In the Matter of


MB Docket No. 14-50


MB Docket No. 09-182

Promoting Diversification of Ownership In the Broadcasting Services

MB Docket No. 07-294

Rules and Policies Concerning Attribution of Joint Sales Agreements In Local Television Markets

MB Docket No. 04-256

To The Commission:

PETITION FOR CLARIFICATION

Pursuant to 47 C.F.R. §1.41, the Minority Media and Telecommunications Council (“MMTC”) files this petition seeking clarification, via an erratum, of the Commission’s decision regarding 23 diversity proposals in Promoting Diversification of Ownership in the Broadcasting Services (“Diversity Docket”) pending from the 2010 Quadrennial Ownership Review (“2010 Quad. Review”). The facts surrounding the history of these proposals, many of which have been

1 This Petition seeks clarification of what is obviously an honest mistake in the drafting of a Commission decision. See infra at 4. It does not seek reconsideration on the merits, although MMTC reserves the right to do so and/or to intervene in the pending appeal of the decision.

pending for more than a decade, indicate that they fall squarely within the scope of the 2014 Quadrennial Ownership Review due to the Third Circuit Court of Appeals mandate to consider them within the quadrennial review. Yet the Commission has failed to consider them in the current proceeding. Notably, seven of these proposals were developed by the Commission’s own expert Advisory Committee on Diversity for Communications in the Digital Age and several were supported by a number of business and consumer organizations.


4 2014 FNPRM at ¶317.

The Commission’s entire disposition of these proposals was that though “accompanied by detailed and thoughtful analysis, and some of them may warrant further consideration…they

are outside the scope of this proceeding.” Since we cannot believe that the agency would deliberately defy a court order that essentially requires it to consider these 23 proposals “at the same time” as the agency undertook the review of its ownership rules, the Commission’s refusal to consider these proposals has to be an honest mistake. To correct it, the Commission is respectfully requested to issue an erratum indicating that these proposals in fact remain under consideration in the above-captioned Diversity Docket (MB Docket 07-294) and, in that docket or in the 2014 Quadrennial proceeding, will be ruled upon within a year.

I. Background

The 2002 Quadrennial Review resulted in new ownership rules that were later challenged by MMTC and other petitioners before the Third Circuit Court of Appeals. Upon judicial review, the 2002 Order was remanded to the Commission, with instructions to consider diversity proposals “at the same time” as the agency undertook the review of its ownership rules. In response, the Commission consolidated the Diversity Docket with its statutory ownership review during the 2006 proceeding, with the purpose of simultaneously reviewing the media ownership rules and considering diversity proposals to enhance participation in the

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6 2014 FNPRM at ¶317. While the Commission states that legislative proposals are beyond the scope of this proceeding, in the 2014 FNPRM it mentions – quite appropriately - how it “proposed a new tax incentive program to spur ownership diversity” in the most recent Section 257 Report. Id. at ¶311 n.968 (citations omitted).

7 See Prometheus I, 373 F.3d at 421, n.59 (3d Cir. 2003).


9 See Prometheus I, 373 F.3d at 372.

10 Id. at 421, n.59.
market. Throughout the 2010 Quad. Review, the Commission stated its intention to review the Diversity Docket within that proceeding, and address the Third Circuit’s ruling on diversity proposals. The Commission inquired as to how it could “most effectively … 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.” The agency clearly stated that “[i]n light of the Third Circuit’s remand, we again seek comment on the proposals in the Diversity Third FNPRM, as well as those that have been suggested more recently, in this proceeding.”

At no point in the 2010 Quad. Review did the Commission suggest the Diversity Docket should be untied from the statutorily mandated ownership review, or that proposals addressing ownership diversity that are before it in either docket might be regarded as outside the scope of either the combined dockets or any individual docket.

11 “In response, [Diversity and Competition Supporters] advanced additional and/or revised proposals, as did other commenters. Accordingly, we consolidate this docket with the media ownership proceeding, in which these proposals were filed, and resolve the issues involved in the Second Further Notice.” 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 Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5925 ¶4 (“2006 Order”).


