

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013	)	MD Docket No. 13-140
	)	
Procedures for Assessment and Collection of Regulatory Fees	)	MD Docket No. 12-201
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008	)	MD Docket No. 08-65
	)	

To The Commission

**COMMENTS OF THE MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL**

The Minority Media and Telecommunications Council (MMTC) respectfully submit these comments in response to the Commission’s Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (Notice)<sup>1</sup> to urge the Commission to waive application fees for small businesses and nonprofits and to provide regulatory fee relief for certain broadcast entities, as recommended by the Commission’s Advisory Committee on Diversity for the Digital Age (Diversity Committee)<sup>2</sup> and the Diversity and Competition Supporters (DCS).<sup>3</sup>

---

<sup>1</sup> See Assessment and Collection of Regulatory Fees for Fiscal Year 2013 et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, MD Docket No. 13-140 et al., 2013 FCC Lexis 2285 (rel. May 23, 2013).

<sup>2</sup> See Recommendation on Application and Regulatory Fees, Access to Capital Subcommittee, Advisory Committee for Diversity in the Digital Age (Oct. 28, 2008), available at <http://transition.fcc.gov/DiversityFAC/102808/app-reg-fees-102808.pdf> (last visited June 17, 2013) (“Diversity Committee Recommendation on Application and Regulatory Fees”).

<sup>3</sup> See Supplemental Comments of the Diversity and Competition Supporters in Response to the Notice of Proposed Rulemaking, 2010 Quadrennial Regulatory Review, MB Docket No. 09-182 et al. (April 3, 2012), at p. 17 (citing to proposal #8) and p.18 (citing to proposal #9), available at <http://mmtconline.org/wp-content/uploads/2012/04/Supplemental-Media-Ownership-Comments-040312.pdf> (last visited June 6, 2013) (“DCS Supplemental Comments”).

As the Diversity Committee has explained, small businesses are experiencing economic hardship because of the flailing national economy.<sup>4</sup> This economic hardship is even greater for minority owned broadcasters in light of the enormous wealth gap,<sup>5</sup> the repeal of the tax certificate policy,<sup>6</sup> and the Commission's slow speed in developing policies to promote diversity.<sup>7</sup> Each of these factors accelerates the decline of minority ownership.<sup>8</sup>

Under these conditions, requiring small broadcasters to pay sizeable regulatory fees can pose a threat to the viability of their operations and impede the Commission's efforts to comply

---

<sup>4</sup> See Diversity Committee Recommendation on Application and Regulatory Fees at p. 4.

<sup>5</sup> See Thomas Shapiro et al., *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, Brandeis University Institute on Assets and Social Policy, Research and Policy Brief (Feb. 2013), available at <http://iasp.brandeis.edu/pdfs/Author/shapiro-thomas-m/racialwealthgapbrief.pdf> (last visited June 17, 2013) (examining the same set of families throughout a 25-year timeframe, the research illustrates a widening wealth gap between White and African-American families that nearly triples between 1984 and 2009). "...the evidence points to policy and the configuration of both opportunities and barriers in workplaces, schools, and communities that reinforce deeply entrenched racial dynamics in how wealth is accumulated and that continue to permeate the most important spheres of everyday life." *Id.* at p. 1.

<sup>6</sup> See United States Government Accountability Office, Report to the Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, *Media Ownership: Economic Factors Influence the Number of Media Outlets in Local Markets, While Ownership by Minorities and Women Appears Limited and Is Difficult to Assess* (March 2008), at p. 5, available at <http://www.gao.gov/assets/280/273671.pdf> (last visited June 17, 2013) ("GAO Media Ownership Report") (identifying the repeal of the tax certificate program as one of the top three barriers to minority and women ownership).

<sup>7</sup> See, e.g., *Prometheus Radio Project v. FCC*, 652 F.3d 431, 470-472 (3d Cir. 2011). "We conclude once more that the FCC did not provide a sufficiently reasoned basis for deferring consideration of the proposed SDB definitions and remand for it to do so before it completes its 2010 Quadrennial Review." *Id.* at p. 471. See generally Initial Comments of the Diversity and Competition Supporters in Response to the Notice of Proposed Rulemaking, 2010 Quadrennial Regulatory Review, MB Docket No. 09-182 et al. (March 5, 2012).

