Minority Media & Telecommunications Council

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December 14, 2007

Hon. Kevin Martin
Hon. Jonathan Adelstein
Hon. Michael Copps
Hon. Robert McDowell
Hon. Deborah Taylor Tate
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Dear Commissioners:

RE: MB Docket No. 06-121 et al. (Media Ownership)

On December 11, 2007, we wrote to express our concern that the Commission appeared to be "far from agreement on the definition of 'eligible entities' – the beneficiaries of the majority of DCS' proposals." We suggested that

> if the Commission is otherwise ready to vote now on a package of substantive minority ownership proposals, it should make those proposals' effective date the day the Commission acts on a recommendation from the Diversity Committee for a full file review procedure (or, if the Diversity Committee is unable to develop such a procedure, such other recommendation that the Committee may present). In this way, the Commission would not need to delay its plan to approve a package of minority ownership proposals next week.

Above all, we urged the Commission not to adopt a regressive small business definition which, for commercial radio, is even more racially dilute than the industry as a whole. On its face, the use of such a definition would not survive rational basis review.

Finally, we stated:

> If the Commission is unable to arrive at a procedure under which it will develop a definition before the new rules go into effect, it should postpone action on a minority ownership package. It is better to have no package at all until the Commission can agree upon a package that will neither confuse the public nor cause considerable harm to minority entrepreneurs.

The record is closing today, and we are not sure the Commission will be able to work out the handling of an eligible entity definition. Therefore, we write to offer an alternative approach the

Commission could take to enable it to vote on a minority ownership package December 18: it can act on the pending proposals that are not premised on an eligible entity definition, and simultaneously issue a Third FNPRM calling for further comment on such a definition (including SDB and interim full file review) and also calling for further comment on proposals that are premised on an eligible entity definition or that require a more thorough record before they could be adopted. This approach has promise if the Commission immediately implements (and, where relevant, enforces) the rules and policies it adopts now, and if the Commission pledges that it will undertake to act promptly (e.g. within six months) on the proposals contained in a Third FNPRM.[1]

Here is a summary of how the pending proposals could be classified under this approach.

PROPOSALS RIPE FOR ACTION NOW

Proposal #1:	Equal Transactional Opportunity: Barring Discrimination On The Basis Of Race Or Gender In Broadcast Transactions
Proposal #8:	Nonattribution Of EDP Interests[2]
Proposal #10:	Zero Tolerance For Ownership Rule Abuse
Proposal #22:	Nondiscrimination Provisions In Advertising Sales Contracts, Designed To Expressly Avoid Such Practices As "No Urban/ No Spanish" Dictates
Proposal #26:	Ongoing Longitudinal Research On Minority And Women Ownership Trends
Proposal #29:	Encourage More Local And Regional Banks To Participate In SBA Guaranteed Loan Programs For Broadcast And Telecom Ventures
Proposal #31:	Revision Of The Distress Sale Policy To Institute Case-By-Case Review Of Purchasers' Qualifications

[1] The Commission cannot simply postpone consideration of minority ownership proposals for another day that may never arrive. See Prometheus Radio Project v. FCC, 373 F.3d 372, 421 n. 59 (3d Cir. 2004), stay modified on rehearing, No. 03-3388 (3d Cir., September 3, 2004), cert. denied, 125 S.Ct. 2902 (2005).

[2] This proposal was originally proposed as limited to SDBs, but it has been reformulated to apply across the board. See DCS Comments, MB Docket 06-121 et al. (October 1, 2007) at 17-19.

