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
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. 09-182
Promoting Diversification of Ownership in the Broadcasting Services	)	MB Docket No. 07-294
Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets	)	MB Docket No. 04-256

To: The Commission

COMMENTS
OF
THE NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.

James L. Winston
Executive Director and
General Counsel
National Association of Black
Owned Broadcasters, Inc.
1201 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
(202) 463-8970
jwinston@nabob.org

August 6, 2014

TABLE OF CONTENTS

Page

EXECUTIVE SUMMARY ii

I. INTRODUCTION 2

II. THE COMMISSION MUST ACT TO REVERSE THE DECLINE IN MINORITY OWNERSHIP IN THIS PROCEEDING 4

III. THE COMMISSION DATA SHOWS THAT THE COMMISSION IS FAILING TO MEET ITS STATUTORY OBLIGATION TO PROMOTE BROADCAST STATION OWNERSHIP BY MINORITIES 7

IV. THE *PROMETHEUS II* DECISION REQUIRES THE COMMISSION TO REFRAIN FROM CHANGING ANY OF ITS MEDIA OWNERSHIP RULES UNTIL IT HAS DETERMINED THE IMPACT OF ANY SUCH CHANGES ON MINORITY OWNERSHIP 9

V. RELAXATION OF THE COMMISSION'S RADIO CROSS-OWNERSHIP RULE WILL NEGATIVELY IMPACT MINORITY OWNERSHIP 13

VI. THE COMMISSION MUST, AT A BARE MINIMUM, PROVIDE A CLEAR COMMITMENT TO DEVELOPING A POLICY TO PROMOTE MINORITY OWNERSHIP, WITH A TIMETABLE FOR COMPLETING THE NECESSARY *ADARAND* STUDIES TO ADOPT SUCH A POLICY 15

VII. CONCLUSION 17

EXECUTIVE SUMMARY

The National Association of Black Owned Broadcasters, Inc. ("NABOB") submits its Comments in response to the Commission's "Further Notice of Proposed Rulemaking and Report and Order." In the FNPRM, the Commission has proposed to relax some of its media ownership rules. In each of the Commission's previous quadrennial reviews, NABOB has opposed the relaxation of any of the Commission's rules, and that is NABOB's position with respect to the current quadrennial review. The ownership of broadcast radio and television stations has been in steady decline ever since: (1) Congress repealed the minority tax certificate policy in 1995, (2) the Supreme Court decided the *Adarand* case in 1995, and (3) Congress passed the Telecommunications Act of 1996. The repeal of the tax certificate and the *Adarand* decision resulted in the Commission having no meaningful programs to promote minority ownership -- a condition that has now existed for 19 years. In, addition, the passage of the Telecommunications Act of 1996 allowed a massive consolidation of ownership of broadcast facilities into a number of large companies. As a result of that massive consolidation, the number of television stations owned by African Americans now is down from 20 to 4. There has also been a decline in African American radio station ownership, but it has not been quite as dramatic as the television ownership decline.

In spite of this history of decline following the 1996 relaxation of the Commission's ownership rules, the Commission reiterates over and over again in the FNPRM that here is no "evidence" that further relaxation of certain of its ownership rules will negatively affect ownership of broadcast stations by minorities. NABOB submits that the serious decline in African American ownership since 1996 is the principal evidence the Commission needs. It is

clear that three things caused the decline in media ownership, the loss of the tax certificate, the Adarand decision, and the relaxation of media ownership rules in 1996. The Commission only has a direct control over one of those factors – its media ownership rules. It cannot allow the decline of media ownership by African Americans to continue by throwing up its hand and blaming the Supreme Court or Congress.

Any relaxation of any of the Commission's ownership rules will further the ongoing precipitous decline in minority broadcast ownership. In particular, the relaxation of any rules allowing greater consolidation in the radio industry will be particularly detrimental to minority ownership growth. African Americans still own a small number of successful radio stations, and allowing further consolidation in that industry could substantially undermine currently successful radio stations. Thus, the Commission should not relax either its newspaper-radio cross-ownership rule or its radio-television cross-ownership rule. On the other hand, NABOB supports the Commission's tentative conclusion to retain several of its other ownership rules. NABOB supports the Commission's decision to retain: (1) the local television ownership rule, (2) the local radio ownership rule, including preserving the AM/FM subcap rule, and (3) the dual network rule.

NABOB requests that the Commission delay the issuance of a report and order in this proceeding until it has initiated all of the studies necessary to meet the strict scrutiny standard of the *Adarand* decision and has adopted a definition of "eligible entity" that can be used to implement rule and policy changes that have the potential to actually promote minority ownership of broadcast facilities.

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
	)	
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. 09-182
	)	
Promoting Diversification of Ownership in the Broadcasting Services	)	MB Docket No. 07-294
	)	
Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets	)	MB Docket No. 04-256

To: The Commission

COMMENTS
OF
THE NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.

