

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Elimination of Market Entry Barriers For) MB Docket No. 04-228
Small Telecommunications Businesses and)
Allocations of Spectrum-Based Services)
For Small Businesses and Businesses Owned)
By Women and Minorities)

To: The Media Bureau

**COMMENTS OF
AMERICAN WOMEN IN RADIO AND TELEVISION, INC.**

AMERICAN WOMEN IN RADIO AND TELEVISION, INC. (“AWRT”) hereby responds to the Media Bureau’s request for comments on ways to further the mandate of Section 527 of the Communications Act of 1934, as amended (the “Communications Act”), which directs the Commission to identify and eliminate market entry barriers for small telecommunications businesses, and Section 309(j) of the Communications Act which requires the Commission to further opportunities in the allocation of spectrum-based services for small businesses and businesses owned by women and minorities (DA 04-1690, rel. June 15, 2004). AWRT applauds the Bureau’s decision to initiate further discussion on actions it should take to enhance ownership of broadcast stations by women and minorities and urges the Bureau to take immediate, significant steps to advance the opportunities for women to actively participate in broadcast station ownership.

AWRT is a national, non-profit organization dedicated to advancing the impact of women in electronic media and allied fields through education, advocacy, and serving as a

resource for its members and the industry. AWRT members are professional women and men employed in radio, television, cable, advertising and other closely allied fields. For 53 years, AWRT's mission has been to promote the entry and advancement of women in management and ownership of broadcast companies and related businesses. As an integral part of its support of women's advancement in the broadcasting industry, AWRT has actively participated in numerous Commission proceedings that have addressed ownership and employment issues, including the recently completed second EEO proceeding and on-going Auction 58 proceeding. In addition, AWRT is a member of Chairman Powell's Advisory Committee on Diversity in the Digital Age.

Although the Bureau's notice does not discuss the abysmal state of current broadcast station ownership by women and minorities, the most recent ownership report filings make clear that there is a distressing lack of station ownership by these groups. As previously stated, the advancement of women in the broadcast industry is one of AWRT's central goals. Therefore, AWRT believes that it is imperative for the Commission to take prompt action to encourage diversity of ownership and expand opportunities for women to become station owners. AWRT proposes the Commission adopt additional regulations in two critical areas – access to capital and employment advancement – as soon as possible.

I. WOMEN CONTINUE TO LACK MEANINGFUL MEDIA OWNERSHIP OPPORTUNITIES.

Although women make up 51.7 percent of the population over age 18 in this country, only 3.55 percent of the 11,609 stations submitting ownership reports in 2003 are controlled by women.¹ There likely are several reasons for this disappointing state of affairs; however, AWRT

¹ See 2000 Census Data at <http://censtats.census.gov/data/US/01000.pdf> and *Summary of Data Regarding Female Ownership*, www.fcc.gov/ownership/owner_female_2003.pdf.

believes the two primary reasons for such an appalling statistic are (i) the general lack of access to capital available to women seeking to enter the broadcast ownership arena and (ii) the lack of senior management positions available to women so that they may gain the experience necessary to own their own stations.

Access to capital is one of the more significant impediments to ownership for minorities and women because without capital a station cannot be purchased. AWRT reviewed several recent transactions to determine the purchase prices for smaller market stations and these transactions show that a significant amount of capital is necessary for station ownership – indeed, many small market broadcast stations continue to be sold for in excess of \$500,000. Even the purchase of a construction permit is prohibitively expensive without access to capital.² And, as more than one AWRT member can attest, finding capital has been one of the most difficult aspects to becoming a station owner.

There are several reasons lenders are unwilling to make loans to smaller broadcasters, including reduced rates of return, lack of understanding of the broadcasting business, consolidation in the banking industry, general disfavor of investing in small market stations and lack of interest in smaller transactions.³ Because women-owned businesses tend to be smaller and have less income (sixty-nine percent of women-owned businesses have receipts of less than

² The average minimum opening bid in the FM Auction to be conducted in November 2004 is \$37,840. Public Notice: Revised Inventory and Auction Start Date for FM Broadcast Construction Permits, DA 04-1020, rel. April 15, 2004.

