TAB *8*

ADDITIONAL RESEARCH QUESTIONS

The following is a partial list of research questions whose answers are potentially useful in developing a full record in response to the NPRM. Registrants are encouraged to add to this list before and during the November 6 Stakeholders Meeting.

1. How has deregulation affected diversity and public service: in particular, since 1950, how much news and public affairs was broadcast in the years immediately before and after significant FCC decisions that deregulated ownership and programming?

2. When did television and radio stations generally stop editorializing: specifically: (a] why did the elimination of the Fairness Doctrine apparently not produce a return to editorializing: and (b) are independently owned or newspaper owned stations more likely to editorialize?

3. Do newspapers and co-owned broadcast stations carry similar viewpoints more frequently than same-city newspapers and non-co-owned broadcast stations (i.e., the Prichard study. but with greater numerosity of outlets. the use of local issues as an additional measure of bias. and with a control group).

4. Do consumers substitute among media outlets or programs when seeking a diversity of viewpoints, particularly minority viewpoints?

5. Do newscasts express "viewpoints" through their selection of issues. spokespersons, or viewpoints deemed **worthy** of coverage?

6. Do the overall quantity. local content quantity, and viewpoints expressed in or through local news and public affairs programming vary with (a)the degree of market concentration: (b) whether the broadcaster is independently owned or is vertically or horizontally integrated: and (c) whether the broadcaster is minority controlled?

7. What effects have media mergers, local radio market consolidation. and TV duopoly had on the personnel and resources devoted to news. public affairs and public service. and on the output and issue-emphasis of news. public affairs and public service programming?

8. What are the ultimate original sources of news on television and radio?

9. What is the most accurate definition of the local and national advertising market?

10. Does affiliation with WB. UPN. PAX. Univision and Telemundo assist or impede licensees in providing local news. public affairs and public service?

11. How many television and radio stations would be considered "failing" or "failed" stations, as those terms are currently defined in the ownership rules: and how are the numbers of failing or failed stations changing over time?

12. What is the extent of concentration, and are there barriers to entry. in video acquisition. video production. music production and music promotion; and what impact might concentration and entry barriers in these industries have on broadcasting and cable?

13. What prices were paid for broadcast advertising before and after the 1996 Act .(in dollars and in cost per point], and have price and power ratio disparities between minority and nonminority owned or programmed stations diminished or grown since 1996?

14 What are the geographic, income, education and racial attributes of those who still consume only broadcast television and radio?

15. How do low-income families (■ those unable to afford multichannel video) use media -- what sources are used. and what needs are fulfulled and unfulfilled by each source?

16. How well does the media address the needs of minorities and the poor? Which media are regarded by these constituencies as most responsive and least responsive. and in what respects?

17. Do minority-formatted. minority-owned stations provide different programming (news, public affairs, public service, editorials. and issue emphasis). and engage more diverse staffs. than minority-formatted. nonminority-owned stations in the same markets?

18. Will newspaper/broadcast combinations have a potential anticompetitive impact on minority owned weekly newspapers?

19. What explains the departure **of** 20% of the minority radio owners. the overall increase in minority radio ownership. and the sharp decrease in minority television ownership since 1996?

20. What market factors predict whether standalone radio stations (including minority owned standalones) succeed or fail?

21. Are the leading minority owned broadcast companies poised to take advantage of possible further deregulation. or (as happened in 1996) **will** these companies be unable to "get big" and thus have to "get out"?

22. What is the availability of equity capital for minority broadcast ventures, and how would the availability of equity capital for minority broadcast ventures be affected by structural deregulation?

23. What has been the impact of minority ownership on competition in the radio advertising marketplace, and on the aggregate competitiveness of the radio industry vis-a-vis other industries?

24. What is the likely impact of new technology (including IBOC. DAB and DTV) on the extent and nature of service provided by broadcast stations to consumers, and on the ability of small stations (including LPTV. LPFM and small market and rural full power radio and television stations) to serve the public interest?

25. If the Internet is to be considered a media "voice". is high speed access available to low income and rural consumers on the same basis as it is available to high income and urban consumers: and if not, why?

