of resources to compete with today's panoply of unregulated media platforms. Subcap relief would incur all of these benefits without changing the numerical ownership concentration within individual ownership markets.

Since 2002, the Commission has kept the AM/FM subcaps with little to no rational justification. In the current proceeding, the Commission must now recognize that it cannot maintain the subcaps in the media world of 2010. Accordingly, the Commission should use the current proceeding to excise the vestigial subcaps from the local radio ownership rules.

Respectfully Submitted,

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⁽Continued . . .)

¹⁰ See 47 C.F.R. § 73.3555(c)(1)(ii), (d)(1)(i).

¹¹ In this respect, it is noteworthy that the Joint Parties include media brokers as well as broadcasters. In their role of facilitating transactions involving terrestrial radio stations, media brokers are uniquely situated to attest to the likely benefits of subcap relief in the transactional and credit markets.

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