

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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Review of the Commission's Regulations Governing Attribution of Ownership Interests)	MM Docket No. 94-150
)	
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry)	MM Docket No. 92-51
)	
Reexamination of the Commission's Cross-Interest Policy)	MM Docket No. 87-154
)	
TO THE COMMISSION)	

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**MOTION TO ESTABLISH AN ACCELERATED
PROCEDURAL SCHEDULE FOR THE LLC ISSUE**

The Association of Black Owned Television Stations ("ABOTS"), by counsel, respectfully requests the Commission to accelerate its timetable for disposition of Section VII (Limited Liability Companies and Other New Business Forms) of the NPRM in this proceeding.^{1/}

ABOTS, founded December 17, 1994, is the association of African American owned and controlled licensees of full and low power television stations. Currently, African Americans control approximately 39 full power or low power television stations.

A strong case can be made that LLCs should be encouraged, at least to the extent that they might provide a vehicle for greater minority ownership in broadcasting. In addition to their single or pass-through tax benefits, LLCs may be especially attractive to minority entrepreneurs for at least two reasons. First, unlike limited partnerships, they permit absolute limited liability even where the minority investor is in control of day to day management

^{1/} FCC 94-324 (released January 12, 1995) at ¶¶64-75.

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of the company.^{2/} That feature is particularly valuable for persons of fairly modest means, who may put most of their resources at risk on a media venture. Second, LLCs allow investors to have limited involvement in management decisions -- with involvement limited to that typically required by lenders. Thus, unlike limited partnerships, if the minority control persons have the degree of control possessed by the control persons in a corporation, other investors' involvement need not result in attribution under the Commission's rules or in the loss of limited liability -- while still being able to insulate the noncontrolling investors from day to day management and control of the venture.^{3/}

^{2/} Limited partnerships must have a general partner with unlimited liability. Typically, the general partner is a corporation so as to limit the liability of persons or entities other than the corporate general partner. This structure, however, does not eliminate the risk of liability to limited partners who are involved with management of the limited partnership through the general partner. Under limited partnership law, limited partners who participate in the daily management and control of the limited partnership may lose their limited liability protection and be considered general partners. Thus, for example, if minority controlled ventures are required to assume the form of a limited partnership, the minority limited partners who also control the partnership through the general partner will be subjected to the possible loss of their limited liability. Use of an LLC means that the minority members, who also control the day to day affairs of the business, would not be subjected to loss of their limited liability.

^{3/} For example, an LLC can be structured to ensure centralized management and minimal involvement of investors -- characteristics that should result in the LLC being treated the same as a corporation from an FCC perspective. This can be done through the use of a "manager form" of LLC, which is managed by certain elected managers and not the members of the LLC (as is the case with a "member form" of LLC.) In a "manager form" of LLC, the organization and operation of the entity is structured to parallel the organization and operation of a corporation. For example, a manager form LLC can provide for voting and nonvoting equity interests, with the voting equity interests having the sole power to elect the board of managers. The board of managers would have the same duties and responsibilities as a corporation's board of directors. The nonvoting members could not control day to day operations because they would have no power to elect directors or officers. Thus, provided that the nonvoting members' rights are no more extensive than those typically granted to lenders, their interest in an LLC should be treated the same as an interest of a nonvoting corporate shareholders (i.e., for attribution purposes, the nonvoting member's interest should be nonattributable.)

Official notice may be taken of the incipient creation of Blackstar LLC ("Blackstar"). Blackstar is the first minority controlled LLC. It is a "manager form" of LLC.^{4/}

ABOTS calls the Commission's attention to the well known difficulties faced by minorities in attracting and retaining pledges of financing.^{5/} The NPRM leaves in doubt for many months the form of the Commission's ultimate rules for LLCs. Regardless of what those rules might be, resolution of this proceeding could be delayed for months. ABOTS fears any prolonged regulatory uncertainty could impair the sense of opportunity and cooperation which have fostered minority/majority partnerships such as Blackstar and thereby diminish the willingness of nonminorities to invest in minority controlled ventures. Coming at a time when minority ownership is under challenge in the courts^{6/} and in Congress,^{7/} any chilling of private, market driven initiatives to promote minority ownership would be particularly unfortunate.

Without taking a position now on the merits of any particular LLC, the Commission can reduce the market-chilling effect of its timetable by severing the LLC portion of the NPRM and assigning that section accelerated comment and decision dates. In this way, all interested persons will retain their

^{4/} See n. 3 supra.

^{5/} See Policy Statement on Minority Ownership in Broadcasting, 92 FCC2d 849, 853 (1982).

^{6/} Adarand Constructors, Inc. v. Peña, No. 93-1841 (S. Ct., argued January 17, 1995).

^{7/} Official notice may be taken of the hearing scheduled for January 27, 1995 before the Oversight Subcommittee of the House Ways and Means Committee. The purpose of the hearing is to consider the possible repeal of the tax certificate policy.

participatory rights under 5 U.S.C. §553 and 47 CFR §1.415,^{8/} and the market will receive a strong signal that permanent rules -- whatever they may be -- may be expected by a date certain.

Severing of the LLC issue -- at least for minority LLCs -- can easily be done at this stage since a resolution of the issue is not inextricably tied to any of the other issues in the NPRM or the issues in the parallel minority ownership and multiple ownership proceedings. Furthermore, a purely procedural decision to sever and accelerate the LLC issue may be made without the need to concurrently evaluate the merits of any particular LLC.

Accordingly, ABOTS respectfully urges the Commission to establish the following procedural schedule on the LLC issue:

Comments to be due by February 10
Reply Comments to be due by February 17
Decision to be announced, if possible, by March 3.

Respectfully submitted,



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^{8/} 47 CFR §1.415 specifies that the time period for comments and replies must be "reasonable."