

**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
)	
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 BLACK OWNED BROADCASTERS, INC.
AND
THE RAINBOW/PUSH COALITION, INC.
ON THE
COMMISSION'S OWNERSHIP STUDIES
AND
THE SECOND FURTHER NOTICE OF PROPOSED RULE MAKING**

The National Association of Black Owned Broadcasters, Inc. (“NABOB”) and Rainbow/PUSH Coalition, Inc. (“Rainbow/PUSH”), by their attorneys, hereby submit their Reply Comments on the Commission’s media ownership studies and the Second Further Notice of Proposed Rule Making (“SFNPRM”) issued in the above-captioned proceedings.

I. THE OWNERSHIP STUDIES ARE TOO FLAWED TO SUPPORT FURTHER RELAXATION OF THE COMMISSION’S OWNERSHIP RULES

On July 31, 2007, the Commission released ten research studies on media ownership intended to provide information for use in developing policies in the above-captioned proceeding and to address the concerns of the U.S. Court of Appeals for the Third Circuit in *Prometheus v. FCC*.¹ The Commission requested public comment on those studies. On the date the studies were released, Commissioners Michael Copps and Jonathan Adelstein issued a statement pointing out that the Commission gave the public inadequate time to review and respond to the voluminous studies.² The Commissioners also pointed out that, “We are told that all of the studies released today will undergo peer review, but many questions are left unanswered.”

In spite of these impediments, several parties were able to analyze the studies and filed comprehensive comments on those studies. The parties filing comments demonstrated that the studies have failed to provide information upon which the Commission can justify any further

¹*Prometheus Radio Project, Inc. v. Federal Communications Commission*, 373 F.3d 372 (3d Cir. 2004), *stay modified on rehearing*, No. 03-3388 (3d Cir. Sept. 3, 2004), *cert. denied*, 73 U.S.L.W. 3466 (U.S. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1045, 04-1168 and 04-1177).

² News Release, July 31, 2007, “Joint Statement by FCC Commissioners Michael J. Copps and Jonathan S. Adelstein on Release of Media Ownership Studies.”

relaxation of its ownership rules. In fact, the comments showed that the studies are too flawed to be used for any purpose, without substantial refinement and improvement.

The Comments of Catherine J.K. Sandoval, Carolyn Byerly and Akilah Folami (“Sandoval Comments”)³ showed that Study No. 7, the Beresteanu and Ellickson study, “Minority and Female Ownership in Media Enterprises,” (the “B&E Study”) was deficient in numerous respects. The Sandoval Comments demonstrated that the B&E Study was flawed in its:

(1) [failure to] consider the public interest as the guiding principle for communications analysis; (2) [] use of the wrong data to analyze minority and female FCC license ownership, relying instead on data which included content providers, thus inflating the numbers they use for comparison; (3) [] limited analysis of lack of access to capital and its relationship to FCC rules, and [] failure to analyze the influence of consolidation and other FCC rules on minority and female broadcast license ownership; (4) [] lack of foundation for their conclusions about content and ownership; (5) and [] assumption that the internet can be an adequate, or even sensible substitute for broadcast media, without considering the gaps in internet adoption and the continuing requirement that broadcasting serve the public interest.”⁴

The Sandoval Comments went on to conclude, “The pervasive methodological flaws of the Beresteanu and Ellickson study should compel the FCC not to rely on that study as part of its examination of the media ownership rules and their relationship to minority and female ownership. Due to the Beresteanu and Ellickson study’s serious methodological and conceptual flaws, any reliance on it for the FCC’s rulemaking would not meet the rational decision-making standard to which the FCC is held.”⁵ NABOB and Rainbow/PUSH support the conclusions reached in the

³ Comments of Catherine J.K. Sandoval, Carolyn Byerly, Akilah Folami, October 19, 2007 (“Sandoval Comments”).

⁴ Sandoval Comments at 3, 4-31.

⁵ *Id.* at 3-4.

Sandoval Comments and submit that the Commission cannot rely upon the B&E Study to support the adoption of an further relaxation of its ownership rules in this proceeding.

Next, the Comments filed by Consumers Union, et. al.,⁶ demonstrated that Study No. 2, the FCC “Ownership Structure and Robustness of Media” study,⁷ is also fatally flawed. Consumers Union showed that Study No. 2 is based on grossly inadequate and incomplete data on minority and female ownership. Consumers Union showed that the FCC researchers failed to make use of the information available in the Commission’s own files and therefore failed to properly identify the minority and female owned stations. Consumers Union showed that Study No. 2 “missed 75 percent of the TV stations that were female-owned in 2005, and missed 69 percent of the TV stations that were minority-owned in 2005.”⁸ Consumers Union then went on to provide detailed lists of the correct station information.⁹ Consumers Union concludes that the flaws in this study require that the Commission not move forward with any rule changes until it has thoroughly and adequately repaired the mistakes in the study.¹⁰

With is Comments, Consumers Union submitted the “Fress Press Census of Full-Power

⁶ Comments of the Consumers Union, Consumer Federation of America and Free Press (“Consumers Union”).

⁷ “Ownership Structure and Robustness of Media,” prepared by Duwadi, Roberts and Wise, of the FCC.

⁸ Consumers Union at 15.

⁹ *Id.* at 11-23.

¹⁰ *Id.* at 24.

Commercial Broadcast Radio and Television Stations.”¹¹ The Free Press study updates much of the information that has been submitted to the Commission in the 2002 proceeding and in the instant 2006 proceeding. The Free Press study supports the comments and research previously submitted by NABOB and Rainbow/PUSH, as well as many others, which showed that consolidation of media ownership in recent years has caused a loss of minority ownership in the broadcast industry. Citing the Free Press study, the Consumers Union Comments concluded that, “if the Commission intends to promote ownership diversity, it cannot accomplish this goal while simultaneously enacting policies that increase market concentration.”¹² NABOB and Rainbow/PUSH support this conclusion, and submit that it is the only reasonable conclusion that can be reached in this proceeding.

