

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
2014 Quadrennial Regulatory 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. 14-50
)	
)	MB Docket No. 09-182
2010 Quadrennial Regulatory 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. 07-294
)	
Promoting Diversification of Ownership In the Broadcasting Services)	MB Docket No. 04-256
)	
Rules and Policies Concerning Attribution of Joint Sales Agreements In Local Television Markets)	

To The Commission:

PETITION FOR CLARIFICATION

Pursuant to 47 C.F.R. §1.41, the Minority Media and Telecommunications Council (“MMTC”) files this petition seeking clarification,¹ via an erratum, of the Commission’s decision regarding 23 diversity proposals in *Promoting Diversification of Ownership in the Broadcasting Services* (“*Diversity Docket*”) pending from the *2010 Quadrennial Ownership Review* (“*2010 Quad. Review*”).² The facts surrounding the history of these proposals, many of which have been

¹ This Petition seeks clarification of what is obviously an honest mistake in the drafting of a Commission decision. *See infra* at 4. It does not seek reconsideration on the merits, although MMTC reserves the right to do so and/or to intervene in the pending appeal of the decision.

² *See 2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,*

pending for more than a decade, indicate that they fall squarely within the scope of the 2014 Quadrennial Ownership Review due to the Third Circuit Court of Appeals mandate to consider them within the quadrennial review.³ Yet the Commission has failed to consider them in the current proceeding.⁴ Notably, seven of these proposals were developed by the Commission's own expert Advisory Committee on Diversity for Communications in the Digital Age and several were supported by a number of business and consumer organizations.⁵

Further Notice of Proposed Rulemaking and Report and Order, MB Docket No. 14-50, 79 Fed. Reg. 28995 (May 20, 2014) at ¶317 (“2014 FNPRM”).

³ See *Prometheus Radio Project v. FCC*, 373 F.3d 372, 421, n.59 (3d Cir. 2003) (“*Prometheus I*”) (remanding the 2002 diversity Order with instructions to consider diversity proposals). See also *Prometheus Radio Project v. FCC*, 652 F.3d 431, 472 (3d Cir. 2011) (“*Prometheus II*”) (remanding the 2006 diversity Order, reiterating instructions to consider diversity proposals).

⁴ 2014 FNPRM at ¶317.

⁵ See, e.g., Proposal 5: Examine How to Promote Minority Ownership as an Integral Part of All FCC General Media Rulemaking Proceedings, adopted by the Diversity Committee in 2004. See Recommendations on Spectrum and Access to Capital, New Technologies Subcommittee, FCC Advisory Committee on Diversity for Communications in the Digital Age at 2 (June 14, 2004) available at http://transition.fcc.gov/DiversityFAC/adopted-recommendations/spectrum_and_access.pdf (last visited June 9, 2014); Proposal 6: Designate a Commissioner to Oversee Access to Capital and Funding Acquisition Recommendations, adopted by the Diversity Committee in 2009. See FCC Advisory Committee on Diversity for Communications in the Digital Age, Funding Acquisition Task Force, Recommendation III at 6 (Dec. 3, 2009) available at <http://transition.fcc.gov/DiversityFAC/recommendations.html>, then follow the link to “Funding Acquisitions, 12/3/09” (last visited June 9, 2014); Proposal 7: Create a Media and Telecom Public Engineer Position to Assist Small Businesses and Nonprofits with Routine Engineering Matters, supported by the National Association of Broadcasters. See Reply Comments of the National Association of Broadcasters, 2010 Quadrennial Regulatory Review - Review Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182 *et al.* (Apr. 17, 2012) at 33, n. 131 (“NAB Reply Comments”); Proposal 9: Grant Eligible Entities a Rebuttable Presumption of Eligibility for Waivers, Reductions, or Deferrals of Commission Fees, supported by the Diversity Committee and the Tribune Company. See Recommendation on Application and Regulatory Fees, Access to Capital Subcommittee, FCC Advisory Committee on Diversity for Communications in the Digital Age at 6, available at <http://transition.fcc.gov/DiversityFAC/adopted-recommendations/app-reg-fees-102808.pdf> (last visited June 9, 2014); see also, Reply Comments of Tribune Company, Debtor-In-Possession on Notice of Proposed Rulemaking, 2010 Quadrennial Regulatory Review - Review Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the

