



FROM: David Honig, Maurita Coley, and Latoya Livingston, MMTC
TO: Commission Staff
DATE: April 3, 2013
RE: Issue Preparation for April 4, 2013 Meetings

MEMORANDUM

Pending Minority Telecom and Media Ownership Matters (Partial List)

- **The MMTC Cross-ownership Study**
 - In March 2013, MMTC engaged BIA/ Kelsey to conduct a cross-ownership study, which will be peer- reviewed and conducted in accordance with refereed journal standards. The study, which has been undertaken at MMTC's own expense, will determine whether the presence of grandfathered newspaper-broadcast and radio-TV ownership operations materially harms minority and women-owned stations, taking into consideration the experiences of other stations in the same markets. The principal focus of the study will be the advertising marketplace, and the study will also inquire into whether cross-ownership has an adverse impact on minority and women owned stations' ability to gather and present news and information.¹

- **Pending Proposals to Advance MWBE Participation in Broadcasting**
 - On December 26, 2012, a coalition of 57 national organizations, led by MMTC, resubmitted a comprehensive iteration of 47 race- and gender-neutral proposals that could help improve the state of broadcast diversity while the Commission conducts *Adarand* studies to develop a more complete record should race-and gender- conscious proposals prove to be necessary. Among the proposals are: encouragement of Congress to reinstatement of 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, and migration of AM radio to VHF Channels 5 and 6.²

¹ For further information, please see MMTC's February 25, 2013 letter to the Commission requesting that the Commission briefly defer a vote in MB Docket No. 09-182 (2010 Quadrennial Review) and MB Docket No. 07-294 (Diversity Proceeding) so that MMTC may conduct the study, available at <http://mmtconline.org/wp-content/uploads/2013/02/MMTC-Quadrennial-ExtReq-022513.pdf>, (last visited April 3, 2013). The Commission has since granted MMTC's request to defer voting on the issue pending receipt of the study's findings.

² 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).

- **Adarand Studies**
 - In a letter dated February 5, 2013³, MMTC urged the Commission to confirm that it is moving forward with the *Adarand* studies. MMTC proposed that per the Supreme Court’s decision in *Parents Involved in Community Schools v. Seattle School District*, *Adarand* studies could be used to develop narrowly tailored race conscious remedies once virtually all race- neutral approaches have been attempted in good faith.

- **Inter-agency Taskforce on Innovation and Entrepreneurship in Media, Telecom and Broadband**
 - MMTC is developing a concept under which the Commission would join with other government agencies and departments to create an inter-agency task force specifically focused on increasing opportunities minority and women business enterprises (“MWBEs”) attendant to the nation’s IP transition – the largest public works project since the building of our interstate highway system.

- **EEO Audits**
 - 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 some of the modifications made in its new EEO audit letters⁴, 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.⁵

 - Further, in 2009, MMTC and the San Jose Mercury News each urged the federal government to enforce its EEO-1 data reporting requirements for major technology companies. Recently, CNN Money reported that the companies have again successfully blocked the release of their employment diversity data. Tech companies such as Google, Facebook, and Apple appealed to the U.S. Department

³ The letter can be viewed at:

<http://apps.fcc.gov/ecfs/document/view;jsessionid=Dyp2RTTZv9CgQzWmHLQw4yT4QCfhhvY5gL82JvRGfcL7Thn8nsQP!956499833!NONE?id=7022117753>, (last visited April 3, 2013).

⁴ 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).

⁵ 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).

of Labor to block public release of the information by citing ‘competitive harm’ or noting that they were not federal contractors as justification for skirting these responsibilities. To this end, MMTTC is 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.⁶

- **MWBE Contracting/Procurement**

- Prime contractors should constantly strive to increase SDB and MBE participation in a variety of ways. Implementing simple measures, such as explaining procedures and requirements relating to qualifications, bid, contracting, materials, invoicing, payment and any other process issues would clear the path for substantial SDB and MBE participation.

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 2011.⁷ 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 how it is a factor driving competition.

- **Desirability of Extending the Cable Procurement Rule to Media, Wireline and Wireless**

- Contracting opportunities are important to develop the experience and finances that could enable a contractor to transition into ownership. For two decades, Congress has required cable operators to encourage the participation of minority and women entrepreneurs “with all parts of its operation” and analyze the results of their EEO programs. Disadvantaged businesses, including minority owned businesses, rarely are full partners in procurement.” Upon making this observation, in 2012, the Diversity Committee recommended that the Commission issue a notice of proposed rulemaking to examine:
 - (1) the Commission’s authority to extend procurement requirements to broadcasting and other regulated industries;
 - (2) the current state of potential contacting opportunities in all regulated platforms;
 - (3) entry and inclusion barriers; and
 - (4) methods to ensure compliance; and

⁶ For more information, please see the Supplemental Comments of the Diversity and Competition Supporters in response to the Notice of Proposed Rulemaking in the Matters of the 2010 Quadrennial Review and Promoting Diversification of Ownership in the broadcasting services, available at: <http://mmtconline.org/wp-content/uploads/2012/04/Supplemental-Media-Ownership-Comments-040312.pdf>, (last visited April 3, 2013).

⁷ “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).

(5) the requirement to “analyze the results of its efforts” found in 47 U.S.C. §554(d)(2)(F) and whether to require public reporting on minority and female procurement contracts.

Once again, MMTC would like to discuss the desirability of extending the cable procurement rule across platforms.⁸

⁸ For additional information, please see MMTC’s Comments on the matter, available at http://mmtconline.org/mmtc2/download/law_and_policy/media_ownership/Supplemental-Media-Ownership-Comments-040312%282%29.pdf, (last visited April 3, 2013).