BEFORE the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

2010 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. 09-182

To: The Commission

COMMENTS
OF
THE NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.

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<u>**EXECUTIVE SUMMARY**</u>

The National Association of Black Owned Broadcasters, Inc. ("NABOB") requests the Commission to take no action in this proceeding that will increase the concentration of ownership in the broadcast industry. The broadcast industry is experiencing severe financial stress at the current time, and minority broadcasters are especially hard pressed. Consolidation of ownership in the broadcast industry has been a direct cause of the 40% drop in the number of minority companies owning broadcast stations. Any further relaxation of the Commission's multiple ownership rules would exacerbate the already dismal lack of minority ownership in the broadcast industry.

The Commission should reinstate its "flagging" policy for identifying excessive concentrations of ownership in local radio markets, and require all assignment and transfer applications to provide information on the impact of the transaction on diversity in the local radio market.

The Sandoval Study provides extensive evidence of the negative impact that consolidation of ownership has had on minority ownership. The Sandoval Study also demonstrates that minority ownership increases service to underserved minority communities. Therefore, the Commission should recognize that among its three principal objectives (promotion of competition, localism and diversity), the promotion of diversity of ownership should be the primary focus of its policies. The Commission should take steps in this proceeding to promote diversity of ownership in the broadcast industry by taking steps to increase minority ownership.

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The National Association of Black Owned Broadcasters, Inc. ("NABOB"), by its attorneys, hereby submits its Comments in the above-captioned proceeding.

I. INTRODUCTION

NABOB has been a participant in each of the Commission's previous reviews of its ownership rules, and most recently filed Comments in the 2006 proceeding.[1] Throughout its history of participating in the Commission's reviews, NABOB has urged the Commission to take steps in its review proceedings to promote minority ownership of broadcast facilities, or, at least, take no action that would further undermine the small amount of minority broadcast ownership.[2] NABOB submits these Comments to urge such action again in this proceeding.

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[1] *In the Matter of 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*, FCC 06-93, MB Docket Nos. 06-121, 02-277, 01-235, 01-317, 00-244 ("2006 Review").

[2] NABOB Comments in the 2006 Review, filed October 23, 2006.

II. ANY RELAXATION OF THE COMMISSION'S OWNERSHIP RULES WILL HAVE A NEGATIVE IMPACT ON MINORITY OWNERSHIP IN THE BROADCAST INDUSTRY

The Commission initiated this Notice of Inquiry by stating:

> We launch this proceeding pursuant to the statutory mandate that we review our media ownership rules every four years to determine whether they 'are necessary in the public interest as the result of competition.' Dramatic changes in the marketplace make it highly appropriate that we take a fresh look at our current ownership rules in order to determine whether they will serve our public interest goals of competition, localism, and diversity going forward.[3]

The changes in the marketplace since the last review that the Commission identified were very troubling. The Commission pointed out that:

> In 1996, there were 10,257 commercial radio stations and 5,133 radio owners. Today, there are 11,202 commercial radio stations and 3,143 owners, representing *a 39% decrease in the number of owners since 1996*. The 1996 Act also required the Commission to review its local television station ownership limits and in 1999, the Commission adopted the current limits. In 1996, there were 1,130 commercial television stations and 450 owners. In 2010, there are 1,302 commercial stations and 303 owners, *a 33% decrease in the number of owners*. (emphasis added, footnote omitted)

The Commission cited research showing that traditional media is losing audience:

> Broadcast audiences and newspaper readership are on the decline, as reflected in the biennial news consumption surveys issued by the Pew Research Center for People and the Press ("Pew").[4] The Pew Center for Excellence in Journalism ("PEJ")

[3] *In the Matter of 2010 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*, FCC 10-92, MB Docket Nos. 09-182 ("NOI") at ¶ 1.

[4] NOI at ¶ 6, n. 9 citing PEW RESEARCH CENTER FOR PEOPLE AND THE PRESS, KEY NEWS AUDIENCES NOW BLEND ONLINE AND TRADITIONAL SOURCES: AUDIENCE SEGMENTS IN A CHANGING NEWS ENVIRONMENT (2008), *available at* http://people-press.org/report/444/news-media ("*Pew People and the Press*") (reporting that between 2006 and 2008, the percentage of those surveyed who stated they had tuned in to local television or radio news the previous day declined, from 54% to 52% for

similarly reports that, between 2008 and 2009, viewership of late, early evening, and early morning broadcast television news fell 6.4%, 6.7%, and 5.5%, respectively.[5] However, recent PEJ research also shows that on a typical day, 78% of Americans state that they get news from a local television station.[6] PEJ reports that, while the number of Americans reporting that they listen to radio regularly has remained static over the last five years, in 2009 nearly one in three stated that they listen to online radio.[7]

