

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

In the Matter of)	
)	
2006 Quadrennial Regulatory Review – Review)	MB Docket No. 06-121
of 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)	MB Docket No. 02-277
of 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 Multiple)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations in)	
Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244
)	
Ways to Further Section 257 Mandate and To)	MB Docket No. 04-228
Build On Earlier Studies)	

To: The Commission

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ submits this reply to certain comments on the Commission’s *Second Further Notice of Proposed Rulemaking* in this

¹ The National Association of Broadcasters is a trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission and the Courts.

proceeding.² In the *Notice*, the Commission sought comment on a number of proposals offered by the Minority Media and Telecommunications Council (“MMTC”) designed to increase minority and female participation in the broadcast industry, as well as on the general issue of fostering minority and female ownership. In response to the *Notice*, NAB filed comments supporting generally many of the proposals offered by MMTC that could boost minority and female participation in the broadcast industry.³ NAB encouraged the Commission to adopt policies that emphasize public/private partnerships and rely on market-based stimulants to boost minority and female ownership.

In this reply, NAB again encourages the Commission to recognize that the public interest is best served by policies designed to encourage greater minority and female participation in a vibrant communications industry. The Commission should reject calls from some commenters in this proceeding to create a fragmented, undercapitalized broadcast industry as a means of promoting minority and female ownership. Instead, the Commission must recognize current market realities and look for solutions that promote the long-term survival of women and minority entrants into broadcasting.

When evaluating calls from some commenters to roll back the radio and television ownership limits set in the 1990s as a way to promote the ownership of broadcast stations

² *Second Further Notice of Proposed Rule Making* in MB Docket Nos. 06-121, 02-277 and 04-228, and MM Docket Nos. 01-235, 01-317, and 00-244, FCC 07-136 (rel. August 1, 2007) (“*Notice*”).

³ *See* Comments of the National Association of Broadcasters in MB Docket Nos. 06-121, 02-277 and 04-228, and MM Docket Nos. 01-235, 01-317, and 00-244 (filed Oct. 1, 2007)(“NAB Comments”).

by minorities and women,⁴ NAB urges the Commission to consider the state of the broadcast industry in the early 1990s before the ownership rules were reformed to permit a more economically efficient level of common ownership.

In 1992, for example, the Commission found that, due to “market fragmentation,” many in the radio industry were “experiencing serious economic stress.”⁵ Specifically, stations were experiencing “sharp decrease[s]” in operating profits and operating margins. *FCC Radio Order*, 7 FCC Rcd at 2759. By the early 1990s, “more than half of all stations” were losing money, and “almost 300 radio stations” had gone silent. *Id.* at 2760. Given that the radio industry’s ability “to function in the ‘public interest, convenience and necessity’ is fundamentally premised on its economic viability,” the Commission concluded that “radio’s ability to serve the public interest” had become “substantially threatened.” *Id.* Accordingly, the Commission believed that it was “time to allow the radio industry to adapt” to the modern information marketplace, “free of artificial constraints that prevent valuable efficiencies from being realized.” *Id.*

Motivated by such concerns, Congress in 1996 acted to “preserve and to promote the competitiveness of over-the-air broadcast stations.”⁶ Congress found that “significant changes” in the “audio and video marketplace” called for a “substantial reform of Congressional and Commission oversight of the way the broadcasting industry develops and competes.” *House Report* at 54-55. Congress specifically noted the “explosion of

⁴ See Comments of Consumers Union, Consumer Federation of America and Free Press in MB Docket Nos. 06-121, 02-277 and 04-228, and MM Docket Nos. 01-235, 01-317, and 00-244 (filed Oct. 1, 2007).

⁵ *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2756 (1992) (“*FCC Radio Order*”).

⁶ H.R. Rep No. 204, 104th Cong., 2d Sess. at 48 (1995) (“*House Report*”).

video distribution technologies and subscription-based programming sources,” and stated its intent to ensure “the industry’s ability to compete effectively” and to “remain a vital element in the video market.” *Id.* at 55.

NAB respectfully submits that the Commission should not ignore the important lessons of the past. Policies that would turn back the clock so that broadcasters are at a competitive disadvantage against multichannel and other information/entertainment providers clearly would not serve the public interest. Nor would such policies serve the interests of prospective station owners, including minority or female ones.

NAB also questions the assumption by some commenters that permitting the common ownership of broadcast stations automatically has a deleterious effect on minority participation in the broadcast industry. The study conducted for the Commission that purported to find that the limited relaxation of the duopoly rule in 1999 had a negative impact on minority and female ownership of television stations,⁷ for example, was found to be “fatally flawed” by the peer reviewer of that study.⁸ Other commenters have also criticized the *Hammond Duopoly Study* for its “non-transparent, biased methodology” and its “unsupported conclusions and biased statements,” and argued that the Commission cannot use or rely upon that study.⁹

⁷ Allen Hammond, *et al.*, *The Impact of the FCC’s TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006* (2007) (“*Hammond Duopoly Study*”).

⁸ B. D. McCullough, Peer-Review Report on “The Impact of the FCC’s TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006” by Hammond, *et al.* (finding that the *Hammond Duopoly Study* failed to consider or control for economic, demographic or other differences in television markets and that such errors “pervades every aspect of the analysis”).

⁹ Comments and Data Quality Petition of The Center for Regulatory Effectiveness in MB Docket No. 06-121 (Oct. 2007).

We urge the Commission to carefully evaluate data purporting to link common ownership with a decline in minority and female ownership. Indeed, NAB notes that earlier studies found that “minority groups increased their radio ownership” after 1996.¹⁰

As noted in our initial comments, NAB strongly supports other policies that would help ameliorate the lack of access to capital that everyone agrees inhibits small and minority- and female-owned businesses from entry into the broadcasting and other communications-related industries.¹¹ NAB has long supported the reinstatement of a tax incentive program as the most effective way to promote diversity of ownership in broadcasting. NAB also supports a range of other proposals supported by the Minority Media and Telecommunications Council to promote the entry and participation of minorities and women in broadcasting.¹²

In conclusion, we emphasize that the common goal of all those commenting in this proceeding is to promote greater participation by minorities and women in the broadcast industry. We submit that the best way to reach this goal is through

¹⁰ National Telecommunications and Information Administration, *Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States* at 38 (Dec. 2000). See also Kofi A. Ofori, *Radio Local Market Consolidation & Minority Ownership* at 10-12, Attached as Appendix One to Comments of MMTC in MM Docket Nos. 01-317 and 00-244 (filed March 27, 2002)(showing increase in the number of minority owned and controlled radio stations since 1997).

¹¹ See, e.g., Arie Beresteanu and Paul Ellickson, *Minority and Female Ownership in Media Enterprises* (June 2007)(finding that minorities and women are underrepresented in almost all major industries in the economy, including radio, television and newspapers, relative to their proportion of the U.S. population, and concluding that lack of access to capital is the major cause).

¹² See NAB Comments at 7-10.

public/private partnerships and market-based stimulants that will promote entry and long-term survival of female and minority entrants in the broadcast industry.

Respectfully submitted,

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