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

In the Matter of:	)	
	)	
2010 Quadrennial Regulatory Review –	)	
Review of the Commission's Broadcast	)	MB Docket No. 09-182
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications	)	
Act of 1996	)	
	)	
Promoting Diversification of Ownership in the	)	MB Docket No. 07-294
Broadcasting Services	)	

To: The Commission

COMMENTS OF ALLIANCE FOR WOMEN IN MEDIA, INC.

Alliance For Women in Media, Inc. ("AWM"), formerly American Women in Radio and Television, Inc. ("AWRT") hereby submits these comments in response to the Commission's *Notice of Proposed Rule Making* ("*NPRM*") in the above-captioned proceeding.[1]

I. Statement of Interest

AWM is a national, non-profit organization dedicated to advancing the impact of women in electronic media and allied fields through educating, advocating and acting as a resource for its members and the industry. AWM members are professional men and women employed in radio, television, cable, digital media, advertising and closely allied fields.

For nearly 60 years, AWM's mission has been to promote the entry and advancement of women in management and ownership of electronic media. Throughout its long history, AWM has been active in Commission proceedings, and has encouraged the Commission enact policies that provide equal opportunities for participation by women in broadcasting and other communications industries.[2] AWM therefore has a profound interest in the ownership rules governing the mass media and their impact upon women in today's media marketplace.

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[1] FCC 11-186 (rel. December 22, 2011).
[2] *See e.g.,* Comments of AWRT, 02-277 (filed March 27, 2002); Comments of AWRT, In the Matter of Elimination of Market Entry Barriers For Small Telecommunications

II. The Commission's Ownership Rules Remain Necessary.

The Commission has undertaken this proceeding in keeping with its statutory mandate to review its media ownership rules every four years to "determine whether any of such rules are necessary in the public interest as the result of competition."[3] AWM submits that it is abundantly clear that competition in the mass media has not developed to such a degree that the Commission's ownership rules are no longer needed. To the contrary, many parties have noted the increased consolidation that has characterized the media marketplace since the passage of the Telecommunications Act of 1996. For example, the Commission itself has previously noted a 39% decrease in the number of commercial radio station owners since 1996. *In the Matter of 2010 Quadrennial Review, Notice of Inquiry,* FCC 10-92 at ¶ 4 (rel. May 25, 2010) (the "*NOI*"). In the nearly two years that have followed, no record evidence has been produced to suggest a reversal to that trend.

According to the figures in one study, the top five radio group owners accounted for a combined total of 1,594 stations in 2009.[4] The figures for 2009 do not differ materially from those for 2008, and generally remain above the totals for 2007.[5] Although some group owners had divested a handful of stations between 2008 and 2009, two of the top five companies (Clear Channel and Entercom) increased the number of stations they owned in the same period.[6] The figures for television likewise show the continuing effects of consolidation.[7]

Businesses and Allocations of Spectrum-Based Services for Small Businesses and Businesses Owned By Women and Minorities, MB Docket No. 04-228 (filed Oct. 12, 2004); Comments of AWRT, In the Matter of 2002 Biennia Review, MD Docket In the Matter of 2006 Quadrennial Regulatory Review, MB Docket No. 06-121 (filed Oct. 23, 2006) ("AWRT 2006 Ownership Comments"); Comments of AWRT, In the Matter of Promoting Diversification of Ownership In the Broadcasting Services, MB Docket No. 07-294 (filed July 30, 2008); Comments of AWM, In the Matter of the Future of Media and Information Needs of Communities in a Digital Age, GN Docket No. 10-25 (filed May 7, 2010).

[3] *See* Pub. L. 104-104, § 202(h), as amended by Pub. L. 108-199, § 629(3).

[4] *See* Pew Project for Excellence in Journalism, *State of the News Media 2010* ("*Pew 2010 Journalism Report*"), "Top Audio Companies," http://www.stateofthemedia.org/2010/media-ownership/sector_audio.php.

