

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

In the Matter of)	
)	
2006 Quadrennial Regulatory Review - Review of)	MB Docket No. 06-121
the Commission's Broadcast Ownership Rules)	
and Other Rules Adopted Pursuant to Section 202)	
of the Telecommunications Act of 1996)	
)	
2002 Biennial Regulatory Review - Review of)	MB Docket No. 02-277
the Commission's Broadcast Ownership Rules)	
and Other Rules Adopted Pursuant to Section 202)	
of the Telecommunications Act of 1996)	
)	
Cross-Ownership of Broadcast Stations and)	MM Docket No. 01-235
Newspapers)	
)	
Rules and Policies Concerning)	MM Docket No. 01-317
Multiple Ownership of Radio Broadcast)	
Stations in Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244

To: The Commission

**REPLY COMMENTS
OF
THE NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.
AND
THE RAINBOW/PUSH COALITION, INC.**

The National Association of Black Owned Broadcasters, Inc. ("NABOB") and Rainbow/PUSH Coalition, Inc. ("Rainbow/PUSH"), by their attorneys, hereby submit their Reply Comments in the above-captioned proceedings. NABOB and Rainbow/PUSH submit that it is not possible to provide a complete reply to the record in this proceeding, because the record is grossly

deficient at this point. Therefore, NABOB and Rainbow/PUSH reserve the right to supplement these Reply Comments after the Commission more appropriately develops the record in this proceeding.

The record is currently deficient in two very significant respects.

I. THE RECORD IN THIS PROCEEDING IS INCOMPLETE AND DEFICIENT AND IT IS NOT POSSIBLE TO PROVIDE COMPLETE REPLY COMMENTS AT THIS TIME

First, as explained in the Comments of NABOB and Rainbow/PUSH, filed October 23, 2006, on remand the Commission has the clear burden of developing a record and a set of rules that will adequately respond to the flaws found by the Third Circuit Court of Appeals.¹ In order to develop an adequate record, the Commission must begin by addressing the issues raised by the MMTC Motion filed on August 23, 2006, in which, MMTC pointed out the deficiencies in the FNPRM in this proceeding.² MMTC demonstrated that the FNPRM (1) fails to identify and describe the minority ownership proposal remanded by the Third Circuit, (2) fails to seek comment on a definition of socially and economically disadvantaged business (“SDB”), and (3) it fails to cite Section 257 of the Telecommunications Act, 47 U.S.C. Section 257, as a source of authority for the actions that may be taken in this proceeding to promote minority ownership. As explained by MMTC, the Commission must issue a revised FNPRM to rectify these deficiencies. The Commission still has not acted upon the MMTC Motion and has failed to correct the procedural deficiencies in its FNPRM. Therefore, it is not possible to provide complete Reply Comments at this

¹ *Prometheus Radio Project v. Federal Communications Commission*, 373 F.3d 372 (3d Cir. 2004).

² Motion for Withdrawal of the Further Notice of Proposed Rulemaking and for the Issuance of a Revised Further Notice, filed by MMTC, August 23, 2006, in this proceeding.

time.

Second, on November 22, 2006, the Commission issued a Public Notice announcing that it will conduct ten studies as part of its review of its media ownership rules. These studies have not been completed, and it is therefore impossible for parties to comment on these studies. In addition, the brief descriptions of the studies provided by the Commission raise serious questions about whether the studies will cover all necessary subjects or go into the appropriate depth in their examination of those subjects. For example, the Commission describes studies 7 & 8, the Minority Ownership studies, as follows: “These two studies will examine levels of minority ownership of media companies and barriers to entry.” This description suggests that the studies will not be extensive enough to provide useful information in this proceeding. In our Comments, NABOB and Rainbow/PUSH described the research the Commission needs to provide in this proceeding. At pages 5-6 of our Comments, we quoted from the Comments of a distinguished group of academics who proposed the following scope of the studies that need to be developed in this proceeding:

The FCC should also look at the effect of consolidation on minority and female ownership. In consolidated markets, has minority or female ownership increased or decreased? The September 2006 study by Freepress, “Out of the Picture: Minority & Female TV Station Ownership in the United States, Current Status, Comparative Statistical Analysis & the Effects of FCC Policy and Media Consolidation,” found that television markets with minority owners are significantly less concentrated than markets without minority owners. Freepress’ analysis of television ownership also found that markets that saw the addition of new minority owned stations since 1988 are significantly less concentrated than markets that did not gain new minority owners. The Freepress study also suggested the FCC conduct a comprehensive study of every licensed broadcast radio and television station to determine the level of female and minority ownership, examining changes since 1999, focusing on station format and content including local news, and analyzing the effect of consolidated markets on minority and female ownership. An FCC study of market concentration and minority and female ownership in radio similar to that conducted by Freepress of market concentration for television markets would yield useful data in examining the

effects of consolidation policies since the passage of the Telecommunications Act of 1996.

