

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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)	

**JOINT REPLY COMMENTS OF
BONNEVILLE INTERNATIONAL CORPORATION
AND THE SCRANTON TIMES, L.P.**

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Bonneville International Corporation (“Bonneville”) and The Scranton Times, L.P. (“Scranton”) (collectively “Bonneville/Scranton”) hereby submit their reply comments in response to the Commission’s November 2012 report on broadcast ownership data (“*Broadcast Ownership Report*”) and recent filings in the above-referenced dockets concerning minority and female broadcast ownership issues.¹ As with our earlier submissions in MB Docket No. 09-182,² these comments are limited to one rule: the newspaper/radio cross-ownership restriction,

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*, Report on Ownership of Commercial Broadcast Stations, 27 FCC Rcd 13814 (MB 2012) (“*Broadcast Ownership Report*”); *Commission Seeks Comment on Broadcast Ownership Report*, MB Docket Nos. 09-182, 07-294, Public Notice, DA 12-1946 (MB, rel. Dec. 3, 2012) (“Public Notice”); see also *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) (“*2011 NPRM*”) (collectively, the “2010 Quadrennial Review”). For the sake of brevity, references herein to “minority” ownership apply to gender-based ownership issues unless otherwise specified.

² See, e.g., Joint Comments of Bonneville International Corporation and The Scranton Times, LLP, MB Docket No. 09-182 (filed March 5, 2012) (“Bonneville/Scranton Comments”); Bonneville

which bars common ownership of a daily newspaper and radio stations in the same local market.³ The analysis below demonstrates that the Commission should not hesitate to abolish the outdated newspaper/radio rule.

INTRODUCTION AND SUMMARY

The FCC's new *Broadcast Ownership Report* provides a useful snapshot of the current demographics of broadcast ownership. Bonneville/Scranton agrees with the widespread observation that the number of minorities and women who control licensees is disproportionately low in comparison to their numbers within the U.S. population generally. We also agree that the Commission can and should take steps designed to help boost minority ownership – which is why we have endorsed such action previously.

The record developed since the Commission released the *Broadcast Ownership Report* also is illuminating in several respects. In regard to identifying tangible impediments to greater minority ownership, commenters in the docket and observers commenting outside the formal proceeding present a persuasive case that the main issue is access to capital, not structural ownership regulations. This understanding should prompt the Commission to take actions to help alleviate that problem. We endorse several suggestions offered by multiple commenters in this docket, including encouragement of greater foreign investment, establishment of an incubator program, active support for Congressional efforts to craft a sustainable tax certificate program, and the launch of ongoing educational seminars to acquaint local and regional banks and other investors with the potential of broadcasting. Some of the rule and policy changes

International Corporation and The Scranton Times, LLP, Notice of Ex Parte Presentation, MB Docket Nos. 09-182, 07-294 (filed May 14, 2012) (“Bonneville/Scranton Ex Parte”).

³ 47 C.F.R. § 73.3555(d) (restricting common ownership of a daily newspaper and a radio or television broadcast station in the same local market). We continue to believe that the record justifies elimination of the entire newspaper/broadcast cross-ownership (“NBCO”) rule, but these comments focus solely on the newspaper/radio prohibition.

offered by commenters can be implemented immediately, while others can be adopted after rulemaking proceedings. A number of initiatives could be put into place while the FCC continues to work to develop data that may support explicitly race-based ownership regulations.

Review of recent filings in this docket since mid-November 2012 also reveals that the Commission can and must eliminate the newspaper/radio cross-ownership restriction. The record remains devoid of any factual data to support continuation of that component of the newspaper/broadcast cross-ownership (“NBCO”) rule. The proponents of a complete lock-down on all five of the media ownership regulations under review in this proceeding spend little time – and no substance – on attempting to empirically demonstrate that lifting the newspaper/radio rule would harm minority ownership. Even if they had tried, they would be hard pressed to rebut several critical facts to the contrary: The 15,000+ full-power radio stations across the country offer ample opportunities for any new entrant with access to capital, and the Commission soon will open a new low-power FM (“LPFM”) application window to add hundreds more radio facilities to the existing 800+ LPFM stations also in the mix. These facts, together with the evidence already in this docket concerning the precarious state of the traditional newspaper industry and the limited role that radio plays in local newsgathering, require that the Commission fulfill its statutory obligations under Section 202(h) of the Telecommunications Act by eliminating the newspaper/radio restriction.

