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

In the Matter of	)	
	)	
Revision of Procedures Governing	)	MB Docket No. 05-210
Amendments to FM Table of Allotments	)	RM-10960
And Changes of Community of License	)	
In the Radio Broadcast Services	)	

To The Commission

COMMENTS OF THE MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL

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EXECUTIVE SUMMARY

The streamlined procedures for making AM and FM facility modifications proposed by the Federal Communications Commission ("Commission") in its notice of proposed rulemaking ("NPRM") will generally further the Commission's longstanding goal of promoting ownership diversity in the radio industry. A significant divide continues to exist between nonminority-owned and minority-owned radio stations in terms of size, location, power, and population served. Today, minorities own only 4.2% of the nation's radio stations, located primarily in exurban areas far from their target urban audiences. Such a disparity in ownership of so valuable a public resource as broadcast facilities is unacceptable in a democracy.

The streamlined procedures proposed by the Commission will ease the substantial administrative burden and resultant regulatory delays currently associated with AM and FM facility modifications. Therefore, under the new procedures, investors will be more willing to expend the funds needed to upgrade smaller exurban radio stations. This will, in turn, enable minority owners to serve larger populations and ultimately will result in improved radio service to the public.

In particular, the proposal to allow community of license changes to be made by minor modification will facilitate the relocation of minority-owned exurban stations to urban centers. Such upgrades are in the public interest because they will allow minority owners to enter the nation's top radio markets and better serve their stations' target audiences. Radio station upgrades also will promote more diverse programming and enable radio programming to be delivered to a larger segment of the public. Finally, spectrum vacated by the relocation of stations to urban areas can be backfilled with new rural allotments of new medium-powered FM stations better suited to serve such markets and attractive to new entrants.

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I. INTRODUCTION

The Minority Media and Telecommunications Council ("MMTC"), pursuant to 47 C.F.R. §1.415(a), respectfully submits these Comments in response to the Notice of Proposed Rulemaking ("*NPRM*") issued in the above-captioned proceeding.[1] As discussed below, MMTC generally urges the Federal Communications Commission ("FCC" or "Commission") to adopt the rule changes set forth in the NPRM in order to streamline the procedures for AM and FM station facility modifications. The proposed rule changes will further the Commission's goal of removing market entry barriers that tend to diminish access by small and minority-owned businesses to radio spectrum and the Commission's policy of promoting diversity of media voices.[2]

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[1] *See Revision of the Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Notice of Proposed Rulemaking, 20 FCC Rcd 11169 (2005) ("*NPRM*").

[2] *See* 47 U.S.C. § 257(a) (calling upon the Commission to identify and eliminate "market entry barriers for entrepreneurs and other small business"); 47 U.S.C. § 257(b) (establishing a "National Policy" under which the Commission shall promote "diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity.")

II. STATEMENT OF INTEREST

MMTC is a national nonprofit organization dedicated to promoting and preserving ownership diversity, equal opportunity, and civil rights in the mass media and telecommunications industries. MMTC is recognized as the nation's leading advocate for minority advancement in communications. Since its inception in 1986, MMTC has assisted numerous other national organizations, including the NAACP, the Congressional Black Caucus, the Congressional Hispanic Caucus, the League of United American Citizens, the National Council of La Raza, the National Council of Churches, the National Urban League, the National Bar Association, and the Office of Communication of the United Church of Christ, Inc.[3] MMTC currently represents 54 national organizations before the Commission in various proceedings in furtherance of the goal of enhancing diversity in communications technology and media.

III. MINORITY OWNERSHIP OF DESIRABLE RADIO STATIONS IS LACKING

The Commission long ago recognized the "dearth of minority ownership in the broadcast industry" and the detrimental impact the disparities between minority-owned and nonminority-owned stations have on the public interest.[4] Citing the "acute underrepresentation of minorities among the owners of broadcast properties,"[5] the Commission nearly thirty years ago observed that "the views of racial minorities continue to be inadequately represented in the broadcast media."[6] The Commission found that such underrepresentation of minorities in the broadcast media "is detrimental not only to the minority audience but to all of the viewing and listening

[3] These Comments reflect the institutional views of MMTC and are not intended to reflect the views of any individual member of MMTC, its Board of Directors, or its Board of Advisors.

[4] *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC2d 979 (1978).

[5] *Id*. at 981.

