

Minority Media and Telecommunications Council

3636 16th Street N.W., Suite B-366
Washington, D.C. 20010
Phone: 202-332-0500 Fax: 202-332-7511
www.mmtconline.org

February 5, 2013

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)

Dear Ms. Dortch:

This reports on a meeting held February 5, 2013 among Chief of Staff Zac Katz, Legal Advisor to the chairman Elizabeth Andrion, and myself. During the meeting I reiterated several points made in a meeting with several Commissioners and staff on January 22, 2013¹ concerning items that the Commission should consider in the upcoming Report and Order for the 2010 Quadrennial Media Ownership Review. The points I addressed were:

1. **Foreign Ownership**. The FCC should conclude that relaxation of its restrictions on overseas investments in broadcasting (interpreting and applying 47 U.S.C. §310(b)(4)). .
2. **Eligible Entity Definition/Incubator Proposal**. The Overcoming Disadvantages Preference (“ODP”), first proposed by the Commission’s Diversity Committee, should be refined through a further NPRM and applied, as a test, to the Incubator Proposal that the Commission has had under consideration since NABOB introduced it in 1990. The test should be designed collaboratively by a multi-disciplinary group of experts.
3. **Adarand Studies**. The Commission should confirm that it is moving forward with the Adarand² studies. Per the Supreme Court’s decision in Parents Involved in Community Schools v. Seattle School District³, Adarand studies could be used to develop narrowly tailored race-

¹ See, e.g., MMTC Ex Parte Letter (Jan. 24, 2013), available at <http://apps.fcc.gov/ecfs/comment/view?id=6017159467> (last visited Feb. 5, 2013).

² See Adarand Constructors v. Peña, 515 U.S. 200, 227 (1995) (“Adarand”) (supporting the proposition that all race-based government action is analyzed under strict scrutiny review and must be narrowly tailored to further a compelling government interest).

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

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conscious remedies once virtually all race-neutral approaches have been attempted in good faith.⁴

4. **Cross-Ownership**. The Diversity and Competition Supporters, including MMTC, have stated that they do not object to some relaxation of the rule **so long as, “as applied,” it does not diminish minority ownership.**⁵ Thus the proposed limited relaxation of the rule should be made contingent on the outcome of research, to be performed by the Commission promptly, evaluating the impact of cross-ownership on minority ownership.
5. **DCS’ 47 Pending Media Ownership Proposals**. In the 2010 Quadrennial R&O, it would be particularly desirable to take up, *inter alia*, several proposals, many of which have been endorsed by the National Association of Broadcasters, that most directly impact radio and that recommend engineering and other regulatory relief that could save many AM or small FM stations – the types of facilities disproportionately owned by minority broadcasters.⁶

Respectfully submitted,

David Honig

David Honig
President

⁴ See, e.g., Supplement to Further Comments and Further Reply Comments of the Diversity and Competition Supporters, MB Docket Nos. 09-182, 07-294 (Jan. 11, 2013), available at <http://apps.fcc.gov/ecfs/comment/view?id=6017157722> (last visited Feb. 5, 2013).

⁵ 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) at p. 40, available at <http://apps.fcc.gov/ecfs/document/view?id=7021898416> (last visited Feb. 5, 2013).

⁶ See, e.g., MMTC Radio Rescue Petition: Review of Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism, MB Docket No. 09-52 (filed July 19, 2009).