I. THE RECORD STILL PROVIDES NO BASIS FOR RETAINING THE DECADES-OLD NEWSPAPER/RADIO CROSS-OWNERSHIP RULE

A. No proponent of retaining the newspaper/radio restriction has provided any empirical data to support their contentions

The latest submissions in this docket do nothing to override the substantial record requiring repeal of the newspaper/radio rule. As Bonneville/Scranton and other commenters already have demonstrated, elimination of the rule will comport with the FCC’s long history of

pronouncements about newspaper/radio cross-ownership and finally resolve the 16 years' worth of questions about ending it.⁴ Earlier comments established conclusively that retention of the newspaper/radio restraint is not necessary to serve any of the Commission's traditional policy goals for ownership regulation: The regulation has no effect on competition or diversity and actually hinders localism.⁵

Even with the narrower focus of the current comment round, the record still provides overwhelming support for eliminating the restriction.⁶ Until late November 2012, no proponents of retaining ownership restrictions provided any substantive discussion of the newspaper/radio rule – and the few filings that have even mentioned the restriction since then provide no empirical showing that it has any demonstrable effect on minority ownership.⁷ Rather, just as they did in the earlier comment phase of this proceeding, most commenters calling for retention

⁴ See, e.g., Bonneville/Scranton Comments at 2, 7. As we explained earlier, the statute no longer affords the FCC scope to retain restrictions on media ownership with nothing more than “hoped for” diversity as support. *Id.* at 9-10 & n.19.

⁵ See, e.g., Reply Comments of the National Association of Broadcasters, MB Docket Nos. 09-182, 07-294, at 28 (filed Apr. 17, 2012) (“Retaining ... cross-ownership restrictions affirmatively harms localism by preventing broadcast outlets and newspapers from achieving important efficiencies.”); Reply Comments of the Newspaper Association of America, MB Docket Nos. 09-182, 07-294, at 10 (filed Apr. 17, 2012) (“[R]epealing the NBCO rule ... would promote localism ...”); see also 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13759-60 ¶ 353 (2003) (“[T]he current [newspaper/broadcast cross-ownership] rule is not necessary to promote our localism goal and ... is likely to hinder its attainment.”).

⁶ See, e.g., Supplemental Comments of the Newspaper Association of America, MB Docket Nos. 09-182, 07-294, at 5, 7-8 (filed Dec. 26, 2012) (“NAA Supplemental Comments”); National Association of Broadcasters, Notice of Ex Parte Presentation, MB Docket Nos. 09-182, 07-294, at 1 (filed Dec. 21, 2012); Comments of the National Association of Media Brokers, MB Docket Nos. 09-182, 07-294, at 5-8 (filed Dec. 21, 2012) (“NAMB Comments”); Initial Comments of the Diversity and Competition Supporters, MB Docket Nos. 09-182, 07-294, at 40-43 (filed Mar. 4, 2012) (“DCS Initial Comments”).

⁷ See Comments of the National Association of Black Owned Broadcasters, Inc., MB Docket Nos. 09-182, 07-294, at 11 (filed Dec. 26, 2012) (“NABOB Comments”); Office of Communication of the United Church of Christ, Inc., Written Ex Parte Presentation, MB Docket Nos. 09-102, 07-294, at 2 (filed Nov. 27, 2012) (“UCC 11/27 Ex Parte Letter”); Free Press *et al.*, Notice of Ex Parte Presentation, MB Docket Nos. 09-182, 07-294, 12-268, at 2 (filed Nov. 21, 2012) (“Free Press 11/21 Ex Parte Letter”).

of the NBCO rule still focus their attention on newspaper/TV combinations, not newspaper/radio ones.⁸