[6] *Id*. at 980.

public."[7] Further, the Commission noted that representation of minority viewpoints "enhances the diversified programming which is a key objective of not only the Communications Act of 1934 but also of the First Amendment."[8] The Commission concluded that "unless minorities are encouraged to enter the mainstream of the commercial broadcasting business, a substantial portion of our citizenry will remain underserved, and the larger nonminority audience will be deprived of the views of minorities."[9]

Recognizing this disparity between minority-owned and nonminority-owned broadcast stations, the Commission has adopted policies intended to promote greater minority ownership in the broadcast industry. The Commission's tax certificate policy, which enabled the seller of a broadcast station to defer the gain realized upon the sale of the station to a minority buyer, provided an incentive to sell broadcast properties to minority buyers.[10] Similarly, the Commission's distress sale policy allows a broadcast licensee whose license has been designated for revocation hearing to sell its station to a minority-owned or minority-controlled entity at a price substantially below fair market value.[11] Additionally, the Commission more recently has exercised its spectrum management authority to promote greater minority participation in the radio industry.[12]

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[7] *Id*. at 980-81.

[8] *Id*. at 981.

[9] *Id*.

[10] *See Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, Policy Statement, 92 FCC2d 849, 856 (1982).

[11] *See id*. at 858-59.

[12] *See, e.g.*, "FCC Chairman Michael Powell Announces Opening of Application Window for AM Radio Service: Powell Highlights Strengthening of Minority owned AM Stations," News Release (rel. Nov. 6, 2003) (in which then Chairman Powell stated that opening the filing window "will enable all AM radio station licensees, many of whom represent minority interests, to apply for approval to move their transmitters to locations that better serve their local communities" and that "better signal coverage will increase the diversity of radio options available to listeners and will enhance the viability of AM stations.").

The nation continues to face a great disparity in terms of minority ownership of radio stations. Presently, minorities control only 4.2% of the nation's radio stations. Moreover, because these minority-owned radio stations tend to be lower-powered or exurban facilities, they constitute a mere 1.3% of the radio industry's asset value. The reasons for these disparities between minority-owned and nonminority-owned radio stations are well established. For two generations, minorities were excluded from radio station ownership by societal discrimination and by the FCC's licensing policies.[13] By the time minorities had a meaningful opportunity to purchase radio stations, the most desirable allotments already were occupied. As a result, minority broadcasters generally were left with exurban and lower-powered radio properties located at considerable distances from their audiences who generally live in urban centers. In fact, recent studies of minority-owned radio stations found that minority-owned radio stations were more likely to operate at lower power levels, in smaller markets, and on less desirable spectrum than nonminority-owned radio stations. For example,[14]

- Of the 548 minority-owned stations in 2001, 283 (51.6%) were AM stations; of the 12,469 nonminority-owned stations, 4,498 (36.1%) were AM stations. Thus, a minority-owned station was 43% more likely than a nonminority-owned station to be an AM station.

- Minorities own none of the 25 unduplicated AM "clears." Those licenses were typically given out in the 1920s, a generation before minorities owned any radio stations.

- Of the 283 minority-owned AM stations in 2001, 23 (8.1%) operated between 540-800 kHz. Of the 4,498 nonminority-owned AM stations, 569 (12.7%) operated between 540-800 kHz. Minorities were 36% less likely than

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[13] *See generally* Comments of MMTC, MB Docket No. 02-277 (Omnibus Broadcast Ownership Proceeding) (filed Jan. 2, 2003) at 19-35.

[14] The 2001 radio statistics given are derived from Kofi Ofori, "Radio Local Market Consolidation & Minority Ownership" (MMTC, March 2002). The 2003 radio statistics given are from "Minority and Nonminority Commercial Radio Owners' Holdings in the Top 50 Markets" (MMTC, September 2003). Both studies used BIA databases. Data for minority-controlled stations included data for four publicly traded radio companies, each of which is controlled by minorities. Like the Commission, MMTC refers to such stations as "minority-owned." All references are to commercial facilities.

nonminorities to own these low-band facilities. This also means that only 3.9% of the low-band AM stations were minority-owned.

- Of the 283 minority-owned AM stations in 2001, 96 (33.9%) operated between 1410-1600 kHz. Of the 4,498 nonminority-owned AM stations, 1,277 (28.4) operated between 1410-1600 kHz. Thus, minorities were 19% more likely than nonminorities to own these high-band facilities.

