

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

In the Matter of)	
2006 Quadrennial Regulatory Review –)	MB Docket No. 06-121
Review 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
)	
)	

To: The Commission

REPLY COMMENTS OF NATIVE PUBLIC MEDIA

Native Public Media (“NPM”) respectfully submits these reply comments concerning the media ownership studies conducted or commissioned by the Federal Communications Commission (“FCC” or “Commission”) in these proceedings (the “Media Ownership Studies”).¹ Because the Commission still has not sufficiently evaluated the current status of ownership of media outlets by Native nations or individual Native Americans, NPM urges the Commission to further study Native station ownership and any barriers to such ownership before adopting final rules in these proceedings.

¹ See *FCC Seeks Comment on Research Studies on Media Ownership*, Public Notice, DA 07-3470, MB Docket No. 06-121 (rel. July 31, 2007).

I. BACKGROUND

NPM represents the interests of 33 public radio stations serving Native Nations and communities throughout the United States.² Since its launch in 2004, NPM's primary focus has been strengthening existing Native American public radio stations and promoting ownership for more Native communities by serving as an advocate, national coordinator, and resource center. NPM recognizes that profound changes are taking place in the way Americans consume media, and is therefore focused not only on the needs of Native American radio stations, but also on helping Native America leverage new digital and wireless platforms that will make it possible to close the existing media divide.

Ensuring that policymakers understand the impact of their actions on Indian Country is critical to NPM's efforts. For this reason, NPM has been an active participant in the instant proceedings. For example, in August 2006, NPM requested that the Commission "hold one of its upcoming officially supported media ownership hearings in Indian Country and focus solely on media ownership issues facing Tribal nations, American Indians and Alaska Natives."³ In its request, NPM offered to assist the Commission and its staff in identifying a location, relevant topical issues, and witnesses for a hearing focused on Native American broadcast ownership.⁴ In January 2007, NPM urged the Commission to take several steps that would promote the goals of

² NPM, formerly known as the "Center for Native American Public Radio," was created as a center under the National Federation of Community Broadcasters with seed funding from the Corporation for Public Broadcasting ("CPB"). A list of the NPM member stations can be found at Appendix A, attached hereto. NPM was honored to serve as a co-host at two previous FCC Indian Telecommunications Initiative ("ITI") Regional Workshop and Roundtable events: the 2006 ITI in San Diego, CA and the 2007 ITI in Albuquerque, NM. NPM greatly appreciates the efforts of FCC staff who coordinated and participated in these events.

³ See Letter dated August 11, 2006 from Loris Taylor, Executive Director, Center for Native American Public Radio to Chairman Kevin J. Martin. This letter was later incorporated into the record in the instant proceedings. See Letter dated September 12, 2006 to Marlene H. Dortch, Secretary, FCC (filed in MB Docket Nos. 06-121, 02-277, 01-235, 01-317, and 00-244) ("Taylor Ex Parte Letter").

⁴ *Id.*

competition, diversity, and localism in the media, particularly for Native American viewers, listeners, and potential owners of media outlets.⁵ NPM advanced two proposals of particular relevance to the Commission's Media Ownership Studies:

- Ensure that the *unique needs of Native Nations are considered in any studies performed as part of this proceeding* and consider performing a targeted study of Native Nation broadcast issues.⁶
- Create an "Indian Desk" that will: generate proposals to promote broadcasting on Native lands; propose ways for the Commission to set aside spectrum to meet the needs of Native Nations; help Native Nations hold mainstream broadcasters accountable; *study Native station ownership*; identify ways that the transition to digital technology can serve un-served Native American populations; and assist Native Nations and Native communities in securing new media opportunities.⁷

II. ARGUMENT

NPM urges the Commission to remedy the lack of information available in the record about Native American media ownership, employment, and programming before adopting final rules in these proceedings. As discussed above, NPM began urging the Commission to carefully examine patterns of media ownership by tribes and individual Native Americans nearly one year before the studies were released. However, the paucity of information available in the record

⁵ See Reply Comments of Native Public Media in MB Docket No. 06-121, *2006 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (filed Jan. 16, 2007). NPM also urged the Commission to: retain existing limits on the number of stations that one entity can own to increase localism and diversity in television and radio broadcasting; adopt the proposals of the Minority Media and Telecommunications Council and the Diversity and Competition Supporters to promote diversity of ownership in commercial broadcasting; expand education and outreach regarding regulatory requirements through publications and seminars during ITI events; and adopt NPM's proposals for Native American noncommercial educational ("NCE") station applicants and low power interference protection. *Id.* at iii. In this regard, NPM requested that the Commission seek comment and evaluate whether to amend Section 73.7003 of its rules, 47 C.F.R. § 73.7003, to include the award of one point for applicants that are federally recognized tribes. *Id.* at note 14. NPM also urged the Commission to consider establishing heightened interference protection for Native low power FM stations and translators. *Id.* at 10.

