Congress of the United States
Washington, DC 20515

December 13, 2012

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

RE: MB Docket No. 09-182 (2010 Quadrennial Regulatory Review); MB Docket No. 07-294 (Promoting Diversification of Ownership In the Broadcasting Services)

Dear Ms. Dortch:

This letter is respectfully submitted as a Comment in the aforementioned proceedings.[1] Recently, constituents from the 18th congressional district reached out to us regarding the sale of KCOH Radio, the oldest black radio station not only in Texas, but in the southern United States. The radio station, which was established in 1953, has been recognized as a forerunner in black radio for more than 50 years and was the first in its field to include talk show programming, gospel, and a variety of programming to its urban listeners. In 2008, KCOH was named the Best Radio Station in Houston by *Houston Press*, an alternative weekly newspaper. Unfortunately, following the passing of its prior owner, KCOH was recently proposed for sale to a company that, in effect, plans to terminate the station's service to the Black community in February 2013. The loss of this innovative resource, which has consistently and reliably served the Black community for almost six decades, will devastate the community.

Several proposals now before the Commission and Congress would, if adopted, ensure that a situation like KCOH's never happens again. One proposal, developed originally by the National Association of Black Owned Broadcasters (NABOB) and advanced now by NABOB and 49 other organizations banding together as the Diversity and Competition Supporters, would require the Commission to set for hearing applications that present a substantial issue of market failure due to the adverse impact on minority ownership or diversity.[2] There are 47 such proposals just

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[1] See 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, Notice of Proposed Rulemaking, 26 FCC Rcd 17489 (2011).

[2] See, e.g., Supplemental Comments of the Diversity and Competition Supporters in Response to The Notice of Proposed Rulemaking, 2010 Quadrennial Regulatory Review - Review Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182 et. al. (April 3, 2012) at p. 13, available at http://mmtconline.org/wp-content/uploads/2012/04/Supplemental-Media-Ownership-Comments-040312.pdf (last visited Dec. 8, 2012) ("Supplemental Comments of DCS") (the proposal filed by the Diversity and Competition Supporters, led by the Minority

relating to broadcasting, and the fact that these rulemaking proposals have not been acted upon is quite troubling. What is even more troubling are statistics presented by NABOB this week showing declines in African American ownership of broadcast stations. NABOB's data shows the following declines:

1995	Radio companies	146
	TV companies	10
	Radio stations	250
	TV stations	23
2012	Radio companies	68
	TV companies	5
	Radio stations	225
	TV stations	8

Decades ago, Congress charged the Commission with the task of advancing minority and women's media ownership. It specifically stated that "the Commission shall seek to promote the policies and purposes of this chapter favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and

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Media and Telecommunications Council (MMTC), which seeks to integrate civil rights into the FCC's institutional priorities, urging the Commission to consider the probable impact that each proceeding and transaction will have on minority ownership; contemplates that the Commission include a minority and female impact statement in all major rulemaking proceedings and transactions; and through minority and female impact statements, the Commission could navigate the unintended consequences of major actions on its diversity goals, while crafting informed policy decisions). See also FCC Deregulation of Radio, Report and Order, 84 F.C.C. 2d 968, 991-992 (1981) (placing reliance on marketplace forces to achieve public interest goals, and specifically holding that "... the licensee may demonstrate the sufficiency of its own programming and, in doing so, relate to other services available in its community. For instance, an individual licensee with, by way of example, a country and western music format must address public issues. If challenged in a petition to deny alleging a lack of programming directed towards issues faced by minorities, it may demonstrate that it did indeed offer such programming or, if it did not, that a local station oriented toward the minority audience was present in the community and that the challenged station was reasonable in its reliance upon that station to offer nonentertainment programming relevant to the issues facing the minority community. However, the same licensee confronted by a petition alleging that it offered no nonentertainment programming relevant to any public issues may not defend by showing the presence of an all news and public affairs station in the community or by showing that other stations are providing significant amounts of such programming." The effect was that a country station in the market may rely on the existence of a minority station to meet minority community needs, and consequently the country station doesn't have to serve that groups' interest. Here we have a situation where the market has failed, though, calling into question all of the other broadcasters' decisions not to serve the minority community based on their reliance on KCOH).

