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

In the Matter of:

Amendment of the Commission's Rules	)	RM-10960
Governing Modification of FM and AM	)	
Authorizations	)	

COMMENTS OF THE MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL

The Minority Media and Telecommunications Council ("MMTC") respectfully submits its Comments in response to the above-referenced Petition for Rulemaking ("First Broadcasting Petition").[1]

MMTC urges the Commission to offer the First Broadcasting in a Notice of Proposed Rulemaking at the earliest possible date. Each of the proposals in the First Broadcasting Petition is well conceived, and each of them would advance the goal of removing market entry barriers that tend to diminish access to the spectrum resource for small businesses. See 47 U.S.C. §257(a) (1996), which calls upon the Commission to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services," and 47 U.S.C. §257(b), which establishes a "National Policy" under which the Commission shall promote "diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity."

We face a gross and scandalous disparity in media ownership. Minorities control only 4.2% of the nation's radio stations. Because these stations tend to be lower powered or exurban facilities, they constitute only 1.3% of industry asset value. The reason why minority-owned stations tend to have lower asset values than nonminority-owned stations is well established: for

[1] This Petition reflects the institutional views of MMTC and is not intended to reflect the views of any individual member of MMTC, its Board of Directors or its Board of Advisors.

two generations, minorities were excluded from radio ownership by societal discrimination and by the FCC's ratification of that discrimination in its licensing practices.[2/] By the time minorities had any meaningful opportunity to purchase radio stations, the most desirable allotments were already occupied. Minority broadcasters were generally left to fend with lower powered properties some distance from their audiences. In particular:[3/]

- Of the 548 minority-owned stations in 2001, 283 (51.6%) are AM stations; of the 12,469 nonminority-owned stations, 4,498 (36.1%) were AM stations. Thus, a minority-owned station was 43% more likely than a nonminority-owned station to be an AM station.

- Minorities own none of the 25 unduplicated AM "clears." Those licenses were typically given out in the 1920s, a generation before minorities owned any radio stations.

- Of the 283 minority-owned AM stations in 2001, 23 (8.1%) operated between 540-800 kHz. Of the 4,498 nonminority-owned AM stations, 569 (12.7%) operated between 540-800 kHz. Thus, minorities were 36% less likely than nonminorities to own these low-band facilities. This means, also, that only 3.9% of the low-band AM stations were minority-owned.

- Of the 283 minority-owned AM stations in 2001, 96 (33.9%) operated between 1410-1600 kHz. Of the 4,498 nonminority-owned AM stations, 1,277 (28.4%) operated between 1410-1600 kHz. Thus, minorities were 19% more likely than nonminorities to own these high-band facilities.

[2/] See generally Comments of MMTC in MB Docket 02-277 (Omnibus Broadcast Ownership Proceeding) (filed January 2, 2003) ("MMTC Omnibus Ownership Comments"), pp. 19-35.

[3/] The 2001 radio statistics given above were derived from Kofi Ofori, "Radio Local Market Consolidation & Minority Ownership" (MMTC, March, 2002). The 2003 radio statistics are from "Minority and Non-minority Commercial Radio Owners' Holdings in the Top 50 Markets" (MMTC, September, 2003). Both studies used BIA databases. Data for minority-controlled stations included data in four publicly traded radio companies, each of which is controlled by minorities. Like the Commission, we refer to all of these stations as "minority-owned." All references above are to commercial facilities.

- Of the 265 minority-owned FM stations in 2001, 20 (7.5%) were full Class C's. Of the 7,971 nonminority-owned FM stations, 895 (11.2%) were full Class C's. Thus, minorities were 33% less likely than nonminorities to own these most powerful FM stations in the country. This means, also, that only 2.2% of the full Class C's were minority-owned.

- Of the 265 minority-owned FM stations in 2001, 128 (48.3%) were Class A's. Of the 7,971 nonminority-owned FM stations, 3,185 (40.0%) were Class A's. Thus, minorities were 22% more likely than nonminorities to own these lower power facilities.

- Of the 87 minority-owned, top-50 market FM stations in 2003, 21 (24.1%) were licensed to the dominant community in the market. Of the 897 nonminority-owned FM stations in the top 50 markets, 343 (38.2%) were licensed to the dominant community in the market. Thus, minority-owned FM stations were 37% less likely to be licensed to the market's dominant community as were the nonminority-owned stations in the same markets.