[5] *See* Pew Project for Excellence in Journalism, State of the News Media 2009 ("*Pew 2009 Journalism Report*"), "Audio - Ownership" http://www.stateofthemedia.org/2009/narrative_audio_ownership.php?cat=5&media=10#2stationsowned.

[6] *Compare Pew 2010 Journalism Report and Pew 2009 Journalism Report*.

[7] *See e.g*, *NOI* at ¶ 4 (33% decrease in local TV station ownership since 1996); *Pew 2010 Journalism Report*, "Local TV – Ownership," http://www.stateofthemedia.org/2010/local_tv_ownership.php (the top four television networks still represented 30% of industry revenues for 2008).

This is not to disparage the large media owners, or suggest that those entities should in any way be penalized for owning multiple stations as permitted by the Commission's rules. The Telecommunications Act does not require the Commission to adopt more stringent rules as a part of the quadrennial review process. What the Act does require, however, is that before the Commission eliminates or relaxes its multiple ownership rules, it must find that those rules are not "necessary in the public interest as the result of competition." AWM respectfully submits, that, in light of the continued consolidation in the media and the continued underrepresentation of women and minorities in media ownership the ownership rules remain necessary to the public interest.

Diversity remains a core goal of the Communications Act. Indeed, as the FCC is well aware, the Third Circuit recently took the FCC to task for failing to take sufficient action to encourage ownership by women and minorities. *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011) ("*Prometheus II*"). There, the Court found that the definition of "eligible entities" adopted in the Commission's *Diversity Order* was arbitrary and capricious because it was solely revenue based, and the Commission had failed to adequately explain how revenue-based measures would encourage minority and female ownership. The *NPRM* sought comment on how to respond to the *Prometheus II* Court's remand . AWM regretfully agrees with the Commission that further data is needed if race and gender-based preferences are to survive judicial review; however, there are further actions that the Commission can now take to encourage more diverse media.

III. Retention of the Rules is Critical for Diversity, Including Participation by Women and Minorities

The Commission is well aware of the abysmal statistics for female ownership of broadcast properties: women, while comprising 51% of U.S. population, own only 5.8% of full power TV stations and 6% of full power commercial radio stations. *See, e.g., NOI* at ¶ 75. Other sources show similarly distressing rates, and further indicate that women and minorities are likewise sorely underrepresented in top management positions. *See, e.g.,* Turner, S. Derek, *Off The Dial: Female and Minority Radio Station Ownership in the United States*, pp. 4-5 (FreePress, June 2007) (women own 6% of full power commercial radio stations, as compared to 28% of all non-farm businesses; only 4.7% of broadcast stations are owned by an entity with a female CEO). The statistics for minority ownership are similarly disheartening. *See, e.g., NOI* at ¶ 75. AWM submits that, by whatever metrics the Commission may consider adopting, such severe underrepresentation of substantial portions of the U.S. citizenry cannot be said to reflect diverse ownership of media properties.

AWM would like to underscore the continuing importance of diversity as a goal of broadcast regulation. First, encouraging diversity of ownership is not merely a matter of what is "fair" or a "nice idea," it is part of the Commission's statutory mandate. Congress has identified diversity of in the number and type of licensees generally (that is, outlet diversity), and participation by minorities and women in particular, as critical components of the Commission's licensing

regimes. Section 309(j) of the Communications Act directs the Commission to provide area designations and bandwidth assignments that "promote economic opportunity for a wide variety of applicants, including . . . businesses owned by members of minority groups and women."[8] The Act further requires the Commission to design competitive bidding procedures for licenses that, *inter alia*, encourage "disseminating licenses among a wide variety of applicants, including. . . and businesses owned by members of minority groups and women,"[9] and to adopt regulations to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services."[10] Moreover, Congress has charged the Commission with identifying and eliminating, through regulatory action, "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services[.]"[11]

In its comments on the 2006 Quadrennial Review, AWM (then AWRT) noted two significant barriers to women's ownership of broadcast stations: lack of access to managerial positions from which to gain experience, and lack of access to capital. *See* AWRT 2006 Ownership Comments. Both of those barriers are even more formidable today than they were at the last quadrennial review.

