

Minority Media & Telecommunications Council

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November 22, 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. 08-187 (Portable People Meter)
MB Docket No. 98-204 (Equal Employment Opportunity)
MB Docket No. 07-294 (Diversification of Broadcast Ownership)
MB Docket No. 05-211 (Wireless Auction Rules)
EB Docket Nos. 06-119 and 04-296 (Emergency Alert System)

This reports on a November 21, 2008 meeting with Commissioner Jonathan Adelstein, Senior Legal Advisor Scott Bergmann, Legal Advisor Rudy Brioche and Confidential Assistant and Director of Outreach Katie Yocum. Participating were Ari Fitzgerald, Secretary, Minority Media and Telecommunications Council (MMTC), Inez Gonzalez, Washington Director, National Hispanic Media Coalition; Ronald Gordon, President, Independent Spanish Broadcasters Association (ISBA), David Honig, Executive Director, MMTC; Kimberly Marcus, Washington Bureau Executive Director, Rainbow PUSH Coalition; Manny Mirabal, Chair, Hispanic Technology and Telecommunications Partnership; Francisco Montero, Counsel, ISBA; Hilary Shelton, Washington Bureau Director, NAACP, and James Winston, Executive Director, National Association of Black Owned Broadcasters. We made these points:

Portable People Meter

The Media Bureau's inquiry has elicited essentially all relevant public information, but to discern the nature and extent of PPM methodology's impact on minority broadcasters, the Commission must review information available only from Arbitron and the MRC. Thus, if the Commission investigates PPM, it should do so using Section 403's subpoena power. An alleged wrongdoer should not dictate to a finder of fact which tools should be used to investigate its behavior. Nonetheless, fairness may require a protective order and in camera review of privileged material.

Equal Employment Opportunity

The Commission's EEO audit system is a failure, EEO enforcement has been decimated, and consequently minority broadcast employment has been decimated. The Commission's EEO caseload has declined 96% in 10 years, and minority employment in English language, non-

minority owned radio journalism has plunged to essentially zero. Word of mouth recruitment conducted substantially from homogeneous workforces - an inherently discriminatory practice - is commonplace again. Ending this practice is impossible unless the Commission and the public know which stations' workforces are homogeneous. Thus Form 395 must be restored and made public. Form 395 is a race neutral document, and its use is justified by the compelling governmental interests of preventing and proscribing discrimination.

Diversification of Broadcast Ownership

The Commission should take several steps aimed at diversifying broadcast ownership:

1. implement Full File Review as an interim step while updating the 2000 Adarand studies and producing a constitutionally sustainable SDB definition
2. allow share-time ownership for HD and DTV sub-channels
3. authorize modest structural rule waivers for creating incubator programs
4. authorize must-carry for hyper-local and multilingual Class A LPTVs
5. study the efficacy of tradable diversity credits
6. reallocate Channels 5-6 for FM and allow AMs to migrate to that spectrum
7. relax the FM move-in rules to expand service to minority populations.

Wireless Auction Rules

The Commission should reform the designated entity (DE) program by developing new incentives to advance minority ownership of wireless networks and services. One aspect of DE program reform (the ten-year exit limitation) was mentioned in passing but was not developed in light of pending litigation (counsel for which are being served with a copy of this letter).

Emergency Alert System

The multilingual EAS tests that ISBA, OC Inc. and MMTC had planned to undertake in 21 markets in cooperation with the NAB and the Florida Association of Broadcasters (FAB) this summer did not take place. Shortly before the tests were to have begun, the FAB unexpectedly withdrew its support for the essential element of the tests - a "designated hitter" plan. Under such a plan, a designated station in a market would agree and make plans in advance to provide emergency information in a widely spoken language if, during an emergency, no other broadcast service in that language is available. If a broadcast license means anything at all, broadcasters must agree to designated hitter plans. Although over three years have passed since Hurricane Katrina, broadcasters have shown that they will not adopt designated hitter plans voluntarily. Therefore, unfortunately, the Commission will have to adopt rules requiring these plans.

Respectfully submitted,

David Honig

David Honig
Executive Director