

MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL

3636 16th Street N.W., Suite B-366
Washington, D.C. 20010
Phone: (202) 332-0500 Fax: (202) 332-0503
www.mmtconline.org

David Honig, Executive Director
Phone: (202) 332-7005 Fax: (202) 332-7511
e-mail: dhonig@mmtconline.org

Henry M. Rivera
Chairperson

May 27, 2003

Erwin Krasnow
Deborah Lathen
Vice Chairpersons

Lawrence Roberts
Secretary

Everett C. Parker
Treasurer

Hon. Michael Powell
Hon. Kathleen Abernathy
Hon. Jonathan Adelstein
Hon. Michael Copps
Hon. Kevin Martin
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

BOARD OF DIRECTORS

Andrew C. Barrett
Antoinette Cook Bush
Jeneba Jalloh Ghatt
Julia Johnson
Erwin Krasnow
Deborah Lathen
Nicolaine Lazarre
Alex Nogales
Everett C. Parker
Henry M. Rivera
Lawrence Roberts
Andrew Schwartzman
S. Jenell Trigg
Herbert Wilkins

BOARD OF ADVISORS

Raul Alarcon, Jr.
Eddie Arnold
Tyrone Brown
Amador Bustos
Angela Campbell
Thomas Castro
Jannette Dates
Belva Davis
Moctesuma Esparza
Jerome Fowlkes
Frank Halfacre
John Hane
Janis Hazel
Ragan A. Henry
Leo Hindery
Reginald Hollinger
Larry Irving
Eli Noam
Vincent A Pepper
Benjamin Pérez
Linda Eckard Vilardo
Anthony Williams
Edward Young

Dear Colleagues:

RE: Broadcast Ownership Omnibus Proceeding
MB Docket 02-277

The Commission is reportedly considering whether to allow a licensee to transfer intact a combination that could not be created ab initio under the local ownership rules. Some have suggested that such combinations should be transferable intact repeatedly; others that they should be transferable only once; and still others that they should not be transferable at all.

In our Comments, we proposed a compromise (the "SDB Transfer Option") that would promote diversity and advance the small business paradigm in Senator McCain's proposed Telecommunications Ownership Diversification Act of 2003, S.267: "allow the owner of such combinations to sell the combination intact to an SDB [socially and economically disadvantaged business]....This would result in no greater concentration of ownership than had existed previously, and it would contribute to diversity

Hon. Michael Powell
Hon. Kathleen Abernathy
Hon. Jonathan Adelstein
Hon. Michael Copps
Hon. Kevin Martin
May 27, 2003
Page Two.

by placing valuable properties in the hands of small businesses, particularly minorities." MMTC Comments, pp. 107-108. 1/

In response, the NAB stated that although it "would go further, so that station owners would be allowed to transfer properly formed station combinations freely to any purchaser (see NAB's comments at 83-84), whether an SDB or not, NAB does not oppose MMTC's proposal." NAB Reply Comments, p. 44 n. 79. Today, the NAB graciously indicated that it continues its non-opposition to the SDB Transfer Option.

1/ Senator McCain's bill contemplates that the Treasury Department would conduct a rulemaking to determine which groups (e.g. Hispanics or women) are socially and economically disadvantaged in the telecommunications industries. See S.267, Telecommunications Ownership Diversification Act of 2003, Sec. 6(b), which provides, in pertinent part, that

The Secretary of the Treasury, in consultation with the Federal Communications Commission, shall promulgate regulations to implement the amendments made by this Act not later than 90 days after the date of the enactment of this Act. The regulations shall provide for the determination by the Secretary of the Treasury as to whether an applicant is an "eligible purchaser" as defined in section 1071(f) of the Internal Revenue Code of 1986 (as added by section 3(a)) [.]