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TAB 9

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS -

(Senate - October 15,2002)

While large companies continue to merge into even larger companies, small businesses have faced substantial barriers in trying to become long-term players in the telecommunications market. These barriers can be even more formidable for members of minority groups and for women, for whom it has historically been more difficult to obtain necessary capital. Since new entry and the ability to grow existing businesses are key components of competition, and since competition is usually the most successful way to achieve the goals of better service and lower prices, restricting small business' ownership opportunities does not serve consumers' interests.

It's easy to forget that telecommunications industry transactions are routinely valued in the billions. Even radio, which has traditionally been a comparatively easier telecom segment to enter, has been priced out of range of most would-be entrants. In addition to these monetary barriers, the tax code makes cash sales less attractive to sellers than stock-swaps. So new entrants and smaller incumbents, which typically must finance telecom acquisitions with cash rather than stock, are less-preferred purchasers than large incumbents. As a result, telecom business sellers have little incentive to sell their businesses to new entrants and small incumbents.

But what should Congress do? Clamp down on merger activity? Insist that hopelessly-outdated ownership restrictions set by the Federal Communications Commission be retained? Rush to concoct new telecom ownership "opportunities" from government programs or regulations that, in the real world, present small business with only one real opportunity, the opportunity to fail? None of these proposals would succeed because all of them, like the Telecommunications Act of 1996, ignore marketplace realities instead of working with them.

One answer is to level the playing field and give established telecom industry players the same economic incentives to deal with new entrants and small businesses as they currently have with respect to larger companies. And that's what this legislation would do.

Specifically, the bill would amend the Internal Revenue Code by adding a new Section **1071** entitled "Nonrecognitionof gain on certain sales of telecommunications business." This new section of the tax code would allow a telecom business seller to elect to have capital gains deferred under the existing Section **1033** rules for any "qualified telecommunications sale." The aggregate amount of any gain deferred under the qualified sale would be limited to $250 million per transaction, and less than $84 million per taxable year.

A qualified telecommunications sale would be defined in *two* ways. The first type of qualified sale would be sales to an "eligible purchaser" of either the assets of a telecom business or the stock that makes **up** a controlling interest in a corporation with substantially **all** of its assets in one or more telecom businesses. Eligible purchasers would include economically and socially disadvantaged businesses that qualify under a carefully drawn three-part test. The second type of qualified sale would be the sale of any telecom business to any purchaser, as long as the seller reinvests the proceeds in equity interests in eligible small telecom businesses.

To account for the variety of telecommunications services available today, the legislation would broadly define telecommunications businesses eligible for capital gains **tax** deferral to include not only radio, broadcast TV, DBS, and cable TV, but also wireline and wireless telephone service providers and resellers.

Some may be concerned that this legislation could potentially allow entities seeking to "game the system" to set up eligible purchasers **to** take advantage of the bill's provisions. In order to eliminate the potential for abuse, the bill would require the eligible purchaser to hold any property acquired for three years, during which time it could only so sold to an unrelated eligible purchaser. Moreover, the bill would require the General Accounting Office to thoroughly audit and report on the administration and effect of the law every two years.

By sharing with smaller companies a portion **of** the investment benefits our **tax** laws give to the major telecom companies we have a chance to make sure that, at the end of the day, we won't regret what "might have been" **for** small business. By enabling individuals and small businesses to use industry restructurings as opportunities for expansion, we will keep faith with those who have been, and remain, enduringly valuable contributors to our free-market system.

Over the next several months, I look forward to working with interested organizations to further improve this legislation. In particular, I welcome comments on how to further refine the concepts of "qualified telecommunications business'' and "eligible purchaser" to ensure that this legislation can meet its goals in the most fair and effective manner.

Revolutionary developments in the telecommunications industry have been made by gifted individuals with small companies and unlimited vision. In this sense, the telecommunciaitons industry is a true microcosm of the American free-market system. New entrants and small businesses should have a fair chance to participate across the broad spectrum of industries that will make up the telecommunications industry in the Information Age. This legislation will help them do that.

I ask unanimous consent that the text of the bill be printed in the **RECORD.**

There being no objection, the bill was ordered to be printed in the **RECORD, as** follows:

S. 3112

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telecommunications Ownership Diversification Act of 2002".