³ One recent study indicates that race and gender play an insidious part in whether a financial institution is willing to make loans to a business. See William D. Bradford, *Discrimination in Capital Markets, Broadcast/Wireless Spectrum Service Providers and Auction Outcomes*, December 5, 2000 at p. 2 (“Bradford Study”).

\$25,000)⁴ addressing the issue of access to capital is one of the most critical areas in which the Commission must act in order to increase the number of women-owned broadcast stations.

A second significant hindrance to women becoming broadcast station owners is the lack of opportunities for women in top management positions at the local station level to provide a training ground for future ownership. Numerous studies have clearly and repeatedly documented that women do not hold many management positions in the broadcasting industry. For example, the most recent Annenberg Public Policy Center Annual Report on Women Leaders in Communications Companies found only fifteen percent of executive leadership positions in the 57 Fortune 500 companies engaged in telecommunications, publishing and printing, entertainment and advertising are held by women.⁵ The most recent RTNDA/Ball State University study reveals that only 12.1 percent of television stations and 13.4 percent of radio stations have women general managers.⁶ Yet another recent study, carried out by M Street on behalf of the Most Influential Women in Radio, found that only 19.3 percent of all management positions at radio stations (general manager, general sales manager, national sales manager, local sales manager and program director) are held by women.⁷ Until women are able to gain access to the top levels of station management they will continue to lack critical experience and confidence to venture into station ownership. Accordingly, the Commission should adopt EEO

⁴ U.S. Census Bureau, Survey of Women-Owned Business Enterprises, 1997 Economic Census.

⁵ *The Glass Ceiling Persists: The 3rd Annual APPC Report on Women Leaders in Communication Companies*, found at www.annenbergpublicpolicycenter.org/04_info_society/omen_leadership/2003_04_the-glass-ceiling-persists-corrected_rpt.pdf.

⁶ Recovering Lost Ground, Bob Paper, RNTDA Communicator, July/August 2004, www.rntda.org/diversity/Diversity2004.pdf.

⁷ Most Influential Women in Radio Press Release: *General Manager Gender Analysis Released by MIW's, Female GM's Still Hard to Find in Radio Industry*, December 2002.

regulations that specifically focus on expanding the opportunity for women to rise in station management.

II. RECENT COURT DECISIONS DO NOT PREVENT THE COMMISSION FROM REMOVING ENTRY BARRIERS THAT PREVENT WOMEN FROM ATTAINING STATION OWNERSHIP.

As the Commission is well aware, Congress has mandated that the Commission act to promote economic opportunity and competition and to ensure that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses. Specifically, the Commission has been directed to “promote the policies and purposes of this Act favoring a diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.”⁸ To attain these goals, Congress has charged the Commission with identifying and eliminating, through regulatory action, “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.”⁹ Further, every three years the Commission must identify those market entry barriers faced by small businesses in the communications industry and report on the specific regulations it has prescribed to eliminate those barriers.¹⁰ Similarly, in Section 309(j) of the Communications Act, Congress directs the Commission to provide area designations and bandwidth assignments that “promote economic opportunity for a wide variety of applicants,

⁸ 47 U.S.C. § 257(b).

⁹ 47 U.S.C. § 257(a).