The National Association of Black Owned Broadcasters, Inc. ("NABOB"),[1] by its attorneys, hereby submits its Comments in the above-captioned proceedings pursuant to the Commission's "Further Notice of Proposed Rulemaking and Report and Order ("FNPRM").[2]

---

[1] In the *2010 Quadrennial Review* NABOB joined the Diversity and Competition Supporters coalition in their initial comments. NABOB will file separately in this proceeding.
[2] *2014 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Further Notice of Proposed Rulemaking and Report and Order, MB Docket No. 14-50, et al, FCC 14-28 (April 15, 2014) (" FNPRM"),

I. INTRODUCTION

In the FNPRM, the Commission has proposed to relax some of its media ownership rules. In each of the Commission's previous quadrennial reviews, NABOB has opposed the relaxation of any of the Commission's rules, and that is NABOB's position with respect to the current quadrennial review. The ownership of broadcast radio and television stations has been in steady decline ever since: (1) Congress repealed the minority tax certificate policy in 1995,[3] (2) the Supreme Court decided the *Adarand* case in 1995,[4] and (3) Congress passed the Telecommunications Act of 1996.[5] The repeal of the tax certificate and the *Adarand* decision resulted in the Commission having no meaningful programs to promote minority ownership -- a condition that has now existed for 19 years. In, addition, the passage of the Telecommunications Act of 1996 allowed a massive consolidation of ownership of broadcast facilities into a number of large companies. As a result of that massive consolidation, the number of television stations owned by African Americans now is down from 20 to 4. There has also been a decline in African American radio station ownership, but it has not been quite as dramatic as the television ownership decline.

In spite of this history of decline following the 1996 relaxation of the Commission's ownership rules, the Commission reiterates over and over again in the FNPRM that here is no "evidence" that further relaxation of certain of its ownership rules will negatively affect ownership of broadcast stations by minorities. NABOB submits that the serious decline in African American ownership since 1996 is the principal evidence the Commission needs. It is

---

[3] See Deduction for Health Insurance Costs of Self-Employed Individuals, Pub. L. No. 104-7, §2, 109 Stat. 93, 93-94 (1995).

[4] *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995).

[5] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996).

clear that three things caused the decline in media ownership, the loss of the tax certificate, the *Adarand* decision, and the relaxation of media ownership rules in 1996. The Commission only has a direct control over one of those factors – its media ownership rules. It cannot allow the decline of media ownership by African Americans to continue by throwing up its hand and blaming the Supreme Court or Congress.

Similarly, the Commission cannot suggest that the only solution is for minorities to find new ways to access capital. Certainly, lack of access to capital inhibits the ability of African American entrepreneurs to become broadcast station owners. But the Commission has no regulatory authority over any financial institution. Therefore, the Commission has no direct ability to make capital available to African American entrepreneurs. The Commission has only one direct tool available to it in reversing the decline in African American broadcast ownership – it must maintain rules that have the potential to slow the decline in minority ownership.

Any relaxation of any of the Commission's ownership rules will further the ongoing precipitous decline in minority broadcast ownership. In particular, the relaxation of any rules allowing greater consolidation in the radio industry will be particularly detrimental to minority ownership growth. African Americans still own a small number of successful radio stations, and allowing further consolidation in that industry could substantially undermine currently successful radio stations. Thus, the Commission should not relax either its newspaper-radio ownership rule or its radio-television ownership rule. On the other hand, NABOB is pleased that the Commission has tentatively concluded to retain several of its other ownership rules. NABOB supports the Commission's decision to retain: (1) the local television ownership rule, (2) the local radio ownership rule, including preserving the AM/FM subcap rule, and (3) the dual network rule.

In addition, NABOB requests that the Commission delay the issuance of a report and order in this proceeding until it has initiated all of the studies necessary to meet the strict scrutiny standard of the *Adarand* decision and has adopted a definition of "eligible entity" that can be used to implement rule and policy changes that have the potential to actually promote minority ownership of broadcast facilities.

II. THE COMMISSION MUST ACT TO REVERSE THE DECLINE IN MINORITY OWNERSHIP IN THIS PROCEEDING

The Commission has numerous proposals pending intended to improve the broadcast industry as a whole. However, no policy changes in the broadcast industry will promote minority ownership unless the policies are specifically designed for that sole purpose. In other words, the Commission must establish policies, similar to those it had prior to the *Adarand* decision, which were designed to specifically increase minority ownership of broadcast stations. These policies included: the minority tax certificate, the minority distress sale policy, and the minority credit in comparative hearings. From 1934 to 1978, the Commission had no such specific policies, and there was very little minority broadcast station ownership.[6] From 1978 to 1995, the Commission did have these policies, and minority ownership experienced rapid growth.[7] Since 1995, minority broadcast station ownership has experienced a severe decline.[8]

The Commission's recent "Report on Ownership of Commercial Broadcast Stations,"[9]

---

[6] NABOB's records show that in 1978 there were 30 radio stations and 1 television station owned by African Americans.

[7] NABOB's records show that in 1995 there were 250 radio stations and 23 television stations owned by African Americans.

[8] NABOB's records show that in 2013 there are 212 radio stations and 4 television stations owned by African Americans.

[9] *2014 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Report on

released in this proceeding, corroborates the data provided by NABOB and others for many years, which shows the abysmal state of minority broadcast station ownership and justifies the need for the Commission to take steps to improve this situation. The compilation of the raw data in the Report on Ownership has accomplished the first step in showing the need for specific policies to promote minority ownership. Next, the nexus between minority ownership and minority programming viewpoint provides the second step in establishing the need for policies specifically designed to promote minority ownership.[10] One of the Commission's principal policy objectives is to promote diversity of programming viewpoint, and the Commission has determined through years of study and research that there is a nexus between minority broadcast station ownership and diversity of programming viewpoint.[11] Indeed, the Supreme Court has acknowledged and accepted that minority ownership leads to programming diversity, and the Third Circuit Court of Appeals has acknowledged that the Supreme Court's determination of the nexus between minority ownership and programming is still the law of the land:

> In addition, we note that the Supreme Court has upheld targeted FCC efforts to promote increased minority ownership. The Court has ruled that 'the interest in enhancing broadcast diversity is, at the very least, an important governmental objective' that justified FCC policies designed to promote minority ownership in broadcasting. *Metro Broadcasting Inc. v. FCC*, 497 U.S. 547, 567 (1990) *overruled on other grounds in Adarand*, 515 U.S. 200 (overruling use of intermediate scrutiny). The Court upheld such policies because 'the conclusion that there is a nexus between minority ownership and broadcast diversity…is corroborated by a host of empirical evidence,' *id.* at 580, and 'both Congress and the Commission have concluded that the minority ownership programs are critical means of promoting broadcast diversity. *Id.* at 579.[12]

Ownership of Commercial Broadcast Stations, DA 14-924, released June 27, 2014 ("Report on Ownership").

