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

In re Applications of	)	
	)	
Cox Radio, Inc. and SummitMedia LLC	)	
for Assignment of Licenses of	)	
Commercial Radio Stations:	)	
	)	
WAGG(AM), Birmingham, AL, Facility ID 48717	)	File No. BAL-20130212ABK
WBHJ(FM), Midfield, AL, Facility ID 730	)	File No. BALH-20130212ABL
WBHK(FM), Warrior, AL, Facility ID 65227	)	File No. BALH-20130212ABM
WBPT(FM), Homewood, AL, Facility ID 5355	)	File No. BALH-20130212ABN
WENN(AM), Birmingham, AL, Facility ID 6411	)	File No. BAL-20130212ABO
WZNN(FM), Gardendale, AL, Facility ID 71417	)	File No. BALH-20130212ABP
WZZK-FM, Birmingham, AL, Facility ID 48724	)	File No. BALH-20130212ABQ
WHZT(FM), Williamston, SC, Facility ID 5971	)	File No. BALH-20130212ABR
WJMZ-FM, Anderson, SC, Facility ID 1303	)	File No. BALH-20130212ABS
KCCN-FM, Honolulu, HI, Facility ID 34552	)	File No. BALH-20130212ABT
KINE-FM, Honolulu, HI, Facility ID 34553	)	File No. BALH-20130212ABU
KKNE(AM), Waipahu, HI, Facility ID 14937	)	File No. BAL-20130212ABV
KPHW(FM), Kaneohe, HI, Facility ID 27424	)	File No. BALH-20130212ABW
KRTR(AM), Honolulu, HI, Facility ID 13880	)	File No. BAL-20130212ABX
KRTR-FM, Kailua, HI, Facility ID 50118	)	File No. BALH-20130212ABY
WQNU(FM), Lyndon, KY, Facility ID 20332	)	File No. BALH-20130212ABZ
WRKA(FM), Louisville, KY, Facility ID 48290	)	File No. BALH-20130212ACA
WVEZ(FM), St. Matthews, KY, Facility ID 53535	)	File No. BALH-20130212ACB
WSFR(FM), Corydon, IN, Facility ID 55499	)	File No. BALH-20130212ACC
WHTI(FM), Lakeside, VA, Facility ID 27439	)	File No. BALH-20130212ACD
WKHK(FM), Colonial Heights, VA, Facility ID 319	)	File No. BALH-20130212ACE
WKLR(FM), Fort Lee, VA, Facility ID 71330	)	File No. BALH-20130212ACF
WURV(FM), Richmond, VA, Facility ID 37230	)	File No. BALH-20130212ACG
	)	
Cox Radio, Inc. and Connoisseur Media	)	
Licenses, LLC for Assignment of	)	
Licenses of Commercial Radio Stations:	)	
	)	
WEZN-FM, Bridgeport, CT, Facility ID 48721	)	File No. BALH-20130212ACH
WFOX(FM), Norwalk, CT, Facility ID 14379	)	File No. BALH-20130212ACI
WPLR(FM), New Haven, CT, Facility ID 46968	)	File No. BALH-20130212ACJ

To: The Secretary

APPLICATION FOR REVIEW

2014061887

Citizens for Equity in Taxation ("CET"), pursuant to section 1.115[1] of the Commission's rules, seeks review of the letter decision of the Chief, Audio Division of the Media Bureau dismissing CET's Petition to Deny and granting the above-captioned applications filed on behalf of Cox Radio, Inc. ("Cox"), SummitMedia, LLC ("SummitMedia") and Connoisseur Radio LLC ("Connoisseur") (jointly, the "Applicants").[2] See, *In re: Cox Radio, Inc. and SummitMedia, LLC*, DA 13-908, released April 26, 2013 (Chief, Audio Division, Media Bureau) (the "Staff Letter").[3]

I. Questions Presented.

A) Did the Bureau err in neglecting to seek an elemental disclosure from the Applicants as to which of the stations were subject to a proposed "like-kind" exchange in order to fully evaluate whether a grant of the applications would serve the public interest in conflict with its obligations under the Communications Act?

