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October 18, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Hon. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th St. S.W.  
Washington, D.C. 20554

Dear Ms. Salas:

RE: MM Docket Nos. MM Docket Nos. 91-221 and 87-8  
(Review of the Commission's Regulations  
Governing Television Broadcasting)

On behalf of the Minority Media and Telecommuni-  
cations Council ("MMTC"), transmitted herewith are  
the original and eleven copies of our "Petition for  
Partial Reconsideration and Clarification" of the  
Report and Order in the above-referenced proceeding,  
FCC 99-209 (released August 6, 1999 ("TV Local  
Ownership Order")).

We propose that:

1. The Commission should establish a genuine, well funded monitoring program which would allow the Commission to determine, on an annualized basis, whether local duopolies have impeded minority and SDB ownership opportunities. This monitoring should be tied to quantitative, objective benchmarks, including the number of stations and asset value held by minorities and socially and economically disadvantaged small business concerns ("SDBs"). If the Commission finds that its new rules have impeded ownership by minorities and other SDBs, its should end grandfathered LMAs when their two and five year terms end.
2. Sellers of failed, failing or unbuilt stations should be expected to market their properties so as to provide SDBs with reasonable notice of their availability and a reasonable opportunity to bid.

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October 18, 1999

Page Two.

3. Sellers of duopoly-eligible stations that have voluntarily marketed their properties to SDBs should be afforded expedited processing of their applications.
4. The owner of any two same-market television stations should be permitted to sell the combination intact to an SDB, irrespective of the stations' ratings or the number of operating television voices in the market.
5. The owner of any TV/radio combination should be permitted to sell the combination intact to an SDB, irrespective of the number of independently owned media voices in the market.
6. When a broadcaster provides an SDB with an equity/debt plus ("EDP") interest that enables the SDB to build out an unbuilt permit, the EDP interest should be deemed nonattributable, and the EDP provider should be reserved a place in line to subsequently duopolize or crossown another same-market station.

We respectfully request an opportunity to meet with Bureau officials, along with other affected parties, to explore the feasibility of our proposals.

Respectfully submitted,



David Earl Honig  
Executive Director

Enclosures

/dh

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

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8
	)	
TO THE COMMISSION		

**PETITION FOR PARTIAL RECONSIDERATION  
AND CLARIFICATION OF THE MINORITY  
MEDIA AND TELECOMMUNICATIONS COUNCIL**

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October 18, 1999

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### **Summary**

The new rules place the future of minority television station ownership at great risk. On top of the consolidation they've already survived, three more waves of consolidation face them:

- the first wave, consisting of the creation of duopolies authorized by the new rules;
- the second wave, consisting of the duopolization of stations that become "failing" or "failed" stations because they couldn't compete against the first set of duopolies; and
- the third wave, consisting of the probable authorization of still more duopolies to satisfy the losers of the races to the courthouse.

These three new waves of consolidation will probably wash away more than half of all minority owned television stations. Regulations likely to produce this horrible outcome must not take effect uncorrected.

To promote broadcast ownership by minorities and other small and disadvantaged businesses, MMTC proposes that:

1. If the Commission finds that small and minority television ownership is endangered, it should terminate all two-year and five-year grandfathered LMAs.
2. The Commission should expect sellers of failed, failing or unbuilt stations to market them to socially and economically disadvantaged small business concerns ("SDBs").
3. The Commission should expedite the processing of applications filed by duopoly-eligible licensees that voluntarily market their properties to SDBs.
4. The Commission should allow the owner of any two same-market television stations to sell them both together to an SDB.
5. The Commission should allow the owner of any radio/television combination to sell it intact to an SDB.
6. The Commission should not attribute equity/debt plus ("EDP") interests, and should vest multiple ownership rights, for an EDP provider who finances the SDB's construction of an unbuilt station.

The modifications we seek are modest fine-tunes to promote diversity. While probably insufficient to stem all of the decline in small and minority television ownership the new rules will cause, our proposals would at least mitigate some of that harm.

MMTC respectfully invites the industry's comments, suggestions and support for its proposals.

The Minority Media and Telecommunications Council ("MMTC"), pursuant to 47 CFR §1.429, respectfully requests the Commission to reconsider in part and clarify its Report and Order in Review of the Commission's Regulations Governing Television Broadcasting (Report and Order), MM Docket Nos. 91-221 and 87-8, FCC 99-209 (released August 6, 1999) ("TV Local Ownership Order").<sup>1/</sup>

### Introduction

Since its founding in 1986, MMTC has encouraged the Commission to aggressively foster minority participation in employment, ownership and program control. While race-neutral steps will often be insufficient to promote diversity and remedy past discrimination, these steps should be attempted before the agency resorts to race-conscious steps. The six initiatives we recommend herein are race-neutral. They would assist socially and economically disadvantaged small business concerns ("SDBs").<sup>2/</sup> These steps are vital to securing the full inclusion of all disadvantaged persons, including many people of color, in the mass media. They are justified to fulfill Congress' instruction to all agencies to assist SDBs' efforts to secure growth opportunities and obtain access to capital.<sup>3/</sup>

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<sup>1/</sup> The views expressed in this Petition are the institutional views of MMTC, and do not necessarily reflect the individual views of each of its officers, directors or members.

<sup>2/</sup> The term is defined precisely in the SBA's governing statute. See 15 U.S.C. §631(a)(4)(A) (1999). However, the Commission might need to define "small" in a manner that more realistically reflects the size of a television broadcaster. See TV Local Ownership Order, Appx. A (Final Regulatory Flexibility Analysis) at 69 ¶250 (expressing the Commission's tentative belief "the SBA's definition of 'small business' greatly overstates the number of radio and television broadcast stations that are small businesses" and reserving "the right to adopt a more suitable definition of 'small business'" as applied to mass media.)

<sup>3/</sup> In adopting the Small Business Economic Policy Act of 1990, 15 U.S.C. §631(a) and (b) (1994) Congress declared:

[I]t is the continuing policy and responsibility of the Federal Government to...foster the economic interests of small businesses; insure a competitive economic climate conducive to the development, growth and expansion of small businesses; establish incentives to assure that adequate capital and other resources at competitive prices are available to small businesses; reduce the concentration of economic resources and expand competition; and provide an opportunity for entrepreneurship, inventiveness, and the creation and growth of small businesses. Congress further declares that the Federal Government is committed to a policy of utilizing all reasonable means...to establish private sector incentives that will help assure that adequate capital at competitive prices is available to small businesses. To fulfill this policy, departments, agencies, and instrumentalities of the Federal Government shall use all reasonable means to coordinate, create, and sustain policies and programs which promote investment in small businesses... (emphasis supplied).

