

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
2018 Quadrennial Regulatory Review –)	MB Docket No. 18-349
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules Adopted)	
Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	

To The Commission

**FURTHER COMMENTS OF THE MULTICULTURAL
MEDIA, TELECOM AND INTERNET COUNCIL**

The Multicultural Media, Telecom and Internet Council (“MMTC”) respectfully submits these Further Comments in the 2018 Quadrennial.¹

MMTC Restates Its Defense Of Minority Ownership

In its Order opening a new round of comments, the Bureau stated that it wished to receive “new or additional information to update the record in the 2018 Quadrennial Review proceeding.”²

In the past two years, little has happened that fundamentally changed the inequities in this Quadrennial docket. Thus, MMTC stands by its 2019 contentions that:

- Minority and women broadcast ownership is embarrassingly low.³
- The FCC depressed minority ownership for 50 years of its history and must now take remedial steps to undo the damage it caused.⁴

¹ MMTC, Comments of the Multicultural, Media, Telecom, and Internet Council, MMTC’s Initial Comments were filed April 28, 2019 (“MMTC Initial Comments”), <https://ecfsapi.fcc.gov/file/1042987748822/MMTC%202018%20Quad%20Comments%20042819.pdf> (last accessed August 23, 2021).

² See Media Bureau Seeks to Update the Record in the 2018 Quadrennial Regulatory Review, Public Notice, MB Docket No. 18-249, DA 21-657 (June 4, 2021) (“Quad Restart Order”), at 4.

³ MMTC Initial Comments, at 2-3.

⁴ *Id.* at 3-5.

- The Local Radio Ownership Rule should not undergo major changes at this time. Relaxing or eliminating the caps or subcaps, or reliance on translators to supplement AM stations' coverage, would disadvantage minority broadcasters. Further, relaxing the local ownership caps or the AM or FM subcaps would spell the end of the incubator program before it has a chance to succeed.⁵
- New voices—not increased consolidation, less new entry, and less minority ownership—are the answers to local advertising competition from Facebook and Google.⁶

The Cable Procurement Rule Should Be Extended To All FCC-Regulated Technologies

We renew our potentially most impactful proposal – extending the highly successful Cable Procurement Rule to broadcasting and all other FCC-regulated technologies.⁷ This proposal has enormous potential to contribute to competition, diversity, and inclusion.

In the 1992 Cable Act, Congress adopted the cable procurement requirement to “encourage minority and female entrepreneurs to conduct business with all parts of its operation; and . . . analyze the results of its efforts to recruit, hire, promote, and use the services of minorities and women and explain any difficulties encountered in implementing its equal employment opportunity program.”⁸ The regulation, in effect since 1993, has yielded solid results and has drawn no opposition.⁹ It ensures that cable MSOs will disseminate major

⁵ *Id.* at 5-12.

⁶ *Id.* at 5-9.

⁷ *Id.* at 12-19.

⁸ 47 U.S.C. §554(d)(2)(E) (stating that FCC must develop rules to ensure that an MVPD shall “encourage minority and female entrepreneurs to conduct business with all parts of its operation.”) The rule (with the same language) is found at 47 C.F.R. §76.75(e) (the “Cable Procurement Rule”).

⁹ *Recommendation on Procurement Issues, Emerging Technologies Subcommittee, Advisory Committee on Diversity for Communications in the Digital Age (adopted by the full Committee)*, (June 10, 2008), <https://transition.fcc.gov/DiversityFAC/adopted-recommendations/procurement-061008.pdf> (recommending that the Commission examine extending the procurement requirements to all platforms). MMTC has sought this relief since 2010. See also Letter to Marlene Dortch from David Honig, Executive Director, Minority Media and Telecommunications Council (Proposal #10), (March 18, 2010), <https://ecfsapi.fcc.gov/file/7020396472.pdf>; see also William Kennard, Reed Hundt, Julius Genachowski, and Michael Copps, Letter to Hon. Tom Wheeler regarding the extension of the