The Commission’s entire disposition of these proposals was that though “accompanied by detailed and thoughtful analysis, and some of them may warrant further consideration...they

Telecommunications Act of 1996, MB Docket No. 09-182 *et. al.* (Apr. 17, 2012) at 41 (“Tribune Company Comments”); Proposal 10: Extend the Cable Procurement Rule to Broadcasting, proposed by the Diversity Committee. *See* Recommendation on Procurement Issues, Emerging Technologies Subcommittee, FCC Advisory Committee on Diversity for Communications in the Digital Age (June 10, 2008) available at <http://transition.fcc.gov/DiversityFAC/adopted-recommendations/procurement-061008.pdf> (last visited June 9, 2014); Proposal 35: Conduct Tutorials on Radio Engineering Rules at Headquarters and Annual Conferences, supported by the NAB, the Newspaper Association of America, and Bonneville International Corporation and The Scranton Times. *See* NAB Reply Comments at 33, n. 131; *see also* Supplemental Comments of The Newspaper Association of America, 2010 Quadrennial Regulatory Review - Review Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182 *et. al.* (Dec. 26, 2012) at 10 (“NAA Comments”); *see also* See Joint Reply Comments of the Bonneville International Corporation and The Scranton Times, L.P., 2010 Quadrennial Regulatory Review - Review Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182 (Jan. 4, 2013) at 14; Proposal 36: Develop an Online Resource Directory to Enhance Recruitment, Career Advancement, and Diversity Efforts (proposed by the Diversity Committee – *twice*). *See* Recommendation for an Online Diversity Resource Director, Career Advancement Subcommittee, Advisory Committee on Diversity for Communications in the Digital Age (Dec. 10, 2004), available at <http://transition.fcc.gov/DiversityFAC/recommendations.html>, then follow the link to “Resource Directory, 12/10/04” (last visited June 9, 2014); *see also* FCC Advisory Committee on Diversity for Communications in the Digital Age, Funding Acquisition Task Force, Recommendation III at 2 (Dec. 3, 2009), available at <http://transition.fcc.gov/DiversityFAC/recommendations.html>, then follow the link to “Funding Acquisitions, 12/3/09” (last visited June 9, 2014); Proposal 41: Legislative Recommendation to Expand the Telecommunications Development Fund (TDF) Under Section 614 and Finance TDF with Auction Proceeds. *See* Recommendations on Spectrum and Access to Capital, New Technologies Subcommittee, Advisory Committee on Diversity for Communications in the Digital Age (June 14, 2004) at 3, available at http://transition.fcc.gov/DiversityFAC/adopted-recommendations/spectrum_and_access.pdf (last visited June 11, 2014) (“Diversity Committee Access to Capital Recommendation”); *see also* Recommendations from the March 24, 2010 Meeting, Advisory Committee for Diversity in the Digital Age (Mar. 24, 2010) at 2, available at <http://transition.fcc.gov/DiversityFAC/recommendations.html>, then follow link to “Recommendations from the March 24, 2010 Meeting” (last visited June 11, 2014); Proposal 45: Legislative Recommendation to Amend Section 614 to Increase Access to Capital by Creating a Small and Minority Communications Loan Guarantee Program. *See* Diversity Committee Access to Capital Recommendation at 6; Proposal 46: Legislative Recommendation to Amend Section 614 to Create an Entity to Purchase Loans Made to Minority and Small Businesses in the Secondary Market. *Id.*

are outside the scope of this proceeding.”⁶ Since we cannot believe that the agency would deliberately defy a court order that essentially requires it to consider these 23 proposals “at the same time” as the agency undertook the review of its ownership rules,⁷ the Commission’s refusal to consider these proposals has to be an honest mistake. To correct it, the Commission is respectfully requested to issue an erratum indicating that these proposals in fact remain under consideration in the above-captioned *Diversity Docket* (MB Docket 07-294) and, in that docket or in the 2014 Quadrennial proceeding, will be ruled upon within a year.

