MMTC Multicultural Media, Telecom and Internet Council | NABOB National Association of Black Owned Broadcasters

Press Statement

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The Facts About Current Issues in Broadcast Regulation

WASHINGTON, D.C. (November 9, 2017): For four decades, the Multicultural Media, Telecom and Internet Council (MMTC) and the National Association of Black Owned Broadcasters (NABOB) have each advocated tirelessly before the Federal Communications Commission (FCC) on behalf of multicultural broadcasters and consumers.

Several media structural ownership issues will come before the FCC for a vote November 16; they are described in a draft *Order on Reconsideration and NPRM* ("*Draft Order*") that FCC Chairman Pai released October 27.

Here is how each of the key issues of broadcast regulation impacts minority broadcasters and consumers.

BROADCAST OPERATIONS AND TRANSACTIONS

- **Consideration of content in broadcast licensing.** This issue has arisen in two separate contexts: (1) President Trump has repeatedly suggested that the FCC should deny NBC owned or affiliated television stations' license renewals because the stations broadcast news stories with which Trump disagrees; and (2) opponents of the Sinclair/Tribune merger (discussed below) have contended that the merger should be denied because Sinclair airs right wing propaganda disguised as news on its local stations. Longstanding precedent disallows the FCC's consideration of the accuracy of stories presented as news when determining whether to grant or renew a broadcast license. FCC commissioners have had to assure the public that they will apply First Amendment principles while, at the same time, being careful not to mention specific cases, complainants, speakers, news stories, or parties, as mention of such specifics could open the door to recusal requests if actual complaints were ever filed. The Chairman and all of the Commissioners have handled these matters reasonably.

- **Sinclair/Tribune merger.** While neither of our organizations takes positions on specific mergers, we note that attendant to its proposed acquisition of Tribune Media, Sinclair Broadcast Group has announced that it may spinoff over $1B in stations to comply with possible DOJ antitrust and FCC regulatory requirements. Sinclair's spinoff outreach process began in July without the contemporaneous outreach to minority broadcasters that has characterized all other major broadcast mergers since 1999.

- **Main studio rule.** Since 1939, the FCC has required broadcasters to maintain a brick-and-mortar studio from which to broadcast. A 2008 statistical study by MMTC found that the rule worked to the deep disadvantage of minority broadcasters. Since minorities entered broadcasting late, they often were relegated to serving large markets with inferior, suburban stations each requiring its own main studio. Non-minority broadcasters, who got into broadcasting decades earlier, could serve these markets with several stations, each operating from a single downtown studio. MMTC demonstrated that this "tax on Blackness and Brown-ness" drove capital away from minority entrepreneurs. Some have contended that having a physical studio is necessary to ensure that broadcasters provide local program service, but technology has superseded that requirement. A radio station no longer needs a physical building or office to create and distribute programs. On October 24, the FCC voted to eliminate the rule. We believe the FCC's decision will not harm the public and will contribute substantially to the asset values of minority broadcasters.

- **AM improvement**. Minorities entered radio ownership 50 years later than others, and consequently minorities often found themselves broadcasting from weak suburban locations, trying to reach distant segregated inner-city communities. Today, the "rural radio" and related policies prevent relocation of suburban transmitters into central cities even when there are no engineering impediments to relocation. Thus we have urged the Commission to update its radio technical rules to make it easier to relocate transmitters closer to downtown. In this way the Commission could correct some of the present effects of past discrimination and add considerably to the asset value of minority owned broadcast stations.

- **Pirates**. For two decades, individuals have set up "radio" stations in their garages or bedrooms in large cities without bothering to apply for FCC licenses. These "pirate" stations provide no news, no public service programming, no emergency broadcast service, no discussion of community issues, and no editing of content to ensure that it is child-friendly. Many of these operations choose to exploit the African American community, drawing revenue away from legitimate broadcast licensees that invest in community service. The FCC has cut back on its field offices and thus its piracy enforcement capacity. We are hopeful these cuts can be reversed. The FCC also needs additional enforcement powers to effectively shut down pirates.

