

Minority Media and Telecommunications Council

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March 18, 2010

Marlene Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: Notice of *Ex Parte* Communication

- MB Docket Nos. 07-294 (Promoting Diversification of Ownership in the Broadcasting Services), 06-121 (2006 Quadrennial Review), 02-277 (2002 Biennial Review), 01-235 (Cross-Ownership), 01-317 (Multiple Ownership in Local Markets), 00-244 (Definition of Radio Markets), 04-228 (Ways to Further Section 257), 03-130 (Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area), 04-233 (Broadcast Localism), 09-52 (Review of Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism), 08-187 (Portable People Meter), and RM 11565 (Review of Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and the Promotion of Diversity)
- MM Docket 98-204 (Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies)
- DA Nos. 05-1076 (Auction 62), 04-1699 (Auction 37)
- AU Docket Nos. 09-21 (Competitive Bidding Procedures),
- Council Tree Communications v. FCC, Docket No. 06-2943.
- WT Docket Nos. 05-211 (Implementation of the Commercial Spectrum Enhancement and Modernization of the Commission's Competitive Bidding Rules and Procedures)
- GN Docket No. 10-25 (Future of Media)
- PRM09MB (Petition for Rulemaking to Expand the Commission's Broadcast Advertising Nondiscrimination Rule to Cable, Satellite and Telecommunications Services)

Dear Ms. Dortch:

This reports on a meeting held March 17, 2010 with Thomas Reed, Director of OCBO, Carolyn Fleming Williams, Senior Deputy Director of OCBO, Eric Malinen, Senior Legal Advisor and FCC Liaison to the SBA, Belford V. Lawson III, Attorney Advisor, Calvin Osborne, Attorney Advisor, Roberto DeJesus, Attorney Advisor, and Karen M. Beverly, Consumer-Industry Affairs Specialist and Assistant for Management. Representing MMTC at this meeting was David Honig, President and Executive Director, Joseph Miller, Earle K. Moore Fellow, Jacqueline Clary, John W. Jones Fellow.

MMTC distributed a briefing book containing a table and description of 84 pending civil rights proposals. Attached please find a table of the 84 pending proposals. During the meeting we discussed pending proposals 1-39. Our position during the meeting was consistent with the dockets documents listed (below) unless otherwise noted.

	Proposal	Points made that differ from documents cited
<p><i>*We stated that the eligible entity definition could be used as a placeholder for any of the proposals containing "minority" or SDB while the Commission develops its policy on Full File Review and undertakes renewed <u>Adarand</u> studies.</i></p>		
<p>1.</p>	<p>Examination of how to Promote Minority Ownership as an Integral Part of all FCC General Media Rulemaking Proceedings; Examine Major Rulemaking and Merger Applications to Discern the Potential Impact of the Proposed Rules or Transactions on Minority and Female Ownership; and Give Enhanced Consideration of Minority Ownership and Viewpoint Diversity Attendant to Consideration of Assignment and Transfer Applications</p> <p>FFR Candidate; No Significant Opposition to Underlying Concept</p>	<ul style="list-style-type: none"> Discussed this as being similar to, but a separate obligation from Reg-Flex that would require a duty to think through a rules impact on small, minority and women owned businesses during the rulemaking process
<p>2.</p>	<p>Conduct Ongoing Longitudinal Research on Minority and Women Ownership Trends</p> <p>No Significant Opposition</p>	<ul style="list-style-type: none"> This proposal is being applied in part with Form 323 but the Commission should enact a policy to establish precedent for future Commissions.
<p>3.</p>	<p>Definition of Socially and Economically Disadvantaged Businesses</p> <p>Complete the Effort to Determine Whether, and to What Extent, Bidding Credits Can Incorporate Measures That Account for Race</p> <p>No Significant Opposition to Underlying Concept</p>	<ul style="list-style-type: none"> Department of Defense (for procurement) and Department of Energy have made headway with <u>Adarand</u> studies.
<p>4.</p>	<p>Grant Eligible Entities a Rebuttable Presumption of Eligibility for Waivers, Reductions, or Deferrals of Commission Fees</p> <p>FFR Candidate; No Significant Opposition to Underlying Concept</p>	<ul style="list-style-type: none"> If the Commission does not feel it has the authority to make this rule, the Commission should make a legislative recommendation asking Congress for a fee schedule that reduces arbitrariness and increases flexibility for economically disadvantaged applicants.