B) In failing to seek such disclosure, did the Bureau fail to obtain a sufficient factual basis evaluate the potential competitive impact of "like-kind" exchanges under the *Communications Act* on the market and the potential impact on other Commission's policies such as the promotion of diversity in media ownership as it may have presented a novel question of law or policy not previously resolved by the Commission?

II. Background.

Cox Radio, Inc. ("Cox") had previously filed and received grants of applications to take assignment of certain television stations through transactions structured as "like-kind" exchanges

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[1] 47 CFR Sec. 1.115

[2] The CET notes that it did not seek to stay the effective date of the grant and that the subject transactions have now been consummated. Nevertheless, while it is not the CET's intention to otherwise interfere with the administrative finality of the transactions, CET files the instant Application for Review to seek the Commission's ruling on a prospective basis only as to what appears to be a novel question of law and policy under the Communications Act.

[3] The Application for Review is timely filed in that it has been submitted on the first business day after the required 30 day filing deadline after excluding holidays during which the Commission's office are closed. See 47 CFR Sec. 1.45

pursuant to Section 1031 of the Internal Revenue Service Code.[4] These stations apparently were the on the "acquired" property side of the "like-kind" exchange, a fact openly disclosed to the Commission inasmuch as the tax transaction required the Commission's consent to pass the licenses through an unrelated third party "qualified intermediary." The CET believed the above-captioned applications were involved in the "like-kind" exchange as the properties to be "disposed" of based upon the time frames for "like-kind" exchanges to be effected, as well as the fact that the contracts attached to the applications as exhibits contained provisions specifically reserving the right to include the transaction as part of Section 1031 "like-kind" exchange. The applicants never affirmatively disclosed to the Commission in the applications or in the Joint Opposition to Petition to Deny whether or not the transactions were in fact to be part of Cox's overall plan for section 1031 tax treatment.

In its Petition, the CET noted the failure of the Applicants to disclose either any factual details as to which of the stations were to be involved in the like-kind exchange contemplated by Cox Radio, Inc., or any public interest rationale supporting a finding that use of the tax device in the subject transactions did not pose any competitive concern and was in the public interest under the Communications Act. The CET also noted that pursuant to Section 309 (d) of the Communications Act, the Commission is under the affirmative obligation to assess the potential impacts of transactions structured under Sec. 1031 under its public interest standard. Lastly, the CET argued in its Petition that use of Sec. 1031 like-kind exchanges in this context may in fact promote barriers to new entrants and negatively impact efforts to further the goal of diversity of ownership and programing of broadcast facilities by providing large multi-station owners

[4] See applications seeking the assignment of licenses for Television Stations WAWS-TV and WTEV-TV, Jacksonville, Florida and Television Stations KOKI-TV and KMYT-TV, Tulsa, Oklahoma, File No. BALCDT-202000802ABN, BALCDT-20120802ABL, and BALCDT-20120802ABM. Rights to purchase the licenses to WTEV-TV were assigned to Bayshore Broadcasting, LLC, an entity unaffiliated with Cox. See, e.g. File No. BALCDT-20120802ABK.

perverse economic incentives to simply "flip" station licenses, abandon existing markets, and enter new markets or consolidate holdings in existing markets through use of the financial windfall not available to all, but rather one that accrues to the beneficiary through use of a potentially perpetual deferment of capital gains taxes.

The Applicants in response challenged CET's standing as a party in interest and cited other procedural defects[5], argued that it provided all required information in the applications,[6] that use of Sec. 1031 is fully consistent with IRS policy and therefore beyond the reach of the Commission's considerations, and finally that the Commission has routinely approved transactions in the past that made use of like-kind exchanges without conducting a public interest inquiry of the impact of the tax benefits flowing under Sec. 1031.[7]

The Bureau in the Staff Letter adopted the Applicant's position virtually in its entirely. The CET was denied standing (although the Petition was accorded treatment as an informal objection) and the staff agreed that consideration of tax policy was not an appropriate issue for consideration in the proceeding. Further, the Staff noted transactions involving "like-kind" exchanges had not previously been found to be of concern and that any change in policy would require a rule making proceeding.

III. Argument.

A) The Staff Ignored the Commission's Independent Obligation Under Section 309(d) of the Communications Act By Failing to Require the Applicants to Provide Either Full or Disclosure or a Public Interest Rationale.