[10] 652 F.3d at 471, n. 42

[11] *Id.*

[12] *Id.*

The final step for the Commission, therefore, is to develop a record for creating a definition of "eligible entity" that specifically promotes minority ownership, and will also pass constitutional scrutiny. The tax certificate, distress sale and comparative hearing credit were all successful for one reason: they caused existing broadcast industry participants to seek out potential minority station owners. In other words, it caused those persons inside the industry to seek out those who were only marginally inside or totally outside the industry. Any policies the Commission adopts which do not have the effect of making it desirable for industry insiders to seek out minorities for broadcast ownership opportunities will be ineffective in increasing minority ownership. For the Commission to help reverse the continuing decline of minority broadcast ownership, the Commission must take action in this proceeding to develop a definition of "eligible entity" that specifically promotes minority ownership. Adoption of any policy that does not specifically promote minority ownership will be ineffective in stopping the decline of minority ownership.

Therefore, what the Report on Ownership shows is that the Commission should take no action in this proceeding to relax any of its ownership rules until the Commission has taken positive steps to promote minority ownership. NABOB shall demonstrate below:

1. Any relaxation of any of the Commission's ownership rules will negatively impact minority ownership.

2. Any relaxation of the Commission's ownership rules without a record that shows such relaxation will not harm minority ownership is contrary to the mandate of the Third Circuit Court of Appeals in the *Prometheus II* case.

3. Failure to adopt a policy to promote minority ownership in this proceeding is contrary to the mandate of the Third Circuit Court of Appeals in the *Prometheus II* case.

III. THE COMMISSION'S DATA SHOWS THAT THE COMMISSION IS FAILING TO MEET ITS STATUTORY OBLIGATION TO PROMOTE BROADCAST STATION OWNERSHIP BY MINORITIES

The decline in minority ownership of broadcast facilities has been building for over a decade.

A. In 1995, over the strenuous objections of NABOB and various public interest organizations, Congress passed, and the President signed, legislation repealing the minority tax certificate. Also in 1995, the Supreme Court issued the *Adarand* decision, which the Commission has interpreted to preclude it from having a minority ownership policy. In 1996, Congress passed, and the President signed, the Telecommunications Act of 1996, which allowed broadcast companies to own an unlimited number of radio stations nationwide and as many as eight in a single market. It also allowed greater concentration of ownership of television stations.

B. Over the next decade a handful of major companies consolidated their ownership of the broadcast industry. This resulted in a precipitous decline in the number of African American companies owning broadcast stations.

NABOB's data show the following declines for African American companies owning broadcast stations:

1995	Radio companies	146
	TV companies	10
	Radio stations	250
	TV stations	23
2013	Radio companies	67
	TV companies	3
	Radio stations	212
	TV stations	4

The Commission's data is consistent with NABOB's data. The Commission's data shows in 2013 African Americans owned:

Broadcast Stations	Number	Percentage
TV Stations	9	0.6%
AM radio stations	93	2.5%
FM radio stations	73	1.3%[13]

African Americans comprise 13.6% of the U.S. population.[14] The Commission's Report on Ownership regarding African American ownership confirms NABOB's data, which demonstrates that African Americans are woefully underrepresented in the ownership of broadcast stations.

C. This situation has gotten even worse because of the recent recession. From 2005 to 2009, at least 59 minority owned radio stations were transferred to bankruptcy trustees, trusts established for the benefit of creditors, or to trustees for debtors-in-possession attempting to reorganize under Chapter 11 of the Bankruptcy Code.[15] Most of these bankruptcy cases resulted in the minority owners losing ownership of the stations. In addition, 18 minority owned stations requested permission from the Commission to cease operations due to financial difficulties.[16]

---

[13] Report on Ownership at 6, 13 and 15. The Report on Ownership notes at page 7, n. 19, that there were applications pending when the Report was being prepared that would reduce the number of African American owned commercial television stations from the 9 listed in the Report.

[14] U.S. Census Bureau website: http://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf, at p. 3.

[15] *Minority Commercial Radio Ownership in 2009: FCC Licensing and Consolidation Policies, Entry Windows, and the Nexus Between Ownership, Diversity and Service in the Public Interest*, by Catherine J. K. Sandoval, Assistant Professor, Santa Clara University School of Law, November 2009 (the "Sandoval Study").

[16] *Id.* The Sandoval Study has not been updated since 2009, but press reports indicate that this trend of bankruptcies is continuing.

In addition, NABOB urges the Commission to delay issuance of the report and order in this proceeding until the Commission has adopted a policy to promote minority ownership of broadcast facilities, as required by the U.S. Third Circuit Court of Appeals in the *Prometheus* case.[17] If the Commission proceeds to adopt a report and order at this time, and that report and order does not adopt a policy to promote minority ownership, the Commission must, at a bare minimum, provide a clear commitment, complete with a timetable, for completing the necessary studies for adopting such a policy.

