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

In the Matter of	)	
	)	
2010 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 No. 09-182
	)	MB Docket No. 07-294
Promoting Diversification of Ownership in the Broadcasting Services	)	

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] submits these comments in response to the Media Bureau's *Public Notice*[2] seeking comment on a study commissioned by the Minority Media and Telecommunications Council ("MMTC") entitled, "The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations" (the "MMTC Study").[3] As discussed in detail below, this survey reconfirms the very substantial evidence in the record in this proceeding as to the challenges that all local broadcasters experience in today's highly competitive media marketplace. NAB also again urges the Commission to adopt incentive-based approaches grounded in marketplace realities to promote a more diverse broadcast industry.

---

[1] The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

[2] *Media Bureau Invites Comments on Study Submitted by the Minority Media and Telecommunications Council in 2010 Quadrennial Review of Broadcast Ownership Rules*, Public Notice, MB Docket Nos. 09-182, 07-294, DA 13-1317 (Jun. 7, 2013) ("*Public Notice*").

[3] Fratrik, Dr. Mark R., Vice President and Chief Economist, BIA/Kelsey, "The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations" (May 30, 2013).

I. Survey Responses in the MMTC Study Reaffirm Extensive Record Evidence about the Competitive Marketplace Realities Faced by all Local Broadcasters

A. Broadcast Station Owners Face Similar Business Challenges as They Compete With a Growing Array of Outlets

The MMTC Study reports the results of a survey that asked various questions about competition and advertising in respondents' local markets, as well as the challenges they face in providing local news and information.[4] Regardless of their backgrounds,[5] survey respondents observed that they face stiff competition from other broadcasters as well as myriad other outlets.[6] In addressing questions about the "most important factors" and "challenges" faced in selling advertising time, respondents cited competition from other broadcasters, noting that, "[r]adio is very competitive in this market with a lot of stations fighting for a small piece of the pie," that digital television multicast channels are a new source of broadcast competition, and that some of their broadcast competitors offer lower rates.[7]

In addition to broadcast competitors, respondents also observed that there are "[o]ther viable alternative outlets providing my audience" to potential advertisers, that they "have to overcome the internet and satellite radio … as competition for our audience," and that they are encountering "[t]ighter budgets in the face of new platforms."[8] With a proliferation of ways to get their messages across, advertisers are enjoying a buyer's

---

[4] MMTC Study at 4. The MMTC Study reports receiving responses from fourteen local broadcast operations, eight of which were owned by minorities or women and six that were not owned by minorities or women. *Id.* at n. 4.

[5] MMTC Study at 10 ("there was no perceptible difference in the responses of the two groups of respondents to these issues").

[6] MMTC Study at 6-8.

[7] MMTC Study at 7.

[8] *Id.*

market. As one respondent stated, there is simply “[t]oo much media/advertising available. There must be 100 items selling as advertising.”[9]

Aside from fierce competition for advertising dollars, respondents further reported challenging economic conditions as a factor in their ability to sell advertising, citing a “[s]low economy” and observing that “economic conditions are shaky at best.”[10] One respondent reported that “[b]usinesses are still reluctant to spend money, economy is still tight.”[11] Responding broadcast owners also know that more competition is on its way, identifying “[d]igital platforms of all shapes and sizes” as emerging competitors.[12] Respondents additionally discussed challenges they face in the provision of news and information, observing that they must now “[c]ompet[e] with digital media to get the information first” because there are “[m]any more players on the digital front.”[13] Several cited the challenge of budgeting for sufficient staff to cover news across their markets.[14]

These views are consistent with extensive record evidence documenting the competition for advertising revenues and audiences that broadcasters face.[15] Among other things, NAB and other commenters have explained that multichannel video programming distributors (“MVPDs”) are now formidable competitors, garnering significant

---

[9] *Id.*

[10] *Id.*

[11] *Id*.

[12] MMTC Study at 7-8. Facebook, Google, Pandora and Spotify were among those specifically identified as emerging competitors. *Id.*

[13] MMTC Study at 8.

[14] *Id.*

[15] *See, e.g.,* NAB Comments to *Notice of Proposed Rulemaking* in MB Docket 09-182, at 6-8 (filed Mar. 5, 2012) (“NAB Comments”) (describing the competition to broadcast outlets in today’s media marketplace); NAB Reply Comments in MB Docket No. 09-182 at 2-7 (filed Apr. 17, 2012) (“NAB Reply Comments”) (discussing the record regarding competition generally); *id.* at 9-10 (discussing competition to local TV stations); *id.* at 20-21 (discussing competition to local radio stations); *id.* at 24-25 (discussing competition in the context of cross-ownership).