Recent filings in this docket also seem to overlook the fact that the *2011 NPRM*, and the proposed order reportedly before the Commission now,⁹ call for quite modest rule changes overall. Neither the local radio rules nor the local TV rules appear likely to change; indeed, consideration is being given to tightening the local television rule.¹⁰ Beyond the proposed elimination of the radio/television cross-ownership rule – largely due to unnecessary redundancy with the service-specific restrictions – the only rule changes currently under consideration involve limited relaxation of the NBCO restriction.¹¹

Given the empirical data now in this record, the Commission cannot stand pat on the 37-year-old newspaper-specific restraint. The facts set forth in the agency’s own staff report on the *Information Needs of Communities* (the “*INC Report*”) provide a compelling picture of the transformational plight facing the newspaper industry as it labors to retool for the digital media era.¹² With respect to the newspaper/radio rule in particular, any action short of elimination of

⁸ See, e.g., Free Press 11/21 Ex Parte Letter at 3; Comments of Free Press, MB Docket Nos. 09-182, 07-294, at 23 (filed Dec. 21, 2012) (“Free Press Comments”); Comments of the Media Alliance, MB Docket No. 09-182, at 2 (filed Dec. 26, 2012) (“Media Alliance Comments”); Comments of the Office of Communication of United Church of Christ, Inc., *et al.*, MB Docket Nos. 09-182, 07-294, at 19 (filed Dec. 26, 2012) (“UCC Comments”); Free Press *et al.*, Notice of Ex Parte Presentation, MB Docket Nos. 09-182, 07-294, at 2 (filed Nov. 23, 2012) (“Free Press/UCC 11/23 Ex Parte Letter”).

⁹ See Jonathan Make, *Draft FCC Order Would Attribute JSAs, End Radio/Paper and Radio/TV Cross-Ownership Ban*, COMMUNICATIONS DAILY, Nov. 15, 2012, at 1-3.

¹⁰ See Warren Communications News, Inc., *Mass Media Notes*, COMMUNICATIONS DAILY, Dec. 26, 2012 (reporting on the draft order’s call for making TV joint sales agreements attributable).

¹¹ Bonneville/Scranton and other commenters believe that the FCC’s proposed deregulatory changes do not go far enough and that tightening the local TV rule is not warranted. See, e.g., Comments of the National Association of Broadcasters, MB Docket Nos. 09-182, 07-294, at 3, 57-58 (filed Mar. 5, 2012).

¹² STEVEN WALDMAN AND THE WORKING GROUP ON THE INFORMATION NEEDS OF COMMUNITIES, FCC, *THE INFORMATION NEEDS OF COMMUNITIES: THE CHANGING MEDIA LANDSCAPE IN A BROADBAND AGE 34-58* (2011) (“*INC Report*”), available at http://transition.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf; see also, e.g., Rick Edmonds, *et al.*, *State of the*

the restraint would be arbitrary and capricious, inconsistent with the governing statute, and constitutionally suspect.¹³ As a matter of policy, we agree with Steve Waldman, lead author of the *INC Report*, who in a recent article in the *Columbia Journalism Review* explained that

[s]mart media policy could actually help local news ecosystems during a critical time.... Let's keep focused on the most important fact about today's local media: the Internet has increased the number of voices and provided many other benefits, but at the same time undermined the economic models that had previously subsidized local journalism.... [T]he FCC is considering the reasonable step of lifting the ban on newspapers owning radio stations in the same town [because] this change ... could actually help communities [by supporting local newsgathering operations].¹⁴

B. The record indicates that eliminating the newspaper/radio rule cannot negatively affect minority and female broadcast ownership

As we have demonstrated in our prior comments, historical and empirical data show that the newspaper/radio rule has always been something of an outlier in the context of media ownership policy.¹⁵ The same holds true in the narrower context of minority ownership concerns: The presence or absence of the newspaper/radio rule will have no impact on this policy goal.

