

Minority Media and Telecommunications Council

3636 16th Street N.W. Suite B-366
Washington, D.C. 20010
Phone: 202-332-0500 Fax: 202-332-0503
www.mmtconline.org

October 6, 2010

Marlene Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: Notice of *Ex Parte* Communications:

MB Docket Nos. 07-294 (Promoting Diversification of Ownership in the Broadcasting Services), 04-228 (Ways to Further Section 257), 03-130 (Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area), 04-233 (Broadcast Localism), RM-11565, MB Docket No. 09-52 (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), MM Docket 98-204 (Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, AU Docket Nos. 09-21 (Competitive Bidding Procedures); WT Docket No. 05-211 (Implementation of the Commercial Spectrum Enhancement and Modernization of the Commission's Competitive Bidding Rules and Procedures), and MB Docket No. 07-57 (Sirius XM Set-Aside)

Dear Ms. Dortch:

This reports on a meeting held October 5, 2010 with Thomas Reed, Director of the Office of Communications Business Opportunities (OCBO), Belford V. Lawson III, Attorney Advisor, Karen M. Beverly, Consumer-Industry Affairs Specialist and Assistant for Management, and Gilberto de Jesus, Attorney Advisor. Representing MMTC at this meeting were David Honig, President and Executive Director, Joycelyn James, Cathy Hughes Fellow, Jacqueline Clary, John W. Jones Fellow, and Lucette Pierre-Louis, Research Director.

This meeting was convened as a follow up to the meetings held on March 17 and March 23, 2010. The purpose was to receive a status report from OCBO on the 72 pending civil rights proposals before the Commission. None of the proposals has been sent to the Chairman's office ready for action (except #8, which the Chairman has rejected). Here is a table outlining the status and issues discussed.

	Proposal	Year Proposed	Status
1.	Examination of how to Promote Minority Ownership as an Integral Part of all FCC General Media Rulemaking Proceedings; Examine Major Rulemaking and Merger Applications to Discern the Potential Impact of the Proposed Rules or Transactions on Minority and Female Ownership; and Give Enhanced Consideration of Minority Ownership and Viewpoint Diversity Attendant to Consideration of Assignment and Transfer Applications	1973	<ul style="list-style-type: none">• OCBO considers this to be part of their function but they will continue to deliberate on whether/how to formalize the process.• MMTC urged the FCC to create formal rules, similar to RegFlex to ensure that consideration of minority and female ownership and diversity become priorities in every major FCC action.
2.	Conduct Ongoing Longitudinal Research on Minority and Women Ownership Trends	2007	<ul style="list-style-type: none">• Moving forward with this item; OCBO considers this to be a part of the continuing <u>Adarand</u> studies process.

3.	Definition of Full File Review	2007	<ul style="list-style-type: none">• Supplanted by the developing Overcoming Disadvantage Preference (ODP).• MMTC urged the Commission to continue developing the proposals that rely on race-based classifications by using the ODP standard.
4.	Begin <u>Adarand</u> Studies to Arrive at a Constitutionally Defensible Definition of SDB Complete the Effort to Determine Whether, and to What Extent, Bidding Credits Can Incorporate Measures That Account for Race	2005	<ul style="list-style-type: none">• Moving forward with this process.• MMTC alerted the Commission to our concern that, due to <u>Parents Involved</u>, even after three or four years after the <u>Adarand</u> studies are completed the FCC may have difficulty implementing race conscious measures because it would need to try every conceivable race neutral measure including the ones discussed here.

5.	Grant Eligible Entities a Rebuttable Presumption of Eligibility for Waivers, Reductions, or Deferrals of Commission Fees – Rulemaking	2008	<ul style="list-style-type: none">• Not reported upon
6.	Legislative Recommendation to Grant Eligible Entities a Rebuttable Presumption of Eligibility for Waivers, Reductions, or Deferrals of Commission Fees Under 47 U.S.C. §159(d).	2008	<ul style="list-style-type: none">• Not reported upon
7.	Conduct Outreach to Increase Opportunities for Minorities and Women	2004	<ul style="list-style-type: none">• OCBO is working on implementing this proposal.
8.	Designate a Commissioner to Oversee Access to Capital and Funding Acquisition Recommendations	2009	<ul style="list-style-type: none">• The Chairman rejected this proposal.
9.	Develop a Policy under which Divestiture Remedies Promote Opportunities for Small, Women, and Minority Owned Businesses	2004	<ul style="list-style-type: none">• Not reported upon• MMTC reported upon the status of having filed concerns regarding the paradigm reportedly before the Commission on circulation in Sirius-XM, that will ultimately harm minorities and women.