The Commission showed that these audience declines have led to a decline in revenues:

Media industries also are experiencing declining advertising revenues, precipitated in part by the downturn in the national economy. Between 2006 and 2008 the total amount of money spent on advertising in the United States for all media declined 3.9%, from $281.7 billion to $270.8 billion.[8] During that period, *advertising revenue declined 13.4% for broadcast television stations; advertising revenue for radio stations dropped 10.7%;* and newspaper advertising revenue dropped by 23.1%. Because operating costs for these broadcast television and radio industries are relatively fixed in the short term, revenue is a key variable in determining profitability.[9] When demand for commercial time enables broadcasters to charge high rates, profits can be high. When advertising revenues decline, as they have over the past several years as a result of both structural and cyclical economic factors, these industries see immediate declines in profits. PEJ, citing data from BIA Kelsey, estimates that between 2008 and 2009, *revenues for the broadcast television and radio industries each fell 22%.*[10] (emphasis added)

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television news, and from 36% to 35% for radio news).

[5] *Id.* at n. 10 citing PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2010: AN ANNUAL REPORT ON AMERICAN JOURNALISM (2010), *available at* http://www.stateofthemedia.org/2010/ ("*The State of News Media 2010*"); *see id.*, Key Findings, available at http://www.stateofthemedia.org/2010/overview_key_findings.php.

[6] *Id.* at n 11 citing PEW RESEARCH CENTER'S PROJECT FOR EXCELLENCE IN JOURNALISM, UNDERSTANDING THE PARTICIPATORY NEWS CONSUMER (2010), *available at*, http://www.journalism.org/analysis_report/understanding_participatory_news_consumer ("*Participatory News Consumer*").

[7] NOI at ¶ 6.

[8] NOI at ¶ 7, citing FCC staff analysis based on data supplied by Robert J. Coen, Universal McCann ("Coen data"); *see also,* Posting of Douglas Galbi, *Robert J. Coen, Advertising Data Hero*, PURPLE MOTES, A JOURNAL OF WHIMSY AND HOPE, (May 10, 2009), http://purplemotes.net/2009/05/10/robert-j-coen-advertising-data-hero/ ("Purple Motes").

[9] *Id.* citing HAL VOGEL, ENTERTAINMENT INDUSTRY ECONOMICS 283-84 (7th ed. 2007).

[10] *Id*.

The Commission pointed out that these revenue declines for traditional media have led to some business failures:

> Television and radio licensees, as well as newspaper publishers, who issued bonds and borrowed money to fund the acquisitions of assets and other broadcasting and publishing companies, have had difficulty making interest payments. The credit crisis in the fall of 2008 also has made it difficult for broadcasters and newspaper publishers to find buyers for their properties, since they also have difficulty obtaining serviceable loans and servicing debt without strain. *Consequently, in 2009, a total of 12 broadcast television and radio companies filed for bankruptcy.*[11] *In addition, several radio companies have recapitalized, i.e., negotiated with lenders, effectively wiping out shareholder equity in the process, including Westwood One Inc. and Cumulus Media Partners*.[12] (emphasis added, some footnotes omitted)

The Commission went on to discuss the growth of Internet and mobile platforms as new methods by which consumers are receiving news and information. However, the Commission pointed out that these new media have not created a business model that can finance the production of content:

> These new patterns of media consumption and use have provided media producers with new ways to offer content to consumers and provided many consumers with a wide variety of ways of watching, listening, or reading content. *However, PEJ reports that a sustainable business model currently does not exist to finance the production of online content and finds that even the best new media sites have limited ability to produce content.*[13] (emphasis added)

At footnote 28, the Commission expanded upon this point by explaining that:

> In its recent study "How News Happens," PEJ examined for one week all outlets that produce local news in Baltimore, Maryland to determine which sources actually originate the news.
> *See* http://www.journalism.org/analysis_report/how_news_happens. PEJ found that most of the information people receive contains no original reporting. Eight of the

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[11] NOI at ¶ 8 citing Tony Lenoir & Justin Nielson, SNL Kagan, *Citadel, NextMedia Chapter 11 Filings End 2009 With 12 Broadcast Bankruptcies*, BROADCAST INVESTOR: DEALS & FINANCE, 11-12 (Jan. 29, 2010).
[12] NOI at ¶ 8.
[13] NOI at ¶ 10.