13 Id. at 17555 ¶169 (emphasis added). “In particular, we ask for input on how the court’s remand of the provisions relying on the eligible entity definition should impact our consideration of each of these proposals. We also seek comment on whether the adoption of these measures would advance our policy objectives and on the legal implications of implementing these proposals. Further, we invite parties to comment on whether the Commission would need additional data in order to justify any of these measures and encourage parties to provide any data that may be helpful to our analysis.” Id.
In the 2011 decision *Prometheus II*, the Third Circuit reiterated its desire that the agency review the proposals “*within the course* of the Commission’s 2010 Quadrennial Review of its media ownership rules.”\(^{14}\) In April 2014, the Commission voted on the *2014 FNPRM*, expressly stating its intent to incorporate the record from the *2010 Quad. Review* within the new docket to, in part, “resolve the ongoing 2010 proceeding.”\(^{15}\) The Commission reiterated its “longstanding policy goals of fostering competition, localism, and diversity” seeking comment on “the appropriate framework within which to evaluate and address minority and female interests as they relate to the broadcast ownership rules.”\(^{16}\) However, contrary to its stated intentions, the Commission specifically refused to consider the above-referenced 23 diversity proposals, albeit they were each squarely within the scope of the *2010 Quad Review*, and *certainly* within the scope of the above-captioned *Diversity Docket*.\(^{17}\) Further, the Commission did not attempt to explain its rejection of the 23 proposals by suggesting that it had chosen other means of addressing the minority ownership issue – nor could it have suggested this, since elsewhere in the *FNPRM* the Commission rejected every other proposal it considered and made no effort to show that the few pro-diversity efforts it has in place are in any way tailored to or sufficient to reverse the very longstanding paucity of minority ownership in broadcasting.\(^{18}\) Thus, even in the

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\(^{14}\) *Prometheus II*, 652 F.3d at 472 (citing *Prometheus I*, 373 F.3d at 420-21) (emphasis added).

\(^{15}\) “To accomplish both objectives, with this Further Notice of Proposed Rulemaking (‘FNPRM’) we are initiating this 2014 Quadrennial Review; incorporating the existing 2010 record into this proceeding.” *2014 FNPRM* at ¶1.

\(^{16}\) *Id.* at ¶14.

\(^{17}\) *Id.* at ¶317.

\(^{18}\) See generally *2014 FNPRM* ¶¶307-319 (discussing and dismissing minority proposals but with no mention of an alternative plan to solve the problem of diminishing levels of minority ownership).
face of a court order, the Commission appears to have swept away, for no reason, 23 proposals, many of which have been pending before the Commission for years.\(^{19}\)

II. Relief Requested

MMTC requests that the Commission correct the 2014 FNPRM by issuing an erratum to clarify that the 23 proposals mentioned in paragraph 317 and n. 989 of the FNPRM have not been denied, that they remain pending in the 2014 Quadrennial docket and certainly in the Diversity Docket, and that these proposals will be analyzed and ruled upon within a year as part of the Diversity Docket, the 2014 Quadrennial Review, or both.\(^{20}\)

\(^{19}\) For example, five proposals that were introduced by the Commission’s Advisory Committee on Diversity for Communications in the Digital Age have languished before the Commission for almost a decade. See Proposals 5, 36, 41, 45, and 46 supra n. 5. As documented in our Petition to Intervene during Prometheus I, the Commission failed to act on diversity proposals in at least six proceedings prior to the 2002 ownership proceeding that prompted the initial review before the Third Circuit. See Brief for American Hispanic Owned Radio Assn., et al. as of Intervenors at 7-9, Prometheus Radio Project v. FCC, 373 F.3d 372 (2004) (No. 03-3388 et al.) available at http://mmtconline.org/lp-pdf/BroadcastOwn-Brief.pdf (last visited June 4, 2014). MMTC cited a number of proceedings where the Commission “repeatedly failed to keep its promises to consider new minority ownership policies.” Id. at 7-8. For example, at that time in 2003, “a 1992 structural rulemaking lay dormant for so long that they were rolled into the 1995 minority ownership rulemaking – which also remains dormant. A 1999 rulemaking proposal by Entravision Communications still awaits action. Two 1999 proposals by MMTC, which the FCC deferred for further study in 2001, remain pending and were not mentioned in the R&O.” Id. at 8 (citations omitted). Other examples include “the 1992 Cable Act implementation proceeding, [where] the FCC ignored proposals for minority ownership filed by one of the only two minority owned cable channels, Caribbean Satellite Network (“CSN”) and failed to list CSN in the decision’s Appendix as a commenter. In the digital audio broadcasting proceeding, the FCC did not mention the minority ownership issue despite extensive comments, reply comments, and a minority market demand study filed by the NAACP, LULAC and others.” Id. at 8-9 (citations omitted). Situations where diversity proposals are deferred repeatedly – while the underlying problem festers and gets worse – can no longer be deemed acceptable.

\(^{20}\) As former Acting Chairman Michael Copps and former Commissioner Deborah Taylor Tate agree, the agency could act by voting on these a few at a time. See Deborah Taylor Tate, The Color of Voices, Broadband & Social Justice (Dec. 27, 2012), available at http://broadbandandsocialjustice.org/2012/12/the-color-of-voices/ (last visited June 5, 2014) (“The FCC should commit to review and vote on some of those 71 long-pending minority ownership proposals every month. Up or down. Just please do something in 2013 to ensure that women and minorities can participate fully in America’s broadcasting industry.”).

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Respectfully submitted,

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