Before the
Federal Communications Commission
Washington, D.C. 20544

In the Matter of	)	
	)	
Possible Revision or Elimination of Rules Under	)	
The Regulatory Flexibility Act, 5 U.S.C. Section 610	)	CB Docket No. 11-72
	)	

To the Commission

COMMENTS OF THE MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL

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SUMMARY

The Minority Media and Telecommunications Council (MMTC) respectfully submits these comments in response to the Commission's Notice of Inquiry (NOI).[1] MMTC welcomes the Commission's willingness to revise or eliminate some of its rules that are not achieving their intended purposes or are harmful. Given the opportunity to reevaluate these rules, the Commission has the opportunity to use its powers to close the digital divide and positively impact minority owned businesses, which will in turn spur the economy and strengthen the telecommunications industry.

These Comments will outline several rules and policies that should be either eliminated or revised to ensure that this positive change can occur. Specifically, the Commission should relax its local programming policies, provide broadband deployment support to unserved insular areas including Puerto Rico, relax its foreign broadcast ownership policies, provide for multilingual emergency communications, and enforce and expand its broadcast EEO rules. Through this Section 610 proceeding, the Commission will be able to move ever closer to achieving our mutual goals of promoting minority access to broadband and capital and promoting minority entrepreneurship.

[1] See Possible Revision or Elimination of Rules Under The Regulatory Flexibility Act, 5 U.S.C. Section 610, 26 FCC Rcd 11024 (2011) ("Section 610 NOI").

INTRODUCTION

Pursuant to its powers under Section 610, the Commission plans to review any rules that it adopted in the calendar year 2000 to determine whether the rules have or might have a significant effect on a substantial number of small businesses. Section 610's objective is "to minimize any significant economic impact of such rules (the rules adopted in calendar year 2000) upon a substantial number of small entities." The factors that the Commission will consider when evaluating each rule include: (a) the continued need for the rule; (b) the nature of complaints or comments received concerning the rule from the public; and (c) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Looking upon the stated purpose for this Section 610 review and the objectives that the Commission hopes to achieve, MMTC has reviewed the rules enacted during the requisite time frame and respectfully makes the following recommendations.

I. THE COMMISSION SHOULD RELAX ITS LOCAL PROGRAMMING POLICIES

The radio industry has been suffering major economic problems, leaving minority broadcasters grasping for life support.[2] This impact is compounded by archaic broadcast engineering rules that operate as market entry barriers and effectively stifle diversity and impede competition.[3]

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[2] See Letter from 14 minority broadcasters to U.S. Treasury Secretary Timothy Geithner (July 13, 2009), available at http://www.huffingtonpost.com/2009/07/13/minority-broadcastersin_n_230890.html (last visited September 1, 2011) ("The recession and current credit crisis are having disastrous impacts in all economic sectors, but minority-owned broadcasters are close to becoming an extinct species").

[3] For a complete explanation see MMTC Radio Rescue Petition for Rulemaking, In the Matter of Review of Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism, MB Docket No. 09-52, RM-11565 (July 19, 2009) ("MMTC Radio Rescue Petition"), available at http://mmtconline.org/lp-pdf/MMTC-Radio-Rescue-Petition-071909-REV.pdf (last visited September 1, 2011).

Unfortunately, faced with this crisis, the Commission has instead focused its regulatory attention on localism, an aspect of regulation that is undefined, is largely irrelevant to the survivability of broadcasting, and whose adverse regulatory impact falls most heavily on minorities.

Section 307(b) imposes an obligation upon the Commission to distribute frequencies among the various communities equitably, efficiently, and fairly. The statute requires the distribution of frequencies based on demand for their use. However, Section 307(b) is often misapplied when it is used to discourage move-ins. Minority broadcasters, which typically own stations with inferior technical parameters, have a difficult time reaching their intended audiences because the stations are located far from the centers of the urban markets they generally serve.[4] The additional expense of broadcasting a signal from these remote locations, and the costly burden of complying with outdated technical rules and policies create an even greater challenge for minority broadcasters attempting to survive.

