

TO: Federal Communications Commission

FROM: **Howard Media Group:**
Carolyn M. Byerly, Ph.D., Associate Professor
Department of Journalism

Reggie Miles, M.A., Assistant Professor
Department of Television, Radio & Film

Yong Jin Park, Ph.D., Assistant Professor
Department of Television, Radio & Film

John H. Johnson School of Communications
Howard University, Washington, DC 20059

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RE: Comment for consideration on the FCC's planned reconsideration of the
2010 Media Ownership Review Proceeding (MB Docket No. 09-182)

We appreciate the opportunity to submit comments for the Commission's planned quadrennial reconsideration of media ownership rules. The following remarks provide our responses to questions that the Commission has specifically raised with respect to competition, diversity and localism goals, pursuant to the Commission's Public Notice DA 09-2209, on October 21, 2009.

As research faculty at Howard University, a historically Black institution of higher learning with a mission to advance the education and status of under-represented populations, we have specific and deep concerns about the significant lack of diversity in broadcast ownership by female and non-white individuals in a nation that is 52% female and increasingly multicultural. *The present demographics in broadcast ownership do not fairly represent the nation's gender and racial demographics, and neither does content broadcast over the nation's publicly owned airwaves today.*

Within this context of concern, we respond to the following questions, both those set forth by the Commission to be answered in the present comment period, and some related ones that we pose.

1. Are the goals of competition in conflict with those of diversity and localism? In our view, yes, and the evidence is tightly associated with deregulation. The problem has grown increasingly obvious since 1960, when Chairman Fowler abandoned the 14 stated criteria for determining "public interest, convenience and necessity" in favor of letting the marketplace determine how the public would be served. *Competition*, which may be understood as a synonym for *marketplace*, gradually accelerated in the years to follow, as did mergers and acquisitions. In 1981, the FCC eliminated rules and policies governing the keeping of program logs, commercial time limitations, ascertainment of community problems, and non-entertainment

programming requirements by radio stations in order to “remove the illusory comfort of a specific, quantitative guideline” (FCC cited in Krasnow, 1997, p. 10). Three years later, the Commission extended this rule to television stations. The 1996 Telecommunications Act opened what has been called the floodgates of deregulation, resulting in a dominance of mega-corporations that own the majority of the nation’s stations. While large corporations advanced to the top (and accumulated the profits that accompanied this ascent), small and middle-sized broadcast stations either went bankrupt or were forced to sell out. Women and minority-owned stations were the biggest losers in this process, with such ownership now in the low single digits (Turner, 2006; Turner & Cooper, 2007; Byerly, 2006; Sandoval, 2009). With parent companies whose management emanates from national-level headquarters, the content of full-powered broadcast radio stations has been homogenized for the national audience. Very little local content beyond some advertising, a few station breaks, and the occasional public service announcement can be heard on local stations. Competition (i.e., the marketplace) has won, and diversity and localism have lost.

When it comes to television stations, the evidence is also alarming. Yan and Napoli (2006) found that there was a negative relationship between station financial resources and the provision of public affairs programming. The studies (Smith, 2004; Yan & Park, 2009) also indicated that while the relaxation led to an increase in some local content, it had no impact on public affairs programming. The latest report by Yanich (2009) found no significant relationship between newspaper/television cross ownership and both (1) the type and (2) the amount of local news in broadcast stations. We are concerned that these studies consistently indicate the absence of clear benefits from market competition. *Alas, the problem documented here is a structural one that can only be remedied by race and gender-conscious communication policies. We strongly advocate for lower ownership levels through re-regulation in the public interest in order to bring local content and diversity of ideas back to broadcasting.*

2. What is the public interest? In 1960, the FCC adopted a “Report and Statement of Policy re: Commission En Banc Programming Inquiry” (usually referred to as the “1960 Programming Policy Statement”), which listed 14 “major elements,” some mix of which was considered to be necessary for broadcasters to serve the public interest. These included:

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| 1. Opportunity for local self-expression | 8. Political broadcasts |
| 2. Development and use of local talent | 9. Agricultural programs |
| 3. Programs for children | 10. News programs |
| 4. Religious programs | 11. Weather and market reports |
| 5. Educational programs | 12. Sports programs |
| 6. Public affairs programs | 13. Service to minority groups |
| 7. Editorials by licensees | 14. Entertainment programming |

These elements were later eliminated. Then, in 1981, the FCC further eroded any possible use of standard measures when it ended the use of rules and policies governing the keeping of program logs, commercial time limitations, ascertainment of community problems, and non-entertainment programming requirements by radio stations in order to “remove the illusory comfort of a specific, quantitative guideline” (FCC cited in Krasnow, 1997, p. 10). Three years later, the Commission extended these same rules to television stations. *We believe if there is to be a fair,*

consistent and transparent process by which to determine whether the public interest is being served, there must be some kind of stated markers by which the performance of broadcasters in relation to serving the public interest may be determined. We strongly encourage adoption of such markers for use by FCC staff.

