A. <u>The Incubator Concept</u>

The incubator concept outlined by NABOB *et al.* in MM Docket 91-140 is generally reasonable and MMTC endorses it. The incubating operator should provide loan guarantees, loans or equity, management or technical assistance, training and business planning. An operator should incubate two minority owned facilities for every additional facility it is permitted to acquire over the ownership limits. Furthermore, the incubating operator should demonstrate that any proposed acquisition will not adversely impact minority ownership.

The definition of a meaningful financial infusion should be kept straightforward and unambiguous to make enforcement possible. For a financial infusion to be meaningful, it should be set at a level which is tailored to address the greatest deficiency faced by minorities in financing broadcast and cable acquisitions -- raising the equity. Most broadcast and cable deals involving minorities must be structured with at least 40% of the funds coming in the form of equity. That equity can be raised if the debt is guaranteed or lent on a fully subordinated basis; thus, a proposal to guarantee all of the debt or to loan 60% of the purchase price on a fully subordinated basis would be sufficient. Similarly, minorities generally can raise 10% of the equity in a major deal themselves if the other 90% is precommitted; thus, a proposal to inject 90% of the equity (amounting to 36% of the total funds to be raised for an acquisition) would be sufficient.

The Commission's alternative to NABOB's proposed one-year holding period prior to additional acquisitions by the incubating operator is a one year holding requirement by the incubated owner. This is reasonable and MMTC can accept it.

The NPRM proposes that the incubated owner's acquired station be no more than five markets below the incubating owner's proposed acquisition, with a parallel requirement for CATV based on households passed. This is reasonable and MMTC can accept it.

The program should be designed around the national, not the local ownership limits. The local limits protect local stand-alone station owners -- a category which includes a disproportionate number of minorities -- from predatory and anticompetitive behavior from multiple station owners who might otherwise aggregate enough audience share points to dictate advertising rates, effectively determine other stations' formats, and punish aggressive independent competitors.

B. Attribution Relief

MMTC enthusiastically endorses the Commission's proposal that noncontrolling investments in minority owned stations be nonattributable. Written certification of minority control, full disclosure of all contracts and agreements of the parties, and careful review of petitions to deny are sufficient to insure the integrity of this approach. However, to enable the Commission to fulfill Section 310(b) of the Act, alien noncontrolling investments in minority owned stations would still need to be attributable.

MMTC recommends that the incubator proposal be designed around the national, not the local ownership limits to avoid predatory practices adverse to local minority station owners. On the other hand, a nonminority cannot use a noncontrolling interest in a minority owned station to bring about any of the anticompetitive effects which might flow from excessively concentrated ownership. Thus, the imputed nonattribution of investments in minority owned stations should apply for all purposes and to all rules, although not for the purposes of Section 310(b).

C. Investment Tax Credit

MMTC enthusiastically endorses this proposal. No minimum investment threshold is needed, since a minority owner would not accept an investment so small that the administrative burdens attendant to managing the investment would be too large relative to the investment's size.

D. Ownership Limits for Minority Owners

A "3 local AM" rule for minorities is reasonable on its face, given the inferior technical status of AM broadcasting. National TV, AM and FM caps for minorities substantially (1 1/2 times) the national caps for nonminorities would also be reasonable. Minorities lack the market strength to pose antitrust concerns nationally or locally. The largest minority owned broadcaster (U.S. Radio) is only the 41st largest group owner.

E. Other Commission Proposals

MMTC endorses the Commission's proposal that SSBIC financing be rebuttably presumed valid. MMTC also endorses the Commission's approach to data collection to monitor and insure the integrity of its programs.

VI. Additional Initiatives The Commission Should Consider

A. Minority Media Ownership Trust

As set out in the NAACP/LULAC/NBMC Petition for Reconsideration in MM Docket No. 90-263 (filed January 21, 1991), the Commission should facilitate the creation of a Minority Media Ownership Trust, to be formed with a portion of the excess of comparative hearing settlements over documented expenses. Not only would this more rapidly terminate comparative hearings, it will lead to no abuse because the current applicants did not apply in reliance on the possibility of settling for a profit. Other sources of initial funding for this trust might include the interest generated from PCS application fees.[21]

B. **Accelerated Application Processing**

To partly replace the opportunity-providing aspects of the tax certificate policy, the Commission should adjust its processing criteria for assignment and transfer applications such that applicants which sell to minorities are put on an accelerated calendar with shortened petition to deny periods. Applicants which voluntarily issue a 45-day public notice of sale to entertain bids from minorities would be on a faster than normal track (but not as fast as those who sell to minorities), and other applicants would be processed as they are now.[22]

C. **Alien Ownership Incentives**

As set out in MMTC's Comments in IB Docket No. 95-22 (filed March 28, 1995), the Commission can use its Section 310(b)(4) waiver authority as a carrot to attract alien capital to minority ventures. For example, it can declare a policy of permitting up to 49% alien equity in minority controlled companies. It can also declare a policy that aliens which invest very substantially in minority controlled entities should be allowed to participate up to the 30% level in nonminority companies.

21/ MMTC thanks its Board Member and co-founder, Thomas Hart, for coming up with this idea.

22/ In 1977, Commissioner Hooks proposed a mandatory a 45-day notice of sale period. 45 Day Notice for Sale of Broadcast Property, FCC 78-323, 43 Fed. Reg. 24560 (1978). As reconfigured by MMTC, the 45-day notice period would be voluntary and operate as a minority ownership incentive.

D. **American Communications Investment Bank**

The Commission should ask Congress to authorize the creation of the American Communications Investment Bank.

The Bank would be a private, nonpartisan, and statutorially created institution operated by Presidential appointees subject to Senate confirmation, much like Fannie Mae and Freddie Mac. The Bank would allow aliens and multinationals to channel and pool their investments for subsequent subdivision and targeting to U.S. media interests of all sizes, in furtherance of U.S. telecommunications and trade policy.

The Bank would be designed to attract sufficient investment to greatly accelerate the construction of the information superhighway, and thereby to generate additional tax revenue and help balance the budget without increasing taxes.

The Bank would promote minority ownership in five ways, providing minorities with capital to which they heretofore have never had access:

a. Its investment decisions would include minority ownership as a primary decisional factor, accounting for at least 30% of the capital invested or loans made, subject to generally accepted prudent lending and investing criteria.

b. Capital flowing through the Bank would not be deemed attributable for the purpose of Section 310(b)(4) of the Act.

c. By its pooling mechanism, the Bank would reduce the transaction costs which prevent small and moderate sized amounts of alien capital from being invested in American media and thus ultimately being accessible by minorities.

d. By its subdistribution mechanism, the Bank would enable large sized amounts of alien capital to be broken down into the smaller sums minorities often require for broadcast acquisitions.

e. The Bank would have the flexibility to take investment positions, make loans or issue loan guarantees.

Additional details on the proposed operation of the bank may be found in MMTC's Comments in IB Docket No. 95-22 (filed March 28, 1995).

* * * * *

Conclusion

The spirit undergirding this proceeding should be drawn from a cadence used in several of Dr. Martin Luther King's sermons in which he articulated several manifestations of oppression. After describing each, he rhetorically asked "How long?" before freedom would come -- to which the congregation answered "Not long!"

Thus it is that in fulfilling its voluntarily undertaken responsiblity -- and its constitutionally compelled duty to remedy generations of minority exclusion from broadcasting -- the Commission must proceed with far more than "all deliberate speed."23/

Respectfully submitted,

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23/ Brown v. Board of Education, 349 U.S. 294 (1955) ("Brown II").