

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 06-121
	)	
	)	
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	)	MB Docket No. 02-277
	)	
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244
	)	
To the Commission		

**REQUEST FOR RULING ON “MOTION FOR WITHDRAWAL OF  
THE FURTHER NOTICE OF PROPOSED RULEMAKING AND FOR THE  
ISSUANCE OF A REVISED FURTHER NOTICE” AND, IN THE ALTERNATIVE,  
FOR ORAL ARGUMENT AND AN EXTENSION OF THE COMMENT DATE**

The Diversity and Competition Supporters (collectively “MMTC”) respectfully request prompt action on their August 23, 2006 “Motion for Withdrawal of the Further Notice of Proposed Rulemaking and for the Issuance of a Revised Further Notice” (“Motion”). Should that not be not possible by the end of this week (September 15, 2006), MMTC (1) requests oral argument before the full Commission, and (2) requests an extension of the September 22, 2006 comment deadline until October 22, 2006 to afford the Commission time to consider the Motion and to afford the parties sufficient time to absorb and act in accordance with the Commission’s ruling.

The Motion is ripe for an immediate grant. Oppositions to the Motion were due September 5, 2006. Notwithstanding the Motion's importance to hundreds of parties, not one opposition was lodged.

Comments in response to the Further Notice of Proposed Rulemaking ("FNPRM")<sup>1</sup> are due September 22, 2006 – eleven days from today. MMTC has received calls from several other parties and their counsel expressing concern about whether they will need to file comments on September 22, whether the FNPRM will be withdrawn and the clock restarted, or whether the Commission will take any other steps that could affect the comment date. The parties and their counsel should be advised whether the September 22 date will stand.

In this proceeding, MMTC wishes to propose 24 minority ownership initiatives. Nearly all of them are deregulatory efforts to reduce market entry barriers, as contemplated by Congress in Section 257 of the Communications Act, 47 U.S.C. §257. At the same time, MMTC will continue to oppose most large-scale structural deregulation as mistaken, unnecessary, or at best premature until the Commission ends the near-exclusion of minorities from ownership of the nation's airwaves. Other parties are seeking new regulatory and deregulatory initiatives. All of this work will be for naught if the Commission does not proceed from a clean and sustainable rulemaking notice.

The Motion demonstrated that unless the FNPRM is withdrawn and a revised further notice is issued, the Commission most likely would be unable to adopt any minority ownership proposals.<sup>2</sup> Minority ownership is an integral part of the proceeding; therefore, if the

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<sup>1</sup> 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 06-121 (Further Notice of Proposed Rulemaking), FCC 06-93 (released July 24, 2006) ("FNPRM").

<sup>2</sup> See Motion at 18-23.

Commission mishandles minority ownership, any other rules the Commission adopts would probably have to be vacated in their entirety.<sup>3</sup>

The FNPRM contains three potentially fatal mistakes. First, by failing to identify and describe the 14 proposals MMTC filed in the 2002 Biennial Review, the FNPRM violated the mandate in Prometheus.<sup>4</sup> Second, by not doing as the Court expects by seeking comment on the definition of a socially and economically disadvantaged business (SDB), the Commission has essentially already denied ten of MMTC's 14 original proposals.<sup>5</sup> Third, by not identifying Section 257 of the Communications Act as a key legal basis for this proceeding, the FNPRM has made it far more difficult for the Commission to adopt any new minority ownership initiatives.<sup>6</sup>

The Administrative Procedure Act only requires an agency conducting a rulemaking proceeding to do two things: (1) describe the proposals it has received, and (2) give a rational basis for granting or rejecting them.<sup>7</sup> The remand in Prometheus was triggered by the Commission's failure to perform the first of these two steps in response to voluminous proposals filed by seventeen national organizations. Such an omission in a Report and Order is so unusual that until Prometheus there were almost no cases on point.<sup>8</sup> In response to the Court's remand,

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<sup>3</sup> See Motion at 22.

<sup>4</sup> See Motion at 6-12 (discussing Prometheus Radio Project v. FCC, 373 F.3d 372 (3d Cir. 2004) ("Prometheus"), stay modified on rehearing, No. 03-3388 (3d Cir., September 3, 2004), cert. denied, 125 S. Ct. 2902 (2005).

<sup>5</sup> See Motion at 12-13.

<sup>6</sup> See Motion at 13-14.

<sup>7</sup> See, e.g., 5 U.S.C. §555(e), which requires that an agency give "[p]rompt notice...of the denial in whole or in part of a...request of an interested person made in connection with any agency proceedings...the notice shall be accompanied by a brief statement of the grounds for denial." See also 5 U.S.C. §553(c), which requires agencies to consider the "relevant matter presented" and "incorporate in the rules adopted a concise general statement of their basis and purpose."

<sup>8</sup> One must reach back 19 years to find a similar example. See City of Brookings Municipal Telephone Co. v. FCC, 822 F.2d 1153, 1163 (D.C. Cir. 1987) (remanding the Commission's decision to modify the methods for reimbursing local telephone companies for interstate service costs where the Commission failed to consider alternatives that were outlined in rulemaking comments).

the Commission should avoid even the appearance of dishonoring the APA and the Court's mandate.

Should the Commission be unable to act on the Motion by the end of this week (September 15, 2006), MMTC respectfully requests that the Motion be orally argued before the full Commission as provided by 47 CFR §1.423.<sup>9</sup> Finally, if the Commission is unable to grant this Motion by September 15, 2006, MMTC requests an extension of the September 22, 2006 comment deadline until October 22, 2006 to afford the Commission time to consider the Motion and to afford the parties sufficient time to absorb and act in accordance with the Commission's ruling.

Respectfully submitted,

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<sup>9</sup> In Cable Television Syndicated Program Exclusivity Rules, 79 FCC2d 652, 661 (1980), the Commission rejected the National Association of Broadcaster's request for oral argument because it deemed the extensive written record to be sufficient. That holding is inapposite here if the Commission is unable to rule on the Motion without an open discussion of the merits.