

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

In the Matter of)	
)	
2002 Biennial Regulatory Review - Review of)	MB Docket No. 02-277
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)	MM Docket No. 01-235
Newspapers)	
)	
Rules and Policies Concerning)	MM Docket No. 01-317
Multiple Ownership of Radio Broadcast)	
Stations in Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244

To: The Commission

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION
OF BLACK OWNED BROADCASTERS, INC. AND THE
RAINBOW/PUSH COALITION, INC.**

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February 3, 2003

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EXECUTIVE SUMMARY

The National Association of Black Owned Broadcasters, Inc. (“NABOB”) and Rainbow/PUSH Coalition (“Rainbow/PUSH”), in our initial Comments in this proceeding, pointed out that the number of minority owners of broadcast facilities has decreased by 14% since the passage of the Telecommunications Act of 1996. Therefore, NABOB and Rainbow/PUSH requested that the Commission adopt promotion of minority ownership of radio facilities as a primary policy objective in this proceeding. NABOB and Rainbow/PUSH requested that the Commission take the following actions to promote diversity of ownership and minority ownership:

1. The Commission should place greater emphasis on the promotion of diversity of ownership, and with it the promotion of minority ownership, in the broadcast industry.
2. As a part of its public interest review, the Commission should assess the impact on minority ownership of assignment and transfer applications.
3. The Commission should eliminate its policy of granting 6, 12 and 18 month waivers of the broadcast ownership rules. If a transaction will place a party over the ownership limits, applications to sell stations to third party buyers should be filed at the same time that assignment and transfer applications which exceed the ownership limits are filed.
4. The Commission should make permanent, with the revisions proposed in our Comments, the Commission’s Interim Policy for processing radio assignment and transfer applications. In particular the Commission should consider a 40/60 market share screen for “flagging” potential excessive consolidation in a market, instead of the current 50/70 screen.

5. The Commission should change its radio market definition to correlate with the Arbitron market. The failure of the Commission's current definition is reflected in at least eleven Arbitron markets where a single entity owns or controls between 9 and 12 radio stations.
6. The Commission should treat all Local Marketing Agreements as attributable interests.
7. The Commission should continue to urge Congress to reinstate the minority tax certificate policy.

In these Reply Comments, NABOB and Rainbow/PUSH submit newly available information for consideration in this proceeding. First, NABOB attaches the testimony of Robert Short given before the U.S. Senate Committee on Commerce, Science and Transportation on January 30, 2003. In his testimony, Mr. Short describes in great detail the forces of consolidation that are squeezing small station owners out of the industry. NABOB and Rainbow/PUSH also submit a speech given by Commissioner Copps at the Columbia Law School on January 16, 2003. In the speech, Commissioner Copps identifies numerous questions which the Commission has not asked in this proceeding and identifies a great deal of information that the Commission should develop in the record instead of rushing to judgment in this proceeding..

NABOB and Rainbow/PUSH also demonstrate that the parties seeking repeal of the Commission's rules have not made the case for such repeal. However, NABOB and Rainbow/PUSH

note that Granite Broadcasting has raised a concern about the duopoly rule which merits consideration.

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Cross-Ownership of Broadcast Stations and Newspapers)	MM Docket No. 01-235
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Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets)	MM Docket No. 01-317
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Definition of Radio Markets)	MM Docket No. 00-244

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**REPLY COMMENTS OF THE NATIONAL ASSOCIATION
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RAINBOW/PUSH COALITION, INC.**

The National Association of Black Owned Broadcasters, Inc. ("NABOB") and Rainbow/PUSH Coalition, Inc. ("Rainbow/PUSH"), by their attorneys, hereby submit their Reply Comments in the above-captioned proceeding.¹ NABOB and Rainbow/PUSH demonstrated in their Comments that the Commission's review of its ownership rules should result in the adoption by the Commission of specific

¹2002 Biennial Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket Nos. 02-277, 01-235, 01-317, 02-249 and 00-244 released September 23, 2002 ("NPRM").

policies to promote minority ownership of broadcast facilities. In these Reply Comments NABOB and Rainbow/PUSH shall demonstrate that parties seeking repeal of the Commission's ownership rules have failed to demonstrate that repeal is appropriate. In addition, NABOB and Rainbow/PUSH submit new information in this proceeding, consisting of the testimony of Robert Short before the U.S. Senate Committee on Commerce, Science and Transportation on January 30, 2003, and a speech given by Commissioner Copps on January 16, 2003.