SEC. 2. FINDINGS AND **PURPOSES.**

(a) FINDINGS.--The Congress makes the following findings:

(1) Current trends in the telecommunications industry show that there is increasing convergence among various media, including broadcasting, cable television, and Internet-based businesses, that provide news, information, and entertainment.

(2) This convergence will continue, and therefore, diversifying the ownership of telecommunications facilities remains a pre-eminent public interest concern that should be reflected in both telecommunications and *tax* policy.

(3) A market-based, voluntary system of investment incentives is a very effective, lawful, and economically sound means of facilitating entry and diversification of ownership in the telecommunications industry.

(4) Opportunities for new entrants to participate and grow in the telecommunications industry have substantially decreased since the end of the Federal Communications Commission's *tax* certificate policy in **1995,** particularly in light of the increase in tax-free like-kind exchanges, despite the most robust period of transfers of radio and television stations in history. During this time, businesses owned or controlled by socially disadvantaged individuals, including, but not limited to, members of minority groups and women, have continued to be under represented **as** owners of telecommunications facilities.

(5) Businesses owned or controlled by socially disadvantaged individuals are and historically have been economically disadvantaged in the telecommunications industry. For these businesses, access to and cost of capital are and have been substantial obstacles to new entry and growth. Consequently, diversification of ownership in the telecommunications industry has been limited.

*(6)*Telecommunications facilities owned by new entrants may not be attractive to investors because their start-up costs are often high, their revenue streams are uncertain, and their profit margins are unknown.

(7) It is consistent with the public interest and with the pro-competition policies of the Telecommunications Act of **1996** to provide incentives that will facilitate investments in, and acquisition of telecommunications facilities by, socially and economically disadvantaged businesses, thereby diversifying the ownership of telecommunications facilities.

(8) Increased participation by socially and economically disadvantaged businesses in the ownership of telecommunications facilities will enhance competition in the telecommunications industry. Permitting sellers of telecommunications facilities to defer taxation of gains from transactions involving socially and economically disadvantaged businesses, and resulting from investments in designated capital funds that provide capital for such entities, will further the development of a competitive and diverse United States telecommunications **industry** without governmental intrusion in private investment decisions.

(9) The public interest would not be served by attempts to diversify the ownership of telecommunications; businesses through any approach that would involve the use of mandated set-asides or quotas.

(10) Today, the telecommunications industry is struggling to survive one of its most troubling times. Therefore, facilitating voluntary, pro-competitive transactions that will promote ownership of telecommunications facilities by economically and socially disadvantaged businesses will aid in providing the investment and capital that is crucial to this sector.

(b) PURPOSE.--The purpose of this Act is to facilitate voluntary, pro-competitive transactions that will promote ownership of telecommunications facilities by economically and socially disadvantaged businesses.

SEC. **3.** NONRECOGNITION OF GAIN ON QUALIFIED SALES OF TELECOMMUNICATIONS BUSINESSES.

(a) IN GENERAL.--Subchapter **O** of chapter 1 of the Internal Revenue Code of 1986 (relating to gain or loss on disposition of property)

is amended by inserting after part IV the following new part:

"part V--Certain Sales of Telecommunications Businesses

"Sec.

"1071. Nonrecognition of gain on certain sales of telecommunication businesses.

"SEC. **1071.** NONRECOGNITION OF GATN ON CERTAIN SALES OF TELECOMMUNICATION BUSINESSES.

"(a) IN GENERAL.--In case of any qualified telecommunications sale, at the election of the taxpayer, such sale shall be treated **as** an involuntary conversion of property within the meaning of section 1033.

"(b) LIMITATION ON **AMOUNT OF** GAIN ON WHICH TAX **MAY** BE DEFERRED.--The amount of gain on any qualified telecommunications sales which is not recognized by reason of this section shall not exceed $250,000,000 per transaction and shall not exceed $83,333,333 per taxable year. Excess amounts can be carried forward in future years subject to the annual limit.

