

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

In the Matter of	)	
	)	
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
	)	
	)	
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 RADIO BROADCASTERS IN RESPONSE  
TO THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

The radio station licensees identified below (“Radio Broadcasters”) respectfully reply to the October 1, 2007 Initial Comments of the Diversity and Competition Supporters (“DCS”) in MB Docket No. 06-121.<sup>1</sup>

As radio broadcasters, we encourage the Commission to develop a package of initiatives that will foster ownership diversity. Diversity enables terrestrial radio to remain competitive with other industries because the business plans developed, audiences served, and creative concepts attempted by a diverse group of owners are likely to be responsive to the needs of a

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<sup>1</sup> 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”).

diverse and changing audience. The competitive spur provided by diverse ownership is consistent with the Commission's mandate under the Communications Act to "disseminat[e] licenses among a wide variety of applicants, including small businesses, . . . businesses owned by members of minority groups and women" and other such entrepreneurs.<sup>2</sup>

Accordingly, we support the following initiatives that we believe could have considerable value in enhancing diversity and competition in the radio industry.

Proposal #5: Structural Rule Waivers For Creating Incubator Programs: This proposal, pending since 1992,<sup>3</sup> is the classic "win-win" paradigm under which any potential loss of diversity that hypothetically could attend an ownership rule waiver would be more than ameliorated by an initiative of commensurate scope aimed at incubating one or more minority or woman owned broadcasters. When the Commission is unsure where to draw the line separating a permissible ownership combination from an impermissible one, the flexibility offered by this incubator initiative could prove invaluable as a means of simultaneously preventing overregulation and promoting diversity.

Proposal #8: Nonattribution Of EDP Interests In SDBs: The Radio Broadcasters concur with the conclusion in the DCS Initial Comments that "the EDP Rule has had the unintended effect of too severely restricting small business financing, especially in the form of seller paper that so often is vital to new entrants' ability to close a transaction."<sup>4</sup> To ameliorate this unintended effect, the Radio Broadcasters support the proposed revision to the Commission's EDP rule, 47 C.F.R. § 73.3555, NOTE 2(i), which would relax the current 33% EDP restriction

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<sup>2</sup> 47 U.S.C. §309(j)(3)(B); *see also id.* §309(j)(4)(D) (requiring the Commission to "ensure that small businesses ... and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services" and obligating the Commission "for such purposes, [to] consider the use of tax certificates, bidding preferences, and other procedures" to facilitate involvement and investment by such entities).

<sup>3</sup> *See Revision of Radio Rules and Policies, MM Docket 91-140 (Reconsideration)*, 7 FCC Rcd 6387, 6391-92 ¶¶22-25 (1992).

by allowing EDP of up to 50% in a small business or 80% for nonconvertible debt.<sup>5</sup> As the DCS Initial Comments explain, this proposal would authorize more substantial levels of seller paper and other financing of small businesses without increasing significantly the risk of abuse, and it would expand access to capital for minority and women broadcasters.<sup>6</sup>

Proposal #24: Advocacy Of Tax Deferral Legislation Designed, To The Extent Possible, To Foster Minority Ownership: The Tax Certificate Policy that “enabled a seller to defer capital gains taxes on the sale of a media property to a minority controlled firm” was an exceptionally good promoter of minority broadcast ownership opportunities, with MMTC estimating that this policy was largely responsible for quintupling the number of minority owned stations between 1978 and 1995.<sup>7</sup> The DCS Initial Comments note that the Commission has continued recommending that the policy be reinstated since its repeal in 1995.<sup>8</sup> DCS also notes that two bills before Committee in the current Congress would reinstate the policy, while allowing it to benefit all SDBs rather than only minority controlled entities and while capping eligibility for transactions above a certain value in order to reduce potential impact on the Treasury.<sup>9</sup> The Radio Broadcasters support this proposal in favor of widely supported, effective, and essential Tax Certificate Policy legislation, and join in encouraging the Commission to continue advocating for that policy’s reinstatement in a form similar to those currently under consideration in Congress.

Proposal #36: Use Of The Share-Time Rule To Foster Ownership Of DTV And FM Subchannels: As owners ourselves, we support initiatives that will seed our industry with new

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<sup>4</sup> DCS Initial Comments, MB Docket No. 06-121 (filed October 1, 2007) at 17 (“DCS Initial Comments”).

<sup>5</sup> *Id.* at 17-18.

<sup>6</sup> *See id.* at 19.

<sup>7</sup> *See id.* at 28.

<sup>8</sup> *Id.* (citing Deduction for Health Insurance Costs of Self-Employment Individuals, Pub. L. No. 104-78, §2, 109 Stat. 93, 93-94 (1995)).

entrants. As presented by DCS, this share-time proposal would be entirely voluntary: a radio licensee could choose to program subchannels itself, broker time on them, lease them, or under this share-time proposal simply monetize them in the manner by which a condominium owner monetizes each unit in its building. In principle, this proposal might accelerate the rollout of vital DTV subchannel and HD services, strengthen our industry competitively and financially, and promote ownership diversity all at the same time. Recognizing that this initiative is unique, the Commission should give it careful study, ensuring that it would be entirely voluntary and that it would have no unintended adverse consequences.

The Radio Broadcasters regard these proposals as deserving of thorough and expedited review. The Commission can count on the enthusiastic support of the radio industry for effective initiatives designed to advance competition and diversity.

Respectfully submitted,

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<sup>9</sup> See DCS Initial Comments at 28-29.

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November 1, 2007