10.	Provide Minority Auction Winners with a Transferable Credit if Winner Certifies that the Licensee Will Serve Underserved Markets	2004	<ul style="list-style-type: none">• Not reported upon• MMTC mentioned that this could potentially be part of the <u>Adarand</u> review.
11.	Provide a Transferable Credit in Auctions if Winner Shows Transaction With an SDB	2004	<ul style="list-style-type: none">• Not reported upon• MMTC mentioned that this could potentially be part of the <u>Adarand</u> review.
12.	Develop a New Communications Technologies Supplier Diversity Program	2004	<ul style="list-style-type: none">• OCBO is working on developing workshops and looking into a supplier diversity program at the governmental level on their own initiative. They will continue to examine what can be done more formally.• MMTC urged the Commission to extend the cable procurement requirements to all platforms on the basis of platform neutrality.

13.	Legislative Recommendation to Expand the Telecommunications Development Fund (TDF) Under 47 U.S.C. §614 and Finance TDF with Auction Proceeds	2004	<ul style="list-style-type: none">• Not reported upon
14.	Legislative Recommendation to Require the Commission to Annually Review and Remove Or Affirmatively Prohibit Known Market Entry Barriers Including Bundling, Bonding, Excessive Year in Business, and Any Preference for Loans Over Grants, and Previous Large Project Experience; Authorize Annual Media and Telecom Diversity and Digital Divide Census, and Expand the Scope of Section 257 to Afford the Commission Ancillary Jurisdiction Over Civil Rights Enforcement for Title I and Title II Services	2009	<ul style="list-style-type: none">• Not reported upon• MMTC urged the Commission to adopt this proposal because it addresses whether it is necessary to amend Section 257. Section 257 was enacted for the purpose of encouraging the FCC to think comprehensively about how the rules impact minority ownership and report upon how they could adjust their regulations to encourage diversity. Congress should be more explicit about the requirements of the report.

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15.	Legislative Recommendation to Clarify Section 307(b) (localism) to Provide that Rules Adopted to Promote Localism are Presumed to be Invalid If they Significantly Inhibit Diversity	2009	<ul style="list-style-type: none">• Not reported upon
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16.	Legislative Recommendation to Amend the FTC Act (15 U.S.C. §§41-58) to Prohibit Racial Discrimination in Advertising Placement Terms	2009	<ul style="list-style-type: none">• OCBO reports that this is likely outside of the FCC's purview.• With respect to potential legislation, including the critical tax certificate legislative recommendation (item 72), MMTC urged the FCC to remember that it is the expert agency and, as such, it routinely recommends legislation to Congress. For example, in nearly every year between 1996-2008, the FCC recommended reinstating the tax certificate policy. It has also advised Congress on Lifeline/Linkup, DTV vouchers and spectrum, and other topics.
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17.	Legislative Recommendation to Create a New Section Within 47 U.S.C. §614 to Increase Access to Capital by Creating a Small and Minority Communications Loan Guarantee Program	2004	<ul style="list-style-type: none">Continued deliberation
18.	Legislative Recommendation to Create a New Section Within 47 U.S.C. §614 to Create an Entity to Purchase Loans Made to Minority and Small Businesses in the Secondary Market	2004	<ul style="list-style-type: none">Not reported upon
19.	Extend Grandfathering for One Year if the Cluster or Noncompliant Station(s) are Sold to a Small Business	2003	<ul style="list-style-type: none">Not reported upon

20.	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 (the “Minority Ownership Incubation Proposal”)	1990	<ul style="list-style-type: none">• Not reported upon• MMTC urged the Commission to consider this proposal due to its timeliness with respect to the Commission’s examination of its multiple ownership rules and Future of Media proceedings. It would have a large impact and should not be controversial, assuming that the race-neutral ODP is applied.
21.	Bifurcation of Channels for Share-Times with SDBs	2002	<ul style="list-style-type: none">• Not reported upon• MMTC encouraged the FCC to view this proposal in conjunction with proposal 24.

