

The FCC's Consideration of Minority Media Ownership Proposals

Tri-Caucus Briefing
November 14, 2006

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At the initiative of Chairman Richard Wiley in 1977, the FCC developed the tax certificate policy. Adopted in 1978 under Chairman Charles Ferris, the policy lifted minority broadcast ownership from 60 stations to over 300. After Congress repealed the policy in 1995, the FCC developed and enforced no significant initiatives aimed at promoting minority media ownership. Yet the FCC's failure to cure the deep under-representation of minorities in the nation's most influential industries¹ cannot be attributed to any shortage of remedial proposals.

In 2003, the Diversity and Competition Supporters ("DCS"),² represented by the Minority Media and Telecommunications Council ("MMTC"), presented fourteen proposals in the FCC's first omnibus media ownership rulemaking proceeding. These proposals consumed hundreds of pages. DCS representatives met with each commissioner twice and met with the FCC's staff numerous times to explain the proposals. Yet the FCC's decision failed to mention the existence of twelve of the proposals, and failed to rule on the other two.³

In its 2004 Prometheus decision, the Third Circuit of the U.S. Court of Appeals reversed the FCC. Referring to DCS' "proposals for advancing minority and disadvantaged business and for promoting diversity in broadcasting," the Court required the "rulemaking process in response to our remand order" to "address these proposals at the same time."⁴

¹ The FCC's minority ownership database is woefully incomplete and error-prone. Based on its own research, MMTC estimates minority broadcast ownership to stand at about 4% of total facilities and about 1.5% of industry asset value. The disparity between the percentage of minority owned facilities and their asset value stems from minority owners' 50-year late start, which was largely caused by market entry barriers such as the FCC's licensing thousands of segregationists. Consequently, minorities tend to own lower power stations with inferior tower locations that do not permit full market coverage.

² Presently 29 organizations are included in the DCS: Alliance for Community Media, American Indians in Film and Television, Asian American Justice Center, Black College Communication Association, Center for Asian American Media, Independent Spanish Broadcasters Association, International Black Broadcasters Association, Latinos in Information Sciences and Technology Association, League of United Latin American Citizens, Minorities and Communication Division of the Association for Education in Journalism and Mass Communications, Minority Business Enterprise Legal Defense and Education Fund, Minority Media and Telecommunications Council, Multicultural Broadband Trade Association, National Association of Black Telecommunications Professionals, National Association of Hispanic Publications Foundation, National Association of Latino Independent Producers, National Coalition of Hispanic Organizations, National Congress of American Indians, National Council of Churches, National Council of La Raza, National Hispanic Media Coalition, National Indian Telecommunications Institute, National Institute for Latino Policy, National Puerto Rican Coalition, National Urban League, Native American Public Telecommunications, Inc., Puerto Rican Legal Defense and Education Fund, UNITY: Journalists of Color, Inc., and Women's Institute for Freedom of the Press.

³ Unfortunately, this marked the fifth time in 20 years that the FCC disregarded minority ownership proposals filed in its rulemaking proceedings.

⁴ Prometheus Radio Project v. FCC, 373 F.3d 372, 421 n. 49 (3d Cir. 2004) ("Prometheus"), stay modified on rehearing, No. 03-3388 (3d Cir., September 3, 2004), cert. denied, 545 U.S. 1123 (2005). See also Prometheus at 435 n. 82.

On remand from Prometheus, in its July 24, 2006 Further Notice of Proposed Rulemaking (“FNPRM”),⁵ the FCC once again failed to identify and describe DCS’ proposals. It also failed to seek comment on the definition of a socially and economically disadvantaged business (“SDB”), the linchpin of ten of DCS’ proposals. The FCC’s failure to provide notice that it might limit FCC programs’ eligibility to SDBs prevents the FCC from adopting proposals based on an SDB definition. Finally, the FCC failed to specify the key legal basis for DCS’ proposals - Congress’ requirement that the FCC eliminate market entry barriers (“Section 257”).⁶ An agency cannot rely on a law to justify a rule unless it recites the law in its rulemaking notice.

Through these mechanisms, the FCC has guaranteed that none of DCS’ proposals can be adopted.⁷ That is especially unfortunate because these proposals have now been pending for between three years and fourteen years.

