

Minority Media and Telecommunications Council

3636 16th Street N.W. Suite B-366
Washington, D.C. 20010
Phone: 202-332-0500 Fax: 202-332-0503
www.mmtconline.org

November 16, 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:

- 2010 Quadrennial Review: MB Docket No. 09-182
- PPM Inquiry: MB Docket No. 09-817
- Radio Rescue PFRM: RM-11565
- Broadcast EEO: MM Docket No. 98-204

This reports on a November 10, 2009, meeting with William Lake, Chief of the Media Bureau, Robert Ratcliffe, Deputy Chief of the Media Bureau, and Mania Baghdadi, Deputy Chief of the Industry Analysis Division of the Media Bureau. Present from MMTC were Jacqueline Clary, Counsel, and myself.

We discussed when the advertising nondiscrimination provision goes into effect and the implications of a renewal-based certification where certification implies a rule of ongoing compliance throughout the renewal term. I urged the Commission to bring the industry to the table to ensure agreement on compliance language for the advertising nondiscrimination rule. I also urged the Commission to recommend that Congress enact legislation giving the Federal Trade Commission the authority to regulate the supply side of the advertising nondiscrimination problem.

I offered my commendation to the Commission for the media ownership workshops but drew attention to an omission in the Public Notice¹ regarding “other...issues that the Commission should address in this proceeding(.)”² The problem with this Public Notice is the Commission’s failure to mention minority ownership, which is a critical aspect of this inquiry. This is a battle

¹ See Media Bureau Announces Agenda and Participants for Initial Media Ownership Workshops and Seeks Comment on Structuring of the 2010 Media Ownership Review Proceeding, Public Notice, MB Docket No. 09-182 (rel. Oct. 21, 2009).

² Id. at p. 2.

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that was hard fought and won in 2006 when the Commission added this language to its post-Prometheus Notice of Proposed Rulemaking: "...we urge commenters to explain the effects, if any, that their ownership rule proposals will have on ownership of broadcast outlets by minorities, women and small businesses."³

I also specifically urged the Commission to act on the pending issues from the last Quadrennial Review including recommendations developed by the Diversity Committee and thirteen of MMTC's proposals, most importantly the proposal of structural rule waivers for creating incubator programs.⁴

I briefly reviewed the state of minority ownership in radio broadcasting as stated in the handout on MMTC's landmark study of minority commercial radio ownership (attached). I also summarized the proposals developed in the Radio Rescue Petition to update certain rules that have outlived their usefulness and noted which proposals were substantially unopposed by initial comments.

I urged the Commission to incorporate MMTC's Radio Rescue Petition into the Rural Radio docket to be acted upon quickly, while noting that acting upon certain proposals that do not require comment would send a much needed message to broadcast investors that radio is an industry that will survive.

Another challenge facing minority broadcasters is the performance royalty issue. This issue arises in a time where there is no money in media brokerage, especially for minorities, persons attempting to complete deals of less than five million dollars, and non-cash flowing properties.⁵

I also discussed the barriers caused by Arbitron's monopoly and a PPM ratings methodology that does not accurately count minority audiences, does not use sufficient address based sampling, and fails to include a measure of listener engagement. I urged the Commission to develop one of two solutions to this problem. The Commission could either (1) allow licensees to opt out of existing contracts and thus provide opportunities for ratings service competition, or (2) conduct a Section 403 Hearing.

³ 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 (Further NPRM), MB Docket No. 06-121 et al., 21 FCC Rcd 8834, 8837 ¶ 6 (rel. July 24, 2006).

⁴ See Supplemental Ex Parte Comments of the Diversity and Competition Supporters in Response to the Second Further Notice of Proposed Rulemaking, 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 et al. (filed Nov. 20, 2007), pp. 5-9.

⁵ Id. at Appendix E (setting forth the results of MMTC's Survey).

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The last topic addressed at this meeting was EEO non-enforcement. I discussed how word of mouth recruitment is only discriminatory if there is a homogenous workplace as well as problems with the audit system that allow everyone to pass without giving sanctions where sanctions are due. The Commission needs to send a signal to the industry that it is enforcing EEO regulations by looking at stations that have homogenous workplaces and then looking at station specific Form 395 data. The Commission knows how to sanction those who misuse this data and there is a way to do this and survive judicial review. If these steps are not taken, the alternative is an industry purged of minorities – as has already happened in radio journalism.

Attached please find five handouts I presented the during the meeting:

- Agenda
- Model Nondiscrimination Clauses for Written and Oral Contracts Between Broadcasters (including their rep firms) and Advertisers (including their agencies)
- MMTC Announces Landmark Study on Minority Commercial Radio Ownership
- Radio Rescue Support/Oppose List
- Table of Contents of MMTC's Radio Rescue Petition, Showing Items Opposed By No More Than One Individual *Pro Se* Commenter

Respectfully submitted,

David Honig

David Honig
President and Executive Director