TAB 6

PUBLIC NOTICE

Federal Communications Commission
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DA 02-2476
Released: October 1,2002

FCC SEE COMMENT ON OWNERSHIP STUDIES RELEASED BY MEDIA OWNERSHIP WORK ING GRO ND ESTABLISHES COMMENT DEADLINES FOR 2002 IAL REGULATORY REVIEW OF COMMISSION'S WNERSHIP LES

MB Docket 02-277
MM Docket Nos. 01-235, 01-317, 00-244

Comment Date: December 2,2002
Reply Comment Date: January 2,2003

The Federal Communications Commission's Media Ownership Working Group ("MOWG) today released twelve (12) studies intended to inform the Commission's comprehensive review of its broadcast ownership policies undertaken in its 2002 *Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 ("2002 Biennial Ownership NPRM").*[1] The studies, which were conducted by outside researchers and by Commission staff, examine a range of issues that impact diversity, competition and localism, three important policy goals of the structural ownership **rules.** The studies will be incorporated into the record of the biennial review proceeding in MB Docket No. 02-277 and are available on the Commission's website at http://www.fcc.gov/ownership/studies.html.

In releasing the 2002 *Biennial Ownership NPRM,* the Commission indicated that parties should address these studies in their comments and should initiate their **own** independent analyses of **the** media marketplace. The Commission intends to **use** the evidence collected in the studies, **as** well as the comments, to guide and support its decisions in **the** ownership proceeding.

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[1] *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets,* FCC *02-249* (MB Docket No. 02-277), released September 24,2002.

MEDIA OWNERSHIP WORKING GROUP STUDIES

Following is a listing of the MOWG studies released today, their authors and professional affiliations:

Consumer-Oriented Studies

A Comparison of Media Outlets and Owners for Ten Selected Markets: 1960. 1980.2000, Scott Roberts, Jane Frenette and Dione Stems, Industry Analysis Division, Media Bureau, Federal Communications Commission.

Consumer Substitution Among Media, Joel Waldfogel, The Wharton School, University of Pennsylvania.

Consumer Survey on Media Usaee, Nielsen Media Research.

The Measurement of Local Television News and Public Affairs Programs, Thomas Spavins, Technical and Public Safety Division, Enforcement Bureau, Federal Communications Commission; Loretta Dennison, Jane Frenette, Scott Roberts, Industry Analysis Division, Media Bureau, Federal Communications Commission.

Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign, David Pritchard, Department of Journalism and Mass Communication, University of Wisconsin-Milwaukee.

Promam Diversity and the Promam Selection Process on Broadcast Network Television, Mara Einstein, Department of Media Studies, Queens College, City University of New York.

Market-Based Studies

Broadcast Television: Survivors in a Sea of Competition (Federal Communications Commission, Office of Policy and Plans Working Paper), Jonathan Levy and Marcelino Ford-Livene, Office of Policy and Plans, Federal Communications Commission; Anne Levine, Industry Analysis Division, Media Bureau, Federal Communications Commission.

On the Substitutabilitvof Local Newspaper, Radio and Broadcast Television Advertisine in Local Business Sales, C. Anthony Bush, Administrative Law Division, Office of the General Counsel, Federal Communications Commission.

Radio Industry Review 2002: Trends in Ownership, Format and Finance, George Williams and Scott Roberts, Industry Analysis Division, Media Bureau, Federal Communications Commission.

Consolidation and Advertising Prices in Local Radio Markets, Keith Brown and George Williams, Industry Analysis Division, Media Bureau, Federal Communications Commission.

Radio Market Structure and Music Diversity, George Williams, Keith Brown and Peter Alexander, Industry Analysis Division, Media Bureau, Federal Communications Commission.

A Theory of Broadcast Media Concentration and Commercial Advertising, Brendan M. Cunningham, Department of Economics, U.S. Naval Academy, and Peter J. Alexander, Industry Analysis Division, Media Bureau, Federal Communications Commission.

FILING COMMENTS

We hereby solicit comment by December 2,2002, and reply comment by January 2,2003, on the issues raised in the ***2002 Biennial Ownership NPRM*** and the above-listed MOWG studies. Parties may submit their comments using the Commission's Electronic Comment Filing System ("ECFS") **or** by filing paper copies? Comments may be filed as an electronic file via the Internet at http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket ***or*** rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply. Additional information on ECFS is available at http://www.fcc.gov/e-file/ecfs.html.

Filings may also be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties who choose to file paper must file an original and four copies **of** each filing. If more than one docket **or** rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12" Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

We also request that parties send two paper copies of each pleading to Qualex International, Portals II, 445 12" Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or email at qualexint@aol.com. Parties must also send one electronic copy via email, plus eight paper copies of their filing, to Linda Senecal, Industry Analysis Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-C438, Washington, D.C. 20554, email lsenecal@fcc.gov.

PROCEDURAL MATTERS

This proceeding (MB Docket No. 02-277) has been designated "permit but disclose" for purposes of the Commission's ***exparte*** d e s . ***See generally*** 47 C.F.R. §§ 1.1200-1.1216. ***Ex parte*** presentations will be governed by the procedures set forth in Section 1.1206 of the Commission's rules applicable to non-restricted proceedings? Parties making oral ***ex parte*** presentations are directed to the Commission's

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[2] ***See Electronic filing of Documents in Rulemaking Proceedings,*** 63 Fed. Reg. 24121 (1998).

[3] ***An exparte*** presentation is any communication (spoken or written) directed to the merits or outcome of a proceeding made to a Commissioner, a Commissioner's assistant, or other decision-making staff member, that, if written, is not served on other parties to the proceeding **or,** if oral, is made without an opportunity for all parties to be present. 47 C.F.R. § 1.1201.

statement re-emphasizing *the* public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing **the** presentation must contain the presentation's substance and not merely list the subjects discussed! More than a one or two sentence description of *the* **views** and arguments presented is generally required. ***See*** **47** C.F.R. §1.1206(b)(2).

Media Contact: Michelle Russo **(202) 418-7200.**
Media Bureau Contacts: Paul Gallant **(202) 418-7200;** Judith Herman **(202) 418-2330.**
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[4] ***See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings,*** **15** FCC Rcd **19945 (2000).**

NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC. 515 F 2d 385 (D.C. Circ 1974).