In September 2003, the FCC chartered an expert 29-member Advisory Committee on Diversity for Communications in the Digital Age (“Diversity Committee”). By December 2004, the Diversity Committee had endorsed eight of the DCS’ twelve proposals and had adopted four additional minority media ownership proposals of its own. Yet after the Diversity Committee was re-chartered in March 2005, it was deprived of staff and not allowed to meet for fourteen months, even though its Charter requires the FCC to arrange two meetings a year. The Diversity Committee has not held an in-person meeting in 23 months, and all of its media ownership recommendations have been ignored.

In light of these circumstances, on August 23, 2006 DCS filed a motion asking the FCC to withdraw the FNPRM and publish a revised further notice of proposed rulemaking that would (1) identify and describes the fourteen proposals remanded by the Third Circuit, (2) seek comment on a definition of an SDB, and (3) specify Section 257 as a key legal basis for DCS’ proposals. The comment date in the media ownership rulemaking proceeding elapsed on October 23, 2006, but the FCC has still not ruled on DCS’ motion.

In its Initial Comments filed October 23, DCS presented its original fourteen proposals, the Diversity Committee’s four additional proposals, and three new proposals. DCS filed all 21 proposals as an offer of proof, recognizing that the FCC still must restart the proceeding to adopt any of them. DCS’ 21 proposals are intended to address each of the three principal impediments to minority ownership: access to capital, access to spectrum, and access to opportunity. An annotated summary of the 21 proposals is attached.

⁵ 2006 Quadrennial Regulatory Review -- Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 21 FCC Rcd 8834 (2006).

⁶ The proposals are almost entirely deregulatory, having been designed to help the Commission satisfy its obligations under Section 257 of the Telecommunications Act, 47 U.S.C. §257, to eliminate market entry barriers. Congress has required the FCC to file triennial reports under this provision, and the next such report is due by December 31, 2006. See 47 U.S.C. §257(c) (1996).

⁷ The FCC has repeatedly acknowledged that minority ownership is an indispensable element of its media ownership policies. Case precedent suggests that the FCC’s failure in its omnibus media ownership rulemaking to address minority ownership could require a reviewing court to once again reject the ownership consolidation the FCC wishes to pursue in the proceeding.

TWENTY-ONE MINORITY OWNERSHIP PROPOSALS¹

Section I (items 1-14) contains the 14 proposals of the Diversity and Competition Supporters (“DCS”) in MB Docket No. 02-277, the 2002 Biennial Ownership Review. The FCC’s Advisory Committee on Diversity for Communications in the Digital Age (“Diversity Committee”) also proposed eight of these items, as noted therein.

Section II (items 15-18) contains four recommendations issued the Diversity Committee that do not track the proposals or suggestions in items 1-14.

Section III (items 19-21) contains three new proposals.

SECTION I: DCS PROPOSALS IN MB DOCKET 02-277

1. Equal transactional opportunity policy -- barring discrimination on the basis of race or gender in broadcast transactions

Location(s) in Record: Initial Comments of Diversity and Competition Supporters, MB Docket No. 02-277 (filed January 2, 2003) (“DCS 2003 Comments”), pp. 115-120; MMTC Letter to Hon. Michael Powell, MB Docket No. 02-277 (April 28, 2003) (“MMTC April 28, 2003 Ex Parte”), pp. 11-19.

Summary of Item: Race and gender discrimination in the sale of broadcast stations would be banned, consistent with 47 U.S.C. §151. The seller would certify compliance by checking a box on a Form 314 or Form 315 application.