As AWM has previously observed, if women are to participate as owners of media enterprises, they require "the necessary experience in the relevant industry (be it radio or television) to feel confident enough to purchase a station." *See* AWRT 2006 Ownership Comments at 4. The era of consolidation brought about a decrease in the number of broadcast managerial positions available, and consequently, less training of lower-level employees for future management roles. *Id*. The current economic crisis has exacerbated that trend, severely limiting employment opportunities in most if not all sectors, including the mass media. The recent past has seen significant layoffs in broadcast industry, including at some of the largest companies.[12] Although there are signs that the job market is improving somewhat, there is also some evidence that

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[8] 47 U.S.C. § 309(j)(4)(C)(ii).
[9] 47 U.S.C. § 309(j)(3)(B)
[10] 47 U.S.C. § 309(j)(4)(D).
[11] 47 U.S.C. § 257(a).
[12] See e.g., "Layoffs sweep TV networks and their affiliates," Broadcast Engineering (April 7, 2008), http://broadcastengineering.com/news/layoffs_sweep_tv_networks_0407/; "Clear Channel cutting 1,850 jobs," Houston Chronicle (Jan. 20, 2009), http://www.chron.com/disp/story.mpl/headline/biz/6221249.html; "ABC's Engineering and Operations Division Makes Significant Layoffs in New York," The New York Observer (Jan. 26, 2010), http://www.observer.com/2010/media/abcs-broadcastoperations-and-engineering-division-makes-significant-layoffs-new-york; Layoffs and Newsroom Shutdowns, http://www.tvjobs.com/cgibin/layoffs_newsroom_shutdowns.cgi.

women are not benefiting from newly created or available jobs to the same degree as men.[13] Relaxing the ownership rules to permit further consolidation would only result in the further reduction of broadcast employment opportunities, as newly-combined entities eliminated redundant job functions.

Additionally, women have historically lacked access to capital, and that trend has shown no signs of abating.[14] The capital markets have been hard-hit by the recession, and are far from recovered.[15] Since 2008, there has simply been less investment capital to be had, and women and minorities, whose ability to obtain third-party investments has been limited in the best of times, have even less chance of obtaining sufficient capital to purchase a station today than they did in 2006.

AWM therefore urges the Commission to take steps, consistent with its statutory authority and judicial precedent, to address the historic underrepresentation of women in the broadcast industry. AWM applauds the steps that the Commission has taken since the last biennial review period, including the reinstatement of the "failed station solicitation rule;" AWM submits that the more broadly information about available stations is disseminated, the more diverse the pool of potential buyers is likely to be . Nonetheless, many of the suggestions made in the AWRT 2006 Ownership Comments have not been adopted, and AWM believes that those suggestions remain practical and legally-permissible courses of action that the Commission can and should undertake. Those suggestions are restated in here; AWM urges the Commission to consider them in this proceeding:

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[13] *See, e.g.*, "Unemployment Not Getting Better for Women," Huffington Post (Dec. 2, 2011), http://www.huffingtonpost.com/2011/12/02/many-baby-boom-women-going-bust-in-recovery_n_1126244.html; "Women Lag Behind Men in Economic Recovery," ABC News (March 21, 2011), http://abcnews.go.com/US/unemployment-recession-men-return-work-women-left-economic/story?id=13185406.

[14] *See e.g.*, Pinelli, Maria, "Scaling Up: Women-Owned Businesses Can Recharge the Global Economy" (Dec. 2009) (approximately 5% of *all* equity capital investments in the U.S. go to women-led businesses); Shane, Scott, *The Importance of Angel Investing in Financing the Growth of Entrepreneurial Ventures* (Sept. 2008) (11% of start-ups able to obtain outside equity were owned by women).