BROADCAST OWNERSHIP STRUCTURE

- **Top Four TV station co-ownership.** The *Draft Order* contemplates the use of waivers to weaken current protections against combinations of two of the top four local TV stations (usually, the ABC, NBC, CBS and Fox affiliates). In a typical media market, only five organizations perform full-scale newsgathering: the top four TV networks' affiliates, and the daily newspaper. Thus, weakening the top-four rule would reduce local journalism from five voices to three. Inevitably that will mean less coverage of already under-reported stories about racial profiling, the school-to-prison pipeline, employment discrimination, voting rights, and discrimination in credit and housing. Further, this change in policy would help drive out the few remaining minority owned television stations by undercutting their advertising support. The waiver criteria are so vague that minority broadcasters will be unable to develop long term business plans in contemplation of their competitors' eligibility for waivers.

- **Eight voices test**. The *Draft Order* proposes to eliminate the historic requirement that there be at least eight independently owned television stations remaining in the market following the creation of a new two-station combination. This provision has prevented TV duopolies from proliferating in small markets. On its face, this proposal is highly anti-competitive. In practice it will shut off the primary route to entry for minorities seeking to enter the television business – securing a foothold in small markets without having to face an entrenched incumbent that can so completely dominate the advertising sales marketplace as to make it impossible for a new entrant to secure capital to enter and survive.

- **Joint sales agreement attribution rules**. JSAs are arrangements under which one station sells most or all of the sales inventory of another station. Some innovative JSAs have proven beneficial to minority ownership, such as the one for WLOO-TV, Jackson, MS, owned by Tougaloo College. However, in its *Draft Order*, the Commission proposes to eliminate ownership attribution of JSAs – meaning that operation of a JSA would no longer be treated the same as ownership of a station in determining compliance with the local or national television station ownership caps. When applying non-attribution of JSAs along with repeal of the eight voices test (above), a company could own two stations in a small market *and* sell the inventory of *all* of the other stations - thereby completely dominating the market's television advertising sales and making new entry impossible.

- **Shared services agreements.** SSAs are arrangements under which one station handles virtually all operations, including personnel, facilities, sales, programming, and news, for another. Although SSAs must be disclosed, they are not attributable even though they amount to almost a complete forfeiture of operations by one station to another. In its *Draft Order*, the FCC denied an NAB request to abandon even the requirement that SSAs be *disclosed*, while also refusing to require SSAs to be attributed. Non-attribution of SSAs means that even without the repeal of the eight voices test, but with non-attribution of JSAs (above), a company could operate all of the stations in a market, controlling all advertising sales, making new entry impossible, *and* suppressing all competing news, information and opinion.

- **Broadcast/newspaper cross-ownership.** In its draft media ownership order, to be voted on November 16, the Commission proposes to repeal its rules against broadcast-newspaper cross-ownership. Our organizations have concluded that these rules can safely be repealed as long as doing so would not impede minority ownership. Not all cross-media combinations offend the public interest. Allowing video companies to help the fourth estate survive in the internet age is not unreasonable and in some circumstances it is laudable.

- **AM/FM radio subcaps**. The AM and FM subcaps are number of AM or FM stations a company may own in a market as a portion of the total cap of radio stations it may own. For example, in a large market (45 or more stations), the total cap is eight radio stations, and the subcaps are five AM or five FM stations. A proposal would eliminate the subcaps, so that a company could own eight FM stations (or eight AM stations, although few owners would want to do that). Were that to happen, the largest FM owners in the market would promptly find a way to expand up to the eight FM station limit. Almost no minority owners could manage this feat, and the few remaining minority owned stations would operate at an enormous competitive disadvantage. AM stations (which are disproportionately minority owned) would suffer deeply, with diminished asset value. Since the subcap issue is not now before the FCC in its structural ownership docket, the agency is not going to take it up until it opens its 2018 media ownership quadrennial review proceeding.