News Media 2012: An Annual Report on American Journalism, Pew Research Center's Project for Excellence in Journalism, available at <http://stateofthedia.org/2012/newspapers-building-digital-revenues-proves-painfully-slow/newspapers-by-the-numbers/> (last visited Jan. 4, 2012) ("2012 Pew Study").

¹³ See discussion *infra* pp. 9-10 regarding Section 202(h) of the Telecommunications Act of 1996; see also Bonneville/Scranton Comments at 9-10 & nn.19-20.

¹⁴ See Steven Waldman, How to fix the media ownership debate, COLUMBIA JOURNALISM REVIEW (posted Dec. 20, 2012), available at http://www.cjr.org/swing_states_project/how_to_fix_the_media_ownership.php.

¹⁵ See Bonneville/Scranton Comments at 5-10 (demonstrating that the FCC since the conceptual beginning of the NBCO rule has considered radio "substantially less significant" in the cross-ownership context).

Assuming that financing is available (and, as we discuss below, access to capital is the key issue for minority broadcasters today), there are ample opportunities for would-be new owners – regardless of race, ethnicity or gender – to acquire radio stations. According to the most recently released FCC statistics, there currently are more than 15,000 full-power radio stations in the United States now, along with more than 800 existing LPFMs.¹⁶ Evidence before the Commission indicates that many owners would be willing to sell their stations at reasonable prices.¹⁷ In addition, the FCC already has taken steps that may open the doors to a considerable number of new broadcast owners. The Commission’s recent action concerning LPFM stations means that potentially hundreds of new, community-focused radio facilities will soon become available in localities both large and small.¹⁸ Participants in this docket have hailed the development as one that can increase minority presence on local airwaves.¹⁹

In contrast to the large and growing number of radio opportunities, the ranks of daily newspapers are small and shrinking, as the *INC Report* and other sources attest.²⁰ The number of

¹⁶ FCC News Release, Broadcast Station Totals as of June 30, 2012 (rel. July 19, 2012), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0719/DOC-315231A1.pdf.

¹⁷ See NAMB Comments at 2, 3 (“[T]here is no shortage of potential sellers of broadcast stations.... For a buyer with access to money, there are practically an unlimited number of transactions that could be had right now”).

¹⁸ *Creation of a Low Power Radio Service*, MM Docket No. 99-25, MB Docket No. 07-172, RM-11338, Fifth Order on Reconsideration and Sixth Report and Order, FCC 12-144 (rel. Dec. 4, 2012). An even earlier opportunity to enter radio broadcasting is available right now: 112 new FM station licenses are to be made available via Auction 94 beginning April 23, 2013. See *Auction of FM Broadcast Construction Permits Rescheduled for April 23, 2013*, Public Notice, 27 FCC Rcd 14299 (2012).

¹⁹ Dave Seyler, *Hispanic watchdog praises FCC LPFM action*, RBR.com (posted Dec. 7, 2012) available at <http://rbr.com/hispanic-watchdog-praises-fcc-lpfm-action/> (“‘We joined this effort so that Latino-led and Latino-serving organizations could have a greater presence on the radio dial....,’ said Jessica Gonzalez, [the National Hispanic Media Coalition]’s Vice President of Policy and Legal Affairs.”).

²⁰ See, e.g., *INC Report* at 35-42; NAA Supplemental Comments at 6-7 (noting paid daily circulation has fallen to World-War II-era levels, despite tripling of potential subscriber base; severe economic changes cause more than 200 newspapers to close or cut print editions since 2007).

dailies has dropped from more than 1,600 to approximately 1,350 in the last 20 years.²¹ Given the current challenging economic climate in which traditional newspapers exist, media brokers see little likelihood that those newspapers owners without broadcast assets will make a substantial new play in broadcasting in general or radio in particular.²² There also is no history of newspaper publishers standing in the way of new minority buyers of broadcast facilities.²³ Thus, even as a theoretical matter, there is little potential for elimination of the newspaper/radio rule to lead to substantial removal of radio properties otherwise available for purchase to new entrants, including minorities.