¹⁰ 47 U.S. C. § 257(c) .

including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”¹¹

Sections 257 and 309(j) reflect Congress’ appreciation of the importance of small business to America’s economy. In fact, small businesses generate two-thirds to three-quarters of new jobs annually in the United States.¹² And as at least one Commissioner has acknowledged, because almost 98 percent of U.S. telecommunications employers are small businesses, much of the future of the telecommunications industry hinges on how well small- to medium-sized businesses do in the national and international economy.¹³ Further, entrepreneurs and small businesses play a crucial role in communications industries by providing service in rural and underserved areas, encouraging innovation and niche operations, and bringing a unique and diverse voice to the public airwaves. It is the importance of small businesses to the economy and the reality of significant market barriers in the communications industry which led Congress to require the Commission to report on the *proactive steps* it takes to establish new rules to help small businesses and promote entrepreneurship and diversity of ownership.

Admittedly, the Commission faces challenges in implementing regulations pursuant to these Congressional mandates. Federal courts reviewing the role that preferences (and specifically race) may play in governmental action have injected a fair amount of uncertainty into the process. In 1995, the United States Supreme Court strictly scrutinized the use of federal race-based programs and held that such programs can survive challenge only if they are

¹¹ 47 U.S.C. § 309(j)(4)(C)(ii).

¹² Small Business Administration Office of Advocacy, *Small Business by the Numbers*, <http://www.sba.gov/advo/stats/sbfaq.html>.

¹³ See *Section 257 Triennial Report to Congress; Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses*, dissenting statement of Commissioner Michael J. Copps, FCC 03-335 (2003).

“narrowly tailored measures that further compelling governmental interests.”¹⁴ More recently, the Supreme Court evaluated race-based education admissions policies and affirmed that the attainment of diversity can be a compelling government interest.¹⁵ These cases also affirm the validity of policies that are narrowly tailored to promote diversity and, moreover, have not abolished the Commission’s statutory obligation to promote small business, women and minority ownership.

Under the guidance of *Adarand*, *Grutter* and *Gratz* the Commission must carefully craft its ownership policies and regulations. For instance, the Commission cannot adopt licensing and assignment practices that employ quotas or award automatic “bonus points” to applicants based on race when doing so would make race a decisive factor, but the Commission can consider race-neutral alternatives for attaining diversity. In addition, the Commission may utilize race-conscious alternatives if no workable race neutral alternative is available. Furthermore, these cases do not prevent the Commission from monitoring the results of its processes to ensure that diversity is being achieved as is required by Section 257.

As the Commission has recently reaffirmed, diversity of ownership is a key Commission policy and encouraging female ownership is an important Commission objective.¹⁶ Furthermore, studies commissioned by the Commission pursuant to Section 257 confirm that there is a link between the race or ethnicity of broadcast owners and the programming content they provide.¹⁷

¹⁴ *Adarand Constructors v. Pena*, 515 U.S. 200 (1995).

¹⁵ *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Gratz v. Bollinger*, 539 U.S. 244 (2003).

¹⁶ *2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order, MB Docket 02-277, released July 2, 2003, para. 46 (“Biennial Review”).

¹⁷ *Diversity of Programming in the Broadcast Spectrum: Is There a Link Between Owner Race or Ethnicity and News and Public Affairs Programming*, Christine Bachen, Allen Hammond, Laurie Mason and Stephanie Craft

Therefore, armed with this information and empowered by Congressional mandate, the Commission must tread carefully, but is nonetheless compelled to further opportunities in the allocation of spectrum-based services for small business and businesses owned by women and minorities and eliminate market entry barriers for small businesses.

III. THE COMMISSION HAS AN OBLIGATION TO ADOPT REGULATIONS AND POLICIES THAT ENCOURAGE MEDIA OWNERSHIP BY WOMEN.

The Commission can and should institute several changes to its regulations to encourage diversity of ownership and expand the opportunity for women, minorities and other small business owners to own broadcast stations. First and foremost, the Commission should work to make access to capital by women a priority.¹⁸ The Commission can and should:

1. Prepare a primer on investment in broadcast ownership for smaller and regional lenders and others willing to provide “small” loans to new owners. Such a primer can provide the guidance necessary to help smaller lenders better understand the industry and encourage them to make broadcast related loans.
2. Prepare a primer for new entry owners to provide guidance on how to find financing. Such a primer should provide potential new owners with sources and “best practices” for obtaining the capital necessary to enter the broadcast ownership arena.
3. Explore allowing sellers to hold a reversionary interest in a Commission license if Seller paper is involved. A Seller may be more likely to finance a new owner’s purchase of its station if it has the power to reacquire the station’s key asset (i.e., its FCC license) if the purchaser defaults on payments. (AWRT recognizes there would need to be stringent guidelines for this option and stands ready to work with the Commission to propose a workable rule.)
4. Revise the current attribution rules to eliminate the EDP regulation for the limited purpose of allowing large broadcasters to invest in legitimate small businesses owned by women and minorities. This would encourage larger companies to assist smaller

(December 1999). *See also Biennial Review* at paras. 26-30 (observing that there appears to be a meaningful connection between the identity of the outlet owner and the content delivered).

¹⁸ The Bradford Study supports the proposition that existing capital market discrimination allows the Commission to adopt policies and regulations that are targeted to minorities and women.

companies to enter the broadcast arena. (AWRT again recognizes this proposal would require stringent guidelines in order to prevent ownership fraud.)

5. Establish a link on the FCC's website to provide information on stations which are available (or may be eligible) for purchase under the Commission's distress sale policy or otherwise available to small businesses, including those owned by women and minorities. Such readily available information about station sales will assist women and minority owned businesses in finding properties to acquire.
6. Adopt closed auctions for new broadcast stations which allow participation only by small businesses owned by women and minorities.¹⁹ Many FM allotments are backlogged under the broadcast auction mandate. Prior to the recently scheduled November 2004 FM auction the Commission allowed noncommercial applicants to request commercial allotments be reserved for noncommercial use. The FCC should adopt a modified version of this procedure to allow allotments to be reserved for women and minorities.

The Commission may take the above actions the its own initiative. However, AWRT also urges the Commission to work with Congress to reintroduce and pass a tax credit initiative similar to that which existed in the early 1990s.

In addition to expanding access to capital, the Commission must take action to encourage current station owners to hire and promote women in order to prepare them for station ownership. As *Grutter/Gratz* hold, diversity is a valid goal under which the Commission can adopt regulations that are preference conscious.²⁰ Accordingly, the Commission should strengthen its EEO policies to ensure increased training at stations to move women in top management and encourage stations to add initiatives for career development and advancement for women. For example, the FCC should allow stations to include in their fulfillment of recruitment initiatives (i) development or participation in mentoring programs designed to

¹⁹ This is the only suggestion which may require further study to establish that discrimination in ownership opportunity is pervasive enough to survive an *Adarand* analysis. However, AWRT believes that there is ample support for this action found in the Commission's own policies of designating certain wireless spectrum for small businesses.

²⁰ To survive an *Adarand* challenge, the Commission may need to have reputable neutral third parties conduct studies to examine how past and current EEO regulations have impacted on women and minorities before strengthening its EEO rules to target women and minority hiring. If this is so, the Commission should conduct such studies as soon as possible.

encourage the retention and advancement of women in station management; (ii) attendance by female station personnel in leadership training programs such as the National Association of Broadcasters Broadcast Leadership Training Program; and (iii) creation of a diversity and advancement program for the company.

IV. CONCLUSION.

Diversity in broadcast ownership promotes quality programming with varied viewpoints, creating a well-informed populace. Indeed, to the limited extent they have been enfranchised, women-owned businesses have brought a diverse influence to the broadcast industry – expanding coverage of issues affecting women to levels not imaginable before gender diversity crept into ownership and senior management. Encouraging minority and female ownership has been an important Commission objective, yet very little has been done to advance this objective. Therefore AWRT respectfully encourages the Commission to take action to speedily adopt regulations and policies that will promote the ownership of broadcast stations by women.

Respectfully submitted,

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