FOR IMMEDIATE **RELEASE**
October 1,2002

NEWS MEDIA **CONTACT:**
Michelle **Russo 202-418-2358**

FCC RELEASES TWELVE STUDIES ON CURRENT MEDIA MARKETPLACE

Research Represents Critical First Step in FCC's Fact Finding Mission

Washington, D.C. • Today, the Media Bureau of the Federal Communications Commission (FCC) released 12 empirical studies examining the current state of the media marketplace, including how consumers use the media, how advertisers view the different media outlets, and how media ownership affects diversity, localism and competition. The FCC is seeking comment on these studies as part of the third Biennial Regulatory Review of Broadcast Ownership Rules, which was launched on September 12, 2002. At that time, the FCC said the objective of the Biennial Review is to develop ownership rules and policies that reflect the current media marketplace, are based on empirical evidence, and are analytically consistent.

Last November, FCC Chairman Michael K. Powell created the Media Ownership Working Group (MOWG) to study the media marketplace and improve the FCC's knowledge base and ability to make informed media policy decisions. The Group commissioned a series of studies by external and internal experts.

Chairman Powell said, "This effort is the most comprehensive look at media ownership regulation ever undertaken by the FCC. As the courts have made clear, it is critical that the FCC has a solid factual base to support its media ownership rules. Collectively, these studies represent an unprecedented data gathering effort to better understand market and consumer issues so that we may develop sound public policy."

Paul Gallant, chair of the MOWG, said "These studies are a critical first step in evaluating the FCC's media ownership rules and policies. The next step is public comment on these studies and the Commission's recently launched Biennial Review of media ownership rules. Together, this empirical data will significantly advance our understanding of the key factual areas of media ownership policy."

A *summary* of the findings of each study is attached. The full text of the studies is available on the FCC web page (www.fcc.gov) under Headlines or at www.fcc.gov/ownership.

-FCC-

Comments due: December 2,2002
Reply Comments due: January 2,2003
MB Docket 02-277
MM Docket Nos. 01-235, 01-317, 00-244
Media Bureau contact: Paul Gallant at 202418-7200

FCC Media Ownership Working Group Studies

Consumer-Oriented Studies

"A Comparison of Media Outlets and Owners for Ten Selected Markets: 1960, 1980, 2000." Scott Roberts, Jane Frenette, Dione Steams, Media Bureau, FCC

Authors' findings: The number of media outlets (radio stations. television stations, newspapers, cable systems, and DBS operators) available to consumers in the ten markets surveyed has increased by an average of 195% since 1960. and the number of independent owners of those outlets has increased by 139%.

"Consumer Substitution Among Media." Joel Waldfogel, The Wharton School, University of Pennsylvania

Author's findings: Using a variety of supply side and demand side econometric models, there is the clearest evidence of substitution between the Internet and broadcast TV both overall and for news consumption; between daily and weekly newspapers; and between daily newspapers and broadcast TV news. There is also evidence ofsubstitution between cable and broadcast channels, both overall and for news consumption; between cable and daily newspapers both overall and for news consumption; between radio and broadcast TV for news consumption; and between the Internet and daily newspapers for news consumption. There is little or no evidence of substitution between weekly papers and broadcast TV, between radio and the Internet, or between radio and cable.

"Consumer Survey on Media Usage." Nielsen Media Research

The Media Ownership Working Group developed a series of questions regarding Americans' media usage habits and commissioned Nielsen Media Research to conduct an extensive survey on these questions. Complete results of the survey are available at www.fcc.gov/ownership.

"Local News and Public Affairs Programming on Broadcast Television." Thomas Spavins (Enforcement Bureau, FCC) and Loretta Dennison, Scott Roberts, and Jane Frenette (Media Bureau, FCC)

Authors' findings: This paper evaluates the quality and quantity of local news and public affairs programming on network owned-and-operated (O&O) stations, network affiliates. and the subset of affiliates that are co-owned with a newspaper publisher. With respect to ratings - the first quality measure – O&Os and affiliates were virtually identical during the period tested. With respect to the receipt of RTNDA and DuPont awards for news excellence - the second quality measure - O&Os received those awards at a rate of 231% of the national average and affiliates received them at 87% of the national average. As to total output, O&Os produced an average of 23% more local news and public affairs programming than did network affiliates. Separately, within the overall group of network affiliates, newspaper-owned affiliates outperformed other affiliates in all measures of quality (local news ratings: 8.0 to 6.3; news awards: 260% of national average versus 31%); and total output per week (21.9 hours versus 14.9 hours).

"Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign." David Pritchard, Department of Journalism and Mass Communication, University of Wisconsin-Milwaukee

Author's findings: Of the ten commonly-owned newspaper-television combinations studied, five exhibited a similar slant in covering the final weeks of the 2000 Presidential election, while five exhibited divergent slants.

"Program Diversity and the Program Selection Process on Broadcast Network Television." Mara Einstein, Department of Media Studies, Queens College, City University of New York

Author's findines: This study examines program diversity on broadcast network television in the years surrounding the implementation and repeal of the FCC's financial interest and syndication (fin-syn) rules. Using a variety of statistical measures of program genre, the study finds that the fin-syn rules did not improve program diversity The paper also addresses the program selection process at broadcast networks and concludes that networks are influenced to a significant extent by the financial incentives associated with the ownership of programming.

Market-Based Studies

"Broadcast Television: Survivors in a Sea of Competition." (OPP Working Paper) Jonathan Levy, Anne Levine, Marcelino Ford-Livene

Authors' findings: Broadcast television's viewing share continued its decline over the last 11 years, dropping during the 1990-2001 period by 31 percent all-day and 33 percent in primetime over all households. The broadcast share of video advertising revenues also dropped, but by only 21 percent, and the actual level of broadcast advertising revenues rose in every year since 1990 with the exception of 2001. DBS and the expansion in cable availability and channel capacity have created an increasingly competitive environment for television broadcasting. This will lead to continuing audience fragmentation and further pressure on broadcast advertising revenues. The increasing competition for program production resources has led to an increase in production costs. The future profitability of the broadcast industry will depend on how it responds to competition and cost pressures, and on whether it can harness new technologies such as DTV and interactive services to its benefit.