Year First Proposed: 1994

Parallel Recommendation of Diversity Committee: Transactional Transparency Recommendations, May 14, 2004, p. 4; White Paper on Equal Transactional Opportunity, April 29, 2004

Relevance of SDB Definition: No

2. Transfer Restriction of Grandfathered Clusters to SDBs

Location(s) in Record: DCS 2003 Comments, pp. 107-109

Summary of Item: The seller of a grandfathered cluster would not have to break it up if it were sold to an SDB. In the 2002 Biennial Review, the Commission adopted a

¹ Parties seeking additional information about any of these items may contact David Honig, Executive Director, Minority Media and Telecommunications Council, by mail at 3636 16th Street N.W., Suite B-366, Washington, D.C. 20010, or by e-mail at dhonig@crosslink.net.

provision for the transfer intact of a grandfathered cluster, but decided that small businesses, rather than SDBs, would constitute the class of eligible buyers. DCS seeks to develop a definition of “socially and economically disadvantaged business” (SDB) that would be appropriate for broadcasting and be constitutionally sound. SDBs are a subset of small businesses. Like other small businesses, they are economically disadvantaged; but unlike other small businesses, they are also socially disadvantaged. Their social disadvantage stems from individualized factors or from their membership in a class (such as a racial group in a particular industry) for which discrimination has inhibited entry and financing. An SDB definition is desirable because it would be less dilute in its impact on minorities by omitting, for example, the children of millionaires who, as new entrants, can qualify as small businesses although they have never been disadvantaged.

Year First Proposed: 2003

Parallel Recommendation of Diversity Committee: none

Relevance of SDB Definition: Yes

3. 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

Location(s) in Record: DCS 2003 Comments, p. 103

Summary of Item: A company contemplating a transaction that would otherwise be barred by an ownership rule (perhaps one that would qualify in the future, *e.g.*, if the Commission adopted a staged implementation of deregulation program; *see* item 13 *infra*) would be permitted to complete the transaction if it sells stations to SDBs.

Year First Proposed: 1995 (concept originally advanced by NTIA in 1977)

Parallel Recommendation of Diversity Committee: Financial Issues Recommendations, June 14, 2004, pp. 17-18; White Paper on Incentive-Based Regulations, May 23, 2004, pp. 5-6

Relevance of SDB Definition: Yes

4. Tolling buildout deadlines for selling expiring construction permits to SDBs

Location(s) in Record: DCS 2003 Comments, pp. 112-115 (originally a petition for rulemaking filed by Entravision Holdings LLC, RM-9567 (filed March 10, 1998))

Summary of Item: In 1998, Entravision submitted a petition for rulemaking which sought to revise the construction permit expiration standard established pursuant to 47 U.S.C. §§319(a)-(b) and implemented in 47 C.F.R. §73.3598. Entravision proposed that the Commission allow holders of expiring construction permits to sell them to entities in which minorities own at least 20% of the equity, or to entities which commit to serve the programming needs of minority or foreign language groups for at

least 80% of their operating time. DCS proposed a modification of Entravision's concept to make it applicable to all SDBs.

Year First Proposed: 1998

Parallel Recommendation of Diversity Committee: Financial Issues Recommendations, June 14, 2004, pp. 17-18; White Paper on Incentive-Based Regulations, May 23, 2004, pp. 9-10

Relevance of SDB Definition: Yes

5. Structural rule waivers for creating incubator programs

Location(s) in Record: DCS 2003 Comments, pp. 104-105

Summary of Item: The Commission would act on still-pending incubator plans developed in 1992 by Chairman Sikes and by NABOB. With constitutionally required modifications, these plans would allow a company to acquire more than the otherwise-allowable number of stations in a market if the company establishes a program that substantially promotes ownership by disadvantaged businesses. The incubator programs could encompass management or technical assistance, loan guarantees, direct financial assistance through loans or equity investment, training and business planning assistance.

Year First Proposed: 1992

Parallel Recommendation of Diversity Committee: Financial Issues Recommendations, June 14, 2004, pp. 17-18; White Paper on Incentive-Based Regulations, May 23, 2004, pp. 6-7

Relevance of SDB Definition: Yes

6. Bifurcation of channels for share-times with SDBs

Location(s) in Record: Comments of the Minority Media and Telecommunications Council ("MMTC") in MB Docket 01-317 (Radio Ownership), filed March 19, 2002 ("MMTC 2002 Comments"), pp. 111-173; Reply Comments of MMTC in MB Docket 01-317 (Radio Ownership), filed May 8, 2002 ("MMTC 2002 Reply Comments"), pp. 6-10; DCS 2003 Comments, pp. 106-107

Summary of Item: The Commission would create a new class of "Free Speech Stations." They would be independently owned by SDBs, have at least 20 non-nighttime hours per week of airtime, and be primarily devoted to non-entertainment programming. A Free Speech Station would share time on the same channel with a largely deregulated "Entertainment Station." A cluster owner that bifurcates a channel to accommodate a Free Speech Station and an Entertainment Station could buy another fulltime station in the market by taking advantage of Section 202(b)(2) of the Telecommunications Act, which allows for an exception to the local radio

ownership rule when a new station is created. That additional fulltime station would also be bifurcated into a Free Speech and an Entertainment Station. In this way, a cluster could grow steadily up to the limits allowed by antitrust law.