procurement opportunities (such as laying fiber or installing equipment) broadly enough to reach eligible minority- and women-owned companies. Procurement opportunities help small, minority- and women-owned businesses grow and provide jobs;¹⁰ further, by adding competition in bidding, these businesses drive down the prices cable companies must pay for the services provided. Finally, a diverse pool of multiple suppliers of a key product or service deepens the pool of talent and entrepreneurial mettle, while helping ensure that the market will not collapse as it would if the only supplier should fail. Ubiquitous equal procurement opportunity would be a classic “win-win” for everyone.

The Commission should issue an NPRM in a fast-track¹¹ new general docket, encompassing the industries regulated by the Wireline, Wireless, and Media Bureaus. This NPRM should propose equal procurement opportunity across all FCC-regulated industries,¹² modeled after the Cable Procurement Rule.

MVPD procurement rule (August 5, 2016), <https://ecfsapi.fcc.gov/file/1080581619752/FmrChairs%20Procurement%20Ltr-signed%20080516.pdf> and subsequent filings in multiple dockets. In the *Quad Restart Order*, the Commission sought comment on whether to extend the Cable Procurement Rule to broadcasting. See *Quad Restart Order*, at 2 and n. 9. The issue of extending the Rule to wireless is also before the Commission. See *MMTC et al., Petition for Partial Reconsideration, Establishing a 5G Fund for Rural America*, GN Docket 20-32 and WT Docket 10-208, p. 1 (November 30, 2020), <https://ecfsapi.fcc.gov/file/1130418623421/5G%20Fund%20Supporters%20Recon%20113020%20FINAL.pdf> (asking the Commission to “require that applicants for 5G Fund subsidies broadly disseminate contracting opportunities to ensure that diverse contractors have an opportunity to compete for contracts awarded under the Fund.”)

¹⁰ Whenever qualified minorities are unable to fully deploy their innovative and entrepreneurial capital in the marketplace, the national economy suffers. See Danielle Davis, *The Economic Cost of Discrimination*, MMTC (2018), <https://www.mmtconline.org/wp-content/uploads/2019/04/Andrew-Brimmer-and-the-Economic-Costs-of-Discrimination-042619.pdf> (providing citations documenting the economic cost to society of racial discrimination in employment).

¹¹ In *Prometheus Radio Project v. FCC*, 939 F.3d 567, 573 (3d Cir. 2019) (“Prometheus IV”), the Third Circuit held that the FCC’s failure to act on this proposal for over 10 years “is not unreasonable *so far*” (emphasis supplied).

¹² If the Commission feels that MB Docket 18-349 is not broad enough to encompass our proposal for an industry-wide regulation, it should treat these MMTC Further Comments as a

**The Office Of Economics And Analytics Should Consider
Our Mathematical Models For Competition And Diversity**

We renew our request to have the Office of Economics and Analytics consider Tradable Diversity Credits, the Source Diversity Formula, and the Tipping Point Formula. As we stated in the MMTC Initial Comments:¹³

[O]ur three basic concepts do not lend themselves to development in a notice-and-comment rulemaking. What these concepts need at the outset is not legal analysis but economic analysis, because each concept immediately presents questions of economic policy whose answers are the predicates to whether its formula, or some other formula, is the best one.

Those familiar with the *Prometheus* line of cases, and these Quadrennials, know that the Commission's rudimentary methods of measuring competition and diversity are, at best, sub-optimal, and imprecise - analogous to defining pi as 3.0. The local and national media ownership limitations in 47 C.F.R. §73.3555 are little more than raw station or pop counts. Seldom are they tethered to demographic and economic factors that may change rapidly over time. Such coarse metrics as station counts are unconnected to stations' respective economic values or even to stations' audience reaches. The rules themselves – even when they accidentally happen to “work” – are sometimes little more than the product of political compromises, bereft of rigorous economic analysis. Seldom, if ever, do they take diversity into account except as an afterthought.