The Applicants refused and the Commission's Staff failed to require the Applicants to provide the public or the Commission with either the facts regarding the scope of, and the

[5] See Joint Opposition at pages 1-3
[6] See Joint Opposition at pages 4-5
[7] See Joint Opposition at page 6

stations involved in, the contemplated "like-kind" exchange or any rationale as to why the use of a like-kind exchange in the context of these particular transactions served the public interest inasmuch as, in the Applicants' view -- and ultimately that of the Staff's -- no such showing was required because the operation of Sec. 1031 is beyond the Commission's authority and not appropriate for consideration when acting upon license transfers.[8]

The Staff wholly ignored the argument that the CET was not challenging the legality of Sec. 1031 from a tax perspective, but rather seeking FCC consideration as to whether its use in the subject transactions had any potential competitive effects or was otherwise is in the public interest *under the Communications Act of 1934, as amended* (Emphasis added.) In this connection, the CET noted that the Commission's own view of its public interest jurisdiction is rather broad, and extends well beyond the considerations of sister agencies like the IRS. For example, as to competitive effects, the Commission has often noted that, while informed by traditional antitrust principals, its competitive analysis as conducted under the broader public interest standard is considerably different than that conducted either the Department of Justice or the Federal Trade Commission. The FCC's authority arises under the Communications Act, not the antitrust statutes, and necessarily is concerned ultimately with the maximization of the utility that the public obtains from the use of the broadcast spectrum. The FCC's public interest evaluation necessarily includes the broader aims of the Communications Act, which include ensuring the existence of an efficient, nationwide radio communications service available to everyone and promoting locally oriented service and *diversity in media voices.*[9] (emphasis added).

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[8] See Joint Opposition at page 4; Staff Letter at page 4.

[9] See, for example, "In the Matter of the Application of Pressly Enterprises, LLC, Assignor and Pressly Partnership Productions, Inc., Assignee; for Consent to Assignment of License of KJBX(FM), Truman, Arkansas, 17 FCC Rcd 14079 at 14083-14084 and cases referenced therein. Interestingly, the case concerns the consideration of an

Consequently, while the Commission is not free to invalidate the use of Sec. 1031 for tax purposes, its obligation under its broad public interest mandate requires the Commission to evaluate whether, within the context of an assignment of license application, the use of a Sec. 1031, "like-kind" exchange and the benefits conveyed thereby (potentially tens of millions of dollars in tax savings conveyed upon the beneficiary) has any affect on the competitive status of the marketplace, impacts normal market operations through creation of perverse incentives to simply "flip" stations or otherwise promotes the goals of the Communications Act, including diversity of media voices. These are precisely the matters that are within the Commission's mandate under the Communications Act, yet the Staff refused to make the inquiry necessary to affirmatively make its public interest finding.

The Applicants asserted and the Staff found that CET failed to meet its burden under Sec. 309(d) to present facts sufficient for a prima face showing that a grant of the application would be contrary to the public interest. Similarly, the Applicants claimed they supplied all the information regarding the transactions required by the Commission's rules, forms and instructions. The Staff agreed. These arguments wrongly place the exclusive focus on the petitioner's burden under Sec. 309, and ignore the Commission's independent obligation to make inquiry and examine all the relevant facts before making its public interest determination, as well as the Applicants' obligations to be fully forthcoming with all material information that impacts the Commission's deliberations.

The CET argued that Sec. 309(d) placed independent obligations on the Commission and the parties to an assignment of license proceeding. Consequently, even where, assuming for the

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assignment of license application under and "interim" policy unilaterally imposed by the Commission in furtherance of its independent public interest obligations under the Communications Act during the pendency of a rulemaking on media concentration. Consequently, even in the absence of a concrete, duly authorized rule, the Commission's public interest mandate provides it with a basis to scrutinize transactions on a case-by-case basis where a palpable public interest issue is be presented. Consequently, and contrary to the Staff's position, any change in policy does not require the completion of a rule making proceeding.

sake of argument, a petitioner fails to meet their burden, the Commission still has the obligation to affirmatively find that a transaction is in the public interest, and the Applicants have the burden to demonstrate that a grant of the applications is in the public interest through full and forthright disclosure of the facts and the broader dynamics underlying a set of transactions. Even in the face of its abbreviated processing procedures, the Commission continues to have, in its own words, "an independent obligation to consider whether a proposed pattern of radio station ownership that complies with the local radio ownership limits would otherwise have an adverse competitive effect in a particular local market and thus would be inconsistent with the public interest."[10] Yet, the Staff refused to make inquiry.

