

Minority Media and Telecommunications Council

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October 10, 2009

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Ms. Dortch:

RE: Notice of Ex Parte Communication:

- MB Docket No. 07-294 (Promoting Diversification of Broadcast Ownership)
- MB Docket No. 08-187 (Arbitron Audience Ratings)
- DA 09-2139 (2010 Quadrennial Review Media Ownership Rules)
- RM-11565 (MMTC Radio Rescue Petition)

This reports on an October 7, 2009, meeting with Sherrese Smith, the Chairman's Legal Advisor for Media, Consumer, and Enforcement Issues. MMTC was represented by Henry Rivera, Chair; Erwin Krasnow and Maurita Coley, Vice Chairs; Joycelyn James, John W. Jones Fellow, and myself. The full agenda for the meeting is attached; this letter describes only the points we discussed at the meeting.

We urged that in light of the current state of minority broadcast ownership, the Commission should take action to expand entrepreneurs' access to capital and ownership opportunities. We encouraged designation of a Compliance Officer to enforce the Broadcast Advertising Nondiscrimination rule adopted in the Broadcast Diversity Order and Third Further NPRM ("Broadcast Diversity Order").¹ "No urban/no Spanish" dictates ("NUDs" and "NSDs") cause minority broadcasters to lose at least \$200 million a year in revenue. In August, after receiving a copy of a written NUD by Mini Cooper's agency, MMTC renewed its July 2008 request for the Commission to designate a compliance officer to enforce this rule.² Taking such action would advance the Commission's efforts to protect and empower all Americans.

¹ See Promoting Diversification of Ownership In the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5941-42 ¶¶49-50 (2008) ("Broadcast Diversity Order").

² See Letter to Hon. Julius Genachowski, from David Honig, MMTC, re: Nondiscrimination in Advertising Sales Contract, MB Docket No. 07-294 (August 12, 2009).

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We also urged the Commission to complete the Broadcast Diversity proceeding by considering the thirteen outstanding proposals, including structural rule waivers for incubator programs, AM expanded band relief, and relaxation of restrictions on foreign investments in broadcast stations.³

We encouraged adoption of must-carry for hyper-local and multilingual Class A low-power television (“LPTV”) stations. Approximately 15% of Class A LPTV stations are minority owned and provide service to multilingual and multicultural communities that is not available from full-power stations.

The Commission should also authorize share-time ownership for HD and DTV sub-channels, initially to socially and economically disadvantaged businesses (“SDBs”), as noted in the Diversity and Competitions Supporters’ (“DCS”) 2008 Broadcast Diversity Comments.⁴ MMTC has estimated that if only 20% of broadcast owners sell a sub-channel under this rule, the nation would experience a 61% increase in minority broadcast ownership.⁵ Ownership should be the goal of digital share time, as lease relationships are nearly impossible to finance in the current economic climate.

The Commission should also support reinstatement of a tax certificate policy, providing tax relief for broadcasters who sell stations to minority and female entrepreneurs.

In May of this year, the Commission issued a Notice of Inquiry into Arbitron’s use of portable people meters (“PPMs”) as a radio audience measurement device.⁶ The matter is fully briefed and awaiting action by the Commission. Recent action by Congress indicates that there are major flaws in the PPM methodology.⁷ As the expert agency on broadcast communications services, the Commission has jurisdiction to investigate these flaws and make factual findings related to PPM. Congress and the Commission should act in tandem to ensure that any radio audience measurement service is accurate because the Commission relies on these ratings to enact broadcast rules and policies.

³ See generally Broadcast Diversity Order, n. 1 supra. In June 2008, Diversity and Competitions Supporters (“DCS”) petitioned for reconsideration of the Commission’s Broadcast Diversity Order on its eligible entities rule and refusal to relax its interpretation of the foreign ownership rule. Diversity and Competition Supporters Petition for Reconsideration, MB Docket No. 07-294 (filed June 16, 2008). This matter is still pending and requires the Commission’s attention.

⁴ See Diversity and Competition Supporters Initial Comments in Response to the Third Further NPRM (July 30, 2008) at 13-15.

⁵ Id.

⁶ See Impact of Arbitron Audience Ratings Measurements on Radio Broadcasters, Notice of Inquiry, 24 FCC Rcd 6141 (2009).

⁷ See Towns Subpoenas Media Ratings Council for Arbitron Documents, U.S. Congress Committee on Oversight and Reform (September 22, 2009) available at <http://oversight.house.gov/story.asp?ID=2603> (last visited October 8, 2009).

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The MMTC Radio Rescue Petition, submitted July 19 of this year, asks that the Commission revise and delete certain outdated and ineffective rules in an effort to promote public service, public safety, minority entrepreneurship and democracy.⁸ Among these is establishment of an advisory committee to explore migration of AM radio station to TV channels 5 and 6.⁹ Approximately two-thirds of minority-owned stations are found on the AM band. If done properly, AM migration to TV 5 and 6 would go a long way to support diversity and localism.

MMTC encourages the Commission to take into consideration proposals submitted over the past six years by its Advisory Committee on Diversity for Communications in the Digital Age (“Diversity Committee”). Most recently, the Diversity Committee proposed that the Commission restore its designated entity rule, renew its Adarand disparity studies, and adopt Full File Review to select candidates for is eligible entities program.¹⁰ These race and gender neutral proposals are ripe for consideration by the Commission and should be put out for public comment.

Respectfully submitted,

David Honig

David Honig
President and Executive Director

Attachment

⁸ See MMTC Radio Rescue Petition for Rulemaking, MB 09-52, RM-11565 (July 19, 2009).

⁹ Id. at 7-9.

¹⁰ See Diversity Federal Advisory Committee Meeting, available at <http://www.fcc.gov/DiversityFAC/meeting092209.html>, then follow to links for separate proposals (last visited October 8, 2009).