**I. Unless They Are Modified, The New Rules Will Aggravate The Considerable Impediments Faced By Minority Broadcasters**

Minorities have always faced enormous barriers to entry and success in broadcasting. When broadcasting was in its infancy, people of color cumulatively held only sparse capital assets. Indeed, they still possess an astonishingly low capital base relative to White Americans.<sup>4/</sup> As the capital-intensive broadcasting industry grew around them, people of color faced profound and often insurmountable barriers to access to capital. They still face many of these barriers today.<sup>5/</sup>

Minorities seeking to buy broadcasting stations today seldom enjoy the bidding power held by the industry's large, dominant companies. Until very recently, the Commission's licensing power proved to be an additional and impenetrable barrier to entry even when minorities had the necessary capital. Although the 1934 Act required the Commission to regulate the ether in the interest of all Americans,<sup>6/</sup> the Commission nonetheless deliberately ratified and validated the racially discriminatory behaviors of state governments and of its own licensees.<sup>7/</sup> Then the Commission adopted irrational licensing schemes that perpetuated the effects of its own ratifications of discrimination.<sup>8/</sup>

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<sup>4/</sup> In 1993, the median net worth per Black family was \$4,418 and the median net worth per White family was \$45,740. "Nobody is paying much attention to the most striking evidence of racial inequality in the United States," 21 Journal of Blacks in Higher Education 47 (Autumn, 1998) (citing U.S. Census Bureau statistics).

<sup>5/</sup> Access to capital has long been a critical need of small and disadvantaged businesses, particularly minorities. Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC2d 849 (1982). It is well documented that minorities often experience artificial barriers to obtaining credit or financing for communications ventures. See, e.g., Minority Telecommunications Development Program, National Telecommunications and Information Administration, U.S. Department of Commerce, Capital Formation and Investment in Minority Enterprises in the Telecommunications Industries, Executive Summary (1995) (<<http://www.ntia.doc.gov/opadhome/mtdpweb/finover.htm>>). See also Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 5th Report and Order, 9 FCC Rcd 5532, 5573-5574 ¶98 (1994) (Black and Hispanic applicants were 60% more likely to be turned down for loans than similarly situated white applicants, and held to higher standards to qualify for loans).

<sup>6/</sup> 47 U.S.C. §151 (1934), modified specifically to mention race and gender, 47 U.S.C. §151 (1996 and 1999).

<sup>7/</sup> The Commission used its licensing power to assist state governments in preventing minorities from obtaining the skills needed to enter the broadcasting field. It awarded broadcast licenses to de jure and de facto segregated institutions (such as the state-run Alabama Educational Television Commission, which was freely given all of the state's public television licenses when George Wallace was Governor, and it failed enable state-run HBCUs to secure broadcast licenses).

<sup>8/</sup> Although it knew that the exclusion of minorities from broadcast education denied minorities an opportunity to obtain broadcast experience or a past broadcast record, the

The result of this misregulation is an industry open to all only in theory. By 1978, through incredible care in harnessing their miniscule capital holdings, minorities owned four national magazines, three daily newspapers, and about three hundred weekly newspapers. The cost of starting and operating these facilities was comparable to the cost of starting and operating a broadcasting station. Yet by 1978, minorities owned only about sixty (mostly small) radio stations, four CATV systems, and one -- yes, one -- television station,

In that year, owing to the initiative of former chairmen Wiley and Ferris, the Commission adopted, inter alia, the tax certificate policy to encourage sales to minorities.<sup>9/</sup> The tax certificate policy was responsible for 288 radio, 43 television and 31 cable system acquisitions.<sup>10/</sup> But in

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<sup>8/</sup> [continued from p. 2] Commission built these criteria into its comparative licensing policies anyway. See Policy Statement on Comparative Hearings, 1 FCC2d 393 (1965). The Commission did not repeal a related, overbroad financing rule until 1981. See Ultravision Broadcasting Company, 1 FCC2d 545, 547 (1965) ("Ultravision"), repealed in Financial Qualifications Standards, 87 FCC2d 200, 201 (1981). Finally, the Commission routinely granted and renewed licenses of commercial broadcasters that discriminated, and in doing so openly embraced state segregation laws even after Brown v. Board of Education, 357 U.S. 483 (1954). See, e.g., Southland Television Co., 10 RR 699, recon. denied, 20 FCC 159 (1955). The Commission continued these policies through the early 1970s, when it adopted (but thereafter seldom enforced) the EEO rule. Recently, the Commission acknowledged for the first time that a good case could be made that "[a]s a result of our system of awarding broadcast licenses in the 1940s and 1950s, no minority held a broadcast license until 1956 or won a comparative hearing until 1975 and...special incentives for minority businesses are needed in order to compensate for a very long history of official actions which deprived minorities of meaningful access to the radiofrequency spectrum." Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Notice of Inquiry), 11 FCC Rcd 6280, 6306 (1996) ("Section 257 Proceeding NOI") (citing Statement of David Honig, Executive Director, Minority Media and Telecommunications Council, En Banc Advanced Television Hearing, MM Docket No. 87-268 (December 12, 1995) (on file with counsel of record) at 2-3 and n. 2).

This history is set out in detail in the Comments of Civil Rights Organizations, Creation of a Low Power Radio Service, MM Docket No. 99-25 (filed August 2, 1999) at 34-49 (in which MMTTC and 24 other organizations urged the Commission to approve a LPFM service partly to remedy the effects of past discrimination.)

<sup>9/</sup> Statement of Policy on Minority Ownership of Broadcast Facilities, 68 FCC2d 979, 983 (1978). Two weeks ago, a commissioner serving in 1978 reminded us that the task of promoting ownership diversity is incomplete. In a commentary identifying what he considered to be the ten most critical priorities facing today's Commission, former Chairman Quello listed as his top three: (1) "[c]ongratulate [two merging companies] on [inter alia] their intention to give minority companies first option on buying stations"; (2) "[c]ongratulate broadcast leaders...for initiating an investment fund for minority purchase of stations [and]...encourage other broadcasters to also contribute to funding"; and (3) "expedite establishment of the tax-certificate" policy, which was "an effective, noncoercive way to promote minority ownership." James Quello, "If I were chairman (again)," Broadcasting & Cable, October 4, 1999, at 18.

