

Minority Media and Telecommunications Council

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April 5, 2013

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

RE: Notice of *Ex Parte* Communications, MB Docket No. 09-182 (2010 Quadrennial Review), MB Docket No. 07-294 (Diversity Proceeding), Docket No. 12-353 (PSTN Transition)

Dear Ms. Dortch:

This reports on meetings held April 4, 2013 with Commissioner Mignon Clyburn and David Grimaldi, Chief of Staff and Media Legal Advisor to Commissioner Mignon Clyburn; and Elizabeth Andron, Acting Chief Counsel and Senior Legal Advisor to Chairman Julius Genachowski. MMTC was represented by David Honig, President, Maurita Coley, VP/COO, and Latoya Livingston, Senior Attorney and Earle K. Moore Fellow.

In the meetings, we presented the following points:

1. Several of the 47 minority media ownership proposals presented by the Diversity and Competition Supporters (DCS) in the 2010 Quadrennial Review proceeding would immediately advance small and diverse ownership and participation in broadcasting.¹ Most notably, the proposal to migrate AM service to VHF Channels 5 and 6 would have an immediate impact on radio industry diversity.² In addition to the migration to Channels 5 and 6, the Commission should adopt DCS proposals such as the following to immediately impact diversity: encourage Congress to reinstate the tax certificate policy; relaxation of the 310(b)(4) Foreign Broadcast Ownership policies; adoption of the National Association of Black Owned Broadcasters' 1990 Incubator Initiative Proposal; extension of the cable procurement rule to media, wireline and wireless; and designate a Commissioner to oversee access to capital and funding acquisition recommendations.³

¹ See Supplemental Comments of the Diversity and Competition Supporters, MB Docket 09-182, MB Docket 07-294 (April 3, 2012), available at <http://mmtconline.org/wp-content/uploads/2012/04/Supplemental-Media-Ownership-Comments-040312.pdf> (last visited March 15, 2013).

² *Id.* at 11-12.

³ For further information, please see MMTC's aforementioned proposals, available at: <http://mmtconline.org/wp-content/uploads/2012/12/DCS-Minority-Ownership-Further-Cmnts-122612.pdf>, (last visited April 3, 2013).

2. MMTC voiced support⁴ for the request of HGH Investments, Inc. for the reinstatement of the operating authority for WHGH(AM), Thomasville, Georgia and the renewal of that station's license. The consequences imposed for HGH's missed administrative deadline do no warrant the cost to the community of the loss of the only African American-owned station in the market. The Commission's failure to reinstate the license for this station will have a profound impact on the Thomasville community and on the Commission's goal of increasing the diversity of the ownership of broadcast stations, by preventing an African American owned station that has been operating for over 25 years from continuing to serve the community in the area of south Georgia that it serves.
3. MMTC has begun a study to determine whether relaxation of the newspaper/broadcast cross-ownership rules would adversely impact minority ownership in broadcasting. This study is not a replacement for the Adarand studies that the Commission should conduct to enable it to develop narrowly-tailored, race conscious remedies to improve diversity. As the Commission considers race-neutral proposals such as those proffered by MMTC and DCS, the FCC should also begin conducting the Adarand studies necessary to determine whether the FCC can implement race-based measures to achieve diversity.⁵ Adarand studies performed by an external, qualified research entity could be performed and used by the Commission if the studies were done in coordination with the agency.
4. The decommissioning of the PSTN and buildout of nationwide IP networks should be structured to protect consumers. The transition also presents opportunities to generate growth in minority and women-owned business enterprises ("MWBEs"). To ensure MWBE participation, the Commission should take steps to monitor and measure the impact on consumers and MWBEs.

Most notably, on November 3, 2011, the Wireless Telecommunications Bureau released an initial Public Notice for the Sixteenth Report, which asked commenters to submit data and statistics for the calendar-year 2010 time period, as well as information on any trends and developments that occurred during 2010 or 2011.⁶ The issue of MWBE contracting/procurement was not included in that Notice. The Commission should ensure that data on MWBE contracting/procurement be included in the next study to determine whether it is a factor driving competition.

5. MMTC is developing a concept under which the Commission would join with other government agencies and departments to create an inter-agency task force on innovation and entrepreneurship in media, telecom, and broadband, specifically focused on increasing opportunities for MWBEs attendant to the nation's IP transition – the largest public works project since the building of our interstate highway system.

⁴ See Letter of Support attached.

⁵ See *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995); *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701 (2007).

⁶ "Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition," *Public Notice*, 26 FCC Rcd 15595 (2011), available at <http://www.fcc.gov/reports/mobile-wireless-competition-report-16th-annual>, then follow link to "11/3/2011" (last visited April 3, 2013).

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6. To comport with its EEO policy goals and help drive increased economic opportunities for thousands of Americans, MMTC believes that it is imperative that the Commission reverse the modifications made in its new EEO audit letters⁷, give the public an opportunity to consider and comment on these modifications, and actively consider EEO policy changes made by MMTC and the Commission's Advisory Committee for Diversity in the Digital Age. In 2004, the Committee urged the Commission to shift the focus of its EEO policy framework to include efforts that could help increase mentoring, retention, and promotion of diverse employees at the nation's broadcast stations.⁸ MMTC is also urging the Commission to create a new Civil Rights branch of the Enforcement Bureau with staff and compliance officers for EEO, transactional, advertising and procurement nondiscrimination for all platforms, in order to ensure that EEO-1 data is released by all companies under the Commission's purview.⁹

Respectfully submitted,

David Honig

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President

Attachments

1. MMTC's WHGH(AM) Letter of Support
2. Op-Ed by Julia Johnson, Chair of MMTC, titled "It's Time for a Woman to Head the FCC"
3. MMTC Agenda for April 4, 2013 meetings

⁷ In a recent Public Notice, the Commission announced that it was modifying the reporting requirements of broadcasters in its 2013 audit letters by, in part, "requesting fewer job notices, on-air ad logs," and "information on initiatives that go beyond our requirements." See, e.g., FCC Public Notice, DA-13-301, FCC Commences 2013 EEO Audits (Feb. 28, 2013), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0228/DA-13-301A1.pdf (last visited April 3, 2013).

⁸ See FCC Advisory Committee on Diversity for Communications in the Digital Age, Adopted Recommendations, Recommendation for a Regulatory Initiative for Career Advancement (Dec. 10, 2004), available at <http://transition.fcc.gov/DiversityFAC/recommendations.html>, then follow link to "EEO Rule (Dec. 10, 2004)", (last visited April 3, 2013).

⁹ For more information, see Supplemental Comments of the Diversity and Competition Supporters in response to the Notice of Proposed Rulemaking, 2010 Quadrennial Review and Promoting Diversification of Ownership in the Broadcasting Services (April 5, 2012), available at: <http://mmtconline.org/wp-content/uploads/2012/04/Supplemental-Media-Ownership-Comments-040312.pdf> (last visited April 3, 2013).