Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
2010 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 09-182
	)	
Promoting Diversification of Ownership In the Broadcasting Services	)	MB Docket No. 07-294

REPLY COMMENTS OF FREE PRESS

Free Press respectfully submits this reply to initial comments on the Minority Media and Telecommunications Council's ("MMTC") study submitted in the above-captioned dockets, which attempted to evaluate the impact of cross-media ownership on minority and women owned broadcast stations.[1] We appreciate MMTC's and the Commission's acknowledgement that a better picture of how media consolidation affects diverse ownership is necessary before making any changes to the Commission's rules. Most, if not all, parties in this proceeding have acknowledged that women and people of color hold broadcast licenses in disproportionately small numbers and that the Commission should take steps to remedy this deficiency. In this reply, we synthesize critical points made by parties discouraging the Commission from relying on the flawed MMTC Study. We also respond to unsubstantiated claims from industry commenters that overstated the value of the MMTC Study's findings, but understated the

[1] Mark R. Fratrik, Vice President and Chief Economist, BIA/Kelsey, "The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations" (May 30, 2013) ("MMTC Study").

importance of the wealth of evidence submitted into the 2010 Quadrennial Review docket over the past several years. Finally, we note that MMTC's recent supplemental filing, meant to assuage skepticism, only casts more doubt on the study's reliability.

I. Public Interest Groups, Civil Rights Organizations, and Diverse Broadcasters Demonstrated that the MMTC Study Cannot Justify Relaxation of the Commission's Cross-Ownership Limits

The initial comments on the MMTC Study conveyed warranted skepticism from the public interest, civil rights and minority broadcasting communities. There is broad consensus among Free Press, the Institute for Public Representation on behalf of its clients ("UCC *et al.*"), the National Association of Black Owned Broadcasters ("NABOB") and the Leadership Conference on Civil and Human rights on behalf of a dozen civil rights and consumer groups, that the Commission cannot act based on the MMTC Study's findings. UCC *et al.* and NABOB also sounded several of Free Press's concerns outlined in our initial comments and previously stated in a June 26, 2013 *ex parte notice*.[2] Our comments pointed to the following failures: 1) an inadequately described sample; 2) the conflation of broadcast radio owners and broadcast television owners, and of female owners and minority owners; 3) the conflation of single station owners and multiple and/or group station owners; 4) the exclusion of markets with cross-owned combinations receiving waivers; 5) overdrawn conclusions about television markets; 6) over-reliance on online survey responses; 7) the dismissal of survey responses from owners that perceive cross-ownership as negatively impacting their businesses; and 8) the lack of

[2] See Comments of The Office of Communication, Inc. of the United Church of Christ, Communications Workers of America, Media Alliance, Media Council Hawai'i, National Organization for Women Foundation, and Prometheus Radio Project, along with the National Hispanic Media Coalition, MB Docket Nos. 09-182, 07-294, at 5-6 (filed July 22, 2013).("UCC *et al.* Comments"); Comments of the National Association for Black Owned Broadcasters, Inc., MB Docket Nos. 09-182, 07-294, at 5 (filed July 22, 2013) ("NABOB Comments").

transparency with respect to the peer review process.[3] As outlined in Section III below, the sample description and transparency concerns have only been exacerbated since MMTC supplemented the record.

NABOB and UCC *et al.* also discuss other critical considerations the Commission should weigh. NABOB correctly points out as an initial matter that the Commission may not rely on just any data to justify relaxation or suspension of its media ownership limits. In the *Prometheus II* decision, the Third Circuit Court of Appeals placed a strict obligation on the Commission to consider the effect of its rules on minority and female ownership.[4] In explaining that obligation, the Court stressed the need for the Commission to collect "more and better data" necessary for such consideration.[5] As discussed in our initial comments and in Section III below, the MMTC study falls glaringly short. And as NABOB and UCC *et al.* respectively point out, the limited sample size and scope of the study render it unfit for shaping policy.[6] Finally, UCC *et. al*. make a critical point regarding the overbreadth of the MMTC's study's conclusions. Only a paltry few respondents participated in a 3-minute online survey, providing far to little evidence to rule out cross-ownership harms[7]—especially where some number of those respondents identified the presence of a cross-owned competitor as a negative factor for their operations.