<sup>10/</sup> E. Krasnow, "A Case for Minority Tax Certificates," Broadcasting & Cable, December 15, 1997, at 80.

1995, Congress repealed the policy,<sup>11/</sup> and a year later Congress authorized vast consolidation of local radio ownership.<sup>12/</sup>

These events cast a plague on minority owned companies and stations. Minorities seldom had the capital or the opportunity to buy multi-station local platforms. Nonetheless, they had to compete for advertising against these platforms, which could offer multi-station discounts to induce advertisers to buy around minorities and other small competitors.<sup>13/</sup> Realizing that their money could generate higher returns elsewhere, investors in minority broadcasters panicked, began to exercise "puts", and forced many minority entrepreneurs to "get big or get out." Unable to get big, seventeen minority owners got out between 1997 and 1998.<sup>14/</sup>

Recent FCC efforts to advance minority ownership have been sincere but slow. First, record-setting delays threaten to abort LPFM. Second, the Commission produced a study documenting advertisers' discrimination against stations because of their audiences' race,<sup>15/</sup> but it has yet to stem this massive flow of dollars away from minorities. Third, although minorities seldom learn in advance of the best stations for sale,<sup>16/</sup> the Commission has not yet guaranteed minorities the same notice and opportunity to bid that similarly situated White entrepreneurs

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<sup>11/</sup> Deduction for Health Insurance Costs of Self-Employed Individuals, Pub. L. No. 104-7, §2, 109 Stat. 93, 93-94 (1995) (codified at 26 U.S.C. §1071 (1995)). But see S. 1711, the Telecommunications Ownership Diversification Act of 1999, introduced October 8, 1999 by Senator John McCain and Senator Conrad Burns (courageously proposing to restore much of the tax certificate policy).

<sup>12/</sup> Telecommunications Act of 1996, Pub. L. No. 104-10-4, §202, 110 Stat. 56 (1996).

<sup>13/</sup> See K. Ofori, K. Edwards, V. Thomas and J. Flateau, Blackout? Media Ownership Concentration and the Future of Black Radio (1996) ("Blackout") (documenting loss of minority ownership in the wake of the 1996 Telecommunications Act and the loss of the tax certificate policy). See also A. DeBarros, "Radio's Historic Change: Amid Consolidation, Fear of Loss of Diversity, Choice," USA Today, July 8, 1998, at 1A-2A.

<sup>14/</sup> National Telecommunications and Information Administration, "Minority Commercial Broadcast Ownership in the United States" (August, 1998) at 4.

<sup>15/</sup> K. Ofori, "When Being No. 1 Is Not Enough: The Impact of Advertising Practices on Minority-Owned & Minority-Formatted Broadcast Stations" (Report of the Civil Rights Forum on Communications Policy for the Office of Communications Business Opportunities, Federal Communications Commission, 1999). This study documented the refusal of many advertisers to buy airtime on stations programmed to minorities. In many cases, this is patently unlawful customer-preference discrimination. The race of the audience is the most significant factor giving rise to no-buy dictates by advertisers and ad agencies.

<sup>16/</sup> Public Notice of Intent to Sell Broadcast Station, 43 RR2d 1, FCC 78-323, 43 Fed. Reg. 24560 (1978) ("Hooks Proposal").

enjoy.<sup>17/</sup> Finally, despite clear evidence that employment discrimination continues to inhibit minorities' opportunities to learn the broadcasting trade, the Commission cut EEO enforcement by about 60% from 1994-1997.<sup>18/</sup> It has stopped issuing nondiscrimination enforcement orders, and has failed to produce rules with even the very modest remedy of targeted recruitment.

Many of the experiences of minority broadcasters have been shared by other small and disadvantaged broadcasters. Broadcasters serving women, children, the disabled, non-English speakers, immigrants, the poor, farmers, alternative music lovers, and some religious communities often face substantial barriers to capital acquisition. All small and disadvantaged broadcasters face pressure to either consolidate or fold.

In 1995, the Commission correctly recognized that the issues in this proceeding, the attribution proceeding, and its minority ownership proceeding were closely interrelated, and that actions taken in this proceeding and the attribution proceeding could help or hinder its efforts to promote minority ownership. Thus, it coupled the three proceedings together, calling for concurrently filed and crossreferenced comments in each proceeding.<sup>19/</sup>

However, a 1995 Supreme Court decision made it procedurally more burdensome for agencies to adopt race-conscious programs.<sup>20/</sup> Instead of meeting this burden, the Commission

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<sup>17/</sup> Station brokering continues to introduce prejudice into the process of selecting the next generation of licensees. Far too often, minorities do not learn of deals until it's too late to bid. This happens because broadcasters are not prohibited from engaging discriminators as their agents for the sale of their stations. The entire station brokerage business employs only two minorities (one of whom works at MMTC). Ironically, a broadcaster who sells her station, then decides to relocate, could not hire a discriminator to sell her private home, but she can hire this discriminator to sell her federally licensed broadcasting station.

<sup>18/</sup> Employment of minorities in broadcast news has sharply declined over the past two years. See RTNDA and Ball State University, "Women & Minorities Employment Statistics" (July, 1999) (reporting, *inter alia*, that minority radio news directorships dropped from 11% to 8% in the year since we lost the EEO Rule.) The Commission's longstanding failure to ensure minority employees' career development helps explain why the four major television networks cast only one minority lead character in this fall's 26 prime-time series, and none in any prime time drama series.

<sup>19/</sup> See Review of the Commission's Regulations Governing Television Broadcasting (Further NPRM), MM Docket Nos. 91-221 and 87-8, 10 FCC Rcd 3524 (1995); Review of the Commission's Regulations Governing Attribution of Broadcast Interests (NPRM), MM Docket Nos. 94-150, 92-51 and 87-154, 10 FCC Rcd 3606 (1995); Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities (NPRM), MM Docket Nos. 94-149 and 91-140, 10 FCC Rcd 2788 (1995). Comments in each proceeding were due April 17, 1995.

