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

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	)	MB Docket No. 06-121
	)	
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	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244
	)	
Ways to Further Section 257 Mandate and To Build on Earlier Studies	)	MB Docket No. 04-228

To the Commission

SUPPLEMENTAL <u>EX PARTE</u> COMMENTS OF THE DIVERSITY AND COMPETITION SUPPORTERS IN RESPONSE TO THE <u>SECOND FURTHER NOTICE OF PROPOSED RULEMAKING</u>

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November 20, 2007

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Summary

The Diversity and Competition Supporters ("DCS")[1] completes its merits case for the adoption of a wide spectrum of minority and woman ownership initiatives.[2] Consideration of these Supplemental Comments is respectfully requested.

For the first time in 30 years, the broadcasting industry has spoken with one voice to endorse a wide range of minority ownership initiatives. Few objections have been raised to any of DCS' proposals, and those objections are relatively easy to address through modifications to some of the proposals. Additional proposals have been offered, and DCS is pleased to endorse most of them. If the Commission finds a proposal has promise, it should keep the proposal alive by seeking further comment on it in an expedited third further notice of proposed rulemaking.

Not only are minority ownership initiatives needed now, these initiatives should be adopted and implemented before the Commission authorizes potentially damaging consolidation. The testimony of seventeen owners and senior executives of minority owned broadcast companies documents the many ill effects of consolidation, including its impact on minority broadcasters' access to the transactional, advertising, employment and capital markets.

The Commission has sought comment on the desirability of the Failing Station Solicitation Rule (FSSR). The testimony of three minority broadcasters demonstrates the wisdom of retaining this program.

MMTC recently conducted a survey of lenders and investors in the small broadcast deal market. The results show that very few firms offer capital for AM stations and no firms offer

[1] The Diversity and Competition Supporters is a coalition of national organizations created in 2002 to advance the cause of minority ownership in MB Docket No. 02-277. A list of its 29 members is found in Appendix A.

[2] As in previous filings, references to minority ownership initiatives are intended to include women.

capital for leases. The Commission should focus on what incentives it could offer to bring more capital into the small deal and, particularly, the minority small deal markets.

As DCS has detailed in earlier pleadings, the underrepresentation of minorities in broadcast ownership is so profound that only through the adoption of race-conscious programs can this underrepresentation be cured. Promoting diversity and remedying the effects of past discrimination are well-documented as compelling justifications for race-conscious policies. Herein DCS develops a third compelling justification: promoting competition in the media industries.

Finally, by far the most critical issue the Commission must resolve is the definition of eligible entities. It appears that while 7.78% of commercial radio stations are minority owned, only about 5.88% of the commercial radio stations classified as "small businesses" under the SBA's definition are minority owned. This statistical anomaly results from the status of seven minority owned radio companies that are too large to qualify under the SBA's small business definition, even though they are dwarfed by the leading radio companies. Consequently, not only would the adoption of a small business classification fail to advance minority ownership, it would actually be regressive and serve to diminish minority ownership.

Therefore, as an interim step before the Commission develops race-conscious initiatives, DCS recommends individualized, race-neutral "full file review" as a means of vetting applicants based on their success in overcoming disadvantages, the overcoming of which is predictive of their success in a challenging environment and their contribution to diversity of information and perspective. If the Commission is not prepared to adopt a full file review paradigm at this time, it should postpone the effective date of minority ownership initiatives (other than nondiscrimination provisions) until such time – in the very near future -- as it is able to approve a full file review classification procedure.

I. DCS' Proposals Are Worthy Of Adoption

A. Over Eighty Companies Have Endorsed Various Of DCS' Proposals

Traditionally, consumer, civil rights and minority organizations have been the lone voices in favor of minority ownership initiatives. In this proceeding, too, public interest organizations have spoken unequivocally in favor of most of DCS' proposals.

Yet now, for the first time since the Commission adopted the tax certificate and distress sale policies in 1978,[3] a diverse spectrum of broadcasters, financial institutions, media brokers and trade associations have endorsed a wide variety of minority ownership initiatives. Companies that seldom participate in Commission proceedings have spoken up in favor of a number of minority ownership proposals. One of these proposals, a revision of the Cluster Spinoff Rule (Proposal #35) was endorsed by nearly all of the nation's leading media brokers and nearly all of the nation's largest radio broadcasters in an unprecedented 48-party pleading.[4] Among the pleading's signatories were traditional adversaries Clear Channel Communications and Prometheus Radio Project. And it is not every day that four initiatives endorsed by News Corporation are also endorsed by Free Press.[5]

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[3] See Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC2d 979, 983 (1978) (referring favorably to the endorsements of, inter alia, General Electric Broadcasting Company, the Carter Administration and the American Broadcasting Companies). The broad base of support for minority ownership initiatives came about largely through the diplomacy and foresight of Chairman Wiley, who in 1977 formed the Commission's first Minority Ownership Task Force. Recognizing that minority ownership initiatives were not business as usual, Chairman Wiley charged the Task Force with the responsibility of bringing the Commission proposals that would be effective, that would be "win-wins" and that would enjoy the support of a wide range of stakeholders.

[4] See Reply Comments of 48 Parties, Petition for Rulemaking of the Minority Media and Telecommunications Council to Facilitate the Entry of Small Businesses into Local radio Markets, RM-11388 (October 5, 2007).

[5] See Reply Comments of Joint Television Broadcasters, MB Docket No. 06-121 (November 1, 2007) at 3, and Comments of Consumers Union, Consumer Federation of America and Free Press, MB Docket No. 06-121 (October 1, 2007) at 30-31 (both sets of comments endorsing, inter alia, DCS Proposal 24 (tax certificate restoration), 29 (SBA guaranteed loan program), 30 (fund of funds) and 34 (extension of divestiture deadline in mergers where applicants solicited bids from SDBs).

Further, there now appears to be a consensus that the Commission must address minority ownership now.[6] Examples of comments making this central point are set out in Appendix B. As ION Media Networks put it:

> ION also agrees with those who believe that now is the time to engage. While some will argue it is optimal from a public policy perspective for the Commission to wait on other broadcast ownership rule changes until an independent panel has time to convene and make recommendations on minority ownership participation, ION recognizes that other policy objectives argue in favor of prompt Commission action on the long-delayed general media ownership proceeding. The Commission should, therefore, move promptly to convene a panel to conduct a thorough review of over 40 regulatory proposals that have been pending at the FCC, and recommend an immediate action agenda.[7]

The Commission should never again make the mistake it made in 1983 when it went out of its way to repeal a minority ownership initiative based on the invidious premise that the initiative had somehow served its purpose.[8] Nor, certainly, should the Commission make the awful mistake it made in 2003 when it repealed its only minority television ownership policy, the Failing Station Solicitation Rule (FSSR), without even acknowledging that it was a minority ownership policy.[9] Instead, the Commission should focus now on how to fully address the needs of minority broadcasters for access to capital, access to spectrum and access to opportunity. A

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[6] In Prometheus, the Third Circuit made it clear that postponing consideration of minority ownership proposals for another day – which may never arrive – is no longer acceptable. See Prometheus Radio Project v. FCC, 373 F.3d 372, 421 n. 59 (3d Cir. 2004), stay modified on rehearing, No. 03-3388 (3d Cir., September 3, 2004), cert. denied, 125 S.Ct. 2902 (2005) ("Prometheus"). That view is now the mainstream consensus of civil rights advocates and broadcasters alike.

[7] Reply Comments of ION Media Networks, MB Docket No. 06-121 (November 1, 2007) at 6. See also Reply Comments of Office of Communication of the United Church of Christ, Inc., National Organization for Women Foundation, Media Alliance, Common Cause and Benton Foundation, MB Docket No. 06-121 (October 16, 2007) ("UCC 2007 Reply Comments") at 8 ("proper data collection and analysis is essential for the Commission to monitor the effects of its policies" but "[a]t the same time, all of the available data show that minorities and women hold very few broadcast licenses. This is beyond dispute. All of the Commenters, industry and public interest groups alike, have urged the Commission to take action to increase the number of stations owned by women and minorities. Thus the FCC should promptly act to adopt policies that will promote opportunities for minorities and women to fully participate in serving the public as broadcast licensees" (fns. omitted).

[8] See Deletion of AM Acceptance Criteria in §73.37(e) of the Commission's Rules (Report and Order), 102 FCC2d 548, 558 (1985), recon denied, 4 FCC Rcd 5218 (1989).

[9] See Prometheus, 373 F.3d at 421 n. 59.

package of initiatives should therefore be assembled that, taken as a whole, is a holistic and comprehensive cure for a cancer on the broadcasting industry.

B. Responses To Questions Concerning Several DCS Proposals

Relatively few of DCS' proposals drew objections, and fortunately all of the objections can be addressed in the drafting process.

The Commission seldom has an opportunity to address minority ownership issues comprehensively, and it would be unfortunate if it misses a chance to adopt worthwhile proposals simply because time is in short supply and other media ownership issues compete for the Commission's attention. Therefore, if the Commission finds a proposal to be promising but is not able to vote on it at this time, DCS respectfully requests that the proposal be kept alive by being folded into a third further notice of proposed rulemaking. To be sure the third further notice of proposed rulemaking does not land in regulatory purgatory, the Commission should state that it will undertake to conclude that further rulemaking in no more than two months.

Proposal #5: Structural Rule Waivers For Creating Incubator Programs

Consumers Union et al. state that by not ensuring that a station will come to be minority owned through the incubation opportunity, an incubator program could "create a giant loophole that would allow massive increases in local market concentration" and potentially bring about "a market decrease in the level of minority and female ownership that could not be offset by any such benefits from incubator proposals."[10] The Office of Communication of the United Church of Christ, Inc. et al. agree, stating that "an incubator program could allow increased consolidation, which raises market hurdles for women and minorities and creates other problems, in return for the unproven and speculative benefits of incubation. Thus, it is important that the

[10] Comments of Consumers Union, Consumer Federation of America and Free Press, MB Docket No. 06-121 (October 1, 2007), at 34.

Commission have clear and meaningful standards for assessing the adequacy of incubator programs and for ensuring that such programs are actually carried out."[11]

These concerns – that an incubator program must be narrow in scope, and that the opportunities being incubated be commensurate with any potential adverse impact of the consolidating step accompanying the incubation – are well taken, and we would add that adoption of a strongly enforced zero tolerance policy with random audits (Proposal #10, discussed infra) is vital to ensuring the integrity of an incubator program. In response to the concerns of Consumers Union et al., we offer below a much more modest "Trial Incubation Plan" that would be narrowly tailored to maximize the likelihood of successful minority inroads into ownership, while minimizing the risk of excessive consolidation.

A Trial Incubation Plan would be focused only on the local radio ownership rule, 47 C.F.R. §73.3555(a) (including both the local radio ownership caps and the AM/FM subcaps, which limit the number of AM or FM stations an entity may own in a local market) in large markets. There are three advantages of a plan focused on large radio markets: (1) the risk of excessive consolidation in these markets is relatively slight because of the large number of radio voices in those markets; (2) the quality of entrepreneurs seeking to grow in large markets virtually ensures that proposed transactions will close; and (3) a large radio market presence is vital to the growth of several of the strongest minority broadcast companies, whose business plans are premised on building footholds in the largest markets and, thereby, becoming truly national companies in audience reach, advertiser perception and program syndication potential.

Incubation would be deemed sufficient to justify the incubating party's purchase of an additional station when the steps to be taken by the incubating party will definitely bring into existence an SDB-owned station in the same service (AM or FM) in the same market or a market

[11] UCC 2007 Reply Comments at 7 (fns. omitted).

of approximately the same size (for example, a purchase in market 2 and incubation in markets 1, 2, or 3; a purchase in market 10 and incubation in any of markets 7-13; a purchase in market 15 and incubation in any of markets 10-20).[12]

To assure that the incubation is sufficient in impact, the two transactions would be contingent on one another. Thus the incubated transaction would close prior to or simultaneously with the incubating party's transaction, and the incubating party would make a substantial contribution to the success of the paired transaction – inter alia, selling the incubated party a station, guaranteeing the senior debt, or providing the mezzanine portion of the transaction.

The Trial Incubation Plan would operate for two years, then it would either terminate or be renewed or expanded depending on a thorough analysis of its beneficial or adverse effects.

The original incubation proposal was been widely endorsed.[13] First approved in an NPRM issued by a unanimous Commission in 1992,[14] it has been under consideration in five dockets. After fifteen years, the time for a decision has arrived. The Commission should determine now that a Trial Incubation Plan is in the public interest and will be implemented. To assist the Commission in working out the precise details of the Plan, the Commission should delegate to its subject matter expert body, the Advisory Committee on Diversity for Communications in the Digital Age, the task of recommending to the Commission, within two

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[12] Ideally the stations would be in the same market. However, similar stations are not always available simultaneously in the same markets. Therefore allowing incubation in similar markets, and designing a program that would result in numerous transactions, would over time result in the placement in the hands of SDBs of stations in a range of large markets comparable to the markets in which incubating parties have acquired stations by using the incubator plan.

[13] Endorsers include the Commission's Consumer Advisory Committee, television broadcasters including Belo Corp., Fox Television Stations, Inc., Max Media LLC and Gannett Company, Inc., radio broadcasters including Emmis Communications, Legend Communications LLC, and Multicultural Radio Broadcasting, Inc., and minority and civil rights organizations including NABOB and the Rainbow/PUSH Coalition.

[14] See Revision of Radio Rules and Policies (Reconsideration), 7 FCC Rcd 6387, 6391-92 ¶¶20-26 (1992) (seeking comment on incubator proposals advanced by Chairman Sikes and by NABOB).

months, the parameters and coefficients of the Plan. The Commission should express its intention to vote on the creation of the Plan within two months after receiving the Advisory Committee's recommendation.

Proposal #10: Zero Tolerance For Ownership Rule Abuse

DCS cannot overemphasize the importance of adopting this proposal and implementing it in a meaningful way. As the Commission's Consumer Advisory Committee has recommended, the Commission should "[a]dopt a Zero Tolerance Policy for ownership structure abuse, thereby assuring that if new rules are adopted, companies will not push the limits even farther, on a de facto basis, than the Commission wishes to go."[15]

The propensity of licensees to engage in structural abuse is all too well known.[16] The financial rewards are huge and the chance of being caught and being held accountable is slight. There is little or no incentive to complain of ownership fraud, and most ownership fraud is well hidden from the eyes of whistleblowers.[17] Thus it will not be enough simply to promise to investigate complaints or rule on them promptly, because for the most part there aren't any complaints.

Instead, the Commission should implement, among other things,[18] regular random audits, such as those used by the IRS in tax enforcement and those used by the Commission in EEO

[15] FCC Consumer Advisory Committee, Further Recommendation Regarding 2006 Quadrennial Regulatory Review of the Commission's Media Ownership Rules" (October 2007) at 2.

[16] See, e.g., DCS Initial Comments in MB Docket No. 06-121 (October 1, 2007) at 21-22.

[17] Id. at 21 ("Licensees, operating in a close-knit industry and needing to avoid discretionary spending, seldom can muster the time, effort, resources or long-term motivation to take on a fellow broadcaster. Citizen groups seldom possess the inside information required to make out an abuse case, and whistleblowers can risk their careers if they're labeled as troublemakers.")

[18] Id. at 21-22 (also urging the Commission to provide, inter alia, whistleblower protections and powerful discovery tools including depositions).

enforcement.[19] The Enforcement Bureau knows what questions to ask and what documents should be sought in an ownership fraud investigation. If an applicant knows that it stands one chance in ten of having to prove up the genuineness of an application, it is likely not to file any nongenuine applications.

Proposal #22: Nondiscrimination Provisions In Advertising Sales Contracts, Designed To Expressly Avoid Such Practices As "No Urban/ No Spanish" Dictates

The Commission has been intimately familiar with "no Urban/no Spanish" dictates since it held a public hearing on the subject in 1984, so certainly it is time for action on this vital subject. For urban and Spanish language specialists, these discriminatory practices likely depress advertising revenues by about 5-10%. Thus, this initiative would have enormous impact if it has teeth and is enforced. Although we trust that broadcasters do not instruct their advertising agencies and rep firms to engage in racial discrimination against minority broadcasters, nonminority broadcasters are inevitably the recipients of money that would have gone to minority broadcasters were it not for advertisers' discrimination. That money is tainted. Receiving that money is the moral equivalent of purchasing transmitter equipment that is not type-accepted, or airing an indecent program produced by a third party, or receiving stolen goods. Accepting advertisers' tainted money is not robbery; rather, it is the receipt of the predictable and tangible benefits of another person's robbery. Thus, the simple act of requiring all broadcasters to include a nondiscrimination provision in their contracts with advertisers, advertising agencies and rep firms is a proper exercise of the Commission's character-based and competitive free market jurisdiction over all broadcasters. The Commission should adopt this enormously important provision and, in doing so, make it clear that while the provision should

[19] See Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, MM Docket No. 98-204, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018 (2002) (reconsideration pending).

generally be prophylactic and self enforcing, the Commission will enforce the provision through random audits that would elicit examples of nondiscrimination language in advertising contracts, and by responding seriously and immediately to complaints.

C. DCS Endorses Several Proposals Submitted By Other Parties

Seven proposals (neither moot nor ancillary to advancing minority ownership) have been offered by other parties. Continuing DCS' numbering system, DCS has taken the liberty of assigning them numbers 41-47. All minority ownership proposals are set out in a "Minority Ownership Proposal Scorecard (Appendix C).

Proposal #41: Must-Carry For Class A LPTVs (Reply Comments of Community Broadcasters Association, MB Docket No. 06-121, November 1, 2007)

DCS enthusiastically endorses this proposal. For several reasons, must-carry for Class A LPTVs is preferable to general must-carry for channels produced by undefined designated entities. It would assist owners rather than leaseholders,[20] and it would promote diversity in programming (the 910 Class As already have local service requirements) as well as ownership diversity. As explained by DCS witness Rosamaria Caballero (whose statement can be found in Appendix D hereto):

> Granting Class A stations must-carry status, for at least their primary signals, would be one of the single most effective steps the FCC could take to promote minority television ownership, since approximately 15% of Class A stations are minority owned - a proportion roughly five times as high as minority ownership of full power television. Must-carry status for Class A stations would significantly expand a station's ability to sell local and national ads and enhance local programming. Minority broadcasters would benefit greatly if they had access to the only main entry point to cable, IPTV and satellite boxes.
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> Must-carry significantly increases a station's asset value, thereby enhancing its owner's creditworthiness, borrowing power and attractiveness to investors. In my opinion, must-carry for Class A stations would dramatically expand access to

[20] Financing for a lease is far more difficult to secure than financing for ownership. See §IV infra. Further, the goal of the Commission's minority ownership policies should be fostering minority broadcast licensees rather than tenancy arrangements.

capital for minority broadcasters. Access to capital has been the single greatest factor impacting the survival and growth of minority owned broadcast companies.[21]

Proposal #42: Replacement Of TV Channels 5 And 6 With FM Service (Mullaney Engineering, Inc. Petition for Reconsideration and/or Comment, MM Docket No. 87-268, October 26, 2007)

This highly creative proposal deserves inclusion in a third further notice of proposed rulemaking. As Jack Mullaney points out in the above-cited Petition for Reconsideration and/or Comment ("Mullaney Petition"), the redeployment of Channels 5 and 6 for FM "equates to more than 2,000 new or improved FM facilities. Given that the existing FM band consists of only 100 channels, the use of either one or two TV channels would be a staggering expansion of the existing FM band."[22] The potential opportunities for new entrants are so enormous that the Commission would be remiss if it does not afford this fascinating proposal a hard look.