Year First Proposed: 2002

Parallel Recommendation of Diversity Committee: Financial Issues Recommendations, June 14, 2004, pp. 17-18; White Paper on Incentive-Based Regulations, May 23, 2004, pp. 7-8

Relevance of SDB Definition: Yes

7. Structural rule waivers for financing construction of an SDB's unbuilt station

Location(s) in Record: DCS 2003 Comments, pp. 109-110

Summary of Item: When a broadcaster provides an SDB with an equity/debt plus interest ("EDP Interest") that enables the SDB to build out an unbuilt permit, (1) the EDP Interest should be deemed nonattributable, and (2) the entity providing the EDP Interest should be reserved a place in line to subsequently duopolize or crossown another same-market station. This reserved place in the queue, in markets where only a limited number of new combinations can be created under the local ownership rules, would provide an incentive to broadcasters to assist SDBs to build out their unbuilt permits.

Year First Proposed: 1999

Parallel Recommendation of Diversity Committee: none

Relevance of SDB Definition: Yes

8. Grandfathering of nonattribution of EDP (equity debt-plus) interests in SDBs

Location(s) in Record: DCS 2003 Comments, pp. 110-112

Summary of Item: The nonattributable nature of EDP Interests in SDBs would be grandfathered, irrespective of whether the entity providing the EDP Interest (the "EDP Provider") subsequently acquires other properties which otherwise would cause the EDP Interest to be attributable to the EDP Provider. These arrangements would be permissible where (1) the EDP Provider merges with, acquires, or is acquired by a company unrelated to the company holding a nonattributable EDP Interest in an SDB (an "Unrelated Transaction"); (2) the Unrelated Transaction occurs at least a year after the EDP relationship was formed; (3) the Unrelated Transaction would otherwise cause the EDP Provider's EDP Interest in the SDB to become attributable; and (4) the EDP Provider and the SDB make an affirmative showing that the EDP Provider does not exercise undue influence over the SDB.

Year First Proposed: 1999

Parallel Recommendation of Diversity Committee: Financial Issues Recommendations, June 14, 2004, pp. 17-18; White Paper on Incentive-Based Regulations, May 23, 2004, pp. 8-9

Relevance of SDB Definition: Yes

9. Mathematical touchstones: tipping points for the nonviability of independently owned radio stations in a consolidating market, and quantifying source diversity

Location(s) in Record: MMTC 2002 Reply Comments, pp. 22-27; Reply Comments of Diversity and Competition Supporters, MB Docket No. 02-277 (filed February 3, 2003) (“DCS 2003 Reply Comments”), pp. 17-24; MMTC April 28, 2003 Ex Parte, pp. 6-7

Summary of Item: Two formulas in the record were offered as suitable for crafting and implementing rules to promote diversity: (1) MMTC’s “Tipping Point Formula” established how the Commission could ensure that local radio markets could preserve independent owners. This formula was based on the premise that independent owners each need determinable and quantifiable revenue streams in order to stay afloat and provide service to the public. The formula acknowledges the existence of a tipping point in the distribution of radio revenue in a market between cluster owners and independents. When the combined revenues of a market’s cluster owners exceed this tipping point, the independents can no longer survive. By identifying this tipping point, the formula provides a rational basis for determining whether a transaction would limit diversity. (2) DCS’ “Source Diversity Formula” expresses consumers’ utility derived from marginal increases in source diversity. The Source Diversity Formula is based on the premise that increases in consumer utility flow from their access to additional sources, with diminishing returns to scale. This formula would require field-testing before it could be applied in practice to measure source diversity.

Year First Proposed: 2002 (Tipping Point Formula); 2003 (Source Diversity Formula)

Parallel Recommendation of Diversity Committee: none

Relevance of SDB Definition: Yes

10. Zero tolerance for ownership rule abuse

Location(s) in Record: DCS 2003 Comments, pp. 123-127

Summary of Item: Structural abuse is endemic due to limited enforcement resources, the ease of concealing abuse, and the high financial rewards for rulebreaking. Structural rule relaxation would be easier to accept if the Commission holds the line on abuse through a Zero Tolerance Policy focused on clear standards, pro-active investigations, evidentiary hearings, and strict penalties for rule violations.

Year First Proposed: 2003

Parallel Recommendation of Diversity Committee: none

Relevance of SDB Definition: No

11. Use of Joint Operating Agreements (JOAs) as an alternative to Local Marketing Agreements (LMAs) and Joint Sales Agreements (JSAs)

Location(s) in Record: Comments of the Communications Workers of America (CWA) in MB Docket 02-277 (filed January 2, 2003), pp. 4-5 and 48; DCS 2003 Reply Comments, pp. 15-16

Summary of Item: The Commission requires ownership attribution of most JSAs and LMAs. While this step promotes diversity, it also reduces the options available to financially troubled facilities seeking to survive. CWA proposed that JOAs, such as those used in the newspaper industry, could be used to help companies survive and to promote diversity at the same time. A JOA adapted to broadcasting would leave each station's program creation, program organization and distribution, and sales strategy and implementation in the hands of each station's licensees. At the same time, a genuine JOA allows both stations to take advantage of operational synergies for non-program, non-sales related functions, such as accounting, engineering, and physical plant management. A JOA would not be attributable.

Year First Proposed: 2003

Parallel Recommendation of Diversity Committee: none

Relevance of SDB Definition: No

12. Opening FM spectrum for new entrants

Location(s) in Record: DCS 2003 Comments, pp. 128-141; MMTC April 28, 2003 Ex Parte, pp. 10-11

Summary of Item: The Commission has systematically broadened spectrum availability as a means of balancing consolidation with new entry. DCS proposed three methods by which the FCC could open the FM radio spectrum to new entrants: (1) create two new classes of FM stations suitable for serving small communities; (2) perform a comprehensive engineering search of the FM spectrum to identify the most-needed new drop-in opportunities; and (3) replace FM station classes with pure interference-based criteria.

Year First Proposed: 2003

Parallel Recommendation of Diversity Committee: Recommendation on Diversifying Ownership in the Commercial FM Radio Band, October 4, 2004, as amplified by the

Recommendations of the Subcommittee on New Technologies, June 11, 2004, containing eight relevant subparts: (1) create medium power FM stations; (2) replace the FM Table with interference-based allotment criteria; (3) allow Class A stations to use low towers and higher-than-standard power while retaining appropriate ERP levels; (4) conduct a comprehensive channel search for new FM allotments; (5) harmonize regional interference protection standards; (6) repeal the third-adjacent FM contour rules; (7) relax the community of license and transmitter site rules; and (8) authorize interference agreements.

Relevance of SDB Definition: No

13. Staged implementation of deregulation, coupled with a negotiated rulemaking

Location(s) in Record: DCS 2003 Comments, pp. 84-101 and 145-147; Comments of Paxson Communications Corporation, MB Docket 02-277 (filed January 3, 2003), pp. 6-14; DCS 2003 Reply Comments, pp. 25-32

Summary of Item: By implementing deregulation in stages, the Commission could measure the impact of deregulation while it is underway, and implement mid-course corrections when needed to protect diversity, competition, localism and minority ownership. DCS proposed that the Commission would implement its new ownership rules over a ten-year period in five two-year stages. In even numbered years, the Commission would use quantitative tests to measure diversity, competition, localism and minority ownership. If these tests showed ill health on any of these four factors, the Commission would take corrective steps in the odd-numbered years. If a subsequent even-year measurement showed continued ill health, the Commission could apply the brakes until market conditions change. Paxson Communications offered a similar proposal. The coefficients of a staged implementation plan could be worked out in a negotiated rulemaking involving representatives of all of the stakeholders in the proceeding.

Year First Proposed: 2003

Parallel Recommendation of Diversity Committee: none

Relevance of SDB Definition: Yes

14. Market-based, tradable Diversity Credits as an alternative to voice tests

Location(s) in Record: DCS 2003 Reply Comments, pp. 34-38; MMTC April 28, 2003 Ex Parte, pp. 8-10

Summary of Item: A system of market-based diversity credits would be created as an alternative to voice tests. A quantity of diversity credits would be given to SDBs, commensurate with the extent of their social and economic disadvantages. Diversity credits would also be given to the seller at the closing of a transaction that would result in greater structural diversity. If a transaction would add to concentration, the buyer would return a number of diversity credits to the Commission when the

transaction closes. Finally, companies could buy or sell diversity credits to one another, thereby providing a market-based source of access to capital for SDBs. A similar paradigm used by the EPA has replaced much command-and-control environmental regulation. Diversity credits would (1) incentivize diversity, (2) disincentivize consolidation, (3) place on the beneficiaries of consolidation the responsibility of paying for the remediation of some of consolidation's ill effects, (4) serve as a mechanism to provide access to capital to SDBs, (5) capture the measure of diversity more precisely than an inherently approximate voice test, and (6) allow for easier administration than a system of voice tests and waivers.

Year First Proposed: 2003

Parallel Recommendation of Diversity Committee: Transactional Transparency Recommendations, May 14, 2004, p. 3; White Paper on Diversity Credits, May 22, 2004

Relevance of SDB Definition: Yes

SECTION II: PROPOSALS OF THE DIVERSITY COMMITTEE

15. Revision of the Distress Sale Policy to institute case-by-case review of purchasers' qualifications

Location(s) in Record: Diversity Committee, Recommendation on the Distress Sale Policy, June 1, 2004; Financial Issues Recommendations, June 14, 2004, pp. 18-19

Summary of Item: The Distress Sale Policy, in existence since 1978 but seldom used recently, would be revised to ensure that it satisfies the narrow tailoring prong of strict scrutiny. In particular, a potential buyer, of any race, would demonstrate that its proposed service to the community would address needs unmet by existing media. Service to minority audiences could be an unmet need.

Year First Proposed: 2004

Relevance of SDB Definition: No

16. Reservation, for a company that finances or incubates an SDB, of first place in the queue to form a duopoly in a market for which only a limited number of duopolies are permissible

Location(s) in Record: Diversity Committee, Financial Issues Recommendations, June 14, 2004, pp. 17-18; White Paper on Incentive-Based Regulations, May 23, 2004, p. 9

Summary of Item: When the local market voice test limits how many LMAs may be created, a company wishing to have its application to create an LMA considered first could reserve a place in the application queue by financing or incubating an SDB.

Year First Proposed: 1999

Relevance of SDB Definition: Yes

17. Relaxation of foreign ownership restrictions (see 47 U.S.C. §310(b)(4))

Location(s) in Record: Diversity Committee, Adoption of a Declaratory Ruling on Section 310(b)(4) Waivers, December 10, 2004

Nature of Item: Recommendation for rulemaking or policy statement

Summary of Item: The Commission would consider whether a noncontrolling investment from foreigners (e.g. up to 49%) could be permitted where the investment would help eliminate a barrier to access to capital for domestic minority owned broadcasters as contemplated by 47 U.S.C. §257.

Year First Proposed: 2004

Relevance of SDB Definition: Yes

18. Extension of divestiture deadlines in mergers where applicants have actively solicited bids for spin-off properties from SDBs

Location(s) in Record: Diversity Committee, Recommendation on Merger Review, October 15, 2004

Summary of Item: The Commission has recognized that minorities, especially new entrants, often need additional time to line up financing. Therefore, the Commission would announce a policy of generally affording more time for divestitures where the applicants solicit bids from SDBs for spinoff properties.

