

Minority Media and Telecommunications Council

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December 10, 2009

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

Dear Ms. Dortch:

RE: Notice of Ex Parte Communication:

- Broadband Policy: Adoption and Digital Divide: GN Docket No. 09-47, 09-51, 09-137
- Cable Encryption and Low Income Consumers: MB Docket No. 09-68
- Radio Rescue Petition for Rulemaking: MB Docket No. 09-52; RM-11565
- Rural Radio: MB Docket No. 09-52
- PPM Inquiry: MB Docket No. 09-817
- Sirius XM Set Aside: MB Docket No. 07-57

This reports on a December 9, 2009, 4:00 PM meeting with Commissioner Mignon Clyburn and Legal Advisors Rick Kaplan and Angela Kronenberg. Present from MMTC were Jacqueline Clary, Counsel and myself. We provided the attached agenda and extra copies of the testimony from the FCC Broadband Staff Underserved Workshop that had been held in the morning, as well as the FCC Advisory Committee on Diversity's December 3, 2009 Digital Divide Recommendation.

Broadband Policy: Adoption and Digital Divide Issues

Last week, the FCC's Diversity Committee adopted a resolution urging the Commission to exercise its affirmative duty to close the digital divide.¹ The Resolution urges the FCC, when it examines any major broadband policy issue, to determine whether its proposed action will further the goal of closing the divide.

¹ See Recommendation of the Constitutional Issues Subcommittee of the FCC's Advisory Committee on Diversity For Communications in the Digital Age, The FCC's Obligation to Close the Digital Divide (Dec. 3, 2009) (citing 47 U.S.C. §1302(a)).

Cable Encryption and Low Income Consumers

Attendant to its application to encrypt in New York City, Cablevision has proposed an unprecedented commitment of two set-top boxes for five years at no cost to low-income consumers. This commitment, which the company worked out with MMTC, is consistent with MMTC's 2004 DTV voucher proposal. It's a breakthrough that consumers now receiving only analog basic will have this extended period of time to complete the digital transition. The application deserves rapid approval this month as a testament to the agency's support for low-income consumers.

Radio Rescue Petition and the Rural Radio Docket

MMTC's Radio Rescue Petition presents a better approach to media policy than the Rural Radio proceeding. The Radio Rescue Petition advocates that, with the exception of Tribal Communities, which need to have radio stations close by,² stations should be allowed to move closer to their audience in order to survive.³ I also urged that the Commission should have an Advisory Committee for the transition to Channels 5 and 6.

PPM

I briefly recapped the recent developments in the PPM matter, including the December 2 hearing called by Congressman Edolphus Towns, Chairman of the House Committee on Oversight and Government Reform, and discussed the need for the Commission to make a recommendation to Congress based on a fully developed record about Arbitron's PPM methodology.

Sirius XM

I urged the Commission to hold that the original vote to approve the set aside in the merger⁴ was premature because it was based on outdated Adarand studies. While the Commission completes new Adarand studies, it should encourage the company to work with HBCUs, non-English speaking organizations, and tribal organizations. None of these is defined by a racial classification.

² See MMTC Petition for Rulemaking, Review of the Technical Policies and rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism, MB Docket No. 09-52, RM: 11565, pp. 5 (July 19, 2009) ("Radio Rescue Petition").

³ See Radio Rescue Petition at 28-33.

⁴ See Memorandum Opinion and Order and Report and Order, Applications for Consent to the Transfer of Control of Licenses, MB Docket No. 07-57, ¶¶ 72, 135 (Aug. 5, 2008) ("...Applicants voluntarily commit to lease capacity to qualified entities and to set aside capacity for noncommercial educational and informational programming. We believe this commitment mitigates the potential harm from a decrease in diversity.").

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Respectfully submitted,

David Honig

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President and Executive Director