Proposal #43: Repeal Of Radio Subcaps (Comments of Multicultural Radio Broadcasting, Inc., MB Docket No. 06-121, October 23, 2006)

A proposal offered by Multicultural Radio Broadcasting, Inc. ("Multicultural") is entitled to the greatest respect. Multicultural is the nation's preeminent Asian language radio broadcaster, and its television affiliate is the nation's largest minority owned television licensee by audience reach.

Multicultural's proposal would permit more consolidation and thus could operate to the detriment of new entrants. However, it should not be dismissed out of hand. First, of all of the potential deregulatory steps the Commission could take, this is the most moderate one. Second,

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[21] Declaration of Rosamaria Caballero, President, Caballero Television Texas LLC (November 12, 2007) at 1 (emphasis in original), in Appendix D hereto. See also Arthur Greenwald, "For LPTV, DTV is a Countdown to Disaster," TVNewsday, November 17, 2007 (explaining that DTV conversion could leave LPTVs with analog-only service unless they are carried on cable, yet these stations have no must-carry rights.)

[22] Mullaney Petition at 4. Indeed the scarcity of available FM allotments in large markets relative to the demand for such allotments FM band is so profound that companies have begun to resort to extraordinary means to secure access to the FM band in these markets. See, e.g., "New York has a new commercial FM, thanks to TV," Inside Radio, November 16, 2007, at 2 (reporting that Russian language programmer Mega Media Group will lease the FM

an unintended consequence of the subcaps is an anomaly that prevents an AM radio specialist such as Multicultural (and, probably, some of the largest Spanish language broadcasters) from growing:

> Multicultural owns a group of five AM stations in Los Angeles (there are 90 stations in the market). Under the current rules, Multicultural may not own any more AM stations. If it wished to expand its Los Angeles group to the maximum size allowed, it would have to acquire FM stations and it could acquire three FM stations under the current rules. The situation is even more absurd with respect to New York, where Multicultural owns a grandfathered combination of six AM stations (there are 149 stations in the market). The maximization of Multicultural's holdings in New York under current rules would permit the acquisition of three FM stations but only if Multicultural divested one of its existing AM stations in order to obtain one or more FM stations. Such results defy common sense.[23]

Proposal #44: Enhanced Consideration Of Minority Ownership And Viewpoint Diversity Attendant To Consideration Of Assignment And Transfer Applications (Comments of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 06-121 (October 23, 2006); see also Comments of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 02-277, January 2, 2003)

DCS strongly endorses this proposal. For the same reason that the Commission should examine general rulemakings to discern their potential impact on minority ownership,[24] it should examine major transactions. The law the Commission makes on minority ownership has the same force irrespective of whether the underlying issue arises in a rulemaking or in an adjudication.

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audio carrier of LPTV station WNYZ-LP, Channel 6, allowing Mega's programming to be received at 87.88 mHz, while the LPTV station itself will carry a test pattern).

[23] Comments of Multicultural Radio Broadcasting, Inc., MB Docket No. 06-121 (October 23, 2006) at 3 (emphasis in original).

[24] See DCS Proposal #25 (Examination Of How To Promote Minority Ownership As An Integral Part Of All FCC General Media Rulemaking Proceedings).

Proposal #45: Bright Line Test With No Waivers For Assignment And Transfer Applications Exceeding Ownership Caps (Comments of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 06-121 (October 23, 2006); see also Comments of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 02-277, January 2, 2003)

DCS endorses this proposal to the extent that it does not conflict with DCS Proposal #5 (Structural Rule Waivers For Creating Incubator Programs) and similar DCS proposals that are premised on trading an above-cap ownership opportunity for an SDB ownership opportunity. During the 1978-1995 period when the tax certificate policy was in effect, only 2% of broadcast transactions were tax certificate transactions. Thus, it is likely that the vast majority of broadcast transactions will not be effectuated with minority ownership initiatives. As to transactions not involving a minority ownership initiative, the NABOB-Rainbow/PUSH bright line test ought to apply.

Proposal #46: Treatment of LMAs As Attributable Interests (Comments of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 06-121 (October 23, 2006); see also Comments of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 02-277, January 2, 2003)

DCS endorses this proposal. On its face, this proposal would do much to prevent and proscribe the ownership structure abuse DCS seeks to address in its Proposal #10 discussed above.

Proposal #47: Allow Minorities To Own Station Combinations Equal To The Largest Combination In A Market (MB Docket No. 06-121 (October 23, 2006); see also Petition for Reconsideration of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 02-277, September 4, 2003)

DCS strongly endorses this proposal, which presents a creative means of advancing diversity while also counterbalancing the economic dominance of large grandfathered holdings.

II. The Testimony of Minority Owned Broadcasters Demonstrates That The Commission Should Not Deregulate Media Ownership Before It Cures The Gross Underrepresentation Of Minorities From Broadcast Ownership

While the Commission considers DCS' and other proposals, it should be cautious about simultaneously introducing additional ownership consolidation. If the Commission approves each of the pending minority ownership proposals but also approves consolidation on the massive scale contemplated by the Commission in 2003, it would have taken minority broadcast ownership three steps forward and sixty steps backward.

To be sure, consolidation is not the only cause of the paucity of minority broadcast ownership. Certainly the present effects of past discrimination is at least as significant a factor. Further, consolidation attendant to strictly observed ownership caps sometimes yields a short-term gain in minority ownership when merging companies, bumping up against the local radio ownership caps, are committed to a station disposition process in which minorities have a fair chance to prevail.[25] And some forms of very modest consolidation, linked arm-in-arm with commensurate pro-diversity incubation initiatives, could yield a net benefit to the public.[26]

Not all forms of consolidation are equal in impact. Some forms of consolidation under consideration, such as additional duopolies or the outright repeal of the radio ownership caps, would have an especially severe impact on minority ownership since they would take off the transactional table properties minority broadcasters need to grow their companies while, at the same time, enhancing the competitive disadvantages faced by minorities who must compete against much larger local media combinations.

The Commission should not lose sight of the many specific ways in which consolidation has constrained the growth of minority broadcast ownership and sometimes stopped minority

[25] A prime example is Clear Channel's disposition of 40 of 110 radio station spinoffs to minorities when it merged with AMFM in 2000. In the long run and in most cases, however, consolidation tends to diminish minority ownership, as documented by the witness testimony discussed herein.

new entrants in their tracks. Attached as Appendix D are the statements of 17 CEOs or COOs of minority broadcast owners or former owners.[27] These witnesses have documented five specific adverse effects of consolidation on minority broadcast ownership: (1) impairment of minority broadcasters' ability to acquire more stations and expand their business operations; (2) restraints on minority broadcasters' ability to attract advertising revenue; (3) restraints on minority broadcasters' ability to offer competitive program service in the public interest; (4) restraints on minority broadcasters' ability to attract the best employees and offer secure employment and training to minorities seeking to enter the industry; and (5) restraints on minority broadcasters' ability to secure financing.

First, consolidation has had a negative impact on minority broadcasters' ability to acquire more stations and expand their business operations. For example:

> Raul Alarcon, Chairman, President and CEO, Spanish Broadcasting System, Inc.: Today, competition in Spanish-language broadcasting is intense and non-Hispanic companies that broadcast in Spanish and have access to very substantial funds make expansion difficult for SBS and other similarly situated broadcasters. The whole area of consolidation after the passage of the Telecommunications Act of 1996 as well as relaxed ownership standards have placed me at a competitive disadvantage, particularly in the larger markets.
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> Lyle Banks, President and CEO, Banks Broadcasting, Inc.: The FCC's media ownership rules have enabled much larger companies to grow at the expense of smaller companies like mine. Consolidated operators are more capable of controlling their costs through economies of scale. Consolidation also allows these larger companies a greater advantage in purchasing programs, employee benefits, and in obtaining many other assets as well.
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> Hundley Batts, Managing Agent, WEUP(AM) Radio: The media ownership rules and consolidation trends have also made the purchase and acquisition of additional properties more difficult. In our current market, the prices of properties that were once categorized as unattractive are being inflated. These higher prices make it more difficult, and in some cases impossible, for local broadcasters to submit bids to purchase these stations.

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[26] One of several examples is DCS' Proposal #5 (Structural Rule Waivers For Creating Incubator Programs).

[27] Signature copies of the declarations are on file with counsel.

John Douglas, President and CEO, AIM Broadcasting, LLC: The FCC's media ownership rules have affected my company's financial health by fostering consolidation and doing little to correct consolidation's impact on small businesses. It is difficult for a company like mine, with one or two stations, to compete in a market where others own up to seven stations.

Ronald Gordon, President and CEO, ZGS Communications: As a result of radio local market consolidation, we are now faced with the possibility that we will have to sell our Washington, D.C. radio station. The reason for this decision is that a consolidator has purchased several radio stations in this market with different programming formats, one of which is a Spanish-language format….The FCC should reconsider the detrimental effect that media consolidation is having on minority media owners. The current climate of media consolidation does nothing to truly serve the public interest, promote minority ownership or foster a diversity of voices.

James Hardman, President and CEO, Hardman Broadcasting, Inc.: With the ownership rules that are currently in place, I understand why many smaller radio companies have sold their stations or closed their doors. The current mantra in the radio industry is: the more stations you own in a market, the better you can compete with the larger radio groups. One must either "get big or get out."

Raymond Simes, President and CEO, West Helena Broadcasters, Inc.: I have witnessed situations where a small media owner purchases four or five more radio stations. The large companies will then make an offer to buy the stations. If the smaller company refuses the offer, the larger company will change the programming format of one of its radio stations to place it in direct competition with the smaller station. This guerilla business tactic puts a particularly enormous financial strain on minority media owners because most minority owners only own one radio station.

Darnell Washington, President, CEO and General Manager, Destiny Communications: My experience has been that media consolidation eliminates jobs, diminishes the diversity of voices, and crushes entrepreneurship. The FCC's media ownership rules have given an unfair advantage to large media consolidators to the detriment of the spirit of entrepreneurship.

Second, consolidation also has an adverse effect on small broadcasters' ability to compete for advertising revenue. For example:

Hundley Batts, Managing Agent, WEUP(AM) Radio: The FCC's media ownership rules have resulted in an increase of media consolidation that has had an oppressive impact on small companies like ours. The large media companies have a built-in advantage over us because they are able to market nationwide as a cluster. This allows them to purchase advertising time based on volume rather than on the merits of their local program service. The marketing tactic of the media conglomerates is to absorb the entire local advertising budget based on the sum of the conglomerates' ratings numbers among their combined station holdings.

Rosamaria Caballero, President, Caballero Television Texas LLC: The FCC's media ownership rules have made it more difficult for independent operators and small and emerging station groups to obtain national advertising dollars from advertisers and agencies. The large media companies dominate national advertising revenues. Without significant national advertising dollars, it is difficult for small station groups to realize a profit. As media companies continue to consolidate, the advertising dollars are becoming more concentrated into the hands of the large media companies.

Merrill Charles, President and CEO, Salt City Communications, Inc.: The large media conglomerates already had established relationships with the advertisers. The conglomerates could offer the advertisers package deals that allowed their ads to be broadcast on several of their stations, which meant a larger market share of listeners than I could offer….In the Syracuse market, one company owned five stations and two other companies owned four stations each. These three companies controlled well over 50% of the advertising revenue in the Syracuse market, with one company alone claiming a 30% share of the advertising revenues.

Bishop Victor Curry, President and CEO, New Birth Broadcasting Corporation: As an independent urban gospel station, WMBM has been affected by the FCC's current media ownership rules primarily in the allocation of advertising and non-traditional revenue dollars. In the urban sector, many cluster stations owned by corporations have begun to use gospel formats. This means that independent stations, like ours, are blocked from receiving advertising revenue that we previously were able to obtain.

Rip Daniels, President and CEO, WJZD, Inc.: Since the FCC has allowed mega-station companies to purchase many stations in our market, we have witnessed predatory under-pricing of commercials. Fortunately, WJZD is locally owned and operated with a small amount of debt, so we have withstood the onslaught of the mega-station companies. However, we are concerned that if the mega-station companies are allowed to expand into newspaper and/or television advertising, prices would be forced so low that our services to the community would have to be cut in order for us to remain competitive….We are interested in purchasing another radio station in this market but, because the mega-station owners have such a large share of the advertising sales, we would not earn enough in advertising to show a profit for quite some time.

James Hardman, President and CEO, Hardman Broadcasting, Inc.: As a small stand-alone station, my company's financial health and growth have been hindered in the market. Advertisers have become accustomed to dealing with cluster owners, which makes it very difficult for a smaller operation, such as mine, to secure the revenue needed to operate.

Arthur Mobley, Vice President and COO, Black Entrepreneurs Association: In 1999, I was forced to sell my stations because media consolidation in the market took away the advertising dollars that my stations needed to survive. Consolidated media companies exerted undue pressure on advertising agencies to only buy airtime on the stations in certain portfolio areas. Advertising dollars were going to the media companies that had the most stations in a market. Small and minority station owners, like me, were squeezed out of the advertising dollars by the sheer volume of advertising commanded by the new and larger consolidated companies.

Paula Nelson, President and CEO, Diamond Broadcasting: Advertising dollars are the lifeblood of the broadcast industry. When conglomerates own the lion share of radio stations in one market and offer packaged deals to advertisers that include airtime on all of their stations, radio owners like me, who only own one station, cannot compete for those dollars in any form. This causes us to expend more time and money searching for fewer dollars with small results….Because two radio conglomerates also own the billboards in the Sacramento area, I have no option except to purchase my radio station billboards ads from them. Once I buy a billboard ad from them, they subsequently place a larger billboard ad next to mine advertising their competing radio station. Is this a level playing field?...I have to struggle to get the advertising dollars to support this type of programming because all of the larger advertisers are committed to conglomerates.

Don Rosette, General Manager, WMCS(AM), owned by All-Pro Broadcasting, Inc.: One company owns five radio stations in the Milwaukee market, and its stations command a disproportionate share of the advertising dollars. As a result, we could not generate the amount of advertising revenue needed to pay experienced personnel if we chose a music format in this market….We cannot offer prospective advertisers the rates that the media conglomerates offer. As a result, we lost our broadcast of the University of Wisconsin at Madison's women's basketball games to a competitor….In spite of the ratings that show that the majority of WMCS' audience consists of consumers who purchase a high volume of durable goods (i.e. fast food, furniture, cars, etc.), the advertisers of these goods continue to by-pass us and advertise on the larger consolidated stations. We broadcast community-oriented programming that garners a high volume of listeners and the confidence of the community we serve; yet we still have to struggle for advertising dollars.

Ernesto Schweikert, President and CEO, Crocodile Broadcasting Corporation: Each of the three largest consolidated media owners in the New Orleans radio market has at least four stations. National advertisers prefer to buy airtime from them because they can offer packaged advertising deals on all of their stations for one price. As a minority who owns one radio station, I cannot offer these types of attractive deals to advertisers. This forces me to offer other types of added incentives to advertisers just to compete. These incentives include free live remotes, free airtime, and concert and football tickets. All of these added incentives are offered at a financial detriment to me. Each incentive comes with a cost that I do not always recoup. Essentially I am forced to scramble for the fraction of the advertising dollars that are left on the table after the consolidators have captured all of the large advertising contracts.

Darnell Washington, President, CEO and General Manager, Destiny Communications: Small advertising clients appreciate the fact that we are locally owned and they come to us for that reason. But the small advertising dollars are not enough to keep us afloat. While we share a mutual appreciation for the small advertisers, we also want to compete for the larger advertisers. Because the FCC has allowed so much consolidation, the larger advertisers gravitate toward the consolidated media owners and never give us a first glance. This unfair advantage keeps us out of the game before we get a chance to enter the stadium.

Third, consolidation has had an adverse impact on minority broadcasters' ability to offer optimal programming services. For example:

Rip Daniels, President and CEO, WJZD, Inc.: WJZD is a community-oriented station with a daily two-hour local talk show, news on the hour, and a tremendous amount of community involvement. The mega-stations in our market have none of these features, yet they bill themselves as "local stations." These mega-stations command more of the market shares without the same commitment to the community.

Don Rosette, General Manager, WMCS(AM), owned by All-Pro Broadcasting, Inc.: We need capital improvements and we would like to add news programming to our broadcast. However, because of our decline in revenue as a result of media consolidation, we cannot make the necessary capital improvements or pay for a news department…This is why we had to look for a niche to separate us from the other AM stations, so we chose a local talk format and the ESPN contract. This programming requires fewer personnel.

Darnell Washington, President, CEO and General Manager, Destiny Communications: Consolidated ownership makes it difficult for me to negotiate for syndicated programming because the large owners control the pricing of programming. The consolidated media owners also control the news content by transmitting news from one market within the state to another (e.g. transmitting news broadcasts from a station in Helena to Great Falls). This limits the local news information that the community of Great Falls receives.

Fourth, consolidation has impaired minority broadcasters' ability to compete for the strongest personnel and to offer secure employment and training.[28] For example:

[28] Minority radio broadcasters employ over half of the minorities working in radio. See Comments of EEO Supporters, Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, MM Docket No. 98-204 (April 15, 2002) at 52-53.

Merrill Charles, President and CEO, Salt City Communications, Inc.: After my stations were sold, all of the employees, who were predominantly African American, were terminated. The buyer had only two or three African Americans on its staff of over 100 employees. The other two consolidated owners in the market had no African Americans on their staffs. This was ironic because the audience that all three of these media companies program for is significantly composed of minorities. Many of these owners continue to ignore FCC recommended employment outreach methods, notifications, and hiring practices that would provide diversity and opportunity in their stations.

Bishop Victor Curry, President and CEO, New Birth Broadcasting Corporation: As a consequence of the FCC's media ownership rules, we have to consider laying off staff, consolidating positions and taking other budget-cutting steps. We have, in a sense, been pushed into a financial straight jacket - cutting dollars allocated for larger promotions, marketing and personnel training. This further hampers our ability to compete….Needless to say, attracting new sales and maintaining sales accounts is far more than an uphill battle.