The CET concedes that the Commission has in the past permitted assignment applications to go forward where a 1031 like-kind exchange was contemplated as part of the transaction. In those cases, for the most part, the information was openly disclosed by the applicants. Those applications -- considered on a case-by-case basis -- dealt with the transfer of the license(s) in question to the third party intermediary pending the exchange or otherwise were justified by some countervailing public interest benefit such as making properties subject to divestiture requirements available to a wide class of potential purchasers and thereby presumably promoting diversity of media ownership.[11] None of those factors were present in the subject transactions by the Applicant's own admission, and hence hold little if any value as precedent.

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[10] see Chet-5 Broadcasting, L.P., 14 FCC Rcd at 13043, para.8

[11] In this connection, CET again notes that had Cox Radio, Inc. chosen to argue that it used the benefits of the tax free exchange to further diversity of media ownership of its own accord by searching out qualified new entrants or small businesses there would be little or no basis for CET to complain. The problem in equity with regard to the transfer of broadcast licenses under Sec. 1031 is simply that the seller exclusively receives the tax windfall, without any reciprocal public interest benefit accruing to the public. In the days of yore, tax certificates were permissible, and generated substantial diversity benefits. And, while the Commission has been deprived of authority to provide tax certificates by Congress, the benefits of tax-deferred sales of broadcast property has continually been cited as significant way to further the public policy goal of diversity in media ownership. see, e.g."In the Matter of Promoting Diversification of Ownership In the Broadcasting Services; 2006 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; 2002 Biennial Regulatory Review -- Review of the Commission's Broadcast

B) **Section 1031 "Like-Kind" Exchanges Have Competitive Impacts and Must Be Examined Under the Public Interest Standard.**

The Commission apparently has never analyzed in depth and on a case-by-case basis the prospective competitive affects of like-kind exchanges -- and the war chest of cash they provide on the basis of a tax windfall -- on the market(s) involved or other public interest standard as a general or specific matter within the context of a particular transaction, and consequently, the Staff's action presents a question of law and policy that has not previously been fully resolved by the Commission. That analysis -- which the CET argues the Commission is compelled to do under its Section 309 and 310(d) obligations -- can only be done on a case-by-case basis in the face of full disclosure of the facts and details of the broad-based transactions contemplated, particularly where, the licenses to stations disposed of do not pass through the third-party intermediary and consequently not require additional FCC applications that would also serve to identify the stations involved in the "like-kind" exchange, and hence provide disclosure. But the licenses and the financial circumstances of the transfers on the disposed of leg of the transaction remain directly relevant to the Commission's consideration of a pattern of transfers or competitive affects in particular markets. But, in the absence of full disclosure of the facts there is little basis upon which to conduct the required competitive inquiry.

Section 1031 is rather flexible in its application, and provides opportunities to potentially indefinitely defer capital gains taxes through any number of transactional permutations. The

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Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets; Ways to Further Section 257 Mandate and To Build on Earlier Studies" MB Docket No. 07-294; MB Docket No. 06-121; MB Docket No. 02-277; MM Docket No. 01-235; MM Docket No. 01-317; MM Docket No. 00-244; MB Docket No. 04-228, 23 FCC Rcd 5922 (released March 5, 2008) at para 72. These concerns are apparently still acute in the Commission's own view, by virtue of its very recent action to re-charter its Committee on Diversity and appointment of the many luminaries who have pressed the issue in the past. see, Public Notice, "Correction - Appointment of Members of the Re-Chartered FCC Diversity Committee" (released March 27, 2013).