Adoption of the SDB Transfer Option need not await the passage of S.267, however. Indeed, the Commission's experience in implementing the SDB Transfer Option could prove valuable to the Treasury Department in developing its own regulations. If S.267 does not become law before the effective date of the new ownership rules, the Commission could follow any of several interim approaches to rendering SDB eligibility determinations. For example, the Commission could draw upon the record compiled in the six Section 257 studies completed in 2000; or it could review transactions case by case based on transferee's individualized showings of social and economic disadvantage; or it could consult with the Treasury Department in adopting an interim eligibility policy. The task of tying down the precise definition of a qualifying SDB is not so daunting that it should prevent the Commission from adopting the SDB Transfer Option as part of the forthcoming Report and Order.

Hon. Michael Powell
Hon. Kathleen Abernathy
Hon. Jonathan Adelstein
Hon. Michael Copps
Hon. Kevin Martin
May 27, 2003
Page Three.

The advantages of the SDB Transfer Option are many:

First, by allowing some transferability of combinations while still grandfathering existing clusters, the Commission could avoid disrupting incumbents' operations. At the same time, the SDB Transfer Option would disincentivize the accretion of assets in the hands of licensees that may no longer highly value these assets.

Second, the SDB Transfer Option would provide a strong incentive for incumbents to sell stations to new entrants, including many minorities and women. History has proven the value and fairness of incentive-based marketplace initiatives, such as the tax certificate policy and the Mickey Leland Rule. 2/

Third, the SDB Transfer Option would provide SDBs with ownership opportunities that are specifically tailored to the marketplace realities of a consolidating industry. In such an industry, nothing is more desirable than the opportunity to acquire a cluster intact. Such an opportunity would attract urgently needed investment capital to socially and economically disadvantaged

2/ When it created the Mickey Leland Rule, the Commission declared that "our national multiple ownership rules may, in some circumstances, play a role in fostering minority ownership." Multiple Ownership of AM, FM and Television Broadcast Stations (MO&O on reconsideration), 100 FCC2d 74, 94 (1985). The Mickey Leland Rule provided that an interest of up to 49% in minority-controlled stations would not be subject to attribution with respect to two stations beyond the otherwise applicable national ownership caps. A similar approach was contemplated by Chairman Sikes' plan to allow those who incubated minority owned companies to acquire additional stations beyond the ownership caps. Revision of Radio Rules and Policies (MO&O and Further NPRM), 7 FCC Rcd 6387, 6391 ¶21 (1992) (concluding that "encouraging investment in small business and minority broadcasters is a goal worth pursuing. Minority broadcasters who have had difficulty acquiring the resources to become station owners could significantly benefit from such assistance.")

Hon. Michael Powell
Hon. Kathleen Abernathy
Hon. Jonathan Adelstein
Hon. Michael Copps
Hon. Kevin Martin
May 27, 2003
Page Four.

businesses, including most broadcast companies owned by minorities. 3/

Fourth and most important, by allowing the transfer of clusters intact to SDBs, the Commission would reduce the risk that its new ownership regulations might diminish diversity and impede minority entrepreneurship.

* * * * *

It has been a privilege to participate in this proceeding. We appreciate the considerable time and thought you and members of your staffs have invested over the past nine months in meeting with us and considering our proposals.

Sincerely,



David Honig
Executive Director

cc: Jane Mago, Esq.
Michele Ellison, Esq.
Henry Baumann, Esq.

/dh

3/ The Commission has recognized that "access to capital is the most critical limitation on minority participation in the industry." Revision of Radio Rules and Policies (R&O), 7 FCC Rcd 2755, 2770 ¶28 (1992); see also MMTC Comments, pp. 36-37 (discussing causes of minority broadcasters' lack of access to capital). Lacking substantial equity reserves of their own, most minority owned broadcasters rely heavily on venture capital ("VC") firms as sources of equity. Unless they can enjoy 30-40% returns from broadcasting, VC firms will invest their resources in other industries. This rate of return is generally attainable only by taking advantage of the synergies flowing from multiple ownership, such as clustering. It is usually impossible for a new entrant to assemble a local cluster one station at a time. Consequently, the opportunity for an SDB to enter a market as a cluster owner is regarded by VC firms as especially attractive.