

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

In the Matter of)	
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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
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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
)	
)	
Ways to Further Section 257 Mandate and To Build on Earlier Studies)	MB Docket No. 04-228

To: The Commission

**REPLY COMMENTS OF SPANISH LANGUAGE BROADCAST COMPANIES IN
RESPONSE TO THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

The Spanish language broadcasters listed below (“Spanish Broadcasters”) respectfully support the Commission’s decision to consider some 38 minority ownership proposals.¹ Most Spanish language broadcasters are socially and economically disadvantaged businesses (“SDBs”) that overcame considerable obstacles in becoming broadcast owners. Thus, Spanish Broadcasters strongly endorse several of the proposals that will likely reduce current hurdles for

¹ See 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 et al. (Second Further Notice of Proposed Rulemaking), 22 FCC Rcd 14216 (2007) (“Second FNPRM”). The proposals were submitted to the Commission by the Diversity and Competition Supporters (“DCS”) and the Advisory Committee on Diversity for Communications in the Digital Age. The Commission has indicated that it will accept reply comments in response to the Second FNPRM through November 1, 2007. See Order, DA 07-4107 (released October 12, 2007) at 3 n. 13.

new entrants. By way of illustration, here are some initiatives that would be especially valuable in facilitating entry and growth by companies focused on multilingual and multicultural broadcasting.

Proposal #1: Equal Transactional Opportunity: Barring Discrimination On The Basis Of Race Or Gender In Broadcasting

The Commission has a mandate under 47 U.S.C. §151 to prevent any type of discrimination with respect to the sale or purchase of broadcast stations. The Diversity and Competition Supporters' ("DCS") equal transactional opportunity proposal is specifically targeted to deter broadcasters from using race or gender stereotypes in selecting which buyers to solicit. The Commission would add a box on Form 314 or 315 for the assignor/transferor to check certifying that it has not engaged in any discriminatory practices in its consideration of buyers. Thus enforcement would not create an administrative burden for the Commission, nor would it pose any hardship on a nondiscriminating assignor or transferor.

This rule would also promote access to capital because it would assure lenders and investors that minorities and women would not be unfairly excluded from acquisition opportunities.

Proposal #4: Tolling Buildout Deadlines For Selling Expiring Construction Permits To SDBs

In 1998, Entravision Communications proposed that the Commission permit holders of expiring construction permits to sell them to entities in which minorities own at least 20% of the equity, or to entities that commit to serve the programming needs of minority or foreign language groups for at least 80% of their operating time. The proposal would, (a) allow the Commission to quickly dispense of expiring permits, (b) reduce some of the start-up costs and consequently remove a significant capital access barrier, and (c) reduce the time that a station remains off-air due to the initial construction permittee's inability to build out the permit.

Proposal #10: Zero Tolerance For Ownership Rule Abuse

Broadcasters who use the public airwaves have a responsibility to operate in the public's best interest; structural ownership abuse, and particularly abuse of rules designed to promote minority ownership, should therefore never be tolerated. Tolerance of structural abuse rewards practitioners of gamesmanship, deprives legitimate minority broadcasters of ownership opportunities, and feeds the cynicism of those in Congress who must oversee the Commission's minority ownership policy stewardship.

Proposal #12: Opening FM Spectrum For New Entrants

There are three methods the Commission should adopt that would help open access to FM spectrum. First, the third adjacent FM contour rules under 47 C.F.R. §73.215(a) should be repealed. Second, the Commission should revise the procedures that govern FM major modifications by permitting more than four (4) contingent FM applications. Third, the Commission should adopt a 50% community of license area or pops coverage requirement for commercial FM stations instead of the present 80% requirement, and also allow stations to change their communities of license to any community as long as the new community of license is within the same Arbitron market. With these steps in place, minority broadcasters, which so frequently aim to serve central city communities with inferior exurban signals, will be in a better position to serve their core audiences and enhance their access to investment capital.

Proposal #24: Advocacy Of Tax Deferral Legislation Designed, To The Extent Possible, To Foster Minority Ownership

From 1978 through 1995, the number of minority broadcast owners more than quintupled thanks to the tax certificate policy. When it was in effect, the tax certificate was valuable to a minority buyer to the extent that the seller's capital gains savings exceeded the difference in purchase prices offered by minority and non-minority buyers. It was an effective and

nonintrusive tool in increasing the number of minority owners, and ultimately advancing what Congress had declared to be “the Nation’s policy favoring diversity in the expression of views in the electronic media.”² Adoption of a new tax certificate policy would provide the Commission with a continued mechanism to fulfill Congress’s mandate under the Communications Act to “eliminate market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services”³ and “seek to promote the policies and purposes of this Act in favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.”⁴ The Commission should recommend to Congress, in the strongest terms, that it reauthorize the tax certificate policy forthwith.

