

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
2010 Quadrennial Regulatory Review of the ) MB Docket 09-182  
Commission’s Broadcast Ownership Rules )

**COMMENTS OF THE NATIONAL HISPANIC MEDIA COALITION**

The National Hispanic Media Coalition (“NHMC”)<sup>1</sup> respectfully submits these comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) Public Notice seeking comment on the “scope and methodology for the proceeding and the analytical framework the Commission should use for conducting its review.”<sup>2</sup> NHMC applauds the Commission for transparently addressing procedural issues prior to commencing substantive review of its broadcast ownership rules. NHMC urges the Commission to proceed with the following three recommendations. First, the 2010 review should include an examination of the impact of current and future structural broadcast ownership regulations on minority and female ownership. Second, to facilitate that examination, the Commission should gather and interpret better data on minority and female ownership. Finally, the Commission should promptly resolve all outstanding license renewal applications, waiver requests and related petitions to deny.

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<sup>1</sup> NHMC is a 23 year old non-profit organization whose mission is to (1) improve the image of American Latinos as portrayed by the media; (2) increase Latino employment in all facets of the media industry; and (3) advocate for media and telecommunications policies that benefit the Latino community and other communities of color. NHMC filed a petition for reconsideration of the order issued in the 2006 Quadrennial Regulatory Review, *2006 Quadrennial Regulatory Review, Report & Order and Order on Reconsideration*, 23 FCC Rcd. 2010 (2008) (“2008 Order”), requesting that the FCC reconsider its deregulatory decisions, and tighten local radio and television rules.

<sup>2</sup> Public Notice, DA 09-2209 (rel. Oct. 21, 2009) (“Public Notice”).

## **I. The Commission Must Examine The Impact Of Broadcast Ownership Rules On Minority Ownership In This Proceeding**

Before making any decision about broadcast ownership rules, the Commission must examine the impact of those rules on minority ownership of broadcast stations. There is a “long history of recognition by this agency, as well as by courts, Congress, and the public, that minorities and women have experienced serious obstacles in attempting to participate in the telecommunications industry [and] that their greater participation would enhance the public interest.”<sup>3</sup> As articulated in comments submitted by the Institute for Public Representation in the 2006 Quadrennial Regulatory Review,

assessing the impact of ownership rules on underrepresented and disadvantaged groups, is not merely an option for the Commission – it is an imperative. Not only did the Third Circuit Court of Appeals instruct the Commission to consider proposals to encourage minority and women’s ownership in the ownership proceeding,<sup>4</sup> the Commission is also bound by sections 257 and 309(j) of the Communications Act to review and eliminate barriers to entry for underrepresented groups, including women, minorities, and small businesses, and to develop policies to encourage their acquisition of broadcast licenses.

Under Section 257, the Commission is instructed to identify and eliminate “market barriers to entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services,” and to do so in a manner “favoring diversity of media voices.”<sup>5</sup> Section 257 requires the Commission to report to Congress every three years of its regulatory efforts to eliminate market entry barriers for entrepreneurs and other small businesses “in the provision and ownership of telecommunications services and information services,” and to recommend any such obstacles that should be eliminated.<sup>6</sup> Similarly, Section 309(j) directs the Commission to adopt competitive bidding procedures and to issue licenses in a matter that avoids “excessive concentration of licenses” and to “disseminate licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by *minority groups and women*.”<sup>7</sup>

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<sup>3</sup> *Section 257 Proceeding to Identify and Eliminate Entry Barriers for Small Businesses*, Report, 12 FCC Rcd. 16,802, 16,831 (1997).

<sup>4</sup> *Prometheus Radio Project v. FCC*, 373 F.3d 372, 435 n.82 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (June 13, 2005) (“*Prometheus*”) (directing the Commission to conduct rigorous analysis of the impact of broadcast ownership rules on minorities and women).

<sup>5</sup> 47 U.S.C. § 257 (2007).

<sup>6</sup> 47 U.S.C. § 257(a) (2007).

<sup>7</sup> 47 U.S.C. §309(j)(3)(B) (2007) (emphasis added).

Taken in tandem, these provisions impose a compelling mandate on the Commission to adopt rules and procedures to increase women and minority access to broadcast ownership.<sup>8</sup>

The most current data on minority ownership of broadcast stations indicates that a disproportionately small number minority broadcast owners, and that broadcast ownership rules enhance minority ownership.<sup>9</sup> Statistics compiled by Free Press indicate that only 7% of commercial broadcast radio stations are owned by people of color despite that they make up 33% of the population, and that Latinos own just 2.9% of radio stations despite that they comprise 15% of the population.<sup>10</sup> As for commercial broadcast television stations, minorities own just 3.26%, and Latinos own only 1.11%.<sup>11</sup> These figures are considerably lower than overall minority business ownership, which was at 18% upon the last calculation.<sup>12</sup> In addition, research indicates that minority-owned stations thrive in more competitive, less concentrated markets.<sup>13</sup> Indeed, most of the current minority broadcasters acquired their licenses prior to enactment of the Telecommunications Act of 1996, which resulted in record consolidation.<sup>14</sup>

Minority ownership is a critical factor to examine in this proceeding, and failure to consider it would be a disservice to current and potential minority and female broadcasters and the viewers and listeners that they serve. A recent study shows that minority owners are highly

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<sup>8</sup> Comments of UCC *et al.*, MB Dkt. No. 06-121 (Oct. 1, 2007).