The FCC study should examine factors that influenced minority and women owners' decisions to buy or sell stations since the Telecommunications Act of 1996, including ownership consolidation, major mergers with spin-offs, capital markets and access to capital. The study should also seek information on the effect of consolidation on advertising prices. Many minority owners allege that some consolidators will sell advertisements on their African-American formatted stations for \$1 in a package with their other stations (a dollar a holler), making competition impossible for minority and small entrepreneurs who cannot amortize their costs across several stations in a market or across several markets. The study should also examine the interaction of consolidation with the practices in the advertising industry that pay broadcasters with minority formats or minority audiences less than those with non-minority formats or audiences. Such practices result in lower cash flows for stations which program in minority-oriented formats and serve predominantly minority audiences, making it more difficult to attract financing needed to buy other stations and creating disincentives to provide such programming. [footnotes omitted]³

The studies described by the Commission fall far short of providing the information called for above by the academic community. In addition, even the limited information the Commission plans to develop in its studies is not currently available. Therefore, NABOB and Rainbow/PUSH cannot provide complete Reply Comments at this time. We must, instead, reserve our right to file additional comments after the studies have been made available to the public.

II. THE COMMISSION SHOULD RETAIN ITS MULTIPLE OWNERSHIP RULES WITH THE MINOR MODIFICATIONS PROPOSED BY NABOB AND RAINBOW/PUSH

³ Comments, dated October 23, 2006, from Catherine J. K. Sandoval, et al, filed in this proceeding.

In our Comments in this proceeding, NABOB and Rainbow/PUSH provided a substantial showing of the need for the Commission to retain its multiple ownership rules with minor modifications. NABOB and Rainbow/PUSH will not repeat the discussion provided in our Comments, and in our Petition for Reconsideration, which is still pending from 2003. Instead, we will summarize the principal points made previously. As we stated, the Commission should review NABOB and Rainbow/PUSH's request for reconsideration of the decision to eliminate review of market share information in radio assignment and transfer cases. The Commission's decision to no longer consider market share information was one of the principal flaws in the Commission's 2003 Order identified by the Court. In our Comments, NABOB and Rainbow/PUSH showed that there is overwhelming evidence in the record justifying reinstating the market share review procedure known as "flagging." The Court's decision supports this conclusion.

The additional points raised in our Comments are:

1. The Commission should adopt policies to promote minority ownership in this proceeding, not in a separate proceeding to be instituted at some unspecified date.
2. The Commission should require divestiture of radio ownership clusters that exceed the local radio ownership rules and should not grandfather these clusters.
3. If the Commission does not eliminate its grandfathering policy, the Commission should allow minority owned companies to own stations equal to the number of stations owned by the largest group owner in the market.
4. If the Commission does not eliminate its grandfathering policy, it should allow station clusters to be sold to minority owned companies, regardless of the size of the minority owned

company.

5. The Commission should not count noncommercial stations in determining the number of stations in a local radio market.

6. The Commission should not relax its ownership rules to allow greater combinations of radio, television, and newspaper ownership. 1. As a part of its public interest review, the Commission should assess the impact on minority ownership of all assignment of license and transfer of control applications.

7. The Commission should eliminate its policy of granting 6, 12 and 18 month waivers of the broadcast ownership rules, which waivers are ostensibly to allow parties exceeding the rules to find potential buyers. Applications to sell stations to third party buyers should be filed simultaneously with the underlying assignment and transfer applications. The Commission's approach to granting waivers has been so exploited by the large group owners as to make the current ownership rules "window dressing."

8. The Commission should continue to urge Congress to reinstate the minority tax certificate policy.

These issues all should be addressed in this proceeding.

III. CONCLUSION

NABOB and Rainbow/PUSH submit that the Commission must correct the procedural deficiencies in the FNPRM, as set forth in the MMTC Motion. In addition, the Commission cannot adopt rule changes in manner that will meet the requirements of the Court's remand decision on the basis of comments received in this proceeding until the Commission completes studies that address

all of the issues set forth above. The Commission must develop such studies and then make them available for public comment. Absent such a procedure, any resulting rule changes will be unable to meet the standard of review set forth by the Court. In addition, as explained in detail in NABOB and Rainbow/PUSH's Comments, the Commission should review the record information that was not adequately considered by the Commission in 2003, in particular, the evidence demonstrating, as the Court noted, that market share information should continue to be used to review radio assignment and transfer cases. The Commission should also act upon the issues raised in NABOB and Rainbow/PUSH's Petition for Reconsideration.

Respectfully submitted,

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