"On the Substitutability of Local Newspaper, Radio, and Broadcast Television Advertising in Local Business Sales." C. Anthony Bush, Office of General Counsel, FCC

Author's findines: The paper examines data from 45 randomly-selected DMAs to ascertain the extent to which local radio, local television, and daily newspapers compete for advertising dollars from local businesses. The evidence generally suggests weak substitutability among the three media tested. Specifically, with respect to the thee media pairs studied, the paper finds: (1) The elasticity of substitution between newspaper and radio advertisements is 1.16936. This number is small but statistically significant; (2) The elasticity of substitution between newspaper and television advertisements is 0.91459. This number also is small but statistically significant; and (3) The elasticity of substitution between local radio and local television is 0.3094, which is not statistically different from zero.

"Radio Industry Review 2002: Trends in Ownership, Format, and Finance." George Williams and Scott Roberts, Media Bureau, FCC

Authors' findings: Between 1996 and 2002, the average number of radio station owners in each market decreased from 13.5 to 9.9. During same period, the average number of formats remained virtually unchanged (10.1 formats in 1996 vs. 10.2 in 2002). In 1996, the largest station owner in each market received an average of 35.6% of radio advertising revenue.. In 2002, the largest owner receives 46.8% of such revenue.

"Consolidation and Advertising Prices in Local Radio Markets." Keith Brown and George Williams, Media Bureau, FCC

Authors' findings: Increased concentration of ownership in local radio markets between 1996 and 2001 explains 3-4% out of the 68% increase in real advertising rates during this period. Economic growth explains much of the other 65%. National concentration does not appear to drive the increase in advertising'piices. Finally, a greater presence of large national owners in a local market appears to decrease the advertising rates paid by national and regional advertising agencies.

"Radio Market Structure and Music Diversity." George Williams. Keith Brown, and Peter Alexander, Media Bureau, FCC

Authors' findings: This study applies a unique playlist-based measure of product diversity for radio stations and applies that measure to radio station playlists to examine changes in diversity since 1996. During the 1996-2001 period, the average measure of diversity for the nationwide sample increased slightly from 9.26 to 9.32, or 0.74%. The study also finds a decrease of 2.4% in the diversity of songs within the same format across local markets. In addition, the study finds an increase of 11.48% in the diversity of songs within the same format within each local market.

"A Theory of Broadcast Media Concentration and Commercial Advertising." Brendan M. Cunningham (Department of Economics. U.S. Naval Academy) and Peter J. Alexander (Media Bureau, FCC)

Authors' findings: This paper develops a model to estimate how consumers, advertisers, and broadcast outlets interact to determine the level of advertising when ownership structures in radio or television markets become more concentrated. The analysis finds that increased levels of concentration in broadcasting markets are likely to result in an increase in the proportion of non-programming material (commercials, PSAs, etc.) among those outlets with an increased market share. However, consumers' response to such increases is an important consideration for broadcasters in determining the extent to non-programming material can be increased profitably.

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FOR IMMEDIATE RELEASE
October 9,2002

NEWS MEDIA CONTACT:
Michelle Russo 202-418-2358

FCC RELEASES TWO NEW MEDIA BUREAU STAFF RESEARCH PAPERS

The Media Bureau of the Federal Communications Commission (FCC) today released two new papers in the Staff Research Paper series. The goal of this series is to closely examine marketplace issues that affect media policy and regulation. These two papers are not part of the Media Ownership Working Group studies that were recently released and incorporated into the third Biennial Regulatory Review of Broadcast Ownership Rules proceeding.

Today's papers examine various possible economic impacts of consolidation on cable operators' bargaining power in the programming market. Nodir Adilov of Cornell University and Peter J. Alexander of the FCC's Media Bureau authored both papers. These papers represent the individual views of their authors and do not necessarily reflect the views of the FCC, any FCC Commissioners, or other staff.

The first paper, "Asymmetric Bargaining Power and Pivotal Buyers," examines the possible effects of merger on the bargaining power of the merged firm. Some previous research suggests that a merged firm's bargaining position can actually be worsened post-merger. The current study suggests that this worsening of bargaining position may occur in the case where buyer bargaining power is equal, but not in the case where buyer bargaining power is unequal.

The second paper, "Most Favored Customers in the Cable Industry," explores the implications of most-favored-customer (MFC) clauses in the cable industry. The paper demonstrates that the introduction of a most-favored-customer clause for large buyers may increase their profitability, and that a seller's profits may decrease.

The issues discussed in these two papers are now a part of the record of the FCC's consideration of the pending cable ownership rulemaking proceeding (CS Docket Nos. 98-82, 96-85; MM Docket Nos. 92-264, 94-150, 92-51, 87-154, 16 FCC Rcd 17312 (2001)) and the AT&T-Comcast license transfer proceeding (MB Docket No. 02-70, released March 29,2002).

The full text of these papers is available at www.fcc.gov/mb or on ECFS

Media Bureau contact: Royce Sherlock at 202-418-7200

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DA 02-2568

October 9, 2002

MEDIA BUREAU RELEASES TWO STAFF RESEARCH PAPERS RELEVANT TO THE CABLE OWNERSHIP RULEMAKING AND THE AT&T-COMCAST PROCEEDINGS

CS DOCKET NOS. 98-82, 96-85
MM DOCKET NOS. 92-264, 94-150, 92-51, 87-154
MB DOCKET NO. 02-70

Federal Communications Commission Media Bureau staff economist, Peter Alexander, and Nodir Adilov, Department of Economics, Cornell University, recently co-authored two staff research papers relevant to the issues in the cable ownership rulemaking[1] and AT&T-Comcast[2] proceedings. By this Public Notice, we inform interested parties that the Commission will consider these two papers in its deliberations in the above referenced proceedings. These papers represent the individual views of their authors and do not necessarily reflect the views of the Commission, any commissioner, or other staff member.

The first paper, Media Bureau Staff Research Paper No. 13, entitled, ***"Asymmetric Bargaining Power and Pivotal Buyers,"*** examines the potential impact of horizontal mergers on buyer bargaining position. This study shows that, in the case where bargaining power is asymmetric, it is possible that large merged firms might extract greater concessions from program suppliers than smaller buyers. These results suggest that horizontal merger might be used as a strategy to enhance bargaining position.