<sup>8</sup> See 2010 Quadrennial Regulatory Review et al., *Report on Ownership of Commercial Broadcast Stations*, 27 FCC Rcd 13814 (2012). Illustrating the persistently low-levels of minority media ownership, the latest FCC data shows that racial minorities held a majority of voting interests in 2.2 percent of full power commercial television stations, 5.8 percent of low power television stations, 6.2 percent of commercial AM radio stations, and 3.5 percent of commercial FM radio stations. See *id.* at 13817 ¶7.

with congressional directives to increase broadcast industry diversity. As the Diversity Committee has explained, “even a small fee can have a substantial impact on a small business’ bottom line. A small business must pay the same fee amounts as the amounts paid by a large company. Therefore, fees represent a much higher proportion of the income or assets of small businesses than large businesses ... the fee structure can impair the Commission’s ability to fulfill Congress’ direction to promote ownership diversity and lift market entry barriers.”<sup>9</sup>

By adopting the proposals described below, the Commission can help reduce arbitrariness and increase flexibility for economically disadvantaged broadcast licensee applicants and promote broadcast industry diversity by providing small, nonprofit, and diverse broadcasters with an opportunity to survive and to continue providing valuable service to their constituents.

**I. The Commission Should Grant Eligible Entities a Rebuttable Presumption of Eligibility for Waivers, Reductions, or Deferrals of Commission Fees.**<sup>10</sup>

The Commission should exercise its statutory discretion<sup>11</sup> and implement this proposal to alleviate known barriers to entry while it continues to develop a sustainable definition of eligible entities.<sup>12</sup> This proposal, previously submitted by the Diversity Committee, broadly defines entities eligible for the new rebuttable presumption.<sup>13</sup>

---

<sup>9</sup> Id.

<sup>10</sup> See DCS Supplemental Comments at p. 18 (citing to previous MMTC proposal #5). This proposal is similar to MMTC proposal #6 for legislative recommendation to grant eligible entities a rebuttable presumption of eligibility for waivers, reductions, or deferrals of Commission fees under 47 U.S.C. §159(d). See Minority Media and Telecommunications Council Ex Parte Letter, MB Docket No. 07-294 et al., (Oct. 6, 2010). As the Notice explains, the Commission has flexibility in applying the statute. See Notice at ¶13 (citing 47 U.S.C. §159(b)(3)).

<sup>11</sup> See 47 U.S.C. §159(d). See also 47 U.S.C. §158(d)(2) (assessing and collecting application fees) and the corresponding Commission regulation 47 C.F.R. §1.1119.

<sup>12</sup> See Prometheus Radio Project v. FCC, 652 F.3d at 472.

<sup>13</sup> See Diversity Committee Recommendation on Application and Regulatory Fees. “For the purpose of such new rules, an “eligible entity” could be defined as a socially or economically

In requiring the Commission to collect fees to cover the Commission’s regulatory costs, Congress granted the Commission flexibility in assessing fees<sup>14</sup> and the authority to “waive, reduce, or defer payment of a fee in any specific instance of good cause shown, where such action would promote the public interest.”<sup>15</sup> The Commission’s regulations provide that regulatory fee waivers, reductions, and deferrals may be considered on a case-by-case basis, rather than for a class of applicants, for a good cause that would promote the public interest.<sup>16</sup> Further, while the regulations explicitly account for instances of financial hardship, neither the statute nor the regulations limit the public interest standard to financial hardship.<sup>17</sup> As the Commission seeks to make its fee allocation process more current and transparent,<sup>18</sup> as well as fair and sustainable,<sup>19</sup> while preventing ‘undue economic hardship’ for other sectors as it completes its adjustment<sup>20</sup> in a changing communications sector,<sup>21</sup> the Commission should

---

disadvantaged business (“SDB”), as an entity provid[ing] essential services to isolated populations, as an entity that incubates eligible entities, or as a small business that has individually faced and (where relevant) overcome disadvantages.” Id. at pp. 1-2.