The Commission has relied on Section 307(b) to inquire into the likelihood of local programming by move-in applicants. This information is then used to draw inferences regarding a move-in applicant's future intent to serve areas beyond its proposed community of license. In adopting this policy, the Commission has gone against both the purpose of Section 307(b) and

[4] See Comments of the Minority Media and Telecommunications Council and the Independent Spanish Broadcasters Association in Response to the Report on Broadcast Localism and Notice of Proposed Rule Making, In the Matter of Broadcast Localism, MB Docket No. 04-233, p. 3 (April 28, 2008). "The vast majority of the minority-owned stations are on the AM band, and these stations tend to have inferior facilities…In 2001, 5.9% of AM stations were minority owned; a minority owned station was 43% more likely to be an AM station than was a non-minority owned station. Only 3.9% of the low-band (540 kHz to 800 kHz) stations were minority owned; minorities were 36% less likely than non-minorities to own these desirable facilities. Further, 33.9% of minority owned AM stations operated between 1410-1600 kHz, and minorities were 19% more likely than non-minorities to own these generally less desirable high band facilities." Id. (citing Advisory Committee on Diversity, FM Radio Recommendations, June 11, 2004, pp. 2-4 (citing Kofi Ofori, "Radio Local Market Consolidation and Minority Ownership" (MMTC, March 2002)), available at http://mmtconline.org/lp-pdf/08-04-28-MMTC-ISBA-Localism-Cmts-042808.pdf (last visited Sept. 1, 2011).

the need for a local service for many deserving communities, as has been pointed out in previous Comments.[5]

The Commission should relax this antiquated and unnecessary policy that is an obstacle to competition and diversity. An overhaul of this policy would improve the general state of broadcasting, ease the path of entry for minorities, and remedy many of the present effects of past discriminatory policies directed against minorities.

II. THE COMMISSION SHOULD ENSURE THAT ANY MECHANISM TO DEPLOY BROADBAND GIVES PRIORITY TO UNSERVED INSULAR AREAS SUCH AS PUERTO RICO

Section 254(b) provides that the Commission "shall" ensure that "Consumers in all regions of the Nation, including low-income consumers, and those in rural, insular, and high cost areas ... have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas...."[6] Unfortunately, U.S. territories have not historically had access to comparable service.[7] For example, in the Commission's form 477 County Data indicates that 3.9 million Puerto Ricans are unserved by broadband.[8] By comparing Puerto Rico's unserved population to the total amount of 26 million unserved Americans,[9] the

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[5] See Comments of the Minority Media and Telecommunications Council and the Joint Parties, In the Matter of Policies To Promote Rural Radio Service and to Streamline Allotment and Assigned Procedures, MB Docket No. 09-52, RM- 11528 (May 6, 2011) ("MMTC Rural Radio Reconsideration Petition"), available at http://mmtconline.org/lp-pdf/Rural%20Radio%20Recon%20Petition%20051811.pdf (last visited Sept. 1, 2011).

[6] 47 U.S.C. §254(b)(3).

[7] See Letter from David Honig, President and Executive Director, to FCC Chairman Genachowski, Re: Universal Service Reform, WC Docket No. 10-90 et al., (October 14, 2011), p. 7 ("MMTC USF Letter").

[8] See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd 8008, 8052 (May 20, 2011).

[9] See id. at 8009 (relying upon NTIA data from the National Broadband Map).

data illustrates that Puerto Rico's unserved population accounts for one-sixth of Americans without access to broadband.[10] This is unacceptable. Thus, as the Commission continues with its plans to deploy broadband to unserved areas, priority should be given to unserved insular areas, including Puerto Rico, to ensure that consumers across the nation have access to broadband and the opportunities it provides.

III. THE COMMISSION SHOULD RELAX ITS BROADCAST FOREIGN OWNERSHIP POLICIES TO PROMOTE ACCESS TO CAPITAL

The Commission should relax its outdated foreign ownership policies to address one of the most significant impediments to minority ownership – access to capital.[11] In 2010, the Advisory Committee for Diversity in the Digital Age ("Diversity Committee") and the Diversity and Competition Supporters ("DCS") submitted a recommendation and a proposal, respectively, to inform the Commission on the foreign ownership policy's impact on minority ownership and provide the Commission with suggestions for remedial steps. The recommendation and proposal each sought a declaratory ruling adopting a rebuttable presumption that foreign entities located in a WTO member country, and investing up to 49% of the total equity in a socially and economically disadvantaged business ("SDB") seeking a broadcast license, satisfied the public interest standard so long as the foreign entity, with certain exceptions, does not receive more

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[10] See MMTC USF Letter.at 7.

