

**STATEMENT
OF
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Before the

**FEDERAL COMMUNICATIONS COMMISSION
MEDIA OWNERSHIP WORKSHOP**

BROADCAST INDUSTRY PANEL

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Thank you for inviting me to discuss the Commission's 2010 Media Ownership Review proceeding.

NABOB is a trade association representing the interests of African American owners of radio stations, television stations and cable television systems across the U.S. NABOB has participated in each of Commission's prior ownership rule review proceedings. In each instance, NABOB has urged the Commission not to further relax its multiple ownership rules. Since the passage of the Telecommunications Act of 1996, which significantly relaxed the Commission's multiple ownership rules, the number of minority owners has dropped by approximately 35%.

Therefore, having watched the number of minority owned broadcast companies drop steadily for over a decade, NABOB approaches this review proceeding with great concern and trepidation. The concern and trepidation relate to whether the Commission will ask the wrong questions, seek the wrong information, and reach the wrong conclusions, as it has done so many times in the past.

Section 202(h) of the Telecommunications Act of 1996 requires the Commission to "determine whether any of [the Commission's ownership rules] are necessary in the public interest as the result of competition." Section 202(h) also provides that the Commission "shall repeal or modify any regulations it determines to be no longer in the public interest." In the past, the Commission has taken these statutory words as a direction to do economic modeling of the broadcast industry, as if the only issue to be addressed is broadcast competition. The question of what rules serve the public interest has been lost.

As we sit here today with a new administration in the White House, and new leadership here at the Commission, I hope that the Commission will give much more

weight to its obligation to regulate the broadcast industry in the public interest. If it does, the analysis should then begin with a three pronged approach. As the Public Notice recognizes, the Commission has historically regulated broadcasting seeking to balance three policy goals: localism, diversity and competition. Achieving these goals frequently requires that the Commission chose between what can often be conflicting goals. In making these inevitable hard choices, NABOB submits that the Commission should recognize that the goals of diversity and localism are the only goals that directly involve First Amendment considerations. Competition is an economic consideration, which, at best, only indirectly affects First Amendment considerations. Thus, it should be the Commission's last consideration, not its first.

Unfortunately, in the past, when the balance has been struck among the Commission's conflicting goals, the goal that always receives short shrift is the goal of diversity. The diversity goal must encompass policies that promote minority ownership of broadcast stations. However, the Public Notice does not even mention the promotion of minority ownership. The minority ownership aspect of diversity is far too important a part of that subject not to be mentioned as a pivotal issue for this review. Indeed, in rejecting the Commission's 2002 review, the Third Circuit Court of Appeals specifically identified the Commission's failure to address minority ownership as a matter warranting the reversal of the 2002 order.

If the Commission does consider the state of minority ownership as part of this review, it will see that the problems are staggering. As was pointed out by Professor Catherine Sandoval, when she released her invaluable new study of minority ownership on Monday, the Commission's records are woefully inadequate with respect to being able to identify the number of minority owned stations in the U.S. Through her own very extensive study, Professor Sandoval was able to demonstrate that the number of minority owners continues to fall at a precipitous pace.

Therefore, before the Commission can fully answer the questions it has posed in this proceeding, it needs much better information on how many minority broadcast station owners there are, where they are, and the conditions of their ownership situations. As Professor Sandoval's study demonstrates, for too many of the existing minority owners, the condition of their ownership is very tenuous.

For many minority owners, the tenuous nature of their ownership can be traced directly to their lending institutions. Many minority broadcasters are being threatened with foreclosure by banks, hedge funds and private equity firms, because of financial difficulties brought on by the credit crisis and economic recession. Many of these banks are the same banks who received billions of dollars in bailouts from the taxpayers with the assurance that those billions would be used to help small businesses survive the economic downturn. Instead, those banks are hoarding their billions and forcing minority broadcasters into foreclosure or bankruptcy.

In recent press reports, some of these banks, hedge funds and private equity firms, which have foreclosed on numerous broadcasters, are now complaining that the

Commission's ownership rules may hinder them from taking over more stations. The article suggested that these lenders may come to the Commission seeking to further relax the Commission's attribution rules to permit such additional ownership by them. Therefore, NABOB submits that one of the issues that should be addressed in this proceeding is whether the attribution rules need to be strengthened to prevent excessive control of the broadcast industry by banks, hedge funds and private equity firms.

Adding to the woes of minority broadcasters is the Arbitron audience measurement company. The Commission has a Notice of Inquiry pending to determine whether it should investigate Arbitron's new Personal People Meter ("PPM") audience measurement methodology. NABOB and the PPM Coalition have demonstrated that the PPM methodology discriminates against stations serving minority audiences, particularly young minority audiences. As a result, Arbitron has been sued by the attorneys general in New York, New Jersey and Florida, and entered into settlements with the attorneys general in New York, New Jersey and Maryland.

Therefore, NABOB submits that the questions being investigated by the Commission need to be expanded, and the emphasis needs to shift. Additional questions the Commission should ask in this proceeding are:

1. Do any of the Commission's ownership rules impede its efforts to promote minority ownership?

Response: NABOB has shown in repeated filings over the course of the last decade how the Commission's rules, which allow excessive concentration of media ownership, have decimated the ranks of minority ownership. We will be filing additional comments on this subject in this proceeding.

2. Do any of the Commission's ownership rules need to be modified to aid the Commission in the promotion minority ownership?

Response: While most of the Commission's ownership rules were imposed by Congress and cannot be strengthened without Congressional action, the Commission should examine its attribution rules to determine whether these rules need to be strengthened to prevent further control of the industry by banks, hedge funds and private equity firms.

2. Does the Commission need to obtain additional information in its efforts to promote minority ownership?

Response: Professor Sandoval has demonstrated that the Commission needs to gather much more information on minority ownership in order to adequately determine the regulatory steps it must take to promote minority ownership.

In the Public Notice, you asked a series of questions, and I will address some of them here.

1. The existing rules limit concentration within a single industry and bilateral cross-ownership between two industries. Should the Commission continue to enforce limits of these types, or should it develop an alternative structure, such as determining an ownership limit for all media within a relevant market?
2. Should the Commission have bright line rules or a more case-by-case approach guided by a policy statement?

Response: The Commission should not create a formula that attempts to lump all media in a market into a catch-all market concentration measurement. The current rules, which specify the number of stations of each type that an entity can own in a market, give clear, measureable signals to competitors and the public of whether a particular proposed transaction is within the Commission's rules. A system that allowed entities to juggle ownership interests to reach a mixture of assets that could change for each purchaser would leave competitors and the public always guessing at what potential transaction might be proposed and of the regulatory response that could be expected. The public is best served when the allowable transactions in a market are foreseeable. This also means that when the Commission has bright line rules, it should adhere to those rules. The Commission should only grant waivers from its ownership rules when a clear benefit to diversity, such as the promotion of minority ownership, can be demonstrated.

3. How should the FCC define the diversity goal in the modern media marketplace in a manner that is addressable by the media ownership rules?

Response: The Commission should maintain its current media ownership rules because they allow a diversity measurement based upon the number of each type of station owned. As noted above, within this framework, the Commissions should only consider waivers of its rules where the Commission's minority ownership or another important diversity goal will be promoted.