22.	Structural Rule Waivers for Financing Construction of an SDB's Unbuilt Station	1999	<ul style="list-style-type: none">• Not reported upon• MMTC urged the Commission to consider this proposal because it would be an easy adopt and is similar to the waiver of 18-month construction rule adopted in 2007.
23.	Relax Broadcast Foreign Ownership Restrictions (<u>see</u> 47 U.S.C. §310(b)(4))	2004	<ul style="list-style-type: none">• Not reported upon• MMTC urged the Commission to adopt in order to overcome the many barriers to gaining capital in the U.S. and also to create an opportunity for reciprocity in other countries.
24.	Use of the Share-Time Rule to Foster Ownership of DTV and FM Subchannels	2007	<ul style="list-style-type: none">• Continued deliberation

25.	Retention On Air of AM Expanded Band Owners' Stations if One of the Stations is Sold to a SDB	2006	<ul style="list-style-type: none">• Not reported upon• MMTC urged the Commission to consider this proposal offered by four citizen groups and eleven broadcast companies, as there is no significant opposition.
26.	Mathematical Touchstones: Tipping Points for the Non-Viability of Independently Owned Radio Stations in a Consolidating Market, and Quantifying Source Diversity	2007	<ul style="list-style-type: none">• Not reported upon• MMTC mentioned that this could potentially be part of the <u>Adarand</u> review.
27.	Engage Economists to Develop a Model for Market-based, Tradable Diversity Credits as an Alternative to Voice Tests	2007	<ul style="list-style-type: none">• OCBO will continue to examine whether this could be an <u>Adarand</u> related study.• MMTC explained that this proposal has a different objective; to study whether diversity credits (or chips) could be used to replace the dilute voice test with respect to consolidation and ownership diversity.

28.	<p>Must-Carry for Certain Class A Television Stations</p> <p>Evaluate Media Access Project's Proposal for new "Class S" Television Station to Share-Time With Full Power DTV</p>	2005/2008	<ul style="list-style-type: none"> • Not reported upon • MMTC urged the FCC to consider because it might be relevant for other LPTV proceedings.
29.	<p>Repeal of Radio Subcaps</p> <p>*In the <u>Diversity Order</u>, the FCC declined to act on this proposal because the subcaps were retained in the 2006 Quadrennial Report and Order</p>	2007	<ul style="list-style-type: none"> • Not reported upon
30.	Relax the Main Studio Rule	2009	<ul style="list-style-type: none"> • Continued deliberation
31.	Clarify that Eligible Entities Can Obtain 18 Months to Construct Major Modifications of Authorized Facilities	2009	<ul style="list-style-type: none"> • Not reported upon • MMTC urged the Commission to view in conjunction with item 22.
32.	Extend the Three-Year Period for New Station Construction Permits	2009	<ul style="list-style-type: none"> • Not reported upon
33.	Conduct Tutorials on Radio Engineering Rules at Headquarters and Annual Conferences	2009	<ul style="list-style-type: none"> • Continued deliberation

34.	Create a Media and Telecom Public Engineer Position to Assist Small Business and Nonprofits with Routine Engineering Matters	2009	<ul style="list-style-type: none">• Continued deliberation
35.	Issue a One-Year Blanket Waiver of Application Fees for Small Business and Nonprofits	2009	<ul style="list-style-type: none">• OCBO informed us that this proposal is unlikely to be adopted to the extent that it impacts the agency's operating budget.

36.	Create Medium Powered FM Stations	2004	<ul style="list-style-type: none">• OCBO informed us that their initial impression is that proposal is unlikely due to limited spectrum, but they may have to do further research.• MMTC urged the FCC to adopt this proposal because there may be a way, in certain markets, to use medium powered stations to cover an entire market. While the NAB has trained many minority and women owners, there are currently few opportunities for them to acquire their own stations.
37.	Replace the FM Table With Interference-Based Allotment Criteria	2004	<ul style="list-style-type: none">• Not reported upon
38.	Authorize Interference Agreements	2004	<ul style="list-style-type: none">• Not reported upon
39.	Harmonize Regional Interference Protection Standards; Allow FM Applicants to Specify Class C, C0, C1, C2 and C3 Facilities in Zone I and IA	2004	<ul style="list-style-type: none">• Continued deliberation

