

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202(b) of the Telecommunications Act of 1996)	MM Docket No. 02-277
)	
Cross-Ownership of Broadcast Stations and Newspapers)	MM Docket No. 01-235
)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets)	MM Docket No. 01-317
)	
Definition of Radio Markets)	MM Docket No. 00-244

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

MBC Grand Broadcasting, Inc., through counsel and pursuant to Section 1.106(g) of the Rules, hereby opposes the petition by the National Association of Black-Owned Broadcasters (“NABOB”) and the Rainbow/Push Coalition, Inc., for reconsideration of the FCC’s decision in this proceeding, *Report and Order*, FCC, 03-127, released July 2, 2003.

In the *Report and Order*, the FCC adopted a new definition of radio markets for purposes of determining the maximum number of radio stations that might be owned, operated or controlled by a single entity in a given market. The new definition, based on radio markets delineated by the Arbitron rating service, is a “bright-line” rule; a transaction which leaves the assignee/transferee within the maximum number of stations permitted by Congress under the 1996 Telecommunications Act, P.L. 104-104, § 202(b), 110 Stat. 110, will be granted.

The adoption of a bright-line test was a departure from the FCC's practice since August 1998, when the staff began to "flag" applications for additional, extended economic review where, as the result of the proposed assignment, a single entity would control fifty percent or more of market radio revenue, or two entities would control, in the aggregate, seventy percent or more of market radio revenue. In deciding, in the *Report and Order*, to adopt a bright-line rule, the FCC acknowledged that the effects of the flagging practice were to impose substantial additional costs on buyers and sellers of radio properties and make the outcome of particular transactions difficult if not impossible to predict.¹ (*Report and Order*, ¶ 83; bright-line rules "permit planning of financial transactions, ease application processing and minimize regulatory costs.")

The NABOB petition asks the FCC (*Petition*, pp. 8-9) to retain its "flagging" policy and, indeed, suggests that the thresholds triggering further economic review should be lowered. The sole asserted reason for this request is that the flagging policy "worked very well in informing the public about potential excessive concentration and allowing the public to comment." *Petition*, p. 8.

The NABOB petition does not challenge any of the reasons given by the FCC for abandoning the flagging practice. It does not deny that the practice imposed significant additional costs on the parties to sales agreements. It does not deny that the practice rendered the fate of many contemplated assignments unpredictable. It ignores the fact that, during the entire period in which the staff flagged applications for additional review, although a significant number of assignments and transfers were abandoned because of processing delays, the FCC

¹ In its *Notice of Proposed Rule Making* in MM Docket No. 01-317, FCC 01-239, released November 9, 2001, the FCC admitted (*NPRM*, ¶ 19) that the flagging policy "has led to unfortunate delays that do not serve well the interests of the agency, the parties or the public."

never finally adjudicated the denial of a single application flagged for additional economic review.

In that respect, the flagging policy was not merely inefficient, as acknowledged by the *Report and Order*, but the agency's imposition of additional costs and delays was also arbitrary, capricious, and an abuse of the FCC's power. Neither the NABOB Petition, in seeking retention of the flagging policy, nor the *Report and Order* in replacing it with a bright-line rule, acknowledges the substantial doubt that Congress, in passing the 1996 Act, intended the FCC to have *any* authority to, on a case-by-case basis, refuse to approve any assignment or transfer that complies with Congress's numerical limits. See Comments of MBC Grand Broadcasting, Inc., in MM Docket Nos. 01-317 and 00-244, filed March 27, 2002, pp. 4-7.

NABOB's assertion that the FCC "provided no adequate explanation for eliminating the policy" (*Petition*, p. 8) blinks reality. For the foregoing reasons, and the reasons stated in the *Report and Order*, the Petition for Reconsideration by NABOB and the Rainbow/Push Coalition, Inc., should be swiftly and summarily denied.

Respectfully submitted,

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