

# Minority Media & Telecommunications Council

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August 7, 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 No. 04-233 (Broadcast Localism); MB Docket 99-25 (LPFM Service): FM Translators for AM Stations; Main Studio Requirement
- MB Docket Nos. 06-121 and 07-294 (Media Ownership; Minority Ownership): Must-Carry for Certain Class A LPTVs; Proposed Class S Stations
- MB Docket No. 07-57: Sirius XM Merger: Selection Process for Programmers in the Channel Diversity Initiative
- EB Docket No. 04-296 (Multilingual Emergency Broadcasting): Failure of Collaborative Market Test

This reports on a meeting held August 5, 2008 with Chairman Kevin Martin and his Legal Advisor, Elizabeth Andrion, Esq. Those participating were Joseph S. Miller, Esq., Earle K. Moore Fellow, MMTTC; Joycelyn Tate, Esq., Associate Broker, MMTTC; Margaret Lancaster, Esq., Associate, Skadden, Arps, Slate, Meagher & Flom; James L. Winston, Esq., Executive Director, National Association of Black Owned Broadcasters; and myself. We discussed the following issues arising in pending permit-but-disclose proceedings:

## **FM Translators for AM Stations; Main Studio Requirement**

MMTC and NABOB maintain that minority owners' asset values would increase substantially if AM stations could extend their signals using FM translators. The vast majority of minority owned stations broadcast on AM frequencies. MMTTC wholeheartedly supports, and is eager to have implemented, the National Association of Broadcasters' ("NAB") proposal to allow AM stations to extend their signals via FM translators. If the pending LPFM "Rule of 10" reconsideration petition presents an obstacle to resolution of this issue, perhaps that obstacle could be overcome by permitting the holders of more than ten construction permits to sell the excess permits to eligible entities, provided an acceptable eligible entity definition can be crafted.

MMTC and NABOB oppose a return to the pre-1987 main studio rules. Minority broadcast clusters' stations tend to be licensed to multiple communities; thus this proposal would disproportionately burden minority owners.

### **Must-Carry for Certain Class A LPTVs**

MMTC supports must-carry for hyper-local and multilingual Class A LPTVs. Lack of access to capital remains a pervasive stumbling block for minority media owners. Must-carry significantly increases an LPTV station's asset value as it grants LPTV stations access to a main entry point to cable—IPTV and satellite boxes—thereby making these stations more attractive to investors. Minorities own some 15% of Class A Low Power Television (LPTV) stations—a rate that is five times as high as minority ownership of full power television stations. Thus, must-carry for some Class A LPTVs would significantly promote media ownership diversity.

### **Proposed Class S Stations**

MMTC supports Media Access Project's proposal to create a new class of stations—Class S stations—that would broadcast on DTV sub-channels using the share-time rule.

### **Sirius XM: Selection Process for Programmers in the Channel Diversity Initiative**

MMTC will file comments regarding (1) the definition of eligible entities for the programming diversity initiative, (2) the selection of the entity that will select the programmers, and (3) the selection process to be used to select the programmers. Strict scrutiny may not apply, but even if it does, there are several viable race-neutral classifications premised on service to the unmet needs of large communities that can be aggregated nationwide by satellite service; e.g., service to Native Americans, to Historically Black Colleges and Universities, and to multilingual populations. MMTC doubts that the Commission itself can, or ought to, choose the non-licensee programmers.

### **Failure of Collaborative EAS Market Test (discussed with Ms. Andrion after Chairman Martin had to leave the meeting)**

A summer 2008 20-market test of a multilingual emergency broadcasting system was to have been undertaken by MMTC, the Spanish Radio Association (“SRA”), the Office of Communication of the United Church of Christ, Inc. (“UCC”), the NAB and the Florida Association of Broadcasters (“FAB”). The test was premised on the designation of “designated hitter” stations that would agree in advance to be responsible for transmitting messages in widely spoken languages other than English in the event of an emergency and, especially, if the only station providing full market service in a widely spoken language other than English is taken off the air during the emergency. The test has failed, unfortunately, due to the unwillingness of rank and file broadcasters to volunteer to be designated hitters. MMTC does not hold the NAB or the FAB responsible for the failure of the test. Nonetheless, self-regulation has not succeeded.

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Therefore, MMTC, the SRA and the UCC will shortly file a request that the Commission implement regulations to effectuate multilingual emergency broadcasts.

Respectfully submitted,

*David Honig*

David Honig  
Executive Director

Courtesy Copy to: John Griffith Johnson, Esq. (Counsel for Arbitron)

Documents already in the record that were provided at this meeting:

- MB Docket 07-294: Initial Comments of the Diversity and Competition Supporters in Response to the Third Further Notice of Proposed Rulemaking (July 30, 2008)
- MB Docket 07-294: Letter to Hon. Kevin J. Martin from David Honig, Executive Director, MMTC (July 15, 2008) re: Nondiscrimination in Advertising Sales Contracts
- MB Docket 04-233: James Gattuso, "FCC Localism Rules: A "Tax on Blackness"?" (May 30, 2008)

Additional documents provided at this meeting (and filed as attachments to this letter):

- All Dockets: Diversity Issues for Discussion August 5, 2008 (NOTE: except for PPM (which is not the subject of a docketed proceeding), the items on this agenda that were not described in this letter were not discussed during the meeting. A discussion of PPM took place and tracked the PPM Coalition's August 4, 2008 Memorandum set out above. A similar discussion was had the same day in separate meetings with Commissioner Michael Copps, Rudy Brioché, Esq., Legal Advisor to Commissioner Jonathan Adelstein, and Amy Blankenship, Legal Advisor to Commissioner Deborah Taylor Tate.)
- Dockets 07-294 and 06-121: A Proposal for Diversifying Access to Digital TV Spectrum (Media Access Project, July 29, 2008)
- Non-Docketed: Resolution of the FCC Advisory Committee on Diversity for Communications in the Digital Age, Requesting an Investigation of the Arbitron Portable People Meter (July 28, 2008)
- Non-Docketed: PPM Coalition: Issues Regarding the Portable People Meter (August 4, 2008 – inadvertently misdated on the document as "April 4, 2008")
- All Dockets: MMTC Roadmap for Telecommunications Policy (July 21, 2008)