John Douglas, President and CEO, AIM Broadcasting, LLC: While securing and maintaining talent has not been a challenge, retaining qualified sales personnel has been difficult. A cluster owner can pay salespeople more because each one can sell the inventory of several stations. Thus, a cluster owner is able to attract better sales people because it can afford to offer larger compensation packages. Smaller companies, like AIM Broadcasting, find it difficult to offer competitive compensation packages to well qualified sales professionals.

Paula Nelson, President and CEO, Diamond Broadcasting: At great expense, I have trained some of Sacramento's best minority and women programmers and sales executives, only to lose them to a conglomerate for a bottom line reason: it can afford to pay more than me because of the large-scale revenue it generates from its packaged deals to advertisers. Thus, with the FCC's blessing, large conglomerates have almost assured that small, women and minority-media owners will not likely ever have a chance to be equal contenders in this industry.

Don Rosette, General Manager, WMCS(AM), owned by All-Pro Broadcasting, Inc.: Media consolidation has affected our hiring practices. We have a very good track record of hiring minorities but, because one company captures a disproportionate share of the advertising dollars in the market, we cannot easily retain staff. We had to reduce our personnel from 32 fulltime persons in 2004 to 21 fulltime persons. We have only one on-air personality who is a seasoned professional.

Ernesto Schweikert, President and CEO, Crocodile Broadcasting Corporation: My station's disproportionately low advertising revenue also affects my ability to hire and/or retain personnel in the sales department. Seasoned sales personnel seldom approach KGLA seeking employment, and I consistently lose such personnel because they prefer to work for the consolidators. I had often devoted considerable time and effort to training these personnel, only to lose them to larger companies. The consolidators can offer their sales staffs larger salaries and bonuses because they are able to negotiate large national contract sales. They do not have to work as hard to come up with ways to attract advertisers because the advertisers seek them out.

Raymond Simes, President and CEO, West Helena Broadcasters, Inc.: Local announcers and DJs are also being forced out of the market because the large media companies are broadcasting syndicated programs. Small media owners, like my company, need to hire local announcers to compete with the syndicated programs, but we cannot pay the salaries these announcers are accustomed to earning. In order for us to hire these experienced announcers at salaries that they will consider, the announcers must fulfill the duties of announcer and program director. This forces the announcers to make the choice of accepting a position with more responsibility for a salary that is similar to their previous one or take an announcer position for less money.

Darnell Washington, President, CEO and General Manager, Destiny Communications: My staff of 13 people is very small for a television station. It has been difficult for me to compete with the pay scales of the consolidated media owners. As a result, I cannot attract experienced sales personnel, which are the lifeblood of media operations. The sales staff members I employ arrive with very little experience. I must train them and I have no experienced personnel to guide them. This situation has a detrimental impact on my ability to compete with the consolidated media owners.

Fifth, consolidation has made it difficult for minorities to obtain the financing necessary to become a broadcast owner or expand their current businesses. For example:

Lyle Banks, President and CEO, Banks Broadcasting, Inc.: The financial leverage that conglomerates are afforded through their multiple sources of revenue allow them to buy stations at higher prices than small business owners can afford to pay, which makes it very difficult to compete in the current media arena. Access to efficient capital often hinders growth in minority ownership. There is financing available for experienced, minority-owned media companies, but it is only a fraction of what a broadcaster needs to survive. The amount of capital available must be scaled to meet the cost of acquiring a station….It is for these reasons that I sold KSCW-TV and I am currently in the process of selling KNIN-TV. To preserve the future of my company's employees, I concluded that I must sell the stations to a company that is strategically and financially able to compete in the current environment.

John Douglas President and CEO, AIM Broadcasting, LLC: Even though [] niche programming is valuable to the community, securing funding to provide this service is challenging. AIM Broadcasting is similar to a charter airline competing with major air carriers for financing – we provide a valuable service to a select group of people, while the major carriers seek to serve the masses. Many lenders are not progressive enough to see the value in providing such multicultural programming.

Ernesto Schweikert, President and CEO, Crocodile Broadcasting Corporation: In order to compete with the consolidators, minority broadcast owners need more than one station. Because minority broadcasters seldom have the capital base that advertising dollars produce, lenders are hesitant to lend to us. If lenders decide to lend to us, they typically want an enormous amount of collateral, including the existing radio station. By allowing media consolidation, the FCC has facilitated these sharp practices of lending institutions.

Thus, as a direct result of the FCC's media ownership rules and the consolidation it has produced, minority broadcasters have been forced to make business decisions driven by the need to survive rather than expand. For example:

Raul Alarcon, Chairman, President and CEO, Spanish Broadcasting System, Inc.: My company has vigorously objected to some of the major consolidations in recent years largely to no avail. Hindsight has proven that we were correct in predicting the detrimental effects that these mergers were going to have on our efforts to expand into markets that we have sought to enter or markets in which my company already operates….In some cases, I have sold broadcast properties or chose not to pursue attractive broadcast properties due solely to the fact that highly consolidated and wealthy competitors would have made it difficult to make inroads into a market that would have justified continued or expanded operations.

Lyle Banks, President and CEO, Banks Broadcasting, Inc.: By implementing policies that foster the interests of larger consolidated conglomerates, the FCC has affected my ability to compete in the broadcast market. Under better circumstances, I would be adding stations and assets to the portfolio of Banks Broadcasting as opposed to selling the assets I have been able to acquire during the last six years of operation. The current media ownership rules simply do not make expansion of my media business feasible.

Bishop Victor Curry, President and CEO, New Birth Broadcasting Corporation: Because of this revenue crunch, WMBM had to put aside our plans to purchase an FM property and possibly a TV property. The FCC's ownership rules put independent stations in a Catch 22 – in order to compete, an independent would have to assemble its own cluster of properties; however, doing so is virtually impossible because a single property cannot attract the advertising revenue needed to meet budgets and generate profits and asset value.

Ronald Gordon, President and CEO, ZGS Communications: In this type of market environment, there is little opportunity for us expand in radio broadcasting. At one time we were looking forward to acquiring more radio stations, but consolidation has forced us to step backwards and consider relinquishing our radio assets.

Arthur Mobley, Vice President and COO, Black Entrepreneurs Association: It did not matter that I had very strong programming geared toward the local African-American community or that my station rated higher than the consolidated stations in the market. The market's dominant company had eight stations and I only had one; therefore, the other company was able to control the advertising marketplace. As a result, I was eventually forced to forgo my expansion plans and sell my stations in Phoenix and Las Vegas.

None of these witnesses declares that every ownership rule relaxation the Commission could conceivably adopt would produce an irremediable harm to minority broadcasters, and none advocates the breakup of existing combinations. However, their testimony compels two global conclusions: first, the Commission should not undertake massive new consolidation; and second, before the Commission allows even modest new consolidation, it should mitigate any damages by ensuring the net long-term growth of minorities in broadcast ownership.

III. The Commission Should Retain The Failing Station Solicitation Rule

In 2003, the Commission imprudently repealed the Failing Station Solicitation Rule (FSSR) without recognizing that in 1999, only four years earlier, it had created the FSSR as a means to foster an increase in minority television station ownership. At the time that the Commission repealed the FSSR, it was the only structural ownership rule having the purpose of promoting minority television ownership. There was no evidence in the record showing that the FSSR was harmful or ineffective. The Commission's rationale for repealing the FSSR was that "the efficiencies associated with operation of two same-market stations, absent unusual circumstances, will always result in the buyer being the owner of another station in the market."[29]

[29] 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), 18 FCC Rcd 13620, 13708 ¶225 (2003), aff'd in part and remanded in part in Prometheus, supra.

The Commission has asked for comment on whether the FSSR should be retained.[30] DCS concurs with the Office of Communication of the United Church of Christ, Inc. et al.'s legal analysis of this question.[31] The factual issue turns on whether recruitment of potential out-of-market buyers, such as minorities and new entrants, can result in the placement of stations in the hands of parties other than in-market owners who would create duopolies. The testimony of three DCS witnesses (Appendix D hereto) shows that recruitment does result in transactions:

> Michael Roberts, Chairman, President and CEO, Roberts Broadcasting: In 1981-1982, we applied for and received a license for WRBU-TV, an unbuilt, full power station in St. Louis, by way of the FCC's comparative hearing process. WRBU went on the air in 1989. Since then, we have acquired full power stations in Evanston, IL and Denver, CO, and had construction permits for broadcast facilities in Raleigh-Durham, NC, Nashville, TN, New London/Hartford, CT, Albuquerque, NM, and Salt Lake City, UT. We also owned LPTVs in Pensacola, FL and Prichard, AL….The stations we acquired in Jackson, Nashville and Raleigh-Durham were in bankruptcy at the time we purchased them. We learned about the station in Evanston from a broker who informed us that the station was in bankruptcy. We bought the competing station in Albuquerque and we purchased the unbuilt construction permit of the station in Denver.
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> Ernesto Schweikert, President and CEO, Crocodile Broadcasting Co.: My company's experience illustrates why the Commission should retain the FSSR in its arsenal. In 2006, an affiliate of CBC purchased the construction permit for WHMM-DT out of bankruptcy. The seller recruited CBC in 2005, and even after Hurricane Katrina dramatically affected television asset values in the New Orleans market, the seller worked cooperatively with us as we got the transaction financed and closed. Even though CBC did not own a television station, we were a highly motivated buyer because New Orleans had no Spanish language television station. As the only Latino radio owner in the market, we knew how to serve the Latino community. I'm proud to say that we built the station, signed it onto the air this spring as New Orleans' Telemundo affiliate and in August combined its operations with those of KGLA.
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> Darnell Washington, President, CEO and General Manager, Destiny Communications, licensee of KTGF-TV, Great Falls, MT: Although KTGF-TV was not a failing station, its previous owner, Max Media, was diligent in selling to a minority due to the fact that under the duopoly rules Max could not acquire another station in the market without selling our station; nor would the rule have allowed KTGF to be purchased by another in-market company. I've been a broadcast executive in Oklahoma, Nebraska and Kansas

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[30] 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, MB Docket No. 06-121 et al. (Second Further Notice of Proposed Rulemaking), 22 FCC Rcd 14216, 14222 ¶11 (2007).

[31] See Comments of the Office of Communication of the United Church of Christ, Inc., National Organization for Women, Media Alliance, Common Cause and Benton Foundation, MB Docket 06-121 (October 23, 2006) at 30-32.

throughout my career of 20 plus years, and the opportunity to own and operate my own station may never have arrived had it not been for the duopoly rule limitation and Max's initiative as a seller. The opportunity that Max Media created as a seller became my opportunity to acquire my first station. The fact that Great Falls, Montana is a small market and has a very limited African American population (less than 2% of 168,000) was of little consequence in my decision to move forward with this project. There are dozens of minority broadcast executives who possess the training and initiative to buy and operate a television stations if only there were opportunities to do so.

IV. The Commission Should Act Immediately To Persuade Lenders And Investors To Finance Minority Broadcast Companies

In an effort to determine the availability of capital for minorities and, especially, new entrants pursuing smaller transactions, MMTC surveyed financial institutions that, in its experience, are responsible for providing nearly all of the small-deal minority broadcast capital for transactions under \$10M. Of the 16-20 institutions believed to provide such financing, 13 responded. The survey instrument was deliberately short in order to secure a broad response. A copy of the survey instrument and a summary of the responses are provided in Appendix E. The results support these observations:

1. Range of Financing. The respondents were asked "the normal range of financing you would commit for a broadcast transaction." The responses broke down as follows:

- Five firms would consider providing \$5M or less in senior debt
- Four firms would consider providing \$5M or less in mezzanine
- Five firms would consider providing \$5M or less in equity

It appears that the small deal market has rebounded somewhat from the early part of the decade, when virtually no one was providing senior debt under \$5M. Understandably, this sector of the financing world is lightly populated because due diligence requirements are essentially the same regardless of deal size, small transaction financial returns are often slight, and the risk of errors by inexperienced new entrants is sometimes substantial. To attract more financial institutions to the small deal market, the Commission should adopt incentives such as waiver-based incubator programs,[32] as well as EDP reform aimed at restoring the seller paper market.[33]

2. Types of Radio Deals Financed. The respondents were asked "which of these radio deals would you consider financing for a quality operator in an average-growth medium market?" The responses are tabulated below:

AM Station Deals:

- Nine firms would consider a single market cluster, all AM stations (cash flowing)
- Four firms would consider a standalone AM station (cash flowing)
- Seven firms would consider a single market cluster, all AM stations (breaking even, but no positive BCF)
- Four firms would consider a standalone AM station (breaking even, but no positive BCF)
- Four firms would consider a single market cluster, all AM stations, stick deal (virtually no revenue)
- Two firms would consider a standalone AM stick deal (virtually no revenue)
- Two firms would consider the buildout of a CP for a new AM station

FM Station Deals:

- Nine firms would consider a standalone FM station (cash flowing)
- Six firms would consider a standalone FM station (breaking even, but no positive BCF)
- Three firms would consider a standalone FM stick deal (virtually no revenue)
- Three firms would consider the buildout of a CP for a new FM station
- No firms would consider an FM HD-2 or HD-3 lease

Two firms would not consider any radio deal.

Most of the stations that are offered for sale to minority and new entrant buyers are AM stations and stick deals. Financing for these opportunities appears to be very difficult to find. It is especially troubling that only two of the 13 firms surveyed will consider a standalone AM stick deal or the buildout of an AM construction permit. The Commission can help stimulate the

[32] See, e.g. DCS Proposal 5 (Structural Rule Waivers For Creating Incubator Programs).

[33] See DCS Proposal #8 (Nonattribution Of EDP Interests In SDBs).

creation of entrepreneurial programs that could attract more financing for AM station acquisitions.[34]

Not one firm would consider financing an FM HD-2 or HD-3 lease. Despite the enormous promise of HD radio, a lease is extraordinarily difficult to finance because of often unrecoverable sunk costs and the absence of collateral or its equivalent. Ownership can be financed, and therefore it is vital that the Commission adopt DCS Proposal #36 (Use of the Share-Time Rule to Foster Ownership of DTV and FM Subchannels), which would allow ownership of an HD-2 or HD-3 channel by giving the FM licensee the flexibility to monetize some of its HD assets if the licensee voluntarily elects to do so.

3. Types of Television Deals Financed. The respondents were asked "which of these television deals would you consider financing for a quality operator in an average-growth medium market?" The responses are tabulated below:

Top-Four Network Affiliates:

- Eleven firms would consider a standalone top-four network affiliate (cash flowing)
- Eight firms would consider a standalone top-four network affiliate (producing revenue, but no positive BCF)
- Six firms would consider a standalone top-four network affiliate stick deal (virtually no revenue)

Non-Top-Four Network Affiliates:

- Ten firms would consider a standalone non-top-four network affiliate (cash flowing)
- Five firms would consider a standalone non-top-four network affiliate (producing revenue, but no positive BCF)
- Four firms would consider a standalone non-top-four network affiliate stick deal (virtually no revenue)

[34] See, e.g., DCS Proposal #28 (Extension Of The Community Reinvestment Act (CRA) To Encourage Financial Institutions To Provide Debt Financing To Broadcasters), Proposal #29 (Encourage More Local And Regional Banks To Participate In SBA Guaranteed Loan Programs For Broadcast And Telecom Ventures) and Proposal #30: (Establishment Of A Fund Of Funds).

DTV Sub-Channel Lease:

- No firms would consider a DTV sub-channel lease

One firm would not consider any television deal.

It appears that that financing for most television transactions is available; however, the financial market is competitive only for top-four network affiliates (all types) and for cash flowing non-top-four network affiliations. These are the assets for which competition among buyers is the most intense. To tie down these assets, new entrants generally must prevail in private auctions – a daunting proposition for anyone lacking a large private equity house as her sponsor. The Commission can intervene in this market by giving broadcasters incentives to dispose of these assets outside the private auction process.[35]

V. Promoting Competition Is A Compelling Governmental Interest, And Race-Conscious Initiatives Further That Interest

DCS has explained why promoting diversity and remedying the present effects of past government involvement in discrimination are compelling governmental interests sufficient to justify narrowly tailored race-conscious remedies under strict scrutiny.[36] In its 2007 Reply Comments, DCS promised to amplify on its contention that promoting competition should be regarded as a third compelling governmental interest justifying race-neutral remedies.[37] As discussed below, promoting competition is a compelling government interest and may be the Commission's most important task. Moreover, increasing diversity in the communications marketplace – at all levels of participation in the industry – furthers the Commission's competition goals.

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[35] For example, DCS Proposal #32 (Reservation, For A Company That Finances Or Incubates An SDB, Of First Place In The Queue To Form A Duopoly In A Market For Which Only A Limited Number Of Duopolies Are Permissible), and Proposal #34 (Extension Of Divestiture Deadlines In Mergers Where Applicants Have Actively Solicited Bids For Spin-off Properties From SDBs).

[36] See Reply Comments of the Diversity and Competition Supporters, MB Docket 06-121 (November 1, 2007) ("DCS 2007 Reply Comments") at 8-14.

Facilitating a Competitive Marketplace is a Compelling Government Interest

Promoting competition should be considered a compelling government interest when the legislature has specifically charged an agency to enhance competition. For example, in Blount v. SEC, the D.C. Circuit found that when there is a link between anti-competitive behavior and the agency's goal of promoting "just and equitable principles of trade," the agency may take actions designed to eliminate practices that undermine the integrity of the market.[38] Congress required the SEC to create rules that would "remove impediments to and perfect the mechanism of a free and open market" and not allow "unfair discrimination" between securities brokers or dealers.[39] The SEC found that certain practices created "artificial barriers to competition" and undermined "just and equitable" principles of trade.[40] The D.C. Circuit agreed and found that the government had a "compelling interest" in preventing such obstacles to competition by "protecting underwriters of municipal bonds from unfair, corrupt market practices."[41]

Congress has repeatedly expressed a government interest in promoting competition in the communications marketplace. Specifically, Congress has directed the Commission to encourage competition and eliminate market entry barriers. In fact, it required the Commission to assess competition on a regular basis as part of the Commission's periodic review of media

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[37] Id. at 9 n. 32.

[38] See Blount v. SEC, 61 F.3d 938, 945 (D.C. Cir. 1995), cert. denied, 517 U.S. 1119 (1996) ("Blount"). Blount involved SEC action that restricted that ability of securities professionals to contribute and solicit political campaign contributions for officials with whom they did business. Id. at 939-940. William Blount, a political party official and registered broker, challenged the statute as a violation of his First Amendment rights. Id. at 940. The Court agreed that this was state action that infringed on Blount's First Amendment rights; however, it found that the government had a compelling interest in preventing corruption. Id. at 944.

[39] Id. at 944 (citation omitted).

[40] Id. at 945 (citation omitted).