shares of local advertising revenues and customizing their programming to viewers in local markets.[16] We have observed that subscription-based outlets and other new media platforms are targeting and reaching the audiences on which broadcasters have traditionally relied.[17] Broadcasters also have documented the Internet's fundamental alteration of the media landscape, which has revolutionized the manner in which news and local content are both consumed and produced,[18] and provided yet another alternative for audiences and advertisers.[19] The survey responses from the MMTC Study

---

[16] *See, e.g.,* NAB Comments at Attachment C (demonstrating the ongoing erosion of advertising market share from local television stations and the increasing advertising shares of local cable operators in recent years); NAB Reply Comments at 3, *citing, inter alia*, Sinclair Broadcast Group, Inc. Comments to *Notice of Proposed Rulemaking* in MB Docket 09-182, at 9-10 (filed Mar. 5, 2012) (highlighting that "[c]able now offers channels that are solely devoted to weather coverage, and include regular and frequent coverage of local weather conditions and forecasts").

[17] *See, e.g.,* NAB Comments at 12-16 (discussing sources of competition to local TV outlets); *id.* at 32-34 (discussing competition to local radio outlets); NAB Reply Comments at 9, *citing* CBS Corporation Comments to *Notice of Proposed Rulemaking* in MB Docket No. 09-182, at 10-11 (filed Mar. 5, 2012) ("CBS Comments"); LIN Television Corporation Comments to *Notice of Proposed Rulemaking* in MB Docket No. 09-182, at 3-8 (filed Mar. 5, 2012).

[18] *See, e.g.,* NAB Comments at 6-8, 12-14, and 42-43; NAB Reply Comments at 4, *citing* Fox Entertainment Group, Inc. and Fox Television Holdings, Inc. Comments to *Notice of Proposed Rulemaking* in MB Docket No. 09-182, at 7 (filed Mar. 5, 2012) ("Fox Comments") (stating that "the Internet dwarfs every previous media technology in its ability to both empower individual users to speak *and* to enable masses of consumers to freely receive information"); Morris Communications Company, LLC Comments to *Notice of Proposed Rulemaking* in MB Docket No. 09-182, at 7-8 (filed Mar. 5, 2012) (citing Commission studies and statements regarding the growing importance of the Internet); Tribune Company, Debtor-in-Possession Comments to *Notice of Proposed Rulemaking* in MB Docket No. 09-182, at 34-44 (filed Mar. 5, 2012) (demonstrating the uniquely pervasive and accessible nature of the Internet and how it allows users to "sort, select, and share content based on their specific interests" or "contribute their own information, commentary, opinion, photos, videos and similar material previously provided uniquely by traditional media").

[19] *See* NAB Reply Comments at 4, *citing* New Vision Television, LLC and TTBG, LLC Joint Comments to *Notice of Proposed Rulemaking* in MB Docket No. 09-182, at 6 (filed Mar. 5, 2012) (highlighting the expanding number of local information sources, including cable television, live streaming, blogs, websites, Yelp.com, Zagat.com, OpenTable.com, FourSquare, and Facebook); Nexstar Broadcasting, Inc. Comments to *Notice of Proposed Rulemaking* in MB Docket. No. 09-182, at 5-8 (filed Mar. 5, 2012) (stating that "[t]oday's consumers live in a time where they can find news and information from numerous sources . . . in a variety of formats . . . at virtually any time"); NAB Comments at 14-15 & n.54 and NAB Reply Comments at 5 & n.13 (citing numerous reports showing that new media cut into broadcasters' revenues as advertisers allocate more of their budgets for locally targeted online, mobile and social media advertisements).

reaffirm existing record evidence of the dynamic competitive landscape in which broadcasters operate, thus underscoring the need to reform decades-old broadcast-only ownership restrictions to reflect current competitive realities.

B. Minority and Women Broadcasters Are Not More Likely than Other Broadcast Owners to Identify Cross-Ownership Combinations as Key Competitors

In response to a question about which stations are the respondents' direct competitors, there was "simply…no difference in the responses from the minority and/or women owned stations and the other [stations]."[20] In fact, only one of the eight minority/women owners identified a cross-owned outlet as its "most direct" or "most dominant" competitor, while two of the six respondents that were not minorities or women listed cross-owned outlets in response to these questions.[21] In response to two open-ended questions about the important factors and challenges the respondents face in selling advertising time in their local markets, none of the responses (either from minority/women-owned or non-minority/women-owned stations) mentioned the presence of cross-media operations, "either directly or indirectly."[22] Similarly, when asked about challenges in providing news and information on their stations, "none of the respondents indicated the local cross-media operation."[23]

As the MMTC Study observes, it is not a "comprehensive random sample survey of all instances of local cross-ownership operations in markets with stations owned by minorities and women,"[24] and "[m]ore [survey] responses would have been preferred."[25]

---

[20] MMTC Study at 5-6.