exchange may be limited to two parties each of whom exchange a property between them or it may involve multiple parties and properties. The "acquired property" may obtained first, with the "disposed of property" sold later, or properties may be disposed of first, and the acquired or "replacement" property obtained later. Again, the structure of the transaction cannot be definitively determined in the absence of full and detailed disclosure. But, what remains axiomatic and plainly before the Commission's own eyes (and of which the FCC is compelled to take notice) is the resulting financial benefit -- essentially a war chest of cash that has a direct impact on capital and debt structure, and hence financial competitiveness -- to the party deferring capital gains. How that financial benefit is utilized differs in each transaction and is unquestionably a matter of public interest concern which the applicants must address and/or potential public interest argument in support of the grant of a series of applicants. For example, use of "like-kind" exchanges may promote transfers of licenses only among existing licensees -- after all, the incumbents are the parties in possession of the licenses to exchange -- and in theory prejudice new market entrants. On the other hand, should the tax deferral result in stations being made available by sellers at more affordable prices to new market entrants, it may be that the public interest is served by promoting media diversity. Neither the CET, not the Commission can prejudge any particular transaction for the public interest determination can, again, only be made on a case-by-case basis upon disclosure of the underlying facts and public interest argumentation supplied voluntarily by the applicants, or required by the Commission.

IV. Conclusion and Requested Relief.

The CET argues that the use of "like-kind" exchanges is not a matter upon which the Commission calls "balls and strikes" as the oft used legal saw goes. Rather, its a matter of the Commission getting into the ball game in the first instance to make the necessary inquiry upon

which it can base a public interest determination. Applicants must in the future be made to provide sufficient information for the Commission to assess the role of the subject stations in a larger pattern of broadcast ownership changes and bear the burden for establishing that the transaction does not have a negative impact on the public interest. The Commission has apparently never considered the issue of the competitive affects of like-kind exchanges in detail, particularly in the context and on the scale of the subject transactions at issue here where there is apparently no countervailing public interest benefit conveyed other than promoting the financial interests of the seller. The Commission's independent obligations under the Communications Act require no less.

CET, in light of the foregoing, requests that in the future the FCC: 1) require prospective applicants to fully disclose the details of any contemplated Sec. 1031 "like-kind" exchange including the identity of the stations involved and the amount of the anticipated tax deferral of capital gains; and 2) require that prospective applicants set forth the nature of any public interest benefit attendant to the transactions, if any. Should the Commission determine that the requested change in application disclosure procedures can be accomplished only through a rule making proceeding, CET requests that such a proceeding be initiated immediately.

Respectfully submitted,

Citizens for Equity in Taxation

By:_____

Thomas L. View

Its Counsel

Citizens for Equity in Taxation
44 Bryant Street, NW
Suite 1010
Washington, DC 20001
(202) 841-9915

CERTIFICATE OF SERVICE

I, Thomas View, Esq. certify that on this 28day of May 2013, I caused the foregoing "Application for Review" to be served by first-class United States mail, postage prepaid, except where hand delivery is indicated, on the following:

The Hon. Julius Genachowski
Chairman,
Federal Communications Commission
Room 8-B201
445 12th Street SW
Washington, DC 20554

The Hon. Robert McDowell
Commissioner,
Federal Communications Commission
Room 8-B115
445 12th Street SW
Washington, DC 20554

The Hon. Mignon Clyburn
Commissioner,
Federal Communications Commission
Room 8-A302
445 12th Street SW
Washington, DC 20554

The Hon. Ajit Pai
Commissioner,
Federal Communications Commission
Room 8-C302
445 12th Street SW
Washington, DC 20554

The Hon. Jessica Rosenworcel
Commissioner,
Federal Communications Commission
Room 8-A204
445 12th Street SW
Washington, DC 20554

Mr. William T. Lake
Chief, Media Bureau

Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Mr. Peter Doyle*
Chief, Audio Division
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Francisco R. Montero, Esq.
Fletcher, Heald and Hildreth, P.L.C.
1300 North 17th Street
11th Floor
Arlington, VA 22209
Counsel to SummitMedia, LLC

John Feore, Esq.
Dow, Lohnes PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 200036
Counsel to Cox Radio, Inc.

David D. Oxenford, Esq.
Wilkinson Barker Knauer, LLP
2300 N Street, N.W.
Suite 700 Washington, D.C. 20037

Thomas L. View, Esq.

*
By Hand Delivery