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[1] *See Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act af 1992, Implementation of Cable Act Reform Provisions of the Telecommunications of 1996, Commission's Cable Horizontal and Vertical Ownership Limits and Attribution Rules, Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the Commission's Cross-Interest* Policy, CS *Docket Nos.* 98-82, 9645, MM *Docket* Nos. 92-264, 94-150, 92-51, 87-154, Further *Notice* of Proposed *Rulemaking,* 16 FCC Rcd 17312 (2001) *("Further Notice").*

[2] *See Applications for Consent* to *the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee,* MB *Docket No.* 02-70, *Public Notice, DA* 02-733 (rel. March 29, 2002) *("Public Notice"), as modified by* Public *Notice, Erratum and Order Extending Filing Deadline, DA* 02-70 (rel. May 3, 2002).

The second paper, Media Bureau Staff Research Paper No. 14, entitled, ***"Most-Favored Customers in the Cable Industry,"*** explores the implications of most-favored-customer clauses in the cable industry. This paper finds that the introduction of a most-favored-customer clause for large buyers will increase their profitability and that the seller's profits may decrease. The paper then compares its results to the Bykowsky-Kwasnica-Sharkey experiments' regarding the effect of a most-favored-customer agreement and finds that the two sets of results are consistent.

The Media Bureau Staff Research Paper Series is a forum for the Media Bureau to examine issues that are relevant to our mission. In addition, these papers will provide information to the Commission in order to stimulate debate.

Both the rulemaking and the license transfer proceedings are "permit-but-disclose'' for purposes of the Commission's ***exparte*** **rules.**[4] *Ex parte* communications will be governed by section 1.206(b) of the Commission's rules.' We urge interested parties submitting written ***ex parte*** presentations or summaries **of** oral ***exparte*** presentations in this proceeding to use the Electronic Comment Filing System ("ECFS") in accordance with the Commission procedures set forth in the Commission's ***Further Notice*** in the cable ownership proceeding[6] and its March 29, 2002 ***Public Notice*** in the AT&T/Comcast license transfer proceeding? If **using** paper ***exparte*** submissions, interested parties must file an original and one copy with the Commission's Secretary, Marlene **H.** Dortch, and should follow the procedures set forth in the aforementioned cable ownership ***Further Notice*** and the March 29,2002 AT&T-Comcast ***Public Notice*** for sending their submissions by mail, commercial overnight courier, or hand delivery. Additionally, interested parties must submit their ***exparte*** filings to the persons identified in the cable ownership ***Further Notice*** and the March 29,2002 AT&T-Comcast ***Public Notice.***

Copies of these papers may be obtained from Qualex International, Portals 11,445 12th Street, SW, Room CY-B402, Washington, DC 20554, and will also be available through ECFS. These documents are also available for public inspection and **copying** during normal reference room hours at the Commission's Reference Information Center, 445 12" Street, SW, CY-A257, Washington, DC 20554. The documents will be posted on the Media Bureau's website at <http://www.fcc.gov/mb>.

'*See* Mark Bykowsky, Anthony M. Kwasnica and William Sharkey, Federal Communications Commission Office of Plans and Policy, OPP Working Paper No. 35, *"Horizontal Concentration in the Cable Television Industry: An Experimental Analysis,"* (rel. June 3,2002).

[4] *See generally* 47 C.F.R. §§1.1200-1.1216

[5] 47 C.F.R. § 1.1206(b).

[6] *See Further Notice,* 16 FCC Rcd at 17371 ¶ 132.

'See Public Notice

Alternate formats of this public notice (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 voice, (202) 418-7365 TTY, or email at bmillin@fcc.gov.

The media contact for this Public Notice is Michelle Russo, (202) 418-2358. The Media Bureau contact is Royce Sherlock, (202) 418-2330.

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TAB 7

http://www.fcc.gov/opportunity/meb_study

POLICY FORUM ON MARKET ENTRY BARRIERS FACED BY SMALL, MINORITY AND WOMEN-OWNED BUSINESSES IN THE COMMUNICATIONS INDUSTRY

FCC Staff Executive Summary
December 12,2000

STAFF EXECUTIVE SUMMARY

This Executive ***Summary*** outlines the purposes and findings of a series of market entry barrier studies released by the Federal Communications Commission (FCC) today. The FCC conducted these studies pursuant to Section 257 of the Telecommunications Act of 1996, 47 U.S.C. $257, which mandates that the FCC identify and eliminate market entry barriers for small telecommunications businesses, and Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j), which requires the FCC to further opportunities in the allocation of spectrum-based services for small businesses and businesses owned by women and minorities.[1]

The studies released today are as follows:

1. Diversity of Programming in the Broadcast Spectrum: Is There a Link Between Owner Race or Ethnicity and News and Public Affairs Programming?: prepared by a team of researchers from Santa Clara University (hereafter "Content/Ownership Study");

2. Study of the Broadcast Licensing Process: prepared by KPMG LLP Economic Consulting Services; consisting of three parts: History of the Broadcast Licensing Process; Utilization Rates, Win Rates, and Disparity Ratios for Broadcast Licenses Awarded by the FCC; and Logistic Regression Models of the Broadcast License Award Process for Licenses Awarded by the FCC (hereafter "Broadcast Licensing Study");

3. FCC Econometric Analysis of Potential Discrimination: Utilization Ratios for Minority- and Women-Owned Companies in FCC Wireless Spectrum Auctions: prepared by Ernst & Young LLP (hereafter "Auction Utilization Study");

4. Study of Access to Capital Markets and Logistic Regressions for License Awards by Auctions: prepared by Professor William Bradford at the University of Washington (hereafter "Capital Markets and Auctions Regression Study"); and

5. Whose Spectrum Is It Anyway? Historical Study of Market Entry Barriers, Discrimination and Changes in Broadcast and Wireless Licensing 1950 to Present: prepared by the Ivy Planning Group LLC (hereafter "Historical Study").[2]

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[1] In addition, the Commission has full authority and power to conduct an inquiry for "any question [that] may arise under any of the provisions of [the] Act" pursuant to Section 403 of the Act.