I. SUMMARY OF INITIAL COMMENTS

In our Comments, NABOB and Rainbow/PUSH stated that the Commission should adopt promotion of minority ownership of broadcast facilities as a primary policy objective in this proceeding. We stated that, among the steps which the Commission should take to promote diversity of ownership and minority ownership are the following:

1. As a part of its public interest review, the Commission should assess the impact on minority ownership of all assignment of license and transfer of control applications.
2. The Commission should eliminate its policy of granting 6, 12 and 18 month waivers of the broadcast ownership rules, which waivers are ostensibly to allow parties exceeding the rules to find potential buyers. Applications to sell stations to third party buyers should be filed simultaneously with the underlying assignment and transfer applications.
3. The Commission should make permanent, with the revisions proposed in our Comments, the Commission's Interim Policy for processing assignment and transfer applications. In particular, the Commission should consider a 40/60 market share

screen for “flagging” potential excessive consolidation in a market, instead of the current 50/70 screen.

4. The Commission should change its radio market definition to correlate with the Arbitron market, because the current rule has allowed a single entity to own between 9 and 12 radio stations in, at least, 11 Arbitron metro markets.
5. The Commission should treat all Local Marketing Agreements as attributable interests.
6. The Commission should continue to urge Congress to reinstate the minority tax certificate policy. Comments, filed January 2, 2003, at 3-4.

In our Comments, NABOB and Rainbow/PUSH cited several studies demonstrating that, since the enactment of the Telecommunications Act of 1996, the number of minority owners in the radio industry has decreased by 14%.² We showed that the Radio Local Market Study demonstrates that the 50/70 screen for “flagging” market over-consolidation is too loose. The Radio Local Market Study data would support a 40/60 screen, instead of the current 50/70 screen. Comments at 6-10.

We cited studies demonstrating that diversity of viewpoint is best promoted by diversity of ownership, and that minority ownership best promotes viewpoint diversity.³ The Commission’s Diversity of Programming Study concluded that there is “empirical evidence of a link between race

² “Radio Local Market Consolidation & Minority Ownership” (“Radio Local Market Study”), prepared by Kofi A. Ofori.

³Diversity of Programming in the Broadcast Spectrum: Is there a Link between Owner Race or Ethnicity and News and Public Affairs Programming?, Christine Bachen, et al., December, 1999 at 37. (Incorporated herein by reference.)

or ethnicity of broadcast station owners and contribution to diversity of news and public affairs programming across the broadcast spectrum.⁴ Comments at 10-13.

NABOB and Rainbow/PUSH demonstrated that only ownership diversity can provide the type of meaningful diversity that will promote the First Amendment policies of the Commission. A single entity owning stations broadcasting in a variety of entertainment formats does not provide the type of diversity that the Commission's ownership rules are designed to promote. The ownership rules are primarily intended to promote opinion diversity, and only secondarily entertainment diversity. We showed that the Commission should adopt policies which will diversify ownership of broadcast stations. Comments at 13-17.

NABOB and Rainbow/PUSH demonstrated that the Commission's method for defining radio markets for purposes of applying its local radio ownership rule is in need of revision. We demonstrated that the appropriate geographic area that should be used for diversity and competition purposes is the Arbitron market. Comments at 17-20. We showed that numerous group owners are listed as operating more than eight radio stations in various Arbitron markets. We showed that, the following group owners are shown to operate the following number of stations in the indicated markets :

1. Clear Channel
 - a. Los Angeles – 11.
 - b. Louisville – 10.
 - c. Roanoke -- 9.

⁴Diversity of Programming Study at i.

- d. Huntington – 9.
-
- 2. Citadel
 - a. Wilkes Barre – 11.
 - b. Little Rock – 10.
-
- 3. Cumulus
 - a. Florence – 9.
-
- 4. Beasley
 - a. Augusta, GA – 9.
-
- 5. Next Media
 - a. Chicago – 11.
 - b. Greenville, NC – 10.
-
- 6. Curtis Media Group
 - a. Raleigh – 12.

Comments at 20-21.

We noted that, the numbers identified above for the companies exceeding the eight station limit may not include some time brokerage and local marketing agreements. These numbers demonstrate that, included in the enforcement of Section 202(b), must be a rule which requires that all time brokerage agreements and local marketing agreements between same market licensees be filed with the Commission and treated as attributable interests, even if they are for less than 15% of a station's broadcast time. We concluded by describing a bright line test that the Commission should establish for preventing further

excessive ownership consolidation. Comments at 22-26.