> ten stories studied repeated or repackaged stories originated from other sources. *The study found that 95% of original stories were from traditional media, mostly newspapers. Id*. (emphasis added)

Therefore, the current state of news and information on the internet and mobile platforms is that 95% of the actual news stories the public receives are originated by traditional media, mostly newspapers. This raises a critical point for the Commission's deliberations in this proceeding. The evidence in the PEJ study clearly demonstrates that the Commission must not adopt any changes in policy in this proceeding that might damage the existing traditional broadcast media, because the new internet and mobile media delivery mechanisms are merely relaying information created by traditional media. In other words, if there are further losses in the operations of traditional media, the new media are not positioned to replace traditional media by delivering original news and information to the American people, especially America's minority communities.

These facts demonstrate that, if the Commission is not willing to take any steps in this proceeding to increase minority ownership of broadcast stations, the Commission must not do anything to further erode that ownership. The new media are not positioned to provide the American public, particularly the minority public, with the news and information that the broadcast industry now provides.

Moreover, as the Commission's data shows, the broadcast industry is in serious financial difficulties, and this is definitely not the time to make changes in the ownership rules affecting this industry. The number of minority owned broadcast companies has fallen by 40% since the passage of the Telecommunications Act of 1996. The huge loss of minority ownership experienced since the passage of the Telecommunications Act of 1996 is directly related to the consolidation of the industry permitted by that Act. If the Commission allows any further consolidation as a result of rule relaxation in this proceeding, it will make a very dire situation even worse.

III. THE COMMISSION SHOULD TAKE ACTION TO LIMIT THE EFFECTS OF CONSOLIDATION OF CONTROL OF THE BROADCAST INDUSTRY

The Commission should take steps in this proceeding to prevent any further consolidation of control of the broadcast industry and limit any further damage to minority ownership. In the 2002 Biennial Review and the 2006 Quadrennial Review, NABOB submitted Comments with a number of actions the Commission could take to improve minority ownership opportunities. One proposal was that the Commission should reinstate its policy of "flagging" transactions which raise questions regarding excessive concentration of radio station ownership in a local market. The flagging policy required that radio transactions that would result in one owner controlling more than 50% of local radio market revenues, or two owners controlling more than 70% of local radio market revenues would be identified in a public notice.

This policy worked very well in informing the public about potential excessive ownership concentration and allowing the public to comment. The Commission identified numerous transactions which triggered the flagging process. The mere number of transactions which triggered the process was clear evidence of the need for the policy. Yet, the Commission concluded that the flagging policy was no longer necessary. However, the Commission provided no adequate explanation for eliminating the policy.

Another step the Commission should implement is to assess the impact on minority ownership of all assignment of license and transfer of control applications. The Commission has the statutory obligation to examine every assignment of license and transfer of control application to determine if it serves the public interest. The Commission has stated repeatedly that its public interest obligation requires it to determine its impact that its ownership policies have on competition, localism and diversity. The best time for the Commission to examine the impact on these issues is at the assignment and transfer stage. However, the Commission has no standard procedure for examining these issues in assignment and transfer applications. Unless a specific objection is filed against a transaction, the Commission never considers the impact of a transaction on diversity. The Commission could begin this examination with a few questions added to the assignment and transfer forms regarding the minority population of the community to be served and the stations currently serving that population.

These steps would provide the Commission with much needed information about the consolidation of ownership in the broadcast industry and its impact upon diversity, particularly as it affects minority communities.

IV. THE SANDOVAL STUDY CLEARLY DEMONSTRATES THAT MINORITY OWNERSHIP LEADS TO IMPROVED SERVICE TO MINORITY COMMUNITIES AND THAT CONSOLIDATION OF OWNERSHIP HAS HARMED MINORITY OWNERSHIP

In the NOI, the Commission asks numerous questions related to balancing the competing goals of promoting competition, localism and diversity, and how minority consumer interests are affected in this balancing process.[14] At ¶ 44 the Commissions asks:

> To what extent should the analysis of the impact of market structure on media market participants differ in the context of unserved and underserved communities? What, if any, changes to the media ownership rules could promote minority and female ownership of broadcast stations? *What marketplace or other factors would encourage new entry by minorities and/or females? Does consolidation hinder such ownership or does the opportunity to obtain efficiencies of scale and scope help promote growth and better public service by minority and female owners*? (emphasis added)

[14] NOI at ¶¶ 30, 37, 43, 44 and 75.