<sup>20/</sup> Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995) ("Adarand").

uncoupled the minority ownership caboose from the express train pulling the duopoly and attribution cars.<sup>21/</sup>

In 1997, MMTC asked the Commission to reverse this uncoupling.<sup>22/</sup> The Commission did not respond to our request. Instead, it issued the TV Local Ownership Order with this startling explanation for the absence of any consideration of the effects of its new rules on minority (as well as small business and women) ownership:

We note that a number of parties have expressed concern about the fact that greater consolidation of ownership in broadcasting makes it more difficult for new entrants -- parties that own no or only a few mass media outlets -- to enter this industry. This is particularly the case for minorities and women who are underrepresented in broadcasting. [fn. 23] We share these concerns. The Commission has recognized the importance of promoting new entry into the broadcast industry as a means of promoting competition and diversity. Indeed, we have adopted a "new entrant" bidding credit as part of our broadcast auction procedures for these reasons and also to comply with our statutory mandate to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." [fn. 24] We will monitor the effects of the relaxation of our local TV ownership rules on new entry.

We are now guided in considering initiatives to encourage greater minority and women-owned mass media businesses by a 1995 Supreme Court decision that held that any federal program that uses racial or ethnic criteria as a basis for decision-making is subject to strict judicial scrutiny.... [fn. 25]

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<sup>21/</sup> In 1996, the Commission put the TV local ownership and attribution proceedings onto a fast track, and also proposed new national TV ownership rules. Review of the Commission's Regulations Governing Television Broadcasting (Second Further NPRM), MM Docket Nos. 91-222 and 87-8, 11 FCC Rcd 21655 (1996); Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests (Further NPRM), MM Docket Nos. 94-150, 92-51 and 87-154, 11 FCC Rcd 19895 (1996); Broadcast Television National Ownership Rules (NPRM), MM Docket Nos. 96-222, 91-221 and 87-8, 11 FCC Rcd 19949 (1996). Two months ago, this proceeding, the attribution proceeding and the TV national ownership proceedings each were concluded. TV Local Ownership Order, *supra*; Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests (Report and Order), MM Docket Nos. 94-150, 92-51 and 87-154 (released August 6, 1999) and Broadcast Television National Ownership Rules (Report and Order), MM Docket Nos. 91-221 and 87-8, FCC 99-208 (released August 6, 1999). Yet the minority ownership dockets remain inactive.

<sup>22/</sup> Letter from David Honig, Executive Director, Minority Media and Telecommunications Council, to William Caton, Acting Secretary, FCC (March 25, 1997). Therein we noted that the Sikes administration's incubator proposal, which contemplated granting incubating companies more liberal multiple ownership waivers and more liberal treatment of attribution, had drawn "widespread industry support and unanimous public interest and minority community support." We noted that concluding the multiple ownership and attribution dockets while leaving the minority ownership dockets unresolved might "render it impossible later to develop incentives useful as inducements to incubate minority owners or to effectuate the financing or sales of stations to minorities." Consequently, MMTC urged the Commission to recouple the minority ownership, TV local ownership and attribution proceedings, or to issue a further NPRM in the minority ownership proceedings "concurrently with the Commission's decisions in the multiple ownership and attribution dockets. The Further Notice should express the Commission's tentative views concerning appropriate incentives, permissible under the 1996 Act, which could be matched with incubation, financing and sale initiatives."

We are presently conducting studies that we believe will allow us to address this issue in the context of our broadcast licensing and ownership policies. Upon the completion of these studies, we will examine the steps we can take to expand opportunities for minorities and women to enter the broadcast industry. In the interim, we encourage broadcasters to establish incubator programs and to engage in other cooperative ventures that will boost new entry into the broadcast industry, particularly with regard to participation of women and minorities in the mass media.

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fn. 23 See, e.g., Letter from David Honig, Executive Director, Minority Media and Telecommunications [Council], to William Caton, Acting Secretary, FCC, dated March 25, 1997; AWRT Comments.

fn. 24 47 U.S.C. §309(j)(4)(D). See First Report and Order, In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, Reexamination of the Policy Statement on Comparative Broadcast Hearings, Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, MM Docket No. 97-234, GC Docket No. 92-52, GEN Docket No. 90-264, 13 FCC Rcd 15920, 15993-15996, ¶¶186-190 (1998) ("Competitive Bidding First Report and Order").

fn. 25 Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 235 (1995).

TV Local Ownership Order at 7-8 ¶¶13-14.

The Commission was honest in not suggesting that these new rules would help minorities. Indeed, the injury to radio ownership diversity caused by consolidation foretells of injury to television ownership diversity. For two reasons, television consolidation will resegregate minority television ownership even more than post-1996 radio consolidation resegregated minority radio ownership.

First, minorities have not been in television as long as they've been in radio. Minority radio ownership would have declined even more dramatically after 1996 were it not for the fact that a few minorities have had twenty years of modest radio ownership experience.<sup>23/</sup> This handful of radio companies possessed the skills and financing to survive consolidation. Only one minority owned company, Granite Broadcasting, has attained a comparable base of experience and financing in television.

Second, Black and Spanish formats provided a safe haven in radio. Many radio broadcasters who otherwise would have been destroyed by duopolization found sanctuary in

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<sup>23/</sup> See A. Evans, "Are Minority Preferences Necessary? Another Look at the Radio Broadcasting Industry," 8 Yale Law and Policy Review 380, 391-92 (1990) (surveying twenty Black broadcast station owners and finding that 50% of them had prior broadcasting experience before they purchased their first station, 25% percent had more than fifteen years of experience, and 25% had been general managers before acquiring their first station.)

formats that other broadcasters didn't find interesting or could not do very well. Television programming costs more than radio programming, and there are not enough television stations to support narrowcasted programming as a national, over-the-air format.<sup>24/</sup> These factors inhibit the development of truly national over-the-air networks aimed at the Black and Hispanic markets. Unable to connect with a secure niche audience, minority television owners facing duopolies will have few options besides failing or folding.

Consequently, MMTC predicts that there will be three waves of consolidation in the next five years, each of which will kill off several minority owned stations.