<sup>14</sup> See 47 U.S.C. §159(b). The statute provides instructions on how to establish regulatory fees including number of employees dedicated to certain offices, functions related to providing benefits to the payor “... including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest[.]” 47 U.S.C. §159(b)(1)(A) (emphasis added).

<sup>15</sup> See 47 U.S.C. §159(d).

<sup>16</sup> See 47 C.F.R. §1.1166.

<sup>17</sup> See 47 U.S.C. §159(d); 47 C.F.R. §1.1166(e).

<sup>18</sup> See Notice at ¶8.

<sup>19</sup> See Notice at ¶20 (“...any reallocation methodology we adopt must be reasonably related to the benefits provided to the payor of the fee by the Commission’s activities. A reallocation that reflects benefits provided to the fee payor will also meet our objectives of being fair and sustainable.”)

<sup>20</sup> See Notice at ¶30.

<sup>21</sup> See Notice at ¶40. The FCC seeks comment on how to define and assess fees for declining industries, asking “whether there are other similarly situated categories that need regulatory relief.” Id.

implement the Diversity Committee’s recommendation on a rebuttable presumption that a certain class of entities need, and are eligible, for regulatory fee relief.<sup>22</sup>

## **II. Issue One-Year Waivers, on a Case-by-Case Basis, of Application Fees for Small Businesses and Nonprofits.**<sup>23</sup>

The Commission should exercise its statutory authority<sup>24</sup> and further its diversity goals by providing struggling small and nonprofit stations an opportunity to obtain a one-year waiver of certain application fees.<sup>25</sup> As access to capital remains a primary barrier for small and minority businesses desiring to enter the broadcasting industry,<sup>26</sup> application fees imposed by the Commission will likely present hardships to small and nonprofit stations already contending with financial difficulties imposed by the nation’s turbulent economy.

## **III. Conclusion**

The communications landscape is a complicated space to navigate. The fragile state of our nation’s economy poses challenges to future and existing small and diverse broadcasters who

---

<sup>22</sup> See id. See also Diversity Committee Recommendation on Application and Regulatory Fees.

<sup>23</sup> See DCS Supplemental Comments at p. 17 (citing to previous MMTC proposal 35). See also MMTC Radio Rescue Petition, Review of the Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism, RM-11565 (July 19, 2009), at p. 50-52.

<sup>24</sup> See 47 U.S.C. §158(d)(2) (“The Commission may waive or defer payment of an charge [an application fee] in any specific instance for good cause shown, where such action would promote the public interest.”)

<sup>25</sup> See DCS Supplemental Comments at p. 17. This proposal contemplates waiver over FCC Forms 175 (Application to participate in an FCC auction), 301 (Application for construction permit for commercial broadcast station), 302-AM (Application for AM broadcast station license), 302-FM (Application for FM broadcast station license), 303 (Application for renewal license for AM, FM, TV, Translator, or LPTV station), 323 (Ownership report for commercial broadcast station), 340 (Application for construction permit for reserved channel noncommercial educational broadcast station), 349 (Application for authority to construct or make changes in a FM translator, or FM booster station), 350 (Application for an FM translator or FM booster station license), as well as applications for special temporary authority. See id. at p. 17-18.

<sup>26</sup> See, e.g., GAO Media Ownership Report at p. 5.

strive to provide listeners with rich and diverse programming on the nation's airwaves.

Unfortunately small and, particularly, minority broadcasters do not have access to resources that large broadcasters do and, as a result, they often struggle to enter the broadcast market and compete effectively. Authorizing the rule waivers we describe will alleviate some of the burdens caused by regulatory fees to help these businesses overcome barriers to entry and participation.

Respectfully submitted,

David Honig

President

Maurita Coley

Vice President and COO

Jacqueline Clary

Senior Counsel and John W. Jones Fellow

Kenneth Mallory

Staff Counsel

Wendy Rivera-Aguilar

Director of Hispanic Affairs and Staff Counsel

Minority Media and Telecommunications Council

3636 16th Street NW, Suite B-366

Washington, D.C. 20010

(202) 332-0500

[dhonig@crosslink.net](mailto:dhonig@crosslink.net)

June 19, 2013