

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review –	)	MB Docket No. 09-182
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. 07-294
Promoting Diversification of Ownership	)	
In the Broadcasting Services	)	

To The Commission

**INITIAL COMMENTS OF THE DIVERSITY AND COMPETITION  
SUPPORTERS IN RESPONSE TO THE NOTICE OF PROPOSED RULE MAKING**

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March 5, 2012

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## Summary and Background

The Diversity and Competition Supporters (collectively “DCS”)<sup>1</sup> respectfully submit these Initial Comments in response to the FCC’s Notice of Proposed Rulemaking<sup>2</sup> (“NPRM”). Through this proceeding, the Commission seeks comments on its media ownership rules. In the course of the 2006 quadrennial review proceeding, DCS provided the Commission with several viable pro-diversity proposals to increase minority and female participation in broadcasting.<sup>3</sup>

The NPRM for the current quadrennial review is related to a number of other critical proceedings, including the Commission’s 2008 Diversity Order,<sup>4</sup> the Third Circuit’s remand of

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<sup>1</sup> The Diversity and Competition Supporters is a coalition of national organizations created in 2002 to advance the cause of minority ownership in MB Docket No. 02-277 (and subsequent dockets). A list of its 50 participants is found in the Appendix. These Initial Comments and all subsequently filed supplements and reply comments reflect the institutional views of each of the Diversity and Competition Supporters, and are not intended to represent the individual views of each of the Diversity and Competition Supporters’ officers, directors and members.

<sup>2</sup> See 2010 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, Notice of Proposed Rulemaking, MB Docket No. 09-182 et al. (Dec. 22, 2011) (“NPRM”).

<sup>3</sup> See Reply Comments of the Diversity and Competition Supporters In Response to the Second Further Notice of Proposed Rulemaking, MB Docket No. 06-121 (Nov. 1, 2007), available at <http://mmtconline.org/lp-pdf/11-01-07DCS-Reply-Comments-110107.pdf> (last visited Feb. 12, 2012) (“DCS 2007 Reply Comments”); Supplemental Ex Parte Comments of the Diversity and Competition Supporters In Response to the Second Further Notice of Proposed Rulemaking, MB Docket No. 06-121 et al. (Nov. 20, 2007) at pp. 38-42, available at <http://mmtconline.org/lp-pdf/071120-DCS-MO-SuppComments-112007.pdf> (last visited Feb. 12, 2012) (“2007 DCS Supplemental Ex Parte Comments”); Initial Comments of the Diversity and Competition Supporters In Response to The Third Further Notice of Proposed Rulemaking, MB Docket No. 07-294 (July 30, 2008), available at <http://mmtconline.org/lp-pdf/DCS-Comments-Third-NPRM-073008.pdf> (last visited Feb. 12, 2012) (“DCS Third FNPRM Comments”).

<sup>4</sup> See Promoting Diversification of Ownership in the Broadcasting Services, MB Docket No. 07-294, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922 (2008) (“Diversity Order” and “Diversity Third FNPRM”).

portions of the Diversity Order in Prometheus Radio Project v. FCC (“Prometheus II”),<sup>5</sup> and a Notice of Inquiry.<sup>6</sup>

To arrive at solutions that will address both new and old challenges from the industry and the courts, we respectfully urge the Commission to craft rules that will advance the media ownership policy goals of both remedying the present effects of past discrimination and preventing new discrimination.<sup>7</sup>

There has been a rapid downturn in minority media ownership, and several barriers continue to prevent growth in this area.<sup>8</sup> As the Commission considers developing a new “eligible entities” framework, DCS recommends that the Commission revisit our proposal to adopt a socially and economically disadvantaged business definition for eligible entities.<sup>9</sup> To meet the strict scrutiny standard used by the courts,<sup>10</sup> we recommend the Commission initially adopt race-neutral measures like the Diversity Advisory Committee’s Overcoming Disadvantages Preference while a constitutionally supported SDB definition is being crafted.<sup>11</sup>

The Commission should also adopt several proposals to increase minority broadcast ownership – several of which were recommended in the previous quadrennial review. These

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<sup>5</sup> See Prometheus Radio Project v. FCC, 652 F.3d 431, 472 (3rd Cir. 2011) (“Prometheus II”) (vacating and remanding various FCC rules, including those that relied on the arbitrary and capricious definition of eligible entities).

<sup>6</sup> See 2010 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, MB Docket No. 09-182, Notice of Inquiry, 25 FCC Rcd 6086 (2010).

<sup>7</sup> See pp. 4-6 infra.

<sup>8</sup> See pp. 6-14 infra.

<sup>9</sup> See pp. 14-18 infra.

<sup>10</sup> See Adarand Constructors v. Peña, 515 U.S. 200, 227 (1995) (“Adarand”) (supporting the proposition that all race-based government action is analyzed under strict scrutiny review and must be narrowly tailored to further a compelling government interest).

<sup>11</sup> See pp. 19-21 infra.

proposals include the 22-year old and still pending minority ownership incubator recommendation,<sup>12</sup> working with Congress to develop tax incentive legislation,<sup>13</sup> and relaxation of foreign ownership policies to support broadcast diversity.<sup>14</sup>

Finally, we believe that the Commission should not further relax the duopoly portion of the local television rule due to the harmful effect that duopoly relaxation has had on minority television ownership.<sup>15</sup> By contrast, because the diminished state of print journalism has reduced the amount of original content needed by growing (and increasingly diverse) online media, we are not opposed to relaxation of the cross-ownership rule where such relaxation would not impede minority broadcast ownership.<sup>16</sup>

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<sup>12</sup> See pp. 22-24 *infra*.

<sup>13</sup> See p. 27 *infra*.

<sup>14</sup> See pp. 24-27 *infra*.

<sup>15</sup> See pp. 38-40 *infra*.

<sup>16</sup> See pp. 40-43 *infra*.

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**I. In Addition To Competition, Localism, And Diversity, The Commission Should Consider Remediating The Present Effects Of Past Discrimination And Preventing Discrimination, Among Its Media Ownership Policy Goals**

This review of the Commission’s structural ownership rules begins against the backdrop of drastically declining minority ownership levels,<sup>17</sup> where 2011 saw more minority broadcasters go into bankruptcy.<sup>18</sup> The Commission defines its diversity goals based on five central tenets:

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<sup>17</sup> See pp. 6-8 *infra*.

<sup>18</sup> The Minority Media and Telecommunications Council (“MMTC”) has learned that of the five largest Black-owned broadcasters in 2007, three are bankrupt and one is nearly bankrupt; and of the five largest Hispanic broadcasters in 2007, four are now bankrupt. A 2009 study revealed that in the two year time span “[b]etween 2007 and August 2009, 52 minority-owned radio stations were transferred to bankruptcy trustees, trusts established for the benefit of lenders as workouts, or to a trustee for a debtor-in-possession who may be able to reorganize under Chapter 11 of the Bankruptcy Code or liquidate the trust’s assets under Chapter 7...” See Catherine J.K. Sandoval et al., *Minority Commercial Radio Ownership in 2009: FCC Licensing and Consolidation Policies, Entry Windows, and the Nexus Between Ownership, Diversity and Service in the Public Interest* (2009) at p. 9, available at [http://mmtconline.org/lppdf/Minority\\_Commercial\\_Radio\\_Broadcasters\\_Sandoval%20MMTC\\_2009\\_final\\_report.pdf](http://mmtconline.org/lppdf/Minority_Commercial_Radio_Broadcasters_Sandoval%20MMTC_2009_final_report.pdf) (last visited Feb. 20, 2012) (“Sandoval Study”). See also Lisa Brown, Roberts Broadcasting Mulls Sale of TV Stations, *STL Business* (Feb. 20, 2012), available at

viewpoint diversity, outlet diversity, program diversity, source diversity, and minority and female ownership.<sup>19</sup> In the NPRM, the Commission reaffirmed the importance of structural media ownership rules to shaping an industry where content contains diverse viewpoints.<sup>20</sup> The Commission also tentatively concluded that minority ownership is a key policy goal in the media ownership proceeding.<sup>21</sup> DCS agrees. However, as DCS has previously stated in this docket, the Commission should also adopt the media ownership goal of remedying the present effects of past discrimination and preventing future discrimination.<sup>22</sup> Remedying the present effects of past discrimination provides a compelling interest for the Commission to consider when implementing race and gender-conscious policies and when developing evidence and necessary data to support these policies.<sup>23</sup> Implementing and advancing this goal would allow the

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[http://www.stltoday.com/business/columns/lisa-brown/roberts-broadcasting-mulls-selling-tv-stations-in-bankruptcy/article\\_cb921586-5bfe-11e1-a475-001a4bcf6878.html](http://www.stltoday.com/business/columns/lisa-brown/roberts-broadcasting-mulls-selling-tv-stations-in-bankruptcy/article_cb921586-5bfe-11e1-a475-001a4bcf6878.html) (last visited Feb. 20, 2012). Edvard Pettersson, Radio Station Owner Inner City Media Targeted for Bankruptcy, Bloomberg (Aug. 19, 2011), available at <http://www.bloomberg.com/news/2011-08-20/radio-station-owner-inner-city-media-targeted-for-bankruptcy-1-.html> (last visited Feb. 20, 2012).

<sup>19</sup> See NPRM at ¶16. The Commission has previously determined that program diversity is determined by competition and that source diversity is outside the scope of the media ownership rules. See id. at n. 37.

<sup>20</sup> See id. at ¶16. “The Commission has regulated media ownership as a means of enhancing viewpoint diversity based on the premise that diffuse ownership among media outlets promotes the presentation of a larger number of viewpoints in broadcast content than would be available in the case of more concentrated ownership structure.” Id.

<sup>21</sup> See id. at ¶20. “We tentatively conclude that our policy goals of competition, localism, and diversity are the appropriate framework within which to evaluate and address minority and female interests as they relate to our media ownership rules.” Id.

<sup>22</sup> See Comments of the Diversity and Competition Supporters in Response to the Notice of Inquiry, 2010 Quadrennial 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) at pp. 18-20, available at <http://mmtconline.org/lp-pdf/DCS%202010%20MediaOwnComments%20071210.pdf> (last visited Feb. 15, 2012) (“DCS 2010 Ownership Comments”).

<sup>23</sup> In the context of government action designed to remedy its past discrimination, courts will analyze the government’s evidence of actual discrimination, past or present. See City of



Commission to meet its statutory purpose of proscribing discrimination in the communications industry.<sup>24</sup>

**A. The Level Of Minority Ownership Is Abysmal And Declining**

Despite the Commission’s goal to address minority ownership issues while assessing its own policy goals, minority ownership of communications media remains abysmally low and, as shown herein, has declined over the past several years.

Studies illustrate the nexus between minority ownership and the minority-targeted programming that minority audiences prefer.<sup>25</sup> African American audiences, Hispanic American audiences, and White audiences differ greatly in their radio programming preferences.<sup>26</sup> An FCC-commissioned study found that minority-owned stations tend to broadcast minority-targeted programming.<sup>27</sup> The FCC study found that while the majority of the minority-formatted

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Richmond v. J.A. Croson Co., 488 U.S. 469, 505 (1989) (stating that the history of school desegregation in Richmond did not point to discrimination in the local construction industry); see also Parents Involved in Community Schools v. Seattle School District No.1, 551 U.S. 701, 720-721 (2007) (“Parents”) (race-conscious government action, after past discrimination is remedied, may only continue if justified on another basis). Past discrimination by the Commission and by licensees is well documented. 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).

<sup>24</sup> See 47 U.S.C. §151 (2006).

<sup>25</sup> See DCS 2010 Ownership Comments at p. 14 (citing A Year After Obama’s Election, Blacks Upbeat about Black Progress, Prospects, Pew Research Center (Jan. 12, 2010) at p. 60, available at <http://www.pewsocialtrends.org/files/2010/10/blacks-upbeat-about-black-progress-prospects.pdf> (last visited Feb. 27, 2012)); see also Sandoval Study at p. 20; see also Joel Waldfoegel, Radio Station Ownership Structure and the Provision of Programming to Minority Audiences: Evidence from 2005-2009 (July 18, 2011) at p. 24, available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-308591A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308591A1.pdf) (last visited Feb. 13, 2012) (“Media Ownership Study 7”).

<sup>26</sup> See Media Ownership Study 7 at pp. 2, 8-9, 24.

<sup>27</sup> See id. at pp. 9-10. See also Sandoval Study at p. 19.

stations are not minority-owned,<sup>28</sup> the presence of a minority-owned station increases the amount of minority-targeted programming in a market,<sup>29</sup> which can yield numerous benefits for listeners. Research demonstrates that approximately 73 percent of minority-owned stations serve the community by broadcasting minority oriented programming in “Spanish, Urban, Urban News, Asian, Ethnic and Minority-oriented Religious formats.”<sup>30</sup> And minority targeted local news can promote civic engagement.<sup>31</sup> For example, a 2006 study found that “Spanish-language news programs boost Hispanic [voter] turnout by 5 to 10 percentage points overall.”<sup>32</sup>

Yet, despite the correlation between minority ownership and minority programming, minority ownership levels are low and rapidly declining. A recent study revealed that in mid-2009, minorities controlled 7.24 percent or 815 of the nation’s commercial radio stations.<sup>33</sup> In television, the snapshot of minority ownership is even bleaker. In 2007, minorities owned 3.15 percent or 43 of the nation’s full power commercial television stations.<sup>34</sup> Sadly, 2009 data

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<sup>28</sup> See Media Ownership Study 7 at pp. 9-10.

<sup>29</sup> See *id.* at pp. 21, 24.

<sup>30</sup> See Sandoval Study at pp. 19-21.

<sup>31</sup> See Carolyn M. Byerly *et al.*, Localism and the Ethnic Minority News Audience, pp. 6-7, available at [http://www.allacademic.com/meta/p\\_mla\\_apa\\_research\\_citation/1/6/9/3/4/p169340\\_index.html](http://www.allacademic.com/meta/p_mla_apa_research_citation/1/6/9/3/4/p169340_index.html) (last visited Feb. 28, 2012) (citing Felix Obeholzer-Gee and Joel Waldfogel, Media Markets and Localism: Does Local News En Espanol Boost Hispanic Voter Turnout? Working Paper 12317, National Bureau of Economic Research (2006), available for purchase at <http://www.nber.org/papers/w12317> (last visited Feb. 28, 2012) (“Obeholzer-Gee and Waldfogel Study”).

<sup>32</sup> See *id.* at p. 6 (quoting Obeholzer-Gee and Waldfogel Study at 11).

<sup>33</sup> See Sandoval Study at p. 4 (this study examined records from the Commission’s database and Internet sources). See also Media Ownership Study 7 at pp. 5-6 (noting that minority ownership data used in the FCC-commissioned study was available for 2005 and 2007 but not for 2009). DCS notes that these statistics on the numerosity of stations actually overstate minority representation, since most minority owned stations are small and thus minorities own only a tiny fraction of industry asset value.

illustrates that these levels dropped to 2.1 percent.<sup>35</sup> In other words, in just a two year span between 2007 and 2009, minority ownership of TV stations has decreased by one-third. The Commission now has the opportunity to address this rapid decline in minority ownership to ensure that minority audiences are served with their programming needs.

**B. Market And Policy Barriers Continue To Prevent Greater Minority Participation In The Broadcasting Industry**

Government studies acknowledge several market and policy barriers that hinder the entry of minorities and women into broadcast ownership. For example, a 2008 study commissioned by the U.S. Government Accountability Office (“GAO”) identified “three primary barriers contributing to the limited levels of ownership by minorities and women. These barriers included ‘(1) the large scale of ownership in the media industry, (2) a lack of easy access to sufficient capital for financing the purchases of stations, and (3) the repeal of the tax certificate program—which allowed for the deferral of capital gains taxes on the sale of broadcast and other media outlets and, thereby, provided financial incentives for incumbents to sell stations to minorities.’”<sup>36</sup>

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<sup>34</sup> See S. Derek Turner, *Out of the Picture 2007: Minority & Female TV Station Ownership in the United States*, *Free Press* (Oct. 2007) at p. 14, available at <http://www.freepress.net/files/otp2007.pdf> (last visited Feb.13, 2012).

<sup>35</sup> See *NPRM* at ¶156.

<sup>36</sup> See United States Government Accountability Office, *Report to the Chairman, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, Media Ownership: Economic Factors Influence the Number of Media Outlets in Local Markets, While Ownership by Minorities and Women Appears Limited and Is Difficult to Assess* (March 2008) at p. 5, available at <http://www.gao.gov/assets/280/273671.pdf> (last visited Feb. 14, 2012) (“GAO Media Ownership Report”).

Given the GAO’s findings, DCS underscores its previously stated position that lack of access to capital, lack of access to spectrum, and lack of access to opportunity continue to thwart the progress of broadcast industry diversity.<sup>37</sup>

**i. Lack Of Access To Capital Remains The Greatest Barrier To Broadcast Ownership**

Lack of access to capital remains the greatest barrier to the participation of minorities in the broadcast industry.<sup>38</sup> In its research regarding access to capital, the GAO cited two issues attendant to the lack of access to capital to buy media assets: (1) “Since stations generally do not advertise their properties for sale, individuals and companies looking to purchase a station must have cash on hand. Prospective buyers cannot wait for an announced sale and then acquire financing. This is a challenge for minority and women broadcasters, who often lack information on upcoming station sales and generally have fewer financial resources; and (2) Sellers are deterred from working with buyers who lack capital since any equity remaining in the station would be considered [an] attributable interest under FCC’s rules.”<sup>39</sup>

In addition to the two barriers noted by the GAO, the issue of lack of access to capital appears to be aggravated by our troubled economy. For example, there is a significant wealth disparity between White Americans and African Americans and Hispanic Americans. The Pew Research Center found that “the median wealth of White households is 20 times that of Black households and 18 times that of Hispanic households.”<sup>40</sup> This presents a considerable barrier to

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<sup>37</sup> See DCS 2010 Ownership Comments at p. 2.

<sup>38</sup> See GAO Media Ownership at pp. 24-25.

<sup>39</sup> See *id.* at p. 25.

<sup>40</sup> See Rakesh Kochhar, Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics, Pew Research Center (July 26, 2011), available at [http://www.pewsocialtrends.org/files/2011/07/SDT-Wealth-Report\\_7-26-11\\_FINAL.pdf](http://www.pewsocialtrends.org/files/2011/07/SDT-Wealth-Report_7-26-11_FINAL.pdf) (last visited Feb. 8, 2012) (“Pew Center Wealth Gap Study”).

entry for minority entrepreneurs since many are unable to self-finance a startup. In addition to the wealth barrier, minority entrepreneurs face financing challenges. According to a study conducted for the U.S. Department of Commerce's Minority Business Development Agency, minority-owned businesses pay higher interest rates on loans, are more likely to be denied credit, and are less likely to apply for loans for fear that their applications will be denied.<sup>41</sup> Research also shows that minority-owned firms "have less than half the average amount of recent equity investments and loans than non-minority firms even among firms with \$500,000 or more in annual gross receipts, and [minority firms] also invest substantially less capital at startup and in the first few years of existence than non-minority firms."<sup>42</sup>

Aside from the broadcast industry, as discussed below, lack of sufficient capital also seems to be a problem encountered by minorities in emerging sectors in the communications industry.

**ii. Lack Of Access To Capital Presents A Barrier To Minority Ownership In The High Tech Sector**

The Commission rightly points out that "broadband Internet and other new technologies have had a dramatic impact on the media marketplace."<sup>43</sup> However, the emergence of new technologies does not cure the lack of diversity in the communications industries. The same barriers to diverse broadcast ownership confront minorities and women struggling to own

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<sup>41</sup> See Robert W. Fairlie, Ph.D., Disparities in Capital Access Between Minority and Non-Minority Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs, U.S. Department of Commerce, Minority Business Development Agency (Jan. 2010), available at <http://people.ucsc.edu/~rfairlie/presentations/Disparities%20in%20Capital%20Access%20Report%202010.pdf> (last visited Feb. 6, 2012).

<sup>42</sup> See *id.* at p. 3.

<sup>43</sup> See *NPRM* at ¶2.

businesses in the high tech sector, where technological innovation is transforming the communications industry.

Accessing sources of capital for minority entrepreneurs in the high tech sector includes, among other things, navigating the venture capital investment process. Since high tech experience is crucial to obtaining financing as a tech sector innovator, systemic employment discrimination in the high tech sector also serves as an access to capital barrier.<sup>44</sup> Furthermore, the level of venture capital investment can be used as a measure of “excitement about” or “interest in” young, emerging, unproven teams and founders from diverse gender and racial backgrounds.<sup>45</sup> A large number of small high tech start-up ventures are encouraged to grow their businesses via capital contributions from third-party investors, like angel investors and venture capitalists.<sup>46</sup> However, research on venture capital-backed founders and venture capital-backed teams shows that only one percent of Internet venture capital is invested with African American entrepreneurs, and only seven percent is invested in Asian firms, as compared to 87 percent invested in White-founded firms.<sup>47</sup>

A common barrier for entrepreneurs of color is an absence of “excitement” around the “human capital” they offer, which, as noted above, is critical in the venture capital investment

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<sup>44</sup> See CB Insights, Venture Capital, Human Capital Report: Jan. to June 2010, p. 2, 19, available at <http://www.cbinsights.com/blog/venture-capital/venture-capital-human-capital-report> (last visited Mar. 2, 2012) (“Venture Capital Report”).

<sup>45</sup> See *id.* at p. 2.

<sup>46</sup> See generally Prepared Remarks of FCC Chairman Julius Genachowski, Minority Media and Telecom Council Access To Capital And Telecommunications Conference, Washington, D.C., at p. 3 (July 20, 2010), available at [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2010/db0720/DOC-299976A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0720/DOC-299976A1.pdf) (last visited Feb. 6, 2012).

<sup>47</sup> See Venture Capital Report at pp. 5-6.

decision-making process.<sup>48</sup> Top venture capital firms attempt to decrease risk by investing in entrepreneurs with attributes similar to founders of previously successful ventures (“pattern matching”), which acts as a further barrier to minority entrepreneurs.<sup>49</sup>

Reports discussing the pattern matching technique point out that venture capitalists seek out and are more likely to fund the pattern of previously “...successful founders [which are] [W]hite, [male], computer-science graduates of Stanford University or a similar elite school.”<sup>50</sup> Challenging these kinds of practices is essential to providing minorities with equal access to capital and other supports needed to foster higher entry rates for entrepreneurs in high tech.

In addition to threshold barriers to venture capital financing noted above, the high tech sector pipeline for entrepreneurs of color is in danger. Annual studies conducted on job separations for African Americans in the information industry show that they are twice as likely to *lose* a job in the information industries than they are to gain a new one.<sup>51</sup>

Moreover, venture capital firms, the lifeblood of high tech sector start-up financing, are more likely to provide funding to Internet start-up founders with high tech experience, posing a true “Catch 22” for minority entrepreneurs.<sup>52</sup> The 2011 CB Insights Venture Capital Human Capital Report shows that 39 percent of teams receiving venture capital investments were former CEOs or founders of an existing company.<sup>53</sup> Almost 30 percent of venture capital backed

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<sup>48</sup> See id.

<sup>49</sup> See Mark Millian, Do Black Tech Entrepreneurs Face Institutional Bias? CNN, <http://www.cnn.com/2011/11/11/tech/innovation/black-tech-entrepreneurs/index.html> (last visited Feb 18, 2012).

<sup>50</sup> See id.

<sup>51</sup> See John William Templeton, Silicon Ceiling 11: Equal Employment and High-Technology, at p. 16, eAccess Corp (2011) (“Templeton Study”).

<sup>52</sup> See Venture Capital Report at p. 19.

<sup>53</sup> See id.

founders had some other title at an Internet firm. But the fact that even experienced innovators of color are unable to raise funds suggests that racial discrimination may be a barrier in gaining access to capital.<sup>54</sup>

**iii. Lack Of Access To Spectrum And Opportunity Remain A Barrier**

In addition to the access to capital barrier, the Commission's limited data demonstrates that certain groups face considerable challenges in securing FCC licenses. For example, a 2000 Adarand study prepared for the Commission's Office of General Counsel included over 100 interviews with minority licensees detailing those challenges, including discrimination and changes in broadcast licensing procedures.<sup>55</sup> Some minority licensees faced considerable difficulty in obtaining a license after 1997, when auction proceedings became the method for spectrum licensing.<sup>56</sup>

The Commission should be commended for its initiatives to promote diversity, such as the annual capitalization strategies workshops conducted by the Office of Communications Business Opportunities' ("OCBO"), which aim to provide information and resources on securing capital for minorities and women seeking entry in the broadcast industry. However, these efforts alone are insufficient to significantly increase opportunities for minority and women

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<sup>54</sup> See Templeton Study at pp. 16-21.

<sup>55</sup> See Whose Spectrum Is It Anyway? Historical Study of Market Entry Barriers, Discrimination and Changes in Broadcast and Wireless Licensing, 1950 to Present, Ivy Planning Group (Dec. 2000) at pp.126-131, available at [http://www.fcc.gov/opportunity/meb\\_study/historical\\_study.pdf](http://www.fcc.gov/opportunity/meb_study/historical_study.pdf) (last visited Feb. 6, 2012) ("Commission Historical Study").

<sup>56</sup> See William D. Bradford, Discrimination in Capital Markets, Broadcast/Wireless Spectrum Service Providers and Auction Outcomes (2000) at pp. vi-vii, available at [http://www.fcc.gov/opportunity/meb\\_study/capital\\_market\\_study.pdf](http://www.fcc.gov/opportunity/meb_study/capital_market_study.pdf) (last visited Feb. 4, 2012). "It was found that minority broadcast [and wireless] license holders were less likely to be accepted in their applications for debt financing, after controlling for the effect of the other variables on the lending decision." Id.



ownership.<sup>57</sup> To address this lack of ownership diversity, the Commission should adopt policies specifically designed to increase minority ownership.<sup>58</sup>

## **II. The Commission Should Correct The Defects In The Eligible Entities Definition And Adopt A Race-Neutral Preference In The Interim**

The Commission seeks comment on how it should respond to the Third Circuit’s remand of the “eligible entities” definition, as well as a number of diversity initiatives that rely upon this definition.<sup>59</sup> DCS believes that these proposals, which relied upon the vacated eligible entities rules, will further the Commission’s diversity of ownership goals and should, therefore, not be abandoned.<sup>60</sup> Instead, the Commission should attempt to reinstate valid eligible entities rules in another proceeding, after it has established a viable eligible entities definition or a solid framework for an Overcoming Disadvantages Preference (“ODP”), discussed at pp. 19-21 infra. To act in the interim without establishing a class of beneficiaries that will increase minority ownership would not only be contrary to the Third Circuit’s mandate,<sup>61</sup> but could potentially create a “backdoor for consolidation with no countervailing minority ownership impact.”<sup>62</sup>

As the Commission reconsiders the eligible entities definition remanded by the Third Circuit,<sup>63</sup> it should look to the findings of the Advisory Committee on Diversity for Communications in the Digital Age (“Diversity Committee”) and take meaningful steps to (1)

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<sup>57</sup> See NPRM at ¶148. The Commission also points out that initiatives designed to increase minority ownership such as its “ban on discrimination in broadcast transactions, a ‘zero tolerance’ policy for ownership fraud, and a requirement that non-discrimination provisions be included in advertising sales contracts,” survived review in Prometheus II. Id.

<sup>58</sup> See pp. 21-37 infra.

<sup>59</sup> See NPRM at ¶¶147-170.

<sup>60</sup> See id. at ¶¶168-69.

<sup>61</sup> See Prometheus II, 652 F.3d at 471.

<sup>62</sup> See 2007 DCS Supplemental Ex Parte Comments at p. 38.

<sup>63</sup> NPRM at ¶¶159-160.

collect data that will sustain a “socially and economically disadvantaged business” (“SDB”) definition,<sup>64</sup> and (2) create a meaningful race-neutral definition in the interim.<sup>65</sup>

As the Commission’s Diversity Committee found in 2008, a race-conscious eligible entities definition is the most effective way for the agency to achieve its goals related to diversity and competition; and the best way to remedy the present effects of past discrimination is to provide a mechanism to enable more minorities and women to become FCC licensees.<sup>66</sup> The most direct method of addressing the issue would be a race and gender-conscious definition, similar to the one used by the Small Business Administration (“SBA”) to define “socially and economically disadvantaged businesses,” as discussed at pp. 15-18 *infra*. However, as the Commission is aware, Adarand and the line of cases that rely upon it provide a fairly high bar for the agency to overcome due to a lack of available data.<sup>67</sup>

**A. The Commission Should Strive To Adopt A Socially and Economically Disadvantaged Business Definition For Eligible Entities**

The Commission seeks comment on replacing the “eligible entity” standard with a standard based on the SBA’s definition of SDBs used for purposes of its Business Development

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<sup>64</sup> See Report and Recommendation of the Subcommittee on Eligible Entities, Advisory Committee on Diversity for Communications in the Digital Age (Oct. 22, 2008) at pp. 7-8, available at <http://transition.fcc.gov/DiversityFAC/102808/eligible-entities-report-102808.pdf> (last visited Feb. 17, 2012) (“2008 Eligible Entities Report”).

<sup>65</sup> See *id.* at pp. 30-31; see generally Preference for Overcoming Disadvantage, Advisory Committee on Diversity for Communications in the Digital Age, Oct. 14, 2010, available at <http://transition.fcc.gov/DiversityFAC/meeting101410.html>, then follow link to “Recommendation on Preference for Overcoming Disadvantage” (last visited Feb. 17, 2012).

<sup>66</sup> See 2008 Eligible Entities Report at pp. 4, 7-8.

<sup>67</sup> See Prometheus II, 652 F.3d at 268 n. 36. “The Commission noted that ‘Adarand requires that governmental classifications based on race must be analyzed under strict scrutiny,’ and that the ‘Adarand standard’ was reaffirmed in the Supreme Court’s decision upholding student body diversity in the context of higher education.” *Id.* (citing Adarand, 515 U.S. 200; Grutter v. Bollinger, 539 U.S. 306 (2003) (“Grutter”))

Program.<sup>68</sup> As mentioned in Prometheus II, the Commission chose to adopt a revenue-based definition of eligible entities instead of the SDB definitions proposed in the Diversity Order.<sup>69</sup>

DCS believes that the Commission should adopt a race-conscious definition that closely reflects the SBA's SDB definition. However, as DCS explained in its comments in the 2006 quadrennial review, a race-neutral definition is not likely to achieve the desired result.<sup>70</sup> The SBA defines "socially disadvantaged" individuals as "those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group."<sup>71</sup> Most minorities seeking ownership in the broadcasting industry will likely fit within the SBA's definitions of a socially and economically disadvantaged business or individual. Historically, the groups the SBA designated as socially disadvantaged were (and in some cases, continue to be) subjected to racial and ethnic prejudices or cultural biases, and were also excluded from

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<sup>68</sup> See NPRM at ¶163.

<sup>69</sup> See Prometheus II, 652 F.3d at 442 (describing the Commission's Diversity Order and stating that the Commission "did not consider proposed SDB definitions.")

<sup>70</sup> See DCS 2007 Reply Comments at p. 1 (stating that "DCS strongly favors the adoption of race-conscious SDB definitions because a race-neutral definition is likely to be unacceptably dilute in its impact).

<sup>71</sup> The following groups that fall under the SBA's definition of "socially disadvantaged" individuals are as follows: "Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands [Republic of Palau], Commonwealth of the Northern Mariana Islands, Laos, Cambodia [Kampuchea], Taiwan; Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru; Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal)." Furthermore, the SBA defines economically disadvantaged individuals as "socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities," and the Administration also requires that the individual's net worth be less than \$250,000 minus his or her equity in the firm and primary residence. See Frequently Asked Questions: 8(a) Business Development Program, U.S. Small Business Administration, [available at http://web.sba.gov/faqs/faqIndexAll.cfm?areaid=17](http://web.sba.gov/faqs/faqIndexAll.cfm?areaid=17) (last visited Feb. 8, 2012).

opportunities to be a major participant in the nation's free enterprise system. Evidence of the long-term impact and lasting effects of such ethnic prejudices or cultural biases in the free market is reflected in the Pew Research Center's racial wealth gap study<sup>72</sup> which underscores the fact that wealth tends to perpetuate itself from generation to generation. Another recent study found that "the wealth gap between [W]hite and African American families has more than quadrupled over the course of a generation."<sup>73</sup> The premise that socially disadvantaged individuals are subject to racial and ethnic prejudice in the communications industry has already been documented in Commission studies.<sup>74</sup> However, updated studies are necessary to support the Commission's use of the SBA's definition of a socially and economically disadvantaged business in the communications industry.

The Commission's Diversity Committee has advised that "SDB-based programs have withstood judicial review in other industries when the government developed a record to examine the state of diversity in the industry and what accounts for the lack of diversity in that industry,"<sup>75</sup> and that a "constitutionally sustainable SDB-based program would be bolstered significantly by updated disparity studies."<sup>76</sup> DCS agrees. As DCS previously stated, the Commission can develop a constitutionally sustainable race-conscious SDB definition by promptly implementing initiatives that impact minority ownership, and are race-neutral and pose no impracticalities, while completing up-to-date research documenting the manner and extent to

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<sup>72</sup> See Pew Center Wealth Gap Study at pp. 1-4.

<sup>73</sup> See The Racial Wealth Gap Increases Fourfold, Research and Policy Brief, Institute on Assets and Social Policy (May 2010) at p. 1, available at <http://iasp.brandeis.edu/pdfs/Racial-Wealth-Gap-Brief.pdf> (last visited Feb. 6, 2012).

<sup>74</sup> See Commission Historical Study at pp. 17-67.

<sup>75</sup> See 2008 Eligible Entities Report at p.2.

<sup>76</sup> See 2008 Eligible Entities Report at p. 3.

which minority and women broadcasters have experienced significant disadvantages in media ownership entry and growth.<sup>77</sup> By implementing this process, the FCC will meet the compelling governmental interests of: (1) promoting diversity of information and viewpoints; (2) remedying the present effects of past and present discrimination; and (3) promoting competition.<sup>78</sup> DCS maintains this position regarding how to develop the SDB definition and proposes that, while the Commission develops the record to support a race-conscious program, it should adopt the race-neutral methods recommended by the Diversity Committee as discussed in more detail below.

**B. The Commission Should Implement Race-Neutral Measures To Further Diversity While Continuing To Make Data Collection On Diverse Participation a Priority**

The Commission seeks comment on how to expand its diversity initiatives while continuing to develop the eligible entities framework.<sup>79</sup> The FCC can take many steps to increase its diversity goals and, in good faith, must consider race-neutral initiatives to achieve them.<sup>80</sup> DCS submits that, while the Commission develops its definition of eligible entities and continues to gather data on the necessity of race-based regulations, the Commission should create an “overcoming disadvantage” preference and begin to implement pending race-neutral proposals to advance diverse ownership.

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<sup>77</sup> DCS 2007 Reply Comments at pp. 6-15.

<sup>78</sup> See *id.* at pp. 6-14.

<sup>79</sup> See *NPRM* at ¶149. The Commission seeks comment on “how the Commission most effectively can expand upon its diversity initiatives at the same time that we address the Third Circuit’s concerns and other legal considerations, including potential impediments to affording licensing preferences to minorities and women under current standards of constitutional law.” *Id.*

<sup>80</sup> See *Parents*, 551 U.S. at 735 (in finding that student assignment plans that used race as a factor were unconstitutional, the Court noted that to prove narrow tailoring, the districts must give “serious, good faith consideration of workable race-neutral alternatives” (quoting *Grutter*, 539 U.S. at 339)).

Given the record on minority ownership and participation in the communications industries, DCS cannot support an eligible entities definition that does not increase opportunity for minorities and women in a meaningful way. As such, the Commission’s previous definition of eligible entities, relying solely upon the SBA’s small business definition, should not be reinstated because it had no measurable impact on minority ownership. That definition does not further the Commission’s objectives because, as DCS explained in its 2006 quadrennial review comments, and as the Third Circuit agreed, “minorities comprise 8.5 percent of commercial radio station owners that qualify as small businesses, but [only] 7.78 percent of the commercial radio industry as a whole.”<sup>81</sup>

**C. The Commission Should Act On The Diversity Committee’s Recommendation on the Overcoming Disadvantages Preference**

DCS believes the Commission’s consideration of the Diversity Committee’s Overcoming Disadvantages Preferences (“ODP”) standard, as referenced in the NPRM,<sup>82</sup> is an affirmative step in the right direction. The ODP standard 1) could promote diversity in the spectrum auctioning process, 2) could potentially result in the awarding of broadcast licenses to diverse participants, and 3) is race and gender neutral. Minorities and women have been disadvantaged in the auction process since the Commission changed its designated entity (“DE”) rules in 2006. The Commission’s alteration of its DE rules nearly eradicated the participation of minorities, women and small businesses in spectrum auctions. For example, prior to the changes in these rules, DE’s secured \$23 billion, or 50 percent of the licenses and after the rule changes, that

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<sup>81</sup> See NPRM at ¶160 (citing Prometheus II, 652 F.3d at 470); see also DCS 2007 Supplemental Ex Parte Comments at p. 2 (noting that some minority-owned businesses are too large to qualify for the SBA definition).

<sup>82</sup> See NRPM at ¶149; see also Advisory Committee on Diversity for Communications in the Digital Age, Recommendation on Preference for Overcoming Disadvantage (Oct. 14, 2010), available at <http://transition.fcc.gov/DiversityFAC/recommendations.html> (follow link to “Recommendation on Preference for Overcoming Disadvantage”) (last visited Feb. 9, 2012).

number plummeted to \$1 billion or only three percent.<sup>83</sup> This dramatic decrease cannot be a mere coincidence.

The Commission needs to take urgent action to reverse the negative effects of its DE rules. The Commission should immediately issue a Notice of Proposed Rulemaking on the ODP recommendation to follow up on the Media and Wireless Bureaus' 2010 Public Notice,<sup>84</sup> thus demonstrating a serious consideration of the initiative to improve diversity of broadcast licensees.<sup>85</sup> As MMTC has noted in its comments to the Public Notice regarding Overcoming Disadvantages Preferences, this proposal would amend the Commission's DE rules by providing coveted bidding credits to those who have overcome substantial disadvantages in highly competitive FCC license auctions – an arena in which beneficiaries under the recommendation might not otherwise have a chance to compete.<sup>86</sup> The ODP standard would provide the

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<sup>83</sup> See Advisory Committee on Diversity for Communications in the Digital Age, Telecom and Broadband Issues Subcommittee, Proposal to Restore the FCC's Designated Entity Program, at p. 1 (Sep. 22, 2009) available at <http://transition.fcc.gov/DiversityFAC/recommendations.html> (follow link to "Designated Entity Investment Rules") (last visited March 5, 2012). Several petitioners, including MMTC, successfully challenged the Commission's actions. See Council Tree Communications v. FCC, 619 F.3d 235 (3rd Cir. 2010) ("Council Tree"), cert. denied, 2011 U.S. LEXIS 2468 (vacating the impermissible material relationship rule and the 10-year-hold rule, and remanding the matter to the FCC for further proceedings). See also Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures: Waiver of Section 1.2110(b)(3)(iv)(A) of the Commission's Rules for the Upper 700 MHz Band D Block License, Order, WT 05-211, 2012 FCC LEXIS 450 (2012).

<sup>84</sup> See Media and Wireless Telecommunications Bureaus Seek Comment on Recommendation of the Advisory Committee on Diversity for Communications in the Digital Age for a New Auction Preference for Overcoming Disadvantage, Public Notice, GN Docket No. 10-244, 25 FCC Rcd 16854 (2010). ("ODP Public Notice") (citing Recommendation on Preference for Overcoming Disadvantage, FCC Advisory Committee on Diversity for Communications in the Digital Age (Oct. 14, 2010), available at <http://www.fcc.gov/DiversityFAC/meeting101410.html> (last visited Feb. 7, 2012)).

<sup>85</sup> See NRPM at ¶167.

<sup>86</sup> See Comments of the Minority Media and Telecommunications Council, Recommendation of the Advisory Committee on Diversity for Communications in the Digital Age for a New Auction

Commission with a race and gender-neutral means of increasing the participation of disadvantaged persons in the auction process who have demonstrated the grit and perseverance necessary for long-term success and a predilection to serve the public interest.<sup>87</sup>

### **III. The Commission Should Adopt Several Long-Pending Diversity Proposals**

A multitude of pro-diversity proposals have been pending before the Commission for years and, in one instance, for over two decades.<sup>88</sup> The proposals include structural ownership rule reforms that can be used in conjunction with a preference on overcoming disadvantage, FCC process reforms to consider the impact of its general rules on minority ownership, and engineering rule revisions that would make it easier for broadcasters to survive. As discussed supra, DCS believes that proposals and initiatives that rely on the vacated eligible entities definition should not be abandoned.<sup>89</sup> Instead, the proposals should incorporate a valid definition of eligible entities or the Overcoming Disadvantage Preference.<sup>90</sup> The recommendations discussed below address the 47 most salient proposals that the Commission should consider in this proceeding.<sup>91</sup>

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Preference for Overcoming Disadvantage, GN Docket 10-244 (Feb. 7, 2011), available at <http://mmtconline.org/lp-pdf/MMTC%20ODP%20Comments%20020711.pdf> (last visited Feb. 14, 2012).

<sup>87</sup> See id.

<sup>88</sup> See, e.g., MMTC Ex Parte Letter re: Diversification of Broadcast Ownership, MB Docket No. 07-294, et al., Attachment (Mar. 24, 2010), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020397317> (last visited Feb. 14, 2012). These proposals have since been reduced to 72 proposals. See 72 Proposals Pending Before the Federal Communications Commission To Advance Minority Media and Telecommunications Ownership and Employment (May 11, 2010) (on file with MMTC).

<sup>89</sup> See pp. 14-15 supra.

<sup>90</sup> See pp. 19-21 supra.

<sup>91</sup> The numbering of these proposals corresponds to the original numbering of the 72 proposals. We plan to file, shortly, supplemental comments on the proposals described herein. Those



1. **Minority Ownership Incubation Proposal [Proposal 20].**<sup>92</sup> The Commission’s ownership rules can be structured to incentivize diversity and new entrants. For example, the incubator proposal, pending before the Commission for more than 20 years,<sup>93</sup> and favorably acknowledged by Commissioner Michael Copps,<sup>94</sup> would use

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among the 72 proposals that are not included here have either been adopted or rejected, are moot, or do not fall within the scope of this proceeding.

<sup>92</sup> As stated in the 72 Proposals, the request was to allow a structural rule waiver for selling a station to an SDB, where sale to the SDB is ancillary to a transaction that otherwise would be barred by an ownership rule. See DCS 2007 Initial Comments at p. 9. As explained herein, this proposal has been refined and improved in some respects.

<sup>93</sup> See DCS 2010 Ownership Comments at p. 22 n. 84 (illustrating the history of the proposal through a progression of dockets since 1992). A proposal to allow structural rule waivers for creating incubator programs was introduced by the 1992 Minority Ownership Task Force. See Initial Comments of the Diversity and Competition Supporters in Response to the Second Further Notice of Proposed Rulemaking, 2006 Quadrennial Regulatory Review – Review Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 06-121, et al. (Oct. 1, 2007) at pp. 11-12, available at <http://mmtconline.org/lp-pdf/DCS-MO-Comments-100107.pdf> (last visited Feb. 15, 2012) (“DCS 2007 Initial Comments”). The incubator proposal was endorsed by each of the Commissioners in office in 1992 and again in 1995. See Revision of Radio Rules and Policies, MM Docket 91-140, Reconsideration, 7 FCC Rcd 6387, 6391-92 ¶¶21-25 (1992); Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities MM Docket No. 94-149, Notice of Proposed Rulemaking, 10 FCC Rcd 2788, 2791-94 ¶¶15-24 (1995). In 1995 it was included in the minority ownership proceeding. See id. This docket was closed in 2002. See Termination of Stale or Moot Docketed Proceedings, Order, 17 FCC Rcd 1199, 1205 (2002). The incubator proposal was also introduced by DCS into a 2001 proceeding that was later consolidated into the 2002 Biennial review. See DCS 2007 Initial Comments at p. 12 n. 47 (citing Multiple Ownership of Radio Broadcast Stations in Local Markets, MM Docket 01-317, 16 FCC Rcd 19861 (2001); Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 17 FCC Rcd 18503, 18506 ¶7 (2002)). The Diversity Committee endorsed the incubator proposal in 2004. See Diversity Committee White Paper on Incentive-Based Regulations at p. 6. DCS expanded upon the 1992 proposal and offered additional suggestions as to what might qualify for incubation activities, including creating an HBCU business planning center for minority entrepreneurs, training similar to the National Association of Broadcasters Foundation’s Broadcast Leadership Training Program, a line of credit for SDBs, and financial investments and mentorship opportunities for SDBs. See DCS 2007 Initial Comments at p. 13 (citing Initial Comments of Diversity and Competition Supporters, MB Docket 02-277 (Jan. 2, 2003) at p. 105, available at <http://mmtconline.org/lp-pdf/BroadcastOwn-Comments.pdf> (last visited Feb. 19 2012) (“2003 DCS Comments”). In the course of the 2006 quadrennial regulatory review proceeding, DCS further modified the incubator proposal in its Supplemental Comments. See 2007 DCS Supplemental Ex Parte Comments at pp. 5-8.

<sup>94</sup> See NPRM at p. 95 (Commissioner Copps states that he is “pleased to see the proposal for an incubator program teed up for comment in the NPRM.”)

structural rule waivers to incentivize broadcasters to finance or incubate disadvantaged businesses.<sup>95</sup> Once a business engages in a qualifying incubating activity, the local radio ownership rule would be waived such that the business could exceed the ownership limits by one station per incubating activity, thus encouraging new entrants.<sup>96</sup> The incubator proposal – unopposed since its origin in the Commission’s Minority Ownership Advisory Committee in 1990 – has garnered praise from Commissioners and has been supported by DCS in previous proceedings.<sup>97</sup>

Through various FCC dockets, the incubator proposal has undergone some change over the years.<sup>98</sup> In its present form, DCS advocates that the Commission should allow: “Structural rule waivers for companies that take actions to ‘incubate’ (i.e., engage in actions that enhance radio station ownership opportunities) SDBs.”<sup>99</sup> The incubator proposal envisions waiver of the local radio ownership rule when applicable to accommodate ownership for the incubator. Activities that would qualify for the incubator waiver should be measured on an ongoing basis to ensure the effectiveness of the incubating activity in increasing opportunities for SDBs, without abuses. These activities might include:

- Sale or donation of a commercial radio station to a qualified entity on the condition that the recipient of a donated station certify that it will hold the station license for a period of three years following closing of the transaction effectuating the donation, subject to exceptions for economic distress or subsequent sale or donation to another qualified entity;
- Five years of an LMA operating structure for an independent programmer on an FM HD-2 or HD-3 channel, with the independent programmer obligated to pay the licensee no more than the licensee’s actual out-of-pocket expenses associated with operation of the subchannel;

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<sup>95</sup> See, e.g., MMTC Ex Parte Letter re: 2010 Quadrennial Review, MB Docket No. 09-182, et al., (Sep. 7, 2011) at p. 3 (“MMTC Sep. 7 Ex Parte”).

<sup>96</sup> See id.

<sup>97</sup> See p. 22 n. 93 supra.

<sup>98</sup> Addressing concerns about the potential increase in consolidation as a result of the incubation proposal, DCS proposed a narrow two-year Trial Incubation Plan. See 2007 DCS Supplemental Ex Parte Comments at pp. 6-7. The Commission then sought comment on the Trial Incubation Plan in its Diversity Order. See Diversity Order, 23 FCC Rcd at 5946 ¶68, 5955 ¶9. In the 2010 quadrennial review proceeding, DCS renewed its request for a broad incubator proposal, not limited to the Trial Incubation Plan. See DCS 2010 Ownership Comments at p. 24 (“...given the state of minority ownership and the relatively few opportunities to enter the market, we propose that the incubation proposal apply to all markets at this time, including additional steps mentioned above that might qualify towards an incubation credit.”)

<sup>99</sup> See, e.g., MMTC Sep. 7 Ex Parte Letter at p. 3.

- Underwriting, including financing of one year of operations and the in-kind provisions of technical or engineering assistance or equipment that enables the re-activation and restoration to full service of a dark commercial or noncommercial station licensed to an eligible entity where the licensee or permittee certifies that it is otherwise unable to resume or commence service prior to the date on which the license or permit would be cancelled by operation of law;
- Arranging for the donation of a commercial or noncommercial station to an Historically Black College or University (HBCU), an Hispanic Serving Institution (HSI), an Asian American Serving Institution (AASI) or a Native American Serving Institution (NASI).
- Providing loans, loan guarantees, lines of credit, equity investments, or other direct financial assistance to a qualified entity to cover more than 50 percent of the purchase price of a radio station;
- Another action that the company seeking a waiver demonstrates is likely to enhance radio station ownership opportunities for qualified entities.<sup>100</sup>

The qualified activity must occur in the same market or a market at least as large as the market where the transaction occurs.<sup>101</sup> Each qualifying activity could be granted a waiver, and station groups resulting from waivers would be permanently grandfathered without needing a new waiver.<sup>102</sup>

2. **Relax broadcast foreign ownership restrictions [Proposal 23].**<sup>103</sup> The Commission should relax its foreign ownership policies pursuant to Section 310(b)(4) of the Communications Act. Such relaxation will not only provide new funding options for minority broadcast entrepreneurs,<sup>104</sup> but will also give all U.S. broadcasters the opportunity to increase their investments in foreign broadcast outlets.<sup>105</sup> As part of this effort, the Commission should conduct a study regarding

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<sup>100</sup> See *id.* at pp. 3-4.

<sup>101</sup> See *id.* at p. 3.

<sup>102</sup> See *id.* at p. 5.

<sup>103</sup> See DCS 2007 Initial Comments at pp. 37-39.

<sup>104</sup> For example, MMTC referenced how the number of Spanish language broadcasters has decreased over the past few years due to the lack of capital investment. See generally Comments of the Minority Media and Telecommunications Council, Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, IB Docket No. 11-133 (Dec. 1, 2011) at pp. 3-9, available at <http://mmtconline.org/lp-pdf/MMTC%20310b4%20Comments%20120111.pdf> (last visited Feb. 15, 2012).

the effectiveness of media ownership diversity proposals in other countries and use that data to help address minority ownership issues in the United States.

The Commission currently restricts foreign investment in broadcast facilities.<sup>106</sup> However, the foreign ownership restrictions in Section 310(b)(4) of the Communications Act are outdated in light of a sea change in communications technology and the advent of a global economy. Congress enacted the predecessor to Section 310(b)(4) during the tumultuous climate of the early twentieth century,<sup>107</sup> when the U.S. was preparing for World War I.<sup>108</sup> Today, however, social media, enabled by the Internet, has substantially changed the way organizations, communities and individuals communicate, eclipsing broadcasting's ability to dominate the marketplace of viewpoints relating to national security and myriad other topics and issues affecting daily life.<sup>109</sup> Moreover, when Congress first enacted foreign ownership restrictions, only a handful of radio stations were licensed. At that

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<sup>105</sup> In 2008, the Commission denied MMTC's request to relax the foreign ownership policy, and MMTC, joined by 28 other national organizations, sought reconsideration of the FCC's denial of a petition to relax the policy. That petition remains pending. See Petition for Partial Reconsideration of 29 Organizations, Promoting Diversification of Ownership In Broadcasting Services, MB Docket No. 07-294 (June 16, 2008), available at <http://mmtconline.org/lp-pdf/DCS-Diversity-Recon-061608.pdf> (last visited Feb. 6, 2012).

<sup>106</sup> Section 310(b)(4) provides that "No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by any corporation directly or indirectly controlled by any other corporation of which more than one-fourth the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license." See 47 U.S.C. §310(b)(4) (2012).

<sup>107</sup> Beginning with the Radio Act of 1927, the Commission has expressed that the impetus for imposing restrictions on foreign broadcast ownership was to quell the spread of anti-American propaganda. See Rita Zajacz, *Liberating American Communications: Foreign Ownership Regulations from the Radio Act of 1912 to the Radio Act of 1927*, p. 1, available at [http://findarticles.com/p/articles/mi\\_m6836/is\\_2\\_48/ai\\_n25092547/pg\\_12/?tag=content;coll](http://findarticles.com/p/articles/mi_m6836/is_2_48/ai_n25092547/pg_12/?tag=content;coll) (last visited Feb. 28, 2012). In 1912, when these policies originated, there was a genuine risk of German dominance of a broadcasting industry in its infancy. Id. "Since communications historians have not investigated foreign ownership rules, it is necessary to turn to legal scholars who participated in the debate about revising the regulations for the Telecommunications Act of 1996. Members of the legal profession and the Federal Communications Commission generally accept that the main national security justification behind the passage of Section 310 was a concern with propaganda." Id.

<sup>108</sup> As the most efficient and pervasive means of addressing the public, regulating foreign access to U.S. broadcasting was imperative in order to protect national interests.

<sup>109</sup> It is difficult to envision foreign investors – especially WTO members – endangering our national security through their ownership stakes in broadcast stations.

time, Congress was concerned that foreign investments would influence U.S. security. Expanding on this concept, the FCC later cited propaganda concerns as justification for the restrictions.

Today, there are thousands of radio and full power television stations, LPTVs, and other mass media such as cable. Indeed, U.S. media is the most dominant media in the world.<sup>110</sup> There is a much greater likelihood of American ideals and viewpoints impacting those living abroad, than the reverse.<sup>111</sup> In fact, an examination of the cable industry shows that the absence of foreign ownership restrictions have not posed any danger whatsoever of foreign domination of that industry, and if the foreign ownership policies are relaxed, the same would certainly be true of the broadcast industry.

There is no logical reason to disallow foreign investment in U.S. broadcasting but permit foreign investment in wireline carriers and other non-broadcast facilities. As noted, in the realm of cable television, another medium of mass communications, there are no foreign ownership restrictions and there is absolutely no evidence that there have been any adverse consequences where systems (or cable stations) are owned or operated by foreign entities. Nor has the Commission expressed any concerns where radio stations, full power television stations, Class A stations, and LPTV stations are being programmed by non-citizens under LMAs or similar arrangements. Arguably, a foreign investor would have a greater ability to influence U.S. security by having a controlling stake in T-Mobile and by investing in U.S. telecommunications infrastructure than by owning more than 25 percent of two local broadcast channels in Maryland. A foreign investor's passive investment in a U.S. broadcast channel is no danger to the nation's security because Section 706 of the Communications Act and other federal laws provide ample protection.<sup>112</sup>

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<sup>110</sup> See Tim Arango, "World Falls for American Media, Even as It Sours on America", New York Times, available at <http://www.nytimes.com/2008/12/01/business/media/01soft.html> (last visited Nov. 30, 2011).

<sup>111</sup> Voice of America and other American international broadcasters now reach 187 million people every week, an increase of 22 million from 2010 and an all-time record number of listeners and viewers. For example, 2011 data shows that three-quarters of the entire country watches or listens to American broadcasts. See "U.S. International Broadcasting Reaching Record Audience Accessing Impact Questioned," Adam Clayton Powell III, U.S.C. Center on Public Democracy at the Annenberg School, available at [http://uscpublicdiplomacy.org/index.php/newswire/cpdblog\\_detail/us\\_international\\_broadcasting\\_reaching\\_record\\_audience\\_assessing\\_impact\\_q/](http://uscpublicdiplomacy.org/index.php/newswire/cpdblog_detail/us_international_broadcasting_reaching_record_audience_assessing_impact_q/) (last visited Feb. 28, 2011).

<sup>112</sup> Section 706 of the Communications Act, as amended and codified in Title 47, Chapter 12 of the United States Code states that "The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other

By relaxing foreign broadcast investment policies, while maintaining the present policy requirement for foreign investors holding a non-controlling interest, U.S. broadcasters, particularly minorities, would have access to new sources of capital that are not available to them under the current regulatory paradigm.

**3. Reinstatement and Expansion of the Tax Certificate Policy [Proposal 72]** Tax incentive policies have been the most effective measures to increase broadcast diversity. The Commission adopted the Tax Certificate Policy in 1978 to provide companies with an incentive to increase minority media ownership.<sup>113</sup> The policy allowed companies to defer capital gains taxation on the sale of media properties to minorities. During the 17-year lifetime of the previous tax certificate policy, which was repealed by Congress in 1995, “the FCC granted 356 tax certificates – 287 for radio, 40 for television and 30 for cable franchises.”<sup>114</sup> Because of its effectiveness, the Commission should continue to endorse<sup>115</sup> and work with Congress to develop a renewed and updated Tax Certificate Policy.<sup>116</sup>

**4. Migration of Most AM Service to VHF Channels 5 and 6 [Proposal 47].** We believe that Channels 5 and 6 should continue to be evaluated to determine which use

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regulating methods that remove barriers to infrastructure investment.” See 47 U.S.C. §1302 (2012).

<sup>113</sup> See Statement of Policy on Minority Ownership of Broadcast Facilities, 68 FCC2d 979, 983 (1979).

<sup>114</sup> See Sandoval Study at p. 14.

<sup>115</sup> See Section 257 Triennial Report to Congress, Identifying and Eliminating Market Entry Barriers, For Entrepreneurs and Other, Small Businesses, 26 FCC Rcd 2909, 2965 ¶155 (2011) (“Section 257 Triennial Report”) (the Commission states: “we propose that Congress adopt a new tax incentive program that would authorize the provision of tax advantages to eligible companies involved in the sale of communications businesses to small firms, including those owned by women and minorities. The proposed program could permit deferral of the taxes on any capital gain involved in such a transaction, as long as that gain is reinvested in one or more qualifying communications businesses. The proposed program could also permit tax credits for sellers of communications properties who offer financing to small firms. Additional conditions might include restrictions on the size of the eligible purchasing firm, a minimum holding period for the purchased firm, and a cap on the total value of eligible transactions. The provision of tax advantages has proven to encourage the diversification of ownership and to provide opportunities for entry into the communications industry for small businesses, including disadvantaged businesses and businesses owned by minorities and women.”)

<sup>116</sup> See MMTC Sep. 7 Ex Parte at p. 1 (“An updated version of the policy could address previous concerns by being race neutral, encompassing media and telecom, and capping deal size and total program size.”)

will provide the greatest impact.<sup>117</sup> We commend the Commission's actions to create a task force within the Diversity Committee to examine the issue and we hope it will continue to make progress.<sup>118</sup>

**5. 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; consider ownership impact and viewpoint diversity as part of the qualifications of an applicant, without comparing applicant to other potential applicants, for assignment and transfer applications [Proposal 1].**<sup>119</sup> The goal of this proposal is to integrate civil rights into the FCC's institutional priorities and consider the impact that each proceedings and transaction will have on minority ownership.

**6. Designate a Commissioner to oversee access to capital and funding acquisition recommendations [Proposal 8].**<sup>120</sup> To combat the dismal state of media financing, this proposal recommends that the FCC designate one Commissioner to take

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<sup>117</sup> In 2007, Mullaney Engineering, Inc. submitted a proposal to reallocate TV Channels 5 and 6 to FM broadcasting. See Mullaney Engineering, Inc. Petition for Reconsideration and/or Comment, MM Docket No. 87-268 (Oct. 26, 2007); see also Comments of the Broadcast Maximization Committee, MB Docket No. 07-294 (July 30, 2008) ("BMC Comments"). Since this time, MMTTC and the Broadcast Maximization Committee have endorsed and refined this proposal to encourage the FCC to use Channels 5 and 6 to save AM radio, expand noncommercial educational (NCE) service, and relocate much of the Low Power FM service. See MMTTC Radio Rescue Petition, Review of the Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism, RM-11565, pp. 7-8 (July 19, 2009), available at <http://mmtconline.org/lp-pdf/MMTTC-Radio-Rescue-Petition-071909-REV.pdf> (last visited Feb. 14, 2012) ("MMTTC Radio Rescue Petition"). See also BMC Comments at p. 2. Specifically, BMC proposed that the FCC "(1) relocate the LPFM service to a portion of this spectrum band; (2) expand the NCE service into the adjacent portion of this band; and (3) provide for the conversion and migration of all AM stations into the remaining portion of the band over an extended period of time and with digital transmissions only." *Id.*

<sup>118</sup> The Commission recently tasked the reconstituted the Diversity Committee. See Meeting of the Advisory Committee on Diversity for Communications in the Digital Age (Dec. 6, 2011), at 82:30-85:00, available at <http://www.fcc.gov/events/diversity-committee-meeting> (last visited Feb. 21, 2012).

<sup>119</sup> See DCS 2007 Initial Comments at pp. 29-30; see also 2007 DCS Supplemental *Ex Parte* Comments at p. 12; DCS Third FNPRM Comments at pp. 27-29.

<sup>120</sup> See Recommendation of the Funding Acquisition Task Force, Media Issues Subcommittee, Advisory Committee on Diversity for Communications in the Digital Age (Dec. 3, 2009) at p. 6., available at <http://transition.fcc.gov/DiversityFAC/120309/recommend-funding-acquisitions.doc> (last visited March 2, 2012).



ownership of these issues and direct outreach and development of policies and procedures relating to access to capital.

**7. Create a media and telecom public engineer position to assist small business and nonprofits with routine engineering matters [Proposal 34].**<sup>121</sup> By providing this valuable resource for small businesses and nonprofits, the Commission would increase diversity by reducing the cost burden associated with navigating the rule maze of regulatory compliance.

**8. Issue a one-year waiver, on a case-by case basis, of application fees for small businesses and nonprofits [proposal 35].**<sup>122</sup> Allowing a one-year waiver on certain applications would increase diversity by providing struggling small and nonprofit stations the opportunity to offset the effects of the troubled economy.

**9. Grant eligible entities a rebuttable presumption of eligibility for waivers, reductions, or deferrals of Commission fees. [Proposal 5].**<sup>123</sup> As the Commission develops an effective definition of eligible entities or implements the Overcoming Disadvantage Preference, the Commission should alleviate barriers to industry participation caused by economic hardship by providing a rebuttable presumption that these entities are eligible for fee waivers, reductions, or deferrals.

**10. Extend the cable procurement rule to broadcasting [Proposal 61].**<sup>124</sup> This proposal highlights the importance of contracting opportunities to develop the experience and finances that could enable a contractor to transition into ownership.

**11. Extend grandfathering for one year if the cluster or noncompliant station(s) are sold to a small business [Proposal 19].**<sup>125</sup> This proposal seeks to provide small businesses with sufficient time to gain access to capital. The proposal should not be

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<sup>121</sup> See MMTTC Radio Rescue Petition at pp. 47-50.

<sup>122</sup> See *id.* at pp. 50-52.

<sup>123</sup> See generally Recommendation on Application and Regulatory Fees, Access to Capital Subcommittee, Advisory Committee on Diversity for Communications in the Digital Age (Oct. 28, 2008), available at <http://transition.fcc.gov/DiversityFAC/102808/app-reg-fees-102808.pdf> (last visited Mar. 5, 2012).

<sup>124</sup> See Recommendation on Procurement Issues, Emerging Technologies Subcommittee, Advisory Committee on Diversity for Communications in the Digital Age (June 10, 2008), available at <http://transition.fcc.gov/DiversityFAC/061008/procurement-061008.pdf> (last visited Mar. 5, 2012) (recommending the Commission examine extending the procurement requirements to all platforms). Outside of the context of this proceeding, Proposal 61 contemplates extending all civil rights rules (EEO, transactional non-discrimination, advertising non-discrimination, procurement non-discrimination) to all platforms.

<sup>125</sup> See DCS 2007 Initial Comments at pp. 40-41. See also NPRM at ¶168 (questioning what do to with this proposal that was adopted but relied on the definition of eligible entities).



abandoned because it relied upon the eligible entities definition; rather the proposal should incorporate a newly developed definition or the Overcoming Disadvantages Preference.

**12. Bifurcation of channels for share-times with SDBs [Proposal 21].**<sup>126</sup> DCS urges the Commission to authorize “Free Speech Stations,” dedicated to non-entertainment programming and owned by SDBs to share time with largely deregulated Entertainment Stations. Cluster owners are incentivized to bifurcate channels through structural rule waivers.

**13. Structural rule waivers for financing construction of an SDB’s unbuilt station [Proposal 22].**<sup>127</sup> This proposal seeks to incentivize construction financing for an SDB’s unbuilt stations by providing the broadcaster non-attributable, non-controlling EDP interest in the SDB’s station and giving subsequent duopoly priority to the broadcaster that provides the financing.

**14. Use of the share-time rule to allow broadcasters to share frequencies to foster ownership of DTV and FM subchannels [Proposal 24].**<sup>128</sup> DCS urges the Commission to allow licensees the option to voluntarily assign rights to share a bundle of rights tantamount to ownership. This virtual ownership model would help new entrants, and multicultural and multilingual entrepreneurs, gain access to capital.

**15. Retention on air of AM expanded band owners’ stations if one of the stations is sold to an SDB [Proposal 25].**<sup>129</sup> This proposal, jointly submitted by eleven broadcasters and four citizen groups, would further the public interest by allowing AM broadcasters to continue to provide programming to their communities.

**16. Relax the main studio rule [Proposal 30].**<sup>130</sup> The Commission should allow a waiver of the main studio rule, particularly if there is a website to which the public has access. This type of waiver to the main studio rule would serve as a cost-efficient mechanism to promote minority ownership by reducing sunk costs that disproportionately burden smaller broadcasters’ balance sheets.

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<sup>126</sup> See DCS 2007 Initial Comments at pp. 14-15.

<sup>127</sup> See *id.* at pp. 15-17.

<sup>128</sup> See *id.* at pp. 41-47. But see Letter from Barbara A. Kreisman, Chief of the Video Division to ION Media Networks, Inc, RE: Applications for Assignment of Share-Time Licenses (Jan. 6, 2012) (recommending that departures from current rules should be taken up in another pending proceeding, Commission staff found that “... Section 73.1715 of our rules ... contemplates share-time operations that involve primarily a division of time, not a division of spectrum and assignment of a portion of the spectrum to a new license.”) DCS is proposing that the share-time rule be interpreted or reworded to expressly contemplate the sharing of other elements of a broadcast license besides the element of time.

<sup>129</sup> See DCS 2007 Initial Comments at pp. 47-50.

<sup>130</sup> See MMTTC Radio Rescue Petition at pp. 33-35.

**17. Clarify that eligible entities can obtain 18 months to construct major modifications of authorized facilities [Proposal 31].**<sup>131</sup> In the NRPM, one of the measures relying upon the eligible entities definition that the Commission sought comment on was the revision to the construction permit deadline.<sup>132</sup> As mentioned above, these proposals should not be abandoned.<sup>133</sup> However, to resolve confusion in the application of the rule, the Commission should clarify that the rule applies to major modification applications as well as new construction permit applications.<sup>134</sup>

**18. Extend the three-year period for new station construction permits for eligible entities and SDBs [Proposal 32].**<sup>135</sup> To alleviate economic hardship for small, minority, and women owned broadcasters, the Commission should adopt a blanket one-year extension of the construction permit deadline for broadcasters that are unable to take advantage of the 18-month construction permit extension.

**19. Create medium powered FM stations [Proposal 36].**<sup>136</sup> This proposal would expand FM service by allowing for modest-sized stations covering all of small markets – a key target for minority new entrants seeking to provide competitive coverage with limited access to capital. Many of these stations would be natural additions to the AM-only facilities disproportionately owned by minority broadcasters.

**20. Authorize interference agreements [Proposal 38].**<sup>137</sup> This proposal would promote minority ownership by allowing smaller, struggling stations to monetize spectrum they don't need in order to serve their core audiences.

**21. Harmonize regional interference protection standards; allow FM applicants to specify Class C, CO, C1, C2 and C3 facilities in Zone I and IA [Proposal 39].**<sup>138</sup> This proposal would promote diversity by increasing spectrum efficiency, reducing spectrum warehousing, and allowing lower class stations to upgrade.

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<sup>131</sup> See id. at pp. 35-40.

<sup>132</sup> See NPRM at ¶168.

<sup>133</sup> See pp. 14-15 supra.

<sup>134</sup> See MMTC Radio Rescue Petition at pp. 36-37.

<sup>135</sup> See id. at pp. 40-41.

<sup>136</sup> See Recommendation on Diversifying Ownership in the Commercial FM Radio Band, Emerging Technologies Subcommittee, Advisory Committee on Diversity for Communications in the Digital Age (Oct. 4, 2004) (“Commercial FM Radio Band Recommendation”), available at <http://transition.fcc.gov/DiversityFAC/adopted-recommendations/AdoptedFMRadioRules.pdf> (last visited Feb. 28, 2012).

<sup>137</sup> See id.

<sup>138</sup> See MMTC Radio Rescue Petition at pp. 20-22; see also Commercial FM Radio Band Recommendation.

**22. Relax the limit of four contingent applications [Proposal 41].**<sup>139</sup> By gradually relaxing the limit of four contingent applications, the Commission could increase spectrum efficiency, encourage diverse participation, and conserve Commission resources through application fees and outsourced engineering analysis.

**23. Request the removal of AM nighttime coverage rules from Section 73.21(i) [Proposal 48].**<sup>140</sup> Removing this rule would improve service and reduce operating costs because the AM nighttime coverage rule burdens AM stations, makes it difficult to improve daytime coverage, and serves as a barrier to entry due to the substantial compliance required for new site applications.

**24. Relax principal community coverage rules for commercial stations [Proposal 49].**<sup>141</sup> This proposal would increase flexibility in site location and provide opportunities to improve service for the intended audience.

**25. Replace minimum efficiency standard for AM stations with a “minimum radiation” standard [Proposal 50].**<sup>142</sup> By changing this standard, the Commission would give stations increased flexibility in antenna choice and site selection. This distinction is especially crucial for the continued operation of entrepreneurs in the lower frequency bands who would be able to be able to move closer to their audience by increasing power and using less land.

**26. Create a new local “L” Class of LPFM stations [Proposal 52].**<sup>143</sup> By implementing this proposal, the Commission would advance its localism goals by allowing small stations with limited service options to meet the needs of local communities.

**27. Collect, study and report on minority and women participation in each step of the broadcast auction process [Proposal 69].** Similar to Proposal #1, which urges the Commission to examine the impact each proceeding and transaction will have on minority ownership, this proposal urges the Commission to gather data on its auction process that can be used to determine best practices and opportunities for improvement.

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<sup>139</sup> See MMTTC Radio Rescue Petition at pp. 28-33.

<sup>140</sup> See id. at pp. 10-14.

<sup>141</sup> See id. at pp. 14-17.

<sup>142</sup> See id. at pp. 17-20.

<sup>143</sup> See id. at pp. 27-28.

**28. Redefine Community of License as a “market” for Section 307 purposes [Proposal 71].**<sup>144</sup> This recommendation would foster minority ownership by enabling ex-urban stations to move closer to their core audiences. These stations are disproportionately minority-owned and are competitively disadvantaged by the distance between their transmitters and the majority of their audiences. The proposal recognizes that radio listeners, as well as advertisers in a metropolitan area seldom, if ever, identify a local station by its municipality of license but, rather, identify the station with the metropolitan area.<sup>145</sup>

**29. Increase broadcast discounts to new entrants [Proposal 43].**<sup>146</sup> This proposal urges the Commission to increase new entrant discounts from 35 percent to 60 percent and increase discounts for small broadcast owners with less than three stations from 25 percent to 40 percent.

**30. Require minimum opening bid deposits on each allotment for bidders bidding for an excessive proportion of available allotments [Proposal 44].**<sup>147</sup> This proposal seeks to eliminate a market entry barrier caused by a practice that requires only nominal consideration in exchange for stating an intention to bid on an excessive percentage of allotments available at an auction, for example, 10 percent or more.

**31. Only allow subsequent bids to be made within no more than six rounds following the initial bid [Proposal 45].**<sup>148</sup> This proposal urges the Commission to increase transparency and efficiency in the bidding process by putting a stop to a practice that raises monitoring costs for small bidders.

**32. 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**

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<sup>144</sup> See Recommendation on Diversifying Ownership in Terrestrial Radio, Emerging Technologies Subcommittee, Advisory Committee on Diversity for Communications in the Digital Age (Dec. 10, 2007); see also Commercial FM Radio Band Recommendation.

<sup>145</sup> The new policies recently adopted by the Commission in Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, 26 FCC Rcd 2556 (2011); recons. pending, place insurmountable barriers on any radio station seeking to relocate into an urban area to serve the broadcaster’s core audience. The Commission has the opportunity to rectify the harmful consequences of its new policies when it acts on reconsideration.

<sup>146</sup> See Reply Comments of the Minority Media and Telecommunications Council, Competitive Bidding Procedures FM Auction 79, AU Docket No. 09-21 (Apr. 1, 2009) at p. 1. (“MMTC Auction 79 Reply Comments”).

<sup>147</sup> See MMTC Auction 79 Reply Comments at p. 2.

<sup>148</sup> See id.

**winning bidder withdraws [Proposal 46].**<sup>149</sup> This recommendation was proposed to prevent smaller bidders from being discouraged from participating in auctions by very large bidders, and to allow those whose lack of access to capital leaves them in second place to have a chance to win a license if (as often happens) the winning bidder abandons the channel.

**33. Mathematical touchstones: tipping points for the non-viability of independently owned radio stations in a consolidating market and quantifying source diversity [Proposal 26].**<sup>150</sup> DCS proposed two formulas for crafting and implementing diversity initiatives at the Commission. The “Tipping Point Formula” illustrates how the Commission could ensure that local radio markets could preserve independent owners and the “Source Diversity Formula” which expresses the consumer benefit derived from marginal increases in source diversity.

**34. Must-carry for certain Class A television stations [Proposal 28].**<sup>151</sup> DCS urges the Commission to designate a new sub-class of must-carry Class A stations that are hyper-local or provide multicultural and multilingual service.

**35. Conduct tutorials on radio engineering rules at headquarters and annual conferences [Proposal 33].**<sup>152</sup> By implementing this proposal, the Commission would promote compliance while reducing the regulatory burden of the Commission’s complex technical rules that act as a barrier to entry for small business and minority ownership.

**36. Develop an online resource directory to enhance recruitment, career advancement, and diversity efforts [Proposal 60].**<sup>153</sup> This proposal suggests the Commission foster diversity by dedicating a portion of its website to diversity. The topics covered should cover a variety of areas, including employment diversity and information for financiers and minorities and women seeking access to capital.

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<sup>149</sup> See Comments of the Minority Media and Telecommunications Council, Auction of FM Broadcast Construction Permits Scheduled for November 1, 2005 (Auction 62), DA 05-1076 (Apr. 29, 2005) at pp. 5-6.

<sup>150</sup> See DCS 2007 Initial Comments at pp. 53-54.

<sup>151</sup> See DCS Third FNPRM Comments at p. 23.

<sup>152</sup> See MMTC Radio Rescue Petition at pp. 44-47.

<sup>153</sup> See generally Recommendation for an Online Diversity Resource Directory, Career Advancement Subcommittee, Advisory Committee on Diversity for Communications in the Digital Age (Dec. 10, 2004), available at [http://transition.fcc.gov/DiversityFAC/041210/diversity\\_directory.pdf](http://transition.fcc.gov/DiversityFAC/041210/diversity_directory.pdf) (last visited Mar. 5, 2012); see also Funding Acquisition Task Force, Media Issues Subcommittee, Advisory Committee for Diversity in the Digital Age (Dec. 3, 2009) at pp. 2-4, available at <http://transition.fcc.gov/DiversityFAC/meeting120309.html>, then follow link to “[Media Issues Subcommittee, Funding Acquisitions Task Force](#)” (last visited Mar. 5, 2012).

**37. Engage economists to develop a model for market-based tradable diversity credits as an alternative to voice tests [Proposal 27].**<sup>154</sup> This proposal envisions that a certain number of Diversity Credits would be given to SDBs. These credits would also be given to the seller at the close of a transaction so long as that transaction results in greater structural diversity. If a transaction would increase concentration, the buyer would be expected to return some of its Diversity Credits to the Commission at the close of the transaction. Companies could also buy or sell these credits to one another, thus providing a market-based source of access to capital for SDBs.

**38. Remove non-viable FM allotments [Proposal 40].**<sup>155</sup> To increase spectrum efficiency and increase opportunities for new entry, the Commission should remove non-viable FM allotments.

**39. Study the feasibility of a new radio agreement with Cuba [Proposal 42].**<sup>156</sup> This proposal seeks to resolve the persistent interference issues plaguing small and minority-owned broadcasters, particularly those located in Florida, by creating an international radio agreement between Cuba and the United States.

**40. 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 [Proposal 62].**<sup>157</sup> This recommendation was proposed to make certain that when civil rights measures are adopted, the Commission will marshal them in through an enforcement office with the skills, subject matter expertise, and resources necessary to ensure compliance.

**41. Legislative recommendation to expand the Telecommunications Development Fund (TDF) under Section 614 and finance TDF with auction proceeds [Proposal 13].**<sup>158</sup> If sufficiently funded, the TDF could help eliminate market entry barriers, including lack of access to capital, for small, minority, and women entrepreneurs.

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<sup>154</sup> See DCS 2007 Initial Comments at pp. 54-55.

<sup>155</sup> See MMTC Radio Rescue Petition at pp. 22-23.

<sup>156</sup> See *id.* at pp. 42-44.

<sup>157</sup> See Letter from David Honig, Executive Director of MMTC, to Hon. Michael J. Copps, Interim Chair of the Federal Communications Commission, RE: Structural and Procedural Reforms in FCC Operations (Jan. 21, 2009) at p. 3.

<sup>158</sup> See MMTC Legislative Recommendations to Advance Diversity in the Media and Telecommunications Industries (Jan. 21, 2009) at p. 4 (“MMTC Legislative Proposals”); see also Recommendations on Spectrum and Access to Capital, New Technologies Subcommittee, Advisory Committee on Diversity for Communications in the Digital Age (June 14, 2004) at p. 6, available at <http://transition.fcc.gov/DiversityFAC/meeting061404.html>, then follow link to “Recommendations for Increasing Access to Capital” (last visited Mar. 5, 2012) (recommending that the type of funding and amount of funding available through TDF be expanded) (“Recommendations on Spectrum and Access to Capital”).

**42. Legislative recommendation to amend Section 257 to require the Commission to annually review and remove or affirmatively prohibit known market entry barriers including bundling, bonding, excessive minimum-years-in-business requirements, preferences for loans over grants, and previous large project experience; authorize an 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 [Proposal 14].**<sup>159</sup> This proposal encourages the Commission to ask for increased authority to track and promote diversity in the communications industries in order to implement better policies and eliminate discrimination.

**43. Legislative recommendation to clarify Section 307(b) to provide that rules adopted to promote localism are presumed to be invalid if they significantly inhibit diversity [Proposal 15].**<sup>160</sup> This proposal asks Congress to update and clarify Section 307(b) to ensure that the statute and the Commission’s resulting localism rules do not operate to lock in the present effects of past discrimination.

**44. Legislative recommendation to amend the FTC Act (15 U.S.C. §§41-58) to prohibit racial discrimination in advertising placement terms and advertising sales agreements [Proposal 16].**<sup>161</sup> This proposal urges the Commission to recommend that Congress address the problem of the “supply side” of advertising discrimination, specifically no Spanish/no urban dictates, while the Commission works with broadcasters to address the demand side.

**45. Legislative recommendation to amend Section 614 to increase access to capital by creating a small and minority communications loan guarantee program [Proposal 17].**<sup>162</sup> This proposal could be implemented and administered by the SBA to increase access to capital for women and minority entrepreneurs.

**46. Legislative recommendation to amend Section 614 to create an entity to purchase loans made to minority and small businesses in the secondary market [Proposal 18].**<sup>163</sup> This proposal was recommended to provide minority and women businesses with more opportunities to access capital.

**47. Provide a tax credit for companies that donate broadcast stations to an institution whose mission is or includes training minorities and women in**

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<sup>159</sup> See MMTTC Legislative Proposals at pp. 4-5 (encouraging the Congress to authorize a media and telecom diversity and digital divide census).

<sup>160</sup> See *id.* at p. 9.

<sup>161</sup> See *id.* at pp. 12-13.

<sup>162</sup> See Recommendation on Spectrum and Access to Capital at p. 6.

<sup>163</sup> See *id.*

**broadcasting [un-numbered proposal]**. The goal of this proposal is to incentivize donations of broadcast stations to training institutions to ensure that minorities and women have an opportunity to enter the broadcast industry. DCS recommends that the Commission propose race-neutral legislation that includes the following fundamental features: (1) provides businesses with a tax credit for qualified broadcast station transfers including transfer of title, transfer of control, and assignment of licenses, (2) ensures that a transfer credit would only go to those who donate radio or television broadcast stations to organizations that expressly agree to provide broadcasting and management training for women and economically and socially disadvantaged individuals, and (3) includes a monitoring feature in which the Commission analyzes and reports to Congress on the impact the legislation has on increasing broadcast diversity in the areas ownership, management and programming, and whether the legislation should be renewed.<sup>164</sup>

We encourage the Commission to take prompt action to consider and implement these proposals as recommended.

#### **IV. Assessment Of The Commission’s Media Ownership Rule Proposals**

The Commission’s media ownership rules can be structured in such a way to hinder - or promote - diversity in broadcasting. As the Commission seeks comment on its media ownership rule proposals,<sup>165</sup> DCS commends the Commission’s decision to reinstate the failed station solicitation rule (“FSSR”) for its potential benefit to minorities.<sup>166</sup> As discussed at pp. 22-24

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<sup>164</sup> Eligible organizations under a new tax credit could consist of categories of institutions that are defined in a manner that the courts have affirmed to be race-neutral, including Historically Black Colleges and Universities (HBCU), Native American-serving Institutions (NASIs), Asian American and Native American Pacific Islander-serving Institutions, Hispanic-serving Institutions (HSIs), and 501(c)(3) or 501(a) tax-exempt organizations that have provided broadcast training and broadcast station management for women and economically and socially disadvantaged persons who have traditionally been underrepresented in the broadcast industry.

<sup>165</sup> See NPRM at ¶¶25-146.

<sup>166</sup> See id. at ¶148, n. 351, citing 47 C.F.R. § 73.3555 which states courts hold that “the FSSR provides that, before selling a station to an in-market buyer, an applicant for a waiver of the local television ownership rule or the radio/television cross-ownership rule must demonstrate that the in-market buyer is the only entity ready, willing, and able to operate the station, and that sale to a buyer outside the market would result in an artificially depressed price”; see also Prometheus II, 652 F.3d at 465 (citing Prometheus Radio Project v. FCC, 373 F.3d 372, 420 (3rd Cir. 2004) (discussing how the FSSR aims to enhance diversity of ownership in radio by requiring “applicants seeking waivers of the local television rule’s requirements to provide notice of the sale to potential out-of-market buyers before it could sell the failed, failing, or unbuilt television station to an in-market buyer.”)).



supra, we believe the local radio rule should be waived for those who participate in activities to incubate SDBs. Further, we do not oppose relaxation of the ban on newspaper/broadcast cross-ownership if such relaxation would not discourage minority ownership.<sup>167</sup> However, we do not support further relaxation of the duopoly rule, as discussed below.

**A. The Commission Should Not Further Relax The Television Duopoly Rule In Light of Its Harmful Impact On Minority Ownership**

The Commission tentatively proposes to retain, without further relaxation, the duopoly provision of the local television rule.<sup>168</sup> DCS believes that the Commission should not further relax the duopoly provision because relaxation of the rule will continue to deter the growth of minority and female ownership in the broadcast industry.

The duopoly portion of the local television rule allows an entity to own two television stations in the same DMA only if there is no Grade B contour overlap between the commonly owned stations, or at least one of the commonly owned stations is not ranked among the top-four stations in the market (“top-four prohibition”) and at least eight independently owned television stations remain in the DMA after ownership of the two stations is combined.<sup>169</sup>

In Prometheus II, the Citizen Petitioners<sup>170</sup> argued that the Commission’s decision not to tighten the duopoly component of the local television rule was arbitrary and capricious.<sup>171</sup> In

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<sup>167</sup> See pp. 40-43 infra.

<sup>168</sup> See NPRM at ¶48.

<sup>169</sup> See id. at ¶25.

<sup>170</sup> The Citizen Petitioners included Free Press, Media Alliance, Office of Communication of the United Church of Christ, Inc. (“UCC”), and Prometheus Radio Project. See Prometheus II, 652 F.3d at 443.

<sup>171</sup> See id., 652 F.3d at 461. Specifically, the Citizen Petitioners contended that in adopting the duopoly rule in the 2006 quadrennial review, the Commission “failed to consider the effect of the transition to digital television, which allows stations to broadcast multiple streams of programming (“multicast”) over a single channel (for example, a regular station and a high-definition station for the same station affiliate in a DMA) and generate new revenue without the

declining to rule in favor of this argument, the Third Circuit found that, because the digital transition was not complete, the Commission's refusal to tighten the duopoly rule was not arbitrary and capricious.<sup>172</sup>

The Commission has decided that the cost efficiencies of duopolies far outweigh the costs. Prometheus II cites the Commission's stance on the duopoly rule as relayed in its 2008 Order, stating the Commission felt that "owning a second-in-market station can result in substantial savings in overhead and management costs, "and determined that "these potential significant benefits of duopolies ... in markets with a plethora of diverse voices, outweigh commenters' ... claims that duopolies harm diversity and competition."<sup>173</sup>

DCS strongly disagrees that there are net benefits to the public from the duopoly rule, and therefore, we maintain that the rule should not be further relaxed. The television duopoly rule was first modified by the Commission in 1999 "to allow signal area overlap if the television stations were in two separate Nielsen Designated Market Areas (DMAs) – industry accepted geographic areas for calculating station market audience share and advertising revenue share."<sup>174</sup> Since that time, the duopoly rule has suppressed minority and female ownership, and its harmful implications far outweigh any consideration of potential benefits the duopoly rule may confer.

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need to purchase multiple stations in a single market." Id. They also referenced a 2007 FCC-Commissioned study, "The Impact of the FCC's TV Duopoly Rule Relaxation on Minority & Women Owned Broadcast Stations," which demonstrates how duopolies have negative effects on minority and female ownership. See id. (citing, Allen S. Hammond, IV et al., The Impact of the FCC's TV Duopoly Rule Relaxation on Minority & Women Owned Broadcast Stations, 1999-2006 (June 2007), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-07-3470A9.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A9.pdf) (last visited Feb. 14, 2012) ("Media Ownership Study 8").

<sup>172</sup> See id. at pp. 461-462.

<sup>173</sup> See id. (citing 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, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2055-56 (2008) (Dec. 18, 2007)).

<sup>174</sup> See Media Ownership Study 8 at p. 6.

For example, Commission research demonstrates that “across all markets in which minority-owned television stations operated between 1999 and 2006, the number of minority-owned television stations dropped by twenty-seven percent,” while in contrast, “in non-duopoly markets the number of minority-owned stations dropped by ten percent.”<sup>175</sup>

As explained in DCS’s comments to the Commission’s Biennial Review, duopolies have threatened minority ownership because of the fact that lenders and investors are less willing to finance a standalone station when they can finance duopolies because of their more attractive revenue models.<sup>176</sup> DCS also referenced how local television duopolies decrease the local programming that is available to minority consumers.<sup>177</sup> Given the detrimental nature of duopolies to minority television ownership, the Commission should not further relax the duopoly provision of the local television rule.

**B. DCS Does Not Object To Relaxation Of The Cross-Ownership Rule If Such Relaxation Would Not Diminish Minority Ownership**

The Commission seeks comment on the newspaper/broadcast cross ownership rule.<sup>178</sup> The Commission describes the history of the rule through the progression of reviews of its media ownership rules and notes that after Prometheus II, an “absolute ban on newspaper/broadcast cross-ownership remains in effect, with no specific provision for waivers.”<sup>179</sup> However, the

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<sup>175</sup> See id. at p. 3.

<sup>176</sup> See 2003 DCS Comments at pp. 40-41.

<sup>177</sup> See id.

<sup>178</sup> As the Commission states, “The newspaper/broadcast cross-ownership rule prohibits common ownership of a full-service broadcast station and a daily newspaper if: (1) a television station’s Grade A service contour completely encompasses the newspaper’s city of publication; (2) the predicted or measured 2 mV/m contour of an AM station completely encompasses the newspaper’s city of publication; or (3) the predicted 1 mV/m contour for an FM station completely encompasses the newspaper’s city of publication.” See NPRM at ¶85.

<sup>179</sup> See id. at ¶¶84-88.

Commission tentatively concludes that while some newspaper/broadcast ownership restrictions remain necessary to “protect and promote” viewpoint diversity, the rule is “not necessary” to promote the Commission’s competition policy goals.<sup>180</sup> The Commission also invites comment on how cross-ownership can further its localism goal,<sup>181</sup> and proposes to adopt certain modifications to the rule.<sup>182</sup>

DCS recognizes that in practice, and especially when compared to the duopoly rule, cross-ownership appears to have little impact on minority ownership. DCS has also noted some public interest benefits to cross-ownership.<sup>183</sup> For example, newspapers owning TV stations can help underwrite original journalism; in addition, newspaper-owned TV stations are found to be top performers in news and public service.<sup>184</sup> Some suggest that relaxation of the rule is

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<sup>180</sup> See *id.* at ¶¶88-90.

<sup>181</sup> See *id.* at ¶89.

<sup>182</sup> See *id.*

<sup>183</sup> See Adam D. Rennhoff and Kenneth C. Wilbur, Local Media Ownership and Media Quality (Apr. 5, 2011) at p. 21, available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0721/DOC-308505A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0721/DOC-308505A1.pdf) (last visited Feb. 14, 2012). The estimates in Table 3 indicate that the elasticities of newspaper circulation, local television news provision, and local TV news ratings with respect to the number of television stations co-owned with a newspaper are all less than .03 in absolute value. *Id.* The lack of television/newspaper integration since the Newspaper/Broadcast Cross-Ownership Rule waiver criteria were loosened in 2007 leads the authors to “question the economic basis for keeping the rule in place, given the influence of newspapers on voter information and turnout, the recent declines in newspaper revenues and news production expenditures, and the potential economies of scope available to joint owners of news outlets in multiple media.” *Id.* at p. 15.

<sup>184</sup> See *id.* at p. 3. The authors assert that “it seems possible that allowing mergers between newspapers and television stations could lead to substantial economies of scope and may improve product offerings by enabling cross-media promotions and integrated delivery. Many newspapers now offer some video content online, and many television stations’ websites provide large repositories of text news stories....” See Erik Saas, McDowell: Cross-Ownership Could Save Newspapers, Media Alliance, <http://www.media-alliance.org/article.php?id=1706> (last visited Mar. 2, 2012). See also National Association of Broadcasters Statement on FCC NPRM Regarding Media Ownership Rules, National Association of Broadcasters Press Release (Dec. 21, 2011), available at <http://www.nab.org/documents/newsroom/pressRelease.asp?id=2662> (last

desirable because so many newspapers are failing and cross-ownership could rescue some of them (and thus ensure that more content is produced for potential repurposing or aggregation by online entrepreneurs, who are disproportionately minorities).<sup>185</sup> It has also been suggested that it is better for a newspaper to own a broadcast station than for a widget manufacturer to own a broadcast station, since a newspaper's business is news.<sup>186</sup> Research indicates that newspaper-owned TV stations produce more news and public affairs programming.<sup>187</sup>

DCS previously voiced concern about the impact of cross-ownership on minority ownership,<sup>188</sup> and it remains concerned about this public interest factor. However, in the current

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visited Mar. 1, 2012) (NAB President and CEO Gordon Smith states that “NAB supports elimination of the broadcast/newspaper cross-ownership rules, because we believe journalism jobs could be saved under that scenario....”). It has also been argued that it is better for a newspaper to own a broadcast station than for a widget manufacturer to own a broadcast station, since a newspaper’s business is news. See David Lieberman, View Of Media Ownership Limits Changes, USA Today, [http://www.usatoday.com/money/media/2007-01-29-media-usat\\_x.htm](http://www.usatoday.com/money/media/2007-01-29-media-usat_x.htm) (last visited Mar. 1, 2012) (citing the contention by newspaper owners that viewers of television broadcasts could “benefit” from cross-ownership of television stations in markets where these owners are already “committed to covering their community.”). Newspaper-owned TV stations do in fact tend to produce more news and public affairs programming. See William T. Gromley, Jr., The Effects of Newspaper-Television Cross-Ownership on News Homogeneity, Institute for Research in Social Science, University of North Carolina, p. 276 (1976) (finding that newspaper-owned television stations are more likely to get advance notice of newspaper-produced stories thereby netting them an advantage over other stations).

<sup>185</sup> See, e.g., Comments of the Newspaper Association of America on the FCC's May 25, 2010 Notice of Inquiry, MB Docket No. 09-182, at 11-23, 25-27 (filed July 12, 2010).

<sup>186</sup> See, e.g., Reply Comments of the Newspaper Association of America, MB Docket Nos. 06-121, et al., at 31-32 (filed Jan. 16, 2007); Joint Comments of Bonneville International Corporation and the Scranton Times, L.P., MB Docket No. 09-182, at 14 (filed July 12, 2010).

<sup>187</sup> See Jeffrey Milyo, Effects of Cross-Ownership on the Local Content and Political Slant of Local Television News, FCC Media Study 6 (Sep. 2007), available at [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DA-07-3470A7.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-07-3470A7.pdf) (last visited Mar. 4, 2012); Thomas Spavins et al., The Measurement of Local Television News and Public Affairs Programs (Sep. 2002), available at <http://www.fcc.gov/working-papers/measurement-local-television-news-and-public-affairs-programs> (last visited Mar. 4, 2012).

<sup>188</sup> See, e.g., 2003 DCS Comments at pp. 42-43 (stating that “cross-ownership should not be allowed to proceed unless there is very close and continuing supervision of its impact on diversity, competition and minority ownership,” while “laissez-faire deregulation of cross-

climate facing the newspaper industry, DCS does not oppose relaxation of the cross-ownership rule so long as the rule, as applied, would not discourage or lead to a decrease in minority ownership.

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ownership should be rejected, since that would significantly diminish minority ownership opportunities.”)

V. **Conclusion**

It is time for the Commission to take bold steps to reverse the decline in minority and female ownership in broadcasting. This quadrennial review presents an occasion to do so. The paucity of diversity in the broadcast industry has only been compounded by a perilous economy, harmful Commission policies – whether intended or not – and the agency’s inattention thus far to dozens of proposed initiatives that would advance minority and female ownership. However, DCS believes that a movement to improve diversity of media ownership is afoot. We remain steadfast in our dedication to work with the Commission to devise the most effective methods to increase diverse participation in our communications industries.

Respectfully submitted,



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March 5, 2012

## APPENDIX

### THE DIVERSITY AND COMPETITION SUPPORTERS (DCS)

1. A. Philip Randolph Institute
2. American Indians in Film and Television
3. Asian American Chamber of Commerce
4. Asian American Justice Center
5. Black College Communication Association
6. Black Entertainment and Sports Lawyers Association
7. Black Leadership Forum
8. Broadband & Social Justice Institute
9. Communications Consumers United
10. Dialogue on Diversity
11. Hispanic Association of Colleges and Universities
12. Hispanic Elected Local Officials
13. International Black Broadcasters Association
14. Japanese American Citizens League
15. Joint Center for Political and Economic Studies
16. Lawyers' Committee for Civil Rights Under Law
17. League of United Latin American Citizens
18. Latinos in Information Sciences and Technology Association
19. MANA – A National Latina Organization
20. Minority Media and Telecommunications Council
21. National Association of Black County Officials
22. National Association of Black Journalists
23. National Association of Black Owned Broadcasters
24. National Association of Black School Educators
25. National Association of Black Telecommunications Professionals
26. National Association of Hispanic Publications
27. National Association of Multicultural Digital Entrepreneurs
28. National Association of Neighborhoods
29. National Association for the Advancement of Colored People
30. National Black Caucus of Local Elected Officials
31. National Black Caucus of State Legislators
32. National Black Church Initiative
33. National Black Coalition for Media Justice
34. National Coalition on Black Civic Participation
35. National Conference of Puerto Rican Women
36. National Congress of Black Women, Inc.
37. National Council of La Raza
38. National Council of Negro Women
39. National Hispanic Foundation for the Arts
40. National Indian Telecommunications Institute
41. National Newspaper Publishers Association
42. National Organization of Black County Officials



43. National Organization of Black Elected Legislative Women
44. National Puerto Rican Chamber of Commerce
45. National Urban League
46. Native American Journalists Association
47. Native American Public Telecommunications
48. Rainbow PUSH Coalition
49. Universal Impact
50. Women's Institute for Freedom of the Press