

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC

In the matter of:)	
)	
2014 Quadrennial Regulatory Review –)	MB Docket No. 14-50
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules Adopted)	
Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
2010 Quadrennial Regulatory Review –)	MB Docket No. 09-182
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules Adopted)	
Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
Promoting Diversification of Ownership In)	MB Docket No. 07-294
the Broadcasting Services)	
)	
Rules and Policies Concerning Attribution of)	MB Docket No. 04-256
Joint Sales Agreements in Local Television)	
Markets)	
)	
Rules and Policies to Promote New Entry)	MB Docket No. 17-289
and Ownership Diversity in the Broadcasting)	
Services)	

COMMENTS OF REC NETWORKS

1. REC Networks (“REC”) through our advocacy, is the leading and remaining active policy voice for the Low Power FM (“LPFM”) broadcast service spanning all six segments of LPFM stations including community media, government/public safety, microbroadcasting, cause-based organizations, faith-based organizations and secular educational institutions.

2. In these comments, we are responding to the *Notice of Proposed Rulemaking* (“NPRM”) in the above captioned proceeding. In the NPRM, the Commission is attempting to rekindle a previously proposed “incubation” program that could offer new sources of financial, technical, operational and managerial support for eligible broadcasters.¹ In exchange for helping

¹ - NPRM at 126.

to “incubate” prospective broadcasters, the Commission is offering to waive certain rules such as the local ownership rules to the “incubating entities” providing this support.²

3. REC totally supports the ability for new entrants to join the ranks of broadcasters, especially those who are under-represented based on gender, race, minority religion, socioeconomic status, physical or mental disability, sexual orientation and gender identity. (Collectively, “the under-represented community”) REC does not feel that any kind of a “mentorship” program such as Broadcast Incubator would grow diversity as it does just the opposite, as it may result in fewer voices in the market at the ownership level; and will further make access to the broadcast spectrum, both television and radio, well out of reach of the under-represented communities.

On the Commission’s Inquiries in the NPRM

4. While REC does not generally support this type of program, we will address the Commission’s inquiries in this NPRM.

5. Eligibility – The Commission seeks information on how to determine eligibility for the incubator program.³ Options include new entrants, revenue-based eligible entry and socially and economically disadvantaged businesses (SDB). REC feels that such a program should be used to encourage new entrants, especially those from SDBs who need to gain the experience necessary to understand the broadcasting industry, methods and policies. We also want to point out that there is a need for training, mentoring and development of those who wish to pursue broadcasting in a noncommercial educational (NCE) environment and provisions need to be put into place to assure non-profit participation in the program. Furthermore, we must assure that all licensee participants in this incubator program select new disinterested entrant participants in a manner that does not discriminate based on sex, race, national origin, age and disability.⁴

² - Id. at 127.

³ - NPRM at 131.

⁴ - Sex discrimination also includes discrimination based on gender identity under Title VII of the Civil Rights Act of 1964 (Pub L. 88-352, 78 Stat. 241 (1964)) (“Title VII”), see *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005); also see *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004); also see *Lopez v. River Oaks Imaging & Diagnostic Group, Inc.*, 542 F.Supp 2d 653 (S.D. Tex. 2008). Sex discrimination also includes discrimination based
(continued....)

6. Qualifying Incubation Activities – The Commission seeks comments on the types of activities that would qualify for incubation.⁵ REC feels that if such an incubation program was to be implemented, it should be focused on training and mentoring individuals, especially women, people of color and the LGBT⁶ on the necessary technical, administrative and managerial skills necessary to be able to own and/or manage a commercial or NCE broadcast station. The incubating entity should have the financial ability as well as the experience and knowledge to properly mentor the principals of incubating stations.⁷ The incubation relationship should result in full independent station ownership without and kind of LMA, JSA or SSA with the incubating entity. The incubated station must be an independent voice in the community. With that, the incubation program should be limited to station acquisitions or new “drop-in” allotments that result in a new distinct “voice” in the market area of the station, especially if the new voice is a new locally controlled NCE organization with no other broadcasting holdings (other than LPFM)⁸. The incubator program should not be extended to existing station owners that need financing or other support for their existing operations. This program should be made available to entities that are currently not engaged in any broadcasting operations at a management or ownership level. The program should be about training and mentoring new talent, not about financially supporting failing stations.

7. Benefit to the Incubating Station – This brings up the question of how to do “reward” a broadcast entity that helps incubate another broadcast station (including divesting their own station and incubating it for a distinct local voice).⁹ This is a difficult question to answer as there

on sexual orientation under Title VII. See *Muhammad v. Caterpillar Inc.*, 767 F.3d 694 (7th Cir. Sept. 9, 2014, as amended on denial of reh’g, Oct. 16, 2014); also see *Winstead v. Lafayette Cty. Bd. Of Cty. Comm’rs.*, 197 F. Supp. 3d 1334 (N.D. Fla. 2016); also see *Koren v. Ohio Bell Tel. Co.*, 894 F. Supp. 2d 1032 (N.D. Ohio 2012).

