

Minority Media and Telecommunications Council

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October 26, 2012

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), IB Docket No. 11-133 (Foreign Ownership), Docket No. 12-268 (Incentive Auction)

Dear Ms. Dortch:

This reports on a meeting held October 25, 2012 with Commissioner Clyburn, Dave Grimaldi, Chief of Staff and Media Legal Advisor, Louis Peraertz, Legal Advisor for Wireless, International, and Public Safety, and Joseph Dworak, Law Clerk. MMTC representatives David Honig, President, Maurita Coley, Chief Operating Officer, and Jacqueline Clary, John W. Jones Fellow, were also present at the meeting.

During the meeting I made the following points:

- The Commission's rule restricting foreign investment in broadcasting (Section 310 (b)(4) of the Communications Act) is outdated. Much has changed since the policy's rationale was developed in 1912. Today, one of the primary barriers to diverse participation in broadcasting is access to capital. Foreign sources are looking to infuse capital in our broadcast service and are open to reciprocity. Relaxing broadcast foreign ownership restrictions to grant the Media Bureau discretion to review applications and decide on a case-by-case basis whether to allow foreign investment in broadcasting could make a big difference for diverse and multi-lingual broadcasting. Something has to be done to stop the slow decline of radio broadcasting.¹

¹ See Radio still has America's ear for more than an hour and a half each day, [Inside Radio](#) (Oct. 24, 2012) (chart attached).

- A coalition of 50 organizations submitted 47 race-neutral proposals in the Quadrennial Review proceeding.² We hope the Commission will begin to rule on these proposals while developing studies on the mechanics and potential desirability of race-conscious measures.³
- MMTC recently changed its stance on cross-ownership such that we no longer object to the relaxation of the cross-ownership rule so long as it does not diminish minority ownership.⁴ Cross-ownership today would usually further the public interest by supporting print and broadcast journalism and helping to invigorate a declining newspaper industry.⁵ The FCC could alleviate some of the concerns raised by opponents of this rule change by implementing pending proposals to increase diversity. Structural rule changes, such as the incubator proposal,⁶ would create new voices in the industry.
- With respect to merger policy, we have been very grateful for efforts made by the Commission to include entrepreneurial opportunities in its consideration. We hope to see the Commission continue to focus on entrepreneurial opportunity as a way to further the public interest. Further, the Commission should also work with the Department of Justice to consider the many variables as to what constitutes the market, including whether the company serves traditionally underserved populations, and what impact a merger would have on those consumers.
- The Incentive Auction Notice of Proposed Rulemaking is deficient in that the FCC failed to solicit comments and therefore provide adequate notice of the Diversity Committee's existing race and gender neutral proposal on Overcoming Disadvantage Preference, which has been pending at the Commission since 2010.⁷ A full record on this question is necessary in light of Prometheus I and II.⁸

² See Initial Comments of the Diversity and Competition Supporters in Response to the Notice of Proposed Rulemaking, MB Docket Nos. 09-182, 07-294 (March 5, 2012) ("Initial Comments of DCS").

³ See *Parents Involved in Community Schools v. Seattle School District No. 1 et al.*, 551 U.S. 701, 798 (2007) (*Kennedy, A., concurring*) ("measures other than differential treatment based on racial typing of individuals first must be exhausted").

⁴ See Initial Comments of DCS at 40.

⁵ See *id.* at 41-42.

⁶ See *id.* at 22.

⁷ See [Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Notice of Proposed Rulemaking, 2012 FCC LEXIS 4169 ¶296 \(2012\). Media and Wireless Telecommunications Bureaus Seek Comment on Recommendation of the Advisory Committee on Diversity for Communications in the Digital Age for a New Auction Preference for Overcoming Disadvantage, Public Notice, 25 FCC Rcd 16854 \(rel. Dec. 2, 2010\); Preference for Overcoming Disadvantage, Advisory Committee on Diversity for Communications in the Digital Age, Oct. 14, 2010, available at <http://transition.fcc.gov/DiversityFAC/recommendations.html>](#), then follow link to "Recommendation on Preference for Overcoming Disadvantage" (last visited Oct. 26,

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- The due date for the 2012 Section 257 Report is rapidly drawing near. The last two reports were late.⁹ MMTC hopes that the Commission will complete the 257 Report in a timely and thorough manner.

Respectfully submitted,

David Honig

David Honig
President and Executive Director

Attachment: The following chart was distributed during the meeting.

2012).

⁸ See Prometheus Radio Proj. v. FCC, 373 F.3d 372, 420-421 (3d Cir. 2004) (“Prometheus I”). See also Prometheus Radio Proj. v. FCC, 652 F.3d 431, 472 (3d Cir. 2011) (“Prometheus II”) (retaining jurisdiction while vacating and remanding various FCC rules, including those that relied on the arbitrary and capricious definition of eligible entities).

⁹ The Commission submitted its first report in 1997. See Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, 12 FCC Rcd 16,802 (rel. May 8, 1997). The second report was released 2000. See Section 257 Report to Congress, 15 FCC Rcd 15,376 (rel. Aug. 10, 2000). The third report was adopted on December 31, 2003 and released in 2004. See Section 257 Report to Congress, Identifying and Eliminating Market Entry Barriers For Entrepreneurs and Other Small Businesses, 19 FCC Rcd 3034 (rel. Feb. 12, 2004). The fourth report, due in 2006, was released several months late in 2007. See Section 257 Triennial Report to Congress; Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses, 22 FCC Rcd 21,132 (rel. Dec. 6, 2007). The fifth report, due in 2009, was released in 2011. See Section 257 Triennial Report to Congress, Identifying and Eliminating, Market Entry Barriers, For Entrepreneurs and Other, Small Businesses, 26 FCC Rcd 2909 (rel. March 3, 2011).

Inside Radio Article (Oct. 24, 2012)

- Television, Online, and Radio comprise the top three consumption platforms.
- Radio still has a large audience tuning in even without data on the digital audience.
 - Average adult consumes 92 minutes of radio daily.
 - This is a slight decrease from previous years (down 2 minutes from 2011) but not an alarming one.

Average Time Spent per Day with Major Media by US Adults, 2009-2012				
<i>minutes</i>				
	2009	2010	2011	2012
TV	267	264	274	278
Online	146	155	167	173
Radio	98	96	94	92
Mobile (nonvoice)	22	34	54	82
Print*	55	50	44	38
—Newspapers	33	30	26	22
—Magazines	22	20	18	16
Other	44	47	45	36
Total	632	646	678	699

*Note: time spent with each medium includes all time spent with that medium, regardless of multitasking; for example, 1 hour of multitasking on a PC while watching TV is counted as 1 hour for TV and 1 hour for online;
*offline reading only
Source: eMarketer, Oct 2012*

Chart Reference:

Radio still has America's ear for more than an hour and a half each day, Inside Radio (Oct. 24, 2012)