The First Wave of Consolidation. We begin with only 32 minority owned full power television stations out of over 1,200 stations. Of these 32, seventeen are in markets large enough for duopolies under the new rules. Of those seventeen, only one (KSEE-TV, Fresno) is among the top four in ratings. Thus, KSEE-TV is the only minority owned station in a position to create a duopoly. The other sixteen minority owned stations in duopoly-eligible markets are at risk. Many of their owners will be compelled to leave a business in which they can no longer grow or compete. Based on our discussions with minority broadcasters, we predict that by 2001, about ten of these stations will not be minority owned.<sup>25/</sup>

This loss in minority ownership will not be offset by new minority entrants. The investment community is unlikely to finance a weak standalone when it can finance a dominant competitor's bid for a duopoly.<sup>26/</sup>

The Second Wave of Consolidation. The few remaining minority owned stations in major markets, forced to compete as singletons, will face enormous anticompetitive pressure. A TV

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<sup>24/</sup> Two leading economists have explained that "as the number of channels continues to increase, advertisers who seek out minority groups will find the television medium increasingly attractive.... But...additional channels are a necessary condition for specialized programs to appear[.]" B. Owen and S. Wildman, Video Economics (1992) at 91-92. Economists also understand that a narrowcasted program will be broadcast only when it will generate as much advertising as the least attractive of several general audience programs. See S. Wildman and T. Karamanis, "The Economics of Minority Programming," in A. Garmer, ed., Investing in Diversity: Advancing Opportunities for Minorities and the Media (1998) at 47.

<sup>25/</sup> This estimate optimistically assumes that Granite Broadcasting will not be sold. See "New rules spark CBS-Viacom talk," Broadcasting & Cable, August 23, 1999, p. 8 ("the buzz on Wall Street is that Granite will sell...[CEO] Don Cornwell says that's premature. 'I'm not sure we're a seller or a buyer.'") Granite owns ten of the nation's 32 minority owned television stations.

<sup>26/</sup> Investment banker Steve Pruett predicts that a duopoly will be worth more than the combined value of the first station and the price paid for the second. E. Rathbun, "Ready, set...duopoly," Broadcasting & Cable, August 9, 1999, at 4, 5.

duopoly can sell itself as a one-stop advertising buy reaching virtually every TV viewer. Even most radio platforms can't match this feat, because many radio listeners fall into niches that cannot all be reached even by some large radio platforms.

Consequently, a duopolized environment will cause a second wave of losses of minority owned television stations. If our experience with radio is any indication, we will probably lose about five more minority owned television stations between 2001 and 2003. By the year 2003, there might still be as many as seventeen minority owned full power television stations.

These few survivors will face even more anticompetitive pressure, because many formerly healthy stations will have been forced into failing or failed status by the first two waves of duopolization. Those new failing or failed stations can and will be duopolized irrespective of whether there are eight operating voices in the market.

The Third Wave of Consolidation. With the ink on the new rules still wet, large broadcasters are already clamoring for even more consolidation.<sup>27/</sup> More applicants will propose duopolies than the new rules allow. Thus, the Commission must referee races to the courthouse.<sup>28/</sup> Those who lose these races will never sit by and watch their rates of return to capital remain only at (e.g.) 25% while their duopolized rivals earn 30%. Singletons in duopoly-eligible markets will say they can't compete against duopolies, and licensees in smaller markets will complain that investment capital is fleeing duopoly-ineligible markets for the higher-return duopolized markets. These broadcasters will press hard for still more consolidation.

Historians point out that the Commission has often succumbed to this kind of pressure.<sup>29/</sup> If it does, we predict that by 2005, the only standalones will be in very small markets, or in markets having an odd number of stations. With virtually no growth, and facing still more massive hemorrhage, minority television ownership in 2005 will likely be heading toward zero.

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<sup>27/</sup> See, e.g., Comments of Sinclair Broadcast Group, Inc., Processing Order for Applications Filed Pursuant to the Commission's New Local Broadcast Ownership Rules, MM Docket Nos. 91-221 and 87-8 (filed October 4, 1999) (advocating FCC authorization of all duopolies unless DOJ objects).

<sup>28/</sup> See Public Notice, "Commission Seeks Comment on Processing Order for Applications Filed Pursuant to the Commission's New Local Broadcast Ownership Rules", FCC 99-240 (released September 9, 1999).

<sup>29/</sup> See, e.g., R. McChesney, Rich Media, Poor Democracy (1999) at 69 (asserting that "the NAB's friends on Capitol Hill" threatened hearings after the FCC Chairman suggested that the Commission might want to roll back some TV and radio concentration.)

Thus, unless these new rules are modified, historians will record that these rules, and the chain reaction they set in motion, dealt minority television ownership a blow even more devastating than was dealt by the loss of tax certificates. The Commission was not entirely unaware of this possibility. The TV Local Ownership Order pointed to the "new entrant bidding credit" and to studies aimed at the restoration of race-sensitive policies.<sup>30/</sup> It promised to monitor minority ownership, and it promised to encourage incubators. But as we explain below, these steps are doomed.

First, the "new entrant bidding credit" is useless for television. There are essentially no new television allotments to be had in the top 200 markets.

Second, the Commission's licensing policy study is only now getting underway, and its outcome is unknown.

Third, while the Commission should be commended for its plans to monitor minority and female ownership,<sup>31/</sup> even the most careful monitoring is no remedy if the damage being monitored is irreversible. If monitoring discloses that the decision to allow more concentration was wrong, it will be too late to reverse the process. The Commission would be unlikely to order massive divestitures even if minority television ownership fell dramatically.

Finally, jawboning to encourage incubators hasn't worked before, and it won't work now. In 1992, Chairman Sikes held a minority ownership conference to propose incubators. Chairman Quello, Chairman Hundt and Chairman Kennard have each repeatedly and enthusiastically encouraged incubators. Yet not a single incubator has arisen. Businesses just find it imprudent to grow their own future competitors.

MMTC appreciates that the industry waited for eight years to get these rules. But ninety years after the birth of broadcasting, minorities still await an opportunity to secure their fair share of access to the radiofrequency spectrum.

By partially reconsidering and clarifying the new rules, the Commission can preserve its legacy of fostering minority ownership. We do not ask the Commission to completely reverse its

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<sup>30/</sup> Id. at 7-8 ¶¶13-14.

<sup>31/</sup> 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules and Processes, MM Docket Nos. 98-43 and 94-149 (Report and Order), 13 FCC Rcd 23056, 23096-23098 ¶¶96-100 (1998), reconsideration denied, FCC 99-267 (released October 6, 1999) at 7 ¶19.

