

NLWJC- Kagan

Counsel - Box 018 - Folder 002

FCC Affirmative Action [2]



FAX TRANSMITTAL

THIS IS PAGE 1 OF 5 PAGES

TODAY'S DATE: February 17, 1995

TIME: 6:46pm

TO: Alisa McDaniel

FAX NUMBER: 225-0832

TELEPHONE NUMBER:

FROM: Sara Seidman

FAX NUMBER: 418-2822

TELEPHONE NUMBER: 418-1700

COMMENTS/SPECIAL INSTRUCTIONS: Attached is Cook Inlet's objection to the Times Mirror tax certificate and the FCC's response.

Summary of Tax Certificate Data (as of 2/2/95)

Before 1978, minorities owned approximately one half of one percent (40) of the approximately 8,500 total broadcast licenses issued by the FCC. In fact, the National Association of Black Owned Broadcasters (NABOB) reports that approximately 2 to 3 minority broadcast transactions were consummated each year prior to the implementation of the FCC minority tax certificate policy in 1978. Today, a 1994 study performed by the National Telecommunication and Information Administration at the Department of Commerce, indicates that there are approximately 323 radio and television stations owned by minorities, 2.9% of the total 11,128 licenses held in 1994. This represents a 700% increase in the number of licenses issued to minorities since the application of section 1071 to minority owned broadcast and cable properties (15 years).

<u>Industry Total</u>	<u>Black</u>	<u>Hispanic</u>	<u>Asian</u>	<u>Native American</u>	<u>Minority Totals</u>
AM Stations 4,929	101 (2%)	76 (1.5%)	1 (0%)	2 (0%)	180 (3.7%)
FM Stations 5,044	71 (1.4%)	35 (.7%)	3 (.1%)	3 (.1%)	112 (2.2%)
TV Stations <u>1,155</u>	<u>21 (1.8%)</u>	<u>9 (.8%)</u>	<u>1 (.1%)</u>	<u>0 (0%)</u>	<u>31 (2.7%)</u>
Cumulative Totals 11,128	193 (1.7%)	120 (1.1%)	5 (0%)	5 (0%)	323 (2.9%)

Of the total number of licenses currently held by minorities the data available indicates that up to 30% of the radio stations were acquired with the use of a tax certificate and up to 90% of the television stations were acquired with the use of a tax certificate. Data is unavailable for cable. Also, NABOB reports that the vast majority of existing minority broadcast owners have utilized tax certificates during the past 15 years either: 1) as an incentive to attract initial investors; 2) to purchase a broadcast property; or 3) to sell a broadcast property to another minority.

During the past 15 years, the issuance of minority tax certificates has resulted in the sale or transfer of over 260 radio licenses, 40 television licenses and 30 cable licenses, totalling approximately 330 tax certificates issued for minority deals. In contrast, approximately 117 non-minority tax certificates have been issued during the life of Section 1071.

<u>Type of License</u>	<u>Certificates Issued</u>	<u>of Total</u>
Minority Radio	260	58%
Minority TV	40	9%
Minority Cable	30	7%
Non-minority	<u>117</u>	<u>26%</u>
Total	447	100%

There was a significant increase in the number of minority tax certificates issued between the years 1987 and 1989. This increase corresponds with the robust trading experienced by the broadcast and cable industry during this period. The level of tax certificate activity also declined significantly in 1991 when federal restraints were placed on highly leveraged transactions and access to capital became a problem for the industry as a whole.

<u>Year</u>	<u>Certificates Issued</u>	<u>of Total</u>
1978	4	1%
1979	12	4%
1980	10	3%
1981	15	5%
1982	15	5%
1983	10	3%
1984	11	3%
1985	17	5%
1986	18	5%
1987	33	10%
1988	33	10%
1989	45	14%
1990	46	14%
1991	18	5%
1992	14	4%
1993	21	6%
<u>1994</u>	<u>8</u>	<u>2%</u>
Total	330	100%

Diversity of Ownership:

Ownership data is available for approximately 55% (142) of the tax certificates issued in minority radio transactions. From this sample, there are approximately 77 separate owners (54%) of radio properties listed. Ownership data is available for approximately 98% (39) of the tax certificates in television transactions. From this sample there are approximately 21 (54%) separate owners listed. Ownership data is available for all 40 of the tax certificates issued in cable television transactions. From this listing, there are 20 (66%) separate owners of cable properties. In sum, the data indicates that well over half of

the broadcast and cable properties receiving tax certificates are owned by different individuals or companies.