[41] Id. at 944.

ownership.[42] In addition, Section 257 requires the Commission to "promote…vigorous economic competition."[43] Moreover, Section 309(j) also requires the Congress to seek methods to "promote economic opportunity and competition" when assigning licenses.[44]

Recognizing the promotion of a competitive communications marketplace as a compelling state interest is consistent with the Supreme Court's opinion in Grutter v. Bollinger.[45] In that case, the Court upheld a race-conscious college admissions program,[46] and explained that "universities occupy a special niche in our constitutional tradition," and that "the robust exchange of ideas" is "of paramount importance."[47] Similarly, the Supreme Court has recognized the special role that broadcast media has in our society.[48] In addition, the pursuit of a "robust exchange of ideas" is as important in the broadcasting context as it is in the university context. As the Commission has recognized for decades, competition in the communications marketplace advances the exchange of ideas and diverse viewpoints.[49] Moreover, greater

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42 See Telecommunications Act of 1996, Pub. L. 104-104, §202(h), 110 Stat. 56, 111-12, codified at 47 U.S.C. §161 (mandating that the Commission review its ownership rules biennially to determine which rules are "necessary in the public interest as the result of competition"); see Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, §629, 118 Stat. 3 (2004) (providing that such review shall henceforth be quadrennial).

43 47 U.S.C. §257(b).

44 Id. §309(j).

45 See Grutter v. Bollinger, 539 U.S. 306 (2003).

46 Grutter involved a law school admissions policy that was alleged to have considered race as the predominant factor in admissions decisions. Id. at 317. However, the Supreme Court disagreed, finding that race was only one of many factors that the government considered, and that attaining a diverse student body was at the heart of the law school's institutional mission. Id. at 324, 329.

47 See Grutter, 539 U.S. at 329.

48 See e.g. Red Lion v. FCC, 395 U.S. 367, 390 (1969) ("[i]t is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here"); FCC v. Pacifica Foundation, 438 U.S. 726, 748 (1978) ("the broadcast media have established a uniquely pervasive presence in the lives of all Americans"); Turner v. FCC, 520 U.S. 180, 195 (1997) ("Turner II") (broadcasting is "an essential part of the national discourse on subjects across the whole broad spectrum of speech, thought, and expression") (citations omitted).

49 See, e.g. Amendment of Section 73.3555 of the Commission's Rules, Broadcast Multiple Ownership Rules, 4 FCC Rcd 1723, 1724 ¶7 (1989) (stating that "[a]lthough one of the structural purposes underlying our multiple ownership rules is to encourage diversity in the ownership of broadcast stations, we have encouraged ownership

competition and additional viewpoints "enhance[] the diversified programming which is a key objective not only of the Communications Act of 1934 but also of the First Amendment."[50] Although the Supreme Court has not yet expressly decided whether promoting competition could justify a race-conscious remedy under strict scrutiny,[51] courts have recognized the importance of a healthy, competitive marketplace in regulated industries, and there is no dispute that the government has an important interest in eliminating restraints on fair competition.[52]

Congress also has expressed a clear link between diverse ownership and competition. For example, in enacting Section 257, Congress found that promoting diverse ownership is an integral component of promoting competition.[53] In Section 309(j), Congress also provided that the Commission could "promote economic opportunity and competition" by "disseminating licenses among a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women."[54]

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diversity as a means of promoting diversity of program sources and viewpoints, not as an end in itself"); 2002 Biennial Regulatory Review, Report and Order, 18 FCC Rcd 13620, 13630 ¶30 (2003), aff'd in part and remanded in part, Prometheus Radio Project v. FCC, 373 F.3d 372 (3d Cir. 2004), stay modified on rehearing, No. 03-3388 (3d Cir., September 3, 2004), cert. denied, 545 U.S. 1123 (2005) ("[O]ur rules should encourage diverse ownership precisely because it is likely to result in the expression of a wide range of diverse and antagonistic viewpoints.")

[50] See Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 979, 981 (1978).

[51] In NAACP v. FPC, 425 U.S. 662 (1976), the NAACP had asked the Court to find that EEO rules in the power industry would make that industry more competitive. The Court found the argument intriguing, but concluded that the facts did not demonstrate a nexus between minority employment and electric power generation sufficient to require the Federal Power Commission to adopt an EEO rule similar to the EEO rule then in effect at the FCC. In dictum, the Court declared that the FCC's mandate to promote diversity justified its EEO regulations. Id. at 670 n. 7.

[52] See, e.g. Turner II, 520 U.S. at 189-90. In Turner II, the Supreme Court held that fair competition in the market for licensed regulated facilities is an important government interest.

[53] Congresswoman Cardiss Collins, a sponsor of Section 257, stated that the government "cannot disregard the lessons of the past and the hurdles we still face" when seeking to promote "diversity of ownership [which] remains a key to the competitiveness of the U.S. communications marketplace." 142 Cong. Rec. H1141 at H1176-77 (daily ed. Feb. 1, 1996) (Statement of Rep. Collins). Thus, promoting diverse ownership also serves to overcome past discrimination.

[54] H.R. REP. 103-111, at 254, 1993 U.S.C.A.A.N. 378, 581 (May 25, 1993).

Race-Conscious Initiatives Advance the
Compelling Interest in Promoting Competition

Although the Commission has generally embraced Congress' mandate to promote competition,[55] there cannot be true competition until the historical entry barriers caused by past discrimination are remedied. As DCS has explained in prior filings in this proceeding, minorities were delayed from entering the broadcast business for approximately fifty years due to societal discrimination. For several decades, the Commission routinely and deliberately granted broadcast licenses to segregationist companies and colleges, thereby facilitating the exclusion of minorities from broadcast employment and ownership.[56] While the Commission can address these entry barriers as a means of remedying the present effects of past discrimination, the Commission also should eliminate the entry barriers because they are anticompetitive, irrespective of their root causes.[57] The Commission therefore should continue to promote competition by adopting proposals that will encourage minorities to enter into the management and ownership of licensed facilities.

It is well established that discrimination hinders competition. More than a decade ago, Andrew Brimmer concluded that discrimination against African Americans in the labor market resulted in a loss of over $240 billion dollars per year to the American economy.[58] Brimmer's

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[55] Chairman Martin has stated that "[a] more talented workforce leads to improved programming, which ultimately benefits all consumers. The program we adopt today therefore should promote not just diversity, but also true competition." Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies (Second R&O and Third NPRM), 17 FCC Rcd 24018, 24129 (2002) (reconsideration pending on other grounds) (Separate Statement of Commissioner Kevin J. Martin).

[56] See, e.g. Southland Television, 10 RR 699, recon. denied, 20 FCC 159 (1955) (holding that because Louisiana's movie theater segregation law was not inconsistent with the Communications Act, a segregationist movie theater owner could hold a television license). Several other examples of how the Commission promoted segregation in broadcasting are provided in the Initial Comments of the Diversity and Competition Supporters, MB Docket 02-277 (January 2, 2003) at 22-23 ns. 38-40.

[57] See DCS 2007 Reply Comments at 13-14.

[58] Steven A. Ramirez, What We Teach When We Teach About Race: The Problem of Law and Pseudo-Economics, 54 J. Legal Educ. 365, 371 (2004) (citing Andrew F. Brimmer, The Economic Cost of Discrimination Against Black

conclusions are still valid today, but the loss would now be equal to almost $400 billion per year.[59] In reality, this amount is likely to be higher because Brimmer's conclusions only considered disparate treatment against African Americans, not discrimination against other minority groups, women, or the disabled community.[60]

Economists believe that investing in minority human capital and facilitating competition through diversity is a win-win situation for minorities and for the general population.[61] The marketplace thrives when resources, including human capital, are used to their fullest potential.[62] The "experience, insight, and cultural skills" that minority communications professionals possess is indispensable in today's communications marketplace.[63] Without this human knowledge, the marketplace is not receiving the maximum input of human capital, preventing optimal competition.[64] Thus, the Commission can and should enact rules that will do more to encourage stakeholders in the market of FCC-licensed facilities to invest in minority human capital. Without such investments, an artificial shortage of qualified individuals from historically

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Americans, in Margaret C. Simms, ed., Economic Perspectives on Affirmative Action 11 (1995)).

[59] Id. at 373 (citing Lawrence B. Morse, Teaching Macroeconomics as if Race Mattered 7, at http://www.ncat.edu/-econdept/wp/morse-race.pdf).

[60] Id. at 374. See generally Michael Ashley Stein, The Law and Economics of Disability Accommodations, 53 Duke L.J. 79 (2003) (discussing the costs of disability accommodations, including loss of human capital related to such accommodations).

[61] See Ramirez, 54 J. Legal Educ. at 375 (stating that "Americans have been programmed to think of race as a zero-sum game, fundamentally misunderstanding the nature of human capital and the wanton destruction of human capital that is central to race. Investment in human capital invariably pays for itself and historically seems not subject to the law of diminishing marginal returns.").

[62] Id.

[63] Id. at 378.

[64] Id. at 370 (stating that "racial disparities lead to depleted human capital, in an economy that is today more than ever driven by human knowledge"); see also DCS 2007 Reply Comments at 8-9 n. 32 ("Competition has always seemed to DCS to be a compelling governmental interest. It is the Commission's top priority, and certainly the inability of minorities and women to unlock their intrinsic entrepreneurial, managerial and creative talent could not be more anticompetitive.")

disadvantaged groups will continue to depress the competitiveness of the communications industries.[65]

The economic and social science literature confirms that the racial integration of key industries – including broadcasting – would advance the competitive goals of American businesses. Minority-owned broadcasters employ over half of the minorities in the radio industry, making such broadcasters both an entry point and a sanctuary for the full integration of the industry.[66] Consequently, minority broadcasters help ensure that the industry will have at its disposal the well trained, heterogeneous workforce this culture-driven industry will need to compete effectively in serving the needs of an increasingly multicultural audience.

Although some economists believe that competition, without government intervention, will diminish discrimination in the market over an extended period of time,[67] the Commission does not have the luxury of taking a wait-and-see approach to eliminating discriminatory practices and the effects of such practices.[68] First, waiting to act would indicate disregard for the true state of discrimination in the market for licensed broadcast facilities, and such disregard may further discourage minorities from entering the industry.[69] Second, waiting to act would

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[65] Steven A. Ramirez, Games CEOs Play and Interest Convergence Theory: Why Diversity Lags in America's Boardrooms and What To Do About It, 61 Wash. & Lee L. Rev. 1583, 1590 (2004) (discussing how lack of investment in human capital and lack of access to "social capital" result in fewer African Americans obtaining the "elite" status desired for service on corporate boards of directors).

[66] See Comments of EEO Supporters, Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, MM Docket No. 98-204 (April 15, 2002) at 52-53.

[67] See Michael S. Barr, Credit Where It Counts: The Community Reinvestment Act and Its Critics, 80 N.Y.U. L. Rev. 513, 544-45 (2005). "The dominant view, derived from the work of Gary Becker, is that in the long run, in a perfect market, discrimination will disappear." Id. (citing Gary S. Becker, The Economics of Discrimination (2d ed. 1971).

[68] Id. at n. 136 (comparing theories of Gary Becker, supra, and John J. Donohue III, Foundations of Employment Discrimination Law 189 (2d ed. 2003), arguing that while the market may discourage and eventually eliminate discrimination, laws barring discrimination are efficient because they accelerate effects of competitive markets in reducing discrimination).

[69] Id. (stating that "the force of competition acting on discrimination depends on market structure, and for those who are discriminated against, waiting around for competition to work may be ill comfort."). See also Jessica Bulman-

exacerbate market failure where minorities are underrepresented due to the effects of past and current discrimination.[70]

In 1991, Robert Reich predicted that "in the emerging global economy, the only true competitive advantage lies in skill in solving, identifying and brokering new problems."[71] His prediction was even more accurate than he could have anticipated. As the Supreme Court recognized in Grutter v. Bollinger, American businesses have made workforce diversity an increasing priority.[72] One of the primary forces behind this phenomenon is the desire of those businesses to benefit competitively from the innovation that derives from a heterogeneous workforce. Modern companies "deliberately establish heterogeneous teams to 'create a marketplace of ideas, recognizing that a multiplicity of points of view need to be brought to bear on a problem."[73] Most importantly, the value of heterogeneity for team performance is clearest in the domains of creative and intellective tasks – the tasks that are essential to our country's

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Pozen, Grutter At Work: A Title VII Critique of Constitutional Affirmative Action, 115 Yale L.J. 1408, 1446 (2006) ("Workplace integration is not static but dynamic because it signals to racial minorities that jobs are open to them and it is worthwhile to invest in their human capital") (citation omitted).

[70] See Barr, supra, citing Donahue. The Commission's duty to address market failure is well grounded in law and policy. As Commissioner McDowell has explained, "I trust free people acting within free markets to make better decisions than those of us in government. For the most part, government should do all that it can to get out of the way and to remove barriers to entry. However, there are times when the government should address market failure so new entrepreneurial ideas have a chance to compete in the market place and succeed or fail on their own merits -- and their own merits alone. Any remedies applied to market failure should be narrowly-tailored, and sunseted, to maximize freedom for all market players, especially consumers." Remarks of Commissioner Robert McDowell, Media Institute Dinner, October 16, 2006, at 2.

[71] Robert B. Reich, The Work of Nations: Preparing Ourselves for 21st Century Capitalism 184 (1991).

[72] 539 U.S. 306, 330 (2003) ("major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, culture, ideas and viewpoints") (citing Brief for 3M et al. as Amicus Curiae at 5; Brief for Gen. Motors Corp. as Amicus Curiae at 3-4).

[73] Taylor Cox, Jr., Cultural Diversity in Organizations: Theory Research & Practice 32 (1993) (quoting R.M. Kanter, The Change Masters 167 (1983)); see also Corporate Executive Bd., Corporate Leadership Council, The Business Case for Diversity 3 (2003) ("Diverse backgrounds and experiences provide a catalyst for increased innovation, more so than a homogeneous staff, as a diverse mix of employees can: challenge long-accepted views; create dynamic environments leading to increased productivity; encourage a wider array of ideas and solutions; and offer varied perspectives.")

global competitiveness.[74] Thus, innovative companies deliberately create heterogeneous workforces – workforces that include people from different racial and cultural backgrounds, of different genders and with different life experiences – because those differences result in varied approaches to problem-solving. In addition, the dramatically increasing market power of minority consumers requires that companies' workforces reflect the diversity of their customers.

Companies also have a critical competitive need for effective heterogeneous workforces as a result of the increasing diversity of the domestic and global markets. Domestically, the customer base is changing rapidly. As explained by the Commission's Advisory Committee on Diversity for Communications in the Digital Age:

> The changing demographics of our nation have had a tremendous impact on our country's economy and the way businesses approach their bottom lines. Among Americans 70 and older, the ratio of majority to minority is 5.3 to 1. For Americans below the age of 40, the ratio is 2 to 1. For children under 10, the ratio is 1.5 to 1. Moreover, according to the U.S. Department of Commerce, in the year 2000, minority consumers spent $1.3 trillion in the marketplace. That number will nearly double to $2.5 trillion in the year 2020. <u>To be competitive, businesses must recognize this trend and take action to invest in and support the needs of its most important resource – their workforces</u>.[75]

Statistics regarding the global market are equally compelling. In recent years, global merchandise exports have surged to comprise more than 20 percent of world gross domestic product.[76] To respond to these changes, companies need employees with the ability to think across cultural lines.[77]

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[74] Richard A. Guzzo & Marcus W. Dickson, Teams in Organizations: Recent Research on Performance & Effectiveness, 47 <u>Ann. Rev. Psychol.</u> 307, 312, 331 (1996); <u>see also</u> Cox, <u>supra</u>, at 33 (citing P. L. McLeod <u>et al.</u>, Cultural Diversity & Creativity in Small Groups: A Test of the Value-in-Diversity Hypothesis (Univ. of Mich., Ann Arbor, Working Paper, 1993)) (research shows that ideas produced by ethnically diverse groups were rated an average of 11 percent higher than those of homogeneous groups on both feasibility and overall effectiveness).

[75] Career Advancement Subcommittee of the FCC's Advisory Comm. on Diversity for Communications in the Digital Age, <u>Workplace Diversity: A Global Necessity & an Ongoing Commitment</u> 8 (2004) ("FCC Best Practices Report") (emphasis added), available at http://www.fcc.gov/DiversityFAC/040614/recommend/Best Practices Report.doc; <u>see also</u> Corporate Executive Bd., <u>supra</u>, at 4 ("From 2000 to 2045, minority purchasing power is expected to increase from $1.3 to $6.1 trillion.")

[76] Ben S. Bernanke, Chairman of the Board of Governors of the Fed. Reserve System, Remarks at the Federal Reserve Bank of Kansas City's Thirtieth Annual Economic Symposium: Global Economic Integration: What's New

Media companies are acutely aware of the importance of cultivating effective heterogeneous workforces. In February 2003, the Commission's Advisory Committee on Diversity for Communications in the Digital Age surveyed twenty companies from the broadcast, telecommunications, cable, satellite, Internet and broadband industries, all of which "recognized diversity as an important goal to achieving success in the marketplace."[78] It follows, then, that promoting ownership diversity is vital to creating the pool of talent that all media companies will need to draw upon to compete effectively. In an industry in which consumer preferences very often are a function of race and language, minority ownership is a vital cornerstone of the industry's competitiveness. Almost everything the Commission does is wrapped up in promoting industry competitiveness; indeed, no Commission interest is more compelling than promoting competition. Because increasing diversity in the communications marketplace enhances competition, it follows that promoting minority ownership as a means of fostering competition is a compelling governmental interest that, on a sufficient showing, could justify race-conscious measures narrowly tailored to that interest.

& What's Not? (Aug. 25, 2006), available at http://www.federalreserve.gov/boarddocs/speeches/2006/20060825/default.htm#fn5.

[77] See Corporate Executive Bd., supra, at 4 ("By reflecting the diversity of a company's base in its workforce, companies are more likely to be sensitive to the needs of specific cultures and lifestyles."); see also Jonna L. Holland & James W. Gentry, The Impact of Cultural Symbols on Advertising Effectiveness: A Theory of Intercultural Accommodation, in Advances in Consumer Research 488 (Merrie Brucks & Deborah J. MacInnis eds., 1997) ("As the demographics of the North American market continue to change, and as international marketing becomes increasingly vital to every business, expertise in communicating with groups of various cultures is becoming an essential marketing skill") (emphasis added).

[78] See FCC Best Practices Report, supra, at 15.

VI. Until It Completes The Task Of Framing An SDB Definition, The Commission Should Apply An Interim, Non-Dilute, Race-Neutral Procedure Based On "Full File Review"

By far the most critical question in this proceeding is the determination of who to include in the class of immediate beneficiaries of the proposed initiatives.[79] If the Commission creates a beneficiary class such as "small businesses" that happens to include almost no minorities, it risks eviscerating the impact of most of the initiatives it might adopt. Even worse, initiatives such as waiver-based incubator programs could become backdoor vehicles for consolidation with no countervailing minority ownership impact. History would regard the Commission as having bestowed on the public "100% of nothing."