- Of the 265 minority-owned FM stations in 2001, 20 (7.5%) were full Class C's. Of the 7,971 nonminority-owned FM stations, 895 (11.2%) were full Class C's. Thus, minorities were 33% less likely than nonminorities to own the most powerful FM stations in the country. This also means that only 2.2% of the full Class C's were minority-owned.

- Of the 265 minority-owned FM stations in 2001, 128 (48.3%) were Class A's. Of the 7,971 nonminority-owned FM stations, 3,185 (40.0%) were Class A's. Thus, minorities were 22% more likely than nonminorities to own these lower power facilities.

If current FM relocation and ownership patterns were frozen, the Commission could never close these ownership disparities—much less keep pace with the rapid growth of minority populations and of minority businesses. Census data shows that between the 1990 and 2000 population counts, population growth among minority groups has dramatically outpaced nonminority population growth. This growth is not occurring just in expected places. In virtually every American urban area of significant size, the Census-enumerated minority population is growing at a much more rapid rate than the population as a whole. This is particularly true in the core, older urban communities within the larger Arbitron Metro survey areas. Furthermore, examining the top 30 Arbitron Radio markets, we find that the average rate of population growth is 17%.[15] This, in itself, outstrips the overall U.S. population growth rate of 13%.[16] The growth of the minority community within urban areas is even more profound. The same Arbitron Metro Survey areas that grew at 17% between the two Census counts saw

[15] *See* 1990 and 2000 U.S. Census Block Groups.

[16] *See* 1990 U.S. Census Population = 248,709,873; 2000 U.S. Census Population = 281,421,906.

African American populations grow 24%,[17] Asian American populations grow 69%,[18] and Latino populations double.[19]

The formats in the largest radio markets, however, simply do not reflect these realities.[20] For example, in the New York City Arbitron Radio Metro,[21] home to 2.6 million Latinos,[22] only 6 of the area's 74 radio stations[23] broadcast predominantly in Spanish.[24] In Los Angeles only 19 out of 73 stations[25] broadcast predominantly in Spanish—even though the Los Angeles Arbitron Metro population is 41% Latino.[26]

Fortunately, the minority "enterprise base," which consists of entrepreneurs having the business skills and resources to enter the broadcasting field, is also growing steadily. As evidenced by the attached U.S. Census maps[27] showing the proliferation of new minority enterprises, Latino, African American or Asian American entrepreneurs are poised to enter FM broadcasting if only the opportunities existed. While it is clear that band congestion and interference concerns must be overcome to create new services in urban areas, unless FM stations can be created or moved in from outlying areas into central cities, these minority entrepreneurs cannot grow their companies to meet their communities' needs and compete effectively with incumbents.

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[17] *See* U.S. Census Block Groups, 1990 and 2000; *see* Exhibit 1 hereto, page 3.

[18] *See* U.S. Census Block Groups, 1990 and 2000; *see* Exhibit 2 hereto, page 3.

[19] *See* U.S. Census Block Groups, 1990 and 2000; *see* Exhibit 3 hereto, page 3.

[20] Arguably, in smaller Arbitron Metros, the disparity is even more accentuated.

[21] Only the portion of the Arbitron Metro within New York State was analyzed.

[22] *See* 2000 U.S. Census Block Groups.

[23] *Id.*

[24] *See* BIA Radio Analyzer (2005).

[25] *Id.*

[26] *See* 2000 U.S. Census Block Groups.

[27] *See* Exhibit 4 hereto.

Notwithstanding that the Commission has fostered minority participation in the broadcast industry for two decades, a significant divide continues to exist between minority-owned and nonminority-owned stations. Consequently, the Commission should continue to promote the full participation of minorities in the broadcast industry, and MMTC commends the Commission for considering the AM and FM rule changes proposed in this proceeding.[28] As explained below, the proposed rule revisions generally will give small and minority-owned businesses greater opportunities to upgrade existing minority-owned stations, to acquire more valuable stations in larger markets, to better serve their target audiences, and to provide diverse programming to larger numbers of minority and nonminority listeners.

