

Minority Media & Telecommunications Council

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June 18, 2008

Marlene Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Dear Ms. Dortch:

RE: Notice of *Ex Parte* Communication:

- MB Docket Nos. 07-294 et al. (Diversification of Broadcast Ownership)
- MM Docket No. 98-204 (Broadcast and Cable Equal Employment Opportunity)
- MB Docket No. 04-233 (Broadcast Localism)
- EB Docket Nos. 04-296 and EB 06-119 (Emergency Alert System)
- MB Docket No. 07-57 (XM/Sirius Merger)

This reports on two meetings held June 16, 2008: (1) Commissioner Jonathan Adelstein, Rudy Brioché, Legal Advisor to Commissioner Adelstein, and Daniel Senter; Intern to Commissioner Adelstein; and (2) Commissioner Michael Copps, Rick Chessen, Senior Legal Advisor to Commissioner Copps, and Christina Hartmann, Intern to Commissioner Copps. Jane Mago, General Counsel of the National Association of Broadcasters (“NAB”) also attended the meeting with Commissioner Adelstein for the limited purpose of participating in the discussion of the Emergency Alert System item (it having been noted that on some items discussed, the NAB’s positions differ in some respects from MMTC’s positions.) Representing MMTC in both meetings were Joy Tate, MMTC Associate Broker, Joseph Miller and Joycelyn James, Esqs., MMTC Fellows, and myself.

Diversification of Broadcast Ownership (MMTC’s presentation was on behalf of the Diversity and Competition Supporters (DCS))

- Advertising Nondiscrimination Rule. Discrimination in advertising sales costs minority broadcasters about \$200 million dollars a year. MMTC applauds the Commission’s efforts to work with industry and civil rights organizations to eliminate this practice that accounts for a 5-10% loss to minority broadcasting – a loss that directly effects access to capital.

- Equity/Debt Plus (EDP). Reform of the EDP rule is a huge step toward bringing back the seller paper market for minority broadcast transactions. The Commission's economists should track the availability of seller paper over time to be sure this reform is having the desired effect.
- Share Times. The share time proposal in the Third FNPRM is an attractive means for incumbent broadcasters to monetize spectrum and for minority and multilingual broadcasters to gain entry. These share time arrangements would be especially desirable because they can be structured as purchase agreements rather than as leases. Financing for leases, as opposed to financing station ownership, is very difficult to obtain.
- Incubator Plans. Structural rule waivers in exchange for carefully drawn incubator plans are desirable, especially when they help minorities enter large broadcast markets. We're sensitive to the concerns of other public interest organizations that an incubator plan not be so aggressive that it swallows a structural rule, and at the same time we would like the Commission to adopt a plan that will have real impact.
- Reallocation of TV Channels 5 and 6 for FM Broadcasting. This proposal presents an enormous opportunity for AM radio and especially for minority broadcasters. Two-thirds of minority-owned stations are located on the AM band, and most minority owned AM stations have inferior facilities with limited reach. This plan would potentially triple minority broadcasters' asset value. It should be afforded the greatest consideration and respect.
- Reconsideration of the Eligible Entities Definition and of the Foreign Ownership Proposal. On June 16, 2008, DCS filed a Petition for Partial Reconsideration of the Commission's decision to adopt a small-business definition for eligible entities and its refusal to consider DCS' foreign ownership proposal. Using the small business definition for eligible entities is inconsistent with the Commission's statutory mandates and will do nothing to advance minority ownership. The Commission's Diversity Committee hopes to arrive at a constitutionally sustainable, less dilute definition; until it does, the Commission should manifest that it recognizes that the small business definition is temporary. Regarding the foreign ownership proposal, the Commission erred by failing to give a specific substantive reason for rejecting the proposal, whose adoption would have the greatest impact of any of the DCS proposals on minority broadcasters' access to capital.¹

¹ Commissioner Copps suggested that the record needs quantitative economic analysis showing the impact relaxation would have on access to capital, trade policy analysis showing whether relaxation would result in reciprocal steps by other nations that would create significant opportunities for U.S. minority broadcasters to expand their footprints, and evidence on relaxation's impact on the content marketplace.