[2] One additional study that was also undertaken as part of this initiative was released in January, 1999. That study was When Being No. 1 Is Not Enough: the Impact of

The Applicable Legal Standards

Section 257 authorizes the Commission to eliminate any identified market entry barriers facing small businesses and businesses owned by women and minorities. Any programs designed to remove specific market entry barriers faced by minority-owned businesses must follow the standards set forth by the Supreme Court in Adarand Constructors. Inc. v. Pena, 515 U.S. 200 (1995). In Adarand, the Supreme Court held that any federal program that uses racial or ethnic criteria as a basis for decision-making must serve a compelling governmental interest, and must be narrowly tailored to serve that interest. Although gender-based classifications need only satisfy intermediate scrutiny, see United States v. Virginia, 518 U.S. 515,531-33 (1996), the FCC sought to examine together the justifications for implementing race- and gender-conscious measures, because any programs that might be developed would likely assist both women and minorities. If the evidence regarding the experiences of women and minorities would satisfy the strict scrutiny standards applicable to race-based provisions, then any programs the FCC might develop would also be able to meet the intermediate scrutiny test applicable to gender-based classifications. Accordingly, the FCC undertook these studies to help determine whether it has a compelling interest under the strict scrutiny standards to support programs promoting license ownership by women and minorities.[3]

There are two federal interests that could potentially provide the necessary factual predicate to meet the strict scrutiny test. First, there is the FCC's interest in promoting the broadcast of a diversity of views. It was on this basis that the Supreme Court upheld two FCC programs in Metro Broadcasting Inc. v. FCC, 497 US. 547 (1990). These programs were: (1) an enhancement for minority ownership in comparative hearings for broadcast licenses; and (2) the FCC's distress sale policy, which provided special procedures for the transfer of broadcast licenses to minority owned firms. Through these policies, the FCC sought to promote the broadcast of a diversity of opinions and information by facilitating diversity of ownership among broadcast stations. However, it is not clear whether the Supreme Court would find that this interest is a compelling one. Metro Broadcasting was decided under the intermediate scrutiny standard before Adarand dictated that strict scrutiny should apply to federal programs. Moreover, in the employment context, the United States Court of Appeals for the District of Columbia Circuit has held that promoting broadcast diversity does not constitute a compelling

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Advertising Practices On Minority-Owned & Minority-Formatted Broadcast Stations, prepared by the Civil Rights Forum on Communications Policy (hereafter the "Advertising Study"). This study provided substantial anecdotal evidence that advertisers often exclude radio stations serving minority audiences from ad placements and pay them less than other stations when they are included.

[3] If the evidence warrants the adoption of programs to promote ownership of FCC licenses by minorities and women, any such programs must also be narrowly tailored to further the particular compelling interest upon which the program is based. The studies only examine the compelling interest prong of the strict scrutiny test, because any narrow tailoring inquiry would be part of the process of developing a specific program.

governmental interest. See Lutheran Church - Missouri Synod v. FCC, **141** F.3d 344 (D.C. Cir.), petition for rehearing denied, **154** F.3d **487,** and suggestions for rehearing en banc denied, **154** F.3d **494** (D.C. Cir. **1998).** Nonetheless, the Adarand decision only overruled Metro Broadcasting to the extent that it applied intermediate rather than strict scrutiny, Adarand Constructors. Inc. v. Pena, **515 U.S. 200,227 (1995),** and in his dissent in Adarand, Justice Stevens provides a lengthy argument in support of the diversity rationale's ability to survive under strict scrutiny. **515 U.S.** at **257-58** (Stevens, J., dissenting).' Accordingly, the possibility that this First Amendment interest would be accepted as compelling has been left open.

Second, there is the FCC's interest in remedying past discrimination. The FCC has already found in the Section **257** proceeding that discrimination can be a market entry barrier. See Market Entry Barriers Notice of Inquiry, **11** FCC Rcd **6283.** Moreover, the governmental interest in remedying past discrimination has been found by a majority of the Supreme Court to meet the compelling interest standard. See Adarand, **515** U.S. at **237;** Citv of Richmond v. J.A. Croson Co., **488 U.S. 469,509 (1989)** (plurality opinion); id. at **511** (Stevens, J., concurring in part and concurring in the judgment). As the Supreme Court stated in Adarand, "[t]he unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it." **515 U.S.** at **237.**

To establish such a compelling interest, the governmental actor must show '"a strong basis in evidence for its conclusion that remedial action [i]s necessary.'" Croson, **488 U.S.** at **500** (quoting Wygant v. Jackson Board of Educ., **476 U.S. 267,277 (1986)).** It is not sufficient to rely on general societal discrimination. Croson, **488 U.S.** at **499.** Rather, the government must show that it is remedying either its own discrimination, or discrimination in the private sector in which the government has become a "passive participant." Croson, **488** U.S. at **492** (plurality opinion); id. at **519** (Kennedy, J., concurring in part and concurring in the judgment). Under the passive participant theory, a governmental actor must possess evidence that its own practices are "exacerbating a pattern **of** prior discrimination," and must "identify that discrimination, public or private, with some specificity," to establish the factual predicate necessary for race-conscious relief. Croson, **488 U.S.** at **504.** In this regard, an inference of discriminatory exclusion may arise "when there is a significant statistical disparity between the number of qualified minority contractors willing and able to perfonn a particular service and the number of such contractors actually engaged." Croson, **488** U.S. at **509** (plurality opinion); id. at **530** (Marshall, J., dissenting).

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[4] In addition, at least one federal appeals court has held that promoting diversity can be a compelling government interest. In Wittmer v. Peters, **87** F.3d **916** (7th Cir. **1996),** cert. denied, **117** S. Ct. **949 (1997),** the Seventh Circuit held that governments may have a compelling interest in ensuring diversity among law enforcement officers, specifically corrections officers. The Court found that it may be necessary to promote diversity to ensure the effectiveness of law enforcement, when a significant percent of the population under the authority of the law enforcement officers are themselves minorities.

The Research Questions Derived from the Legal Standards

The five market entry barrier studies released today explore a series of research questions posed by this strict scrutiny standard. They have been designed to examine both the diversity rationale and the remedial rationale and to evaluate whether the evidence supports them. No single study was designed to provide the definitive answer to this question. Rather, the studies should be evaluated together, along with other studies conducted in the field, to determine whether a compelling interest exists.