[21] MMTC Study at 5-6.

[22] MMTC Study at 6.

[23] MMTC Study at 8.

[24] MMTC Study at 9.

However, the MMTC Study does provide "information from some [stations owned by minorities and women in markets with cross-ownership] about the competitive nature of local markets and the provision of news and information" and compares their responses with those of station owners who are not minorities or women.[26] The study finds the lack of concern about competition from cross-owned outlets to be striking.[27] Clearly, the responses focused on "general business concerns that all radio and television stations have in all markets" regardless of the demographic makeup of their ownership,[28] leading the study to find that its results "while not dispositive, provide evidence that the impact of cross-media ownership on minority and women broadcast ownership is probably negligible."[29]

NAB observes that the MMTC Study is entirely consistent with the record in this proceeding, which contains no evidence showing that modifications to the broadcast ownership rules to permit more efficient combinations, including newspaper/broadcast and radio/television cross-ownership, would harm competition, diversity, or localism. In fact, the record shows that such reforms would allow broadcast owners to structure their operations to take advantage of economies of scale and scope, thereby promoting their ability to compete more effectively with other outlets and allowing them to offer better local service.[30] The Commission cannot, consistent with its statutory obligation under Section

---

[25] MMTC Study at 4.

[26] MMTC Study at 9.

[27] MMTC Study at 9.

[28] MMTC Study at 9-10.

[29] MMTC Study at 10.

[30] As explained in a paper examining the strong scale and scope economics in television broadcasting generally and local news production specifically, "economies of scale and scope are associated with falling unit costs of production – that is, with the production of more output at lower

202(h) of the 1996 Telecommunications Act and established case law, rely on the unproven assertion of a causal connection between the structural rules governing broadcast ownership and the levels of minority and female ownership as a rationale for retaining outdated rules, including the nearly four-decades old ban on newspaper/broadcast cross-ownership.[31] Indeed, despite more than 70 years of structural ownership regulation, there has yet to be empirical evidence showing that rules restricting broadcast ownership generally have improved minority or female ownership specifically.

Moreover, as NAB has previously explained, the overly restrictive and competitively asymmetric broadcast ownership rules currently in effect are only contributing further to the financial challenges faced by smaller, minority- and female-owned stations by artificially depressing the value of broadcast stations.[32] For existing minority and female broadcasters, ownership restrictions reduce the asset and net worth values of their stations, which in turn reduces their borrowing capabilities (and thus their ability to acquire additional broadcast properties, to upgrade programming, or to make other investments in their stations). Since access to capital is a key barrier to expansion or entry for minority and female broadcasters, ownership limits that reduce the capital of existing minority and

---

average cost – and hence are *prima facie* welfare enhancing." Jeffrey A. Eisenach & Kevin W. Caves, *The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting* 1-2 (2011), Attachment A to Reply Declaration of Jeffrey A. Eisenach & Kevin W. Caves (June 27, 2011), in NAB Reply Comments in MB Docket No. 10-71, at Appendix A (filed June 27, 2011) (concluding specifically that existing regulations limiting cross-ownership of newspapers and television stations reduce the amount of news programming produced and carried by local stations). *Id.* at 4.

[31] *See, e.g., Bechtel v. FCC*, 10 F.3d 875, 880 (D.C. Cir. 1993)(court invalidated FCC criterion for licensing broadcast applicants because, after 28 "years of experience with the policy," the FCC had "no evidence to indicate that it achieve[d]" the "benefits that the Commission attribute[d] to it," and the agency could no longer rely on "unverified predictions"); *Cincinnati Bell Telephone Company v. FCC,* 69 F.3d 752, 764 (6th Cir. 1995) (court found ownership limitations in the wireless industry to be arbitrary because they were based on "generalized conclusions" and "broadly stated fears," rather than "documentary support").

[32] *See* NAB Reply Comments in MB Docket Nos. 09-182 and 07-294 at 6-7 (filed Jan. 4, 2013).

female licensees will not increase their ability to acquire additional broadcast properties, but will in fact decrease their ability to do so.

With regard to potential minority and female entrants into the broadcast industry, one can similarly expect that, if competitively disparate regulation discourages investment in broadcasting, minorities and women will find it even more challenging than other potential purchasers to obtain scarce investment capital needed for acquiring and operating stations. Ownership restrictions that reduce the value of broadcast properties make stations less expensive for *all* potential investors (including those with greater access to capital).