IV. THE *PROMETHEUS II* DECISION REQUIRES THE COMMISSION TO REFRAIN FROM CHANGING ANY OF ITS MEDIA OWNERSHIP RULES UNTIL IT HAS DETERMINED THE IMPACT OF ANY SUCH CHANGES ON MINORITY OWNERSHIP

In the *Prometheus II* decision, the Third Circuit Court of Appeals stated:

> Despite our prior remand [in *Prometheus I*] requiring the Commission to consider the effect of its rules on minority and female ownership, and anticipating a workable SDB definition well before this rulemaking was completed, the Commission has in large part punted yet again on this important issue.[18]

The Court then instructed the Commission to: (1) "consider the effect of its rules on minority and female ownership,"[19] (2) consider alternative proposals and definitions for the revenue-based eligible entity definition (such as a socially disadvantaged business (SDB) definition) "before it completes its 2010 Quadrennial Review,"[20] and (3) "synthesize and release

---

[17] *Prometheus Radio Project v. Federal Communications Commission,* 652 F.3d 431 (3d Cir. 2011) ("*Prometheus II*").
[18] *Prometheus II*, 652 F.3d at 471.
[19] *Id.*
[20] *Id.* at 438. 471.

existing data [on female and minority ownership] such that studies will be available for public review in time for the completion of the 2010 Quadrennial Review."[21]

Unfortunately, the Commission expressed in the FNPRM in this proceeding that it has no intention of completing the work directed by the Court. Thus, in the FNPRM in this proceeding the Commission stated:

> Also, we seek additional comment on issues referred to us in the Third Circuit's remand in *Prometheus II* of certain aspects of the Commission's 2008 *Diversity Order*.[22] Specifically, we tentatively conclude that the revenue-based eligible entity standard should be reinstated, as well as the associated measures to promote the Commission's goal of encouraging small business participation in the broadcast industry, which we believe will cultivate innovation and enhance viewpoint diversity. As directed by the court, we consider the socially and economically disadvantaged business definition as a possible basis for favorable regulatory treatment, as well as other possible definitions that would expressly recognize the race and ethnicity of applicants.[23] We tentatively conclude that the record from the 2010 Quadrennial Review proceeding does not satisfy the demanding legal standards the courts have said must be met before the Government may implement preferences based on such race- or gender-conscious definitions and we seek further comment.[24]

This language is only a slight variation from the Commission's statement of its reason not to act on the eligible entity definition in the 2010 Quadrennial Review when the Commission said, "[T]he data currently in the record of this proceeding are not complete and are likely insufficient either to address the concerns raised in *Prometheus II* or to support race- or gender-based actions

---

[21] *Id.* at 471 n. 42.

[22] *Prometheus Radio Project v. FCC*, 652 F.3d 431, 437 (3d Cir. 2011) ("*Prometheus II*"); *see also Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket No. 07-294, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922 (2008) ("*Diversity Order*" and "*Diversity Third FNPRM*").

[23] *Prometheus II*, 652 F.3d at 471-73.

[24] FNPRM at par. 7. The Commission then explains at length its decision to do nothing at pars. 242-306. What the Commission does not do in all of this discussion is commit itself to completing the *Adarand* studies.

by the Commission."[25] The Commission continued, "[W]e plan to undertake the following actions in preparation for the 2014 broadcast ownership review to establish with the requisite foundation and clarity what additional policies can be implemented promoting greater broadcast ownership diversity, including female and minority ownership."[26]

However this rationale for doing nothing in this proceeding, as the Commission did nothing in the 2010 Quadrennial Review, was rejected by the Court in *Prometheus II*:

> Stating that the task is difficult in light of *Adarand* does not constitute "considering" proposals using an SDB definition. The FCC's own failure to collect or analyze data, and lay other necessary groundwork, may help to explain, but does not excuse its failure to consider the proposals presented over many years. If the Commission requires more and better data to complete the necessary *Adarand* studies, it must get the data and conduct up-to-date studies, as it began to do in 2000 before largely abandoning the endeavor.[27]

In spite of these clear instructions from the Court, the Commission is apparently preparing to issue a report and order in this proceeding that accomplishes nothing the Court directed it to achieve with respect to promotion of minority ownership. The *Prometheus II* decision makes clear that the Commission may not relax any of its rules until it "considers the effect of its rules on minority and female ownership."[28] To do otherwise would ignore the clear directions of the Court, and constitute a failure to meet the Commission's statutory obligation to promote minority ownership.

---

[25] *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,* Notice of Proposed Rulemaking, MB Docket No. 09-182, FCC 11-186 (December 22, 2011), at par. 158.

[26] *Id.*

[27] *Prometheus II*, 652 F.3d at 471 n. 42.

[28] *Prometheus II*, 652 F.3d at 471.

The Commission discusses at length the *Prometheus II* decision, in the FNPRM and rejects many of the arguments that NABOB has made above.[29] However, while rejecting NABOB's interpretation of the court's decision, the Commission proposes nothing to remedy the underlying problem – the Commission has not done the required *Adarand* studies, and it has not committed to doing such studies.

The Commission discusses studies it has prepared in the past and the studies prepared by outside experts, and concludes that separately and collectively these studies fail to supply a record that would survive strict scrutiny.[30] Most puzzling in the Commission's rejection of the prior studies is its rejection of its own Media Ownership Studies 8A and 8B because they fail to demonstrate that minority ownership leads to "viewpoint diversity."[31] This conclusion is puzzling, because it appears that the Commission's definition of viewpoint diversity is something that can be statistically measured. NABOB submits that viewpoint diversity is a subjective matter which would require an examination of the actual statements of persons on the air of a specific station. Ownership Studies 8A and 8B do not purport to analyze such content (and indeed it would seem a reviewing court and the Congress might both question such subjective analysis). Instead, it would appear that the Commission's analysis should look at the viewing and listening habits of minority audiences to determine whether viewpoint diversity exists. The Commission identifies several studies which clearly demonstrate that minority audiences prefer minority programming.[32] Minority oriented programming is diverse from the programming of non-minority oriented programming. This should be the measure of viewpoint

[29] FNPRM at pars. 279-280.
[30] *Id.* at pars. 291-299.
[31] *Id.* at 292-293.
[32] *Id.* at 294-297.

diversity. Based upon this measure, the Commission has a substantial amount of evidence that minority ownership leads to viewpoint diversity.