To probe the diversity rationale, the Commission contracted for the Content/Ownership Study. Specifically, this study was designed to examine whether the evidence shows that there is a nexus between the race or ethnicity of broadcast licensees and the content of the programming their stations provide. This study initially sought to measure the impact of station owners' gender as well, but the researchers were unable to gather sufficient data for women-owned stations. This study was based on survey data and used a sampling methodology that matched minority-owned stations with majority-owned stations without controlling for format. Additional research may be required to investigate the impact of format and provide further analysis of the impact of demographic and economic data.' The study also asks whether promoting a greater diversity of racial and ethnic groups among owners creates a greater diversity of programming on the airwaves. Given the First Amendment values behind the diversity rationale, the study focuses on speech that courts have held to be at the core of the First Amendment's protections: news and public affairs programming. In this regard, the study also examines whether the race or ethnicity of station owners affects the quantity of public affairs programming and whether it impacts the likelihood of stations to cover particular issues.

The remaining four studies all examine questions raised by the remedial rationale. Here, the FCC must ask whether there has been discrimination against minorities or women in the distribution of FCC licenses, either directly by the FCC, or through the FCC's passive participation in private acts of discrimination.

For the past fifty years, there have been four different methods by which an applicant could obtain an FCC license: comparative hearings, lotteries, auctions, and purchases on the secondary market. The FCC issued broadcast licenses through the comparative hearing process from the late 1940s through 1993, when the program was suspended in the wake of the decision in Bechtel v. FCC, 10F.3d 875 (D.C. Cir. 1993).[6] Under this process, singleton applications were granted provided that the applicant met

[5] However, there are previous studies that provide evidence of a relationship between owner race and the content of programming.

[6] In Bechtel, the Court held that factors used in the comparative hearings process were "arbitrary and capricious." 10F.3d at 887. Following that decision, the FCC suspended all further comparative hearings.

basic minimum qualifications. If, however, the Commission received more than one application for a particular station, it referred the matter for a comparative hearing before an administrative law judge. In comparative hearings, the FCC evaluated competing applications for broadcast licenses according to a list of criteria set forth in a 1965 Policy Statement which sought to carry out the Commission's goals of furthering the "best practicable service to the public" and the "maximum diffusion of control of the media of mass communications."[7] From the late 1970s through the end of comparative hearings, the Commission awarded an enhancement to applicants with ownership interests by minorities and women. Following the suspension of comparative hearings, the Commission turned to auctions for distribution of broadcast licenses. The first broadcast auction was held in 1999.

As for licenses for wireless voice/data services, the FCC has issued these through lotteries and auctions. In 1981, Congress authorized the FCC to assign a broad range of licenses by lottery:[8] and lotteries were used for several years thereafter. Then in 1993, Congress sharply restricted the FCC's authority to use lotteries and, instead, gave the Commission authority to use auctions to award licenses for the rights to use the radio spectrum.[9] At present, auctions are the sole method for obtaining commercial licenses – broadcast or wireless – directly from the FCC. Finally, both broadcast and wireless licenses are also available through purchases on the secondary market. When licensees seek to sell or transfer their licenses, Section 310(d) of the Communications Act requires that they seek the Commission's approval. 47 U.S.C. § 310(d). However, Section 310(d) only permits the FCC to determine whether the proposed sale is acceptable, and prohibits the Commission from considering whether any person other than the proposed new licensee would better serve the public interest, convenience, and necessity.

One of the first research questions raised by the remedial rationale is the extent, if any, to which minorities and women may have been underrepresented in obtaining FCC licenses. As noted above, the Supreme Court has recognized that an inference of discrimination may be drawn "when there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged." City of Richmond v. J.A. Croson Co., 488 U.S. 469,509 (1989) (plurality opinion); id. at 530 (Marshall, J., dissenting).

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[7] See Policy Statement on Comparative Broadcast Hearings, 1 F.C.C.2d 393 (1965), modified, 2 F.C.C.2d 667 (1966).

[8] Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 736-737, amended, Communications Amendment Act of 1982, Pub. L. No. 97-259, § 115, 96 Stat. 1087, added Section 309(i) to the Communications Act. Some broadcast licenses for low power television stations were also distributed by lottery.

[9] As part of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002, 107 Stat. 312,387-392, Congress added Section 309(j) to the Communications Act of 1934. 47 U.S.C. §§ 151 et seq.

Following this analysis in Croson, the lower federal courts have relied on a variety of "disparity indices" and "utilization ratios" in assessing whether the government has shown the necessary inference of discrimination.[10] Such data may assist the FCC to ascertain whether the evidence regarding participation by minorities and women in the market for FCC licenses creates "an inference of discriminatory exclusion" under Croson. See 488 U.S. at 509.

Two of the studies examine these utilization issues. The Broadcast Licensing Study calculates various measures of utilization for the distribution of broadcast licenses in the comparative hearing process and the Auction Utilization Study explores utilization measures for the allocation of wireless licenses through auctions. Both of these studies calculate and present multiple measures of utilization, which are explained at length in the reports.

Two points, however, are important to note here. First, in adapting the legal standards for utilization calculations to the FCC licensing context, the studies have followed a conservative approach. Adarand and Croson were both cases involving government contracting. Thus, to determine whether minority owned firms were underrepresented in obtaining government contracts, governments were directed to examine the utilization of minority firms compared to the total pool of qualified firms. See Croson, 488 U.S. at 501-02. In government contracting, this task is facilitated by the fact that most agencies maintain lists of eligible and qualified contractors. Thus, they may evaluate how often the minority and women owned firms win contracts compared to what one might expect based upon the number of such firms in the pool of qualified firms. In FCC licensing, however, there is no such list of qualified potential licensees. Nor are there any requirements for education or experience in order to acquire an FCC license. Thus, there is no readily apparent potential pool of qualified bidders.

Further, in some previous studies seeking to document discrimination in an industry, the researchers have attempted to expand the pool of qualified applicants by including those persons who would have applied had they not been barred by

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[10] See, e.g., Contractors Assoc. of Eastern Penn. Inc. v. City of Philadelphia, 6 F [illegible]), 1005, 1007 (3d Cir. 1993) ([illegible] on "li[illegible]ity index" measuring percentage of minority contractor participation in city contracts divided by the percentage of minority [illegible] to find inference of discrimination [illegible] summary [illegible]); [illegible]ated G[illegible]al [illegible]trac[illegible]s of [illegible] Inc. v. Coalition: Economic Equity, 950 F.2d 14[illegible] 141[illegible] 5 (9[illegible] r. [illegible] 1[illegible] denied, 503 U.S. 985 ([illegible] 92 (relies upon comparison of percentage of available minority firms and [illegible] of [illegible] awarded to such firms to support inference of discrimination sufficient to defeat preliminary injunction against program). It is important to note that the existence of any statistical disparities would not be sufficient to demonstrate [illegible]imination, [illegible]d this data should not be taken as a suggestion that minorities and women should be represented among FCC lic[illegible]s in any [illegible]ticular [illegible]ers.

discrimination which prevented them from reaching the application stage.[11] For example, such persons may have suffered discrimination in obtaining financing, and thus could not form the business entity necessary to compete. "But for" discrimination earlier in the process, these persons would also be included in the applicant pool.