The Commission has not hesitated to use its spectrum management authority to address these disparities. See, e.g., "FCC Chairman Michael Powell Announces Opening of Application Window for AM Radio Service: Powell Highlights Strengthening of Minority-Owned AM Stations," FCC News Release, November 6, 2003 (in which Chairman Powell noted that opening the filing window "will enable all AM radio station licensees, many of whom represent minority interests, to apply for approval to move their transmitters to locations that better serve their local communities. Better signal coverage will increase the diversity of radio options available to listeners and will enhance the viability of AM stations.") The advantages of new voices outweigh incumbents' desire to preclude competition. See, e.g., Television Channel Allotments (VHF Drop-ins) (NPRM), FCC 80-545, 45 FR 72902 (November 3, 1980) at ¶¶9, 12 ("any potential loss experienced [by incumbents] will be more than offset by the benefits of such a policy -- additional television service for the public...it is in the public interest to have a regulatory framework that permits the maximum number of signals that can be economically viable" (fn. omitted)); cf. Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations (Report and Order), 3 FCC Rcd 638, 640 ¶15 (1988), in which the Commission decided to rely on market forces to promote competition and therefore abandoned the notion of "ruinous competition" that dated to the "Carroll Doctrine" (per Carroll Broadcasting Co. v. FCC, 258 F.2d 440 (D.C. Cir. 1958)).

The First Media Petition calls for a series of procedural steps designed to facilitate move-ins and drop-ins. Most of these steps would be particularly beneficial to exurban and lower power facilities seeking to better connect with their audiences – the exact circumstances facing the preponderance of minority owners. Facilitating move-ins of exurban stations to urban centers – the thrust of the First Media Petition -- should be a key objective of a comprehensive plan to enhance the asset value of minority-owned facilities. Using this enhanced asset value, these minority owners can secure the capital needed to grow their companies in competition with longer-tenured incumbents.

As First Broadcasting notes, the Commission has not conducted a comprehensive review of the FM Table since 1982, and has not changed its procedures for amending the Table for over 20 years. First Broadcasting Petition at 6. Processing delays for FM allotment changes sometimes run for several years. Id. at 5. First Broadcasting maintains – and our experience bears out -- that these delays lead to "(i) inefficient spectrum use; (ii) delays in delivering improved service to the public; (iii) deterrence of investment in improved facilities; (iv) transactional costs; and (v) waste of scarce and valuable Commission resources." Id. at 6.

We have called for even broader reforms of broadcast spectrum management to facilitate move-ins and drop-ins. See MMTC Omnibus Ownership Comments, pp. 128-141 (calling for the creation of two new classes of FM stations, a comprehensive search of the FM spectrum to identify the most-needed new drop-in opportunities, and replacement of FM station classes with pure interference-based criteria). The First Media Petition presents the Commission with the opportunity to take a significant first step toward broadcast spectrum management reform. With one modest tweak,[4/] we endorse First Broadcasting's proposals.

Most minority-owned broadcasters are underfinanced and thus unable to move rapidly to take advantage of new spectrum opportunities such as those that would be available if the First Media Petition were granted. To ensure that the relief sought in the First Media Petition will be received by those most in need, the Commission should detail an experienced engineer to work fulltime with small and minority broadcasters.

Further, the Commission should ask Congress to appropriate funds for spectrum-clearing incentive grants to failing rural station owners.[5/] Many rural station owners cannot make a decent living, cannot sell their stations for more than scrap value, and seem to have no way out of a sea of red ink. If $25,000,000 were made available for grants of up to $100,000 per station to enable these broadcasters to turn in their licenses and leave the industry with dignity, at least 250 nonviable stations could be cleared from the spectrum. That single, modest appropriation would materially improve the value of the spectrum for other broadcasters and enhance the ability of new entrants to find opportunities for entry through viable drop-ins.

4/ First Broadcasting seeks a simplified allotment deletion process under which the burden of asserting a "compelling justification" for retaining an allotment would rest on the proponent of its retention. First Broadcasting Petition, p. 22. We agree that an allotment deletion process should exist, but urge the Commission to delete only those allotments that are unlikely ever to be commercially viable. The Commission should retain allotments that may not be viable in the immediate future but will be needed later to accommodate the needs of communities likely to undergo significant demographic change, particularly through the infusion of immigrant populations traditionally underserved by broadcasting.

5/ These grants should not be available to niche operators in rated markets. Their stations may be the only alternative voices competing with large, consolidated group owners. The Commission should protect these niche operators by setting limits on local consolidation. See MMTC Reply Comments in MB Docket 01-317 (Radio Ownership) (filed May 8, 2002) (proposing a "tipping point" formula under which the Commission would prohibit consolidation when it would redistribute radio revenue between cluster owners and independents such that the independents could no longer survive).

Finally, the industry should find a way to provide pro bono assistance to small minority broadcasters wishing to upgrade their facilities. In particular, funds should be made available to underwrite the work of fulltime "public interest engineers." These engineers would be the modern equivalent of the public interest attorneys, like Earle K. Moore and Albert Kramer 30-40 years ago, who so profoundly improved the prospects for diversification of the electronic mass media.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I, David Honig, certify that I have this 23rd day of May, 2004 caused a copy of the foregoing "Comments" to be delivered by e-mail to:

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