5.	Conduct Outreach to Increase Opportunities for Minorities and Women No Significant Opposition	
6.	Designate a Commissioner to Oversee Access to Capital and Funding Acquisition Recommendations No Significant Opposition	
7.	Develop a Policy Where Divestiture Remedies Promote Opportunities for Small, Women, and Minority Owned Businesses FFR Candidate; No Significant Opposition to Underlying Concept	
8.	Provide Minority Auction Winners a Transferable Credit if Winner Certifies License Will Serve Underserved Markets FFR Candidate; No Significant Opposition to Underlying Concept	
9.	Provide a Transferable Credit in Auctions if Winner Shows Transaction With an SDB FFR Candidate; No Significant Opposition to Underlying Concept	
10.	Develop a New Communications Technologies Supplier Diversity Program and Examine Whether to Extend Procurement Requirements to Encourage Diversity to all Regulated Platforms; covers Current Opportunities, Barriers to Entry, Methods of Compliance, and Measuring Results No Significant Opposition	

<p>11.</p>	<p>Make Legislative Recommendations to Expand the Telecommunications Development Fund (TDF) and Finance TDF with Auction Proceeds</p> <p>No Significant Opposition to Underlying Concept</p>	<ul style="list-style-type: none"> • Some of the specific reforms MMTC has called for include: <ul style="list-style-type: none"> ○ Greater focus on investment training and broadcast and cable; ○ Using Incubation as a measure against business failure; ○ Diversification of products and deal sizes; ○ Greater service to minorities and women; and ○ Full transparency
<p>12.</p>	<p>Make Legislative Recommendation to Authorize Annual Media and Telecom Diversity and Digital Divide Census</p> <p>No Significant Opposition</p>	
<p>13.</p>	<p>Make Legislative Recommendation to Clarify Section 307(b) (localism)</p>	<ul style="list-style-type: none"> • In the Future of Media proceeding, the Commission may be able to examine whether 307(b) has outlived its usefulness, particularly in terms of the main studio rule.
<p>14.</p>	<p>Make Legislative Recommendation to Amend FTC Act to Prohibit Racial Discrimination in Advertising Placement Terms</p> <p>No Significant Opposition to Underlying Concept</p>	<ul style="list-style-type: none"> • These goals could be accomplished by cooperation of the FCC, FTC, and a Congressional Committee, by amending the FTC Act, or by an MOU between the FCC and FTC. There should also be a compliance officer in the FCC's Enforcement Bureau.
<p>15.</p>	<p>Make Legislative Recommendation to Increase Access to Capital by Creating a Small and Minority Communications Loan Guarantee Program</p> <p>FFR Concept; No Significant Opposition to Underlying Concept</p>	
<p>16.</p>	<p>Make Legislative Recommendation to Create an Entity to Purchase Loans Made to Minority and Small Businesses in the Secondary Market</p> <p>FFR Concept; No Significant Opposition to Underlying Concept</p>	
<p>17.</p>	<p>Transfer Restriction of Grandfathered Clusters to Socially and Economically Disadvantaged Businesses (SDBs)</p> <p>Full File Review (FFR) Candidate; No Significant Opposition</p>	

<p>18.</p>	<p>Structural Rule Waiver for Selling a Station to an SDB, where the Sale to the SDB is Ancillary to a Transaction that Otherwise would be Barred by an Ownership Rule (the “Minority Ownership Incubation Proposal”)</p> <p>FFR Candidate; No Significant Opposition to Underlying Concept</p>	<ul style="list-style-type: none"> When the FCC decided not to act on this, the recession was just beginning. The need is greater now.
<p>19.</p>	<p>Bifurcation of Channels for Share-Times with SDBs</p> <p>FFR Candidate</p>	
<p>20.</p>	<p>Structural Rule Waivers for Financing Construction of an SDB’s Unbuilt Station</p> <p>FFR Candidate; No Significant Opposition</p>	
<p>21.</p>	<p>Relax Broadcast Foreign Ownership Restrictions (<u>see</u> 47 U.S.C. §310(b)(4))</p> <p>FFR Candidate; No Significant Opposition to Underlying Concept</p>	<ul style="list-style-type: none"> Could accomplish by Congressional repeal of the rule or FCC policy statement saying it will be relaxed attendant to review of applications.
<p>22.</p>	<p>Use of the Share-Time Rule to Foster Ownership of DTV and FM Subchannels</p> <p>FFR Candidate</p>	
<p>23.</p>	<p>Retention On Air of AM Expanded Band Owners’ Stations if One of the Stations is Sold to a SDB</p> <p>FFR Candidate (but original proponents are satisfied with the current small business definition for this proposal); No Significant Opposition</p>	<ul style="list-style-type: none"> Willing to accept a small business definition for this proposal, since so many of the affected stations happen to be minority owned or are LMA’ed to minorities (nine out of 34).
<p>24.</p>	<p>Mathematical Touchstones: Tipping Points for the Non-Viability of Independently Owned Radio Stations in a Consolidating Market, and Quantifying Source Diversity</p> <p>No Significant Opposition to Underlying Concept</p>	<ul style="list-style-type: none"> Should be teed up in the Quadrennial Review.