In contrast to such previous studies, in the utilization studies released today, FCC staff directed that researchers follow a conservative approach. Specifically, the pool of qualified bidders was defined as those who actually applied for the licenses. Not only does this approach exclude any discrimination prior to the application stage, but unlike the contracting context, it does not include any pool of qualified bidders who simply chose not to apply for a particular license. In short, these studies attempt to adapt and apply the judicial standards to the licensing context using a narrow definition of the pool of minorities and women who may be "willing and able" under Croson.

In addition, it is important to note that utilization ratios are based upon legal doctrine and the body of case law that has been developed in the wake of the Supreme Court's decision in Croson. Therefore, FCC staff asked contractors to calculate these utilization ratios to satisfy the applicable legal standards. Although utilization ratios are the only calculations widely recognized by the courts, to comport with prevailing econometric practices, the FCC has also asked contractors to supplement these numbers with substantially more rigorous and methodologically sophisticated econometric analysis. Specifically, FCC staff asked contractors to conduct logistic regression analyses to review the licensing process while controlling for relevant control variables. The portion of the Broadcast Licensing Study entitled "Logistic Regression Models of the Broadcast License Award Process for Licenses Awarded by the FCC" presents such calculations for the award of broadcast licenses. The Capital Markets and Auctions Regression Study includes this type of analysis for the award of wireless licenses by auction.

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[11] See. e.g., Opportunity Denied: A Study of Racial and Sexual Discrimination Related to Government Contracting in New York State at Appendix A pages 32-41 (copy on file with the FCC's Office of Communications Business Opportunities); see also Contractors Ass'n of Eastern Penn. v. Citv of Philadelphia, 6 F.3d 990, 1008 (3d Cir. 1993) (noting that the small number of firms owned by Hispanic or Asian-American persons "itself may reflect barriers to entry caused in part by discrimination" but requiring statistical evidence to support theory); O'Donnell Constr. Co. v. District of Columbia, 963 F.2d 420, 427 (D.C. Cir. 1992) (same). By contrast, other studies have explicitly avoided making such calculations, and have simply noted this fact. For example, in calculating utilization of minority firms in federal procurement, the Commerce Department chose this latter strategy and noted that when it calculated the relative capacity of minority and non-minority firms, "to the extent that differences in size, age, or number of firms reflect discrimination against small, disadvantaged businesses, this analysis does not take direct account of such discrimination, which may be substantial." 63 Federal Record 35714, 35718.

The second research question under the remedial rationale is whether there is evidence that the FCC was unwittingly a passive participant in private discrimination. As noted above, the Supreme Court in Croson observed that discrimination requiring remediation could either be discrimination by the governmental actor or by its "passive complicity" in the discrimination of others. Specifically, the research questions presented ask whether the FCC has unwittingly perpetuated patterns of private discrimination through its rules for license allocation? In this regard, the Capital Markets and Auctions Regression Study explores whether and to what extent discrimination in capital markets may have affected applicants for FCC licenses. This study is based on data from a survey of current broadcast licensees and applicants for wireless licenses through FCC auctions. Unfortunately, many survey respondents declined to answer questions regarding their credit ratings, so the study was unable to control for credit ratings in particular. However, the study controls for whether collateral and personal guarantees were required, which reflect, to some extent, credit worthiness. While there already are numerous studies of capital market discrimination in various sectors of the economy, this Study examines the experiences of people seeking financing in connection with their attempts to acquire broadcast and wireless licenses. The study seeks to determine whether firms owned by minorities and women experienced greater difficulty in obtaining funds than did other firms, thereby putting the women and minorities at a competitive disadvantage in obtaining FCC licenses.[12] It also examines whether minorities and women have had to rely on different financial strategies in order to obtain the financing they require. The findings of this study could then assist the FCC in determining whether, for example, auctions have perpetuated patterns of disadvantage created by discrimination in capital markets. Moreover, the Auctions Regression portion of the study explores whether when controlling for other relevant variables, race and gender are statistically significant variables in predicting applicants' success in auctions. This analysis will help determine whether minorities and women have been disadvantaged in obtaining wireless licenses through FCC auctions. A premise of this study is the hypothesis that the failure of minorities and women to qualify as applicants is due in large measure to discrimination in capital markets. An additional premise is that capital market discrimination may have constrained the bidding budgets of minorities and women who have qualified for auctions.

Another study relevant to the passive participation inquiry is the Broadcast Licensing Study, which explores in detail the comparative hearing process for distributing broadcast licenses. The logistic regression portion of this study asks which applicant characteristics were statistically significant in determining the likely license winner. This analysis will help determine whether the FCC's stated criteria for comparative hearings were truly determinative. Moreover, among the numerous variables measured in this study are the applicants' assets, liabilities, and the number of

[12] The Advertising Study, which was released in 1999, see supra note 3, examined another type of private discrimination that may disadvantage minorities seeking FCC licenses. Specifically, it explored the extent to which discriminatory practices among advertisers have prevented minority-owned stations from earning the revenues they might otherwise be expected to obtain.

legal motions filed. These variables permit the researchers to measure the impact of financial qualifications and **of** applicants' access to, and fees spent on, attorneys. In this way, the study can help determine whether comparative hearings may have perpetuated patterns of disadvantage that may have been caused by discrimination in capital markets. In addition, this study examines the extent to which licenses were allocated according to the FCC's stated rules, including the rules permitting credit for participation by minorities and women. **As** noted above, from the late 1970s through the end of Comparative hearings in 1993, the FCC's stated policy was to award a positive credit to applicants with some ownership or management by minorities or women. The study examines the effectiveness of this policy, and whether it may have been manipulated by non-minority applicants who sought to benefit their applications without providing meaningful participation for minorities or women. This analysis will permit the FCC to evaluate whether the FCC perpetuated patterns of disadvantage by condoning such actions.