Evidently only about 5% of radio stations do not fall under the SBA's "small business" definition.[80] Even worse, it appears that minority owned stations are even less well represented among SBA-defined small businesses than they are in the industry as a whole. (!) Minorities own about 7.78% of commercial radio stations,[81] a small percentage that, however, dwarfs the even smaller 5.88% representation of minority owned stations among stations whose owners fall within the SBA's small business definition.[82]

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[79] By "immediate beneficiaries" we mean the companies who will most directly enjoy relief. Many of the proposals are structured as "win-win" initiatives in which a disadvantaged business and an established, non-disadvantaged business each benefit. <u>See, e.g.</u>, DCS Proposal #5 (Structural Rule Waivers For Creating Incubator Programs). Further, by providing diversity, <u>all</u> of the proposals would benefit America's television and radio consumers.

[80] <u>See</u> <u>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 (Further NPRM)</u>, 21 FCC Rcd 8834 (2007) at Appx. B, Supplemental Regulatory Flexibility Analysis ¶53 (citing Commission staff review of the BIA 2005 radio ownership database).

[81] <u>See</u> Free Press, <u>Off the Dial: Female and Minority Radio Station Ownership in the United States</u> (2007) at 16.

[82] This outcome results from the history of minority broadcast ownership. Over the past thirty years, as a result of the tax certificate and other incentive programs, a handful of mid-sized companies emerged and secured a foothold in the industry. There are least seven such companies – Access.1 Communications, Radio One, Bustos Media Holdings, Border Media Partners, Inner City Broadcasting Corporation, Spanish Broadcasting System and Multicultural Radio Broadcasting, with 17-54 stations each. These companies are dwarfed by industry leaders, such as Clear Channel, Cumulus and CBS Radio. Yet these seven minority owned companies are too large to qualify under the SBA's small business definition. Collectively these seven mid-sized minority owned radio companies own 225 stations. Free Press has found that 812 of the 10,506 commercial radio stations (7.78%) are minority owned. <u>See</u> Free Press, <u>Off the Dial: Female and Minority Radio Station Ownership in the United States</u> (2007) at 16. Since about 95% of all commercial radio stations are owned by SBA-defined small businesses (<u>see</u> n. 80 <u>supra</u>),

Consequently, applying a "small business" definition – ironically in the name of minority ownership - would actually reduce minority ownership. Such a regressive program would be worse than having no definition at all.

The optimal solution would be a race-conscious SDB definition, but one cannot be implemented immediately. The task of developing the record necessary to satisfy stringent judicial expectations may have to be re-started because the Commission has allowed the key Section 257 studies to become stale. Further, before turning to race-conscious remedies, the agency must attempt in good faith a variety of race-neutral remedies, a task the Commission has not begun. Thus, unavoidably, some time will elapse before the Commission can promulgate and apply a race-conscious SDB definition.

Therefore, when it adopts a package of minority ownership proposals, the Commission will need to adopt a classification system which would have three attributes: (1) it must be race-neutral; (2) it must disproportionately include minorities and, by doing so, screen out unexceptional "legacy" entities structured as small businesses or new entrants as well as fronts and frauds; and (3) it must be interim, to be used only until the Commission completes the task of developing and ratifying under strict scrutiny, a race-conscious SDB definition.

Fortunately, there is a paradigm that satisfies each of these objectives: individualized "full file" review, similar to that used by Michigan, California, and Texas state university admissions departments following the passage of state initiatives and court decisions banning affirmative action.[83] Applicants for admission at these universities are now evaluated using race-

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there are about 9, 981 small business owned radio stations, and of those, 587 (812 minus 225) are minority owned, representing 5.88% of the SBA-defined small business-owned stations.

[83] In 1996, California voters passed a state constitutional amendment prohibiting any consideration of race in higher education admissions decisions, leading to a significant drop in minority admissions. See Adam Blumenkrantz et. al., Affirming Michigan's Action: The Michigan Journal Of Race & Law's Response To Dr. Carcieri's "Grutter v. Bollinger And Civil Disobedience", 31 U. Dayton L. Rev. 381, 414 (2006). For example, Boalt Hall, the University of California-Berkeley School of Law (Berkeley Law), failed to admit a single African American student the following academic year. Id. In 1998, undergraduate admissions of African Americans at the University of

neutral criteria.[84] Rather than evaluating candidates based primarily on test scores, grades, and familial ("legacy") relationship to alumni, these universities consider applicants' individual successes in overcoming disadvantages. In this way, without considering an applicant's race, they choose applicants who will contribute to a diverse intellectual climate and whose background is predictive of success in a challenging academic environment.

Adapting full file review to FCC practice, each applicant would demonstrate (to the satisfaction of an independent, politically insulated professional entity, perhaps modeled after the Universal Service Board[85]) that it has overcome significant social and economic disadvantages,

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California at Berkeley (Berkeley) dropped to just 191, down from 562 in 1997. See Marcia G. Synnott, The Evolving Diversity Rationale In University Admissions: From Regents v. Bakke To The University Of Michigan Cases, 90 Cornell L. Rev. 463, 475-76 (2005). There was an overall drop in admissions of "underrepresented minorities" in two of California's most notable state universities, Berkeley and the University of California, Los Angeles (UCLA), from 24.3% and 30.1% in 1995 to 11.2% and 14.3%, respectively. See Eboni S. Nelson, What Price Grutter?: We May Have Won the Battle, but Are We Losing the War?, 32 J.C. & U.L. 1, 18 (2005). At the University of Texas Law school, racial preferences were eliminated (following Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) cert. denied, 518 U.S. 1033 (1996)), where thirty-one African-American and forty-two Hispanic students had been among the 500 hundred students entering the University of Texas Law School in 1996-97, only three black and twenty Hispanic students joined the 1997-98 class. See Synnott, 90 Cornell L. Rev. at 477. At Texas Agricultural and Mechanical University (Texas A&M), where African-American and Hispanic students constituted 3.6% and 11.2%, respectively, of the 1996 freshman class, those percentages declined to 2.7% and 9.1%, respectively, in 1998. See Nelson, 32 J.C. & U.L. at 18.

[84] A full-file review program, also referred to as a "direct measures" program, measures diversity attributes without favoring racial identity. See Daria Roithmayr, Direct Measures: An Alternative Form Of Affirmative Action, 7 Mich. J. Race & L. 1, 6 (2001). Using full-file review, an applicant would be granted a preference if her application demonstrated that she had suffered from the effects of racial discrimination, that she likely would contribute an important and under-represented viewpoint on issues of social and racial justice, or that she likely would provide resources to underserved communities. Id. Such a program directly targets "race-neutral characteristics and traits for which racial identity formerly was used as a proxy." Id. at 22. Following the use of full-file review, admissions in these schools increased. See Nelson, supra n.1, 32 J.C. & U.L. at 20. In 2004, after implementing a full-file admissions policy, African American freshmen admissions at one Texas university rose 35% and admissions of Hispanic freshmen increased by 26%. Id. In California, admissions of African American and Hispanic law students in 2003 rose from 1.9% and 7.2% in 1997 to 4.7% and 11.9% respectively. Id. at 22.

[85] The Universal Service Board of Directors is comprised of nineteen members representing thirteen industry and non-industry stakeholders. See 47 C.F.R. §§54.703(b)(1)-(13). Industry representatives include groups such as ILECs, CLECs, and cable operators. See 47 C.F.R. §§54.703(b)(1), (4)-(5). Non-industry representatives include groups such as eligible schools, rural health care providers, and low-income consumers. See 47 C.F.R. §§54.703(b)(7), (9)-(10). Members of each of the relevant industry or non-industry group nominate a single candidate from that group who is likely to possess substantial experience in, and knowledge of, telecommunications issues. See 47 C.F.R. §54.703(c)(3). The Chairman of the Commission selects the nominees for the Board. See 47 C.F.R. §54.703(c)(2). Once selected, the Board member will sit on the Board for a three-year term. See 47 C.F.R. §54.703(d). If members of the relevant industry or non-industry groups fail nominate a candidate for a particular position, the Chairman of the Commission selects an individual to represent that group on the Board. See 47 C.F.R. §54.703(c)(3).

the overcoming of which would be predictive of success in a challenging industry and of the promotion of diversity of information and perspectives and satisfaction of unmet needs in the industry. A few illustrations:

- an applicant was injured in Iraq, won a Purple Heart, then returned to the U.S. and despite his disability completed the NABEF BLT Program.
- an applicant put herself through college in eastern Kentucky, then bought out of bankruptcy and successfully operated a small AM station, and is now trying to grow her company through traditional financing.
- an applicant operated a small Spanish language radio company while overcoming advertiser resistance to the language and the format, and provided training to overcome the disadvantage attendant to the small labor pool of Spanish speaking radio personnel.

Thus a disadvantage often would be related to race or gender discrimination or their present effects, but it could be any significant disadvantage, the overcoming of which is predictive of both of the factors the Commission should want to advance as part of its minority ownership stewardship: (1) success in a challenging, competitive environment, and (2) the provision of a diversity of information to the public, it being reasonable to predict that someone who has overcome great odds will have inspirational and exceptional perspectives to share with the public as a broadcast licensee.[86]

A full file review classification would be more dilute than SDBs for race and gender, but far less dilute than the regressive "small business" classification.[87] A solid example of a full file

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[86] "Race may be one component of that diversity, but other demographic factors, plus special talents and needs, should also be considered." Parents, 127 S.Ct. at 2798 (Kennedy, J., concurring). A direct measures (full file review) program identifies the experience of racial discrimination as a source of disadvantage that justifies differential treatment based on diversity. See Roithmayr, supra, n. 2, 7 Mich. J. Race & L. at 20 (discussing Justice Stevens suggestion in Richmond v. J.A. Croson Co., 488 U.S. 469, 514 (Stevens, J., concurring) that it would be "more constructive to try to identify the characteristics of the advantaged and disadvantaged classes that may justify their disparate treatment.").

[87] General economic classifications in higher learning, similar to small business classifications, have not been as effective at achieving diversity goals through increased minority enrollment compared to full-file review. See Roithmayr, supra, n. 2, 7 Mich. J. Race & L. at 11 (discussing how even with economic affirmative action programs in place, Black enrollment at UCLA College of Law dropped by 72%, and Hispanic enrollment by 26% compared to pre-anti-affirmative action initiatives); see also Nelson, supra n. 1, 32 J.C. & U.L. at 41 (discussing how class-based affirmative action has helped, however it has yet to produce the same levels of racial and ethnic diversity as race-

review selection process is that used by the National Association of Broadcasters for its first-rate Broadcast Leadership Training (BLT) Program. Selection is race-neutral but is based on much more than test scores and grades: instead, it is based on a person's life experiences, including the overcoming of obstacles, and a person's commitment to a career in broadcast ownership or senior management. About half of the students have been minorities and about half have been women; further, the program also includes numerous military veterans and rural broadcasters. It is the future of broadcasting.

Clearly the Commission cannot rationally adopt a classification for a minority initiative that is so regressive that it is even more dilute than minorities' representation in the industry. Therefore, if the Commission is not ready at this time to adopt full-file review but nonetheless is ready to adopt specific minority ownership initiatives, it should approve the minority ownership initiatives but, for initiatives that require a beneficiary definition,[88] postpone their effective date for a short time (e.g. two months) while it develops and authorizes an interim system of full-file review.

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conscious programs). Further, some scholars have argued that economic-based programs designed to benefit minority students fail to achieve adequate levels of racial diversity because such programs fail to account for differences in wealth, social status, and social advantage that exist between African-American and White individuals. Id.

[88] DCS Proposal #1 (Equal Transactional Opportunity: Barring Discrimination On The Basis Of Race Or Gender In Broadcast Transactions) and Proposal #22 (Nondiscrimination Provisions In Advertising Sales Contracts, Designed To Expressly Avoid Such Practices As "No Urban/No Spanish" Dictates) are pure nondiscrimination initiatives. If the Commission adopts these initiatives, it need not delay their implementation since they do not depend on a beneficiary classification.

Respectfully submitted,

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November 20, 2007

APPENDIX A

THE DIVERSITY AND COMPETITION SUPPORTERS (DCS)

Alliance for Community Media
American Indians in Film and Television
Asian American Justice Center
Black College Communication Association
Center for Asian American Media
Independent Spanish Broadcasters Association
International Black Broadcasters Association
Latinos in Information Sciences and Technology Association
League of United Latin American Citizens
Minorities and Communication Division of the Association for Education in Journalism and Mass Communications
Minority Business Enterprise Legal Defense and Education Fund
Minority Media and Telecommunications Council
Multicultural Broadband Trade Association
National Association of Black Telecommunications Professionals
National Association of Hispanic Publications Foundation
National Association of Latino Independent Producers
National Coalition of Hispanic Organizations
National Congress of American Indians
National Council of Churches
National Council of La Raza
National Hispanic Media Coalition
National Indian Telecommunications Institute
National Institute for Latino Policy
National Puerto Rican Coalition
National Urban League
Native American Public Telecommunications, Inc.
Puerto Rican Legal Defense and Education Fund
UNITY: Journalists of Color, Inc.
Women's Institute for Freedom of the Press

APPENDIX B

COMMENTERS AGREE – THE COMMISSION SHOULD ADOPT THE DIVERSITY AND COMPETITION SUPPORTERS' MINORITY OWNERSHIP PROPOSALS

"Today it is almost universally agreed that curing the acute minority under-representation in broadcast ownership would do much to promote competition and diversity of viewpoints. Since the market entry barriers that still inhibit minority broadcast entry and growth are numerous and powerful, the Commission will need to deploy an equally numerous and powerful set of tools with which to correct the problem…."Thus, when it reviews the proposals discussed here, the Commission should examine all of them holistically, and adopt a thorough, comprehensive package of initiatives that collectively would be sufficient, with breathtaking rather than 'deliberate' speed, to fully address each category of market entry barriers that cause minority exclusion: access to spectrum, access to capital, and access to opportunity."

Initial Comments of the Diversity and Competition Supporters (29 national organizations) in Response to the Second Further Notice of Proposed Rulemaking, October 1, 2007, pp. 2-3, presenting 38 proposals.

"Today, ION agrees with the Diversity and Competition Supporters, represented by the Minority Media and Telecommunications Council, that the Commission should lift the 'market entry barriers that prevent one-third of America's citizenry from full enjoyment of the nation's most influential industries.'"

Reply Comments of ION Media Networks, November 1, 2007, pp. 3-4.

"NAB has long been a supporter of incubator programs like those operated by the NABEF. This rule…could provide thousands of disadvantaged businesses and individuals with the seed money and education to excel in the broadcast business….[T]he NAB generally supports proposals that will help overcome the largest roadblock to a more diverse broadcast industry – access to capital. The NAB supports recent proposals by the FCC Diversity Committee to hold a conference that will bring together industry stakeholders, minority interests, and private equity firms."

Comments of the National Association of Broadcasters, October 1, 2007, p. 8, endorsing six proposals.

"The proposals set forth in the *Second FNPRM* underscore the Commission's ability to enhance the ease of entry, creditworthiness, asset values and operational qualifications presented by potential broadcast station operators and buyers, particularly minorities and women. Therefore, we encourage the Commission to review these proposals thoroughly and develop a comprehensive package of minority ownership initiatives that would be effective."

Reply Comments of Financial Services Companies Alta Communications, Inc., Dover Capital Partners, LLC, Media Venture Partners, LLC, Pacesetter Capital Group, Pacific Media Capital, Quetzal/J.P. Morgan Partners, Wells Fargo Foothill, and D.B. Zwirn & Co., November 1, 2007, p. 2, endorsing five proposals.

"MMTC asks the Commission to modify its existing policy regarding radio cluster ownership to allow a grandfathered cluster that otherwise exceeds the applicable ownership cap to be transferred in its entirety to any third party as long as the third party transfers the stations exceeding the cap within 12 months to a small business. We support this important proposal, which would create critical opportunities for minorities and women in broadcast ownership."

Reply Comments of 48 Parties (21 radio broadcast licensees, 16 media brokerages, six public interest organizations and five financial institutions) on RM-11388, October 5, 2007, p. 1, regarding Proposal #35, Relaxation Of The Grandfathered Cluster Transfer Deadline For Cluster Purchasers Who Will Resell Stations To Small Businesses.

"[I]f the Commission delays, it will be impossible to retroactively correct the opportunities to increase participation in the radio industry by small business owners that would be lost if these transactions are completed without the benefit of the relief that MMTC requests."

Comments of Clear Channel Communications on RM-11388, September 5, 2007, p. 3, regarding Proposal #35, Relaxation Of The Grandfathered Cluster Transfer Deadline For Cluster Purchasers Who Will Resell Stations To Small Businesses.

"Improved access to spectrum and capital, added flexibility in the rules applicable to transactional structures, and economic incentives for participation in media transactions/media ownership opportunities for women and minorities are the tools necessary to effectively advance diversity in ownership."

Reply Comments of Joint Television Broadcasters Max Media, LLC, Fox Television Stations, Inc., Lin Television Corp., Granite Broadcasting Corp., Gannett Co., Inc., Belo Corp., Shooting Star Broadcasting, and Banks Broadcasting Inc., November 1. 2007, p. 3, endorsing six proposals for immediate adoption.

"Diversity enables terrestrial radio to remain competitive with other industries because the business plans developed, audiences served, and creative concepts attempted by a diverse group of owners are likely to be responsive to the needs of a diverse and changing audience. The competitive spur provided by diverse ownership is consistent with the Commission's mandate under the Communications Act to "disseminat[e] licenses among a wide variety of applicants, including small businesses,…businesses owned by members of minority groups and women" and other such entrepreneurs."

Reply Comments of Radio Broadcasters Emmis Communications, Legend Communications, LLC, Multicultural Radio Broadcasting, Inc, November 1, 2007, pp. 1-2, endorsing four proposals.

"Most Spanish language broadcasters are socially and economically disadvantaged businesses (SDBs) that overcame considerable obstacles in becoming broadcast owners. Thus, Spanish Broadcasters strongly endorse several of the proposals that will likely reduce current hurdles for new entrants."

Reply Comments of Spanish Language Broadcasting Companies Bustos Media Holdings, Norsan Group, Spanish Broadcasting System, Inc., and ZGS Communications, November 1, 2007, pp. 1-2, endorsing nine proposals.

"Minority ownership promotes competition and diversity of viewpoints. The market entry barriers that inhibit increased minority ownership and growth are numerous and powerful. The Commission must take a consistent and coordinated approach to fully appreciate and effectively address the primary barriers that cause minority exclusion: access to spectrum, access to capital and access to opportunity."