The answers to many of these questions were addressed in the recent study completed by Professor 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," published November 2009 ("Sandoval Study"). This groundbreaking study provides a detailed examination of the current state of minority ownership and demonstrates the clear nexus between minority ownership and service to minority communities.

The Sandoval Study gleaned the Commission's records to accurately count the number of minority owned stations. The Sandoval Study reports that:

> According to the FCC's CDBS records in mid-2009, 324 minority owners control 815 commercial radio stations. Fifty-three percent, or 172, of the 324 minority commercial radio owners in mid-2009 were awarded their *first* license among the radio station licenses they still control, *prior to the Telecommunications Act of 1996*. The 1996 Act ended the restrictions on the number of stations a corporation could control nationally and dramatically raised the number of stations that could be under common control in a local market.[15]

Of the 324 minority owned stations, 129 are owned by African American controlled companies.[16] The Sandoval Study explains how these ownership numbers were negatively impacted by consolidation:

> Despite industry-wide consolidation, 61% or 198 minority commercial radio owners in mid-2009 control only one station. The predominance of single-station owners made it difficult to withstand the market's sea change in the wake of the 1996 Act, which opened the floodgates of consolidation. A handful of minority owners were positioned for expansion after the 1996 Act, although they formed smaller station groups than the dominant broadcasters in the industry. In mid-2009 only 14 minority broadcasters control 10 or more commercial radio stations, while only 3 minority-owned companies control 25 or more stations.[17]

[15] Sandoval Study at 4.
[16] *Id.* at 8.
[17] *Id.* at 4.

The Sandoval Study adds:

> Of the 324 minority commercial radio *owners* in mid-2009, 172 or 53% were awarded their *first license prior to the 1996 Act*. Of the 815 minority commercial radio *stations* still held in mid-2009, 287 or 35% were obtained before the 1996 Act. Fewer new minority owners who still hold their licenses in mid-2009 *entered* the commercial radio field after 1996, as compared to those who entered between 1978 and 1995.[18]

The Sandoval Study goes on to report that, between 2007 and August 2009, 42 minority-owned radio stations were either transferred to: bankruptcy trustees, trusts established for the benefit of lenders, or to a trustee for a debtor-in-possession, who may be able to reorganize under Chapter 11 of the Bankruptcy Code, or liquidate the trust's assets under Chapter 7 of the Bankruptcy Code.[19] However, even this thorough discussion only reports on the cases that have become public. It does not report on the minority broadcasters who are still negotiating with their lenders so that they do not become the next bankruptcy statistics.

The Sandoval Study then provides clear evidence that minority ownership translates into diverse programming serving minority audiences:

> In mid-2009, 72.5%, or 591, of the 815 minority-owned stations air minority-oriented formats: Spanish, Urban, Urban News, Asian, Ethnic and Minority-oriented Religious formats such as Gospel and Spanish-Christian. If the 24 silent minority-owned stations are eliminated, *74.7% of all minority-owned stations broadcasting programming air minority-oriented programming*. This pattern refutes Justice Sandra Day O'Connor's assertion in *Metro Broadcasting v. FCC* (1990, p. 617) that the proposition that minority ownership contributes to diversity is based on stereotypes. The correlation between minority radio ownership and diversity in program service is robust.[20] (emphasis added)

[18] *Id.* at 13.
[19] *Id.* at 10.

[20] *Id.* at 20.

The Sandoval Study adds to an impressive amount of research that has been provided to the Commission over decades showing that the American public benefits from the promotion of minority ownership, because minority owners tend to program their stations to serve underserved minority audiences. In addition, the Sandoval Study clearly demonstrates that consolidation of ownership causes a decline in minority ownership, and no additional consolidation of ownership should be adopted by the Commission in this proceeding.

V. CONCLUSION

The evidence is overwhelming that the broadcast industry is under great financial stress at this time. Minority owners, because they tend to own only one or few stations are under a great deal of financial stress. It is also clear that the American public continues to rely upon broadcast media for news and information, and the internet and mobile platforms merely retransmit news and information created by broadcast and print sources. Therefore, it is important for the Commission to take no action in this proceeding that will further undermine minority ownership. As the diminished state of minority ownership is directly attributable to the consolidation of the broadcast industry, it is imperative that the Commission take no action in this proceeding that would allow greater consolidation of ownership in the broadcast industry. NABOB therefore requests that the Commission reinstate its "flagging" policy to identify radio transactions that would result in excessive market consolidation, and require all assignment and transfer applications to provide basic information about the impact on service to minority communities affected by the assign or transfer.

Respectfully submitted,

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