IV. THE PROPOSED RULE CHANGES WILL PROMOTE DIVERSITY IN RADIO STATION OWNERSHIP AND DIVERSITY OF PROGRAMMING

In the *NPRM*, the Commission seeks comment on proposed changes to certain of its procedures for amending the FM Table of Allotments (the "Table") and for modifying AM and FM facilities. In particular, the Commission proposes to permit AM and FM station community of license changes to be resolved by minor modification application on a first-come, first-served basis, rather than by AM auction filing window applications or FM rulemaking proceedings to change the Table.[29] The Commission also proposes to mandate the filing of Form 301 when filing petitions for rulemaking to amend the Table[30] and to eliminate the rule prohibiting

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[28] Minority ownership is "an important aspect of the problem" of broadcast regulation. *Prometheus Radio Project v. FCC*, 330 F.3d 372 (3d Cir. 2004) ("*Prometheus*"), *cert. denied*, 125 S.Ct. 2902 (2005) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983). Consideration of the impact of new broadcast rules on minority ownership is also compelled by the Commission's obligation to make the broadcast spectrum available to all people "without discrimination on the basis of race", *47 U.S.C. §151 (1996)* (cited in *Prometheus, 330 F.3d at 421 n. 8*).

[29] *NPRM* at 11178 ¶27.

[30] *Id*. at 11181 ¶34.

electronic filing of petitions for rulemaking to amend the Table.[31] MMTC supports the proposed rule changes and urges the Commission to adopt them.[32]

Procedurally, the proposed rule changes will streamline the Commission's radio station allotment and modification procedures and allow for expedited processing of AM and FM facility modifications. Processing times for FM allotment changes currently run for several years, and AM filing windows occur infrequently. In MMTC's experience, these processing delays deter investment in the radio industry and discourage *bona fide* proponents from attempting to improve radio service to the public. The proposed streamlined procedures will allow the Commission to use its resources more efficiently and reduce the administrative burdens placed on the Commission's staff. They also will allow applicants to enjoy increased regulatory certainty and avoid the processing delays that historically have beleaguered the AM and FM major modification process. As a consequence of the new procedures, more investors will be willing to expend the funds needed to upgrade smaller exurban radio stations, which will enable minority owners to serve larger populations and ultimately will result in improved radio service to the public.

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[31] *Id*. at 11183 ¶39.

[32] However, the Commission should not strictly limit the number of channel changes that may be proposed in one proceeding to amend the Table. *See id*. at 11182-83 ¶¶35-37. To optimize the number of voices in a crowded FM environment, incumbent in-market stations must be relocated to other nearby frequencies–generally, one or two channels distant from an incumbent station's current place on the dial. Since incumbents typically resist the creation of additional stations, established licensees are not likely to cooperate in any spectrum rationalization plan that facilitates new market entrants. In effect, this permits incumbent broadcasters to cast a veto against newcomers. Even if such cooperation were always forthcoming, no broadcaster seeks to diminish the coverage or reliability of its existing signal. In almost all cases, this means that existing, incumbent stations must change frequency to enable full use of available spectrum–and such changes must, of course, protect existing and proposed FM facilities. In the crowded top 30 Arbitron markets, it is difficult or impossible to move a station into the market unless more than five facilities are relocated. Rather than prohibit such move-ins outright, the Commission should permit them upon a showing that a simpler solution is unavailable and that reasonable efforts have been made to cooperate with incumbents. Further, to reduce burdens on Commission staff attendant to analyzing complex proposals, the Commission should consider outsourcing analysis of these (and perhaps other) move-in applications to qualified independent engineering firms.

Further, allowing community of license changes to be made by minor modification application also will provide small and minority-owned businesses with greater opportunities to serve the urban markets where their core audiences reside. As explained above, minority-owned stations predominantly are located in exurban areas far from the urban listeners that they often target. The Commission's proposal to allow community of license changes to be made by minor modification will facilitate the relocation of minority-owned exurban stations to urban centers.[33] Such upgrades are in the public interest for several reasons:

First, upgrades will offer small and minority-owned businesses a meaningful opportunity to operate or acquire higher-powered radio stations in larger and more desirable markets. In 2003, there were only 87 minority-owned FM stations in the top 50 markets, compared to 897 nonminority-owned stations in the same markets.[34] Given the paucity of minority-owned stations in the top 50 markets, the Commission should foster procedures that will encourage minority ownership of more powerful radio stations in the nation's top markets. The Commission's minor modification approach will facilitate the relocation of radio stations to more desirable markets, creating a greater number of stations that small and minority-owned businesses can operate or acquire in such markets.