Reply Comments of African American Broadcasters Bakewell Media of Louisiana, LLC, Broomfield Broadcasting, Inc., Destiny Communications, LLC, Miles Ahead Broadcasting, Radio One, Inc. and Roberts Broadcasting Co., November 1, 2007, p. 2, endorsing six proposals.

"[T]he Commission should liberalize its treatment of foreign ownership of broadcast licensees where it would foster greater ownership by members of minority groups. Second the Commission should permit DTV or FM licensees to assign the right to operate a DTV subchannel or an HD radio channel to small disadvantaged business ("SDBs") under the Commission's share-time rule."

Reply Comments of the Hispanic Broadcasters of Philadelphia, November 1, 2007, p. 2-3, discussing two of three supported proposals.

"What is missing from past analysis is the impact of the [tax certificate] program on the minority community…[T]he initial purchases of SBS core stations could not have been consummated without tax certificates. The program truly leveled the playing field in the high stakes of broadcast business. A resuscitated program would encourage sellers to transfer or assign stations to minority buyers and to let the marketplace do the rest."

Comments of Spanish Broadcasting System, October 22, 2007, pp. 4-5.

"[T]he Commission can and should institute several changes to its regulations to encourage diversity of ownership and expand the opportunity for women, minorities and other small business owners to own broadcast stations. First and foremost, the Commission should work to make access to capital by women a priority."

Comments of American Women in Radio and Television, Inc., October 23, 2006, p. 9.

"With respect to MMTC's proposals, NABOB and Rainbow/PUSH support the proposals to increase minority ownership. NABOB and Rainbow/PUSH also support MMTC's request that the Commission adopt a definition for a socially disadvantaged business ('SDB') in this proceeding. NABOB and Rainbow/PUSH also support each of the proposals of the Diversity Committee."

Comments of the National Association of Black Owned Broadcasters and The Rainbow/PUSH Coalition, Inc., October 1, 2007, p. 3.

"NCTA supports advocacy of legislation to allow deferral of tax on gains from the sale of telecommunications businesses in specific circumstances and with appropriate safeguards as a means to promote diversity of ownership. We also support the proposals for the Commission to convene an Access to Capital Conference and to create a Diversity Guidebook."

Reply Comments of the National Cable and Telecommunications Association, November 1, 2007, p. 2, supporting three proposals.

"Requiring the seller of a failing station to give public notice and attempt to find a buyer outside of the market provides one avenue for new entry. Public notice is important because research shows that minorities and women often have difficulty finding out about opportunities to purchase stations."

Comments of the Office of Communication of the United Church of Christ, Inc., National Organization for Women, Media Alliance, Common Cause, and the Benton Foundation, October 23, 2006, p. 32, discussing one of the six proposals endorsed.

“The Commission’s rulemakings need to take into consideration the impacts of any new ownership limits to ensure that they preserve, protect and promote minority ownership, rather than impede it. The AFL-CIO and DPE also endorse the MMTC proposals presented in its comments to the FCC, that address the barriers that impede minority ownership and promote measures that foster greater minority ownership in the future.”

Comments of the American Federation of Labor and Congress of Industrial Organizations and the Department for Professional Employees, AFL-CIO, October 23, 2006, p. 6.

“The FCC must first resolve the crisis in minority ownership before it can move forward with any plans to adopt new ownership rules that could further media consolidation and force minority ownership in decline.”

Letter from National Association of Hispanic Journalists, October 10, 2007, p. 2.

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APPENDIX C

MINORITY OWNERSHIP PROPOSAL SCORECARD

Diversity and Competition Supporters
November 16, 2007

I. DCS' Twenty-Eight Substantive Initiatives The Commission Could Adopt Now

Proposal #1: Equal Transactional Opportunity: Barring Discrimination On The Basis Of Race Or Gender In Broadcast Transactions

Proposal #2: Transfer Restriction of Grandfathered Clusters To SDBs

Proposal #3: Structural Rule Waiver For Selling A Station To An SDB, Where The Sale To The SDB Is Ancillary To A Transaction That Otherwise Would Be Barred By An Ownership Rule

Proposal #4: Tolling Buildout Deadlines For Selling Expiring Construction Permits To SDBs

Proposal #5: Structural Rule Waivers For Creating Incubator Programs

Proposal #6: Bifurcation Of Channels For Share-Times With SDBs

Proposal #7: Structural Rule Waivers For Financing Construction Of An SDB's Unbuilt Station

Proposal #8: Nonattribution Of EDP Interests In SDBs

Proposal #10: Zero Tolerance For Ownership Rule Abuse

Proposal #12: Opening FM Spectrum For New Entrants

Proposal #13: Staged Implementation Of Deregulation, Coupled With A Negotiated Rulemaking

Proposal #22: Nondiscrimination Provisions In Advertising Sales Contracts, Designed To Expressly Avoid Such Practices As "No Urban/ No Spanish" Dictates

Proposal #24: Advocacy Of Tax Deferral Legislation Designed, To The Extent Possible, To Foster Minority Ownership

Proposal #25: Examination Of How To Promote Minority Ownership As An Integral Part Of All FCC General Media Rulemaking Proceedings

Proposal #26: Ongoing Longitudinal Research On Minority And Women Ownership Trends

Proposal #28: Extension Of The Community Reinvestment Act (CRA) To Encourage Financial Institutions To Provide Debt Financing To Broadcasters

Proposal #29: Encourage More Local And Regional Banks To Participate In SBA Guaranteed Loan Programs For Broadcast And Telecom Ventures

Proposal #30: Establishment Of A Fund Of Funds

Proposal #31: Revision Of The Distress Sale Policy To Institute Case-By-Case Review Of Purchasers' Qualifications

Proposal #32: Reservation, For A Company That Finances Or Incubates An SDB, Of First Place In The Queue To Form A Duopoly In A Market For Which Only A Limited Number Of Duopolies Are Permissible

Proposal #33: Relaxation Of Foreign Ownership Restrictions

Proposal #34: Extension Of Divestiture Deadlines In Mergers Where Applicants Have Actively Solicited Bids For Spin-off Properties From SDBs

Proposal #35: Relaxation Of The Grandfathered Cluster Transfer Deadline For Cluster Purchasers Who Will Resell Stations To Small Businesses

Proposal #36: Use Of The Share-Time Rule To Foster Ownership Of DTV And FM Subchannels

Proposal #37: Retention On Air Of AM Expanded Band Owners' Stations If One Of The Stations Is Sold To An SDB

Proposal #38: Permitting AM Stations To Use FM Translators

Proposal #39: Convening Of An Access To Capital Conference

Proposal #40: Preparation Of A Guidebook On Diversity

II. DCS' Two Substantive Initiatives The Commission Could Adopt After Further Study

Proposal #9: Mathematical Touchstones: Tipping Points For The Non-viability Of Independently Owned Radio Stations In A Consolidating Market, And Quantifying Source Diversity

Proposal #14: Market-based, Tradable Diversity Credits As An Alternative To Voice Tests

III. DCS' Eight Voluntary Initiatives The Industry Could Implement Now

Proposal #15: Equity For Specific And Contemplated Future Acquisitions

Proposal #16: Debt On Favorable Terms – Enhanced Outreach And Access To Debt Financing By Major Financial Institutions

Proposal #17: Investments In Institutions Specializing In Minority And Small Business Financing

Proposal #18: Assistance – Cash And In-Kind – To Institutions That Train Future Minority Media Owners

Proposal #19: Creation Of Business Planning Centers

Proposal #20: Executive Loans, And Engineers On Loan To Minority Owned Companies And Applicants

Proposal #21: Enhanced Access To Broadcast Transactions

Proposal #23: In-House Incubation And Mentoring Programs For Future Minority Owners

IV. Proposals Of Additional Parties (Excluding Proposals That Are Apparently Moot)

Proposal #41: Must-Carry For Class A LPTVs (Reply Comments of Community Broadcasters Association, MB Docket No. 06-121, November 1, 2007)

Proposal #42: Replacement Of TV Channels 5 And 6 With FM Service (Mullaney Engineering, Inc. Petition for Reconsideration and/or Comment, MM Docket No. 87-268, October 26, 2007)

Proposal #43: Repeal Of Radio Subcaps (Comments of Multicultural Radio Broadcasting, Inc., MB Docket No. 06-121, October 23, 2006)

Proposal #44: Enhanced Consideration Of Minority Ownership And Viewpoint Diversity Attendant To Consideration Of Assignment And Transfer Applications (Comments of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 06-121 (October 23, 2006); see also Comments of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 02-277, January 2, 2003)

Proposal #45: Bright Line Test With No Waivers For Assignment And Transfer Applications Exceeding Ownership Caps (Comments of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 06-121 (October 23, 2006); see also Comments of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 02-277, January 2, 2003)

Proposal #46: Treatment of LMAs As Attributable Interests (Comments of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 06-121 (October 23, 2006); see also Comments of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 02-277, January 2, 2003)

Proposal #47: Allow Minorities To Own Station Combinations Equal To The Largest Combination In A Market (MB Docket No. 06-121 (October 23, 2006); see also Petition for Reconsideration of NABOB and the Rainbow/PUSH Coalition, MB Docket No. 02-277, September 4, 2003)

V. Ancillary Questions

Continuation Of The Failing Station Solicitation Rule (FSSR)

Definition of a Designated Entity

APPENDIX D

TESTIMONY OF SEVENTEEN MINORITY BROADCAST OWNERS

1. Raul Alarcon, Chairman, President and CEO, Spanish Broadcasting System, Inc.
2. Lyle Banks, President and CEO, Banks Broadcasting, Inc.
3. Hundley Batts, Managing Agent, WEUP(AM) Radio
4. Rosamaria Caballero, President, Caballero Television Texas LLC
5. Merrill Charles, President and CEO, Salt City Communications, Inc.
6. Bishop Victor T. Curry, President and CEO, New Birth Broadcasting Corporation
7. Rip Daniels, President and CEO, WJZD, Inc.
8. John Douglas, President and CEO, AIM Broadcasting, LLC
9. Ronald Gordon, President and CEO, ZGS Communications
10. James Hardman, President and CEO, Hardman Broadcasting, Inc.
11. Arthur Mobley, Vice President and COO, Black Entrepreneurs Association
12. Paula Nelson, President and CEO, Diamond Broadcasting
13. Michael Roberts, Chairman, Roberts Communications
14. Don Rosette, General Manager, WMCS(AM), owned by All-Pro Broadcasting, Inc.
15. Ernesto Schweikert, President and CEO, Crocodile Broadcasting Corporation
16. Raymond Simes, President and CEO, West Helena Broadcasters, Inc.
17. Darnell Washington, President, CEO and General Manager, Destiny Communications

DECLARATION OF RAUL ALARCON

I, Raul Alarcon, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

Spanish Broadcasting System, Inc. ("SBS") presently owns and/or operates 20 radio stations in seven of the top-10 U.S. Hispanic markets. It also owns a full power TV station in the South Florida DMA. SBS was founded in 1983 and is now the largest publicly traded Hispanic-controlled media company in the U.S. Its stations are held through wholly owned subsidiaries. I, Raul Alarcon, Jr., am the Chief Executive Officer, President and Chairman of the board of SBS. My family has been involved in Spanish-language broadcasting since the 1950s.

SBS has grown, but at the expense of larger, highly consolidated companies. During my earlier efforts at acquiring broadcasting properties, I was helped immeasurably by the government's tax certificate program. I cannot stress this enough. Without the program, I would likely not have been able to secure my first core properties because of the difficulty in finding sufficient capital to purchase large-market stations where greater numbers of Spanish speaking listeners reside. Even with the requisite financing, it was nearly impossible not being outbid by the larger broadcasting corporations. The minority tax certificate program was a godsend that allowed SBS to purchase its first fledgling AM radio properties. I want to continue making appropriate acquisitions and to keep up with larger media companies, but this might not be possible unless and until the Federal Communications Commission (FCC) makes provisions for smaller companies and minorities to be more proportionately represented in the industry.

Today, competition in Spanish-language broadcasting is intense and non-Hispanic companies that broadcast in Spanish and have access to very substantial funds make expansion difficult for SBS and other similarly situated broadcasters. The whole area of consolidation after the passage of the Telecommunications Act of 1996 as well as relaxed ownership standards have placed me at a competitive disadvantage, particularly in the larger markets.

My company has vigorously objected to some of the major consolidations in recent years largely to no avail. Hindsight has proven that we were correct in predicting the detrimental effects that these mergers were going to have on our efforts to expand into markets that we have sought to enter or markets in which my company already operates. This problem is industry-wide; the proof lies in the shamefully miniscule number of remaining minority owners.

SBS is a highly innovative programmer and has initiated many different Spanish-language formats to stay competitive. But the enormity of available funds to some of our greatest competitors has made matters difficult. The disparity in access to capital has caused me nearly insurmountable personnel losses and has cut into revenues in markets where competition is most significant. Consolidation of the broadcast radio industry has, on balance, affected SBS adversely in these matters.

In some cases, I have sold broadcast properties or chose not to pursue attractive broadcast properties due solely to the fact that highly consolidated and wealthy competitors would have made it difficult to make inroads into a market that would have justified continued or expanded operations.

My experiences with the current media ownership rules have made me come to the conclusion that the FCC should vigorously press Congress to enact legislation that would reinstitute the tax certificate policy in order to help minorities and small business broadcasters to become more represented in the industry.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed November 16, 2007.

/s/________________________
Raul Alarcon

DECLARATION OF LYLE BANKS

I, Lyle Banks, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

I founded Banks Broadcasting in 1999 and serve as CEO and President of the company. Ownership of the company is shared with LIN Broadcasting Corporation, which owns 50% of our company's equity and two private equity companies that each own 25% of the company's equity. Banks Broadcasting owns KNIN-TV in Boise, ID, as well as the Idaho International Film Festival. We owned KSCW-TV, Wichita, KS, from December 2000 until August, 2007, when we sold it to Schurz Communications.

The FCC's media ownership rules have enabled much larger companies to grow at the expense of smaller companies like mine. Consolidated operators are more capable of controlling their costs through economies of scale. Consolidation also allows these larger companies a greater advantage in purchasing programs, employee benefits, and in obtaining many other assets as well. The financial leverage that conglomerates are afforded through their multiple sources of revenue allow them to buy stations at higher prices than small business owners can afford to pay, which makes it very difficult to compete in the current media arena. Access to efficient capital often hinders growth in minority ownership. There is financing available for experienced, minority-owned media companies, but it is only a fraction of what a broadcaster needs to survive. The amount of capital available must be scaled to meet the cost of acquiring a station.

It is for these reasons that I sold KSCW-TV and I am currently in the process of selling KNIN-TV. To preserve the future of my company's employees, I concluded that I must sell the stations to a company that is strategically and financially able to compete in the current environment.

Television stations vie for the best programs, the best managers and the best sales teams for our individual companies. As a CW affiliate, KSCW-TV's chief competitor was the owner of the Fox affiliate. That company owned dozens of other stations, which give it the leverage to purchase programming for lower rates and to strategically blocked my station from acquiring particular shows it needed.

Media consolidation has also affected my ability to retain talented sales people. Larger companies are able to offer sales associates higher salaries than we could afford to offer. This is a very difficult challenge since the revenue generated from our sales department is our chief source of income.

By implementing policies that foster the interests of larger consolidated conglomerates, the FCC has affected my ability to compete in the broadcast market. Under better circumstances, I would be adding stations and assets to the portfolio of Banks Broadcasting as opposed to selling the assets I have been able to acquire during the last six years of operation. The current media ownership rules simply do not make expansion of my media business feasible.

Although the FCC has long professed to have an interest in ensuring the success and ease of entry for minorities and women into broadcast media ownership, the FCC's current actions are inconsistent with this position. For example, its grandfathering of stations that are acquired by larger companies sends a negative message to smaller station owners who are trying to compete in the already tumultuous realm of broadcasting.

The FCC should focus on creating incentives for financial institutions and private equity groups for lending to and investing in minority and women broadcast owners.

Another step the FCC can take is to reaffirm the Failing Station Solicitation Rule (FSSR) and strengthen its enforcement of the rule. While I did not acquire either of my stations through this rule, I sold one, KSCW-TV, through the FSSR.

Most important, the FCC can take the comments provided by minority broadcast owners such as myself and organizations such as MMTC seriously. I appreciate organizations such as MMTC for revealing the hardships that minority and women broadcast owners have to face.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed October 29, 2007.

/s/__________________________
Lyle Banks

DECLARATION OF HUNDLEY BATTS

I, Hundley Batts, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

WEUP(AM) was founded in 1958 by LeRoy and Viola Garrett as the first African American-owned radio station in Alabama. In 1987, Virginia Caples and I purchased WEUP from Mrs. LeRoy Garrett, and we have owned it since. We have subsequently purchased three other radio stations within fifty miles of WEUP.

The FCC's media ownership rules have resulted in an increase of media consolidation that has had an oppressive impact on small companies like ours. The large media companies have a built-in advantage over us because they are able to market nationwide as a cluster. This allows them to purchase advertising time based on volume rather than on the merits of their local program service. The marketing tactic of the media conglomerates is to absorb the entire local advertising budget based on the sum of the conglomerates' ratings numbers among their combined station holdings.

In this environment, we have survived only because of our ability to cultivate good relationships with local and some regional advertising buyers. Instead of focusing on the competition, we are instead focused on our company's abilities. We operate in a manner that is moral, legal and profitable for not only our employees but our constituents as well.

The media ownership rules and consolidation trends have also made the purchase and acquisition of additional properties more difficult. In our current market, the prices of properties that were once categorized as unattractive are being inflated. These higher prices make it more difficult, and in some cases impossible, for local broadcasters to submit bids to purchase these stations.

We feel it is important for Congress to re-establish the tax certificate policy, which allowed us to purchase our second radio station. When these certificates were available, it was considerably easier for a minority entrepreneur to enter the broadcasting industry. Since 1995, when these certificates were eliminated, it has become extraordinarily difficult for us to secure financing to acquire stations.

This statement is true to my personal knowledge and is made under penalty of perjury under the laws of the United States of America.

Executed October 29, 2007.

/s/_________________________
Hundley Batts

DECLARATION OF ROSAMARIA CABALLERO

I, Rosamaria Caballero, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

Our company, Caballero Television Texas LLC, was founded in the mid 1990's. It is a family-owned company that at one point, owned up to 12 Class A and low power television stations. We sold the majority of these stations to a large media company because we knew that eventually these media conglomerates would dominate our niche Latino programming. Now, we own only one Class A television station and one LPTV, which are located in Fresno and Sacramento, California, both top 15 Hispanic markets.

The FCC's media ownership rules have made it more difficult for independent operators and small and emerging station groups to obtain national advertising dollars from advertisers and agencies. The large media companies dominate national advertising revenues. Without significant national advertising dollars, it is difficult for small station groups to realize a profit. As media companies continue to consolidate, the advertising dollars are becoming more concentrated into the hands of the large media companies.