* * *

Based on the record now before it, the Commission should reject any calls to retain the newspaper/radio cross-ownership rule while the agency works to further enhance minority ownership opportunities.²⁴ As discussed above, the record is devoid of data suggesting that

²¹ According to the Pew Research Center’s Project for Excellence in Journalism’s most recent annual review of the U.S. news media, the number of daily newspapers declined from 1,611 in 1990 to 1,387 by 2009 – and likely fell further to about 1,350 by the time of the Pew report. *See* 2012 Pew Study *supra* note 12. The Pew authors were unable to be more precise for the most recent years because Editor & Publisher, the century-old compiler of such statistics, shut down the annual *E&P Yearbook* in 2009.

²² *See* NAMB Comments at 2-4; DCS Initial Comments at 41-43; *cf.* David Honig, *Let’s Focus on the Real Causes of Minority Exclusion from Media Ownership*, Minority Media and Telecom Council Broadband & Social Justice, (blog entry posted Dec. 3, 2012) *available at* <http://broadbandandsocialjustice.org/2012/12/lets-focus-on-the-real-causes-of-minority-exclusion-from-media-ownership/> (“MMTC *Real Causes* blog”) (“[I]n the thousands of pages of FCC-commissioned studies about media ownership, there is no evidence that retaining the absolute ban on cross-ownership would impact minority ownership of broadcast stations.”).

²³ *See* DCS Initial Comments at 41.

²⁴ The Commission has made strides toward collecting data that eventually may allow the agency to craft constitutionally sustainable rules that explicitly promote minority or female ownership. Even before *Prometheus II*, 652 F.3d 431 (3d Cir. 2011), the FCC launched a significant revamp of its primary means of collecting broadcast ownership data, the Form 323, and continues to address its data collection and reporting efforts. *See Promoting Diversification of Ownership In the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5954-55 ¶¶ 93-96 (2007) (seeking comment on changes to Form 323 to increase the accuracy of the data collected and the potential uses for the form); *Promoting Diversification of Ownership In the Broadcasting Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896 (2009) (modifying Form

retention of the newspaper/radio rule could enhance minority ownership or that elimination could harm it.²⁵ It is a bit odd that some commenters issuing broad calls for FCC action to advance minority ownership have not coupled that advocacy with either up-to-date empirical evidence or specific suggestions for new regulations that might serve their objectives. These omissions, when considered together with their arguments that the FCC must freeze *all* the ownership rules in place,²⁶ raise the prospect that some commenters are primarily focused on blocking any ownership deregulation whatsoever.

Although they may be free to disregard the plain language of Section 202(h), the Commission is not. The statute commands that the FCC “shall determine” every four years “whether any of such rules are necessary in the public interest as the result of competition.”²⁷

The FCC is overdue in making this determination, which requires an assessment of the evidence before it now on each of the rules under review. With respect to the newspaper/radio rule, the

323 and seeking comment on whether to modify Form 323-E, which is filed by non-commercial educational broadcast stations); *Promoting Diversification of Ownership in the Broadcasting Services*, Memorandum Opinion and Order and Fifth Further Notice of Proposed Rulemaking, 24 FCC Rcd 13040 (2009) (seeking further comment on issues related to Form 323); *Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket No. 07-294, Sixth Further Notice of Proposed Rulemaking, FCC 12-166 (rel. Jan. 3, 2013) (seeking further comment on issues related to Forms 323 and 323-E). It also makes sense to approach the issue of new or retained regulations in this area as if heightened scrutiny will apply, *see Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), regardless of whether the restrictions are properly characterized as race based or not. *See Grutter v. Bollinger*, 539 U.S. 306 (2003); *see also Fisher v. University of Texas* (Sup. Ct. Docket. No. 11-345).

²⁵ The FCC did commission a race-focused radio ownership study for the 2010 Quadrennial Review, but its results may not be sufficient to satisfy the constitutional standard. *See* Joel Waldfogel, *Radio Station Ownership Structure and the Provision of Programming to Minority Audiences: Evidence from 2005-2009* (FCC Study 7) at 23-24 (although data suggests that “[t]he presence of minority-owned stations in [a] market appears to raise the amount of minority-targeted programming” the author is “unable to draw strong conclusions” from the available evidence); *see also Lamprecht v. FCC*, 958 F.2d 382 (1992) (striking down rule based on insufficiently supported “generalizations” about the effect of ownership demographics on program content).