[11] See Media Ownership, Report to the Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, GAO-08-383 (March 2008), pp. 24-25, available at http://www.gao.gov/new.items/d08383.pdf (last visited September 1, 2011). See also Comments of the Diversity and Competition Supporters, Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of

the Telecommunications Act of 1996, MB Docket No. 09-182 (July 12, 2010), pp. 3-9 ("2010 DCS Comments"), available at http://mmtconline.org/lp-pdf/DCS%202010%20MediaOwnComments%20071210.pdf (last visited September 1, 2011).

than 25% of the licensee's voting power.[12] Unfortunately, the Commission summarily rejected the proposal without addressing any specific concerns regarding a relaxation of its foreign ownership policy.[13]

In the past, the Commission has waived its foreign ownership policy in the context of ownership of cable and telecommunications facilities without adverse consequences. Thus it is no longer rational to have strict restrictions on foreign investment in broadcasting, especially given the positive impact that more relaxed policies would have on diversity. The Commission's crabbed application of Section 310(b)(4) and inconsistent approach when broadcast licenses are involved adversely impacts minority ownership by preventing opportunities for access to capital while serving no significant countervailing purpose.

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[12] See Recommendation for the Adoption of a Declaratory Ruling on Section 310(b)(4) Waivers (Dec. 10, 2004) ("Diversity Committee Recommendation on Foreign Ownership"), available at http://www.fcc.gov/DiversityFAC/recommendations.html (follow link to "Foreign Ownership") (last visited September 1, 2011); Initial Comments of the Diversity and Competition Supporters in Response to the Second Further Notice of Proposed Rulemaking, 2006 Quadrennial Regulatory Review, MB Docket No. 06-121 et al. (October 1, 2007), pp. 37-39 ("2007 DCS Comments"), available at http://mmtconline.org/lp-pdf/DCS-MO-Comments-100107.pdf (last visited September 1, 2011). Petition for Partial Reconsideration, Promoting Diversification of Ownership in the Broadcasting Services, MB Docket No. 07-294 et al. (June 16, 2008), pp. 9-12 ("DCS Petition for Partial Reconsideration"), available at http://mmtconline.org/lp-pdf/DCS-Diversity-Recon-061608.pdf (last visited September 1, 2011). DCS proposed two exceptions: one, which is less restrictive, is that countries that are members of NAFTA and/or the Caribbean Basin Initiative could hold up to 49% of the voting interest. The second exception is more restrictive: a waiver would not be presumed appropriate if it is demonstrated that the country of the foreign investor will not provide reciprocity to U.S. businesses within five years.

[13] See Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5949 ¶77 (rel. March 5, 2008) ("DCS proposes that the Commission consider relaxing restrictions on foreign ownership to permit non-controlling foreign investment where such investment would help eliminate a barrier to access to capital for domestic, minority-owned broadcasters. We decline to adopt this proposal. DCS does not explain why the Commission's concerns about foreign ownership of broadcast interests generally would not apply in this context. At a minimum, the Commission would be required to undertake a significant rulemaking proceeding to examine this issue in greater depth. We are not convinced, on the basis of the record before us, that taking the extraordinary step of relaxing our foreign ownership rules would advance our interest in promoting diversification among broadcast licensees, including women and minorities.") (internal citation omitted).

Therefore, the Commission should reevaluate and adopt the Diversity Committee's recommendation and DSC's proposal.

IV. THE COMMISSION SHOULD ENSURE THAT BROADCASTERS PROVIDE MULTILINGUAL EMERGENCY WARNINGS AND INFORMATION

Between 1980 and 2000, the Hispanic population in the United States more than doubled to 15.1% of the population,[14] becoming the largest minority population in the country by 2008.[15] Given this demographic shift, the federal government should adjust its policies to ensure they adequately address the needs of the changing population. This includes codifying mechanisms to ensure that Spanish speakers, as well as those speaking other widely spoken languages other than English, are able to receive emergency information in their primary language. Taking this step is critically important since approximately 20% of the Hispanic population speaks Spanish as their primary language.[16] Sixty-two percent of these individuals claim Spanish as their primary language,[17] and forty-four percent of those who speak a primary language other than English at home do not speak English "very well."[18]

In the wake of the devastation caused by Hurricane Katrina and Hurricane Irene, the Commission has yet to update the broadcast portions of the Emergency Alert System (EAS) rules

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[14] See Frank Hobbs and Nicole Stoops, U.S. Census Bureau, "Demographic Trends in the 20th Century" (2002) at 1, 78, available at http://www.census.gov/prod/2002pubs/censr-4.pdf (last visited September 1, 2011).

[15] See American Factfinder, U.S. Census Bureau, ACS Demographic and Housing Estimates: 2006-2008, available at http://factfinder.census.gov/servlet/ADPTable?_bm=y&-qr_name=ACS_2008_3YR_G00_DP3YR5&-geo_id=01000US&-gc_url=null&-ds_name=ACS_2008_3YR_G00_&-_lang=en (last visited September 1, 2011).