As a result of media consolidation, the only "affordable" media properties for minorities are Class A and LPTV stations, which do not have must-carry status on cable. Without full must-carry status, it is difficult to generate significant viewership and advertising revenue. The full power stations, mostly owned by large media groups, have lobbied against and fought must-carry status for Class A stations.

Granting Class A stations must-carry status, for at least their primary signals, would be one of the single most effective steps the FCC could take to promote minority television ownership, since approximately 15% of Class A stations are minority owned - a proportion roughly five times as high as minority ownership of full power television. Must-carry status for Class A stations would significantly expand a station's ability to sell local and national ads and enhance local programming. Minority broadcasters would benefit greatly if they had access to the only main entry point to cable, IPTV and satellite boxes.

Must-carry significantly increases a station's asset value, thereby enhancing its owner's creditworthiness, borrowing power and attractiveness to investors. In my opinion, must-carry for Class A stations would dramatically expand access to capital for minority broadcasters. Access to capital has been the single greatest factor impacting the survival and growth of minority owned broadcast companies.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed November 12, 2007.

/s/___________________________
Rosamaria Caballero
President
Caballero Television Texas LLC

DECLARATION OF MERRILL CHARLES

I, Merrill Charles, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

I established Salt City Communications in 1987 as an S-Corporation. Salt City applied for and, after a seven-year struggle, won an FCC license for an FM drop-in station in Syracuse, New York. Both common and preferred shares were issued while I retained voting shares.

After many legal battles and licensing protocols, the station signed on the air in April 1996, one month after the Telecommunications Act of 1996 was enacted. I immediately began receiving offers from large media conglomerates that already owned four and five stations in the same market. This caused to me immediately rethink my chances of survival in such a different broadcasting environment where I saw little room for growth.

The large media conglomerates already had established relationships with the advertisers. The conglomerates could offer the advertisers package deals that allowed their ads to be broadcast on several of their stations, which meant a larger market share of listeners than I could offer. In order to compete, I knew I would have to add more stations to Salt City Communications' portfolio. There were limited options available for purchasing more stations.

After only four months of operations, I decided that it was best to sell my station to a competitor for a considerable profit. I used the profits from that sale to purchase an AM station and a Class B FM station located 20 miles west of Syracuse.

In the Syracuse market, one company owned five stations and two other companies owned four stations each. These three companies controlled well over 50% of the advertising revenue in the Syracuse market, with one company alone claiming a 30% share of the advertising revenues. Most of the stations owned by these three companies are Class B and Class C FM stations, affording these companies far-reaching and clear broadcast signals.

In an attempt to keep my stations afloat, I tried to merge with another minority operator, Robert Short. The merger would have allowed both of our companies to compete in the market or, at the very least, afford us the opportunity to demand a higher asking price from stations interested in acquiring our assets. Unfortunately, the merger did not take place, and I was once again forced to sell my stations four months later.

After my stations were sold, all of the employees, who were predominantly African American, were terminated. The buyer had only two or three African Americans on its staff of over 100 employees. The other two consolidated owners in the market had no African Americans on their staffs. This was ironic because the audience to which all three of these media companies program is significantly composed of minorities. Many of these owners continue to disregard FCC recommended employment outreach methods, notifications, and hiring practices that would provide diversity and opportunity in their stations.

This causes me to believe that if diversity in the broadcasting industry is truly a goal of the FCC, it should either reinstate the pre-1996 ownership limits or develop very strong incentives for companies to sell stations to minorities on reasonable terms.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed November 13, 2007.

/s/____________________________
Merrill Charles

DECLARATION OF BISHOP VICTOR T. CURRY

I, Bishop Victor T. Curry, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

Gospel AM 1490 WMBM is owned by New Birth Broadcasting Corporation ("New Birth"), a subsidiary of the New Birth Baptist Church Cathedral of Faith International. New Birth purchased the station from the Margolis Broadcasting Company in March of 1995. The station is a stand-alone facility. WMBM-AM has operated in the Miami/Fort Lauderdale market since 1949.

Several corporations have presented serious offers to purchase WMBM; however, none of their offers has been accepted.

As an independent urban gospel station, WMBM has been affected by the FCC's current media ownership rules primarily in the allocation of advertising and non-traditional revenue dollars. In the urban sector, many cluster stations owned by corporations have begun to use gospel formats. This means that independent stations, like ours, are blocked from receiving advertising revenue that we previously were able to obtain.

Because of this revenue crunch, WMBM had to put aside our plans to purchase an FM property and possibly a TV property. The FCC's ownership rules put independent stations in a Catch 22 -- in order to compete, an independent would have to assemble its own cluster of properties; however, doing so is virtually impossible because a single property cannot attract the advertising revenue needed to meet budgets and generate profits and asset value.

As a consequence of the FCC's media ownership rules, we have to consider laying off staff, consolidating positions and taking other budget-cutting steps. We have, in a sense, been pushed into a financial straight jacket - cutting dollars allocated for larger promotions, marketing and personnel training. This further hampers our ability to compete.

Needless to say, attracting new sales and maintaining sales accounts is far more than an uphill battle. We now have to adopt share-a-thons and listener donation programs to supplement our income. This type of fundraising is more often used in non-profit Christian radio stations. WMBM has also partnered with other minority owned media outlets in Florida to address the problems of cluster media advertising block-out. One goal of this partnership is to collectively persuade advertisers to include independent minority owned media in corporate and political advertising buys. The FCC's approval of such endeavors would show its commitment to ensuring that minority broadcasters remain a viable entity in the current broadcasting market.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed November 14, 2007.

/s/__________________________
Bishop Victor T. Curry

DECLARATION OF RIP DANIELS

I, Rip Daniels, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

WJZD, Inc. was founded in 1994 as a stand-alone six-kilowatt FM station in Gulfport, Mississippi. The Daniels family owns the majority of the stock and the other stockholders are employees of the company. WJZD also created the American Blues Network (ABN), a 24-hour nationally syndicated music program fed via satellite to radio stations nationally.

WJZD is a community-oriented station with a daily two-hour local talk show, news on the hour, and a tremendous amount of community involvement. The mega-stations in our market have none of these features, yet they bill themselves as "local stations." These mega-stations command more of the market shares without the same commitment to the community.

Since the FCC has allowed mega-station companies to purchase many stations in our market, we have witnessed predatory under-pricing of commercials. Fortunately, WJZD is locally owned and operated with a small amount of debt, so we have withstood the onslaught of the mega-station companies. However, we are concerned that if the mega-station companies are allowed to expand into newspaper and/or television advertising, prices would be forced so low that our services to the community would have to be cut in order for us to remain competitive.

We are interested in purchasing another radio station in this market but, because the mega-station owners have such a large share of the advertising sales, we would not earn enough in advertising to show a profit for quite some time. The FCC's current media ownership rules have created a situation that has caused us to alter our plans for expansion. We are now planning to provide more of our syndicated programming via ABN to other stations nationally.

The FCC should reverse the rules that allow large media companies to own seven stations in small markets, or develop incentives for these companies to sell stations to minorities on reasonable prices and terms.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed November 12, 2007.

/s/________________________
Rip Daniels

DECLARATION OF JOHN DOUGLAS

I, John Douglas, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

I am the owner of AIM Broadcasting, LLC. I started AIM Broadcasting with one radio station in 2002 and acquired another property in 2004. Both stations are located in Las Vegas, Nevada. I have recently been in negotiations for a third station.

The FCC's media ownership rules have affected my company's financial health by fostering consolidation and doing little to correct consolidation's impact on small businesses. It is difficult for a company like mine, with one or two stations, to compete in a market where others own up to seven stations. As a result of the current media rules, we have decided we must expand in order for my company to survive. That is our reason for negotiating to purchase another station.

The FCC's media ownership rules have affected my company's personnel decisions to a degree. While securing and maintaining talent has not been a challenge, retaining qualified sales personnel has been difficult. A cluster owner can pay salespeople more because each one can sell the inventory of several stations. Thus, a cluster owner is able to attract better sales people because it can afford to offer larger compensation packages. Smaller companies, like AIM Broadcasting, find it difficult to offer competitive compensation packages to well qualified sales professionals.

AIM Broadcasting and its predecessor company serve the community by providing multicultural programming in up to 30 languages. This has been a rewarding experience that could not be accomplished without time brokerage agreements (TBAs). There is no way for one broadcaster to be the expert in reaching such a diverse array of listeners without programming methods such as TBAs. Each community desires a specific type of content and TBAs allow me to provide a voice that is familiar with the cultural groups that AIM Broadcasting seeks to serve.

Even though such niche programming is valuable to the community, securing funding to provide this service is challenging. AIM Broadcasting is similar to a charter airline competing with major air carriers for financing – we provide a valuable service to a select group of people, while the major carriers seek to serve the masses. Many lenders are not progressive enough to see the value in providing such multicultural programming.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed October 29, 2007.

/s/______________________________
John Douglas

DECLARATION OF RONALD GORDON

I, Ronald Gordon, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

I am a Latino-American and an 85% shareholder of ZGS Communications (ZGS), headquartered in Arlington, Virginia. ZGS was founded in 1984 as a media production company. My partner and I moved ZGS into television broadcasting in 1987, when we leased and eventually purchased a low-power television station in Lubbock, Texas where we broadcast Spanish-language programming. We eventually sold the Lubbock station.

ZGS currently owns ten television stations (nine class-A stations and one full-power station) and three AM radio stations, each of which provides 15 to 18 hours per week of local Spanish-language programming on such issues as voter registration, literacy, and consumer information.

We broadcast in Boston and Springfield, Massachusetts; Hartford, Connecticut; Providence, Rhode Island; Washington, DC; Raleigh, North Carolina; Orlando, Tampa, and Fort Myers, Florida; and El Paso, Texas. All of our television stations are Telemundo affiliates.

We attribute our success to the fact that we run efficient operations. We have a total of 175 employees for all of our broadcast operations.

In 1995, we purchased the oldest Spanish-language radio station serving the Washington, D.C. market. For many years, we successfully competed with the other six independently-owned Spanish-language stations in the D.C. market.

In 2000, we acquired our television station in El Paso (which was already a Telemundo affiliate) as a result of our professional acquaintance with the station's seller. At the time we purchased the station, it had technical and operational problems. Since our acquisition, we have corrected the problems and the station is functioning more efficiently now.

As a result of radio local market consolidation, we are now faced with the possibility that we will have to sell our Washington, D.C. radio station. The reason for this decision is that a consolidator has purchased several radio stations in this market with different programming formats, one of which is a Spanish-language format.

Consequently, where we used to engage in healthy competition with the other independently-owned Spanish-language radio stations for advertising revenue, we are now virtually shut out because the consolidator is offering packaged-pricing to advertisers (especially national advertisers who bring substantial dollars) for airtime on all of its radio stations in the Washington, D.C. market, including the consolidator's station that is our direct competitor.

In this type of market environment, there is little opportunity for us expand in radio broadcasting. At one time we were looking forward to acquiring more radio stations, but consolidation has forced us to step backwards and consider relinquishing our radio assets.

The FCC should reconsider the detrimental effect that media consolidation is having on minority media owners. The current climate of media consolidation does nothing to truly serve the public interest, promote minority ownership or foster a diversity of voices.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed November 12, 2007.

/s/__________________________
Ronald Gordon

DECLARATION OF JAMES HARDMAN

I, James Hardman, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

I am the owner of Hardman Broadcasting, Inc., which was founded in October of 2004. Hardman Broadcasting acquired its first broadcast property, WMBH-AM, Joplin, Missouri, in April 2005.

As a small stand-alone station, my company's financial health and growth have been hindered in the market. Advertisers have become accustomed to dealing with cluster owners, which makes it very difficult for a smaller operation, such as mine, to secure the revenue needed to operate.

With the ownership rules that are currently in place, I understand why many smaller radio companies have sold their stations or closed their doors. The current mantra in the radio industry is: the more stations you own in a market, the better you can compete with the larger radio groups. One must either "get big or get out."

Fortunately, through faith and determination, I have been able to sustain my operation, but I know that if I hope to remain in this business, I will have to purchase additional stations. The FCC's media ownership rules make that very difficult because the rules enable the large media conglomerates to command the lion's share of radio broadcast revenue. This being the case, it is difficult to raise the revenue that will make my company attractive to financiers to whom I would turn to finance my expansion.

The problems of smaller broadcasters are similar to the problems small retailers face in order to compete with Wal-Mart. Because advertisers are expecting a small station to offer what larger companies are offering, sales are not as high as they could or need to be, which translates to continually surviving hand to mouth.

Because of this, I have to open my doors each morning with the faith that today will be the day things change and the finances begin to come in. I am operating more on faith than planning. Of course, there is some planning involved in the day-to-day operations, but I cannot sufficiently make long-term plans without adequate finances. It is a very difficult thing to do.

I think it is important that the FCC remembers that America was built on the basis of people determining their own futures and fortunes through operating family-owned businesses and with the hope of expansion. The FCC's current media ownership rules make this impossible for minorities who are the newer entrants in the broadcast industry.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed October 29, 2007.

/s/__________________________
James Hardman

DECLARATION OF ARTHUR MOBLEY

I, Arthur Mobley, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

I am the Vice President and Chief Operating Officer of Black Entrepreneurs Association, Inc. (BEA), a 501(c)(3) non-profit organization formed six years ago for the purpose of expanding public and/or private radio and television ownership. BEA's principal owners are Thurman Steward, Venturi McCray and myself.

I have worked in the broadcast industry for 32 years. I owned radio stations in Phoenix, Arizona and Las Vegas, Nevada. I wanted to acquire 30 stations, but I was only able to acquire two stations before the ownership deregulation embodied in the Telecommunications Act of 1996 went into effect.

In 1999, I was forced to sell my stations because media consolidation in the market took away the advertising dollars that my stations needed to survive. Consolidated media companies exerted undue pressure on advertising agencies to only buy airtime on the stations in certain portfolio areas. Advertising dollars were going to the media companies that had the most stations in a market. Small and minority station owners, like me, were squeezed out of the advertising dollars by the sheer volume of advertising commanded by the new and larger consolidated companies.

It did not matter that I had very strong programming geared toward the local African-American community or that my station rated higher than the consolidated stations in the market. The market's dominant company had eight stations and I only had one; therefore, the other company was able to control the advertising marketplace. As a result, I was eventually forced to forgo my expansion plans and sell my stations in Phoenix and Las Vegas. The loss of 21 employees (81% of whom were African American) at my Las Vegas and Phoenix stations only weeks before Christmas 1999 was devastating as investors forced the sale of the stations to larger portfolio partners.

African Americans have virtually no access to media and communications anywhere in the State of Arizona, with no discernable media outlets that meet or address their needs and concerns. Currently in Phoenix, Tucson and Flagstaff, African Americans own no stations.

BEA recently petitioned and obtained a rulemaking from the FCC to locate a new FM broadcast service on a frequency and channel (229C3, Wickenburg, AZ) previously undiscovered by any other government or private entity. BEA expended thousands of dollars in engineering research and development to prove what its engineers had discovered. Last year the FCC agreed and issued an allotment for a new frequency on channel 229C3 at the Wickenburg coordinates.

In order to get a construction permit, the company must first obtain permission to use the frequency. In this case, BEA filed for preferential consideration through a process called a

"Pioneer Preference" (see letter Re: Request for Grant of a Pioneer Preference). If this preference is not granted, the frequency and channel will simply be auctioned to the highest bidder. BEA is not opposed to paying a fee, but an auction would virtually guarantee the loss of the channel since larger consolidated companies would have more resources to bid.

Even in cases where minority broadcasters find new frequencies (as in the case of BEA Inc.), bring them to the attention of the FCC and have allocations granted, those same minority companies must forfeit any right to obtain permission to construct unless the company can win the frequency at auction.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed November 15, 2007.

/s/______________________________
Arthur Mobley

DECLARATION OF PAULA NELSON

I, Paula Nelson, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

I am President and Chief Executive Officer of Diamond Broadcasting. Diamond Broadcasting was founded in 2004 and now owns KSAC-AM in Sacramento, California. Before we owned KSAC-AM, we owned KBMB-FM, Sacramento. My company was awarded a construction permit to build out this broadcast facility. I obtained venture capital funds from a company that, after winning litigation, became the owners of this station.

The FCC's current media ownership rules have given carte blanche to media conglomerates to take programming and advertising dollars away from small, women, and minority-owned radio stations. I have no problem with fair competition, but the behavior of these conglomerates goes far beyond the bounds of fair competition to the detriment of small, women, and minority-owned radio stations.

Advertising dollars are the lifeblood of the broadcast industry. When conglomerates own the lion share of radio stations in one market and offer packaged deals to advertisers that include airtime on all of their stations, radio owners like me, who only own one station, cannot compete for those dollars in any form. This causes us to expend more time and money searching for fewer dollars with small results.

Media conglomerates pry away our syndicated programming by offering programmers attractive deals for airing their programs in several markets. Most minority and small radio owners cannot provide this kind of offer. Thus, when we lose syndicated programs to the conglomerates, there too goes our advertising revenue.

Unlike conglomerates that mainly program music and syndicated programs, the majority of my programming is a talk radio format. This programming allows me to address the issues that are of importance to the local community. I have to struggle to get the advertising dollars to support this type of programming because all of the larger advertisers are committed to conglomerates.

Because two radio conglomerates also own the billboards in the Sacramento area, I have no option except to purchase my radio station billboards ads from them. Once I buy a billboard ad from them, they subsequently place a larger billboard ad next to mine advertising their competing radio station. Is this a level playing field?

At great expense, I have trained some of Sacramento's best minority and women programmers and sales executives, only to lose them to a conglomerate for a bottom line reason: it can afford to pay more than me because of the large-scale revenue it generates from its packaged deals to advertisers. Thus, with the FCC's blessing, large conglomerates have almost assured that small, women and minority-media owners will not likely ever have a chance to be equal contenders in this industry.

As a broadcaster for most of my career, I would like to expand my company, but if the FCC allows its current media ownership policies to continue and does not adopt strong remedial policies, I will not be able to expand because the broadcast industry is not a level playing field.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed October 29, 2007.

/s/________________________
Paula Nelson

DECLARATION OF MICHAEL ROBERTS

I, Michael Roberts, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownerships rules.

I am the Chairman of Roberts Communications, a minority owned company. I, along with my brother, Steven Roberts, own Roberts Communications, headquartered in St. Louis, Missouri.

In 1981-1982, we applied for and received a license for WRBU-TV, an unbuilt, full power station in St. Louis, by way of the FCC's comparative hearing process. WRBU went on the air in 1989. Since then, we have acquired full power stations in Evanston, IL and Denver, CO, and had construction permits for broadcast facilities in Raleigh-Durham, NC, Nashville, TN, New London/Hartford, CT, Albuquerque, NM, and Salt Lake City, UT. We also owned LPTVs in Pensacola, FL and Prichard, AL.

