

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

In the Matter of)	
)	
Promoting Diversification of Ownership In the Broadcasting Services)	MB Docket No. 07-294
)	
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 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

COMMENTS OF
AMERICAN WOMEN IN RADIO AND TELEVISION, INC.

AMERICAN WOMEN IN RADIO AND TELEVISION, INC. (“AWRT”) hereby
submits comments in response to the Commission’s Third Further Notice of Proposed

Rule Making (the “*FNPRM*”), released March 5, 2008, in the above-referenced proceeding(s).¹

I. INTRODUCTION.

AWRT is a national, non-profit organization dedicated to advancing the impact of women in electronic media and allied fields through educating, advocating and acting as a resource for its members and the industry. AWRT members are professional men and women employed in radio, television, cable, advertising and closely allied fields. For more than 55 years, AWRT’s mission has been to promote the entry and advancement of women in management and ownership of broadcast companies and related businesses. AWRT has actively participated in past Commission proceedings, including the 2002 Biennial Review and Section 257 proceedings that have addressed broadcast media ownership issues because such proceedings have critical implications for future ownership opportunities for women-owned businesses in the radio and television industries. AWRT’s President has been a member of the Commission’s Federal Advisory Committee on Diversity (the “Diversity FAC”) since its inception in 2003. Additionally, AWRT’s Vice Chair/Chair Elect currently serves on the Diversity FAC’s subcommittee studying definitional, constitutional and other issues related to eligible entities. AWRT therefore has a profound interest in any proposals to advance diversity

¹ *Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rule Making*, FCC 07-217 (rel. March 5, 2008). The original comment deadline was June 30, 2008. *See* 73 Fed. Reg. 28400 (May 16, 2008); *corrected* 73 Fed. Reg. 38075 (May 29, 2008). On June 16, 2008, the Media Bureau issued an order granting an extension of the comment and reply comment periods, establishing a new comment deadline of July 30, 2008. *See* DA 08-1359 (rel. June 16, 2008)

in mass media, as well as a unique perspective on the experiences of women in today's media marketplace.

II. SUMMARY OF THE PROPOSALS.

In the Report and Order released with the FNPRM, the Commission enacted a number of rule and policy changes designed to increase participation in the broadcast industry by “eligible entities,” which are defined as entities that meet the Small Business Administration’s revenue standards for a “small business” in the particular entity’s industry grouping (*i.e.*, no more than \$13 million in annual receipts for TV broadcasters or \$5.6 million in annual receipts for radio broadcasters). In the *FNPRM*, the Commission inquires whether the “eligible entities” definition should be expanded to include “socially and economically disadvantaged businesses” (“SDBs”). *FNPRM* at ¶ 81. Specifically, the Commission requests comment on whether a race-based definition of SDBs should be adopted, and asks commenters to present data demonstrating that such a race-based classification could survive strict scrutiny under relevant legal precedents. *Id.* at ¶¶ 82-83. The Commission further requests comment on possible definitions of an SDB that would be race-neutral. *Id.* at ¶¶ 84-85.

The *FNPRM* also raises questions regarding possible changes to the Ownership Report, FCC Form 323, to require information regarding the race and gender identity of licensees. *Id.* at ¶ 93. Specifically, the Commission seeks comment on its data collection procedures, including whether to require additional parties (such as currently-exempt sole proprietors and partnerships composed entirely of natural persons) to file biennial reports and whether to establish a uniform filing date. *Id.* at ¶ 95.

The *FNPRM* also seeks comment on a variety of other proposals, including the following:

- permitting FM licensees broadcasting in HD using IBOC technology to assign the right to operate a radio stream to an SDB. *Id.* at ¶ 87.
- allowing a “time-share” procedure for bifurcation of a single channel analog FM station into an “Entertainment Station” and a “Free Speech Station;” the latter is subject to specific ownership and programming requirements. *Id.*
- extending the amount of time a licensee in the AM expanded band could retain its lower band station as well as its upper band station, if it proposed to assign one of the licenses to a “small business” as defined by the SBA. *Id.* at ¶¶ 90-91.
- allowing radio stations to change their community of license to any other community in the same market, subject to certain requirements. *Id.* at ¶ 98.
- reallocating TV channels 5 and 6 for FM broadcasting. *Id.* at ¶ 100.
- the Commission’s authority to require cable systems to carry Class-A television stations. *Id.* at ¶ 99.

In accordance with its mission, AWRT submits the instant comments on two of the proposals in the *FNPRM*. AWRT believes that a number of the other proposals in the *FNPRM* may have merit, but requires more detail and may address the commenters’ positions on various other proposals in reply comments.