V. RELAXATION OF THE COMMISSION'S RADIO CROSS-OWNERSHIP RULE WILL NEGATIVELY IMPACT MINORITY OWNERSHIP

The Court's decision in *Prometheus II* placed upon the Commission the burden of demonstrating that a relaxation of any of its ownership rules will not negatively impact minority ownership. This is a burden the Commission cannot meet, because the relaxation of any of its ownership rules will have a negative impact on minority ownership. As described above, the consolidation of ownership in the broadcast industry over the past eighteen years has had a devastating effect on minority ownership. The manner in which that consolidation affects the average minority radio station owner is as follows:

Minority radio station owners generally tend to own one or two radio stations. When, in 1996, large companies were allowed to own up to eight radio stations in the largest markets, minority owners found themselves in a very difficult position. Large radio group owners could approach advertisers with a single sales force offering up to eight different radio formats, including perhaps a format specifically targeting minority audiences, and purport to deliver all of the desired demographics for that advertiser. A minority owner, programming only to the minority audience, could find advertisers declining to advertise on the minority owned station, based upon the purported ability of the group owner to deliver the minority audience as part of a group buy, at a discounted price.

If these same large radio group owners are now allowed to combine their multiple station ownership advantage with ownership of a daily newspaper, the group owner will be able to combine the radio and newspaper sales forces, and will be able to offer advertisers a combined

radio-newspaper buy, which will leave minority owners even more disadvantaged in their efforts to compete in the marketplace.[33] If the Commission looks at the potential impact of further relaxation of its cross-ownership rules on minority owners, it will see that further relaxation of its ownership rules can only have a negative impact and will further the decline of minority broadcast station ownership.

Unfortunately, the Commission has begun its analysis of the radio-newspaper cross-ownership rule based upon a faulty premise. That premise is that radio stations and newspapers do not compete in the same advertising market. The Commission states that it has been operating upon this premise based upon studies dating back to its 2002 Quadrennial Review.[34] However, the real world facts contradict the Commission's premise. Most advertisers use an assortment of media. As a result, when radio companies analyze the competition in their markets they look at all competitors, including newspapers. This is clearly demonstrated in the attached press release summarizing the BIAKelsey study "Local Radio Stations Profiles and Trends for 2014 and Beyond."[35] The study clearly identifies newspapers as a competitor to radio. Similarly, the Radio Advertising Bureau, in its Guide to Competitive Media, cites newspapers as

---

[33] This discussion of the disadvantage at which minority radio stations must compete is even more applicable to minority television station owners. The television industry is much more difficult for minorities to enter and compete, because, unlike radio, existing owners can purchase all of the most desirable programming and deny a small station access to that programming. In radio, a small station can obtain access to the same music as all existing competitors. Indeed, the Commission's ownership data which shows the continuing precipitous decline of African American owned television stations, supports the arguments presented here.

[34] FNPRM at par 139.

[35] BIAKelsey "Local Radio Stations Profiles and Trends for 2014 and Beyond" study, at http://www.biakelsey.com/Company/Press-Releases/131112-Local-Radio-Maintains-Competitive-Position-in-Local-Ad-Market-with-11.5-Percent-Share-of-Local-Ad-Revenues.asp.

competitors with radio.[36] Therefore, the Commission's misguided premise that newspapers and radio do not compete is refuted by the entities that actually analyze radio competition, and their analyses undermine the entire rationale for relaxation of the newspaper-radio cross-ownership rule.

VI. THE COMMISSION MUST, AT A BARE MINIMUM, PROVIDE A CLEAR COMMITMENT TO DEVELOPING A POLICY TO PROMOTE MINORITY OWNERSHIP, WITH A TIMETABLE FOR COMPLETING THE NECESSARY *ADARAND* STUDIES TO ADOPT SUCH A POLICY

As stated above, the Commission is obligated by the *Prometheus II* decision to continue this proceeding until it has completed the studies required and adopted a policy to promote minority ownership. However, if the Commission proceeds to adopt a report and order in this proceeding without adopting such a policy, the Commission must, at a minimum, demonstrate to the Third Circuit Court of Appeals[37] that it is not ignoring this issue or putting it off until some unspecified date in the future. In the Commission's 2006 Quadrennial Review a distinguished group of academics developed a detailed list of additional studies that must be undertaken before the Commission will be in a position to adequately address the issues remanded by the Court. The academics proposed the following:

> The FCC should also look at the effect of consolidation on minority and female ownership. In consolidated markets, has minority or female ownership increased or decreased? The September 2006 study by FreePress, "Out of the Picture: Minority & Female TV Station Ownership in the United States, Current Status, Comparative Statistical Analysis & the Effects of FCC Policy and Media Consolidation," found that television markets with minority owners are significantly less concentrated than markets without minority owners. FreePress' analysis of television ownership also found that markets that saw the addition of

[36] Radio Advertising Bureau "Guide to Competitive Media" at http://www.rab.com/whyradio/mediafacts.cfm.