Second, upgrades will allow minority-owned stations to serve the audiences that most want to hear the programming offered by such stations. As explained above, currently there is a geographical divide between minority-owned stations, which predominantly are located in exurban areas, and the urban listeners most likely to listen to such stations. The Commission's

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[33] The Commission's minor modification approach is consistent with the mandate of Section 307(b) of the Communications Act for the fair, efficient, and equitable distribution of radio service. Under the minor modification approach, the Commission will review each Section 307(b) showing individually on its own merits, rather than having to compare competing proposals. Thus, Section 307(b)'s requirements will be satisfied.

[34] *See supra* at 4 n. 14.

minor modification approach will allow minority radio station owners to more readily correct this anomaly by applying for relocation of the stations to areas closer to their target audiences.

Third, upgrades will allow minority-owned stations to serve larger populations than those currently served in exurban areas. The audiences most likely to listen to minority-owned stations generally are located in urban centers with larger populations than the exurban communities currently served by most minority-owned stations. The Commission's minor modification approach will permit such stations to apply to move closer to urban centers and serve a larger number of people.

Fourth, upgrades will enhance the value of the minority-owned stations because the stations will be positioned to serve their intended audiences in urban centers. As a result of the increased value of their stations, minority owners also will be able to secure the capital necessary to improve their stations, resulting in better service to the public and increased competition with longer-tenured incumbent station operators.

Fifth, upgrades will result in diverse programming being delivered to a larger segment of the public. In general, minority-owned stations are more likely than incumbent stations to air international, multilingual, and other programming specifically responsive to the needs of minority listeners. By facilitating the relocation of minority-owned stations to urban centers, the Commission is enabling the stations to deliver this diverse programming not only to their target audiences, but also to a greater number of nonminority listeners.

Sixth, upgrades will promote the availability to the public of more diverse program formats. Currently, in markets served by fewer stations there is a dearth of programming formats. As a result, a mere handful of formats dominate the airwaves across much of the country. In urban markets, however, where there are more radio stations, competition for listeners is more vigorous, and radio stations have a greater incentive to differentiate programming and establish niche audiences. Thus, relocation of minority-owned and nonminority-owned stations to urban centers will result in more diverse programming formats being delivered to the public.

In sum, streamlining the procedures for AM and FM application processing will conserve Commission resources and expedite the processing of AM and FM modifications, creating an incentive for increased investment in the radio industries and facility improvements. Further, the streamlined procedures will increase the value of existing minority-owned stations by enabling them to maximize the use of their facilities. Finally, the new procedures will provide small and minority-owned businesses with greater opportunities to move into and serve the urban markets where their target audiences reside, resulting in larger audiences and the availability of more diverse programming.

V. THE NEW PROCEDURES WILL NOT DETRACT FROM RURAL SERVICE

The new procedures will likely expand service in growing urban areas having the largest numbers of persons per radio station. However, they will not detract from rural service because spectrum vacated by stations relocating to urban areas can be backfilled with new rural allotments.[35] The FCC's Advisory Committee on Diversity for Communications in the Digital Age has urged the Commission to issue notices of proposed rulemaking which would, *inter alia*, create new classes of medium-powered FM stations designed primarily for small rural markets. These new FM stations would be especially attractive to new entrants, particularly minorities.[36] The new stations could fit well into the spectrum gaps that would be created as other FM stations

[35] Indeed, in each of the recent FM auctions, great interest has been shown in the allotments that were offered. *See NPRM* at 11172 ¶11. For the most part, these allotments served rural areas.

[36] *See* Advisory Committee on Diversity for Communications in the Digital Age: Recommendation on Diversifying Ownership in the Commercial FM Radio band (Subcommittee Draft, October 4, 2004; adopted by the Full Committee December 10, 2004); *see also* Advisory Committee on Diversity for Communications in the Digital Age: FM White Paper: Recommendations for FCC Consideration of Nine Means of Diversifying Ownership in the Commercial FM Radio Band (June 11, 2004).

relocate to urban areas. MMTC encourages the Commission to consider the Diversity Committee's recommendations as a complement to the instant rulemaking and as a next step in comprehensive FM spectrum management reform.

Respectfully submitted,

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Attachments (Exhibits 1-4)