

Minority Media and Telecommunications Council

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September 28, 2011

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

RE: Notice of *Ex Parte* Communication, MB Docket No. 09-182 (2010 Quadrennial Review), MB Docket No. 07-294 (Diversity Proceeding), ET Docket No. 10-235 (Innovation in Broadcast Television Bands Proceeding), EB Docket No. 04-296 (Emergency Alert System), MM Docket 98-204 (Equal Employment Opportunity), IB Docket No. 11-133 (Foreign Ownership), and GN Docket 10-244

Dear Ms. Dortch:

This reports on a meeting held September 28, 2011 with Commissioner Copps and Joshua Cinelli, Media Advisor. Representing MMTC at the meeting were our Earle K. Moore Fellow, Latoya Livingston, and myself.

Attached is a document, "Seven Proposals on Broadcast Regulation," that was distributed and discussed at the meeting. We also distributed our program book for our January 2011 Broadband and Social Justice Summit, our high tech jobs report¹, the 2011 NABJ Diversity Census², and our broadband adoption book³.

During the meeting I elaborated upon the "Seven Proposals" handout by noting:

- The Commission has been inactive on conducting Adarand studies. The five studies done in 2000 are now stale. New studies should include: 1) a disparity study that could identify the scope of the problem, determine whether the problem has gotten worse, and explain why it has gotten worse; 2) an updated historical study; and 3) targeted studies that would enable the Commission to assess the potential impact of new race-neutral diversity proposals.

¹ See Dorrissa Griffin and Kristal Lauren High, Esq., Minorities and High Tech Employment (July 22, 2011), available at <http://mmtconline.org/lp-pdf/MMTC%20Jobs%20Book%20072211.pdf> (last visited September 28, 2011).

² See National Association of Black Journalists, 2011 NABJ Diversity Census, Volume 1: An Examination of Television Newsroom Management, available at http://www.nabj.org/resource/resmgr/2011_nabj_diversity_census.pdf (last visited September 28, 2011).

³ See MMTC Report, Universal Broadband Adoption: How to Get There. And Why America Needs It, available at <http://mmtconline.org/lp-pdf/MMTC%20Adoption%20Book%20072111.pdf> (last visited September 28, 2011).

updated historical study; and 3) targeted studies that would enable the Commission to assess the potential impact of specific race-neutral diversity proposals.

- The 2000 disparity and historical studies cost about \$650,000 to \$700,000.
- The Commission should conduct a census on media ownership diversity. None has been done since NTIA's 1999 study.
- As a result of the court's decision in Prometheus Radio Project v. FCC (3d Cir., July 7, 2011) and the 3rd Circuit's growing impatience with the Commission's inattention to diversity, the Commission should put out specific proposals in an NPRM and not simply ask questions as is done in an NOI and in some documents captioned as NPRMs.
- The incubator proposal has been vetted extensively and is not expected to face any opposition. It would be a win/win for diversity. New entrants that find it difficult to secure financing would most likely be the first to take advantage of the program. Local ownership rule waivers should be available where a transaction passes a baseline HHI screen. To prevent "flipping" of the incubated stations, an anti-trafficking provision would be appropriate, similar to that used for the former tax certificate policy.
- Due to a lack of access to capital, minority broadcasters often need an additional 18 months to construct major modifications of authorized facilities.
- AM and LPFM stations need to be saved. The Commission should charter a new advisory committee or assign this matter to the Diversity Committee, so that it can explore using Channels 5 and 6 as a new home for many of these stations. Two-thirds of minority owned stations are AMs. We simply cannot let these stations die a slow death.
- There needs to be platform neutrality so that all of the civil rights rules can be extended to every industry over which the Commission has jurisdiction, especially since the platforms tend to overlap.
- Relaxation of the broadcast foreign ownership policy would have a substantial impact on minority access to capital. If we raise our limits for nationals of a particular country, that country should raise its limits reciprocally for American investors. In that way American broadcast companies would be able to expand more easily into foreign markets.
- Our Katrina Petition would mandate multilingual broadcasting on a designated hitter model during the critical days of an emergency. Stations should enable emergency messages to be periodically broadcast during an emergency if the non-English speaking station is off the air. The costs to the stations would be negligible, or the Commission could waive their regulatory fees for a year to offset any costs that a station might incur as a result of being a designated hitter.