I. Background

The 2002 Quadrennial Review resulted in new ownership rules⁸ that were later challenged by MMTC and other petitioners before the Third Circuit Court of Appeals.⁹ Upon judicial review, the 2002 *Order* was remanded to the Commission, with instructions to consider diversity proposals “at the same time” as the agency undertook the review of its ownership rules.¹⁰ In response, the Commission consolidated the *Diversity Docket* with its statutory ownership review during the 2006 proceeding, with the purpose of simultaneously reviewing the media ownership rules and considering diversity proposals to enhance participation in the

⁶ *2014 FNPRM at ¶317*. While the Commission states that legislative proposals are beyond the scope of this proceeding, in the *2014 FNPRM* it mentions – quite appropriately - how it “proposed a new tax incentive program to spur ownership diversity” in the most recent Section 257 Report. *Id.* at ¶311 n.968 (citations omitted).

⁷ *See Prometheus I*, 373 F.3d at 421, n.59 (3d Cir. 2003).

⁸ *See generally, 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 13620 (2003) (“2002 Order”).

⁹ *See Prometheus I*, 373 F.3d at 372.

¹⁰ *Id.* at 421, n.59.

market.¹¹ Throughout the *2010 Quad. Review*, the Commission stated its intention to review the *Diversity Docket* within that proceeding, and address the Third Circuit’s ruling on diversity proposals. The Commission inquired as to how it could “most effectively ... expand upon its diversity initiatives *at the same time* that we address the Third Circuit’s concerns and other legal considerations, including potential impediments to affording licensing preferences to minorities and women under current standards of constitutional law.”¹² The agency clearly stated that “[i]n light of the Third Circuit’s remand, *we again seek comment on the proposals in the Diversity Third FNPRM*, as well as those that have been suggested more recently, in this proceeding.”¹³ At no point in the *2010 Quad. Review* did the Commission suggest the *Diversity Docket* should be untied from the statutorily mandated ownership review, or that proposals addressing ownership diversity that are before it in either docket might be regarded as outside the scope of either the combined dockets or any individual docket.

¹¹ “In response, [Diversity and Competition Supporters] advanced additional and/or revised proposals, as did other commenters. Accordingly, we consolidate this docket with the media ownership proceeding, in which these proposals were filed, and resolve the issues involved in the Second Further Notice.” *2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 5922, 5925 ¶4 (“2006 Order”).

¹² *2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, 26 FCC Rcd 17489, 17546 ¶149 (emphasis added) (“2010 NPRM”).

¹³ *Id.* at 17555 ¶169 (emphasis added). “In particular, we ask for input on how the court’s remand of the provisions relying on the eligible entity definition should impact our consideration of each of these proposals. We also seek comment on whether the adoption of these measures would advance our policy objectives and on the legal implications of implementing these proposals. Further, we invite parties to comment on whether the Commission would need additional data in order to justify any of these measures and encourage parties to provide any data that may be helpful to our analysis.” *Id.*

In the 2011 decision *Prometheus II*, the Third Circuit reiterated its desire that the agency review the proposals “*within the course* of the Commission’s 2010 Quadrennial Review of its media ownership rules.”¹⁴ In April 2014, the Commission voted on the *2014 FNPRM*, expressly stating its intent to incorporate the record from the *2010 Quad. Review* within the new docket to, in part, “resolve the ongoing 2010 proceeding.”¹⁵ The Commission reiterated its “longstanding policy goals of fostering competition, localism, and diversity” seeking comment on “the appropriate framework within which to evaluate and address minority and female interests as they relate to the broadcast ownership rules.”¹⁶ However, contrary to its stated intentions, the Commission specifically refused to consider the above-referenced 23 diversity proposals, albeit they were each squarely within the scope of the *2010 Quad Review*, and certainly within the scope of the above-captioned *Diversity Docket*.¹⁷ Further, the Commission did not attempt to explain its rejection of the 23 proposals by suggesting that it had chosen other means of addressing the minority ownership issue – nor could it have suggested this, since elsewhere in the *FNPRM* the Commission rejected every other proposal it considered and made no effort to show that the few pro-diversity efforts it has in place are in any way tailored to or sufficient to reverse the very longstanding paucity of minority ownership in broadcasting.¹⁸ Thus, even in the

¹⁴ *Prometheus II*, 652 F.3d at 472 (citing *Prometheus I*, 373 F.3d at 420-21) (emphasis added).