NABOB and Rainbow/PUSH have been active participants in the 2002 proceeding and the instant proceeding. Moreover, long before the 2002 proceeding, we have consistently requested that the Commission take meaningful steps to promote minority ownership. The record created in the 2002 proceeding and in the instant proceeding conclusively demonstrates that media ownership consolidation has had a negative impact upon minority broadcast station ownership and upon the diversity of viewpoint presented to the American people. NABOB and Rainbow/PUSH therefore submit that, based upon the record before it, the Commission can take no action in this proceeding to relax any ownership rules.

¹¹“Free Press Census of Full-Power Commercial Broadcast Radio and Television Stations,” S. Derek Turner and Mark N. Cooper, September 28, 2007.

¹² Consumers Union at 26.

II. THE COMMISSION MUST ISSUE A THIRD FURTHER NOTICE OF PROPOSED RULE MAKING SETTING FORTH ALL OF THE PROPOSALS THE COMMISSION IS CONSIDERING ADOPTING IN THIS PROCEEDING

In our Comments filed October 1, 2007, NABOB and Rainbow/PUSH pointed out that we submitted proposals to increase minority ownership in the broadcast industry in the 2002 proceeding and again requested consideration of those proposals in our Petition for Reconsideration, which is still pending.¹³ In the 2002 proceeding, the Commission adopted NABOB and Rainbow/PUSH's proposal to define radio markets to be the same as Arbitron markets.¹⁴ However, the Commission did not comment on or consider NABOB and Rainbow/PUSH's other proposals.¹⁵ NABOB and Rainbow/PUSH submitted their proposals again in this 2006 proceeding.¹⁶ NABOB and Rainbow/PUSH therefore requested that, like the MMTC proposals, the Commission consider NABOB and Rainbow/PUSH's proposals to increase minority ownership in this proceeding.

In our October 1, 2007 Comments, we also pointed out that, with respect to MMTC's proposals, NABOB and Rainbow/PUSH support the proposals to increase minority ownership. NABOB and Rainbow/PUSH also support MMTC's request that the Commission adopt a definition for a socially disadvantaged business ("SDB") in this proceeding. NABOB and Rainbow/PUSH also

¹³Comments of NABOB and Rainbow/PUSH, January 2, 2003; Petition for Reconsideration of NABOB and Rainbow/PUSH, September 4, 2003.

¹⁴*In the Matter of 2002 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*, 18 FCC Rcd 13620, MB Docket Nos. 02-277, 01-235, 01-317, 00-244, at pars. 276-281.

¹⁵18 FCC Rcd at 13634-52, paras. 46-52.

¹⁶Comments of NABOB and Rainbow/PUSH, October 23, 2006.

support each of the proposals of the Diversity Committee.¹⁷

Some Commentors have taken issue with some of the proposals submitted by MMTC. NABOB and Rainbow/PUSH submit that the Commission has provided no guidance to the public regarding any action it is considering with respect to adopting MMTC's proposals, NABOB and Rainbow/PUSH's proposals, or any other party's proposals. Therefore, NABOB and Rainbow/PUSH submit that the Commission must publicly announce the specific proposals it is considering adopting before adopting any proposals in this proceeding. Such a public announcement will allow all parties to provide more focused and useful comments on those proposals.

The Chairman has stated that he intends to issue a document setting forth the Commission's tentative proposals in mid-November and that the Commission will vote on those proposals on December 18, 2007. This timetable is completely unreasonable and provides no meaningful time for parties to respond and for the Commission to consider those responses. NABOB and Rainbow/PUSH agree that the Commission is required by procedural due process considerations to give the public notice of the proposals it is considering adopting in this proceeding. However, procedural due process also requires that the public be given an adequate opportunity to comment, and the Commission must allow reasonable time to review and consider those comments. The timetable proposed by the Chairman will leave inadequate time for the public to comment on the proposals and will also leave the Commission inadequate time to review and meaningfully consider those comments.

¹⁷James L. Winston, undersigned counsel for NABOB, serves as a member of the Diversity Committee.

III. CONCLUSION

The Commission's studies provide no basis for proposing any further relaxation of the Commission's ownership rules. Before the Commission can assess the impact of any further relaxation of its ownership rules on minority and female ownership, the Commission must do a much better study of existing minority and female ownership and the effects that the current level of consolidation has had on minority and female ownership. On the other hand, the Commission has more than enough information gathered in the 2002 proceeding and the instant proceeding to support adoption of measures to increase minority ownership. The Commission should therefore issue a Third FNPRM setting forth the specific proposals it is considering adopting and provide reasonable time for the public to comment and for the Commission to consider those comments.

Respectfully submitted,

**THE NATIONAL ASSOCIATION OF BLACK
OWNED BROADCASTERS, INC.**

By: /s/ James L. Winston

James L. Winston
Executive Director and
General Counsel
National Association of Black Owned
Broadcasters, Inc.
1155 Connecticut Avenue, N.W.
Suite 600
Washington, D.C. 20036
(202) 463-8970

/s/ Lois E. Wright

Lois E. Wright
Counsel to the NABOB Board of
Directors

Executive Vice President and Corporate Counsel
Inner City Broadcasting Corporation
Three Park Avenue, 40th Floor
New York, NY 10016
(212) 592-0499

RAINBOW/PUSH COALITION, INC.

By: /s/ Cleo Fields
Cleo Fields
General Counsel
Rainbow/PUSH Coalition, Inc.
1131 8th Street, N.E.
Washington, D.C. 20002
(202) 547-3235

November 1, 2007