[3] *See* Comments of Free Press, MB Docket Nos. 09-182, 07-294 (filed July 22, 2013) ("Free Press Comments").
[4] Prometheus Radio Project v. FCC, 652 F.3d 431, 471 (3d Cir. 2011) ("*Prometheus II*").
[5] NABOB Comments at 3 (*citing Prometheus II*, 652 F.3d at 471 n.42).
[6] *See* NABOB Comments at 6; UCC *et al.* Comments at 4.
[7] *See* UCC *et al.* Comments. ("When a study fails to find a statistically significant result, but is not a large enough study to exclude such a result, it is misleading and inaccurate to characterize the study as proof that such a result has been ruled out.").

II. Industry Commenters Depend on Improper Conclusions and Reckless Mischaracterizations of the Record to Justify Reliance on the MMTC Study

Predictably, commenters from the newspaper and commercial broadcasting industry expressed support for the MMTC Study and, consequently, abolishment of the Commission's cross-ownership limits. The Newspaper Association of America ("NAA") and National Association of Broadcasters ("NAB"), along with several radio broadcasters and the Scranton Times, blindly endorsed the MMTC Study while failing to identify any substantive merit in its methodology or instrument—presumably because doing so would have proven to be an impossible feat. Instead, industry commenters relied on mischaracterizations of the study's conclusions and the current market, as well as the patently false assertion that the record lacks evidence showing that cross-ownership is detrimental to ownership by women and minorities.

As a baseline matter, the NAA grossly overstated the findings of the MMTC Study. To portray the study's results as "unambiguous" and representative of women and minority broadcasters' beliefs regarding cross-ownership is wholly disingenuous.[8] As Free Press noted in our initial comments, the study's sample size was too small to support *any* conclusions; and in reality, the MMTC Study actually identified three owners, one of whom was a minority, that cited "cross-media interests as having a competitive impact on their stations."[9]

Even MMTC did not go so far as to claim that its study unambiguously supports relaxation of the cross-ownership rules. MMTC interpreted the above-mentioned finding to mean that "an especially extensive cross-media combination, although lawful under the rules, could

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[8] *See* Comments of The Newspaper Association of America, MB Docket Nos. 09-182, 07-294, at 1 (filed July 22, 2013) ("NAA Comments").

[9] Letter from David Honig, President, Minority Media and Telecommunications Council to Acting Chairwoman Mignon Clyburn, Commissioner Ajit Pai, and Commissioner Jessica Rosenworcel, MB Docket Nos. 09-182, 07-294, at 2 (filed May 30, 2013).

materially inhibit singleton station operations."[10] MMTC went on to acknowledge that to the extent that minorities and women are more likely to be single station owners, the Commission should take heed that cross-owned entities could have a materially detrimental impact on diverse ownership.[11] Therefore, because women and minorities indeed are far more likely to be singleton owners,[12] it seems even MMTC agrees that relaxing cross ownership limits would adversely affect diverse ownership. Industry commenters fail to acknowledge this marketplace reality.

The record in this docket and in prior ownership reviews demonstrates that increased media consolidation and concentration work to keep women and minority ownership levels disproportionately low. As Free Press outlined in our comments on the 2010 Quadrennial Review and the Commission's Form 323 Report, single station owners struggle to compete with large chains and network affiliates because they lack the capital to negotiate programming, hire top talent, and build their asset portfolios.[13] In turn, artificial economies of scale are created, increasingly prevalent financial hardships are exacerbated, and current minority owners are pressured to sell. Moreover, discrimination in access to deals, capital, and equity, which even industry commenters admit exists, continue to shut out new minority owners. When considered along with the high barriers to entry created by consolidation, it becomes evident that cross-ownership perpetuates a perverse cycle of appallingly low and decreasing diverse media ownership.

