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Statement
of
JAMES L. WINSTON
Before the
FEDERAL COMMUNICATIONS COMMISSION

BROADCAST OWNERSHIP EN BANC HEARING

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Federal Communications Commission
Office of me Secretary

Good Morning Chairman Powell, Commissioners Copps, Abernathy, Martin and Adelstein. My name is James Winston, and I am Executive Director and General Counsel of the National Association of Black Owned Broadcasters, Inc. Thank you for inviting me to discuss the Commission's pending rulemaking proceeding examining its broadcast ownership rules.

NABOB is a trade association representing the interests of African American owners of radio stations, television stations and cable television systems across the U.S. NABOB has participated in this proceeding to encourage the Commission not to relax further its multiple ownership rules. Since the passage of the Telecommunications Act of 1996, which significantly relaxed the Commission's multiple ownership rules, the number of minority owners has dropped by **14%.**

The Commission, the Congress and the Courts have historically recognized that the ownership of broadcast stations must be disseminated among a wide number of voices to assure that the First Amendment rights of the American public are protected. In its Comments in this proceeding, NABOB has cited a significant amount of research demonstrating that minority ownership promotes these First Amendment rights by providing viewpoint diversity and promoting competition.

For this reason, NABOB has proposed in its Comments that the Commission make no further relaxation of its rules. Instead, NABOB proposes the following improvements to the Commission's existing rules:

1. Make permanent the Commission's Interim Policy for processing radio assignment of license and transfer of control applications.

2. Improve the Interim Policy by flagging all transactions in which one entity will control **40%** of the local advertising market or two entities will control 60% of the advertising market.

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3. Include in the Interim Policy a review of the impact on minority ownership of flagged transactions.

4. Eliminate the Commission's policy of granting 6, 12 and 18 month waivers of its ownership rules. If a transaction will require one or more stations to be spun-off, the parties should submit an application to spin-off those stations at the time the transaction is filed.

5. The Commission should treat all Local Marketing Agreements as attributable and should require that all agreements between non-commonly, same-market stations be filed with the Commission.

6. NABOB has also requested that the Commission support reinstatement of the minority tax certificate. NABOB commends the Commission for supporting Senator McCain's small business tax deferral bill. We hope that legislation will be amended to specifically promote minority ownership.

In my comments today, I would like to begin with a very positive observation. The Commission's Interim Policy for analyzing the competitive implications of radio station assignment of licenses and transfer of control applications is very good. Pursuant to the Interim Policy, the Commission does a preliminary examination of BIA market data to screen all radio transactions. In those transactions where the BIA data indicates the potential for an adverse impact on competition, the Commission flags the transaction and asks the parties for additional information. The public is invited to comment at that time.

The Commission then does a competitive analysis of the transaction based upon the BIA data and information supplied by the applicants and the public. This review has resulted in the designation for hearing of a number of transactions, where the Commission has been unable to conclude that grant of the applications would be in the public interest.

The Commission's review of radio transactions has managed to result in the designation of some transactions for hearing, but the Commission's review process could be improved.

An examination of just one of these transactions, the application of Clear Channel to purchase an AM station in Ann Arbor Michigan, demonstrates the areas where improvement is needed. In the order designating that application for hearing, the Commission determined that, applying the Commission's current definition of radio markets, the transaction creates five different radio markets and Clear Channel's ownership of radio stations in each of these five markets would be consistent with the Commission's numerical local ownership rules.

However, in the very next paragraph, when the Commission begins its competitive analysis, the Commission concludes that the transaction would create a single market in which Clear Channel would garner **94.9%** of the radio advertising revenue. If we examine these two conclusions together, the flaw in the Commission's current definition of radio markets is quite clear. If the Commission relied only upon its current definition of a radio market, Clear Channel would be allowed to purchase an additional station that would give it a **95%** market share. This is but one example demonstrating the harm to the radio industry that would result if the Commission merely relied on a numerical ownership test to determine whether to grant assignment and transfer applications. The Commission must continue to examine BIA data to assess the competitive impact of all radio and assignment transactions.

The Ann Arbor case also demonstrates that the Commission should tighten its flagging procedure. Even if the Commission determines that it will not permit Clear Channel to acquire the station in the Ann Arbor proceeding, it will leave in place Clear Channel's current market cluster. This means that Clear Channel will still own stations garnering more than 86% of market revenues. This is well above the 50% standard the Commission is committed to flagging. It is not clear from the Commission's order how this level of concentration was allowed to be created, but it demonstrates that more vigilance is needed to prevent the creation of more markets subject to virtual local advertising monopolies.

In its Comments, NABOB cited research showing that in most major markets, the market leader has about **45%** of advertising revenues and the top two firms control about **74%** of adverting revenue. The research concluded that this resulted in highly concentrated markets with Herfindahl-Hirschman Indices exceeding 3000 in many markets. Thus NABOB submits that, given the example of Ann Arbor, where Clear Channel currently has over 86% of the local radio advertising market, the Commission should adjust its flagging procedure to flag transactions which would result in a single entity controlling more than **40%** of market revenues or two entities controlling more than 60% of market revenues.

In conclusion, I would like to note that the principal issue before the Commission in this proceeding is what level of industry consolidation should be permitted to balance the Commission's often conflicting objectives of promoting diversity, competition and localism. NABOB submits that, in reaching a determination of how to balance these competing interests, the Commission should note that diversity and localism are the only two First Amendment considerations falling into that balance. The promotion of First Amendment rights is the Commission's principal obligation, and, in the end, it must be promotion of those interests that is given paramount consideration.