II. Incentive-Based Solutions Will Promote a Stronger, More Diverse Broadcast Industry

As NAB and several other commenters have observed throughout this proceeding, no interests will be served by further delay in the modest relaxation of some ownership rules that the Commission is currently contemplating. Accordingly, NAB again urges the Commission to move forward with modifications to its broadcast ownership limits, take some immediate race-neutral steps to enhance broadcast ownership diversity, and continue research to lay the foundation for other incentive-based measures if such neutral steps fail to produce results.[33]

Several commenters agree with NAB that the adoption of incentive-oriented approaches that reduce barriers to entry will most effectively expand opportunities for minority and female owners. These include the Diversity and Competition Supporters

---

[33] NAB has previously discussed the effectiveness of one incentive-based approach – the tax certificate policy – in expanding minority ownership of broadcast outlets. NAB Comments in MB Docket Nos. 09-182 and 07-294 at 9 & n.39 (filed Dec. 26, 2012). The elimination of this policy nearly 20 years ago is the likely overriding factor impeding growth in the number of minority owners.

("DCS"), who have offered numerous proposals for consideration in this proceeding, many of which are supported by NAB, the Newspaper Association of America ("NAA"),[34] and the National Association of Media Brokers ("NAMB"),[35] to name a few.

NAB continues to support the proposals outlined in our initial comments and reply comments in this proceeding.[36] More recently, in our reply comments regarding the FCC's report on minority and female ownership, NAB observed that the following additional DCS proposals would promote diversity: (i) offering structural rule waivers for financing construction of a qualifying entity's unbuilt station; (ii) developing an online resource directory to enhance recruitment, advancement, and diversity efforts; (iii) considering proposals for legislative recommendations to establish targeted loan programs; and (iv)

---

[34] Comments of NAA in MB Docket Nos. 09-182 and 07-294 at 10 (filed Dec. 26, 2012)(NAA supports proposals to establish an incubator program that provides broadcasters incentives to finance or incubate disadvantaged businesses; reinstatement and expansion of the tax certificate policy; relaxation of the main studio rule; FCC engineering tutorials; placement of diversity resources on the FCC's website; and a legislative recommendation to create a small and minority communications loan guarantee program).

[35] Comments of NAMB in MB Docket Nos. 09-182 and 07-294 at 7 (filed Dec. 26, 2012).

[36] NAB Comments in MB Docket Nos. 09-182 and 07-294 (filed Dec. 26, 2012) at 7-8, citing NAB Reply Comments at 32-33; NAB Comments at 53, n. 202. Specifically, NAB has urged the FCC to: (i) sponsor primers on investment and financing of broadcast enterprises for smaller and regional lenders so that they may be better informed about the industry and more willing to make loans to new owners; (ii) adopt an incubator or waiver program that would give broadcasters incentives to finance qualifying businesses and to ensure that ownership of communications outlets reflects the demographics of the audiences and communities they serve; (iii) adopt subchannel licensing programs that would permit the sale of broadcast subchannels to qualifying entities to facilitate better opportunities for prospective subchannel operators by making it easier to obtain financing; (iv) modify its rules to allow sellers to hold a reversionary interest in broadcast licenses pursuant to certain guidelines to incentivize sellers to be more willing to finance a station purchased by a new owner by retaining the ability to reacquire the station in the event of a default; (v) reinstate a relaxed attribution standard for qualifying entities to improve their ability to attract financing; (vi) reinstate the policy that permitted the transfer of grandfathered radio station combinations to any entity so long as the buyer assigns the excess stations to a qualifying business within one year; (vii) urge Congress to provide tax incentives to station owners who sell broadcast properties to qualifying owners; (viii) modify certain rules governing radio operations advanced in an MMTC petition for rulemaking.

granting the request for clarification regarding foreign ownership restrictions filed by members of DCS and others involved in the Coalition for Broadcast Investment.[37]

III. Conclusion

NAB again urges the Commission to move forward with its proposals for cross-ownership reform, as none of the changes under consideration would harm broadcast ownership diversity. The record in fact supports broader reform of the broadcast ownership rules, including the local television and local radio rules, to allow broadcasters to achieve economies of scale and scope and enhance their service to the public. Additionally, NAB urges the Commission to work toward practical solutions grounded in marketplace realities to foster opportunities for a more diverse broadcast industry.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

Jane E. Mago
Jerianne Timmerman
Erin L. Dozier

July 22, 2013

[37] NAB Reply Comments in MB Docket Nos. 09-182 and 07-294 at 3-4 (filed Jan. 4, 2013), *citing* Supplemental Comments of DCS in MB Docket Nos. 09-182 and 07-294 at 26, 74, 89-90 (filed Apr. 3, 2012) and Letter to Marlene H. Dortch, Secretary, FCC, from Mace Rosenstein and Gerald Waldron of Covington & Burling LLP, Counsel for the Coalition for Broadcast Investment (filed Aug. 31, 2012). *See also* Comments of NAB in MB Docket No. 13-50 (filed Apr. 15, 2013); Reply Comments of NAB in MB Docket No. 13-50 (filed Apr. 30, 2013).