Free Press has also provided historical and empirical evidence as to the consequences of allowing more media consolidation. In *Out of the Picture*, Free Press tracked ownership of 40

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[10] Comments of the Minority Media and Telecommunications Council, MB Docket Nos. 09-182, 07-294, at 3 (filed July 22, 2013) ("MMTC Comments").
[11] *Id.*
[12] *See* NABOB Comments at 4.
[13] *See* Comments of Free Press, MB Docket Nos. 09-182, 07-294, at 21 (filed Dec. 21, 2012).

minority owned commercial broadcast television stations from 1998 to 2007 to uncover how raising the national television ownership cap and permitting duopolies impacted diverse ownership.[14] Our study revealed that 17 minority-owned stations were sold to non-minorities between 1998 and 2007. Of those seventeen sales, nine would have been disallowed under the former rules and therefore, minority ownership would have been 20 percent higher than the 2007 level.[15]

Similarly, in *Off the Dial*, Free Press turned its attention to full-power commercial broadcast radio stations.[16] There, the data revealed that levels of consolidation and diverse ownership in radio markets were closely correlated. *Off the Dial* also uncovered the following:

- Markets with female and minority owners have fewer stations per owner on average than markets without such diverse owners.[17]
- The level of market concentration is significantly lower in markets with female and minority owners, even when the size of the market and the level of minority population in the market are held constant.[18]
- The probability that a particular station will be female- or minority-owned is significantly lower in more concentrated markets.[19]
- The probability that a particular market will contain a female or minority owned station is significantly lower in more concentrated markets.[20]

Finally, industry commenters mistakenly cite the fact that both minority and non-minorities pointed to cross-owned properties as impacting their businesses as evidence that

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[14] S. Derek Turner, *Out of the Picture 2007: Minority & Female TV Station Ownership in the United States* (2007).
[15] *Id.* at 23.
[16] S. Derek Turner, *Off the Dial: Female and Minority Radio Station Ownership in the United States* (2007) ("Off the Dial").
[17] *Id.* at 24.
[18] *Id.* at 29-31.
[19] *Id.* at 7.
[20] *Id.*

cross-ownership limits are no longer needed.[21] Both Free Press and UCC *et al.* highlighted the methodology flaw that led to this faulty premise. MMTC's failure to distinguish between single station and group owners emphasizes the wrong research question.[22] That cross-ownership may affect similarly situated minorities and non-minorities alike is of little consequence.

Cross-ownership manifests a disparate impact on the *diverse media landscape as a whole* because, as Free Press and others have repeatedly shown in the record, women and people of color are more likely to be single station or small-group owners. Therefore, when cross-media interests crowd out these smaller owners, diverse ownership takes a disproportionate amount of the blow. If that is not plain enough for industry commenters, here is an illustrative example: Assume there are 100 broadcast stations in the US and of those 100 stations, 20 are minority- or women-owned and 80 are owned by white men or corporations. Then assume 15 of the 20 diverse stations are singleton stations and 20 of the 80 non-diverse stations are singletons. If 5 similarly-situated, single-station owners are crowded out of both demographics, 25% of the stations held by diverse owners will have been eliminated while only 6% of stations held by non-diverse owners will exit the market. *That* is what is meant by a disproportionate impact, not only the extent to which minorities and women are treated differently in the marketplace solely on the basis of race or gender.

III. MMTC's Attempt to Clarify the Record Regarding the Study Serve Only to Weaken its Case for Relaxing the Commission's Cross-Ownership Rules

In the weeks following the MMTC Study's submission, the Commission requested additional data to resolve questions surrounding the study's methodology. MMTC obliged, but

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[21] *See* Comments of Bonneville International Corporation and the Scranton Times, L.P., MB Docket Nos. 09-182, 07-294, at 3 n.8 (filed July 22, 2013; Comments of Morris Communications. MB Docket Nos. 09-182, 07-294, at 5 (filed July 22, 2013); NAB Comments at 5.

[22] *See* Free Press Comments at 12-13; 3 UCC *et al.* Comments at 2-3.

its supplemental filings raised additional questions about the study's validity while also providing further evidence of the work's structural flaws.

First, the publicly available supplemental information confirms what we suspected: the study primarily focused on the radio market to the exclusion of television. Only two television station owners responded, and there is no indication whether or not these TV respondents work for female or minority-owned companies, no indication what size market these respondents operate in, whether or not there are cross-owned properties in these markets, whether or not these stations are network affiliated stations, or if these respondents completed the phone or online survey.

Second, the supplemental filings confirm the weakness in the study's design as it pertains to identifying concerns about cross-ownership. The bulk of the respondents (12 of the 14) filled out an online survey that they were told would take 3-minutes, something that would earn the respondent a $100 gift card.[23] The validity of MMTC's approach of using unaided recall to determine the "material" impact of cross-ownership notwithstanding, it is very difficult to see how an online survey that expects respondents to spend no more than 20 seconds on each question could produce any valuable information, certainly not generalizable information.

