

STATEMENT
OF
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“Broadcast Ownership in the 21st Century”

BEFORE THE
UNITED STATES HOUSE COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

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INTRODUCTION

Chairman Walden, Ranking Member Eshoo, distinguished Members of the Subcommittee, and esteemed colleagues on the panel, I am honored to appear before the Subcommittee today to address this nation’s efforts to promote and preserve opportunities for diversity in the ownership of our nation’s airwaves.

My name is Kim Keenan, and I serve as President and CEO of the Multicultural Media, Telecom and Internet Council (“MMTC”), a national nonprofit founded 29 years ago to promote equal opportunity and social justice in the mass media, telecommunications and broadband industries. MMTC proudly partners with dozens of national and local civil rights and advocacy organizations. We have worked with both the private and public sectors to facilitate diverse

ownership in the broadcast industry. In an effort to do our part to increase minority broadcast ownership, MMTC's nonprofit Media and Telecom Brokerage division has participated in nearly \$2B in transactions, which represent nearly one-third of all broadcast station sales to women and people of color since 1997.

At MMTC, we believe that, consistent with the mandate of Sections 151, 257 and 309 of the Communications Act, our nation's media must reflect the cultural and viewpoint diversity of our nation. The late Dr. Everett C. Parker, one of MMTC's co-founders and a minister for the United Church of Christ, who passed away last week at the age of 102, said he fought to desegregate radio and television stations because: *"if we want the voiceless to have a voice that everyone can hear, we have to have robust minority broadcast ownership. It is essential to our democracy."* This message of advancing diverse media ownership still resonates as MMTC and other media advocates push for equity in representation and participation in the broadcasting industry.

For the purpose of this hearing, I will address why minority ownership continues to lag in the broadcast industries, and close with an immediate opportunity available through the FCC's current AM revitalization Notice that could foster meaningful engagement for minority broadcasters. In reference to the House Background Memo, MMTC will not testify regarding cross-ownership and takes no position on the cross-ownership rule given the changes in the marketplace.

I. THE FCC HAS NOT BEEN PROACTIVE IN ADVANCING MINORITY BROADCAST OWNERSHIP

First, the FCC must swiftly act upon proposals and policies that address the market entry barriers that limit diversity and inclusion in broadcasting. The FCC has produced four decades of

minority ownership jurisprudence. In response to a 1973 court decision,¹ the FCC first began to consider minority ownership as a factor in comparative broadcast hearings. It followed that decision in 1978 with the famous tax certificate policy² which, until its repeal in 1995,³ quintupled the number of bona fide minority owned broadcast stations. Unfortunately, since 1978 the FCC's activity regarding minority ownership has been marked by inconsistently applied policies and, in some cases, repeal of minority ownership initiatives without implementation of new or alternative approaches. This lack of consistent engagement has led to a pervasively low level of engagement by people of color as station owners and operators despite the emergence of an increasingly diverse viewing and listening public.⁴

In the FCC's most recent Media Ownership Report, issued in 2014 and reporting on October 2013 data, people of color, including Hispanics, held a majority voting interest in *only* 6.0 percent of full power commercial television stations, 11.2 percent of commercial AM stations, and 6.2 percent of commercial FM stations.⁵ And because these stations are mostly small and under-powered, MMTC estimates that they represent no more than 2 percent of broadcast industry asset value. In fact, the FCC's own criteria in awarding broadcast licenses delayed diverse ownership; it took 50 years under prior regulation before people of color owned even 1 percent of

¹ *TV-9 Inc. v. FCC*, 495 F.2d 929 (D.C. Cir. 1973), *cert. denied*, 418 U.S. 986 (1974).

² *See Minority Ownership of Broadcast Facilities*, 68 FCC2d 979, 983 (1978).

³ Deduction for Health Insurance Costs of Self-Employed Individuals, Pub. L. No. 104-7, §2, 109 Stat. 93 (1995).

⁴ *See* Brief of Intervenor Multicultural Media, Telecom and Internet Council in *Howard Stirk Holdings, LLC v. FCC*, No. 14-1090 *et al.* (D.C. Cir., filed August 27, 2015), pp. 3-6.

⁵ *See* Federal Communications Commission, *Report on Ownership of Commercial Broadcast Stations* (June 27, 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-14-924A1.pdf (last visited Sept. 24, 2015).

the nation's broadcast stations.

Today it is well settled that minority ownership is an indispensable element of broadcast ownership diversity. In 1996, Congress adopted Section 257 of the Communications Act to require the FCC to report every three years on its efforts to eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services."⁶ And in 2004, under Chairman Michael Powell, the FCC created the Advisory Committee on Diversity for Communications in the Digital Age to advance media ownership opportunities for minorities and women.⁷

For our part, MMTC, joined by over 50 national civil rights, professional and civic organizations, has placed before the FCC forty-four race-neutral and almost entirely deregulatory proposals for rule changes and legislative recommendations that would advance minority ownership and participation in broadcasting.

Despite clear interest in promoting ownership by women and minorities, the Advisory Committee on Diversity has not met since September 17, 2013. The last Section 257 Market Entry Barriers Report to Congress was due on December 31, 2012. The FCC rejected 23 of MMTC's 44 pending proposals, with no analysis or consideration, in the 2014 Quadrennial Report and Order – on the theory that they were "beyond the scope" of the 2014 Quadrennial rulemaking.⁸ In 2004 and again in 2011, the Third Circuit of the U.S. Court of Appeals had commanded the agency to

⁶ 47 U.S.C. §257(a) (1996).

⁷ *2014 Quadrennial Regulatory Review, Review of the Commission's Broadcast Ownership Rules, Further Notice of Proposed Rulemaking and Order ("2014 Quad Review Order")*, 29 FCC Rcd 4371, 4517 n. 989 (2014).

