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September 28, 2022

Albert Shuldiner, Esq.  
Chief, Audio Division, Media Bureau  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

**Re: Waiver Request of Inspiration Media, Inc., FCC No.  
0000197093**

Dear Mr. Shuldiner:

The Multicultural Media, Telecom and Internet Council (MMTC) respectfully submits this letter in support of the above referenced waiver request filed by Inspiration Media, Inc. (Inspiration).

MMTC is the tech, media, and telecom industries' leading non-partisan, national nonprofit diversity organization. Since its founding, MMTC has worked to increase diverse ownership in broadcasting, and is thus keenly interested in Inspiration's proposed assignment of KNTS(AM) to Baaz Broadcasting Corp. (Baaz), a minority-owned company, and the underlying policy objectives grant of the application would serve. For the reasons that follow, MMTC urges the Commission to grant Inspiration's request to waive 47 C.F.R. § 73.1150(c) to permit the sale of KNTS(AM).

**Background**

On August 5, 2022, Inspiration submitted applications for consent to assign the licenses for stations KLFE(AM) and KNTS(AM) in Seattle, Washington to Relevant Radio, Inc. (Relevant) and Baaz, respectively.<sup>1</sup>

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<sup>1</sup> See FCC File Nos. 0000197096 and 0000197093.

KLFE and KNTS are “paired” stations, with KLFE operating in the “standard” AM band (535-1605 kHz) and KNTS operating in the “expanded” band (1605-1705 kHz).<sup>2</sup> The Commission originally allocated the expanded band for AM use in 1991.<sup>3</sup> Concerned that increasing congestion in the standard band was driving listeners away from AM, the FCC developed a plan to migrate certain AM stations to the expanded band in the hopes of alleviating interference.<sup>4</sup> While, at the time, MMTC proposed that the FCC reserve the expanded band for new minority entrants, the FCC prioritized lessening interference.<sup>5</sup>

The Commission ultimately decided that it would permit authorized licensees to operate their standard and expanded band facilities as a pair.<sup>6</sup> Accordingly, the Commission adopted Section 73.1150(c) of its rules, which prohibits paired station licensees from assigning or transferring control of the standard/expanded band stations other than as a pair.<sup>7</sup>

With respect to the instant case, the Commission tapped KLFE (then KZOK) for migration in its 1997 final allotment plan,<sup>8</sup> and Inspiration put what is now KNTS—a station that airs regional Mexican music<sup>9</sup>—into service as a result. As Inspiration’s waiver request explains, for its own business reasons, Relevant chose only to acquire KLFE.<sup>10</sup> Therefore, Inspiration elected to pursue a sale of KNTS separately to a minority-owned broadcaster, and entered into a purchase agreement with Baaz—a company wholly controlled by persons of South Asian descent—subject to grant of the requested waiver of Section 73.1150(c).<sup>11</sup>

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<sup>2</sup> See FCC File No. 0000197093, Expanded Band Waiver Exhibit (“Inspiration Waiver”).

<sup>3</sup> See *Review of the Technical Assignment Criteria for the AM Broadcast Service*, Report and Order, FCC 91-303 (rel. Oct. 25, 1991) (“1991 Order”).

<sup>4</sup> See *id.* at paras. 2, 9.

<sup>5</sup> See *id.* at para. 111.

<sup>6</sup> See *id.* at para. 145. As Inspiration detailed in its waiver request, the Commission originally determined that paired operations would be authorized for a five-year transition period, after which licensees would be obligated to surrender the authorization for one of their two paired stations. See Inspiration Waiver at 1. Although the Commission proposed in 2015 to require the remaining paired station licensees to surrender one of their licenses, the Commission has yet to adopt this proposal. See *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 15-142, para. 77 (rel. Oct. 23, 2015).

<sup>7</sup> See 47 C.F.R. § 73.1150(c).

<sup>8</sup> See *Implementation of the AM Expanded Band Allotment Plan*, Memorandum Opinion and Order, FCC 97-68 (rel. Mar. 17, 1997); *Mass Media Bureau Announces Revised AM Expanded Band Allotment Plan and Filing Window for Eligible Stations*, Public Notice, DA 97-537 (rel. Mar. 17, 1997).

<sup>9</sup> See Inspiration Waiver at 2, n. 12.

<sup>10</sup> See *id.* at 2.

<sup>11</sup> See *id.*

## **Granting Inspiration's Waiver Request Would Serve the Public Interest and is Warranted by the Circumstances**

The Commission has the authority to waive its rules if it has good cause to do so.<sup>12</sup> Waivers are generally appropriate where deviating from the rule in question would promote the public interest and is warranted by the special circumstances of the case.<sup>13</sup> Waiving Section 73.1150(c) in this case and allowing the license for KNTS to be assigned to Baaz would satisfy these criteria for three key reasons.

