

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

2006 Quadrennial Regulatory Review –)	
Review of the Commission’s Broadcast)	MB Docket No. 06-121
Ownership Rules and Other Rules Adopted)	
Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
2002 Biennial Regulatory Review – Review of)	
the Commission’s Broadcast Ownership Rules)	MB Docket No. 02-277
and Other Rules Adopted Pursuant to Section)	
202 of the Telecommunications Act of 1996)	
)	
Cross-Ownership of Broadcast Stations and)	
Newspapers)	MM Docket No. 01-235
)	
Rules and Policies Concerning Multiple)	
Ownership of Radio Broadcast Stations in)	MM Docket No. 01-317
Local Markets)	
)	
Definition of Radio Markets)	
)	
Ways to Further Section 257 Mandate and To)	MM Docket No. 00-244
Build on Earlier Studies)	MB Docket No. 04-228

**REPLY COMMENTS OF
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”)¹, through its attorneys, submits this reply to certain comments on the Federal Communications Commission’s

¹ NCTA is the principal trade association representing the cable television industry in the United States. Its members include cable operators serving more than 90% of the nation’s cable television subscribers, as well as more than 200 cable programming networks and services. NCTA’s members also include suppliers of equipment and services to the cable industry. The cable industry is also the nation’s largest broadband provider of high speed Internet access after investing \$100 billion over ten years to build out a two-way interactive network with fiber optic technology.

Second Further Notice of Proposed Rulemaking in the above-captioned proceeding.² In the *Notice*, the Commission seeks comment on thirty-four proposals put forth by the Minority Media and Telecommunications Council (“MMTC”) to promote minority and female ownership in the television and radio broadcast industry. In response to the *Notice*, MMTC submitted six additional proposals to promote this goal.³

NCTA supports ongoing governmental and private sector efforts to foster diversity in the media and telecommunications industries. As most of the proposals in the *Notice* and MMTC’s Comments focus on measures to increase minority and female ownership in broadcasting, we do not address those proposals in these comments. There are, however, several general initiatives proposed that would promote minority and female entrepreneurship across the communications industry, including cable. In particular, NCTA supports advocacy of legislation to allow deferral of tax on gains from the sale of telecommunications businesses in specific circumstances and with appropriate safeguards as a means to promote diversity of ownership. We also support the proposals for the Commission to convene an Access to Capital Conference and to create a Diversity Guidebook.

NCTA also briefly addresses the proposal concerning use of the share time rule to foster ownership of DTV subchannels. MMTC’s proposal does not propose, nor appear to contemplate the extension of cable “must carry” obligations with respect to subchannel lessees, and we wish to make clear, as the Commission has twice found, that the applicable statute does not authorize such obligations.

² *Second Further Notice of Proposed Rule Making* in MB Docket Nos. 06-121, 02-277, and 04-228 and MM Docket Nos. 01-235, 01-317, and 00-244, FCC 07-136 (rel. Aug. 1, 2007) (“*Notice*”).

³ See Initial Comments of the Diversity and Competition Supporters in MB Docket Nos. 06-121, 02-277, and 04-228 and MM Docket Nos. 01-235, 01-317, and 00-244 (filed Oct. 1, 2007) (“MMTC Comments”).

CABLE INDUSTRY-BASED INITIATIVES DESIGNED TO PROMOTE ETHNIC AND GENDER DIVERSITY

NCTA's constituent members have long been supporters of initiatives designed to encourage minority and female participation in the media industries. For more than 20 years, the cable industry has supported home-grown organizations dedicated to racial and gender diversity, including the National Association for Multi-ethnicity in Communications ("NAMIC") and Women in Cable and Telecommunications ("WICT"). With individual company support, these non-profit organizations run extensive mentoring, professional development, and executive and managerial training and leadership programs.

For example, NAMIC has partnered with UCLA's Anderson Graduate School of Management to create the Executive Leadership Development Program, which is designed to develop a pipeline of minority leaders in the industry. Additionally, cable executives devote significant time to mentoring through NAMIC's L. Patrick Mellon Mentorship Program. WICT has fostered women executives in the industry through its Betsy Magness Leadership Institute and its Rising Leaders program for mid-level managers.

The industry also donates financial support and resources to the Emma Bowen Foundation, which prepares minority youth for careers in the media industry through multi-year, paid work/study programs, mentoring, scholarships and other programs.

Under the umbrella of NCTA, the Walter Kaitz Foundation contributes more than \$1 million annually to these and other industry organizations that promote diversity in the workplace, executive ranks and supplier base. In May 2007, the Kaitz Foundation held its 8th Annual Supplier Diversity Connection Workshop in conjunction with the NCTA during the CABLE SHOW in Las Vegas, Nevada. The cable industry is committed to establishing long-

lasting and mutually beneficial relationships with women and minority-owned vendors through the Foundation's ongoing National Supplier Diversity Initiative.

In addition to these broad-based programs, major cable companies on both the distribution and programming side of the industry have developed and implemented their own company-wide diversity programs. And cable executives have provided this expertise and their knowledge of the cable business as participants on the Commission's Advisory Committee on Diversity in the Digital Age.⁴

NCTA appreciates the importance of promoting minority and female participation in the cable industry, and will continue to support public/private endeavors designed to increase the number of minorities in high-level positions and to nurture ownership opportunities for aspiring and talented individuals.