⁸ *Id.* at 4371.

consider pro-diversity proposals as part of the Quadrennial dockets.⁹ In 2008, the FCC merged its “Diversity Docket” with the Quadrennial Docket,¹⁰ thereby making all of MMTC’s proposals definitively within the scope of the Diversity Docket. MMTC had to go to court to compel the FCC to simply *rule* on dozens of mostly unopposed proposals that have been pending for over a decade, including over a dozen that have received the enthusiastic support of scores of civil rights organizations as well as the Newspaper Association of America and the National Association of Broadcasters.

To be fair, in 2013, the FCC took a significant step by relaxing its foreign broadcast investment policy,¹¹ an action that MMTC immediately lauded. Yet the agency has rejected nearly all of the other diversity proposals presented to it and has been consistently tardy in issuing the congressionally-mandated Section 257 reports that assess the status of minority media ownership. These examples represent missed opportunities by the Commission to facilitate substantive ownership opportunities for minority broadcasters.

II. REFORM MUST CONTINUE ON JSAs AND SSAs TO ENSURE THAT THEY PROMOTE MEANINGFUL MINORITY OWNERSHIP OPPORTUNITIES

Second, MMTC applauds the FCC’s long overdue crackdown on television Joint Service Agreements (JSAs) and Shared Services Agreements (SSAs) – sometimes called “sidecars”, that

⁹ *Prometheus Radio Project v. FCC*, 373 F.3d 372, 421 n. 59 (3d Cir. 2004); *Prometheus Radio Project v. FCC*, 652 F.3d 431, 472 (3d Cir. 2011).

¹⁰ See *2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules, Report and Order and Third Further Notice of Proposed Rulemaking*, 23 FCCRcd 5922, 5925 (2008).

¹¹ *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, Declaratory Ruling, 28 FCC Rcd 16244, 16251 (2013) (stating that the Commission would exercise its statutory discretion to consider, on a case-by-case basis, applications and transactions that propose foreign broadcast ownership exceeding the 25 percent benchmark of Section 310(b)(4)).

allow one station to sell advertising for, or operate, another station in the same market.¹² These arrangements have almost always been used to evade the TV duopoly rule.

Although a handful of those selected to operate sidecars happen to have been minorities, these arrangements do not help people of color advance in broadcasting. As a practical matter, most sidecar licensees “own” 100 percent of nothing. Most such arrangements are shams in which the “sidecar” station’s supposed owner has no meaningful opportunity to operate the station, choose its programming, or produce any news. For decades, before sidecars were invented, women and people of color actually operated *real* television stations successfully, the owners hired the staff, chose issues to address, and put on local programs to address those issues.

To be fair, we do recognize that there are rare instances where a JSA or an SSA can serve a legitimate purpose. An example is Tougaloo College’s WLOO-TV, which was donated to the college by Raycom Media and is operated by the college as a training institution. The station is a JSA with American Spirit’s WDBD-TV; we have reviewed the arrangement and it promotes minority ownership and training.

MMTC hopes that the FCC’s much-needed JSA and SSA reforms will lead to new, legitimate opportunities for minority broadcast station ownership.

III. AM REVITALIZATION IS AN IMMEDIATE PATHWAY TO INCREASED MINORITY OWNERSHIP

Third, the FCC has an immediate opportunity to foster minority media ownership through its broader effort to revitalize AM radio. Pending before the FCC is the proposal to create an AM-only window to allow AM stations to apply for FM translators as part of this proceeding. Last month, in an unprecedented mass letter, 50 CEOs of minority owned AM radio licensees wrote to

¹² See Phil Verveer, *How the Sidecar Business Model Works* (Mar. 6, 2014), <http://www.fcc.gov/blog/how-sidecar-business-model-works> (last visited Sept. 24, 2015).

the Commission, declaring that “AM radio has been the technological gateway for entrepreneurs of color in broadcasting; two-thirds of minority-owned broadcast stations are AM radio stations.”¹³ Earlier this week, former FCC Acting Chair Michael Capps and former Commissioner Robert McDowell jointly wrote:¹⁴

Translators have been a boon for those stations lucky enough to find one, but too many AM stations are stuck on the sidelines because demand for translators far outstrips supply in many areas. Opening the promised AM-only translator application window would help fix this problem. In fact, such a window is the only way many AM radio stations will ever be able to obtain a translator and provide improved, expanded service to their listeners. This approach is especially important for women and minority owners of AM stations, who are more likely to run small standalone stations on shoe-string budgets.

Twelve members of the Congressional Black Caucus have written to Chairman Wheeler urging the Commission to open an AM-only translator window.¹⁵ I respectfully encourage other Members of Congress to follow suit and help guarantee that AM stations obtain the translators they need to remain competitive and provide our communities with the service they need.

CONCLUSION

MMTC respectfully implores the Subcommittee to exercise its oversight powers to ensure that the FCC makes up for lost ground and takes dramatic and timely steps to increase minority broadcast ownership.

Thank you again for the opportunity to testify.

¹³ Letter to FCC Chairman Wheeler (Aug. 31, 2015), available at <http://www.mmtconline.org/wp-content/uploads/2015/09/AM-Broadcasters-Letter-FINAL-083015.pdf> (last visited Sept. 24, 2015).

¹⁴ Michael Capps and Robert McDowell, *Will FCC Keep Its Promise to Help AM Radio?*, The Hill Blog (Sept. 23, 2015, 7:30 AM), <http://thehill.com/blogs/congress-blog/technology/254527-will-fcc-keep-its-promise-to-help-am-radio> (last visited Sept. 24, 2015).

¹⁵ Congressional Black Caucus Letter to FCC Chairman Wheeler (Sept. 1, 2015) (on file at MMTC and available upon request).