

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

RECEIVED

JUL 10 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matters of)

Review of the Commission's Regulations)
Governing Television Broadcasting)

Television Satellite Stations Review of)
Policy and Rules)

MM Docket No. 87-8

TO THE COMMISSION

DOCKET FILE COPY ORIGINAL

**REPLY COMMENTS OF THE MINORITY
MEDIA AND TELECOMMUNICATIONS COUNCIL**

The Minority Media and Telecommunications Council ("MMTC")^{1/} respectfully submits these Reply Comments in support of policies which enhance the opportunities of minorities to own communications properties.

MMTC has reviewed and endorses the exceptionally well considered Comments of Black Citizens for a Fair Media et al. (filed May 17, 1995). In particular, MMTC feels that industry-wide ownership limit relaxation responds to a "problem" that does not exist. Three years ago, the Commission attempted to justify radio ownership deregulation by pointing to adverse economic conditions in the radio industry.^{2/} But there is no indication that the television industry is suffering economically.

1/ MMTC, founded in 1986, is the association of attorneys, scholars, engineers and economists which assists the civil rights community in communications policy matters. The views stated herein are those of MMTC itself and are not necessarily the views of any particular member of MMTC or its Board.

2/ Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2758-61 (1992) (subsequent history omitted). Minority broadcasters suffered dearly from the 1992 radio rules. Since most minority owned stations are AM standalones or Class A FMs, minorities seldom find themselves able to take advantage of LMAs and duopolies. Instead, they are faced with ever-larger and more economically powerful nonminority competitors.

No. of Copies rec'd 0214
List ABCDE

MMTC's general views on the FCC's structural ownership regulations are incorporated in its May 17, 1995 Comments in the parallel minority ownership proceeding and in Reply Comments in that proceeding which it is filing this date. To the instant proceeding, MMTC adds these brief observations.

In Adarand Constructors, Inc. v. Peña, 63 U.S.L.W. 4523 (U.S., June 12, 1995), the Supreme Court overruled much of Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990) and essentially compelled the FCC to undertake a substantial research initiative to defend its minority ownership policies. In April, Congress abolished the tax certificate policy, which was responsible for approximately 2/3 of all minority owned stations. Now Congress is poised to eviscerate the FCC's multiple ownership rules, including the Mickey Leland Rule,^{2/} and possibly much of Section 310(b) as well. These ill-considered proposals will confer on large domestic and foreign companies an even greater competitive headstart against small and minority owned companies.

As Congress and the courts cut back on minority opportunity, and as some licensees, seeing deregulatory blood in the water, push the limits of the current rules,^{3/} it is particularly critical that the FCC neither directly nor indirectly take steps which will even further impede minority access to the media. The steps needed to protect minority opportunity in proceedings not explicitly involving minority ownership are not always self-evident. Consequently, to be certain that minority opportunity is protected, a condition

2/ 47 CFR §73.3555(e)(i), (ii) and (iii).

3/ See, e.g., Newcity Communications of Massachusetts, Inc., 10 FCC Rcd 4985 (1995).

precedent to eighth floor review of all rulemaking proposals starting with this one, should be a statement on minority impact.^{4/}

As the Commission has long recognized, the multiple ownership rules should be used as a vehicle to foster minority ownership.^{5/} Thus, if Congress does not entirely preempt the Commission on the national multiple ownership rules, or set the ownership cap so high that no minority could possibly reach it, the Commission should fine-tune the Mickey Leland Rule by making the minority cap substantially greater (e.g. twice) the otherwise applicable cap.^{6/} Thus far, only two nonminority companies (in television) and two minority companies (in radio) have taken advantage of the Mickey Leland Rule.^{7/} One reason the policy has not worked effectively is that large companies wishing to expand their ownership influence are unlikely to be motivated to expend the time and effort to obtain noncontrolling interests in just one or two additional stations. However, the economies of scale attendant to a multi-station transaction would be sufficient to motivate a large company to accept a noncontrolling interest in a minority broadcaster.

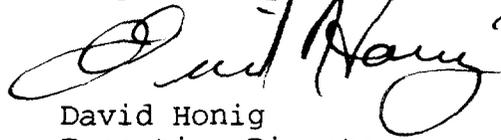
4/ This statement could be made a permanent section of the Commission's Initial Regulatory Flexibility Analysis.

5/ Multiple Ownership Rules (Reconsideration), 100 FCC2d 74, 94 (1985) (finding that "our national multiple ownership rules may, in some circumstances, play a role in fostering minority ownership.") See also Revision of Radio Rules and Policies (Second MO&O), 9 FCC Rcd 7183, 7191 (1994).

6/ A larger bump-up for minorities would present no antitrust question. Minority broadcasters lack the market power to pose antitrust problems anywhere.

7/ One of the nonminority companies (Trinity) is in hearing over allegations that it created a captive company to abuse the policy. Trinity Broadcasting of Florida, Inc. (HDO), 8 FCC Rcd 2475 (1993).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Honig", written in a cursive style.

David Honig
Executive Director
Minority Media and
Telecommunications Council
3636 16th Street N.W.
Suite AG-58
Washington, D.C. 20010
(202) 332-0500

July 10, 1995