"(c) QUALIFIED TELECOMMUNICATIONS SALE.--For purposes of this section, the term 'qualified telecommunications sale' means–

'(1) any sale to an eligible purchaser of--

"(A) the assets of a telecommunications business, or

"(B) stock in a corporation if, immediately after such sale--

"(i) the eligible purchaser controls (within the meaning of Section 368 (c)) such corporation, and

"(ii) substantially all of the assets of such corporation are assets of 1 or more telecommunications businesses; and

"(2) any sale of a telecommunications business, if the taxpayer purchases, within the replacement period specified in section 1033(a)(2)(b), 1 or more equity interests in an entity that **is an** eligible purchaser as defined in subsection (f)(1)(A) (the Telecommunications Development Fund.).

"(d) **SPECIAL. RULES.--**

"(1) **IN GENERAL.--In** applying section 1033 for purposes of subsection (a) of this section, stock of a corporation operating a telecommunications business, whether or not representing control of such corporation, shall be treated **as** property similar or related in service **or** use to the property sold in the qualified telecommunications sale.

"(2) **ELECTION TO REDUCE BASIS RATHER** THAN **RECOGNIZE REMAINDER OF GAIN.**--If--

"(A) a taxpayer elects the treatment under subsection (a) with respect to any qualified telecommunications sale, and

"(B) an amount of gain would (but for this paragraph) be recognized on such sale other than by reason of subsection (b),

then the amount of gain described in subparagraph (B) shall not be recognized to the extent that the taxpayer elects to reduce the basis of depreciable property (**as** defined in section 1017(b)(3)) held by the taxpayer immediately after the sale or acquired in the same taxable year. The manner and amount of such reduction shall be determined under regulations prescribed by the Secretary.

"(3) **BASIS.--For** basis of property acquired on a sale or exchange treated **as** an involuntary conversion under subsection (a), see section 1033(b).

"(e) **RECAPTURE OF TAX BENEFIT IF TELECOMMUNICATIONS BUSINESS RESOLD WITHIN** 3 *Years, Etc.*--

"(1) **IN GENERAL.--If, within** 3 years after the date of any qualified telecommunications sale, there is a recapture event with respect to the property involved in such sale, then the purchaser's tax imposed by this chapter for taxable year in which such event occurs shall be increased by **20** percent of the lesser of the consideration furnished by the purchaser in such sale or the dollar amount specified in subsection (b).

"(2) **EXCEPTION FOR REINVESTED** AMOUNTS.--Paragraph (1) shall not apply to any recapture event which is **a** sale if--

"(A) the sale **is** a qualified telecommunications sale, or

"(B) during the 60-day period beginning on the date of such sale, the taxpayer **is** the purchaser in another qualified telecommunications sale in which the consideration furnished by the taxpayer is not less that the amount realized on the recapture event sale.

``(1) RECAPTURE EVENT.--For purpose of this subsection, the term 'recapture event' means with respect to any qualified telecommunications sale–

"(A) any sale or other disposition of the assets or stock referred to in subsection (c) which were acquired by the taxpayer in such sale, and

"(B) in the case of a qualified telecommunications sale described in subsection (c)(1)(B)**--**

"(i) any sale or other disposition of a telecommunications business by the corporation referred to in such subsection, or

``(ii) any other transaction which results in the eligible purchaser business not having control (as defined in subsection (c)(1)(B)(i)) of such corporation.

``(f) DEFINITIONS.--In this section:

``(1) ELIGIBLE PURCHASER--The term 'eligible purchaser' means--

"(A) the Telecommunications Development Fund established under section 714 of the Communications Act of **1934 (47** U.S.C. 614**),** or any wholly-owned affiliate of that Fund;

"(B) an economically and socially disadvantaged business, **as** defined in paragraph (2) of this subsection; and

``(C) an entity qualified under section 851, if more than *50* percent of its gross income is derived from equity investment in an economically and socially disadvantaged business or businesses, as defined in paragraph (2) of this subsection, as determined by the Secretary.