⁶ See Reply Comments of Native Public Media in MB Docket No. 06-121, *2006 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (filed Jan. 16, 2007) at iii, 14, note 4 (emphasis added).

⁷ *Id.* at iii, 10-14 (emphasis added).

about Native American media ownership demonstrates that NPM's calls went unheeded.

Although the Commission contracted for or conducted and published ten studies, the record in these proceedings still contains very little information about media ownership by Native nations or individuals, the effects of low levels of Native American media ownership, or the source of barriers thereto. Thus, the current record forms a poor foundation upon which to build regulations or policies which will govern ownership of media outlets.

Only a handful of the Media Ownership Studies were designed so that they might generate information about Native American media ownership. Even these studies fail to make Native Americans a subject of significant focus. Native American media ownership issues were more often lumped together as part of analyses of issues affecting all minorities (with no distinction accounting for unique factors affecting any particular group), or were omitted entirely. For example, Study No. 3 attempts to analyze the presence of minority-targeted video programming and to correlate this to ownership, but divides its analysis into only three groups: Black, Latino, and "other."⁸ It is unclear whether this decision reflects a complete lack of video programming targeted to Native Americans, or a failure to analyze available data in sufficient detail for it to be useful to those concerned about Native American-targeted content.⁹ Similarly, Study No. 8 purports to study the effects of common ownership of television stations in the same market on "minority" owners, but it does not distinguish between various types of minorities, so it is unclear whether or how changes to the local television ownership rule have impacted Native

⁸ Study No. 3, *Television Station Ownership Structure and the Quantity and Quality of TV Programming* by Gregory S. Crawford, University of Arizona (July 23, 2007) at 13.

⁹ Native Americans are not mentioned among those listed as "other" minorities. *Id.* ("We distinguished between programming targeting three types of audiences: Black audiences, Latino/Spanish-speaking audiences, and other minority audiences (e.g. International, East Asian, South Asian, Gay & Lesbian, etc.)").

American television station ownership.¹⁰ Study No. 7 identifies the percentages of three types of media outlets owned by Native Americans,¹¹ but then lumps together all categories of “nonwhites” in its analysis of *why* various minorities are less likely to own these outlets.¹² Study No. 2 contained data on the number and percentage of commercial radio and television stations owned by Native Americans over a four-year period.¹³ Though the Study makes an effort to analyze and present available data, it also notes a number of ways in which the underlying data may be unreliable or insufficient, which suggests that better and more frequent data-gathering is necessary.¹⁴

Compounding the lack of information on Native American media ownership and content in the Media Ownership Studies is the lack of inclusion of Native Americans in the Commission’s first five media ownership hearings. To date, none of the hearings has been specifically focused on unique issues affecting Native American station ownership, nor have any hearings been held at a location proximate to multiple Native Nations.¹⁵ Having reviewed the published agendas for the first five hearings, NPM is unable to identify any tribal representative or other Native American individual selected by the Commission to serve as a moderator or scheduled presenter. Because the Commission has a total of six hearings planned, NPM remains

¹⁰ Study No. 8, *The Impact of the FCC’s TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1999-2006* by Prof. Allen S. Hammond, IV, Santa Clara University.

¹¹ Study No. 7, *Minority and Female Ownership in Media Enterprises* by Arie Beresteanu and Paul B. Ellickson, Duke University (June 2007) at 7 (reporting that 0.04% of commercial radio stations, 0.0% of commercial television stations, and 1.0% of newspapers are owned by Native Americans).

¹² *Id.* at 8-12 (relating ownership asymmetries to minorities’ lack of access to capital).

¹³ Study No. 2, *Ownership Structure and Robustness of Media* by Kiran Duwadi, Scott Roberts, and Andrew Wise, Appendix A at 16, 17.

¹⁴ *Id.* at 18 (reliability of the data presented depends on the quality of a 2000 census of minority owners published by the National Telecommunications and Information Administration; data gathered from Media Bureau databases was “noisy and incomplete”).

¹⁵ NPM recommended holding a hearing focused on Native American ownership issues in Phoenix, AZ, Albuquerque, NM, or Denver, CO. *See* Taylor Ex Parte Letter.

optimistic that the next media ownership hearing will be organized in a manner that affords the Commission an opportunity to gather additional relevant data concerning Native American station ownership and its impact on competition, diversity, and localism.

An increased focus on Native American ownership of media outlets in these proceedings is necessary to satisfy the Commission's own policy of establishing government-to-government and trust relationship with federally-recognized Native Nations as described in its *Tribal Policy Statement*.¹⁶ Low levels of station ownership on tribal lands must be evaluated against the backdrop of this relationship, and the Commission must consider whether changes to the rules are necessary in order to acknowledge tribal sovereignty. Tribes are sovereign governments obligated to protect and promote the health, safety, education, economic well-being, and general welfare of their citizens. Access to broadcast spectrum can enhance the ability of tribes to meet these obligations. Without sufficient usable data concerning the relationship of existing ownership rules and policies to Native American station ownership, it is impossible to forge policy that will expand upon such ownership.

