

Minority Media and Telecommunications Council

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May 17, 2013

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

RE: Notice of *Ex Parte* Communication, MB Docket No. 09-182 (2010 Quadrennial Review), MB Docket No. 07-294 (Diversity Proceeding), MB Docket No. 09-52 (Rural Radio Proceeding), Docket No. 12-268 (Incentive Auction Proceeding)

Dear Ms. Dortch:

This reports on five meetings held May 16, 2013 between Commission staff and MMTC representatives David Honig, President, Maurita Coley, Vice President and Chief Operating Officer, and Kenneth Mallory, Staff Counsel. Also joining MMTC was a delegation from a group MMTC has re-convened to explore the issue of AM radio revitalization including: Jack Mullaney, President, Mullaney Engineering, Inc.; Mark Lipp, Partner, Wiley Rein LLP; Jessica Marventano, Senior Vice President, Government Affairs, Clear Channel Communications; Marissa Repp, Principal, Repp Law Firm; Jeff Littlejohn, Executive Vice President, Engineering and Systems Integration, Clear Channel Media and Entertainment; Jim Winston, Executive Director, National Association of Black Owned Broadcasters; John Garziglia, Partner, Womble Carlyle LLP; Lawrence Walke, Associate General Counsel, National Association of Broadcasters; Frank Jazzo, Co-Managing Member, Fletcher, Heald & Hildreth LLP.

For the first meeting with the Commission's Media Bureau, attendance was as follows:

- William Lake, Chief, Media Bureau
- Peter Doyle, Chief Video Division
- Tom Nessinger, Senior Counsel
- James Bradshaw, Deputy Chief, Engineering
- Susan Crawford, Assistant Division Chief
- Tom Hutton, Deputy Chief, Law

For the second meeting, attendance was as follows:

- Alex Hoehn-Saric, Policy Director for Commissioner Jessica Rosenworcel

For the third meeting, attendance was as follows:

- Commissioner Ajit Pai
- Matthew Berry, Chief of Staff for Commissioner Ajit Pai
- Josh Cox, Intern

For the fourth meeting, attendance was as follows:

- Elizabeth Andrion, Acting Chief Counsel and Senior Legal Advisor to Chairman Julius Genachowski

For the fifth meeting, attendance was as follows:

- Dave Grimaldi, Chief of Staff and Media Legal Advisor to Commissioner Mignon Clyburn.¹

At the meetings I circulated an agenda² and presented the following points regarding AM radio revitalization:

1. **The Importance of Reviving AM Radio.** I discussed the urgent need for the Commission to adopt policies that would save AM radio from extinction. I stated that many AM radio owners wonder why they should continue to invest in this FCC regulated business if the Commission will not take measures to protect its viability. I added that while two-thirds of all minority radio station owners own AM stations, the lack of access to capital remains a significant barrier for small and minority entrepreneurs desiring to enter the AM radio market. I mentioned that MMTC filed a ‘radio rescue’ petition in 2009³ with policy proposals designed to strengthen the AM radio market through changes to the Commission’s engineering and operational radio rules. Several of the proposals in the petition were made again in comments that several national organizations filed in the current media ownership proceeding.⁴ I welcomed members from the delegation to discuss long and short term proposals that could potentially have the greatest impact on saving AM radio.
2. **Channels 5 and 6.** Some members of the delegation discussed a proposal to migrate AM radio to TV channels 5 and 6, which many felt was a long term strategy that could benefit AM station owners.⁵ Jack Mullaney noted that channels 5 and 6 are underutilized and almost all of the current analog AM coverage could be replicated by digital operation on channels 5 and 6, with many AM stations obtaining improved nighttime service. This migration would be similar to actions to migrate AM taken in Canada, Mexico and Japan. Several also discussed the desirability of the Commission releasing a Notice of Inquiry that would evaluate this proposal in conjunction with the incentive auction proceeding.
3. **Constructing Major Modifications Proposal.** During the first meeting, I discussed a proposal to extend construction permit and major modifications applications deadlines for stations who qualify as “eligible entities” under the Commission’s rules. While the proposal is under review in the pending

¹ Ms. Marventano and Mr. Littlejohn were unable to attend the meetings with Ms. Andrion and Mr. Grimaldi.

² See Attached Agenda; All items referenced in the agenda were not discussed during each meeting.

³ See MMTC 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/MMTC-Radio-Rescue-Petition-071909-REV.pdf> (last visited May 16, 2013).

⁴ See Supplemental Comments of the Diversity and Competition Supporters in Response to The Notice of Proposed Rulemaking, 2010 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. 09-182 et. al. (April 3, 2012), available at <http://mmtconline.org/wp-content/uploads/2012/04/Supplemental-Media-Ownership-Comments-040312.pdf> (last visited May 16, 2013).

⁵ A version of this proposal was submitted to the Commission by Mullaney Engineering, Inc. in 2007. See Mullaney Engineering, Inc. Petition for Reconsideration and/or Comment, MM Docket No. 87-268 (Oct. 26, 2007). The Broadcast Maximization Committee, which included Jack Mullaney and Mark Lipp, also submitted another version of this proposal in 2008. See Comments of the Broadcast Maximization Committee, MB Docket No. 07-294 (July 2008) available at <http://ccbroadcasters.com/TV%20Channel%205-6%20Radio%20Proposal.pdf> (last visited May 16, 2013).

media ownership proceeding, I stated that the proposal might not have a strong impact if the Commission's definition is re-adopted to define an "eligible entity" as a "small business" rather than as a classification that is more racially inclusive.

4. **Relax Community of License Coverage Requirements for AM Stations.** In the first meeting I noted MMTC's support for the modification of principal community of coverage rules for AM commercial stations from 80% to 50% daytime coverage. While Commission staff noted that waivers are often granted to allow relocations, Jeff Littlejohn noted the preference for a rule change instead of waivers to provide certainty for AM station investment.
5. **Replacement of the Minimum Efficiency Standard for AM Stations with a Minimum Radiation Standard.** Jack Mullaney explained that the MMTC proposal to replace the minimum efficiency standard for AM stations with a minimum radiation standard would allow shorter towers for AM stations, thus allow greater flexibility for siting near urban centers. Jeff Littlejohn noted that shorter towers at higher power could yield more radiation at high angles, and that close attention needs to be paid to this matter to prevent increased interference. Jack Mullaney agreed to this point.
6. **Tell City Waiver.** John Garziglia discussed the Tell City Waiver proposal, which asks the Commission to allow AM stations to move FM translators farther away to rebroadcast stronger signals.⁶ While the proposal has no formal opposition, some group members acknowledged that Commission staff had voiced *Ashbacker*⁷ concerns about the proposal. Jeff Littlejohn expressed that it would be important, ultimately, to have bright line rules, as waivers are burdensome on the Bureau and lead to uncertainty for AM stations.
7. **AM Only Window for New and Major Change FM Translators.** At some of the meetings, the participants discussed the possibility of a window in which AM stations could apply for new and major change FM translators, preferably prior to October 2013. It was noted that AM stations did not have the authority during the last open FM translator window, in 2003, to utilize FM translators, and that the number of AM stations applying in a 2013 window would be far less, and less cumbersome to process, than the number of applications expected in a forthcoming LPFM window. It was noted that FM translators serve as a bridge until long-term remedies are implemented. I also discussed the possibility of an LPFM incubation program in conjunction with such an AM-only FM translator window.
8. **Rural Radio Proceeding Proposal.** Mark Lipp referenced a proposal made in the rural radio proceeding that establishes a presumption whereby any city of license proposal involving a community within an urbanized area or coverage to more than 50% of any urbanized area serves the entire urbanized area and not the city selected. This presumption effectively bars all stations from moving from outside the urbanized area into an urbanized area. There is an exception for all new and major modification applicants filed in the 2004 AM Auction 84 filing window. As part of the AM revitalization effort, the proposal would request that this exception extend to all existing AM stations.

⁶ MMTC has written a letter to the Commission supporting this proposal. See MMTC Letter of Support for Tell-City Proposal (Feb. 12, 2013) available at <http://mmtconline.org/wp-content/uploads/2013/02/MMTC.TellCity.021213.pdf> (last visited May 16, 2013).

⁷ See *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 330 (1945) (holding that the Supreme Court did "not think it is enough to say that the power of the Commission to issue a license on a finding of public interest, convenience or necessity supports its grant of one of two mutually exclusive applications without a hearing of the other.")

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This exception would enable many AM stations to improve their coverage and minority stations, in particular to reach their target listening markets.

9. **Media Ownership Study.** In the fourth meeting, I stated that MMTC's sponsored study to evaluate the impact of the Commission's cross-ownership rules on minority ownership would conclude soon. The study will subsequently be peer-reviewed and a draft of the study will hopefully be submitted to the Commission within the next two weeks.

Respectfully submitted,

David Honig

David Honig
President