"(2) ECONOMICALLY AND SOCIALLY DISADVANTAGED BUSINESS.--The term 'economically and socially disadvantaged business' means a person that is designated by the Secretary as an 'economically and socially disadvantaged business' based on a determination that the subject person--

"(A) meets the control requirements of paragraph ***(6);***

"(B) will be a telecommunications business after the purchase for which the eligibility determination is sought; and

"(C) before the purchase for which the eligibility determination is sought does not have:

"(i) attributable ownership interests in television broadcast stations having **an** aggregate national audience reach of more than **5** percent as defined by the Federal Communications Commission under section 73.3555(e)(2)(i) of title **47** of the Code of Federal Regulations as in effect on **January** 1,2001;

``(ii) attributable ownership interest in: (a) more than 50 radio stations nationally; and (b) radio stations with a combined market share exceeding 10 percent of radio advertising revenues in the relevant market as defined by the Federal Communications Commission; or

``**(iii)** attributable ownership interests in any other telecommunications business having **more** than 5 percent of national subscribers.

"(3) RELEVANT MARKET.--The term 'relevant market' means the local market served by the radio station or stations being purchased.

``(4) TELECOMMUNICATIONS BUSINESS.--The term 'telecommunications business' means a business which, as its primary purpose, engaged in electronic communications and is regulated by the Federal Communications Commission pursuant to the Communications Act, including a cable system (as defined in section 602(7) of the Communications Act of 1934 (47 U.S.C. 532(7)), a radio station (as defined in section 3(35) of that Act (47 U.S.C. 153(35)), a broadcasting station providing television service (as defined in section 3(49) of that Act (47 U.S.C. 153(49)), a provider of direct broadcast satellite service (as defined in section 335(b)(5) of that Act (47 U.S.C. 335(b)(5)), a provider of video programming (as defined in section 602(20) of that Act (47 U.S.C. 602(20)); a provider of commercial mobile services (as defined in section 332(d)(1) of that Act (47 U.S.C. 332(d)(1)), a telecommunications carrier (as defined in section 3(44), of that Act (47 U.S.C. 153(44)); a provider of fixed satellite service; a reseller of telecommunications service or commercial mobile service; or a provider of multichannel multipoint distribution service.

"(5) PURCHASE.--The taxpayer shall be considered to have purchased a property if, but for subsection (d)(2), the unadjusted basis of the property would be its cost within the meaning of section 1012.

"*(6)*CONTROL.--

"(A) INDIVIDUALS.--For purposes of paragraph (2)(A), an individual who meets the requirements of paragraph **(7)** also meets the requirements of this paragraph.

``(B) ENTITIES.--For purposes of paragraph (1)(B), an entity meets the requirement of this paragraph if the requirements of subparagraph (C), (D), or (E) are satisfied.

`'(C) 30-percent test.--The requirements of this subparagraph are satisfied if--

TAB 10

TWELVE MINORITY OWNERSHIP SOLUTIONS

The following is MMTC's non-exhaustive list of business and regulatory initiatives which. if implemented. would go a long way toward increasing the numerosity, asset value and longevity of minority owned media properties. Registrants are encouraged to add to this list before and during the November 6 Stakeholders Meeting.

1. Equity for specific and contemplated future acquisitions

2. Debt on favorable terms -- enhanced outreach and access to debt financing by major financial institutions

3. Investments in institutions specializing in minority and small business financing. such as Quetzal. TDF. and SBICs

4. Assistance -- cash and in-kind -- to HBCUs and other programs (e.g. NABEF) that train future minority media owners

5. Creation of a business planning center, possibly affiliated with a university. that would work one-on-one with minority entrepreneurs as they develop business plans and strategies, seek financing and pursue acquisitions

6. Executive loans, and engineers on loan to minority owned companies and applicants

7. Enhanced access to broadcast transactions -- sellers electing to undertake early solicitations of qualified minority new entrants and afford them the same opportunities to perform early due diligence as the sellers afford to established nonminority owned companies

8. Nondiscrimination provisions in advertising sales contracts, designed to expressly avoid such practices as "no urban/no Spanish" dictates

9. Incubation and mentoring of future minority owners -- programs developed within established media companies

10. Enactment of tax deferral legislation designed. to the extent possible. to foster minority ownership

11. Examination of how to promote minority ownership as an integral part of all FCC general media rulemaking proceedings

12. Ongoing longitudinal research on minority ownership trends. conducted by the FCC. NTIA or both

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