⁵ - NPRM at 133.

⁶ - Lesbian, Gay, Bisexual and Transgender.

⁷ - NPRM at 134.

⁸ - While LPFM does provide a good training ground for some aspects of broadcasting also used by full-service stations, only certain full-service rules apply to LPFM stations (see 47 C.F.R. §73.801). Organizations which are already the licensee of an LPFM station seeking a full-service FM station must divest of the LPFM station on or prior to the consummation of the full-service assignment application or in the case of a full-service original construction permit, the LPFM station must be divested at the time full-service program testing commences (see 47 C.F.R. §73.860(a)).

⁹ - NPRM at 137.

may be very few options other than waivers of ownership rules, which would in turn increase the concentration of existing owners including that owner having some attributable interest in the incubated station. The only true “reward” that can be given is a regulatory fee exemption for a specific period of time (such as 6 months or one year) for each facility the incumbent entity has incubated. REC opposes any rules that would waive the ownership rules to allow an incumbent broadcaster to take direct or indirect control of an incubated station. The incubated station must remain fully independent of any ongoing influence of an incumbent broadcast station other than the benefits gained from increased knowledge shared by the incubating entity.

8. Compliance Assessment – The Commission questions how compliance with the incubator program will be enforced.¹⁰ As we have seen in the LPFM and FM translator services, any kind of compliance based on “self-certification” opens the policy up for gamesmanship. REC agrees that there must be reporting and that those reports must be made public. Reports should be filed by both the incubating entity, and by the incubated station. These independently-filed reports should indicate the types of training, mentoring or other activity that the incubating entity is conducting from the point of view of the incubating entity as well as the other report, taken from the perspective of the incubated station would also consist of a progress report including a statement of competency to track how far the incubated station’s learning path has progressed and where additional education may be necessary. Compliance can’t be outsourced to be self-policed by the industry, it must be enforced at the Commission and any fraud in the program must be met with forfeitures or challenges to the violating entity on their eligibility to remain a Commission licensee. We have seen enough abuse of the system in this decade. Let’s not start another program that will further encourage gamesmanship.

Conclusions

9. REC echoes many of the statements made by Commissioner Clyburn regarding this NPRM. While we do feel that new entrants into the industry, especially women, minorities and the LGBT should be mentored and provided the support in which to carry to torch forward in their communities, we agree with Commissioner Clyburn that this proceeding should also examine the

¹⁰ - NPRM at 143.

impacts of ownership diversity on the broadcast marketplace, how further media consolidation would impact localism and competition, and then work on an incubator program after that data has been collected and analyzed.¹¹

10. REC feels that we need to be divesting large broadcasters, “right-sizing” broadcast stations¹², respecting and serving the community of license and expanding NCE opportunities through providing more flexibility to existing LPFM stations, expanding the number of NCE and LPFM stations through additional filing windows, cracking down on national and regional NCE ownership (which is getting almost as bad as its commercial counterpart) and exploring different and new spectrum such as on AM and on the 11-meter shortwave broadcast band¹³ to enable women, people of color, the LGBT and other minority groups the ability to operate NCE broadcasting and narrowcasting stations to address the needs of the local communities as well as through various methods such as “right-sizing” and responsible market-based ownership limits to improve the number of commercial voices and increased overall diversity.

11. Based on the concepts proposed by the Commission, there is no adequate assurance that an incubator program would actually result in true broadcast diversity. Instead, we will have big companies getting bigger through LMAs and Joint Sales Agreements and being able to take advantage of ownership rule waivers to justify their market domination while we have a dial full of national voices and their shill (questionably disinterested) incubated owners. We must return radio to our communities through the divestiture of the large broadcasters and through right-sizing, FM stations can focus on their communities and not adjacent rim-shot markets. National content is already available through DARS and through internet streaming. Our local AM and FM signals need to remain locally-originated and locally controlled. Therefore, REC Networks does not

¹¹ - See *Dissenting Statement of Commissioner Mignon L. Clyburn*, 32 FCC Rcd. 9802. (2017)

¹² - “Right-sizing” is an REC concept where a full-service station is modified to a lower service class that better represents the community of license they serve and could include creation of commercial service classes with protected contours smaller than A. We acknowledge that this is an outlandish and possibly unworkable but the corporate broadcaster’s behavior over the past two decades show that simply no longer respect the community of license for which the station was distributed to in accordance with 47 USC §307(a).

¹³ - This includes the international broadcasting allocation at 25,850 to 26,100 kHz and the spectrum currently allocated to Remote Pickup Broadcast Stations at 26,100 to 26,500 kHz.

support the creation of any kind of incubator program. Commissioner Clyburn stated that the FCC has “abdicated its responsibility to uphold the core values of localism, competition and diversity in broadcasting.” REC agrees wholeheartedly with Commissioner Clyburn’s statement.

Respectfully submitted,

/S/

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