¹⁵ “To accomplish both objectives, with this Further Notice of Proposed Rulemaking (“FNPRM”) we are initiating this 2014 Quadrennial Review; incorporating the existing 2010 record into this proceeding.” *2014 FNPRM* at ¶1.

¹⁶ *Id.* at ¶14.

¹⁷ *Id.* at ¶317.

¹⁸ *See generally 2014 FNPRM* ¶¶307-319 (discussing and dismissing minority proposals but with no mention of an alternative plan to solve the problem of diminishing levels of minority ownership).

face of a court order, the Commission appears to have swept away, for no reason, 23 proposals, many of which have been pending before the Commission for years.¹⁹

II. Relief Requested

MMTC requests that the Commission correct the 2014 *FNPRM* by issuing an erratum to clarify that the 23 proposals mentioned in paragraph 317 and n. 989 of the *FNPRM* have not been denied, that they remain pending in the 2014 Quadrennial docket and certainly in the *Diversity Docket*, and that these proposals will be analyzed and ruled upon within a year as part of the Diversity Docket, the 2014 Quadrennial Review, or both.²⁰

¹⁹ For example, five proposals that were introduced by the Commission’s Advisory Committee on Diversity for Communications in the Digital Age have languished before the Commission for almost a decade. See Proposals 5, 36, 41, 45, and 46 *supra* n. 5. As documented in our Petition to Intervene during *Prometheus I*, the Commission failed to act on diversity proposals in at least six proceedings prior to the 2002 ownership proceeding that prompted the initial review before the Third Circuit. See Brief for American Hispanic Owned Radio Assn., *et al.* as of Intervenors at 7-9, *Prometheus Radio Project v. FCC*, 373 F.3d 372 (2004) (No. 03-3388 *et al.*) available at <http://mmtconline.org/lp-pdf/BroadcastOwn-Brief.pdf> (last visited June 4, 2014). MMTC cited a number of proceedings where the Commission “repeatedly failed to keep its promises to consider new minority ownership policies.” *Id.* at 7-8. For example, at that time in 2003, “a 1992 structural rulemaking lay dormant for so long that they were rolled into the 1995 minority ownership rulemaking – which also remains dormant. A 1999 rulemaking proposal by Entravision Communications still awaits action. Two 1999 proposals by MMTC, which the FCC deferred for further study in 2001, remain pending and were not mentioned in the R&O.” *Id.* at 8 (citations omitted). Other examples include “the 1992 Cable Act implementation proceeding, [where] the FCC ignored proposals for minority ownership filed by one of the only two minority owned cable channels, Caribbean Satellite Network (“CSN”) and failed to list CSN in the decision’s Appendix as a commenter. In the digital audio broadcasting proceeding, the FCC did not mention the minority ownership issue despite extensive comments, reply comments, and a minority market demand study filed by the NAACP, LULAC and others.” *Id.* at 8-9 (citations omitted). Situations where diversity proposals are deferred repeatedly – while the underlying problem festers and gets worse – can no longer be deemed acceptable.

²⁰ As former Acting Chairman Michael Copps and former Commissioner Deborah Taylor Tate agree, the agency could act by voting on these a few at a time. See Deborah Taylor Tate, *The Color of Voices*, Broadband & Social Justice (Dec. 27, 2012), available at <http://broadbandandsocialjustice.org/2012/12/the-color-of-voices/> (last visited June 5, 2014) (“The FCC should commit to review and vote on some of those 71 long-pending minority ownership proposals every month. Up or down. Just please do something in 2013 to ensure that women and minorities can participate fully in America’s broadcasting industry.”).

Respectfully submitted,

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