Third, there appears to be some discrepancy between the stations that responded and those that MMTC contacted. (We say "appears," because MMTC refused to identify the responding stations, even under protective order.) The supplemental filing indicates that a representative of a radio station, in response to question number 9 ("Who are the competitive local media outlets (both broadcast and non-broadcast) that provide news and information?") responded "tv stations and wbal in the morning." There are two broadcast stations that use the

[23] David Honig, MMTC Response to FCC Request for Additional Information Regarding MMTC Sponsored Study, MB Docket Nos. 09-182, 07-294, at 3 (filed July 25, 2013).

WBAL call signs, WBAL-AM and WBAL-TV, both located in the Baltimore, Maryland media market. From the context of this answer it appears the respondent is referring to WBAL-AM, though both outlets air news programming in the morning. WBAL-AM airs a morning newscast from 5-9am weekday mornings. WBAL-TV, Baltimore's NBC affiliate, airs local news from 4:30am to 7am, and the Today Show from 7am to 10am. However, in the list of stations initially contacted by BIA/Kelsey to participate in the study we see **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] This is a major inconsistency, one that MMTC must explain.

Fourth, there is some indication that MMTC erroneously identified certain stations as female and/or minority owned. For example, in the unredacted list of contacted stations, MMTC lists **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] However, this station is owned by **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** a publicly traded corporation whose voting interests (according to their most recent Form 323 filings) are not held by a **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** Similarly, both **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] which is no longer the case. And MMTC lists **[BEGIN CONFIDENTIAL INFORMATION]**

[END CONFIDENTIAL INFORMATION] when the station was in fact sold to a non-minority owner last year. These blatant errors illustrate a major flaw in the study's design and the haphazard nature in which it was conducted. MMTC relied on years-old

Form 323 data to identify the station owners' demographics without any apparent attempt to verify whether that information remains accurate.

Fifth, given MMTC's position as an owner of broadcast outlets and a major broker for station sales, the possibility exists that one or more of the survey respondents have a prior relationship with MMTC. Yet nowhere in the study or the supplemental materials do we see any such relationships disclosed or even hinted at. This is not wild speculation about an unlikely conflict of interest, as the list of contacted stations reveals **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** Furthermore, until last May, MMTC was **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]** MMTC has also had business relationships with **[BEGIN CONFIDENTIAL INFORMATION]** **[END CONFIDENTIAL INFORMATION]**

Sixth, the supplemental filing confirms that the study was not peer reviewed "in accordance with refereed journal standards" as MMTC previously claimed. In its original submission of the study, MMTC offered no details concerning the peer review process, nor did it bother to mention the reviewers' opinions on the final product. This absence left the impression that the reviewers in fact had no issues with the study or how its author and MMTC presented the conclusions. However, in the supplemental filings we learn that the reviewers felt the study was "not definitive primarily because of the modest number of responses." However, apparently even *that* characterization was not complete, because MMTC filed an *errata* to this response. This latest telling indicates that the reviewers felt that the study "not reliably definitive primarily because of sample composition and the modest number of interviews." This constantly evolving story raises red flags. However, based on what MMTC has now disclosed, it is clear that its own panel of peer reviewers expressed major doubts about the utility of the study, something MMTC failed to disclose until prompted by the Commission.

CONCLUSION

As outlined in our initial comments, the Commission may not rely on the MMTC Study to justify relaxation of its cross-ownership rules. Not only does the MMTC Study fail to satisfy the standards put forth in *Prometheus II*, but it fails to meet academic standards for thoughtful, comprehensive research as well. Public interest, civil rights, and diverse broadcasting commenters that have been parties to this proceeding since its inception likewise recognize the study's failings and have encouraged the Commission to conduct a proper analysis before moving forward with rule changes. Contrarily, industry commenters have chosen to ignore the purpose of this comment cycle—analysis of the MMTC's Study's methodology and validity—and instead repeated their baseless claims about the state of the marketplace and record in this docket in order to push their profit-driven agendas. We urge the Commission to resist these calls to hastily move forward to relax cross-ownership rules, and instead complete the necessary analysis before setting in motion irreversible harm to ownership by women and people of color.

Respectfully submitted,

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