### **1. Granting Inspiration's waiver request would further the Commission's broadcast diversity goals.**

First, it has long been a high priority goal of the Commission to foster diverse ownership and representation in broadcasting.<sup>14</sup> Clearly, granting Inspiration's waiver request would do just that. As an entirely minority-owned company, Baaz's ownership of KNTS would contribute to the diversity of viewpoints that the Commission is entrusted with safeguarding.<sup>15</sup> The Commission recognized that "increasing the levels of minority and female ownership promotes diversity and therefore advances the public interest" in the 1991 Order itself,<sup>16</sup> so the Baaz acquisition certainly would serve the public interest better than turning in KNTS's license.

Further, MMTC respectfully submits that the Commission should consider what continued enforcement of Section 73.1150(c) would mean more broadly for the standard and expanded band station pairs that remain in operation today.

Several of these pairs are either minority-owned or feature a station that airs programming catered to minority audiences.<sup>17</sup> Because the Commission must consider the impact of its

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<sup>12</sup> See 47 C.F.R. § 1.3.

<sup>13</sup> See *Ne. Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>14</sup> See, e.g., *Promoting Diversification of Ownership In the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rule Making, FCC 07-217, para. 2 (rel. Mar. 5, 2008).

<sup>15</sup> See *Metro Broad., Inc. v. FCC*, 497 U.S. 547, 567 (1990), *overruled in part on other grounds in Adarand Constructors Inc. v. Peña*, 515 U.S. 200, 227 (1995) ("Safeguarding the public's right to receive a diversity of views and information over the airwaves is . . . an integral component of the FCC's mission.").

<sup>16</sup> 1991 Order at para. 112.

<sup>17</sup> For instance, the licenses for the following station pairs are held by affiliates of Multicultural Radio Broadcasting, Inc. (MRBI), a minority-owned company: WTTM and WHWH (Lindenwold and Princeton, New Jersey, respectively); KFSG and KLIB (Roseville, California); and WJCC and WNMA (Miami Springs, Florida). See Multicultural Radio Broadcasting Inc., *Our Stations*, available at <https://mrbi.net/?p=162> (last visited Sept. 28, 2022) ("MRBI Website"); see also NeoHorn, *About Us*, available at <http://neohorn.com/p2/about-us> (last visited Sept. 28, 2022). MRBI's stations broadcast a wide range of ethnic programming targeted toward underserved minority audiences, including Spanish, Vietnamese, Chinese, and Haitian content. See MRBI Website. Similarly, according to BIA Advisory Services, the licenses for WHIY and WEUP (Huntsville, Alabama) are held by Broadcast One Inc., an African American-owned

policies on minority ownership and viewpoint diversity,<sup>18</sup> strict adherence to Section 73.1150(c) where there is a compelling interest to waive the rule could unnecessarily cause a diminution of diverse voices in any given market, as it would in the instant case.

The enforcement of Section 73.1150(c) places an additional encumbrance on paired licensees and stations. Essentially, this rule serves to diminish the value of these expanded band operations. A significant portion of the value of an asset—be it a broadcast station, a home, or anything in between—comes from the ability to convey that asset, within reason. Thus, by denying Inspiration’s waiver request, the Commission would in essence be confirming that these licenses are significantly less valuable than the licenses of standalone AM stations.

As Chairwoman Rosenworcel has stated, “[i]n a world with so many ways to listen, there is still something special about a signal in the air. Radio, and AM radio in particular, has long played a role beyond just informing and entertaining. It has created communities and anchored people to place. That capacity for localism is what still makes the medium distinct. It is what gives it the ability to shine when so much other audio content is available.”<sup>19</sup> Grant of the instant request would, as the Chairwoman put it, further the interest in giving the AM band “opportunity to glow.”<sup>20</sup>

MMTC urges the Commission to facilitate the ability of diverse licensees to carry out their operations and have a seat at industry’s table. Grant of the instant waiver request is consistent with that goal.

## **2. Granting Inspiration’s waiver request would allow the Commission to take steps to further minority ownership.**

As MMTC has explained in past letters to the Commission, several FCC proposals that would have furthered racial justice in the communications space have not moved forward.<sup>21</sup> Minority media ownership initiatives have stalled; for example, the Commission’s Incubator Program took

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company. See BIA Advisory Services Database Entries for WHIY and WEUP; BIA Advisory Services and National Association of Black Owned Broadcasters, *Black Owned Radio Stations Ownership and Revenue Report* at 12 (2022).

<sup>18</sup> See, e.g., *Garrett v. FCC*, 513 F.2d 1056, 1063 (D.C. Cir. 1975) (holding that the FCC should have considered the fact that an AM radio station was minority-owned in determining whether to waive nighttime operation rules); cf. *TV 9, Inc. v. FCC*, 495 F.2d 929, 938 (D.C. Cir. 1973) (holding, in a comparative hearing, that “when minority ownership is likely to increase diversity of content, especially of opinion and viewpoint, merit should be awarded” in reviewing grant of a broadcast license). It must also be emphasized that the Supreme Court’s decision in *Adarand* does not prohibit the Commission from granting the instant waiver request, as *Adarand* did not repeal *Garrett* or *TV 9*.