The stations we acquired in Jackson, Nashville and Raleigh-Durham were in bankruptcy at the time we purchased them. We learned about the station in Evanston from a broker who informed us that the station was in bankruptcy. We bought the competing station in Albuquerque and we purchased the unbuilt construction permit of the station in Denver.

Through a series of business transactions, we eventually sold all of our broadcast facilities except for WRBU-TV in St. Louis. Subsequently, by way of the FCC's auction process, we purchased television stations in Columbia, SC (this station went on the air in January 2005) and Jackson, MS (this station went on the air in January 2006). We have also purchased an FM station in Jackson, MS.

We would like to purchase more broadcast facilities, and we could if incentives such as tax certificates were made available to minorities. Without tax certificates and other types of incentives, minorities will be almost excluded from the broadcast industry unless they have deep pockets, which most do not have.

Congress and the FCC should consider developing industry incentives such as tax certificates to help minorities gain long overdue entry into the broadcast market. These incentives could include:

1) Benefits to networks that create network affiliate agreements with minority-owned television stations. These benefits could include a tax credit or certificate for the network.

2) Incentives to lending institutions that lend to minorities. Similar to the new market tax credits that create opportunity in urban and underserved areas, these same types of tax credits can be created for broadcasters. For example, the U.S. Treasury would issue the credit to a small or minority-owned business to enable it to purchase a station by raising the capital in tax credits. The seller could accept tax credits in addition to cash or sell them to high net worth

individuals. Banks could buy the tax credits and use them to finance the broadcast purchase transaction with long-term financing.

3) Rapid depreciation on the purchase of broadcast equipment, e.g., a one to three-year depreciation rate instead of a five to seven year depreciation rate. Since new entrants are disproportionately represented among equipment purchasers, this race-neutral incentive would tend to advance minority ownership.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed October 31, 2007.

/s/____________________________
Michael Roberts

DECLARATION OF DON ROSETTE

I, Don Rosette, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

I am the General Manager of WMCS(AM) in Milwaukee, Wisconsin. WMCS-AM is owned by Willie Davis, owner of All-Pro Broadcasting, Inc., in Los Angeles, California, and President and CEO of the Milwaukee Radio Alliance. The Milwaukee Radio Alliance owns two other radio stations in Milwaukee, WJZI(AM) (smooth jazz) and WLUM-FM (alternative rock).

In April 2004, WMCS began an all-talk format from 6:00am to 6:00pm. In 2005, WMCS entered into a time brokerage agreement (TBA) with ESPN from 6:00pm to 6:00am. The reason we chose an TBA was because of our decline in yearly revenue as a result of the media consolidation in the Milwaukee market.

One company owns five radio stations in the Milwaukee market, and its stations command a disproportionate share of the advertising dollars. As a result, we could not generate the amount of advertising revenue needed to pay experienced personnel if we chose a music format in this market. This is why we had to look for a niche to separate us from the other AM stations, so we chose a local talk format and the ESPN contract. This programming requires fewer personnel.

We need capital improvements and we would like to add news programming to our broadcast. However, because of our decline in revenue as a result of media consolidation, we cannot make the necessary capital improvements or pay for a news department.

Media consolidation has affected our hiring practices. We have a very good track record of hiring minorities but, because one company captures a disproportionate share of the advertising dollars in the market, we cannot easily retain staff. We had to reduce our personnel from 32 fulltime persons in 2004 to 21 fulltime persons. We have only one on-air personality who is a seasoned professional.

We cannot offer prospective advertisers the rates that the media conglomerates offer. As a result, we lost our broadcast of the University of Wisconsin at Madison's women's basketball games to a competitor.

Advertisers have a tendency to look strictly to Arbitron's ratings to choose the stations on which they will buy airtime. Advertisers seldom take into consideration "concept sales," which is the way many minority broadcasters attract their audiences. In 1996, when the FCC allowed for more consolidation, this problem became magnified, causing single station owners or those who do not own a conglomerate of stations not to be considered at all for major advertising dollars.

In spite of the ratings that show that the majority of WMCS' audience consists of consumers who purchase a high volume of durable goods (i.e. fast food, furniture, cars, etc.), the advertisers of these goods continue to by-pass us and advertise on the larger consolidated stations. We broadcast community-oriented programming that garners a high volume of listeners and the confidence of the community we serve; yet we still have to struggle for advertising dollars.

Since media consolidation was permitted in 1996, our struggle to acquire advertising dollars has required us to provide more programming with fewer resources.

The Commission should consider bringing back the tax certificate program. It should also consider allowing AM stations to broadcast from FM translators. This would allow AM stations to broadcast with a stronger signal reach that will increase their revenue capabilities.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed November 16, 2007.

/s/_________________________
Don Rosette

DECLARATION OF ERNESTO SCHWEIKERT

I, Ernesto Schweikert, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

I am a Hispanic American and the owner of Crocodile Broadcasting Corporation (CBC), the parent company of KGLA-AM, a 1000-watt radio station in New Orleans, Louisiana. I bought KGLA in 1991 from its previous owners and I have been the general manager of the station since that time.

KGLA has continuously provided Spanish language programming to the Latino community of New Orleans for the past 37 years. It is one of only two stations in New Orleans that provides 24-hour Spanish language programming of news, music, sports, and community affairs that are of particular interest to the Latino community.

KGLA provides programming that Latino listeners cannot find on other stations. During hurricane Katrina, KGLA provided 24-hour, life-saving Spanish-language programming at great cost to our company and our staff. We stayed with our community because we have a vested interest in its survival and success.

The Federal Communications Commission's (FCC's) current media ownership rules have allowed an inordinate amount of consolidation in the New Orleans radio broadcast market. This has put tremendous financial pressure on single-station minority owners, like me, to compete.

Each of the three largest consolidated media owners in the New Orleans radio market has at least four stations. National advertisers prefer to buy airtime from them because they can offer packaged advertising deals on all of their stations for one price. As a minority who owns one radio station, I cannot offer these types of attractive deals to advertisers. This forces me to offer other types of added incentives to advertisers just to compete. These incentives include free live remotes, free airtime, and concert and football tickets. All of these added incentives are offered at a financial detriment to me. Each incentive comes with a cost that I do not always recoup. Essentially I am forced to scramble for the fraction of the advertising dollars that are left on the table after the consolidators have captured all of the large advertising contracts.

My station's disproportionately low advertising revenue also affects my ability to hire and/or retain personnel in the sales department. Seasoned sales personnel seldom approach KGLA seeking employment, and I consistently lose such personnel because they prefer to work for the consolidators. I had often devoted considerable time and effort to training these personnel, only to lose them to larger companies. The consolidators can offer their sales staffs larger salaries and bonuses because they are able to negotiate large national contract sales. They do not have to work as hard to come up with ways to attract advertisers because the advertisers seek them out.

In order to compete with the consolidators, minority broadcast owners need more than one station. Because minority broadcasters seldom have the capital base that advertising dollars produce, lenders are hesitant to lend to us. If lenders decide to lend to us, they typically want an enormous amount of collateral, including the existing radio station. By allowing media consolidation, the FCC has facilitated these sharp practices of lending institutions.

This leaves me and other minority media owners with few options: 1) sell our stations to predators who pressure us to sell for far less than our stations are worth; 2) give in to the lenders' unreasonable demands; 3) go bankrupt; or 4) try to hold on.

One bright spot is the FCC's Failing Station Solicitation Rule (FSSR), which provides that the seller of a failing station must recruit potential buyers widely, rather than just assuming that an in-market television owner wishing to create a duopoly is automatically the optimal purchaser. My company's experience illustrates why the Commission should retain the FSSR in its arsenal. In 2006, an affiliate of CBC purchased the construction permit for WHMM-DT out of bankruptcy. The seller recruited CBC in 2005, and even after Hurricane Katrina dramatically affected television asset values in the New Orleans market, the seller worked cooperatively with us as we got the transaction financed and closed. Even though CBC did not own a television station, we were a highly motivated buyer because New Orleans had no Spanish language television station. As the only Latino radio owner in the market, we knew how to serve the Latino community. I'm proud to say that we built the station, signed it onto the air this spring as New Orleans' Telemundo affiliate and in August combined its operations with those of KGLA.

The FCC ought to reaffirm the FSSR and develop new and aggressive policies aimed at encouraging broadcast station sellers, lenders and advertisers to work with minority broadcasters.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed November 15, 2007.

/s/_________________________
Ernesto Schweikert

DECLARATION OF RAYMOND SIMES

I, Raymond Simes, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

In 1984, a group that I lead called West Helena Broadcasters, Inc. purchased KCLT, West Helena, Arkansas. A local bank in Arkansas financed the station. This was my first experience being a broadcast owner and I was excited about the possibilities that this opportunity would bring. In 1994, I acquired my second radio station, KAKJ, Marianna, Arkansas. My brother and I are the majority owners of both radio stations. KCLT is the longest operating urban format radio station in the state of Arkansas.

In 2004, I won an auction for an FM station in Clarksdale, Mississippi. The price was manageable only because Clarksdale is a small city in the predominately African American Mississippi Delta. I now have a construction permit for that station.

Since advertising agencies buy airtime according to the market and in bulk rather than by individual radio station, media consolidation has allowed large corporations to swallow up the majority of the advertising revenue needed to survive in the radio broadcasting industry.

I have witnessed situations where a small media owner purchases four or five more radio stations. The large companies will then make an offer to buy the stations. If the smaller company refuses the offer, the larger company will change the programming format of one of its radio stations to place it in direct competition with the smaller station. This guerilla business tactic puts a particularly enormous financial strain on minority media owners because most minority owners only own one radio station.

Media consolidation also affects small owners' programming and personnel decisions. Radio programming has moved toward syndicated programs, such as The Tom Joyner Morning Show. The large media companies are now including clauses in their contracts with syndicated programmers that preclude the programmers from selling any of their other programs to the large company's direct competitors.

Local announcers and DJs are also being forced out of the market because the large media companies are broadcasting syndicated programs. Small media owners, like my company, need to hire local announcers to compete with the syndicated programs, but we cannot pay the salaries these announcers are accustomed to earning. In order for us to hire these experienced announcers at salaries that they will consider, the announcers must fulfill the duties of announcer and program director. This forces the announcers to make the choice of accepting a position with more responsibility for a salary that is similar to their previous one or take an announcer position for less money.

We have had to make these types of personnel decisions (where one person has several job responsibilities) to keep our staff small, thereby increasing the financial base of the company. Since we do not get the majority of the large advertising dollars, we have to work harder with fewer personnel to find creative ways to make money. This causes a strain on employee morale in smaller media companies, and some employees leave to accept positions with the large media companies. We have often invested heavily in time and dollars training these employees; when they leave for larger companies, that investment is lost to us.

If the FCC is serious about increasing minority ownership in the media it has to change its perspective from a national market view to a "share per market" view. The FCC should mandate that a percentage of a market be preserved for minority ownership, and give priority to minorities to purchase stations in that market until that percentage is met. The FCC has already taken an analogous step in the auction process where a 35% credit is given to a bidder that does not already own a broadcast facility in a particular market.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed November 16, 2007.

/s/_________________________
Raymond Simes

DECLARATION OF DARNELL WASHINGTON

I, Darnell Washington, respectfully state as follows:

I am providing this Declaration in regard to the Federal Communications Commission's current media ownership rules.

I purchased KTGF-TV in 2004. It is a full-power television station licensed to Great Falls, Montana. The station has $4 million in assets and it is owned 100% by my parent company, Destiny Communications. Destiny owns the KTGF-TV tower as well: an engineering miracle, it is among the tallest man-made structures in the world. KTGF-TV is the only locally owned television station in Great Falls, and it is the only minority owned broadcast station in the state of Montana.

I am looking to expand my broadcast holdings this year and in 2008, but the FCC's media ownership rules will make my expansion efforts very difficult. The FCC's rules, which allow for heavy consolidation within and among markets, have made it extremely difficult for me, a small media owner, to compete with large companies that own ten or more television stations in the region.

Consolidated ownership makes it difficult for me to negotiate for syndicated programming because the large owners control the pricing of programming. The consolidated media owners also control the news content by transmitting news from one market within the state to another (e.g. transmitting news broadcasts from a station in Helena to Great Falls). This limits the local news information that the community of Great Falls receives.

My staff of 13 people is very small for a television station. It has been difficult for me to compete with the pay scales of the consolidated media owners. As a result, I cannot attract experienced sales personnel, which are the lifeblood of media operations. The sales staff members I employ arrive with very little experience. I must train them and I have no experienced personnel to guide them. This situation has a detrimental impact on my ability to compete with the consolidated media owners.

Small advertising clients appreciate the fact that we are locally owned and they come to us for that reason. But the small advertising dollars are not enough to keep us afloat. While we share a mutual appreciation for the small advertisers, we also want to compete for the larger advertisers. Because the FCC has allowed so much consolidation, the larger advertisers gravitate toward the consolidated media owners and never give us a first glance. This unfair advantage keeps us out of the game before we get a chance to enter the stadium.

My experience has been that media consolidation eliminates jobs, diminishes the diversity of voices, and crushes entrepreneurship. The FCC's media ownership rules have given an unfair advantage to large media consolidators to the detriment of the spirit of entrepreneurship.

One bright spot has been the Failing Station Solicitation Rule (FSSR), which is premised on the potential for recruitment of highly motivated companies outside a local market. Although

KTGF-TV was not a failing station, its previous owner, Max Media, was diligent in selling to a minority due to the fact that under the duopoly rules Max could not acquire another station in the market without selling our station; nor would the rule have allowed KTGF to be purchased by another in-market company. I've been a broadcast executive in Oklahoma, Nebraska and Kansas throughout my career of 20 plus years, and the opportunity to own and operate my own station may never have arrived had it not been for the duopoly rule limitation and Max's initiative as a seller. The opportunity that Max Media created as a seller became my opportunity to acquire my first station. The fact that Great Falls, Montana is a small market and has a very limited African American population (less than 2% of 168,000), was of little consequence in my decision to move forward with this project. There are dozens of minority broadcast executives who possess the training and initiative to buy and operate a television stations if only there were opportunities to do so.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true to the best of my knowledge.

Executed November 1, 2007.

/s/_____________________________
Darnell Washington

APPENDIX E

MMTC SURVEY OF CAPITAL FOR MINORITY BROADCAST TRANSACTIONS
[Survey Instrument]

To respond fully to the FCC's call for comment on minority ownership, MMTC is surveying the broadcast equity and debt markets for small and medium sized transactions. Please send this form to MMTC Executive Director David Honig (dhonig@crosslink.net; fax 202-332-7511) by September 21, 2007. Your responses will be aggregated with other responses, and individual company responses will not be released.

Company Name: ____

Name and Title of Person Responding: ______________________________

1. What is the normal range of financing you would commit for a broadcast transaction?

Senior Debt:	Minimum: $__________	Maximum: $__________
Mezzanine:	Minimum: $__________	Maximum: $__________
Equity:	Minimum: $__________	Maximum: $__________

2. Which of these radio deals would you consider financing for a quality operator in an average-growth medium market?

___ Single market cluster, all AM stations (cash flowing)
___ Standalone AM station (cash flowing)
___ Standalone FM station (cash flowing)
___ Single market cluster, all AM stations (breaking even, but no positive BCF)
___ Standalone AM station (breaking even, but no positive BCF)
___ Standalone FM station (breaking even, but no positive BCF)
___ Single market cluster, all AM stations, stick deal (virtually no revenue)
___ Standalone AM stick deal (virtually no revenue)
___ Standalone FM stick deal (virtually no revenue)
___ Bidder in an FM auction
___ Buildout of a CP for a new AM station
___ Buildout of a CP for a new FM station
___ FM HD-2 or HD-3 lease

3. Which of these television deals would you consider financing for a quality operator in an average-growth medium market?

___ Standalone top-four network affiliate (cash flowing)
___ Standalone non-top-four network affiliate (cash flowing)
___ Standalone top-four network affiliate (producing revenue, but no positive BCF)
___ Standalone non-top-four network affiliate (producing revenue, but no positive BCF)
___ Standalone top-four network affiliate stick deal (virtually no revenue)
___ Standalone non-top-four network affiliate stick deal (virtually no revenue)
___ DTV sub-channel lease

Additional Comments:

MMTC SURVEY OF CAPITAL FOR MINORITY BROADCAST TRANSACTIONS

Summary of Results: 13 Respondents (out of at least 16 known to consider financing of small (under $20M) broadcast transactions)*

2. What is the normal range of financing you would commit for a broadcast transaction?

   - Five firms would consider providing $5M or less in senior debt
   - Four firms would consider providing $5M or less in mezzanine
   - Five firms would consider providing $5M or less in equity

3. Which of these radio deals would you consider financing for a quality operator in an average-growth medium market?

   AM Station Deals:

   - Nine firms would consider a single market cluster, all AM stations (cash flowing)
   - Four firms would consider a standalone AM station (cash flowing)
   - Seven firms would consider a single market cluster, all AM stations (breaking even, but no positive BCF)
   - Four firms would consider a standalone AM station (breaking even, but no positive BCF)
   - Four firms would consider a single market cluster, all AM stations, stick deal (virtually no revenue)
   - Two firms would consider a standalone AM stick deal (virtually no revenue)
   - Two firms would consider the buildout of a CP for a new AM station

   FM Station Deals:

   - Nine firms would consider a standalone FM station (cash flowing)
   - Six firms would consider a standalone FM station (breaking even, but no positive BCF)
   - Three firms would consider a standalone FM stick deal (virtually no revenue)
   - Three firms would consider the buildout of a CP for a new FM station
   - No firms would consider an FM HD-2 or HD-3 lease

   Two firms would not consider any radio deal.

4. Which of these television deals would you consider financing for a quality operator in an average-growth medium market?

   Top-Four Network Affiliates:

   - Eleven firms would consider a standalone top-four network affiliate (cash flowing)
   - Eight firms would consider a standalone top-four network affiliate (producing revenue, but no positive BCF)
   - Six firms would consider a standalone top-four network affiliate stick deal (virtually no revenue)

* Responses in some instances are subject to conditions, e.g., quality of the assets and the entrepreneur, availability of equity (for debt providers) or debt (for equity providers), and long-term market trends.

Non-Top-Four Network Affiliates:

- Ten firms would consider a standalone non-top-four network affiliate (cash flowing)
- Five firms would consider a standalone non-top-four network affiliate (producing revenue, but no positive BCF)
- Four firms would consider a standalone non-top-four network affiliate stick deal (virtually no revenue)

DTV Sub-Channel Lease:

- No firms would consider a DTV sub-channel lease

One firm would not consider any television deal.