What little information is available from the Media Ownership Studies suggests that Native American ownership levels are extremely low, with no commercial television broadcast stations¹⁷ and a mere six commercial radio broadcast stations.¹⁸ Although there is insufficient data in the record to determine the precise effects of these figures, NPM believes that the low levels of Native American station ownership and control are contributing to a lack of Native American-targeted programming, a dearth of opportunities for Native American employment in

¹⁶ *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, 16 FCC Rcd 4078 (2000).

¹⁷ Study No. 2, *Ownership Structure and Robustness of Media* by Kiran Duwadi, Scott Roberts, and Andrew Wise, Appendix A at 17.

¹⁸ *Id.* 16.

the media industry, limited opportunities for Native Americans to express themselves via non-Native owned media outlets, and less representation of Native American issues in broadcast news and public affairs programming.

Before adopting final rules in these proceedings, the Commission should revisit NPM's proposals so that the impact of changes to the broadcast ownership rules on Native Americans can be evaluated, and so that rules or policies adopted to promote ownership of media outlets by minorities also will address any unique barriers faced by Native American tribes and/or individuals. In particular, the Commission should hold an ownership hearing specifically focused on issues affecting Native American station ownership, address deficiencies in the existing studies to ensure that Native American media ownership issues are evaluated, and establish an Indian Desk that will regularly monitor the impact of Commission policy on Native Nations.

III. CONCLUSION

NPM urges the Commission to continue to consult with Native Nations on rules and policies that will significantly or uniquely affect their ability to enter or remain in the broadcasting arena. NPM stands ready to assist, in any way that it can, to help the FCC uphold its trust responsibility to Native Nations in the area of broadcasting as well as new technologies and platforms.

Respectfully submitted,

NATIVE PUBLIC MEDIA

By: _____/s/_____

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Appendix A

List of Native Public Media Member Radio Stations

KABR(AM), Alamo Community, NM, The Alamo Navajo School Board
KABU(FM), Fort Totten, ND, Dakota Circle Tipi, Inc.
KBRW(AM), Barrow, AK, Silakkuagvik Communications, Inc.
KCIE(FM), Dulce, NM, Jicarilla Apache Tribe
KCUK(FM), Chevak, AK, Kashunamiut School District
KCUW-LP, Pendleton, OR, Confederated Tribes of the Umatilla Indian Reservation
KEYA(FM), Belcourt, ND, KEYA, Inc.
KGHR(FM), Tuba City, AZ, Tuba City High School Board, Inc.
KGVA(FM), Fort Belknap, Agency, MT, Fort Belknap College
KIDE(FM), Hoopa, CA, Hoopa Valley Tribe
KILI(FM), Porcupine, SD, Lakota Communications, Inc.
KIYU(AM), Galena, AK, Big River Public Broadcasting Corp.
KLND(FM), Little Eagle, SD, Seventh Generation Media Services, Inc.
KMHA(FM), Four Bears, ND, Fort Berthold Communications Enterprises
KNBA(FM), Anchorage, AK, Kohanic Broadcast Corporation
KNNB(FM), Whiteriver, AZ, Apache Radio Broadcasting Corporation
KNSA(AM), Unalakleet, AK, Unalakleet Broadcasting, Inc.
KOHN(FM), Sells, AZ, Tohono O'ohdam Nation
KOTZ(AM), Kotzebue, AK, Kotzebue Broadcasting, Inc.
KPYT-LP, Tucson, AZ, Pascua Yaqui Tribe, a Federally Recognized Indian Tribe
KRMH(FM), Red Mesa, AZ, Red Mesa Unified School District No. 27
KSDP(AM), Sand Point, AK, Aleutian Peninsula Broadcasting, Inc.
KSHI(FM), Zuni, NM, Zuni Communications Authority
KTDB(FM), Ramah, NM, Ramah Navajo School Board, Inc.
KUHB-FM, St. Paul, AK, Pribilof School District Board of Education
KUTE(FM), Ignacio, CO, KUTE, Inc.
KUYI(FM), Hotevilla, AZ, The Hopi Foundation
KWRR(FM), Ethete, WY, Business Council of the Northern Arapaho Tribe
KWSO(FM), Warm Springs, OR, Confederated Tribes Warm Springs Reservation
KYNR(AM), Toppenish, WA, Confederated Tribes and Bands of the Yakima Nation
KYUK(AM), Bethel, AK, Bethel Broadcasting, Inc.
KZPA(AM), Fort Yukon, AK, Gwandak Public Broadcasting, Inc.
WOJB(FM), Reserve, WI, Lac Courte Oreilles Ojibwa Public