<sup>19</sup> *All-Digital AM Broadcasting*, Report and Order, FCC 20-154 (rel. Oct. 28, 2020) (Statement of then-Commissioner Rosenworcel).

<sup>20</sup> *Id.*

<sup>21</sup> See Letter of MMTC, EB Docket Nos. 04-296 and 06-119, MM Docket No. 98-204, MB Docket Nos. 17-105, 18-184, 18-349, 20-401, and 19-177, at 3 (Aug. 4, 2021).

25 years to garner Commission approval after it was put out for comment.<sup>22</sup> With respect to the expanded band, in 2006 a coalition of 14 broadcast companies and four citizen groups, including MMTTC (then the Minority Media and Telecommunications Council), proposed the same relief that Inspiration seeks here,<sup>23</sup> but the Commission never ruled on this proposal.

The Commission should seize this opportunity to further minority ownership and minority programming. As detailed above, Inspiration has stepped up to the plate to sell a station to a minority-owned company—at a significant discount, no less—and is in this sense proposing to achieve the Commission’s minority ownership goals here and now. Such a result is clearly in the public interest, and the Commission should thus grant Inspiration’s request and waive Section 73.1150(c) in this case.

### **3. Circumstances in the AM service have changed such that applying Section 73.1150(c) is no longer warranted.**

As discussed above, the Commission devised its expanded band plan, including Section 73.1150(c), to address what were very real interference problems at the time. But as the times change so do the circumstances—a reality that the FCC has long been obligated to factor into its decisions.<sup>24</sup>

The Commission’s original expanded band plan sought to put a dent in interference issues, and by the FCC’s admission, this plan may not have achieved all that was envisioned.<sup>25</sup> But nonetheless, today, the expanded band has been fully populated, and the stations that migrated—including Inspiration’s stations—have dutifully provided the public with decades of service in fulfillment of the Commission’s objectives.

Meanwhile, the radio landscape has undergone considerable change in the 31 years since Section 73.1150(c) was adopted, to the point that it would probably be unrecognizable to the 1991

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<sup>22</sup> See *Revision of Radio Rules and Policies*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 92-361, para. 22 (rel. Sept. 4, 1992) (seeking comment on broadcast ownership incubator proposal); *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Order on Reconsideration and Notice of Proposed Rulemaking, FCC 17-156, para. 124 (rel. Nov. 20, 2017) (adopting the same).

<sup>23</sup> See *Entercom Kansas City License, LLC, et al., Request for Waiver of Rules Requiring Return of AM Licenses*, MM Docket No. 87-267, at 5-6 (Mar. 27, 2006). MMTTC has raised this proposal on other occasions as well. See, e.g., *Comments of the Diversity and Competition Supporters*, MB Docket Nos. 09-182 and 07-294, at 30 (Mar. 5, 2012); *Comments of the Diversity and Competition Supporters*, MB Docket Nos. 06-121, 02-277, and 04-228 and MM Docket Nos. 01-235, 01-317, 00-244, at 47 (Oct. 1, 2007).

<sup>24</sup> See *Geller v. FCC*, 610 F.2d 973, 974 (D.C. Cir. 1979) (holding FCC regulations initially promulgated for a certain purpose may not “subsist without a fresh determination that they serve the public interest in some other manner” once the original purpose has been “fully exploited . . .”).

<sup>25</sup> See *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, FCC 09-59, para. 3, n.8 (rel. June 29, 2009).

Commission. The expanded band plan was guided by the belief that “AM radio continues to hold a valuable place on the communications landscape[,]”<sup>26</sup> and the Commission has rightly taken steps to help AM stations maintain their position in the ecosystem in the face of technological and competitive changes.

MMTC believes the Commission’s goal of preserving the role of AM stations can be furthered in the context of evaluating the separate transfer of paired station licenses. The public interest is not served by an unsupportable and arbitrary restraint on alienation, which only serves to further diminish paired AM stations’ value and ultimately “dull[] the competitive edge of this once vital service[,]” just as the Commission originally feared in 1991.<sup>27</sup>

### **Conclusion**

For the reasons above, MMTC urges the Commission to waive Section 73.1150(c) and allow Inspiration to assign KNTS to Baaz, as doing so would serve the public interest and is warranted by the special circumstances of this case. Assigning KNTS to Baaz would further the Commission’s goals of promoting broadcast diversity, allow the Commission to advance its goals with respect to minority ownership issues, and account for the changes to the radio landscape that have taken place since the Commission adopted its original expanded band plan.

Respectfully submitted,

/s/

Robert Branson, President and CEO

David Honig, President Emeritus and Senior Advisor

cc: Holly Saurer, Esq., Chief, Media Bureau

Hon. Jessica Rosenworcel, Chairwoman

Hon. Geoffrey Starks, Commissioner

Hon. Brendan Carr, Commissioner

Hon. Nathan Simington, Commissioner

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<sup>26</sup> 1991 Order at para. 3.

<sup>27</sup> *Id.* at para. 2.