Proposal #39: Convening Of An Access To Capital Conference

Proposal #40: Preparation Of A Guidebook On Diversity

Proposal #41: Must-Carry For Class A LPTVs (submitted by the Community Broadcasters Association)

Proposal #43: Repeal Of Radio Subcaps (submitted by Multicultural Radio Broadcasting, Inc.)[3]

Proposal #44: Enhanced Consideration Of Minority Ownership And Viewpoint Diversity Attendant To Consideration Of Assignment And Transfer Applications (submitted by NABOB and Rainbow/PUSH)

Proposal #45: Bright Line Test With No Waivers For Assignment And Transfer Applications Exceeding Ownership Caps (submitted by NABOB and Rainbow/PUSH)

Proposal #46: Treatment of LMAs As Attributable Interests (submitted by NABOB and Rainbow/PUSH)

Proposal #47: Allow Minorities To Own Station Combinations Equal To The Largest Combination In A Market (submitted by NABOB and Rainbow/PUSH)

PROPOSALS THAT CAN BE DEVELOPED IN A THIRD FNPRM

Proposal #2: Transfer Restriction of Grandfathered Clusters To SDBs

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

Proposal #5: Structural Rule Waivers For Creating Incubator Programs[4]

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[3] DCS classified this proposal as being ripe for action now because there is a substantial record on the proposal and it does not require an eligible entity definition. Our classification may be incorrect, however, since it has been reported that the Commission does not wish to consider changes to the structural radio rules at this time. DCS finds merit in the proposal but has not provided an unqualified endorsement.

[4] This proposal has been reformulated as a Trial Incubator Plan of much more limited scope and duration than the proposal offered originally. See DCS Supplemental Comments, MB Docket No. 06-121 et al. (November 20, 2007) at 5-7.

Proposal #6:	Bifurcation Of Channels For Share-Times With SDBs
Proposal #7:	Structural Rule Waivers For Financing Construction Of An SDB's Unbuilt Station
Proposal #9:	Mathematical Touchstones: Tipping Points For The Non-viability Of Independently Owned Radio Stations In A Consolidating Market, And Quantifying Source Diversity
Proposal #12:	Opening FM Spectrum For New Entrants
Proposal #14:	Market-based, Tradable Diversity Credits As An Alternative To Voice Tests
Proposal #25:	Examination Of How To Promote Minority Ownership As An Integral Part Of All FCC General Media Rulemaking Proceedings
Proposal #32:	Reservation, For A Company That Finances Or Incubates An SDB, Of First Place In The Queue To Form A Duopoly In A Market For Which Only A Limited Number Of Duopolies Are Permissible
Proposal #33:	Relaxation Of Foreign Ownership Restrictions
Proposal #34:	Extension Of Divestiture Deadlines In Mergers Where Applicants Have Actively Solicited Bids For Spin-off Properties From SDBs
Proposal #35:	Relaxation Of The Grandfathered Cluster Transfer Deadline For Cluster Purchasers Who Will Resell Stations To Small Businesses
Proposal #36:	Use Of The Share-Time Rule To Foster Ownership Of DTV And FM Subchannels
Proposal #37:	Retention On Air Of AM Expanded Band Owners' Stations If One Of The Stations Is Sold To An SDB
Proposal #42:	Replacement Of TV Channels 5 And 6 With FM Service (submitted by Mullaney Engineering, Inc. in MM Docket No. 87-268, and cross-filed in the media ownership dockets by DCS)

To summarize:

- There are 47 proposals outstanding in this proceeding
- Of those 47 proposals, 16 evidently cannot be or will not be adopted at this time.[5]
- 15 proposals do not involve an eligible entity definition and are fully briefed. They can be acted on now.
- 16 proposals either require an eligible entity definition or need a more comprehensive record before they can be adopted. These should be folded into a Third FNPRM.

It's exceedingly critical that the Commission use every means at hand to cure the profound underinclusion of minorities in America's most influential industry. Therefore we would much prefer that the Commission adopt every proposal it is able to adopt, while postponing only the effective dates of those proposals that are contingent on an eligible entity definition. If that approach is impossible, the alternative course of action set out above has promise if the Commission immediately implements (and, where relevant, enforces) the rules and policies it adopts now, and if the Commission pledges that it will undertake to act promptly (e.g. within six months) on the matters contained in a Third FNPRM.

Respectfully submitted,

David Honig

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[5] Four proposals are unripe or moot (Proposals 3, 13, 24, 38), two may be subject to jurisdictional limitations (Proposals 28 and 30), eight are industry initiatives beyond the scope of the Commission's authority (Proposals 15, 16, 17, 18, 19, 20, 21, and 23), and two have been abandoned (Proposals 11 and 27).