<sup>32/</sup> Multiple Ownership of AM, FM and Television Broadcast Stations (Report and Order), 100 FCC2d 17 (1984).

decision, only to fine-tune the rules to preserve some measure of diversity.

History offers guidance. In 1984, the Commission changed the 7-7-7 rule to 12-12-12.<sup>32/</sup> When Congressman Leland pointed out that this higher level of concentration would inhibit minority ownership, the Commission listened. It reconsidered and improved the rule by providing that a company owning 12 AM, FM or TV stations could also hold a minority interest in a 13th or 14th station that was controlled by entrepreneurs of color.<sup>33/</sup> Although the Mickey Leland Rule yielded only modest benefits,<sup>34/</sup> the 1985 Commission had the right idea when it reconsidered its rules and tried to promote diversity. Today's Commission should try even harder.

## **II. Six Ways The TV Local Ownership Order Can Be Improved To Promote Diversity**

### **A. The Commission Should Terminate All LMAs If Small And Minority Television Ownership Is Endangered**

MMTC proposes that the Commission establish a genuine, properly funded monitoring program which would allow it annually to determine the status of minority and SDB ownership. The Commission should objectively quantify the number of stations and asset value held by minorities and by SDBs.<sup>35/</sup>

To provide guidance to the industry and the public, the Commission should state now -- unequivocally -- that if minority or SDB ownership falls dramatically, LMAs must end. Specifically, if, by 2001, the Commission finds that minority or SDB television station count, or minority or SDB asset value, has declined by more than 10%, it should end the two-year grandfathering of post-November, 1996 LMAs. If it makes any such finding by 2004, it should end the grandfathering of all LMAs. It must preserve this option because it is the only corrective step potentially available under the new rules.

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<sup>33/</sup> 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.")

<sup>34/</sup> Only one licensee, Home Shopping Network (HSN), successfully used the Mickey Leland Rule. HSN invested in two small-market stations controlled by Blackstar, L.L.C.

<sup>35/</sup> The Commission's monitoring program should also determine the extent to which losses of stations owned by minorities or SDBs were attributable to the new rules. Whenever minorities or SDBs decide to sell or shut down a station, the Commission should ask them how these new rules played a part in their decision. Nonetheless, the loss of diversity calls for remediation irrespective of what caused the loss. Thus, findings that specifically link the new rules to a loss of diversity should not be a condition precedent to steps to reverse that loss.

The new rules have set up a very "generous" test that all but guarantees that no LMA could ever be terminated.<sup>36/</sup> But having found that LMAs have little to recommend them, the Commission should announce that LMAs must fall if minority or SDB ownership is on the ropes.

**B. The Commission Should Require Sellers Of Failed, Failing, Or Unbuilt Stations To Market Their Properties To SDBs**

MMTC proposes that sellers of failed, failing or unbuilt stations be required to market their properties so as to provide SDBs with reasonable notice of their availability and a reasonable opportunity to bid.

Failed, failing or unbuilt station that duopolize become unavailable for acquisition by SDBs. That is especially unfortunate, because the most successful business strategy exercised by SDBs in broadcasting over the past 30 years has been the acquisition and rehabilitation of weak or dark properties. Companies like Spanish Broadcasting System, Radio One and Blue Chip Broadcasting owe their existence to this strategy.

The failed, failing and unbuilt station policies are especially likely to be used -- and abused -- in the next two years. As noted above, duopolization will diminish the economic prospects of the remaining singleton stations.<sup>37/</sup> Some stations that are healthy now won't be healthy for long. Those that were already less than robust will become sick, and those that were already sick will go on life support. Financing to build unbuilt stations will dry up. Companies losing the race to the duopoly courthouse will line up in front of the bankruptcy courthouse, or their broker's doorsteps, to buy failed, failing and unbuilt stations.

Duopolization of a weak station should be a last resort. Sometimes these facilities can be rescued without duopolization. Just ten years ago, many UPN and WB affiliates were "failing stations;" yet without duopolization, most are doing well now. Had competitors been permitted to duopolize these stations, UPN and WB would never have become independent national voices.

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<sup>36/</sup> To determine whether to permanently grandfather LMAs, in 2004 the Commission will examine, *inter alia*, whether stations in LMAs have produced locally-originated programming, made technical improvements, or are on schedule to convert to digital. TV Local Ownership Order at 62 ¶148. Commissioner Ness has accurately characterized this relief as "generous." *Id.* at 82 (Separate Statement of Commissioner Susan Ness).

<sup>37/</sup> See p. 8 supra (discussing the anticipated second wave of consolidation).

Under the new rules, a company selling a failed, failing or unbuilt station must provide an affidavit stating, inter alia, that the only "reasonably available" buyer is the duopolizer.<sup>38/</sup> However, the rules do not state that SDBs must be contacted. Instead, an "independent broker" need only state that "active and serious efforts have been made to sell the station, and that no reasonable offer from an entity outside the market has been received."<sup>39/</sup> In MMTC's experience, trusting this process to the unregulated and exclusionary station brokerage industry means excluding SDBs, particularly minorities. While a few brokers always contact minorities and SDBs, many do not, and some virtually never do.

Thus, to increase the likelihood that some failed, failing or unbuilt stations are sold to SDBs, the Commission should require their sellers to provide SDBs with reasonable notice of the properties' availability, and a reasonable opportunity to bid. A procedure rather like Commissioner Hooks' 1978 proposal for a public notice period before a station can be put under contract might work quite well.<sup>40/</sup> The Commission rejected Commissioner Hooks' proposal because many broadcasters lose staff and goodwill when they market stations openly.<sup>41/</sup> But these considerations do not apply to a failed station, which has no staff and little goodwill. Nor do these considerations apply to a failing station, because its staff and customers surely know that the station is failing. Moreover, a failing station's staff and customers would be well served if the widest possible range of bidders competes to become the successor licensee.

The Commission has recognized that old-boy recruitment of job applicants may be discriminatory,<sup>42/</sup> and that targeted job applicant recruitment promotes diversity in a constitutionally permissible way.<sup>43/</sup> These considerations apply with equal force in the

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<sup>38/</sup> TV Local Ownership Order at 35 ¶76 (failed stations); id. at 36-37 ¶81 (failing station); id. at 38 ¶86 (unbuilt station).

<sup>39/</sup> Id. at 36-37 ¶81.

<sup>40/</sup> Hooks Proposal, supra.

