

Minority Media & Telecommunications Council

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MMTC APPLAUDS THE FCC'S MINORITY OWNERSHIP DECISION, BUT URGES THE FCC TO CORRECT ITS MISTAKE IN DEFINING WHICH PARTIES ARE ELIGIBLE BENEFICIARIES FOR THREE OF THE NEWLY-ADOPTED INITIATIVES

By adopting 12 minority ownership proposals and putting 13 more proposals out for comment, the FCC marked December 18, 2007 – coincidentally MMTC's 21st birthday -- as one of the best days in the history of minority media ownership.

The day was marred only by the FCC's use of a poorly defined "small business" eligibility criterion for three of the proposals it adopted. Apparently only about 8.5% of small business-owned commercial radio stations are minority owned – barely more than the 7.8% of all commercial radio stations that are minority owned. MMTC will act promptly to secure a correction of the FCC's unfortunate mistake.

The FCC's minority ownership decision was taken separately from its decision to relax its broadcast-newspaper crossownership rule, and is not contingent on the crossownership decision.

Although the broadcasting industry is 98 years old and uses billions of dollars worth of publicly owned spectrum, minorities own only 8% of the nation's full power commercial radio stations and 3% of the full power commercial television stations. All of the FCC's remedial initiatives have been repealed or fallen into disuse.

Over the past five years, 29 national organizations (the Diversity and Competition Supporters, represented by MMTC) and others placed before the FCC 29 proposals that were ripe for action now. Virtually all of the nation's civil rights organizations and over 80 businesses endorsed various of the proposals, and almost no one opposed them. Today the FCC unanimously adopted 12 proposals and included 13 more proposals in a forthcoming Third Further Notice of Proposed Rulemaking. Two of the most significant FCC actions were:

- A ban on racial discrimination in broadcast advertising. This historic civil rights action – 23 years after it was first sought by the National Association of Black Owned Broadcasters (NABOB) – should spell the end of written and unwritten "no-urban" and "no-Spanish" dictates by which some advertisers refuse to consider Black and Spanish stations for ad buys. Based on the FCC's own research, MMTC estimates that the FCC's action today should produce a 5-10% increase in revenue for Black and Spanish radio specialists. Henceforth advertisers (as well as agencies and rep firms) must place nondiscrimination clauses in their ad sales contracts with broadcasters. Further, the parties must observe these nondiscrimination clauses, just as they would observe any

other terms of an advertising sales contract. The practical effect of this provision is that Black and Spanish stations' account executives can no longer be denied an opportunity to bid for an ad buy, and such a bid can no longer be rejected because of what amounts to racial discrimination against the stations' listeners or viewers. MMTC expects and anticipates that the FCC will enforce its advertising discrimination ban scrupulously. The FCC also banned race and gender discrimination in broadcast transactions, a step MMTC has sought since 1995.

- Nonattribution of EDP Interests. The Commission liberalized its 1999 "equity-debt-plus" (EDP) rule, which made investments and loans together exceeding 33% of a company's capitalization attributable to the investor or lender. Today's decision, increasing the EDP attribution threshold to 49% as recommended by the MMTC EDP Task Force, was enthusiastically endorsed by broadcasters and civil rights organizations. The decision ought to revive the seller paper market, which is vital to new entrants' and small companies' ability to secure the capital they need to consummate broadcast transactions.

Here is a scorecard of the disposition of the proposals before the FCC. Proposal numbers refer to the numbering system used by DCS in its FCC rulemaking comments.

The Twelve Proposals Approved By The FCC Today:

- Proposal #1: Equal Transactional Opportunity: Barring Discrimination On The Basis Of Race Or Gender In Broadcast Transactions
- Proposal #4: Tolling Buildout Deadlines For Selling Expiring Construction Permits To Small Businesses [DCS proposed SDBs, not small businesses, as eligible entities, and will undertake to reverse the FCC's use of a small business classification]
- Proposal #8: Nonattribution Of EDP Interests
- Proposal #10: Zero Tolerance For Ownership Rule Abuse
- Proposal #22: Nondiscrimination Provisions In Advertising Sales Contracts, Designed To Expressly Avoid Such Practices As "No Urban/No Spanish" Dictates
- Proposal #29: Encourage More Local And Regional Banks To Participate In SBA-Guaranteed Loan Programs For Broadcast And Telecom Ventures
- 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 A Small Business, Of First Place In The Queue To Form A Duopoly In A Market For Which Only A Limited Number Of Duopolies Are Permissible [DCS proposed SDBs, not small businesses, as eligible entities, and will undertake to reverse the FCC's use of a small business classification]

- Proposal #34: Extension Of Divestiture Deadlines In Mergers Where Applicants Have Actively Solicited Bids For Spin-off Properties From Small Businesses [DCS proposed SDBs, not small businesses, as eligible entities, and will undertake to reverse the FCC's use of a small business classification]
- Proposal #35: Relaxation Of The Grandfathered Cluster Transfer Deadline For Cluster Purchasers Who Will Resell Stations To Small Businesses [DCS does not object to the use of a small business classification for this proposal]
- Proposal #39: Convening Of An Access To Capital Conference
- Proposal #40: Preparation Of A Guidebook On Diversity

The Thirteen Proposals Included In A Third Further Notice Of Proposed Rulemaking:

- Proposal #2: Transfer Restriction Of Grandfathered Clusters To SDBs
- Proposal #5: Large Market Local Radio Ownership Waivers For Incubating A Commensurate SDB Transaction
- Proposal #6: Bifurcation Of Channels For Share-Times With SDBs
- Proposal #12: Allowing A Community's Only Station To Relocate When The Departing Licensee Incubates An LPFM In The Departed Community
- Proposal #26: Ongoing Longitudinal Research On Minority And Women Ownership Trends
- 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 #41: Must-Carry For Class A LPTVs
- Proposal #42: Replacement Of TV Channels 5 And 6 With FM Service
- Proposal #44: Enhanced Consideration Of Minority Ownership And Viewpoint Diversity Attendant To Consideration Of Assignment And Transfer Applications
- Proposal #45: Bright Line Test With No Waivers For Assignment And Transfer Applications Exceeding Ownership Caps
- Proposal #46: Treatment Of All LMAs As Attributable Interests
- Proposal #47: Allow Minorities To Own Station Combinations Equal To The Largest Combination In A Market