Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of		
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2010 Quadrennial Regulatory Review –	)	MB Docket No. 09-182
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

To The Commission

REPLY COMMENTS OF THE MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL

The Minority Media and Telecommunications Council ("MMTC") generally supports the proposal calling for a relaxation of the Commission's foreign ownership rules to promote diversity, competition, and localism in broadcast ownership, set forth in the Comments of Azteca International Corporation ("Azteca").[1] MMTC respectfully submits these reply comments.[2]

The Commission should relax its outdated foreign ownership rules to reduce one of the most significant impediments to minority ownership – access to capital.[3] Azteca's proposal envisions the Commission adopting a presumptive waiver to allow foreign entities to own and

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[1] Comments of Azteca International Corporation, 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 (July 12, 2010) ("Comments of Azteca International").

[2] These Reply Comments represent the institutional views of MMTC and are not intended to reflect the individual views of MMTC's officers, directors and advisors.

[3] See Media Ownership, Report to the Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, GAO-08-383 (March 2008), pp. 24-25, available at http://www.gao.gov/new.items/d08383.pdf (last visited July 21, 2010). See also Comments of the Diversity and Competition Supporters, 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 (July 12, 2010), pp. 3-9 ("2010 DCS Comments").

control up to 51% of a domestic broadcast licensee so long as three conditions are satisfied.[4] First, the licensee corporation must have a minimum of two U.S. citizens serving on its board of directors, and one of the board members must be completely independent of the foreign company; second, the programming must serve an underserved audience, and third, the station satisfies all other ownership rules.[5]

Similar proposals calling for the relaxation of the Commission's foreign ownership rules to promote minority ownership have been painstakingly explained and patiently advanced by the Advisory Committee for Diversity in the Digital Age ("Diversity Committee") and the Diversity and Competition Supporters ("DCS").[6]

The Diversity Committee recommendation and the DCS proposal each seek a declaratory ruling adopting a rebuttable presumption that foreign entities located in a WTO member country, and investing up to 49% of the total equity in a socially and economically disadvantaged

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[4] See Comments of Azteca International at 10. As discussed below, MMTC and the FCC's Advisory Committee on Diversity for Communications in the Digital Age support foreign ownership of up to 49% of the total equity and 25% of the voting power (rather than up to 51% of total equity as Azteca International proposes).

[5] See id. MMTC does not believe that a programming requirement is necessary. Such a requirement would be difficult to define and apply; further, over time, access to capital would lift opportunities for minority broadcasters, 75% of whose programming serves underserved audiences. See 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, Catherine Sandoval et al. (Nov. 2, 2009), pp. 4, 20-24 ("Sandoval Study).

[6] See Recommendation for the Adoption of a Declaratory Ruling on Section 310(b)(4) Waivers (Dec. 10, 2004) ("Diversity Committee Recommendation on Foreign Ownership"), available at http://www.fcc.gov/DiversityFAC/recommendations.html (follow link to "Foreign Ownership") (last visited July 21, 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), pp. 37-39 ("2007 DCS Comments"). Petition for Partial Reconsideration, Promoting Diversification of Ownership in the Broadcasting Services, MB Docket No. 07-294 et al. (June 16, 2008), pp. 9-12 ("DCS Petition for Partial Reconsideration").

business ("SDB") seeking a broadcast license, satisfies the public interest standard so long as the foreign entity, with certain exceptions, does not receive more than 25% of the licensee's voting power.[7] However, despite having six years to consider the initial recommendation and despite DCS' further illustration of benefits pertaining to increasing SDB access to capital,[8] the Commission summarily rejected the proposal in just five sentences.[9] On reconsideration, DCS rebutted the Commission's response, which failed to identify *any* specific concerns regarding a relaxation of foreign ownership rules, much less identify concerns that are more important than increasing diversity in the broadcast industry – and once again explained how relaxing foreign ownership restrictions would reduce barriers to entry by providing increased opportunities for SDBs to access capital.[10] DCS' Petition for Reconsideration is still pending.