<sup>41/</sup> Id.

<sup>42/</sup> See Walton Broadcasting Co. (Decision), 78 FCC2d 857, 875 (1980), recon. denied, 83 FCC2d 440 (1980) (holding that EEO recruitment only through referrals from members of a racially homogeneous staff -- the "old-boy network" -- is inherently discriminatory.)

<sup>43/</sup> Review of the Commission's Broadcast Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding (NPRM), 13 FCC Rcd 23004, 23012-23013 ¶¶21-23 (1998).

ownership context. For too long, the old boy network in broadcast station brokering has prevented SDBs from acquiring facilities they could have afforded. Notice to SDBs of the availability of stations for sale, and a fair opportunity to bid, would do wonders to close this opportunity gap.

**C. The Commission Should Expedite The Processing Of Applications Filed By Duopoly-Eligible Licensees That Voluntarily Marketed Their Properties To SDBs**

MMTC proposes that sellers of duopoly-eligible stations that have voluntarily marketed their properties to SDBs be afforded expedited processing of their applications.<sup>44/</sup>

As we have noted, the duopolization of a failed, failing or unbuilt station renders it unavailable to SDBs, and there is no good reason why these stations should ever not be marketed to SDBs.<sup>45/</sup> Actually, the duopolization of any station renders it unavailable to SDBs. Thus, ideally, SDBs should be given a chance to offer the seller of a duopoly-eligible station a better deal.

The Commission has decided not to require public notice of the sale of every station, and we do not seek to overturn that decision.<sup>46/</sup> However, there is no reason a seller cannot market a station to SDBs and still preserve confidentiality and protect station goodwill.<sup>47/</sup>

The public interest usually would be better served by the sale of a station to an SDB than by its sale into a duopoly. Once the Commission receives a Form 314 or 315 application, though,

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<sup>44/</sup> MMTC originally advanced this proposal in the minority ownership proceeding. Comments of the Minority Media and Telecommunications Council, MM Docket Nos. 94-149 and 91-140, Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities (filed May 17, 1995). It languishes because the minority ownership proceeding has been decoupled from this proceeding. See pp. 5-11 supra.

This proposal is not directed to applications subject to a "race to the courthouse." Our proposal to establish the queue in race to the courthouse cases was to provide a bump-up to applicants proposing to spinoff, buy and then spinoff, or finance sales of television stations to SDBs. Comments of the Minority Media and Telecommunications Council, Processing Order for Applications Filed Pursuant to the Commission's New Local Broadcast Ownership Rules, MM Docket Nos. 91-221 and 87-8 (filed October 4, 1999).

<sup>45/</sup> See p. 5 n. 17 supra.

<sup>46/</sup> See Hooks Proposal, supra.

<sup>47/</sup> For this reason, MMTC believes that all stations should be marketed to SDBs. However, we realize that such a proposal might be beyond the scope of this proceeding. We will file it separately as a petition for rulemaking. The steps proposed herein are far more limited than the full range of steps the Commission can and should take to open up the transactional market.

it cannot consider whether other potential purchasers are more desirable.<sup>48/</sup> Consequently, it must rely on the station marketing process to ensure that SDBs have had a chance to bid on stations for sale.

Ideally, sellers of duopoly-eligible stations would always provide SDBs with notice of the sale and a fair opportunity to bid. However, some broadcasters might be concerned that a marketing to SDBs could lengthen to the sale process. They might also contend that it is a major step for the Commission to require, rather than just encourage, the marketing of economically healthy stations to SDBs. To accommodate these concerns, MMTC proposes that the Commission offer expedited processing to duopoly-eligible station sellers who voluntarily market the stations to SDBs.<sup>49/</sup> Here, expedited processing is an especially well-tailored remedy, since it would make up at least as much (or more) time as may have been lost to the SDB marketing process.

**D. The Commission Should Allow The Owner Of Any Two Same-Market Television Stations To Sell Them Both To An SDB**

MMTC proposes that the owner of any two same-market stations should be permitted to sell the combination intact to an SDB, irrespective of the stations' ratings or the number of operating television voices in the market.

The new rules permit a top-four rated station to duopolize another station. Because of their market power, some of these combinations will evolve to the point that both stations' ratings are among the top four in the market. The strength of some of these combinations will also cause some weak standalone competitors to fail or go dark, whereupon they too may freely be duopolized under the failed and failing stations waiver criteria -- causing the number of operating television voices to fall below eight. Under either scenario, divestitures are not required, but the sale of the intact combination is not permitted either, Inly one of the stations could be sold, or both could be sold, but to different buyers.<sup>50/</sup>

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<sup>48/</sup> 47 U.S.C. §310(d) (1952). See S. Rep. 44, 82nd Cong., 1st Sess. (January 25, 1951) and House Rpt. 1750, USCAN 2234 (1952) (repealing the Avco Rule, under which the Commission had considered applications which were mutually exclusive with assignment or transfer applications).

<sup>49/</sup> Expedited processing has been used to reward voluntary efforts to promote minority ownership. See Statement of Policy on Minority Ownership of Broadcast Facilities, 68 FCC2d at 983 (promising that tax certificate and distress sale applications "can be expected to receive expeditious processing.")

<sup>50/</sup> TV Local Ownership Order at 30 ¶64.

Some limitations on the sale of two powerful stations together make sense. Typically, medium-sized companies owning these duopolies would sell them to larger, more powerful companies. Most such transactions would probably diminish diversity, and some could be plainly anticompetitive. However, the prohibition on the sale of an intact duopoly is likely to have an unintended consequence: it would discourage some duopolists from selling these combinations even where the sale would promote diversity.

This quirk in the rules can easily be cured. The Commission can declare that the owner of any two same-market stations can sell the combination intact to an SDB, irrespective of the stations' ratings or the number of operating television voices in the market. Such a sale would never diminish diversity because it would not decrease the number of voices in the market or place stations in the hands of a more powerful company. Instead, such a sale would promote diversity by helping a company that faces historic barriers to entry to overcome those barriers.<sup>51/</sup>

**E. The Commission Should Allow The Owner Of Any Radio/Television Combination To Sell It Intact To An SDB**

MMTC proposes that the owner of any TV/radio combination should be permitted to sell the combination intact to an SDB, irrespective of the number of independently owned media voices in the market.