necessity."[3] The Commission chose to act on Congress' instruction by announcing its objective to "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."[4]

Despite the Commission's congressional mandates, minority ownership is freefalling to almost non-existent levels. Currently, racial minorities own a majority interest in a mere eight percent of the nation's commercial radio stations.[5] Yet because most minority-owned stations are very small, they comprise only about 1% of the asset value of U.S. broadcasting stations, according to the Minority Media and Telecommunications Council (MMTC). Given the demographic shift in the United States, there is a clear need to protect existing minority-focused programming and to foster minority ownership and programming diversity. **This situation is clear evidence that not only has the market failed KCOH and many Houstonians, but the Commission is doing very little, if anything, to address this problem. Our constituents do not need rhetoric; they need substantive action by the Commission and Congress.**

The Commission, with the aid of Congress, needs to vigorously pursue the promotion of diverse ownership in broadcasting. It should ask Congress to reinstitute the Tax Certificate Program[6] that was very beneficial to minority and women broadcast entrepreneurs. Other means the Commission could examine are relaxing the Foreign Broadcast Ownership Rules[7], increasing

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[3] See 47 U.S.C. §257(b).

[4] See id. at §309(j)(3)(B).

[5] See Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report on Ownership of Commercial Broadcast Stations, 2012 FCC LEXIS 4710, p. 9 (2012).

[6] See Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F.C.C.2d 979, 983 (1978) (The tax certificate policy program allowed companies to defer capital gains taxation on the sale of media properties to minorities). Although the program was repealed in 1995, it led to the issuance of "356 tax certificates – 287 for radio, 40 for television and 30 for cable franchises" between 1978 and 1995. See Catherine J.K. Sandoval et al., 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 (2009) at p. 14, available at http://mmtconline.org/lp-pdf/Minority_Commercial_Radio_Broadcasters_Sandoval%20_MMTC_2009_final_report.pdf (last visited Dec. 10, 2012).

[7] Such relaxation will not only provide new funding options for minority broadcast entrepreneurs, but will also give all U.S. broadcasters the opportunity to increase their investments in foreign broadcast outlets. For example, MMTC referenced how the number of minority broadcasters has stagnaged or declined over the past few years due to the lack of capital investment. See generally Comments of the Minority Media and Telecommunications Council,

broadcast auction discounts to new entrants[8], and creating an "incubator" program to incentivize those who help finance small and disadvantaged broadcast stations.[9]

If the Commission took these affirmative steps it would promote diversity of viewpoints and facilitate the establishment of additional broadcasting facilities that, like KCOH, serve underserved communities. KCOH's unfortunate situation has compelled us to aggressively make affirmative progress for minority and women entrepreneurs in our communications industry -- the Commission needs to show the American people that it will join us in this important fight. We can save viable stations in their same formats and ownership, just like KCOH, which has been serving the African American community and others in Houston for over fifty years!

Respectfully submitted,

SHEILA JACKSON LEE
Member of Congress

Member of Congress

Member of Congress

Member of Congress

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[8] A study performed for the Commission in 2000 found that small and minority broadcasters are less likely to win in the auction process, and that due to capital market discrimination, minority broadcast [and wireless] license holders are "less likely to be accepted in their applications for debt financing, after controlling for the effect of the other variables on the lending decision." See William D. Bradford, Discrimination in Capital Markets, Broadcast/Wireless Spectrum Service Providers and Auction Outcomes (2000) at pp. vi-ix, available at http://transition.fcc.gov/opportunity/meb_study/capital_market_study.pdf (last visited Dec. 8, 2012).

[9] See Supplemental Comments of DCS at pp. 4-6.