The benefits of relaxing the foreign ownership rules were again raised at this year's January 27 Media Ownership Workshop on Minority and Female Ownership, where they were

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[7] See Diversity Committee Recommendation on Foreign Ownership. See also 2007 DCS Comments at 37-39. There are two exceptions: one, which is less restrictive, is that countries that are members of NAFTA and/or the Caribbean Basin Initiative could hold up to 49% of the voting interest. The second exception is more restrictive: a waiver would not be presumed appropriate if it is demonstrated that the country of the foreign investor will not provide reciprocity to U.S. businesses within five years.

[8] See id.

[9] See Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5949 ¶77 (rel. March 5, 2008) ("DCS proposes that the Commission consider relaxing restrictions on foreign ownership to permit non-controlling foreign investment where such investment would help eliminate a barrier to access to capital for domestic, minority-owned broadcasters. We decline to adopt this proposal. DCS does not explain why the Commission's concerns about foreign ownership of broadcast interests generally would not apply in this context. At a minimum, the Commission would be required to undertake a significant rulemaking proceeding to examine this issue in greater depth. We are not convinced, on the basis of the record before us, that taking the extraordinary step of relaxing our foreign ownership rules would advance our interest in promoting diversification among broadcast licensees, including women and minorities.") (internal citation omitted).

[10] See DCS Petition for Partial Reconsideration at 2, 9-12.

discussed by witnesses Michael V. Roberts, Chairman and CEO of Roberts Broadcasting Company and David Honig, President and Executive Director of MMTC, and also by Norman Leventhal, Partner, Holland & Knight.[11]

The current state of the media landscape and low levels of minority ownership in commercial radio and television – 7.24% and 3.15% respectively[12] – make one thing clear, it is time for action. Minority ownership is critical to diversity in the broadcast industry due to the demonstrated nexus between minority ownership and programming and the consumption patterns of minority communities.[13] The Commission should relax its outdated foreign ownership rules because allowing foreign investment could provide new opportunities to access capital for minority businesses[14] where domestic investment has failed to yield diversity in broadcast ownership.

MMTC applauds the Comments of Azteca International, setting forth the history, benefits, and policy rational for allowing this limited relief of the foreign ownership restrictions to encourage media diversity in an increasingly digital landscape, where foreign ownership restrictions have been waived in favor of large corporations for less important goals than

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[11] See Recorded Webcast of Minority Media Ownership Workshop, Washington, DC – 1/27/10 at approximately 169:00- 173:00; 173:50-176:30; 195:00-198:00; 200:50- 201:40, available at http://www.fcc.gov/ownership/workshop-012710.html (last visited July 24, 2010).

[12] See 2010 DCS Comments at 19 (citing Sandoval Study, pp. 4, 8; S. Derek Turner & Mark Cooper, Out of the Picture 2007: Minority & Female TV Station Ownership in the United States, Free Press (Oct. 2007), pp. 2, 14.

[13] See generally 2010 DCS Comments. See also Sandoval Study at 20-23; A Year After Obama's Election Blacks Upbeat about Black Progress, Prospects, Pew Research Center (Jan. 12, 2010), p. 60, available at http://pewsocialtrends.org/assets/pdf/blacks-upbeat-about-black-progress-prospects.pdf (last visited July 22, 2010).

[14] See Diversity Committee Recommendation on Foreign Ownership; 2007 DCS Comments at 37-39; DCS Petition for Partial Reconsideration at 2, 9-12; and Comments of Azteca International.

diversity.[15] The Commission has waived foreign ownership rules in the context of cable and telecommunications without adverse consequences.[16] Strict restrictions on foreign investment in broadcasting are no longer rational because the Commission has relaxed the rules in the cable and telecommunications contexts to further goals that are not greater in importance to diversity. Continued severe restrictions adversely impact minority ownership by preventing opportunities for access to capital while serving no significant countervailing purpose.

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[15] See generally Comments of Azteca International.

[16] See Comments of Azteca International at 5-6. See also Ted Gotsch, FCC Staffers Probe Possible Wireless Foreign Ownership Rule Changes, Telecom Reports Daily (July 21, 2010) (According to this report, the FCC is looking to relax foreign ownership rules for the wireless industry. When the discussion turned to whether the broadcast foreign ownership rules should be applied as the model, "[s]ome attorneys worried such a plan would hinder investment opportunities." Another attorney, Yaron Dori, said, "In a world where the leadership [of the FCC] is questioning broadcast television, why are we holding broadcast as some kind of standard anymore?")