25.	Market-based, Tradable Diversity Credits as an Alternative to Voice Tests No Significant Opposition to Underlying Concept	<ul style="list-style-type: none"> • Should refer this proposal to OSPP to drill down with economic analysis. • Define diversity causers through either FFR or similar to new entrant credits (used in FM Auctions).
26.	Must-Carry for Certain Class A Television Stations FFR Candidate	<ul style="list-style-type: none"> • Could use FFR, or limit to all Class A television stations. Limiting principle necessary to avoid excessive cable carriage obligations.
27.	Decline to Grant Temporary Waivers of the Local Ownership Rules to Parties Proposing a Transaction that Would Create Station Combinations Exceeding the Ownership Caps	
28.	Treat Local Marketing Agreements as Attributable Interests	<ul style="list-style-type: none"> • May be difficult to re-regulate, especially when the broadcast industry is suffering.
29.	Allow Minorities to Own Station Combinations Equal to the Largest Combination in a Market to Counter Balance the Economic Impact of Grandfathered Holdings FFR Candidate; No Significant Opposition to Underlying Concept	
30.	Repeal of Radio Subcaps *In the <u>Diversity Order</u> , the FCC declined to act on this proposal because the subcaps were retained in the 2006 Quadrennial Report and Order	<ul style="list-style-type: none"> • Should be considered as part of the 2010 Quadrennial Review. Deregulatory, but good case can be made especially for AM stations.
31.	Allow Joint Operating Agreements as an Alternative to LMAs and JSAs, and Hold that Genuine JOAs are Non-Attributable	
32.	Reverse Authorization of Triopolies	
33.	Relax the Main Studio Rule No Significant Opposition to Underlying Concept	
34.	Clarify that Eligible Entities Can Obtain 18 Months to Construct Major Modifications of Authorized Facilities FFR Candidate; No Significant Opposition to Underlying Concept	<ul style="list-style-type: none"> • Important for there to be no uncertainty in the process; should automatically allow a one-time renewal.

35.	Extend the Three-Year Period for New Station Construction Permits No Significant Opposition	<ul style="list-style-type: none"> • Could also issue a one-year extension for the wireless 5 year buildout period. New entrants coming up on 5 year deadline are having difficulty and risking the spectrum they won.
36.	Conduct Tutorials on Radio Engineering Rules at Headquarters and Annual Conferences No Significant Opposition	
37.	Create a Broadcast Public Engineer Position to Assist Small Business and Nonprofits with Routine Engineering Matters No Significant Opposition	<ul style="list-style-type: none"> • Could achieve goals while insulating from going too far on legal advice or constructing projects for public – should have an engineer in each Commissioner’s office or one in Consumer Affairs to answer questions and publish FAQs. • Should look at examples from state PSCs’ offices of public counsel.
38.	Issue a One-Year Blanket Waiver of Application Fees for Small Business and Nonprofits No Significant Opposition to Underlying Concept	<ul style="list-style-type: none"> • Could be rolled up with proposal 4 in a policy statement on fee relief.
39.	Make Legislative Recommendation to Allow Private Lenders to Take a Security Interest in FCC Licenses	<ul style="list-style-type: none"> • The industry is split on this proposal. • Discussed the rationale for advancing this proposal (incentivize private lenders to make loans) and disadvantages inherent in this proposal (could attract investors that want to take the business away; must avoid repeat of the 2007 housing crash).

The corresponding descriptions of proposals 1-39, portions of which were distributed at the meeting, can be found in the following dockets.

- Initial Comments of the Diversity and Competition Supporters in Response to the Third Further Notice of Proposed Rulemaking, Promoting Diversification of Ownership in the Broadcasting Services, MB Docket No. 07-294 (July 30, 2008), available at <http://mmtconline.org/lp-pdf/DCS-Comments-Third-NPRM-073008.pdf> (last visited March 17, 2010).
- Initial Comments of the Diversity and Competition Supporters in Response to the Second Further Notice of Proposed Rulemaking, 2006 Quadrennial Regulatory Review, MB Docket No 06-121 *et al.* (Oct. 1, 2007), available at <http://mmtconline.org/lp-pdf/DCS-MO-Comments-100107.pdf> (last visited March 17, 2010).