III. THE COMMISSION SHOULD REVISE ITS OWNERSHIP REPORTING REQUIREMENTS.

AWRT urges the Commission to adopt its proposal with respect to race and gender information on FCC Form 323. As AWRT and others – including the Government Accountability Office (“GAO”)² – have long observed, the need for accurate, readily-available information concerning the extent of female and minority

² *Media Ownership: Economic Factors Influence the Number of Media Outlets in Local Markets, While Ownership by Minorities and Women Appears Limited and Difficult to Assess*, GAO-08-383 (March 2008) (“*GAO Report*”), available at <http://www.gao.gov/new.items/d08383.pdf>.

ownership in the broadcast industry is acute. The lack of such information hinders the Commission and interested parties in discerning the true scope of underrepresentation of women and minorities in media ownership and management, which makes it more difficult to formulate solutions and assess their effectiveness. While many of the rules the Commission has enacted for eligible entities are laudable, and a number of the proposals in the *FNPRM* seem promising, the current state of the Commission's data will render it nearly impossible to determine if those actions have any positive impact on diversity. In addition, the lack of accurate data hinders the Commission from adopting rules and policies that would survive review under a strict scrutiny standard.

AWRT believes the *GAO Report* is instructive. The GAO noted a number of weaknesses in the Commission's data collection processes, including limits on the category of stations that must file the Form 323; use of attachments that may make ownership information, including female and minority ownership, unavailable for electronic searching; retaining outdated or incorrect information in the database; and lack of quality control mechanisms for the data submitted. *See GAO Report* at 22-23. AWRT submits that the Commission should generally adopt procedures to address the flaws described by the GAO;³ although AWRT believes that sole proprietors should not be required to file every two years. For sole proprietors, any change in the identity of a licensed individual would be captured by a license assignment application and the necessary ownership report filing. Nonetheless, following necessary changes to its forms and electronic filing system to improve the accuracy and accessibility of ownership

³ It appears that the Commission has already undertaken to address some of these issues. See *GAO Report* at 22. AWRT applauds the Commission's commitment to improving the accuracy of its data collections, and urges it to continue its efforts.

data, AWRT recommends that the Commission require a one-time filing for licensees who remain exempt from the biennial ownership reporting requirement, to ensure that the Commission's records accurate information regarding such broadcasters.

IV. ANY DEFINITION OF SDBs MUST INCLUDE WOMEN.

While AWRT is not necessarily opposed to including “socially and economically disadvantaged businesses” or SDBs within the definition of an eligible entity for some purposes, or to the Commission adopting specific rules to benefit SDBs, AWRT submits that any definition of an SDB that is enacted must include businesses owned by women as well as those owned by racial minorities. As the limited information available on broadcast ownership makes abundantly clear, women are severely underrepresented in media ownership, and in business ownership generally.⁴ The available reports indicate that, although comprising 51% of the U.S. population, women-owned firms account for a disproportionately small percentage of media businesses. The largest estimates of female business ownership indicate that women own 14.01% of radio stations and 13.68% of TV stations.⁵ Other reports paint a far bleaker picture, indicating that women own approximately 5% of full-power TV stations (compared to 3% for minorities) and 6% of radio stations (compared to 8% for minorities).⁶ Regardless of which figures are correct, it is plain that underrepresentation of women in ownership positions in the media is severe. Moreover, women, like minorities, have suffered historical lack of access to

⁴ Artie Beresteanu and Paul Ellickson, *Minority and Female Ownership in Media Enterprises* (Duke University, June 2007), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A8.pdf (“FCC Study No. 7”).

⁵ FCC Study No. 7 at 5.

⁶ *GAO Report* at 4-5, citing reports by Free Press.

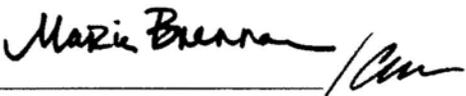
capital and other barriers to station ownership.⁷ There is no rational basis for the Commission to adopt rules benefitting one subset of disadvantaged persons while ignoring other subsets, and such a policy would be unlikely to survive judicial review.

V. CONCLUSION.

AWRT requests the Commission to expeditiously adopt rules and policies that protect and promote ownership diversity, especially gender-ownership diversity, in the broadcasting industry in accordance with the foregoing comments.

Respectfully submitted,

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⁷ See e.g., *id.* at 25; FCC Study No. 7 at 8-10.