MMTC's metrics could measure local ownership competition and diversity much more precisely than the current blunt instruments of arbitrary and unchanging numbers.¹⁴ While these mathematical models and formulas are more complex than the current rules, consumers and broadcasters would endure no harm. These days, there is an app to calculate any formula.¹⁵

petition for rulemaking (and a new docket or dockets) under 47 C.F.R. §1.401.

¹³ MMTC Initial Comments, at 20-21 (fn. omitted).

¹⁴ *Id.* at 19-22.

¹⁵ The agency and those practicing before it are no strangers to complexity. Consider, for example, the broadcast engineering expertise needed to interpret the ownership rules; and consider the math needed for separations and settlements and for intercarrier comp.

The Commission Should Reopen Its Incubator Rule, Promote The Opportunity It Presents To The Industry, And Correct An Error In Its Formulation

A new circumstance points to the importance of revisiting the *Incubator Order*.¹⁶ Since the Commission (quietly) announced on June 4 that its incubator program had begun,¹⁷ no incubator applications have been filed, and there does not appear to be any interest from potential incubating parties. The industry is surely aware of incubators, as the issue has been litigated for 31 years since the day in 1990 when NABOB brought the proposal to Chairman Sikes' Minority Ownership Advisory Committee. Instead, the industry is balking because the agency has done nothing to welcome incubator applicants, or to correct a major flaw in the program, the "Traverse City Anomaly" impacting the comparability of incubating and waiver markets.

The "Traverse City Anomaly" is our term to describe the scenario in which incubation of a station in a geographically vast but sparsely populated market with 45 stations (*e.g.* Traverse City, MI, BIA Market #157) can be rewarded by a local radio ownership cap or subcap waiver in (*e.g.*) New York City.¹⁸ Even though it is lawful,¹⁹ it is unwise because it will have the appearance of an invitation to gamesmanship. Fortunately, the Anomaly can be corrected in

¹⁶ *Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services*, MB Docket No. 17-289, Report and Order, 33 FCC Rcd 7911 (2018) ("Incubator Order").

¹⁷ See 2014 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, MB Docket Nos. 14-50 et al., Order, DA 21-656 (rel. June 4, 2021), at 1-2.

¹⁸ See, *e.g.*, David Honig and James Winston, Letter to Secretary Marlene Dortch, FCC (July 26, 2018) (see discussion of "Comparable Markets"), <https://ecfsapi.fcc.gov/file/10726007804045/2%20FAC%20Members'%20ExParte%20072618.pdf>, and subsequent filings.

¹⁹ See *Prometheus IV*, 939 F.3d at 573 (letting stand as "a reasonable exercise of discretion" the FCC's decision to reward incubation with an ownership waiver in any market for which the allowable numbers of local AM and FM stations are no greater than the numbers of such stations allowed by the local multiple ownership rules). It was sufficient that the FCC had justified this "Traverse City Anomaly" as an incentive for incubation. But no radio owner would be so disinterested in advancing diversity that it would require so huge a financial incentive to create an incubator.

several ways, such as creating a series of five or six comparable market tranches (*e.g.*, incubation in a market ranked 11-24 would be rewarded with a waiver in another market ranking 11 or smaller.)

Further, to generate interest in the program, the Commission should hold an incubator workshop at which agency officials could provide the public with the history of the incubator program, its goals, and examples of incubations that would be well regarded and waiver-eligible by the Bureau and the commissioners.²⁰

Respectfully submitted,

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²⁰ A model for such a workshop is the October 2020 Tech Supplier Diversity Showcase. *See* Public Notice, FCC Announces October 23, 2020 Tech Supplier Diversity Opportunity Showcase (co-hosted by the Internet Association), GN Docket No. 17-208, DA 20-1228 (October 16, 2020).