- Reply Comments of the Diversity and Competition Supporters in Response to the Second Further Notice of Proposed Rulemaking, 2006 Quadrennial Regulatory Review, MB Docket No. 06-121 et al., (Nov. 1, 2007), available at <http://mmtconline.org/lp-pdf/11-01-07DCS-Reply-Comments-110107.pdf> (last visited March 17, 2010).
- Supplemental Ex Parte Comments of the Diversity and Competition Supporters in Response to the Section Further Notice of Proposed Rulemaking, 2006 Quadrennial Regulatory Review, MB Docket No. 06-121 et al., (Nov. 20, 2007), available at <http://mmtconline.org/lp-pdf/071120-DCS-MO-SuppComments-112007.pdf> (last visited March 17, 2010).
- Comments of the Minority Media and Telecommunications Council, Auction of FM Broadcast Construction Permits Scheduled for November 1, 2005 (Auction 62), DA No. 05-1076 (April 29, 2005), available at <http://mmtconline.org/lp-pdf/MMTCAuction62Comments.pdf> (last visited March 17, 2010).
- MMTC, Legislative Recommendations to Advance Diversity in the Media and Telecommunications Industries (Jan. 21, 2009), available at http://mmtconline.org/lp-pdf/MMTC_Legis_Recommendatns_012109.pdf (last visited March 17, 2010).
- Petition for Reconsideration, 2002 Biennial Regulatory Review, MB Docket No. 02-277 et al., (Sept. 4, 2003), available at <http://mmtconline.org/lp-pdf/BroadcastOwn-Recon.pdf> (last visited March 17, 2010).
- MMTC Radio Rescue 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, RM-11565, MB Docket No. 09-52 (July 19, 2009), available at <http://mmtconline.org/lp-pdf/MMTC-Radio-Rescue-Petition-071909-REV.pdf> (last visited March 17, 2010).
- Diversity Committee Recommendation on Spectrum and Access to Capital (June 14, 2004), available http://www.fcc.gov/DiversityFAC/adopted-recommendations/spectrum_and_access.pdf (last visited March 17, 2010).
- Diversity Committee Recommendation on Renewing Adarand Studies (Sept. 22, 2009), available at <http://www.fcc.gov/DiversityFAC/adopted-recommendations/constitutional-sub-rec-adarand.pdf> (last visited March 17, 2010).
- Diversity Committee Recommendation on Implementation of Full File Review (Sept 22, 2009), available at <http://www.fcc.gov/DiversityFAC/adopted-recommendations/constitutional-sub-rec-fullfile.pdf> (last visited March 17, 2010).
- Diversity Committee Report and Recommendation on Eligible Entities (Oct. 22, 2008) (<http://www.fcc.gov/DiversityFAC/adopted-recommendations/eligible-entities-report-102808.pdf>) (last visited March 17, 2010).
- Diversity Committee Recommendation on Application and Regulatory Fees (Oct. 28, 2008), available at <http://www.fcc.gov/DiversityFAC/adopted-recommendations/app-reg-fees-102808.pdf> (last visited March 17, 2010).
- Diversity Committee Recommendation from Funding Acquisitions (Dec. 3, 2009), available at <http://www.fcc.gov/DiversityFAC/recommendations.html> (follow link to Funding Acquisitions) (last visited March 17, 2010).
- Diversity Committee Recommendation on Merger Review (Dec. 10, 2004), available at <http://www.fcc.gov/DiversityFAC/recommendations.html> (follow link to Merger Review) (last visited March 17, 2010).

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- Diversity Committee Recommendation on Supplier Diversity Program (June 14, 2004), available at <http://www.fcc.gov/DiversityFAC/recommendations.html> (follow link to Supplier Diversity Program) (last visited March 17, 2010).
- Diversity Committee Recommendation on Procurement Issues (June 10, 2008), available at <http://www.fcc.gov/DiversityFAC/adopted-recommendations/procurement-061008.pdf> (last visited March 17, 2010).
- Diversity Committee Recommendation on Incentive-Based Regulation (June 14, 2004), available at <http://www.fcc.gov/DiversityFAC/recommendations.html> (follow link to Incentive-Based Regulations) (last visited March 17, 2010).
- Diversity Committee Recommendation on Foreign Ownership (Dec. 10, 2004), available at <http://www.fcc.gov/DiversityFAC/recommendations.html> (follow link to Foreign Ownership) (last visited March 17, 2010).
- Diversity Committee Recommendation on Diversifying Ownership in Terrestrial Radio (Dec. 10, 2007), available at <http://www.fcc.gov/DiversityFAC/recommendations.html> (follow link to Diversifying Ownership in Terrestrial Radio) (last visited March 17, 2010).
- Diversity Committee Recommendation on FM Radio Rules (Oct. 4, 2004), available at <http://www.fcc.gov/DiversityFAC/adopted-recommendations/AdoptedFMRadioRules.pdf> (last visited March 17, 2010).

Respectfully submitted,



David Honig
President and Executive Director

Attachment