40.	Remove Non-Viable FM Allotments	2004	<ul style="list-style-type: none"> • Not reported upon
41.	Relax the Limit of Four Contingent Applications	2009	<ul style="list-style-type: none"> • Continued deliberation
42.	Study the Feasibility of a New Radio Agreement with Cuba	2009	<ul style="list-style-type: none"> • Not reported upon
43.	Increase Broadcast Auction Discounts to New Entrants	2009	<ul style="list-style-type: none"> • Not reported upon • MMTC urged the Commission to consider this proposal in light of the <u>Council Tree</u> decision discussed in item 53.
44.	Require Minimum Opening Bid Deposit on Each Allotment for Bidders Bidding for an Excessive Proportion of Available Allotments	2009	<ul style="list-style-type: none"> • Continued deliberation
45.	Only Allow Subsequent Bids to be Made Within no more than Six Rounds Following the Initial Bid	2009	<ul style="list-style-type: none"> • Not reported upon
46.	Require Bidders to Specify Intention to Bid Only on Channels With Total Minimum Bid of Four Times Their Deposit and Designate a Second Place Bidder if Winning Bidder Withdraws	2005	<ul style="list-style-type: none"> • Not reported upon

47.	Establish an AM Transition Federal Advisory Committee to Make Recommendations for the Use of TV Channels 5/6 as a New Home for Most AM Stations	2008	<ul style="list-style-type: none">• No status update, but OCBO asked whether we would recommend any other action.• MMTC urged the FCC to convene an advisory committee to help build a consensus. Allowing AM stations to relocate to channel's 5/6 would help save AM, and the 2/3 of minority owned stations on AM. The FCC should include the Navy's frequency coordinator as a participant on the advisory committee due to the opportunity to repurpose some AM spectrum for sonar.
48.	Request the Removal of AM Nighttime Coverage from Section 73.21(i)	2009	<ul style="list-style-type: none">• Continued deliberation
49.	Relax Principal Community Coverage Rules for Commercial Stations	2009	<ul style="list-style-type: none">• Continued deliberation

50.	Replace Minimum Efficiency Standard for AM Stations with a “Minimum Radiation” Standard	2009	<ul style="list-style-type: none"> • Not reported upon
51.	Maintain a Rule of 10 Translator Applications Per Applicant	2009	<ul style="list-style-type: none"> • Not reported upon
52.	Create a New Local “L” Class of LPFM Stations	2009	<ul style="list-style-type: none"> • Continued deliberation
53.	Set Aside the 2006 Designated Entity Rule Changes	2006	<ul style="list-style-type: none"> • OCBO asked about the impact that the <u>Council Tree</u> decision has on this proposal. • MMTC urged the Commission to reinstate and publicize the previous, 2006 DE rule. The FCC could also have a workshop on the auction process.
54.	Do Not Award DE Benefits to Entities that Have a Material Relationship With Large In-Region Incumbent Wireless Providers – Specifically, Create a Pre-clearance Process for DE Applicants; Conduct Random Audits After the Auction; and Strengthen the Unjust Enrichment Rules	2004/2006	<ul style="list-style-type: none"> • Not reported upon

55.	Increase Access to Wireless Spectrum by Increasing Bidding Credits to Small and Very Small Businesses	2004	<ul style="list-style-type: none">• Not reported upon
56.	Increase Access to Licensed Spectrum by Identifying Auctions Where Assigned Licenses Cover Small Geographic Areas	2004	<ul style="list-style-type: none">• Not reported upon
57.	Increase Access to Licensed Spectrum by Waiving Pre-Approval Requirements of Lease Agreements that Transfer <i>De Facto</i> Control of Wireless Licenses that Do Not Conflict with Public Interest	2004	<ul style="list-style-type: none">• Not reported upon
58.	Legislative Recommendation to Amend 309(j) (spectrum auctions) to Ensure that the Commission Cannot Interfere with the DE Program Goals of Increasing a Diverse Array of Licensees and Ensuring the Ability of Minorities and Women to Gain Access to Capital	2009	<ul style="list-style-type: none">• Not reported upon

59.	Prepare Diversity Guides for Companies in Media and Telecom Industry and for Small Businesses, Entrepreneurs and other New Entrants	2008	<ul style="list-style-type: none">• OCBO has restarted the process and will be looking for input from MMTC and the Diversity Committee. These e-guides will be posted on their website.
60.	Develop an Online Resource Directory to Enhance Recruitment, Career Advancement, and Diversity Efforts	2004	<ul style="list-style-type: none">• OCBO is developing a business matching website similar to NTIA's broadband.gov website to provide opportunities for partnership.• MMTC alerted the FCC to the fact that the BTOP/BIP programs were not a success because the SDB were often sub-recipients, which could extend to janitorial services, and that this is not a good model to follow.