[15] *See e.g.*, "U.S. Venture Capital Fundraising Up 13 Percent In First Half Of 2010 To $7.5B" *TechCrunch* (July 8, 2010), http://techcrunch.com/2010/07/08/u-s-venturecapital-fundraising-up-13-percent-in-first-half-of-2010-to-7-5b/ (noting that despite gains, venture funds raised in 2010 remain at half of 2008 levels); "Private equity fundraising down 26% from '09," *Dallas Morning News* (July 9, 2010), http://www.dallasnews.com/sharedcontent/dws/bus/stories/070910dnbusprivateequity.11ce0cc33.html.

1. Preparing a primer on investment in broadcast ownership for smaller and regional lenders and others willing to provide "small" loans to new owners. Such a primer can provide the guidance necessary to help lenders better understand the broadcast industry and encourage them to make broadcast related loans.

2. Preparing a primer for new entry owners to provide guidance on how to find financing. Such a primer should provide potential new owners with viable sources and "best practices" for obtaining the capital necessary to enter the broadcast ownership arena.

3. Allowing sellers to hold a reversionary interest in a Commission license if Seller paper is involved. A Seller may be more likely to finance a new owner's purchase of its station if it has the power to reacquire the station's key asset (i.e., its FCC license) if the purchaser defaults on payments. (AWM recognizes there would need to be stringent guidelines for this option and stands ready to work with the Commission to propose a workable rule.)

4. Establishing a link on the FCC's website to provide information on stations which are available (or may be eligible) for sale under the Commission's distress sale policy or otherwise available to small businesses, including those owned by women and minorities. Such readily available information about station sales will assist women and minority owned businesses in finding properties to acquire. (AWM recognizes that some incentive may be necessary to encourage larger broadcasters and/or brokers to post information on this type of website, but the Commission should at least experiment with such an action to see if it can be effective.)

In addition to those previously-made proposals, AWM respectfully offers the following suggestions:

1. AWM also suggests that the Commission could – and should – undertake efforts to make the FCC Form 323 ownership data more easily searchable. AWM has long encouraged the Commission's efforts to improve its ownership data, and broadcasters must spend considerable time and effort to complete their Form 323 filings. However, unless that data is can be readily searched, compiled and analyzed, it is of limited value. Search terms allowing interested persons to search specifically by the gender of shareholders, officers, etc., could allow for more useful analysis of the data that broadcasters so diligently provide.

2. The Commission should follow through on its stated plans for the 2014 Quadrennial Review. *See NPRM* at ¶ 158. In particular, AWM supports the Commission's commitment to "appropriately-tailored research and analysis on diversity of ownership[.]" *Id*. The studies which have been undertaken in the current proceeding have not been sufficiently tailored to the questions surrounding female and minority ownership of media properties, the impact that changes to the Commission's Rules have had on representation of women and minorities in media ownership, and the effect upon media consumers.

3. AWM supports the re-adoption of the "eligible entity" standard as a means of enhancing ownership opportunities for small businesses, regardless of race or gender. Any

policies which reduce barriers to entry into the media market have the potential to decrease concentration; and, there is at least some evidence that less concentrated markets are more conducive to minority and female ownership. *See Off the Dial* at 29-31.

4. The Commission should consider asking Congress for authority to reinstate the tax certificate program. The program provided an incentive for sellers to seek out minority and female purchasers that are difficult to replicate. AWM understands that an election year may not be the right time to ask Congress to focus on policy proposals of this kind; however, there is no reason that the Commission cannot work on the preparation of proposed legislation, or work with the Diversity Advisory Committee on the issue.

Conclusion

For all the foregoing reasons, AWM respectfully submits that the Commission's ownership rules remain necessary in the public interest, and that the Commission should take additional steps to ensure the diversity of mass media ownership and participation by women and minorities. AWM looks forward to providing the Commission with additional input during the course of this proceeding.

Respectfully submitted,

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DATE: March 5, 2012