Marlene Dortch, Esq.
September 28, 2011
Page Three.

- EEO enforcement is so weak that minorities have been essentially purged from radio news. The Commission should hold a Section 403 hearing to determine why that happened.

Respectfully submitted,

David Honig

David Honig
President and Executive Director

Attachment: Seven Proposals on Broadcast Regulation (Revised August 1, 2011)



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Seven Proposals on Broadcast Regulation

August 1, 2011 (revised)

These seven proposals are drawn from a list of 72 proposals (MMTC, May 11, 2010) pending before the Commission in rulemakings and other proceedings.

Each of the seven proposals has these attributes:

- High impact on minority ownership, employment, or service by the broadcast media
- Absence of significant opposition
- Ease of adoption
- Ease of implementation.

They are offered as a package that, taken as a whole, would likely be met with industry and civil rights organization consensus.

1. Reinstate and expand the Tax Certificate Policy [proposal 72].

- **REQUESTED ACTION:** Designate a staff team to coordinate with the White House on the design of legislation.

2. Structural rule waivers for companies that take actions to "incubate" (i.e., engage in actions that enhance radio station ownership opportunities) SDBs (the "Minority Ownership Incubation Proposal") [see proposal 20]. The local radio ownership rule would be waived as necessary (including waiver of the overall caps as described below and/or the subcaps) in order to allow the ownership of one station above the applicable limits for each qualifying "incubator" activity ("Qualifying Activity") that a radio broadcaster engaged in. The Qualifying Activity would occur in the same market where the transaction requiring the waiver was to occur or in a market of the same or larger size (i.e., if the waiver-requiring transaction took place in market #25, the Qualifying Activity must take place in one of markets 1-25). Owing to the time-sensitive nature of broadcast transactions and the need for regulatory certainty, the waiver standard

would include a menu of Qualifying Activities containing at least some easily quantifiable items. The menu of activities should include items such as:

- Sale or donation of a commercial radio station to a qualified entity on the condition that the recipient of a donated station certify that it will hold the station license for a period of three years following closing of the transaction effectuating the donation, subject to exceptions for economic distress or subsequent sale or donation to another qualified entity;¹
- Five years of an LMA for an independent programmer on an FM HD-2 or HD-3 channel, with the independent programmer obligated to pay the licensee no more than the licensee's actual out-of-pocket expenses associated with operation of the subchannel;
- Underwriting, including financing of one year of operations and the in-kind provision of technical or engineering assistance or equipment that enables the re-activation and restoration to full service of a dark commercial or noncommercial station licensed to an eligible entity where the licensee or permittee certifies that it is otherwise unable to resume or commence service prior to the date on which the license or permit would be cancelled by operation of law;²
- Arranging for the donation of a commercial or noncommercial station to an Historically Black College or University (HBCU), an Hispanic Serving Institution (HSI), an Asian American Serving Institution (AASI) or a Native American Serving Institution (NASI);
- Providing loans, loan guarantees, lines of credit, equity investments, or other direct financial assistance to a qualified entity to cover more than 50% of the purchase price of a radio station;
- Another action that the company seeking a waiver demonstrates is likely to enhance radio station ownership opportunities for qualified entities.

¹ A "qualified entity" would be defined as a for-profit that satisfies the Small Business Administration's standards for "Small Disadvantaged Businesses (SDBs)", or a non-profit entity that would satisfy the same standards.

