Fletcher, Heald & Hildreth

1300 NORTH 17th STREET, 11th FLOOR
ARLINGTON, VIRGINIA 22209

OFFICE: (703) 812-0400
FAX: (703) 812-0486
www.fhhlaw.com
www.commlawblog.com

ORIGINAL

DOCKET FILE COPY ORIGINAL

FRANCISCO R. MONTERO
(703) 812-0480
MONTERO@FHHLAW.COM

May 15, 2018

Accepted / Filed

MAY 15 2018

Federal Communications Commission
Office of the Secretary

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

Re: FCC Incubator Proposal, MB Docket No. 17-289

Dear Ms. Dortch:

The purpose of this letter is to provide my experience with the significant obstacles that all prospective broadcasters, but especially minority and women-owned businesses, face in obtaining access to capital for broadcast acquisitions. I am the Managing Partner of the media/telecommunications law firm of Fletcher, Heald & Hildreth and I have over 30 years of experience in representing broadcasters, and specifically Hispanic broadcasters. I have served on the FCC's Federal Advisory Committee for Diversity in the Digital Age (on its finance subcommittee) and I was the Director of the FCC's Office of Communications Business Opportunities during the administration of FCC Chairman William Kennard and was charged with assisting small and minority-owned business with gaining access to the telecommunications industry and working to bring down barriers to entry for those businesses.

There exists a "middle market" gap where there is little available senior financing for small and minority owned communications and broadcast companies. This is due to a reliance by lenders on asset-based lending versus cash flow valuations. Local and regional lenders, as well as purchasers of senior debt on the secondary market and banking regulators are relatively uneducated in valuation and the means of structuring senior financing for media and communications companies.

Women and minority-owned purchasers of broadcast stations frequently run into hurdles when trying to obtain senior third-party financing. The problem is that those purchasers are usually looking at smaller, and in some cases single station buys. This is opposed to larger group

No. of Copies rec'd 0
List ABCDE

owners who look to acquire station "clusters" of 4-5 stations in a market. These larger buyers can usually be financed from available cash flow or by large national financial institutions that are familiar with the broadcasting industry. By contrast, smaller minority owners frequently have to deal with far more expensive private equity money, local banks, or search for the rare seller willing to seller-finance a sale.

With local banks, a large obstacle comes from the lack of familiarity with the broadcasting industry. These local lenders are unfamiliar with FCC rules regarding the collateralization and valuation of broadcast assets, the need for FCC approval prior to foreclosure, the need to file FCC loan agreements with the FCC, as well as Federal regulatory prohibitions on security interest on FCC licenses themselves. All these uncertainties discourage and deter smaller regional banks from making these loans. Add to that the fact that the valuation of broadcast businesses and assets is different from a traditional commercial loan. In the case of a broadcast station, there are no hard physical assets such as a buildings or real estate, nor is there tangible inventory such as a warehouse or a parking lot full of cars or equipment or dry goods to be sold. With broadcasters, the inventory is airtime and there is no real estate, as broadcast stations usually rent tower or studio space. The only valuable assets is the Federal license which cannot be collaterized. This leaves the smaller lender stifled when it comes to evaluating the loan. Credit committees applying traditional criteria see no inventory and no assets and no familiar method for evaluating the loan.

I frequently find myself being asked to explain to potential lenders the process for evaluating and foreclosing on a broadcast transaction. So often is this that we have actually developed a power point presentation and webinar for small regional banks unfamiliar with the process. The other alternative available to minority buyers is Small Business Administration (SBA) and Specialized Small Business Investment Company (SSBIC) lenders, but these too have their limits in terms of dollar valuations of the assets.

With available options so limited, many small businesses, particularly minority and woman-owned businesses, fail to secure financing and never get a foothold in the marketplace. An incubator program can provide a means for smaller entities to obtain the financing they need to get off the ground.

Respectfully submitted,

Francisco R. Montero