CIVIL RIGHTS AND EQUAL OPPORTUNITY

- **Minority ownership policies, including reinstatement of the tax certificate**. Legislation proposed by Congressman H.K. Butterfield would reinstate, with some revisions, an FCC program that quintupled minority broadcast ownership from 1978-1995. Using tax incentives for sellers of broadcast stations and other FCC-regulated assets, the Butterfield bill would raise minority ownership of the public's airwaves from its current level (approximately 7% of stations) closer to the 35% of stations that would correspond with the representation of people of color in the population. Several additional long-pending proposals to advance minority ownership remain backlogged at the FCC.

- **Incubators**. In 1990, NABOB originated the concept of an incubator program, under which a broadcaster would provide an ownership rule waiver to a company that creates a new voice in the market. Seven dockets and 27 years later, the Commission plans to issue an NPRM proposing how the concept would take shape. The NPRM will consider such questions as which entities are eligible for participation, what incubation activities are qualifying; what benefits would accrue to the incubating station, what would be the review process for incubation proposals, how the Commission would monitor compliance, and costs and benefits. We support the Commission's approach and will encourage the agency to be particularly careful to ensure that sham structures (such as many SSAs and JSAs) are not held out as incubators and exploited to secure benefits in the name of advancing minority ownership.

- **Extension of the cable procurement rule to broadcasting.** Since 1993, the FCC has required cable systems and satellite broadcasters to disseminate their requests for proposals (RFPs) widely enough to reach qualified minority contractors. This non-controversial broad outreach requirement opened the doors for millions of dollars of new revenue for minority contractors. Surprisingly, in 2014 the FCC refused to extend the rule to broadcasting and other FCC-regulated technologies. Responding to a court appeal by MMTC, the FCC promised to reconsider its decision; but in 2016, the FCC, giving no reason, again refused to extend the rule. MMTC and NABOB then took the FCC to court a second time; that case is pending in the Third Circuit in Philadelphia.

- **Multilingual emergency broadcasting**. MMTC filed the "Katrina Petition" in 2005 after 100,000 Spanish-speaking individuals in New Orleans were left with no sources of information for eight days in the wake of Hurricane Katrina, one of the most life-threatening natural disasters in American history. Eleven years later, the FCC refused to require broadcasters to provide life-saving multilingual information during or in the immediate wake of a disaster. On October 17, a divided panel of the D.C. Circuit denied an appeal by MMTC and LULAC, even while calling the FCC's delay "bureaucracy standard time." The court decision means that the FCC – which said it is still "studying" the issue – must expeditiously render a decision.

- **Equal employment opportunity**. Since 2004, the FCC has had before it a request by 48 national organizations to upgrade its EEO enforcement by focusing on the primary manner in which it has found discrimination to occur in broadcasting: recruiting primarily by word-of-mouth from a homogeneous workplace. That request has been renewed on several occasions, to no avail. The FCC's repeated failure to address this issue under three Republican and four Democratic chairs or acting chairs speaks poorly of the agency's institutional commitment to equal opportunity.

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About MMTC:
The Multicultural Media, Telecom and Internet Council (MMTC) is a non-partisan, national nonprofit organization dedicated to promoting and preserving equal opportunity and civil rights in the mass media, telecom and broadband industries, and closing the digital divide. MMTC is generally recognized as the nation's leading advocate for minority advancement in communications.

About NABOB:
NABOB is the only trade organization representing the interests of African-American owners of radio and television stations across the country. NABOB has two principal objectives: First, to increase the number of African-American owners of telecommunications facilities, and second, to improve the business climate in which we operate. The overall objective is to maximize the potential for financial success through providing advocacy resources and information in critical business areas including, advertising sales, station acquisition, financing, and federal broadcast regulation.