

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Promoting Diversification of Ownership |) | MB Docket No. 07-294 |
| In the Broadcasting Services |) | |
| |) | |
| 2006 Quadrennial Regulatory Review – |) | MB Docket No. 06-121 |
| Review of the Commission’s Broadcast |) | |
| Ownership Rules and Other Rules |) | |
| Adopted Pursuant to Section 202 of the |) | |
| Telecommunications Act of 1996 |) | |
| |) | |
| 2002 Biennial Regulatory Review – |) | MB Docket No. 02-277 |
| Review of the Commission’s Broadcast |) | |
| Ownership Rules and Other Rules |) | |
| Adopted Pursuant to Section 202 of the |) | |
| Telecommunications Act of 1996 |) | |
| |) | |
| Cross-Ownership of Broadcast Stations |) | MM Docket No. 01-235 |
| and Newspapers |) | |
| |) | |
| Rules and Policies Concerning Multiple |) | MM Docket No. 01-317 |
| Ownership of Radio Broadcast Stations |) | |
| in Local Markets |) | |
| |) | |
| Definition of Radio Markets |) | MM Docket No. 00-244 |
| |) | |
| Ways to Further Section 257 Mandate |) | MB Docket No. 04-228 |
| and To Build on Earlier Studies |) | |

To: The Commission

**REPLY COMMENTS OF
COUNCIL TREE INVESTORS, INC.**

Council Tree Investors, Inc. (“Council Tree”), pursuant to Section 1.415 of the Commission’s Rules, 47 C.F.R. § 1.415, submits these reply comments in response to the captioned *Report and Order and Third Further Notice of Proposed Rule Making* (FCC 07-217)

adopted by the Commission on December 18, 2007 and released on March 5, 2008 (“*Third FNPRM*”).^{1/}

I. INTRODUCTION

Council Tree is an investment company organized to identify and develop communications industry investment opportunities for the benefit of businesses owned by members of minority groups and women. As part of this work, Council Tree has long been an active supporter of responsibly-managed government efforts to encourage the participation of new entrants in the communications industry. Given its investment mission, Council Tree has an interest in seeing that the Commission’s rules and policies designed to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses, reflect this goal in a rational and effective manner.

II. THE COMMISSION SHOULD ADOPT THE DEFINITION OF SOCIAL AND ECONOMICALLY DISADVANTAGE BUSINESSES USED BY THE SBA OR, IN THE MEANTIME, IMPLEMENT FULL FILE REVIEW

Council Tree urges the Commission to adopt the definition of social and economically disadvantaged businesses (“SDBs”) used by the United States Small Business Administration (“SBA”) instead of the definition of eligible entities adopted by the Commission in this context. *See Third FNPRM* at ¶ 80. To qualify for participation in Small Business Administration’s Small Disadvantaged Business

^{1/} On June 16, 2008, the Media Bureau extended the deadline for reply comments in response to the *Third FNPRM* to August 29, 2008. *See* DA 08-1359.

program,^{2/} a small business must be at least 51 percent owned and controlled by a socially and economically disadvantaged individual or individuals. Under the program, African Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Pacific Americans, and Native Americans are presumed to qualify, and other individuals can qualify if they can show by a preponderance of the evidence that they are disadvantaged.^{3/} As explained by the Diversity and Competition Supporters (“DCS”), the Commission has full authority, and the obligation, to expand the scope of “eligible entities” in this context. *See* DCS Comments at 5-6. It should do so.

If the Commission believes that it must create a new record on which to adopt the SBA’s definition of SDB in this context, it should implement full file review of broadcast license applications while the Commission explores the adoption of a race-conscious definition of SDBs. *See* DCS Comments at 12. Under such an approach, “each applicant would demonstrate (to the satisfaction of an independent, politically insulated professional entity, perhaps modeled after the Universal Service Board) that it has overcome significant social and economic disadvantages, the overcoming of which would be predictive of success in a challenging industry and of the promotion of diversity of information and perspectives and satisfaction of

^{2/} 13 C.F.R. § 124.1.

^{3/} 13 C.F.R. §§ 124.103(b-c), 124,104(a).

unmet needs in the industry.”^{4/}

It is clear that conducting such full file review and granting broadcast licenses to applicants who have overcome social and economic disadvantages will result in greater diversity of broadcast information and viewpoints. In the same way that pursuit of a diverse student body has justified the implementation of full file review in the university admissions context, the pursuit of a diversity of media voices can justify the same approach here. *See* 47 U.S.C. § 257(b). Though the university admissions process necessarily involves the *comparative* evaluation of applications that could be absent in this context, evaluation of discrete broadcast license applications can benefit from the assessment of the social and economic disadvantages overcome by the applicant provided that it is based on clear standards for qualification. *See* DCS Comments at 11-12.

III. OTHER PROPOSALS SHOULD BE ADOPTED BY THE COMMISSION

In addition, other proposals should be adopted by the Commission. Council Tree endorses the DCS recommendation to create a must-carry obligation for Class A low power television stations that actually broadcast multicultural and/or multilingual programming. *See* DCS Comments at 23. Doing so will, at once, help such existing programming reach a wider audience and give Class A low power broadcasters the incentive to develop new multicultural and/or multilingual

^{4/} Supplemental Ex Parte Comments of the Diversity and Competition Supporters in Response to the Second Further Notice of Proposed Rulemaking, MB Docket No. 06-121, at 40-41 (filed Nov. 20, 2007).

programming.

Likewise, as advocated by NABOB and the Rainbow/PUSH Coalition, the Commission should examine major rulemaking and merger applications for the potential impact of the proposed rules or transactions on broadcast station ownership by members of minority groups and women. The Commission has seen evidence of the need for such an approach in the results of its 2006 amendments to its designated entity rules in the competitive bidding context. In the wake of those amendments, national incumbent wireless carriers AT&T Wireless, Verizon Wireless, Sprint, and T-Mobile control 90 percent of domestic wireless industry subscribers and 96 percent of domestic wireless industry revenue.^{5/} Their domination of the advanced wireless service and 700 MHz band auctions and flurry of recent acquisitions mean that the commercial mobile radio services industry will continue its slide into consolidation. In the broadcast context, the Commission should work to avoid such a result by screening major rulemaking and merger applications for the potential impact of the proposed rules or transactions on broadcast station ownership by members of minority groups and women and by foregoing action that would impair broadcast station ownership by such groups.

IV. CONCLUSION

For these reasons, the Commission should adopt the definition of SDB used by the SBA, implement full file review of broadcast license applications while the

^{5/} These figures are *pro forma* for Verizon Wireless's proposed \$28 billion acquisition of Alltel.

Commission explores the adoption of a race-conscious definition of SDBs, create a must-carry obligation for Class A low power television stations that actually broadcast multicultural and/or multilingual programming, and examine major rulemaking and merger applications for the potential impact of the proposed rules or transactions on broadcast station ownership by members of minority groups and women.

Respectfully submitted,

/s/ Steve C. Hillard
Steve C. Hillard
George T. Laub
Jonathan B. Glass
Council Tree Investors, Inc.
2919 17th Avenue
Suite 205
Longmont, CO 80503
(303) 678-1844

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