The racial allocation of the minority tax certificates are as follows:

African Americans	64%
Hispanics	23%
Native American	1%
Alaskan Native	4%
Asian	8%

Holding Period:

Although FCC regulations require the buyer of a property for which a tax certificate is issued to hold that station for one year, the overwhelming majority of minority buyers retain their licenses for much longer. Example, of the total certificates issued, minority buyers of radio and television properties have held their licenses for an average of 5 years. Cable is excluded from these figures because there is insufficient data available on the holding period. However, the Communication Act requires that all cable systems be held for a minimum of three years following either the acquisition or initial construction of such system. Holding period information is available for approximately 83% of the minority radio stations and all of the minority television stations.

Size of Transactions:

After reviewing a sample consisting of 55% of radio stations and 78% of television stations, the data indicates that the great majority of the sales transactions in which tax certificates are awarded are relatively small, averaging a sales price of \$3.5 million for radio stations and \$38 million for television stations. Data is not available for the 30 cable deals, although we know that cable deals tend to be larger transactions.

FCC has no data available on the amount of tax gains actually deferred.

Other Findings:

Although the tax certificate program is not the only FCC program designed to encourage transfer of licenses to minorities, it is the most frequently used program and is often used in concert with the other programs. In addition, various entrepreneurs and industry associations have submitted testimony to FCC which indicates that: "But for the tax certificate program the acquisition of existing broadcast and cable properties by minorities would be significantly more difficult to consummate."

RECEIVED

JUN - 7 1993

WVTM-TV
KTVA-TV

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COOK INLET REGION, INC.

June 4, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

Re: File No. BALCT-930408KF, et al.,
Assignment of Licenses from subsidiary of Times Mirror
Broadcasting (Times Mirror) to subsidiaries of Argyle
Television Holding, Inc. (Argyle)

Dear Madam Secretary:

Cook Inlet Region, Inc. (CIRI) has been one of the nation's leading minority-owned broadcasters, and the nation's largest Native American-owned broadcaster, since 1985. CIRI has participated in both television and radio broadcasting in a manner which we believe has consistently and demonstrably upheld the Commission's minority ownership policies, including the Minority Tax Certificate Policy.

A certain transaction, however, that is currently pending before you is causing us deep concern. We believe the grant of a tax certificate in the Times Mirror/Argyle situation would trivialize the Minority Tax Certificate Policy and thereby threaten the continued viability of the Policy for minority entities, such as CIRI, which are long term investors and which invest substantial equity of their own in addition to demonstrating effective minority group control.

The notion that Mr. Morales of Argyle is or will be a significant player, let alone the controlling person, in the Argyle deal is not even marginally credible. The carefully structured multi-layered paper pyramid placed before the Commission in the request for tax certificate crumbles under the weight of practical analysis.

The proposed equity capital for Argyle's purchase of television stations in Birmingham, Dallas, Austin and St. Louis from Times Mirror apparently consists of a total of \$50 million (not counting bank or other debt capital). Mr. Morales apparently will put up only \$153,000 (a mere three-tenths of one percent) of this total, and even "a significant amount" of this small figure will be borrowed. For this insignificant investment Mr. Morales apparently would technically have 51% of the common stock (\$153,000 of

6/4/93

Pg 2

\$300,000). This tiny, low-risk investment falls far short of any meaningful and practical demonstration of either "minority control" or of "substantial minority equity." Mr. Morales will have none of the 8% convertible non-cumulative preferred, none of the Junior convertible non-cumulative preferred, and none of the zero coupon debentures. Of the proposed \$50 million stake in the enterprise, \$2.5 million will be held by Argyle Communications Partners, L.P., and the balance of \$47.35 million will be held by the various DLJ investor entities.

Although Mr. Morales has experience in television advertising sales, there is no evidence that he has ever managed a television station or a group of television stations. On the other hand, a key player in the Argyle pyramid is E. Blake Byrne – a very experienced television station and group manager – who is not a minority and who obviously will call the shots notwithstanding Mr. Morales' titles and bare paper majority stock holding.

The Commission should not issue a tax certificate on the basis proposed by Argyle/Times Mirror. