August 12, 2009

Hon. Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Genachowski:

   RE:    Nondiscrimination in Advertising Sales Contracts, MB Docket No. 07-294

MMTC respectfully renews its July 15, 2008 request that the Commission promptly designate a senior Compliance Officer to enforce the Broadcast Advertising Nondiscrimination Rule adopted in the Broadcast Diversity R&O and Third Further NPRM, 23 FCC Rcd 5922, 5941-42 ¶¶49-50 (2008).1

The rule seeks to eliminate “no urban/no Spanish dictates” (NUDs and NSDs), which “are intended to minimize the proportion of African American or Hispanic customers patronizing an advertiser’s venue – or that presume that African Americans or Hispanics cannot be persuaded to buy an advertiser’s product or service.” Id. MMTC has calculated that minority broadcasters lose at least $200 million a year to NUDs and NSDs, compounding the financial difficulties these broadcasters face in the current economic climate. Minority broadcasters earned these revenues but they never collect them.

This travesty has gone on for decades. It took 24 years for the Commission to adopt this rule even though it was unopposed. No wonder some advertisers think they can discriminate and get away with it. Although the practice mostly occurs under the cover of whispered oral instructions, last week Mini Cooper’s agency issued a four-market written NUD.2

The rule requires broadcasters renewing their licenses to certify on Form 303-S that their advertising contracts do not discriminate on the basis of race or gender and that they contain nondiscrimination clauses. Id. Therefore, to remain in compliance with the rule, every radio station in the Boston, Houston, Baltimore and Washington markets should decline to broadcast Mini Cooper spots.3

If the Broadcast Nondiscrimination Rule remains unenforced, NUDs and NSDs will continue to compromise minority broadcasters’ ability to serve their communities. Designating a Compliance Officer will advance your administration’s efforts to protect and empower all Americans.

Sincerely,

   David Honig

David Honig
President and Executive Director

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1 See attached Letter from MMTC re: Nondiscrimination in Advertising Sales Contracts, MB Docket No. 07-294 (filed July 17, 2008 (reference in the letter to 2007 is a typo). The letter has gone unanswered for over a year.

2 See attached e-mail from Palisades Media, re: Mini-Cooper-Flight (August 5, 2009) (recipients redacted by MMTC).

3 In this letter we are not seeking adjudicative relief; rather, the Commission should afford Mini Cooper an opportunity to act quickly to stop placing its broadcast partners in noncompliance with the rule.
July 15, 2007

Hon. Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Dear Chairman Martin:

RE: Nondiscrimination in Advertising Sales Contracts, MB Docket No. 07-294

MMTC respectfully requests that the Commission designate a senior official to act as the agency’s Compliance Officer for the Broadcast Advertising Nondiscrimination Rule the Commission adopted in its Broadcast Diversity R&O and Third FNPRM, 23 FCC Rcd 5922, 5941-42 ¶¶49-50 (2008).

The Rule takes effect today. It is the first new federal nondiscrimination mandate on any subject in 31 years and the first one ever adopted without opposition.

Full compliance with the Rule would profoundly advance the Commission’s goal of improving minority broadcasters’ access to capital. If it is enforced, the Rule will spell the end of “no-urban” and “no-Spanish” dictates (NUDs and NSDs) by which some advertisers refuse to consider buying time on stations because the stations serve African American and Hispanic audiences. MMTC estimates that minority broadcasters lose at least $200 million per year because of this practice, and that universal compliance with the Rule would produce a 5-10% increase in revenue for minority broadcasters.

Public awareness of the Rule is critical to effective compliance and enforcement. An Advertising Nondiscrimination Compliance Officer would be responsible for alerting broadcasters to their obligation to place nondiscrimination clauses in their advertising sales contracts, and their duty to observe and insist on performance of these clauses just as they would with any other material term of an advertising contract.

Designating a senior official as the Commission’s Advertising Nondiscrimination Compliance Officer would significantly advance the Commission’s determined efforts to eliminate all forms of racial discrimination in broadcasting.

Sincerely,

David Honig
Executive Director
Subject: Mini Cooper-Flight is 8/24-9/13-need today by 1pm LA time
Date: Wednesday, August 12, 2009 2:53 PM
From: David Honig <dhonig@crosslink.net>

From: Candy Ross [mailto:cross@palisadesmedia.com] <mailto:cross@palisadesmedia.com>
Sent: Wednesday, August 05, 2009 8:49 AM
To: [RECIPIENT NAMES REDACTED BY MMTC]
Subject: Mini Cooper-Flight is 8/24-9/13-need today by 1pm LA time
Importance: High

Please send me your rates for the following formats in the following markets. I need these rates by 1pm today.

MARKETS-BOSTON- HOUSTON-DC-BALTIMORE


Length: 30’s

Dayparts-All

No combos or urban formats

If your market has a home team in MLB or NFL please include game specific

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