[37] In the *Prometheus II* decision, the Court remanded the case to the Commission, but retained jurisdiction. 652 F.3d at 472. Thus, the Court has clearly indicated its intention to review any action, or failure to act, by the Commission in this proceeding.

new minority owned stations since 1988 are significantly less concentrated than markets that did not gain new minority owners. The FreePress study also suggested the FCC conduct a comprehensive study of every licensed broadcast radio and television station to determine the level of female and minority ownership, examining changes since 1999, focusing on station format and content including local news, and analyzing the effect of consolidated markets on minority and female ownership. An FCC study of market concentration and minority and female ownership in radio similar to that conducted by FreePress of market concentration for television markets would yield useful data in examining the effects of consolidation policies since the passage of the Telecommunications Act of 1996.

The FCC study should examine factors that influenced minority and women owners' decisions to buy or sell stations since the Telecommunications Act of 1996, including ownership consolidation, major mergers with spinoffs, capital markets and access to capital. The study should also seek information on the effect of consolidation on advertising prices. Many minority owners allege that some consolidators will sell advertisements on their African-American formatted stations for $1 in a package with their other stations (a dollar a holler), making competition impossible for minority and small entrepreneurs who cannot amortize their costs across several stations in a market or across several markets. The study should also examine the interaction of consolidation with the practices in the advertising industry that pay broadcasters with minority formats or minority audiences less than those with non-minority formats or audiences. Such practices result in lower cash flows for stations which program in minority-oriented formats and serve predominantly minority audiences, making it more difficult to attract financing needed to buy other stations and creating disincentives to provide such programming. [footnotes omitted][38]

The Commission should use the guidance provided by the academics in 2006 to set forth in this order:

1. The studies previously prepared by the Commission or others, which the Commission believes will help meet the requirements of the *Adarand* decision.

2. The studies the Commission will prepare that will provide the final information required to comply with the requirements of the *Adarand* decision.

---

[38] Comments, dated October 23, 2006, from Catherine J.K. Sandoval, et al, filed in *the Matter of 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*, FCC 06-93, MB Docket Nos. 06-121, 02-277, 01-235, 01-317, 00-244.

3. The timetable when the Commission will complete these studies.

4. The timetable when the Commission will complete its analysis for adopting a new policy to promote minority ownership.[39]

VII. CONCLUSION

The Commission has for decades recognized that diversity of ownership in the nation's broadcast industry is an important part of protecting the First Amendment rights of all Americans to receive a free flow of information and opinion from diverse voices. The voices of minority communities are being silenced by the decline in minority ownership. The Commission must take concrete steps to end this loss of voices.

The Commission should not relax either its newspaper-radio ownership rule or its radio-television ownership rule. NABOB supports the Commission's decision to retain: (1) the local television ownership rule, (2) the local radio ownership rule, including preserving the AM/FM subcap rule, and (3) the dual network rule. NABOB requests that the Commission delay the issuance of a report and order in this proceeding until it has initiated all of the studies necessary to meet the strict scrutiny standard of the *Adarand* decision and has adopted a definition of "eligible entity" that can be used to implement rule and policy changes that have the potential to actually promote minority ownership of broadcast facilities.

It has been nineteen years since the U. S. Supreme Court's decision in *Adarand,* and the Commission has been without a policy to promote minority ownership for that entire time period. An order in this proceeding which continues the long history of dawdling and delay that

[39] NABOB recognizes that the Commission cannot prejudge the results of its studies, and therefore cannot promise to create a policy that is specifically designed to promote minority ownership. However, the Commission can establish a timetable by which it will determine whether it can create a policy to promote minority ownership.

has characterized the Commission's approach to creating such a policy will send a very negative message to minority communities and the Court of Appeals. NABOB urges the Commission to end the delay and move with conviction and determination to create a policy that will help to slow the continuing decline in minority ownership.

Respectfully submitted,

THE NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.

By: _____

James L. Winston
Executive Director and
General Counsel
National Association of Black Owned
Broadcasters, Inc.
1201 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
(202) 463-8970
jwinston@nabob.org

August 6, 2014

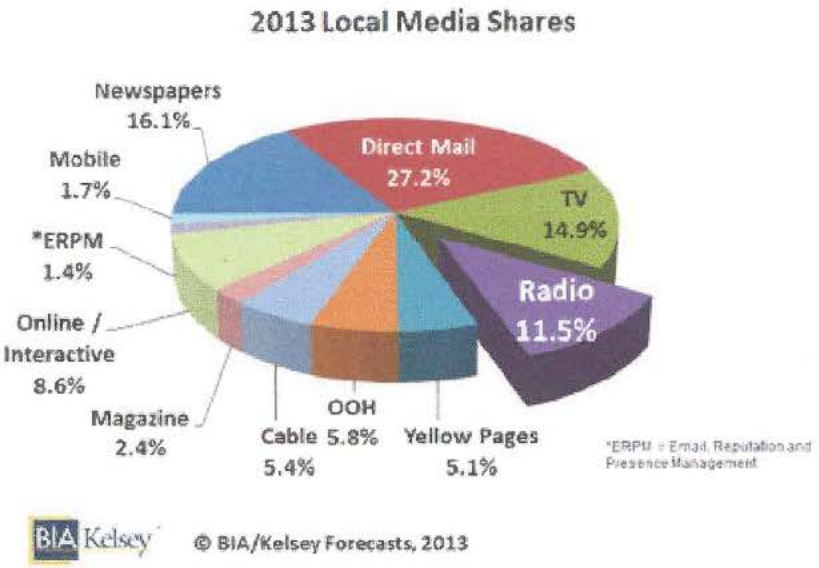
Press Release

Local Radio Maintains Competitive Position in Local Ad Market with 11.5 Percent Share of Local Ad Revenues

New state-of-the-industry report shows local radio stations with fourth largest share of local ad revenues, behind direct mail, newspapers and TV

CHANTILLY, Va. (Nov. 12, 2013) – The local radio market is growing, albeit at a more moderate pace than it once did, by expanding its offerings to off-air platforms, providing a wider range of listener experiences and advertiser opportunities, according to the firm's new state-of-the-industry report. *Local Radio Stations Profiles and Trends for 2014 and Beyond* provides a comprehensive view of the industry based on the long-term research and analysis conducted by BIA/Kelsey for its clients and the industry.