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Broadcast and Cable Equal Employment Opportunity

MMTC urges the Commission to begin collecting Form 395 data from broadcast and multivideo program distributors (“MVPDs”) without delay. The Commission has no accurate data it can use to establish rules or policies that promote and monitor minority employment in broadcasting. Assertions by broadcast associations that the data is too sensitive for the Commission staff to handle or the public to see are without merit. There has already been a purge of minorities from English language, non-minority owned radio journalism, so the time has come for the Commission to assign additional staff to EEO enforcement develop a much more thorough EEO audit and enforcement program.

Broadcast Localism (MMTC’s presentation was on behalf of MMTC and the Independent Spanish Broadcasters Association (ISBA))

The proposals for community advisory boards and for allowing AM stations to use FM translators would promote both localism and diversity. However, in the current economic climate, the effects of some proposals, such as requiring main studios in each community of license, would severely inhibit the growth and survival of minority broadcasting and unintentionally ratify the present effects of past discrimination.

Multilingual Emergency Broadcasting (MMTC’s presentation was on behalf of MMTC, the Office of Communication of the United Church of Christ, Inc. (UCC) and ISBA; the NAB’s presentation was on its own behalf)

MMTC, ISBA and UCC are working with the NAB and the Florida Association of Broadcasters to implement a test of a new multilingual emergency broadcasting plan in about 20 markets during the 2008 hurricane season. This is a real breakthrough on this vital issue. The plan is premised on a “designated hitter” model under which, if the only station in a covered language goes off the air in an emergency, another station would provide emergency information in that language. The PSHS and Media Bureaus are cooperating as well. Our goal is to have the test evaluated and provide the Commission with a report in Q4 2008.

XM/Sirius Merger

MMTC has taken no position on the merger and the topic wasn’t on the agenda for these meetings, but since the subject arose very briefly it is reported here. A proposed leasing set aside had been reported in a front-page article in the Washington Post the morning of these meetings. MMTC had not seen the underlying proposal. Without addressing the merits of the leasing proposal or the merger itself, we noted that it’s important for the Commission, in evaluating any potential leases, to ensure that they are solid business opportunities in light of the difficulty of financing a lease as opposed to financing ownership (an observation we also made concerning the share-time proposal referred above in the discussion of the Diversity Third FNPRM).

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Respectfully submitted,

David Honig

David Honig
Executive Director

Documents already in the record that were provided at these meetings:

1. MB Docket No. 07-294 et al.: Motion for Extension of Time (filed by DCS 6/5/08)
2. MB Docket No. 07-294 et al.: Petition for Partial Reconsideration (filed by DCS 6/16/08)
3. MM Docket No. 98-204: Comments of MMTC (filed 5/22/08)
4. MM Docket No. 98-204: Reply Comments of MMTC (filed 6/6/08)
5. MB Docket No. 04-233: Comments of MMTC and ISBA (filed 4/18/08)
6. MB Docket No. 04-233: Supplemental Comments of MMTC and ISBA (filed 5/18/08)
7. EB Docket No. 06-119 and 04-296: Request to Defer Action on Multilingual Issues (filed by ISBA, UCC and MMTC 6/5/08)

Other documents provided at these meetings (and filed as attachments to this letter in the respective docket):

1. "Pending Diversity Matters: FCC" (Meeting Agenda), 6/16/08
2. MM Docket No. 98-204: David Honig, "Are the Current FCC EEO Rules Effective?" FCBA CLE Program, 2/12/08
3. MB Docket No. 04-233: James Gattuso, "FCC Localism Rules: A 'Tax on Blackness?'" Heritage Foundation, 5/30/08