3. How can the public help to determine whether public interest is served? Similar to our concerns about the need to establish markers (or indicators) of public interest, we believe there need to be ways for members of the public to become more actively involved, on a regular basis, in evaluating broadcast stations' performance. When stations were required to renew their licenses every three years, broadcasters issued a series of announcements providing the date the license will expire, the filing date for the application renewal, the date by which formal petitions against it must be filed, and the location of the station's public inspection file that contains the application. Now that the renewal period has been extended to eight years – something permitted by the Telecommunications Act of 1996 – the public's vigilance is substantially weakened. Stations must still announce their intent to renew licenses and alert their audiences to the public files available to them; however, audiences are ever less aware of the importance of documenting problems during the interim years, or otherwise taking initiative in playing the oversight role that the law entitles them to. Empirical research is needed to establish longitudinal data by which levels of public comment and interest can be established over time to shed more precise light on the degree to which audience involvement in licensure has waned. Anecdotal evidence suggests however that the situation is increasingly serious.

This problem was in fact raised recently by one of the FCC's own members. At the January 28, 2004 hearing on Localism and License Renewal, FCC Commissioner Michael Copps stated, "the Commission pared back its license renewal process from one wherein we looked closely, every three years, at how stations were serving the public to one wherein companies now only need send us a short form every eight years and their renewal wishes were granted" (Copps, 2004).

There are two corollaries to the time-lag factor which we believe similarly serve to dissipate active public involvement in the review of station performance. The first corollary is the way in which stations are asked to announce the review period. FCC requirements for commercial stations to air public service announcements are both confusing and ineffective (See FCC regulations § 73.3574 47 CFR Ch. I [10–1–07 Edition]). They say, for example:

... During the period beginning of the date on which the renewal application is filed to the sixteenth day of the next to last full calendar month prior to the expiration of the license, all applications for renewal of broadcast station licenses shall broadcast the following announcement on the 1st and 16th day of each calendar month. . . At least two of the required announcements must be between 7 a.m. and 9 a.m. and/or 4 p.m. and 6 p.m., at least two of the required announcements shall be made during the first two hours of broadcast operation.

The number of announcements is unspecified. In addition, the requirement assumes that there is validity in arbitrarily establishing the 1st and 16th days of the month when these announcements should be aired. Why not at more regular frequency, both in times of day and numbers of days

per week, so that a wider range of listeners and viewers can be alerted to the public review and comment period?

The second corollary to the time-lag problem has to do with the amount of information that accumulates over an 8-year period in the “public files” which the FCC requires stations to create and maintain. These files must contain documents relevant to the station’s operation and dealings with the community and the FCC. The FCC has noted the importance of these files to the public:

Because we do not routinely monitor each station’s programming and operations, viewers and listeners are in an important source of information about the nature of their area stations’ programming, operations and compliance with their FCC obligations. The documents contained in each station’s public inspection file have information about the station that can assist the public in this important monitoring role. (Shaw Pittman Limited, 2003)

The public file must contain

- The license
- Applications and related materials
- Citizen agreements
- Contour maps
- Materials related to an FCC investigation or complaint
- Ownership reports and related materials
- List of contracts required to be filed with the FCC
- Political file
- EEO materials
- Letters and e-mails from the public
- Quarterly programming reports
- Children’s television programming reports
- Records regarding children’s programming commercial limits
- Time brokerage agreements
- List of donors
- Local public notice announcements

Over an 8-year period, the public file requirement can amount to a massive amount of data for both the public and the FCC to analyze.

McDowell and Lee suggest that “the FCC articulate more clearly the specific data collection purposes of the public inspection file and to outline standardized procedures for the filing system.” The authors advocate a better filing and reporting system to encourage the public to interact more actively with local stations.

In view of the problems we have cited above, we pose three recommendations.

A) We recommend that the renewal of broadcast licenses be moved back to a shorter period – ideally three years, but at a minimum, five years.