Year First Proposed: 1999

Relevance of SDB Definition: Yes

SECTION III: NEW PROPOSALS

19. Retention on air of AM expanded band owners' stations if one of the stations is sold to an SDB

Prior History: Joint Petitioners (eleven broadcasters and four public interest and minority organizations) "Request for Waiver of Rules Requiring Return of AM Licenses," MM Docket No. 87-267 (filed March 27, 2006)

Summary of Item: AM licensees operating in the Expanded Band and having another AM station paired with the Expanded Band station are required to forfeit one of these

AM allotments for cancellation on the fifth anniversary of the date on which the Commission issued the expanded band authorization. The Joint Petitioners asked the Commission to waive this requirement in order to allow the transfer of one of the stations to a recognized small business, or the station's retention by the licensee if the licensee is a small business.

Year First Proposed: 2006

Relevance of SDB Definition: No

20. Permitting AM stations to use FM translators

Prior History: Petition for Rulemaking of the National Association of Broadcasters, RM No. 11338 (filed July 14, 2006); see also Reply Comments of the National Association of Black Owned Broadcasters and MMTC, RM No. 11338 (filed September 6, 2006)

Summary of Item: Minority owners' asset values would increase substantially if AM stations could extend their signals using FM translators. The vast majority of minority owned stations are on the AM band, and these stations tend to have inferior facilities. This initiative would help cure this disparity in service that originated with the late entry of minorities into radio ownership, which was caused in significant part by regulatory barriers to entry.

Year First Proposed: 2006

Relevance of SDB Definition: No

21. Relaxation of the community of license and transmitter site rules

Prior History: Petition for Reconsideration of Diversity and Competition Supporters, MB Docket 02-277 (filed September 4, 2003), pp. 36-44. The Diversity and Competition Supporters withdrew the Petition for Reconsideration in order to fulfill the jurisdictional requirements of the Prometheus court. See Prometheus Radio Project v. FCC, 373 F.3d 372, 420 n. 56 (2004) (subsequent history omitted).

Summary of Item: The Commission should relax its community of license and transmitter site rules to the maximum extent permitted by Section 307(b) of the Communications Act. These rules undermine diversity and localism in three ways:

First, these rules artificially prevent large cities from having the number of local stations required to serve the cities' growing and more diverse populations. With more signals come more niche program offerings -- exactly what these diverse communities need. Thus, the relative paucity of full coverage big-city signals imposed by the community of license and transmitter site rules inhibits diversity.

Second, these rules deprive local communities of truly local service. High powered exurban stations seldom if ever "serve" the towns that technically serve as their

communities of license. Instead, they aim at nearby large markets, where they are often not fully competitive because they lack full market coverage.

Third, these rules result in inferior service to minorities, who typically are confined by segregation and wealth disparities to central cities. Minority owned FM stations are disproportionately licensed to the suburbs -- a consequence of nonminorities' 50-year first-mover advantage in securing the more attractive center city allotments.

We wish to propose that:

1. A licensee whose station is in an Arbitron market should be able to choose any community of license in its Arbitron market, as long as its operation there would not violate the interference rules.
2. A licensee whose station is not in an Arbitron market, yet draws the majority of its listeners from an Arbitron market, should be allowed to relocate to any community in that market if, in doing so, it does not violate the interference rules.
3. A station's 60 dbu contour should be required to cover 50% of the population of the community of license, rather than 80% as presently required.

The first priority for move-ins would be stations owned by SDBs, and the second priority would be lower powered suburban facilities that could become competitive full market signals if moved in. After all of the move-in applications are processed, filing windows for drop-ins and signal upgrades would open up to allow for backfilling of the spectrum freed up by the move-ins. Consistent with the Section 307(b) priorities, these filing windows would open in this order:

1. Full power drop-ins that provide new or competitive local service whose audience will primarily be a rural community;
2. Rural LPFMs;
3. Rural translators;
4. Urban translators; and
5. Class of service, power, and tower height upgrades of full power stations.

Under this new paradigm to facilitate move-ins, not every exurban station could relocate, since relocation may be constrained by interference criteria rather than the community of license and transmitter site rules. However, where the community of license and transmitter site rules are the only impediments to a station becoming a move-in, our proposal would make it much easier to effectuate the move-in. Further, these new urban move-ins would also free up spectrum for new drop-ins tailored to provide rural service.

Year First Proposed: 2004

Relevance of SDB Definition: Yes.