²⁶ *See, e.g.*, Free Press Comments at 24; UCC Comments at 24; NABOB Comments at 10-11; Comments of the National Hispanic Media Coalition, MB Docket Nos. 09-182, 07-294, at 4-7 (filed Dec. 26, 2012).

²⁷ Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996).

docket contains no fact-based support for retaining this long outdated restriction, and the wispy new rhetoric submitted since mid-November does not fill the void. In particular, the latest round of comments and *ex parte* submissions do nothing to rebut the data already in this record – including the Commission’s own *INC Report* – concerning the upheaval created by the Internet and other new media have had on traditional business models that supported local newsgathering in the past. The FCC remains obliged by Section 202(h) to take those developments into account in this proceeding.

A few commenters even point to the impending TV incentive auction as another reason to suspend action on all broadcast rules.²⁸ On its face, the topic has nothing to do with newspaper/radio cross-ownership – or with limitations on broadcast ownership at all. But to the degree that the upcoming auction collaterally touches on TV station ownership, these commenters’ policy disagreements are with Congress, not the Commission. Lawmakers conferred the new authority on the Commission less than 10 months ago, and the resulting auction is widely expected to affect the ownership of only some television facilities in some large markets. This new statutory development plainly is not a basis for deferring action on all ownership rules – particularly those affecting only radio stations or daily newspapers.

II. THE COMMISSION SHOULD CONTINUE AND EXTEND ITS ONGOING EFFORTS TO ASSIST MINORITY ENTREPRENEURS IN TODAY’S FINANCIALLY CHALLENGING MEDIA MARKETPLACE

A. The record demonstrates that the most significant hurdle to increasing minority ownership of broadcast properties is access to capital

Rather than ownership restrictions, it is financial resources – or, more accurately, the lack of them – that most hinders growth among minority-controlled broadcast licensees.²⁹ Docketed

²⁸ See UCC Comments at 16-24; Media Alliance Comments at 2-3.

²⁹ We are not surprised by the results of NAB’s data analysis concerning the growing numbers of women and minorities who have attributable ownership stakes in broadcast stations, such as those who

filings in this proceeding, as well as recent commentary from experienced professionals elsewhere, are in accord on this point. The Minority Media and Telecom Council (“MMTC”), which has operated a minority-owned media brokerage service for more than 15 years, ranks “weak access to capital” as the lead entry on its list of “the real causes of minority exclusion from media ownership.”³⁰ The National Association of Media Brokers (“NAMB”) is on record as stating that based on its members’ experience, “it is clear that the biggest impediment to minority ownership in broadcasting is not whether there is a permissible cross-interest between ownership of a newspaper and a broadcast property in a given market, but instead it is one that faces any new entrant to the broadcast industry – the lack of financing to make an acquisition.”³¹ Many other commenters in this proceeding have made the same point, either explicitly or in calling for the resurrection of a viable tax certificate program.³² Even Free Press implicitly acknowledges that lack of access to capital is a serious impediment to minority ownership.³³

A notable new voice is part of this chorus: Sherman Kizart, the Managing Director of Kizart Media Partners, an advertising and marketing firm. Kizart, who also is a current member of the FCC’s Advisory Committee for Diversity in the Digital Age, has had more than 20 years

hold “positional interests” by virtue of serving in senior executive positions. *See* Comments of the National Association of Broadcasters, MB Docket Nos. 09-182, 07-294, at 3-5 (filed Dec. 20, 2012). This growing pool of experienced talent should be able to acquire even greater stakes in broadcast properties if they can obtain the capital needed to launch their business ventures.