61.	Extend All Civil Rights Rules (EEO, Transactional Non-discrimination, Advertising Non-discrimination, Procurement Non-discrimination) to all platforms; covers current opportunities, barriers to entry, methods of compliance, and measuring results	2009	<ul style="list-style-type: none">• Not reported upon• MMTC urged the FCC to use its Section 403 authority to examine extending EEO and civil rights rules. Part of the justification is that broadcasters are streaming online, which both augments and competes with traditional broadcasting; MMTC also mentioned the <u>San Jose Mercury News</u> expose on IT companies that withhold their EEO data. The FCC could also use its powers under the FCC-EEOC MOU.
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62.	Create a New Civil Rights Branch of the Enforcement Bureau with Staff and Compliance Officers for EEO, Transactional, Advertising and Procurement Nondiscrimination for All Platforms	2009	<ul style="list-style-type: none">• Not reported upon• MMTC noted its recent letter to the FCC requesting the Commission suspend EEO enforcement to allow the Commission to reevaluate and recommit itself to EEO.
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63.	Designate a Senior Compliance Officer for the Advertising Nondiscrimination Rule	2009	<ul style="list-style-type: none">• Not reported upon• MMTC urged the Commission to adopt this proposal because of its huge impact on minority broadcasters by preventing practices that cost minority broadcasters an estimated \$200M/year that they earn by never collect. The Commission should ensure compliance with model contract language and publicize the consequences of violating the rule. NABOB and MMTC have received more than 64 complaints about NUDs/NSDs.
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64.	Restore Effective EEO Enforcement, Prohibit Excessive Word of Mouth Recruitment from Homogeneous Workplaces, and Designate Evidentiary Hearings Promptly	2004	<ul style="list-style-type: none">• OCBO is working with the Media Bureau to hold a February hearing on EEO best practices. MMTC would oppose such a hearing because the problem with EEO is not that broadcasters are unaware of best practices. The problem is systemic racial discrimination and the total absence of FCC anti-discrimination enforcement.
65.	EEO Proposals: Collect and Publish Form 395 Data and Annual Employment Reports At a Set Date	2004	<ul style="list-style-type: none">• Continued deliberation and analysis
66.	Amend EEO Rules to Provide for Greater Focus on Retention and Career Development of Diverse Candidates	2004	<ul style="list-style-type: none">• Continued deliberation and analysis
67.	Legislative Recommendation to Expand Sections 334 and 554 (EEO) to Require the Commission to Adopt and Enforce EEO Rules Across All Platforms and Provide Severability of the Rules to Prevent Unrelated Litigation	2009	<ul style="list-style-type: none">• Not reported upon

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68.	Require a Nine-Month Advance Notice Period for the Deadline of Form 175 Applications	2010	<ul style="list-style-type: none">• Not reported upon
69.	Collect, Study, and Report on Minority and Women Participation in Each Step of the Broadcast Auction Process	2010	<ul style="list-style-type: none">• OCBO is considering as a potential participation (<u>Adarand</u>) study
70.	Collect, Study, and Report on Minority and Women Participation in Each Step of the Telecom Auction Process	2010	<ul style="list-style-type: none">• OCBO is considering as a potential participation (<u>Adarand</u>) study
71.	Redefine Community of License as a “market” for §307 purposes	2010	<ul style="list-style-type: none">• Not reported upon• MMTC urged the Commission to consider as part of its examination of the FCC’s radio rules.
72.	Reinstate and Expand the Tax Certificate Policy	2010	<ul style="list-style-type: none">• Not reported upon• MMTC referenced this proposal in our discussion of item 16. This is MMTC’s top legislative priority.

Sincerely,



David Honig
President and Executive Director