Defining the local media marketplace as all local media/services that provide access to local audiences, BIA/Kelsey estimates total local media spending for 2013 to be $132.7 billion. This marketplace includes all of the media that local radio stations compete against for national and local advertising spending in their markets. Based on this definition of local advertising, local radio stations receive 11.5 percent of all advertising revenue being spent in local markets, fourth amongst all local media segments, behind direct mail (27.2 percent), newspapers (16.1 percent) and TV (14.9 percent).



"As we move toward 2014, it's clear the radio industry has adapted to incredible competition from all sides, with streaming and other audio competitors taking audiences," said Mark Fratrik, chief economist and report author, BIA/Kelsey. "Yet local radio is surviving, and in some instances, thriving, and poised to compete well in the new marketplace. Radio is also beginning to deliver other compelling digital services that help its local advertisers navigate promotional opportunities. With the right attitude towards the new reality of increased competition and strategic planning, local radio stations can prosper."

As local radio works to keep pace with digital innovation, the landscape of radio advertisers reveals an attractive and diverse group. Local radio generates over 10 percent of its advertising from five different groups of advertisers: retail (18.0 percent of total radio industry revenue), financial/Insurance (17.0 percent), restaurants (14.5 percent), automotive (14.0 percent) and technology (10.0 percent).

Nationally, BIA/Kelsey's Media Ad View Plus forecast reveals local radio stations receive 14.3 percent of all advertising spent by finance and insurance companies and 12.1 percent of all advertising spending by restaurants. This diversity of advertisers, along with the strong market share with those advertisers, indicates radio remains an important part of the advertising mix for several groups of national and local advertisers.
Another indication of the success of the radio industry's performance is the recent increase in values of publicly traded radio companies. Like other local media companies, values of public radio companies have increased by 68.2 percent through the first three quarters of 2013, easily beating the performance of the overall stock market. But as competition for audience share continues to cut into audience share for radio stations, the industry needs to be on its toes to remain competitively viable.

Availability of Report and Presentation
"Local Radio Stations Profiles and Trends for 2014 and Beyond" is presented as a 65-plus-page report and a companion presentation.

The report delivers a comprehensive assessment of the radio industry and is useful resources for anyone focused on the trends and direction of local radio, including radio groups and financial institutions and companies building interactive digital solutions being embraced by the industry.

The report includes the following analysis and information:

- Revenue history of local radio stations
- Overall industry growth
- Competitive threats to local radio stations

- Revenue share by format
- Radio's position in the new media marketplace • Radio advertisers and competition for advertisers
- Radio's share with advertiser and business categories
- Technology changes in radio Industry
- Consolidation in the industry
- Digital sales transformation playbook

Accompanying the report is a companion presentation summarizing the top findings from the report. This asset is valuable when creating custom presentations for board and financing meetings and strategic retreats.

The report is available for purchase ($1,095 for the report and companion presentation, or $2,500 for the report, presentation and one-hour custom analyst briefing). More information about the report and how to purchase it is available at www.biakelsey.com/Research-and-Analysis/Reports/State-of-the-Industry-Radio or by emailingsales@biakelsey.com.

About BIA/Kelsey

BIA/Kelsey advises companies in the local media space through consulting and valuation services, research and forecasts, Custom Advisory Services and conferences. Since 1983 BIA/Kelsey has been a resource to the media, mobile advertising, telecommunications, Yellow Pages and electronic directory markets, as well as to government agencies, law firms and investment companies looking to understand trends and revenue drivers. BIA/Kelsey's annual conferences draw executives from across industries seeking expert guidance on how companies are finding innovative ways to grow. Additional information is available at http://www.biakelsey.com, on the company's Local Media Watch blog, Twitter (http://twitter.com/BIAKelsey) and Facebook (http://www.facebook.com/biakelsey).

Contacts:

Eileen Pacheco
For BIA/Kelsey
(508) 888-7478
eileen@tango-group.com
Robert Udowitz
For BIA/Kelsey
(703) 621-8060
rudowtiz@biakelsey.com

Press Relations

Interview requests, media inquiries, conference press passes, please contact:

Eileen Pacheco
(508) 888-7478

Robert Udowitz
(703) 621-8060

MacKenzie Lovings
(703) 802-2991

Citation Policy

BIA/Kelsey publicly available information (including, but not limited to, press releases, blog posts, company Web site content, presentations, and excerpts from advisories and reports) may be cited, provided BIA/Kelsey is properly identified as the source (Source: BIA/Kelsey). If you are uncertain about a particular use, please contact us for approval. Provide the full citation and context for your request via e-mail to Eileen Pacheco at eileen@tango-group.com

Company Information

BIA Advisory Services (BAS) is doing business as (d/b/a) BIA/Kelsey. BAS is owned by BIA Financial Network. For more information on this parent company and for a list of affiliated companies, please click now.

RADIO ADVERTISING BUREAU

MEDIA FACTS

A Guide to Competitive Media

RAB's new Competitive Media section gives you complete access to the latest information profiling 10 competitive media. Each profile contains a complete whitepaper as well as the advantages, disadvantages and plus Radio for each medium.

This section also gives you the option to build custom media profiles reflecting specific talking points in a colorful, street-ready one sheet.