II. THE TESTIMONY OF ROBERT SHORT PROVIDES EVIDENCE OF THE FORCES THAT ARE CAUSING THE DECLINE IN MINORITY OWNERSHIP

On January 30, 2003, the U. S. Senate Committee on Commerce, Science and Transportation, chaired by Senator John McCain (R-AZ), held a hearing on consolidation of ownership in the radio industry. At the hearing, Robert Short, a former radio station owner, testified about the sale of his FM radio station operating in the Syracuse, New York, market. Mr. Short's testimony is attached hereto as Exhibit A. Mr. Short, an African American, and former member of the Board of Directors of NABOB, testified that he sold his station because he was unable to compete in the Syracuse market after Clear Channel Communications, Inc. ("Clear Channel") acquired seven stations in the Syracuse market, with a combined revenue share in excess of 50%, and Citadel Communications Corporation ("Citadel") acquired four stations, with a 24% share of the market revenue.

Mr. Short's story goes directly to the heart of the issues before the Commission. Mr. Short explains that he had lived in Syracuse for close to thirty years when he put his newly constructed station, WRDS, on the air in 1995. After WRDS had been on the air for just a few months, Congress substantially relaxed the radio ownership rules, resulting in the rapid consolidation of the Syracuse market by Clear Channel and Citadel, both of which are established publicly traded companies.

Mr. Short states that he was providing a local service targeted to the African American community

of Syracuse, but he was squeezed out of the market by Clear Channel and Citadel. Throughout the comments filed in this proceeding by the large media giants is a common theme: radio is big business now, and anyone who is not going to operate like a big business will not survive, and should not survive. The principal point to be drawn from Mr. Short's testimony is that, since 1934, the Commission has regulated the radio industry in a manner designed to assure that there would always be a place for the local, single station owner. NABOB and Rainbow/PUSH submit that the Commission's policy was correct then, and it is correct now. The Commission should limit consolidation of ownership so that no more local, single station owners like Mr. Short will be squeezed out of the industry.

III. THE SPEECH OF COMMISSIONER COPPS AT COLUMBIA LAW SCHOOL DEMONSTRATES THAT THE RECORD IS NOT COMPLETE AND THE COMMISSION SHOULD NOT RUSH TO JUDGMENT

Commissioner Michael Copps gave a speech before the Columbia Law School Forum on Media Ownership, on January 16, 2003. A copy of the speech is attached hereto as Exhibit B. In his speech, Commissioner Copps pointed out that consolidation in the radio industry has gone far beyond the level contemplated by Congress in 1996. Commissioner Copps notes that, before rushing forward to further deregulate television or radio, the Commission needs a very complete record. He lists numerous questions which must be answered about the past effects of radio consolidation, and the prospective effects of further relaxation of the Commission's radio and television ownership rules. He stresses that these questions must be answered before the Commission relaxes any of its ownership rules. NABOB and Rainbow/PUSH concur with Commissioner Copps's warnings. The Commission should develop a much more complete record before further relaxing its ownership rules.

IV. THE COMMENTS OF GRANITE BROADCASTING RAISE IMPORTANT CONSIDERATIONS

In our Comments, NABOB and Rainbow/PUSH cited a significant amount of research demonstrating that consolidation in the radio industry has harmed minority ownership by decreasing the number of diverse owners and voices. In their Comments, Granite Broadcasting Corporation (“Granite”), the country’s largest minority-owned television group, a publicly traded company, proposed repeal of the Commission’s local television multiple ownership restriction (the “duopoly rule.”).⁵ As the largest African American owned television company, and a member of NABOB, the continued business success of Granite is important to furthering NABOB’s goal of maintaining and increasing minority ownership of broadcast stations. This is particularly true in the television industry, because television is the most powerful medium for influencing the public. Although Granite owns only eight television stations, this is almost half of all the television stations owned by African Americans.

Granite states that the duopoly rule is precluding it from acquiring stations in the markets where it already owns stations, and, as a result, Granite is not able to compete adequately in those markets. While NABOB and Rainbow/PUSH have taken a general position against relaxation of any of the Commission’s multiple ownership rules, the Comments of Granite require careful consideration. Granite has not acquired

⁵47 CFR § 73.3555(b).

any new television stations in several years, and has indeed sold stations. This is a negative development for minority ownership. Although Granite has in no way indicated that it is considering a sale of the company, NABOB and Rainbow/PUSH are quite mindful of the recent fate of Black Entertainment Television (“BET”). Should Granite decide to sell to a major non-minority owner, such as the sale of BET to Viacom, the American public will lose an important voice providing much needed diversity of viewpoint in the television industry. As noted above, a sale of Granite would, in a single stroke of the pen, reduce the number of African American owned television stations by almost half.