Proposal #25: Examination Of How To Promote Minority Ownership As An Integral Part Of All FCC General Media Rulemaking Proceedings

All mass media rulemaking notices, except those for individual FM or TV allotments, should be accompanied by a minority impact statement. The impact statement should identify any disproportionate or unique impact of the proposed policy on minorities and women and provide a rationale for the existence of the policy having an affect on minorities. The inclusion of a minority impact statement in an NOI or NPRM would assist the Commission in identifying how its policies have affected minorities and women, and in enabling the Commission to develop policies with an eye toward their impact, once implemented, on minorities and women.

Proposal 26: Ongoing Longitudinal Research On Minority and Women Ownership Trends

There is little useful data on minority and women ownership – both raw numbers and the licensees’ views of the factors impeding their growth. Further, there is no current data on the

² Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 22(a)(2), 106 Stat. 1460.

³ 47 U.S.C. §257(a) (1994 & Supp. II 1996).

⁴ *Id.*, §257(b).

extent to which cable systems and DBS operators disseminate content originating from minority owned or controlled entities. This data gap severely impedes the Commission's ability to adopt specific rules and proposals that may most effectively increase ownership diversity.

Proposal 33: Relaxation Of Foreign Ownership Restrictions

The Commission should relax the foreign ownership restrictions, as proposed by the Diversity Committee in 2004. Under the proposal, the Commission would consider permitting non-controlling foreign investment (e.g. up to 49%) in cases where such investment would help eliminate a barrier to access to capital for domestic minority owned broadcasters.

Relaxing the Section 310(b)(4) foreign ownership restrictions would open a new source of financing opportunities for SDBs who may be facing difficulty raising capital using traditional funding mechanisms. This proposal is particularly important to Spanish Broadcasters because capital is often more easily available to them from sources in Mexico, Central America and South America, than from domestic sources. Further, Spanish Broadcasters' ability to expand their footprints into Spanish speaking countries is inhibited by some of those countries' reluctance to relax their foreign investment laws unless relaxation of Section 310(b)(4) restrictions is undertaken reciprocally and concurrently.

Proposal #36: Use Of The Share-Time Rule To Foster Ownership Of DTV And FM Subchannels

As proposed by the Advisory Committee on Diversity, the Commission should allow licensees the voluntary choice of permitting the full-time or part-time use of portions of their multiplexed program feeds for the transmission of programming by unaffiliated entities separately licensed under the share time rule. This route would be an attractive alternative particularly for those new market entrants having difficulty raising capital for leases. It should be especially attractive to companies wishing to program in languages other than English when the English language licensee lacks expertise in non-English operations. By making available

vastly more broadcast facilities, this proposal could be one of the most significant steps the Commission could ever take to foster minority ownership.

New Proposal: Must-Carry For Class A Low Power Television Stations

Spanish Broadcasters propose that Class A Low Power Television (“Class A”) stations be afforded must-carry rights for an analog or digital program stream on cable and satellite services in their DMAs. There are approximately 900 Class A stations, all of which provide locally originated programming. Roughly 15% of the Class A stations are minority owned, and nearly 300 Class A stations are not carried on cable or satellite services. Among the several pending must-carry proposals, this one is the most modest, the least disruptive; it is the one that is most likely to advance localism, diversity, and especially, minority ownership.

Class A and other LPTV stations offer an excellent opportunity for minority groups and small business enterprises to enter the television broadcasting business, because these stations require both lower capital and lower operating costs than full power television stations. However, these stations are usually excluded from Multi-Channel Video Program Distributor (“MPVD”) systems, including cable and direct broadcast satellites, that control access to over 85% of the nation's television households. Section 614(h)(2) of the Communications Act affords must-carry rights to Class A and LPTV stations in only the very smallest communities, and the Copyright Act does not include any Class A or LPTV stations in its “carry one/carry all” mandate for satellite local-into-local service.

More than two-thirds of the nation's television stations are Class A or LPTV. Moreover, Class A stations are the only broadcast stations required by statute to carry local programming -- an average of three hours per week. The exclusion of these stations from access to MVPD systems suppresses the viability of this entry path and thus poses a significant barrier to minority and small businesses. It also blocks distribution of valuable local and ethnic programming to

minority and other interested viewers and deprives these viewers of exchanges of information and viewpoints that are vital to the functioning of a diverse and democratic society. It is time for the Commission to break down the MVPD barrier, to provide Class A stations a vehicle for which minorities and small businesses can enter the television business successfully, and permit local and ethnic programming to reach the households to which MPVDs control access.

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These and other recommendations delineated in the *Second FNPRM* deserve the urgent consideration of the Commission. By adopting these proposals, the Commission would create much-needed new opportunities for entry and growth by Spanish-language broadcasters.

Respectfully submitted,

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November 1, 2007