<sup>9</sup> Al Hammond, *The Impact of the FCC's TV Duopoly Rule Relaxation on Minority and Women Owned Broadcast Stations 1996 to 2006*, FCC (2007).

<sup>10</sup> S. Derek Turner & Mark Cooper, *Out of the Picture: Minority and Female TV Station Ownership in the United States* at 2-3 (2006), available at [http://www.freepress.net/files/out\\_of\\_the\\_picture.pdf](http://www.freepress.net/files/out_of_the_picture.pdf).

<sup>11</sup> *Id.*

<sup>12</sup> Ying Lowrey, *Minorities in Business: A Demographic Review of Minority Business Ownership* (2007).

<sup>13</sup> S. Derek Turner & Mark Cooper, *Out of the Picture: Minority and Female TV Station Ownership in the United States* at 2-3 (2006), available at [http://www.freepress.net/files/out\\_of\\_the\\_picture.pdf](http://www.freepress.net/files/out_of_the_picture.pdf).

<sup>14</sup> Catherine J.K. Sandoval, *Minority Commercial Radio Ownership in 2009: FCC Licensing and Consolidation Policies, Entry Windows, and the Nexus Between Ownership, Diversity and Service in the Public Interest* at 13-14 (2009).

likely to air minority-oriented programming,<sup>15</sup> as in mid-2009, 72.5% of minority-owned stations were transmitting minority-oriented formats.<sup>16</sup> Thus, the impact of ownership regulations on minority and female ownership is also relevant to determining how broadcast ownership rules impact viewpoint diversity.

## **II. The Commission Must Collect Better Data On Minority Ownership**

Before it can consider the impact of regulation on minority ownership, the FCC must collect better data. Indeed, data inadequacies have proven fatal to past attempts to alter the media ownership rules.<sup>17</sup> Fortunately, the FCC has already adopted several important mechanisms to aid in this process, including a rule that requires broadcasters to report ownership data every two years.<sup>18</sup> The first such report is scheduled for December 15, 2009,<sup>19</sup> however, various broadcasters have asked the FCC to postpone the filing date.<sup>20</sup> The Commission should deny these broadcasters' motion to stay the filing date so that data is available when the time comes to make substantive decisions. It should also consider the data collection proposals offered by Professor Catherine Sandoval and the public interest groups represented by the Institute for Public Representation.<sup>21</sup> This will provide an accessible data sample on which the Commission can base its decisions, and will eliminate the Commission's need to rely on proprietary data. Government use of proprietary data frustrates public participation as it is difficult to find, and often too expensive for average members of the public to access.

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<sup>15</sup> *Id.* at 21-22.

<sup>16</sup> *Id.*

<sup>17</sup> *Prometheus*, 373 F.3d at 409.

<sup>18</sup> *Promoting Diversification of Ownership in the Broadcasting Services*, Order, 24 FCC Rcd. 5896 (2009).

<sup>19</sup> Public Notice, DA 09-2275 (rel. Oct. 30, 2009).

<sup>20</sup> Fletcher, Heald and Hildreth, P.L.C. Motion for Stay On Behalf of Various Broadcasters, MB Dkt. No. 07-294 (filed Nov. 16, 2009).

<sup>21</sup> Comments of Catherine J.K. Sandoval, MB Dkt. No. 07-294 (filed Jun. 29, 2009); Comments of UCC *et al.*, MB Dkt. No. 09-182 (filed Nov. 20, 2009).

### **III. The Commission Should Expediently Address Outstanding License Renewal Applications, Waiver Requests And Petitions To Deny**

The Commission should resolve waiver and license renewal applications (and any associated petitions to deny) expediently upon their filing, or at the very least upon expiration of the license. Licensees should not be allowed to operate indefinitely pending the quadrennial review process, as now – on the cusp of the 2010 review – the Commission’s 2002 and 2006 proceedings remain outstanding. To allow licensees such leeway is to essentially provide them with an end-run around the rules, as many broadcasters are operating on licenses that expired years ago. This only incentivizes licensees to buy multiple properties in violation of the rules in the hope that they can convince the Commission to relax the rules to suit their needs while concurrently benefitting from station ownership. The most practical way to proceed is to apply the rule in place at the time of the license’s expiration. This would also provide the certainty that broadcasters seek in this proceeding and eliminate the FCC’s backlog of license renewal applications.

### **CONCLUSION**

Wherefore, NHMC respectfully urges the Commission to examine – in this proceeding – how current structural broadcast ownership regulations and any proposed changes thereto that might impact communities of color, both in terms of minority ownership as well as in terms of access to diverse viewpoints. In addition, the Commission should resolve outstanding license renewal applications, waiver requests and petitions to deny to avoid unnecessary entanglement of this rulemaking process with adjudicatory matters.

Respectfully Submitted,

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