Finally, the FCC's potential passive participation in private discrimination is evaluated in the Historical Study. Through numerous interviews, this Study examines the stories behind the numbers and reviews the real life stories of real people who have sought FCC licenses from 1950 to the present. Courts have recognized that this type of evidence can be helpful in illustrating statistical findings, and that in establishing a pattern of discrimination "the combination of convincing anecdotal and statistical evidence is potent." Coral Construction Co. v. **Kine** County, 941 F.2d 910,919 (9th Cir.1991). **As** the Supreme Court has noted, anecdotal evidence may "bring the cold numbers convincingly to life." International Brotherhood of Teamsters v. United States, 431 U.S. 324,339 (1977). The Historical Study examines a variety of barriers to entry encountered by minority- and women-owned firms, such as limited access to capital and discrimination in broadcast advertising. The interviews covered a cross-section of people by year, method of license acquisition, type of license, type of FCC acquisition rules, race/ethnicity, gender, and size of business. Further, the Study asks whether the FCC has exacerbated barriers to entry for minorities and women through such means as the lifting of ownership caps and underutilization of programs designed to promote minority and female license ownership.

Key Findings

As a Staff Executive Summary, this document does not take any position on the conclusions of the studies or on whether the studies, when viewed together, show that the Commission has a compelling interest to adopt programs promoting license ownership by minorities and women. Each of the studies provides only one piece of the evidence, and each of the quantitative studies has been subject to some difficulties in data gathering. However, when they are considered along with the body of existing research and any further research that may be done in this area, the studies should enable the Commission to begin to assess the extent of market entry barriers facing applicants for FCC licenses, and to discuss what actions the Commission may take to address this issue.

Each of the five studies released today contains its own introduction or executive *summary* outlining its major findings. This Section lists examples of those key findings from each study.

1. Content/Ownership Study:

- Minority-owned radio stations were far more likely to choose a program format that appeals particularly to **a** minority audience;

- Minority-owned radio stations were more likely to provide news and public affairs programming on events or issues of particular concern to minorities;

- Minority-owned radio stations report greater racial diversity of on-air talent;

- Of radio stations that reported tailoring national news stories to the local community, minority-owned stations were far more likely to tailor the story to minority community concerns; and

- The same differences were not found in the case of television, and in most cases, including the areas noted above, there were no statistically significant differences between minority- and majority-owned television stations.

2. Broadcast Licensing Study

- During the time period in which the FCC's policy of awarding credit for minority ownership was in effect:

  - The number **of** minority individuals in **an** application positively influenced win rates in comparative hearings;

  - However, minority controlling ownership share did not increase the likelihood of an application being successful. These findings suggests that, although non-minorities included minorities in applications, such participation was non-meaningful (sham); and

- Overall, there was a lower probability for an application with any type of minority ownership winning a license than a non-minority application winning a license, when controlling for other relevant variables;

- During the time period of the FCC's policy of awarding credit for ownership by women, there was a positive and significant relationship between female ownership – both by additional numbers of women and by higher percentage of female ownership – and the probability of license award, suggesting that the FCC's policy of awarding credit for ownership by women was more effective than that for minority-ownership;

- Both applicant assets and the total number of legal motions filed were strongly correlated with the likelihood of an applicant winning a broadcast license. If there has been discrimination in capital markets, then this would suggest that minorities and women might have been disadvantaged in comparative hearings, even though no license fees were required; and

- Although a high percentage of licenses were awarded to singleton applicants without need for a comparative hearing, minorities were far less likely to be able to use this singleton process. That is, when original applications had higher proportions of minorities, they were statistically more likely to be challenged, despite the fact that such applications were entitled to credit for the minority participation in comparative hearings, and, as a result, were theoretically harder to challenge. While this phenomenon does not necessarily reflect discrimination, it does show that minorities were less able to obtain licenses without completing the lengthy and expensive comparative hearing process. This same result was not *true* for applications with more female participants.

3. Auction Utilization Study

- Measured across all wireless auctions through 1999, minority and women applicants were less likely to win at least one license than were non-minority applicants;

- In an auction by auction comparison, the percentage of winning minorities is sometimes larger and sometimes smaller than the corresponding percentage for non-minority applicants. Similarly, women applicants won more frequently than did men applicants in certain auctions, but less frequently than men in other auctions;

- The inclusion of installments payment in auctions increased the rate at which minority and women applicants won licenses;

- In order to bid in auctions, an applicant must qualify by submitting a completed short form application and an upfront payment. Minorities and women qualified for auctions at significantly lower rates than non-minorities. The reasons for this result are not entirely clear, suggesting this as an area for future research; and

- The differences in utilization rates between minority and women applicants and other applicants are generally less pronounced among small companies than among large companies.

4. Capital Markets and Auctions Regression Study

- Among applicants for wireless licenses, the applications for debt financing by both minorities and women were statistically less likely to be approved than the applications of non-minorities;

- Among current broadcast licensees, minorities' applications for debt financing were statistically less likely to be approved than non-minorities' applications. The applications for women were also less likely to be approved than those for men, but this result was not statistically significant;

- Minorities paid statistically higher interest rates on their loans than did other borrowers. However, there were no statistically significant differences in interest rates on the basis of gender; and

- After controlling for relevant variables, both minority- and women-owned businesses were statistically less likely to obtain wireless licenses in FCC auctions than were businesses owned by non-minorities.

5. Historical Study

- Minorities and women repeatedly report encountering discrimination in their efforts to obtain capital to finance their broadcast and wireless businesses, discrimination in securing advertising on their stations, and discrimination by members of their communities and members of the communications industry;

- Small telecommunications businesses generally, and those owned by women and minorities in particular, report that the market consolidation permitted by the relaxation of the FCC's ownership rules has created nearly insurmountable obstacles to those seeking to enter, or even survive as a small player, in the broadcast industry;

- Minority-owned firms report that the repeal of the former tax certificate program – which, from 1978 until its repeal in 1995, provided tax incentives to encourage firms to sell broadcast licenses to minority-owned firms – has had a severe negative impact on their ability to obtain new stations; and

- Interviewees believed that EEO enforcement has been uneven over the past **fifty** years. This reported uneven enforcement coupled with industry hiring practices has hindered the ability of minorities and women to obtain the work experience that could one day assist them to become broadcasters themselves.