Newspaper

Quick Facts Advantages Disadvantages Plus Radio Create a Profile

For the six-month period ending September 2010, circulation for the 635 daily newspapers included in the regular Audit Bureau of Circulations report was down 5.0% from the same six-month time frame in 2009. Circulation for the 553 Sunday papers included in the study was off 4.5% for the six-month period ending September 2010. (Audit Bureau of Circulations, 2010)

A total of 48.7% adult males and 44.3% of adult females were daily newspaper readers in 2010 (either print or Web versions). (Newspaper Association of America, 2011)

Also in 2010, 45.0% of men and 47.7% of women were Sunday newspaper readers. (Newspaper Association of America, 2011)

In 2010, 32.0% of adults in the 18-34 age range, and 52.7% of those ages 35+ read a daily newspaper (either print or Web version). (Newspaper Association of America, 2011)

For 2010, 39.0% of adults with household incomes of less than $50,000 read a daily newspaper (either print or Web version), compared to 50.6% of those consumers with household incomes of $50,000-$99,999, an 57.4% of those earning $100,000 or more. (Newspaper Association of America, 2011)

During a typical week in 2010, 71.2% of adult males and 71.0% of adult females read a newspaper (either print or Web version. (Newspaper Association of America, 2011)

In 2010, 38.3% of adults with a high school education or less read a daily newspaper (print or Web version), compared to 48.4% of adults with some college, and 58.5% who were college graduates. (Newspaper Association of America, 2011)

The most widely-read sections of a daily newspaper in 2010 (percentage of readers who look at these sections): Main news/front page, 82.2%; local news, 76.6%; sports, 56.0%; entertainment/lifestyle, 55.6%; international/national news, 54.5%; comics, 54.0%; ad circulars/inserts/flyers, 52.4%; food/cooking, 52.3%; business/finance, 51.4%; editorial page, 51.2%; classified advertising, 50.8%; movie listings/reviews, 48.6%;

OTHER MEDIUMS

- Yellow Pages
- Alternative Newsweeklies
- Point-of-Purchase
- Out-of-Home
- Magazines
- Internet
- Direct Marketing
- Broadcast TV
- Newspaper
- Cable/Satellite TV
- New Media

NEWSPAPER PERFORMANCE REPORTS

home/garden, 48.3%; TV/radio listings, 46.1%; science/technology, 44.7%; fashion, 43.2%. (Newspaper Association of America, 2011)

The Main News/Front Page and Local News sections are the top two favorites of both men and women. Sports is the third most popular section among men, while the Entertainment/Lifestyle section ranks third among women readers. (Newspaper Association of America, 2011)

Based on an analysis of 25 leading U.S. newspapers, the number of daily newspaper readers per copy increased from 3.07 adults in 2007 to 3.30 adults in 2009. (Scarborough Research, 2010)

The average aggregate number of daily visitors to U.S. newspaper Web sites in March 2011 was 24.725 million, compared to 20.328 million in September 2010. The average minutes-per-visit in March 2011 was 3.9. (comScore, 2011)

Total ad sales for the traditional newspaper industry dropped 8.2% in 2010 to $22.795 billion, down from $24.821 billion in 2009 and $34.740 billion in 2008. Newspaper ad revenues hit an all-time high of $48.670 billion in 2000. (Newspaper Association of America, 2011)

Revenue from newspapers' online advertising totaled $3.042 billion in 2010, a 10.9% increase from 2009, accounting for 11.8% of all newspaper ad spending for the year. Online ad revenue was $2.743 billion in 2009, and $3.109 billion in 2008. (Newspaper Association of America, 2011)

The total number of daily newspapers in the U.S. slipped to 1,387 in 2009, down from 1,422 in 2007 and 1,452 in 2005. There were 911 Sunday papers in the U.S. in 2009, compared to 907 in 2007 and 914 in 2005. (Editor & Publisher, 2011)

Paid circulation for the nation's daily newspapers totaled 45.653 million in 2009, down from 50.742 million in 2007 and 53.345 million in 2005. For Sunday newspapers, paid circulation was 46.164 million in 2009, compared to 51.246 million in 2007 and 55.270 million in 2005. (Newspaper Association of America, 2011)

The leading newspaper advertisers in 2009, by company: 1. General Motors; 2. Macy's; 3. Verizon Communications; 4. AT&T; 5. Fry's Electronics; 6. News Corp.; 7. Procter & Gamble; 8. Sears Holdings Corp.; 9. Target; 10. Kohl's Corp. (Advertising Age, 2010)

Top newspapers in 2010, based on local audience reach (print and online audiences combined): 1. New York Daily News; 2. Los Angeles Times; 3. New York Times; 4. New York Post; 5. Chicago Tribune; 6. Chicago Sun-Times Group; 7. Washington Post; 8. Los Angeles Newspaper Group; 9. San Francisco Bay Area Group; 10. Newsday. (Scarborough Research, 2011)

According to a 2011 survey by Frank N. Magid Associates, 79% of the respondents said they took action as a result of newspaper advertising in the past month, including: Clipping a coupon (54%); buying something (46%); visiting Web sites to learn more (37%); and trying something for the first time (20%). (Frank N. Magid Associates, 2011)

A 2011 study by comScore determined that newspaper websites reach 74.4% of adults in households earning over $100,000 a year. (comScore, 2011)

Other Competitive Media Resources

In this section, you'll find links to information profiling media OTHER than radio. Below are links to Weekly Sales Meetings, Whitepapers, special reports and other articles that you can use to help your advertisers understand the important role of Radio in supporting ANY marketing effort.

Please make your selection from the lists below and don't forget, you can always call RAB's Member Response Helpline at 1-800-232-3131 for more information.

Radio Advertising Bureau All Rights Reserved. 2012