B) We recommend that in order to better serve the public interest broadcast radio stations be required to broadcast PSAs four times between 6 a.m. and 10 a.m., and 3p.m. and 7 p.m. (i.e., major drive times) and once per hour during the remainder of the broadcast day, for the period

of time they are required to notify their audiences. The pre-filing announcement should be run for four months before the expiration of the license.

C) We concur with McDowell and Lee that making information available to the public in a practical, easy to understand format would be conducive to public awareness and comment on station performance. Broadcasters should tell the public how they are serving the interests of their audiences by making this information available in a standardized format – not only at the station, but also posted on the station’s own website.

4. How should diversity and localism be defined and measured? The courts have looked at diversity in ownership as a determinant of content. With the majority of broadcast radio and television stations owned by white males, there is little basis on which to trust that diversity of ideas on the nation’s airwaves is even a possibility. The principle of localism has always been ambiguous in its meaning (McDowell & Lee, 2007, 177-181). The difficult task for policy makers has always been to preserve local voices in local media markets while, at the same time, allowing market forces to operate. McDowell and Lee (2007) have observed that the difficulty of definition arises not just from ambiguity but also from “uncertainty of the voices to be encouraged” (p. 178). Our specific concern is with the assumed silencing of female and minority voices and the perspectives and experiences those voices might contribute to a vibrant public sphere. The need for indicators that might be used to help in the development of public policy is great. McDowell and Lee (2007) explore several ways this might be approached, looking to Canada’s complex mechanism for mapping and evaluating whether local needs are being addressed by stations. They advocate development of an index that would include:

- Multiple criteria
- Narrowly focused objectives
- Application to small portion of the total broadcast schedule
- Participation in the production process
- Broader institutional and cultural context

While some may question whether minority-owned stations produce a positive and measurable impact on the communities they serve, we urge the Commission to consider two studies by Oberholzer-Gee and Waldfogel (2005, 2006). Their 2005 study’s findings indicated that Black-targeted newspapers and radio stations function as mobilizing channels for political participation among Black voters. In other words, controlling for the size of the Black population in the market, the availability of Black-targeted media had an elevating effect on Black voter participation, but had no apparent similar effect on White voters. In their more recent investigation, Oberholzer-Gee and Waldfogel (2006) sought to learn whether the presence of local television news affects local civic behavior among a Spanish-language audience. The authors used cross-sectional and time-series variation in the availability of news on Spanish television with local news to study its effects on Hispanic voter turnout in presidential and non-presidential years the United States. They then measured the relationship between Spanish news and voter turnout, finding that turnout was higher in areas with Spanish-language local news, and in fact that “Spanish-language news programs boost Hispanic turnout by 5 to 10 percentage points overall” (p. 11). On the other hand, they said, those without access to local television news were significantly less likely to participate in elections. Their findings challenge other

scholarship which contends that the spread of television has brought a decline in political participation (p. 13). But most important, their investigations provide evidence that minority-owned broadcast media influence citizen participation in public affairs. We recognize the need for further empirical research to validate these findings and to explore the various ways that minority-owned media shape perceptions and behavior within the electorate.

As the national demographics shift steadily toward a minority majority population, we urge the Commission to strengthen regulations encouraging minority ownership. Therefore we advocate the following:

(1) The re- adoption of the tax certificate benefit (which the Commission abandoned in 1995) as one method of accomplishing this. Other measures, such as those suggested by Ofori et al. (1999) include

(2) Technical and financial assistance at the organizational level, such as establishing stronger incentives and supports for the employment and advancement of minority and female personnel toward attaining skills and experience needed for station ownership. In this regard, we believe that there is a more pro-active role for the FCC's Office of Communications and Business Opportunities, which could be training and otherwise assisting those with potential to gain knowledge in how to complete applications, successfully seek capital, and competently manage stations

(3) Rigorous anti-trust enforcement by state attorneys general and federal authorities. Ofori et al. (1999) observe that divestiture is often required of companies that have been found to exceed the standards of the Department of Justice merger guidelines. As a part of the negotiated settlement investigation, then, we believe companies should be encouraged to sell stations for a price that is affordable to small racial minority enterprises, as well as those owned by females, whose ownership has similarly declined under deregulation.

(4) Finally, we believe it is critical to maintain the connections among scholarly, public, and industry sectors – all of which play key roles in advancing women and minority skills, awareness and broadcast content in the public interest. We recognize that minority and female ownership at the structure level will not alone be sufficient in assuring that local voices or diverse content will be achieved toward fulfillment of the public interest requirement. We believe these additional measures will make the steady changes to bring back minority and female voices silenced since the early 80s.

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