

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

In the Matter of)
)
Petition for Rulemaking of the National Association of) RM No. 11338
Broadcasters to Permit AM Radio Stations' Use of FM)
Translators)

To: Office of the Secretary

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF
BLACK OWNED BROADCASTERS AND THE MINORITY
MEDIA AND TELECOMMUNICATIONS COUNCIL**

The National Association of Black Owned Broadcasters (“NABOB”) and the Minority Media and Telecommunications Council (“MMTC”) respectfully file these Reply Comments in support of the above-referenced Petition for Rulemaking (“Petition”) of the National Association of Broadcasters (“NAB”).¹

NABOB is the national trade association representing essentially all of the nation’s Black owned radio and television broadcasters. MMTC operates the nation’s only minority owned media brokerage, through which MMTC helps new entrants secure ownership of broadcast facilities.

Our fellow associations representing Hispanic broadcasters summed up the most fundamental reason why the Commission should adopt the NAB’s Petition:

By allowing use of FM translators with AM stations to improve the integrity of the AM band, the Commission would enhance the ability of AM stations to compete with other media sources. Such competition, in turn, drives creativity, ingenuity and attentiveness to the needs of the public in the marketplace as a whole.²

¹ These Reply Comments represent the institutional views of NABOB and MMTC are not intended to represent the individual views of each of their respective officers, directors and members.

² Joint Comments of the Radio Broadcasters Association of Puerto Rico and Independent Spanish Broadcasters Association (filed August 24, 2006), p. 5.

These goals of “promoting creativity, ingenuity and attentiveness to the needs of the public” can best be advanced if the Commission adopts policies that tend to enhance opportunities for minority and female ownership. It is well established that minority ownership must be considered in spectrum management proceedings.³ As petitioner NAB recognizes, minority and female owned stations “further the goal of the Commission’s diversity policy – ensuring that information is available from a multiplicity of sources...the action NAB suggests in this Petition would help AM stations remain viable and therefore continue to be relevant to their communities, and further the government’s interest in diversity.”⁴ NABOB and MMTC commend the NAB for its responsiveness to the Commission’s solicitation of “petitions for rulemaking or other submissions from concerned parties as to other actions we might take” to advance minority ownership.⁵

The Commission has acknowledged that minority and female ownership remain key objectives of structural regulation,⁶ and this Petition presents a race-neutral and gender-neutral means of advancing those objectives. The need could not be greater, for minority ownership is in a state of free fall, having apparently dropped from 4.2% to about 3.9% between 2001 and 2005.⁷

³ See Garrett v. FCC, 513 F.2d 10567 (D.C. Cir. 1975); Clear Channel Broadcasting in the M Broadcast Band (R&O), 78 FCC2d 1345, 1368-69 (1980), recon. denied, 83 FCC2d 216 (1980), aff’d sub nom. Loyola University v. FCC, 670 F.2d 1222 (D.C. Cir. 1982) (including minority ownership as one justification for waivers of acceptance criteria for construction permit applications that proposed new service on domestic Class I-A clear channel AM frequencies).

⁴ Petition for Rulemaking of the National Association of Broadcasters, RM No. 11338 (filed July 14, 2006), p. 3.

⁵ Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC2d 979, 984 (1978) (attendant to adoption of the tax certificate and distress sale policies).

⁶ See 2006 Quadriennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 06-121 (Further Notice of Proposed Rulemaking), FCC 06-93 (released July 24, 2006) at 4 ¶6 (urging commenters to “explain the effects, if any, that their ownership rule proposals will have on ownership of broadcast outlets by minorities, women and small businesses.”)

⁷ Based on the Minority Media and Telecommunications Council’s initial review of the 2001 and 2005 FCC databases of minority ownership (in which MMTC undertook to correct for the over-inclusion or under-inclusion of certain categories of stations and owners in 2005), it appears that minority full power commercial broadcast

Owing to societal discrimination that was facilitated by the FCC,⁸ minority broadcasters entered the business 50 years later than other broadcasters. Therefore, minority broadcasters tended not to have access to FM stations or low dial position AM stations. 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.⁹ Examining station asset values, the FCC's Advisory Committee on Diversity for Communications in the Digital Age concluded that "the typical minority owned station is worth only about 30% of the value of the typical non-minority owned station."¹⁰

Given these inherent disadvantages facing minority broadcasters, an initiative to enable AM stations to use FM translators to expand their coverage areas could not be more welcome. Such an initiative would do much to increase AM stations' asset values, and thereby enhance minority broadcasters' ability to raise capital and expand their holdings.

ownership (including public companies controlled by minorities) declined during this period from 4.2% to approximately 3.9%.

⁸ For 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. 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). Many other examples of how the Commission promoted segregation in broadcasting are provided in the Initial Comments of Diversity and Competition Supporters, MB Docket No. 02-277 (2002 Media Ownership Biennial Proceeding) (filed January 3, 2003) at 22-23 ns. 38-40.

⁹ See FCC Advisory Committee on Diversity for Communication in the Digital Age, FM Radio Recommendations, June 11, 2004 ("FM Recommendations"), pp. 2-4 (citing Kofi Ofori, "Radio Local Market Consolidation & Minority Ownership" (MMTC, March 2002)).

¹⁰ See FM Recommendations at 2.

The relief proposed in the Petition is an important bullet but not a magic one. By itself, this initiative cannot reverse the sharp downward trend in minority ownership. A multiplicity of strategies and initiatives will be required if the Commission is ever to ensure that the nation enjoys the full benefit of the creative, entrepreneurial and managerial skills of a third of its people in the operation of its most influential industries. A grant of this Petition would be a modest but worthy step in that direction.¹¹

Respectfully submitted,

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¹¹ The Prometheus Radio Project had filed comments raising the question of whether the availability of FM translators for AM stations would stunt the growth of LPFM. MMTC filed extensive comments in support of the creation of the LPFM service. See Comments of MMTC et al. in MM Docket 99-25 (Low Power FM), filed August 3, 1999; Reply Comments of MMTC et al. in MM Docket 99-25 (Low Power FM), filed September 17, 1999. MMTC agrees that Prometheus raises a fair point, and recommends that the Commission address the issue by repealing its outdated third adjacent channel restrictions, which operate as a classic market entry barrier of the type Congress sought to eliminate when it adopted Section 257 of the Communications Act, 47 U.S.C. §257 (1996). Eliminating those outdated rules, long rendered irrelevant by advances in receiver technology, would free up sufficient FM spectrum to accommodate the needs of commercial AM stations and the needs of potential LPFM operators.