Therefore, NABOB and Rainbow/PUSH submit that the Commission must give Granite’s Comments serious consideration. NABOB and Rainbow/PUSH are not able at this time to recommend complete repeal of the duopoly rule. However, we recommend review of the rule as it applies to companies, such as Granite, which own primarily small market television stations. NABOB and Rainbow/PUSH would consider a limited relaxation of the rule to permit Granite to acquire additional stations in the markets in which it operates.

V. THE COMMISSION SHOULD RETAIN ITS MULTIPLE OWNERSHIP RULES

NABOB and Rainbow/PUSH demonstrated in our Comments that the loss of minority ownership since the previous relaxation of the Commission’s ownership rules requires retention of the Commission’s remaining ownership rules. Aside from the issue raised in the Comments of Granite, the opponents of the Commission’s ownership rules have not raised any issues justifying any further relaxation.

The National Association of Broadcasters, Inc (“NAB”) proposes elimination of the

newspaper/broadcast cross-ownership rule and the radio/television cross-ownership rule. NAB Comments, filed January 2, 2003, at 60-70. In proposing this relaxation, NAB asserts that there is no evidence that diversity of ownership leads to diversity of viewpoint. NAB relies upon the Commission's Viewpoint Diversity Study⁶ to support this position. NAB Comments at 39-44. However, NAB's argument is not supported by that study. In fact, that study is one of the principal studies demonstrating the need to halt further consolidation in the industry.

The principal consideration that should be given to the Viewpoint Diversity Study is that the study examined news "slanting" in the coverage of the 2000 election. This is an astounding premise, because it takes as a given that news is routinely "slanted." The existence of news slanting, in and of itself, demonstrates why the Commission should not further relax its ownership restrictions. The recognition that news slanting exists should lead the Commission to halt in its tracks and allow no further relaxation of these rules. Once it is conceded that news slanting exists, the need for many diverse sources of news follows as the only logical method of assuring that diverse voices can be heard.

Moreover, not only does the Viewpoint Diversity Study concede that news slanting exists, but it also treats it as a measurable phenomenon. The study measured news slanting and concluded that the slanting of news does not follow a pattern when comparing commonly owned newspapers and television stations. This conclusion only highlights the fundamental problem with the study. It is the mere existence of measurable news slanting that proves the need for ownership diversity. The study proves that the owners

⁶David Pritchard, Viewpoint Diversity in Cross-Owned Newspapers and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign (Sept. 2002) ("Viewpoint Diversity Study").

of media outlets slant the news. The direction of the slanting is immaterial. The Commission must maintain its ownership rules because owners slant the news.

Some parties go even further than NAB and propose the repeal of all ownership rules. Clear Channel Communications, Inc. in its Comments, and Fox Entertainment Group, Inc., Fox Television Station, Inc., National Broadcasting Company, Inc., Telemundo Communications Group, Inc. and Viacom (the “Joint Commenters”), in a set of joint Comments, propose the elimination of all ownership rules. Clear Channel Comments filed January 2, 2003; Joint Comments filed January 2, 2003. Clear Channel essentially relies upon increased competition as a basis for repeal of all ownership rules and gives little attention to the First Amendment need of citizens to receive antagonistic sources of news and information. Clear Channel’s failure to address the First Amendment issues renders its Comments too incomplete to give serious consideration to their call for repeal of the ownership rules. The Joint Commenters rely, as did the NAB, on the Viewpoint Diversity Study. As demonstrated above, the mere existence of measurable news slanting shown in the study renders it a significant study demonstrating the need for retention of the Commission’s ownership rules, not repeal.

VI. CONCLUSION

NABOB and Rainbow/PUSH demonstrated in our Comments that broadcast industry consolidation has had a negative impact on the number of minority owners in the broadcast industry. The Radio Local Market Study, the UCC Studies and the Democratic Discourse Study clearly and convincingly demonstrate this. Moreover, the studies show that absent government intervention, this decline can be expected to continue. In addition, the Commission’s Diversity of Programming Study and the

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