In a ten-voice market, the new rules permit the creation of combinations consisting of a TV and four radio stations. In a twenty-voice market, the new rules permit the creation of combinations consisting of a TV and seven radio stations, or two TVs and six radio stations. Such combinations could be sold intact if the number of voices in the market remains above ten or twenty respectively. However, as time passes, the total number of voices will probably decrease because a standalone station was acquired under the failed or failing station policies, or because a station or a daily newspaper goes out of business. In either event, the combination, once formed, could be retained, but it could not be sold intact.<sup>52/</sup>

Some limitations on the sale intact of a market-dominating TV/radio combination make sense. Typically, medium-sized companies owning these duopolies would sell them to larger, more

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<sup>51/</sup> We are not proposing that an SDB be allowed to assemble an otherwise prohibited duopoly by acquiring the stations from two different owners of standalone properties. Such an acquisition would concentrate local ownership. We only propose that the owner of a duopoly that would otherwise have to be retained or split up be permitted to sell the duopoly intact to an SDB.

<sup>52/</sup> TV Local Ownership Order at 44 ¶100.

powerful companies. Most such transactions would probably diminish diversity, and some could be plainly anticompetitive. However, some limitations on the sale of intact, market-dominating TV/radio combinations might have an unintended consequence: they would discourage some companies from selling these combinations even where the sale would promote diversity.

Like a similar quirk in the duopoly rules,<sup>53/</sup> this quirk in the TV/radio rules can easily be cured. The Commission can declare that the owner of any TV/radio combination can sell the combination intact to an SDB, irrespective of the number of voices in the market. Such a sale would never diminish diversity because it would not decrease the number of voices in the market or place the stations in the hands of a more powerful company. Instead, such a sale would promote diversity by helping a company that faces historic barriers to entry to overcome those barriers.<sup>54/</sup>

**F. The Commission Should Not Attribute EDP Interests, And Should Vest Multiple Ownership Rights, For An EDP Provider Who Finances The SDB's Construction Of An Unbuilt Station**

MMTC proposes that when a broadcaster provides an SDB with an equity/debt plus interest ("EDP Interest") that enables the SDB to build out an unbuilt permit, (1) the EDP Interest should be deemed nonattributable, and (2) the entity providing the EDP Interest (the "EDP Provider") should be reserved a place in line to subsequently duopolize or crossown another same-market station.

SDBs are often highly motivated to build out unbuilt television or radio permits and thereby add a new independent voice to the community. Larger, same-market competitors often lack this motivation because they typically prefer to duopolize or crossown stations that are already on the air.

SDBs wishing to build out (or acquire, then build out) an unbuilt permit could often benefit substantially from EDP Interests provided by a large broadcaster, especially one that understands the market. However, large broadcasters might hesitate to provide such an EDP Interest. It would be an attribution time bomb, set to explode once the unbuilt permit is built out. Furthermore, the EDP Interest, if attributable, could preclude the large broadcaster from acquiring

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<sup>53/</sup> See pp. 15-17 *supra*.

<sup>54/</sup> We are not proposing that an SDB be allowed to assemble an otherwise prohibited combination by acquiring the stations from two or more different owners. Such an acquisition would concentrate local ownership. We only propose that the owner of a crossownership combination that would otherwise have to be retained or split up be permitted to sell the combination intact to an SDB.

another television station (or one or more radio stations) in the same market.

To resolve this dilemma, we propose that an EDP Interest be deemed nonattributable if it was provided to an SDB to build out, or acquire and build out, an unbuilt permit.

When the unbuilt station signs on, the number of independent local voices would increase by one, but might still be insufficient to make room for another duopoly or TV/radio crossownership. Anticipating that scenario, the Commission should also afford the EDP Provider a vested right to the processing of its applications to fill out its complement of duopolized or crossowned stations. This right would vest on the date the contract with the SDB is filed with the Commission. This vested right would provide the large broadcaster with the secure knowledge that its public spiritedness in making a potentially risky investment in an SDB's unbuilt permit will be rewarded with a guaranteed opportunity to acquire a full complement of local properties.

This EDP Interest's nonattribution, coupled with this vested right to grow in the market, would powerfully incentivize companies to provide equity and debt to SDBs in a manner that promotes diversity.<sup>55/</sup> The vested right to grow in the market would also provide a safety valve to relieve some of the pressure for another round of consolidation the Commission will face from those who lose the races to the courthouse.<sup>56/</sup> Those who didn't win these races will have another route to assemble a duopoly -- a route which would cause the replacement of the duopolized voice with a new voice owned by an SDB.

### **Conclusion**

The modifications we seek are modest fine-tunes, but each should have a major impact. Each proposal should be noncontroversial. They are race-neutral,<sup>57/</sup> and they advance

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<sup>55/</sup> Because this proposal seeks relief both from the EDP rule and the local ownership rules, it has been crossfiled in the attribution proceeding. See "Petition for Partial Reconsideration and Clarification of the Minority Media and Telecommunications Council" in Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket Nos. 94-150, 92-51 and 87-154 (filed October 18, 1999) at 3-5.

<sup>56/</sup> See p. 9 supra (describing the anticipated third wave of consolidation).

<sup>57/</sup> The SBA has issued new rules that conform its eligibility and contractual assistance requirements to Adarand. Small Business Size Regulations: 8(a) Business Development/Small Disadvantaged Business Status Determinations: Rules of Procedure Governing Cases Before the Office of Hearings and Appeals (Final Rule), 63 Fed. Reg. 35726 (June 30, 1998). This SBA rule provides a race-neutral model which the Commission can import into its own rules.

the diversity goals of the Act by fostering minority and small business ownership.<sup>58/</sup> While probably insufficient to stem all of the decline in small and minority television ownership the new rules will cause, our proposals would mitigate some of that harm.

We invite the industry's support and its suggestions on how our plan could be improved, and we encourage the Commission to call together all interested parties to think through how these proposals could be implemented in the most logical and efficient way.

This Petition could become moot if the industry duopolizes while it is pending. Delay is the same as a pocket veto. Consequently, we respectfully request expedited treatment.

Respectfully submitted,



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October 18, 1999

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<sup>58/</sup> See Section 257 Proceeding NOI, 11 FCC Rcd at 6280 (implementing Section 257 of the Act, which directs the Commission to promote the policies and purposes of the act favoring diversity of media voices, vigorous economic competition and technological advancement.)