COMMISSION INITIATIVES: PROPOSAL 24 (ADVOCACY OF TAX DEFERRAL LEGISLATION TO FOSTER MINORITY OWNERSHIP); 39 (CONVENING OF AN ACCESS TO CAPITAL CONFERENCE); AND 40 (PREPARATION OF A GUIDEBOOK ON DIVERSITY)

As communications media converge in the digital age, it is important that businesses owned or controlled by minorities and women be able to participate in the communications field. The Telecommunications Ownership Diversification Act of 2007 (H.R. 600), sponsored by Representative Bobby Rush, would re-instate the FCC's Minority Tax Certificate Program. As MMTC points out, this bill focuses on small businesses rather than exclusively minorities. But it extends the policy to not only traditional communications media but telecommunications properties as well, while imposing size caps to reduce the potential impact on the U.S. treasury. The cable industry has historically supported the tax certificate policy and continues to support

⁴ For example, cable executives from such companies as Landmark Communications, Showtime Networks, Lifetime Television and Millennium Digital Media, among others, have served as members of the Committee in recent years.

its restoration as a means to incent and facilitate diversity of ownership in the communications industry.

NCTA also believes that efforts designed to increase awareness and facilitate opportunities for minority and female ownership under the Commission's auspices are important. The Commission's leadership is critical to promoting industry-wide recognition and understanding of the issues faced by minority and female entrepreneurs in the media and communications industries.

We support MMTC's proposal for the Commission to convene an Access to Capital Conference, as put forth by the Access to Capital Subcommittee of the Advisory Committee on Diversity for Communications in the Digital Age.⁵ The conference would help illuminate the barriers encountered by minority entrepreneurs in finding adequate financing for their business endeavors. It would also open up a dialogue between small and minority media and telecom entrants with private equity funds, financial and educational institutions, incumbents, industry trade associations and the Commission. The parties could identify potential solutions to the access to capital impediments regularly encountered by minority and female entrants. Such a conference would also give the parties an opportunity to explore MMTC's other proposals to determine which would aid in attracting financing.

Additionally, MMTC's recommendation that a diversity guidebook be created has merit.⁶ This could provide a roadmap for industry executives seeking proven methods to improve and increase company- and industry-wide diversity programs. The guidebook could also bolster existing industry efforts to encourage minority and female contracting and ownership opportunities.

⁵ See MMTC Comments at 51-52.

⁶ MMTC Comments at 52.

Accordingly, NCTA supports MMTC's proposals 39 and 40.

PROPOSAL 36 (USE OF THE SHARE-TIME RULE TO FOSTER OWNERSHIP OF DTV AND FM SUBCHANNELS)

Finally, MMTC has proposed use of the share-time rule to foster ownership of DTV subchannels through leasing arrangements with DTV licensees.⁷ MMTC's proposal does not propose nor does it contemplate the extension of "must carry" obligations to these subchannel lessees and, as the Commission twice found, the applicable statute does not authorize imposing such additional "must carry" burdens on cable operators.⁸

Sections 614(b)(3)(A) and 615(g)(1) of the Communications Act only require the carriage of a broadcaster's primary video stream and if a "digital broadcaster elects to divide its spectrum into several separate, independent and unrelated programming streams, only one of these streams is considered primary and entitled to mandatory carriage."⁹ In affirming its initial decision that the must carry provisions of the Act do not extend beyond one programming stream, the Commission determined based on the record "not to require cable operators to designate capacity or 'shelf space' for multicasting programming streams at the expense of other competing interests."¹⁰ The Commission also found evidence that cable operators are voluntarily carrying the multiple streams of programming of some broadcast stations that are multicasting their digital spectrum. This continues to be the case today, where cable operators seek to carry compelling program services that meet the diverse needs and interests of their customers.

⁷ See MMTC Comments at 41-46.

⁸ See 47 U.S.C. § 534(b)(3); *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, First Report and Order, 16 FCC Rcd 2598 (2001); Second Report & Order & First Order on Reconsideration, 20 FCC Rcd. 4516 (2005) [hereinafter "*Second Report & Order*"].

⁹ *Second Report & Order* at ¶ 44. See generally *Second Report & Order* at ¶¶ 28-44. See also *Opposition of the National Cable & Telecommunications Association to Petitions for Reconsideration*, CS Docket No. 98-120 (filed. May 26, 2005).

¹⁰ *Second Report & Order* at ¶ 41.

However, as recently stated by two minority programmers, proposals to *mandate* some form of multicast must carry regulations would only “reduce channel space available for prospective new minority programmers and undermine the recent progress in the creation of dedicated program networks for African-American, Latino and Asian-American audiences.”¹¹

For the foregoing reasons, in considering MMTC’s Proposal No. 36 as a potential avenue for increased minority and female ownership in the broadcast industry, the Commission should refrain from considering any DTV subchannel leasing proposals that seek to impose further mandatory carriage obligations on cable systems.

CONCLUSION

NCTA believes that increased participation by minorities and women in the communications industry is an important policy objective. And we support continued efforts to address this persistent issue and to promote awareness of the financial and structural impediments to minority and female ownership in the media industry.

Respectfully submitted,

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¹¹ See Letter from Johnathan Rodgers, President & CEO, TV One, and Michael Schwimmer, CEO, SfTV, to Rep. John Dingell, Chairman, House Committee on Energy & Commerce, Rep. Joe Barton, Ranking Member, House Committee on Energy & Commerce, Rep. Edward Markey, Chairman, House Subcommittee on Telecommunications & the Internet, and Rep. Fred Upton, Ranking Member, House Subcommittee on Telecommunications & the Internet (Oct. 16, 2007).