² In cases involving in-kind provision of technical or engineering assistance or equipment, the incubating broadcaster would also be required to create a working capital fund for use by the station returning to service. The amount to be contributed to the working capital fund would vary based on market size, along the following lines: markets 1-10 (\$200,000); markets 11-50 (\$100,000); markets 50-150 (\$75,000), and markets below 150 (\$50,000).

Incubation could be used without limit for waivers of the AM or FM subcaps in FCC Defined Markets (ranked by Arbitron), and could be used for waivers of the overall caps up to these limits, with each additional station ownership waiver having been associated with a separate Qualifying Activity: (a) ownership of an additional four stations in each of the 16 markets with 65 or more stations (and thus four Qualifying Activities); (b) ownership of an additional two stations in each of the 12 markets with between 55 and 64 stations (and thus two Qualifying Activities); and (c) ownership of one additional station in each of the other FCC Defined Markets (and thus one Qualifying Activity).

The station group created as a result of the waiver would be permanently grandfathered and could be transferred intact without the requirement of a new waiver, subject to a condition (reflected on the FCC Form 732) that the transferee comply with the requirements of the initial grant of the waiver.

- **REQUESTED ACTION:** NPRM in the 2010 Quadrennial Review docket, MB 09-182, and in the Diversity Docket, MB 07-294.

3. Clarify that broadcasters can take up to 18 months to construct major modifications of authorized facilities, with eligible entities' applications receiving expedited treatment [see proposal 31].

- **REQUESTED ACTION:** Further R&O, or Clarification Order, in the Diversity Docket, MB 07-294.

4. Establish an AM Transition Federal Advisory Committee (or task the FCC's Advisory Committee on Diversity) to make recommendations for the use of TV Channels 5/6 as a new home for most AM and LPFM stations [proposal 47].

- **REQUESTED ACTION:** Public Notice manifesting the Chairman's commitment to establish the FAC. If the Chairman prefers to have the Diversity FAC address the issue, the requested action would be to instruct the Diversity FAC to do so.

5. Extend all civil rights rules (EEO, transactional non-discrimination, advertising non-discrimination, procurement non-discrimination) to all platforms [proposal 61]; create a new Civil Rights Branch of the Enforcement Bureau with enforcement and compliance staff for the EEO, transactional, advertising and procurement nondiscrimination rules across all platforms [proposal 62].

- **REQUESTED ACTIONS:** NPRM on cross-platform issues (e.g., extending the cable procurement rule to broadcast and telecom); Public Notice announcing organizational changes made to Part 0 of the Rules.

6. Relax broadcast foreign ownership restrictions (47 U.S.C. §310(b)(4)) [proposal 23]. The Commission would specify its intention to apply, case by case, a hard limit of 40% if the interest is voting, and 49% if the interest is nonvoting.

- **REQUESTED ACTION:** New comment window in response to the pending Diversity and Competition Supporters (MMTC et al.) Petition for Partial Reconsideration in the Diversity Docket (MB 07-294), filed June 18, 2008.

7. Grant the Katrina Petition and require multilingual emergency broadcasting on a “designated hitter” model during and in the critical days after emergencies such as hurricanes [un-numbered]. A radio station serving as a designated hitter would air programming in another language during regular segments throughout the hour (e.g. “on the eights”) in cooperation, where possible, with other radio stations in the market which broadcast in that language (utilizing, for example, their staffs) when, during or in the wake of the emergency, there is no other source of emergency radio programming in the covered language. Covered languages would consist of those (which are spoken by 5% of the market’s population or 50,000 people in the market, whichever is less (approximating analogous federal voting rights policies). This initiative could be effectuated by requiring states to amend their EAS plans, many of which are in need of modernization in any event, to require broadcasters to coordinate regarding the designated hitter process. Further, the Commission could express its willingness to offset a radio station’s costs of service as a designated hitter in an actual emergency by waiving or reducing subsequent regulatory fees for that station for one year.

- **REQUESTED ACTION:** Further NPRM in EB Docket 04-296 et al. on a fast track.