³⁰ *See* MMTC *Real Causes* blog. MMTC’s list of real challenges to greater minority ownership includes “discrimination in advertising and employment” and “inferior technical facilities.” *Id.* But MMTC asserts that in its longtime role as a media broker, it “has never seen a deal fail to close because of cross-ownership.” *Id.*

³¹ NAMB Comments at 2.

³² *See, e.g.*, DCS Initial Comments at 9-10; Comments of the Alliance For Women in Media, Inc., MB Docket Nos. 09-182, 07-294, at 7 (filed Mar. 5, 2012); NABOB Comments at 5; NAA Supplemental Comments at 10; Communications of Bahakel Communications, Ltd., MB Docket Nos. 09-182, 07-294, at 2 (filed Dec. 26, 2012) (“Bahakel Comments”); Comments of Media General, Inc., MB Docket Nos. 09-182, 07-294, at 2 (filed Dec. 26, 2012).

³³ *See* Free Press Comments at 5, 18-20 (describing financial difficulties facing existing minority broadcasters).

of experience in radio advertising, including work for stations focusing on minority audiences.

In an article posted in 2011 on Radio Ink magazine's website, Kizart stated that

[m]inority ownership's demise isn't the blame of the FCC and its policies. Access to capital and access to deal flow are the major obstacles today, yesterday, and tomorrow to increasing the number of African American and Hispanic owners. There are no shortage of terrific African American and Hispanic owners, senior minority executives with ownership aspirations, and new entrants that have strong desires and excellent business plans to acquire and operation radio stations. Every single one of them will tell you that "access to radio deals and access to capital to do these deals" are their greatest challenge.³⁴

The FCC itself has recognized this problem, and during the course of the 2010 Quadrennial Review the Commission has taken sustained action to address it. In particular, the Commission's re-energized Office of Communications Business Opportunities has regularly hosted conferences, workshops and roundtable events to introduce small entrepreneurs, including minorities and women, to potential sources of capital and/or business contracts.³⁵ Although the FCC alone cannot remedy all difficulties that new entrants confront in obtaining financing, events such as OCBO's Supplier Diversity Conferences and Small Business and Broadband Conferences are a useful step forward and should be continued. But there are more actions the FCC can and should adopt to help foster greater minority ownership, as set forth below.

³⁴ Sherman Kizart, *Minority Ownership A Keen Disappointment*, Radio Ink, *available at* <http://www.radioink.com/Article.asp?id=2117791>. With respect to "access to do radio deals," several commenters in this proceeding have pointed out that initiatives such as the former tax certificate policy are highly useful mechanisms for ushering new minority entrants into the broadcasting industry: "The minority tax certificate, distress sale and comparative hearing credit were all successful for one reason: they caused existing broadcast industry participants to seek out potential minority station owners. In other words, it caused those persons inside the industry to seek out those who were only marginally inside or totally outside the industry." NABOB Comments at 5; *see also* DCS Initial Comments at 27; Bahakel Comments at 2.

³⁵ *See* OCBO Blog Posts *available at* <http://www.fcc.gov/office-communications-business-opportunities/ocbo-blog-posts>.

B. The Commission should take additional steps to advance minority ownership, with a particular focus on actions to help increase access to financing and similar operational support

We continue to support efforts to increase minority ownership – and given the widespread consensus concerning the problem of access to capital, we believe that the most effective measures that the Commission can take will be those directed toward stimulating greater financial support for new entrants. Listed below are initiatives that appear to have promise:

- **Revise the Commission’s interpretation of Section 310(b)(4) to allow for greater foreign investment.** As the Diversity and Competition Supporters (“DCS”) have discussed in some detail, the agency’s approach to interpreting Section 310(b)(4) is a historic anomaly,³⁶ and it is at odds with the more flexible interpretation used in transactional reviews elsewhere in the Commission (*e.g.*, the International Bureau). This change could be adopted relatively quickly.
- **Adopt an incubator program to encourage existing broadcasters to financially assist new entrants.** Multiple commenters now have expressed support for this general concept, which originated many years ago.³⁷ The FCC should consider DCS’ suggestion of a further notice in the media ownership docket to review the options for defining those eligible to benefit from incubation as well as the types of support existing broadcasters would have to provide (*e.g.*, direct provision of funds, loan guarantees, in-kind operational support) and the appropriate incentives for offering that support.³⁸ With respect to eligibility, consideration could be given to the “overcoming disadvantages preference” (“ODP”) advocated by DCS. The Commission may wish to consider other approaches as well. For example, eligibility guidelines might be modeled on the Commission’s 2010 reworking of the Sirius XM diversity set-aside merger condition.³⁹ In the broadcast context, such an incubation program would be a purely voluntary one and could be utilized for some test period (launched quickly or after a rulemaking). A currently licensed broadcaster (“Broadcaster”) wishing to participate would select a “New Voice” to incubate based on certain minimal FCC requirements and general selection considerations. Any FCC oversight of the process would be limited to assuring

³⁶ DCS Initial Comments at 24-27.

³⁷ *Id.* at 22-24 (citing proposal that originated in the Commission’s Minority Ownership Advisory Committee in 1990).

³⁸ *Id.*

³⁹ *Applications for the Consent to the Transfer of Control of Licenses SM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, Memorandum Opinion and Order, 25 FCC Rcd 14779 (2010) (“*Sirius XM Diversity Set-Aside Order*”).

that the New Voice satisfies certain bright-line requirements, such as small business size and independence from the Broadcaster,⁴⁰ and that the Broadcaster made a good-faith judgment that the New Voice would promote source, viewpoint, and programming diversity in the local market.⁴¹

- **Work actively w/ Congress to restore a sustainable tax certificate program.** As NABOB and others have explained, the prior tax certificate policy was instrumental in boosting minority ownership of broadcast stations.⁴² The Commission’s experienced legal staff could provide analytical support to Members of Congress in crafting a new approach that would be viable under current precedent.
- **Sponsor educational programs for small and regional banks and other investors concerning broadcast opportunities.** This concept also is widely supported,⁴³ and it could be implemented quickly without any need for formal Commission action.
- **Conduct regulatory tutorials on radio engineering, financing, and legal issues for would-be new entrants.**⁴⁴ These events could take place both at Commission headquarters and at industry conferences around the country, with webcast video that could be stored on the FCC’s website for later uses. Again, this initiative could be launched speedily and requires no formal adoption procedures.

The overview above is not intended to be an exhaustive accounting of all useful steps the Commission can take to help foster growth among minority broadcasters. We support FCC efforts to explore additional alternatives with interested stakeholders.

CONCLUSION

The Commission opened the 2010 Quadrennial Review proceeding more than three years ago. Over that course of time, the FCC has amassed thousands of pages of data, analysis, and

⁴⁰ As part of the Sirius XM condition, the Commission imposed “no direct relationship” requirements that included such safeguards as a prohibition on direct or indirect ownership links between the satellite company and the programming provider and a ban on sharing any common officers or directors. *Id.* at 14783 ¶ 10.

⁴¹ With respect to Sirius XM’s selection of content for its set-aside channels, factors that the company was to consider included whether the programmer would offer a diverse viewpoint or diverse entertainment content and would improve service to historically underserved audiences. *Id.* at 14786-87 ¶ 18. As for Commission evaluation of good faith efforts by regulated entities, the agency has such experience in other contexts. *See, e.g., Mediacom Communications Corporation v. Sinclair Broadcast Group, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 1040 (2007).

⁴² NABOB Comments at 5.

⁴³ *See, e.g.*, NAB Comments at 8.

⁴⁴ *Accord*, DCS Initial Comments at 34; NAA Supplemental Comments at 10.

legal arguments through the hosting of workshops, the commissioning of studies, and the receipt of multiple rounds of comments and *ex parte* presentations. None of that material provides an empirical foundation to support retaining the newspaper/radio cross-ownership rule for the sake of *any* policy. The latest submissions in the docket make plain that the restriction is not necessary to support minority ownership. Accordingly, the agency must comply with its statutory obligations under Section 202(h) by eliminating the regulation.

Respectfully submitted,

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