[16] See American Factfinder, U.S. Census Bureau, "Population and Housing Narrative Profile: 2006-2008", available at http://factfinder.census.gov/servlet/NPTable?_bm=y&-geo_id=01000US&-qr_name=ACS_2008_3YR_G00_NP01&-ds_name=&-redoLog=false (last visited September 1, 2011).

[17] See id.

[18] See id.

to ensure that there are multilingual emergency warnings, and emergency information during and after an emergency event.

To be sure, the Common Alerting Protocol (CAP), which "will allow the Federal Emergency Management Agency (FEMA), the National Weather Service (NWS), a State Governor, or any other authorized initiator of a public alert and warning to automatically format and geo-target a particular alert simultaneously to the public over multiple media platforms such as television, radio, cable, cell phones, and electronic highway signs," will also allow an alert initiator to send alerts specifically formatted for people with disabilities and for non-English speakers."[19] Yet CAP, all by itself, is not enough. CAP cannot ensure that multilingual emergency warnings – much less emergency information in the wake of an emergency event - will reach those without access to mobile phones or other non-broadcast devices, since an emergency may silence a market's only multilingual broadcast station, as happened during Hurricane Katrina. Moreover, CAP does not provide the comprehensive information people need in an emergency – how to seek shelter; where to find food; when it is safe to return; how to be safe upon returning; where to obtain medical assistance; how to find missing loved ones. Only local terrestrial radio, accessible through battery power including in automobile dashboards, is suited to perform that vital function.

Therefore, the Commission should require broadcasters to cooperate to save lives in an emergency by providing multilingual emergency notifications and information.[20]

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[19] Public Notice, EB Docket No. 04-296, DA 10-500 (released March 25, 2010) at 1.

[20] For further discussion, see Reply Comments of the Minority Media and Telecommunications Council, In the Matter of Revisions to the FCC's Part 11 Rules Governing the Emergency Alert System Pending Adoption of the Common Alerting Protocol by the Federal Emergency Management Agency, EB Docket No. 04-296, filed June 14, 2010, available at http://mmtconline.org/lp-pdf/EAS%20Reply%20Comments%20061410.pdf (last visited September 1, 2011); see also Petition for Immediate Interim Relief, In the Matter of Review of the Emergency Alert System, EB Docket No. 04-296, filed September 20, 2005, available at http://mmtconline.org/lp-pdf/EASPetition.pdf (last visited September 1, 2011); see also Reply

V. THE COMMISSION SHOULD ENFORCE AND EXPAND ITS BROADCAST EMPLOYMENT OPPORTUNITY RULES

It is regrettable that the Commission has failed to institute even minimal enforcement of its broadcast Equal Employment Opportunity (EEO) Rule. In a June 29, 2010, letter to Chairman Genachowski,[21] MMTC requested a three-month suspension of broadcast EEO enforcement after the passage of (by that time) a full year with no EEO enforcement actions by the Commission. The urgency of this request was recently underscored by a September 2011 NABJ study of newsroom managers in 15 major television group owners that found that although people of color are 35% of the national population, "out of a total of 1,157 managers, 1,017 are White, 81 are Black, 42 are Hispanic, 16 are Asian and one is Native American" and, thus, only 12.1% of these managers are people of color. NABJ President Gregory Lee declared "These numbers are disappointing. If the media doesn't reflect America, the stories and issues of those who are under-represented will not be told."[22]

We renew our request that enforcement of the EEO rules be promptly re-examined and upgraded. In this way the Commission can reaffirm the agency's commitment to ensuring opportunities for minorities and women in broadcasting.

CONCLUSION

By reforming its rules, the Commission can take many steps to build a bridge across the digital divide and promote minority entrepreneurship. By constantly seeking to promote

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Comments of Petitioners, In the Matter of Review of the Emergency Alert System, EB Docket No. 04-296, filed October 18, 2005, available at http://mmtconline.org/lp-pdf/Post_20Pleading_20and_20Briefs_2edb.EASPetitionReply.pdf (last visited September 1, 2011).

[21] See Letter to FCC Chairman, Julius Genachowski, dated June 29, 2010, available at http://library.mmtconline.org/MMTC%20EEO%20SuspensionReq%20062910.pdf (last visited September 1, 2011).

[22] Bob Butler, 2001 NABJ Diversity Census (2011), available at http://www.nabj.org/resource/resmgr/2011_nabj_diversity_census.pdf (last visited November 26, 2011).

diversity in the communications industries it regulates, the Commission can overcome the present effects of the structural discrimination prevalent in the nation's communications systems and enable all Americans to participate in the digital economy.

Respectfully submitted,

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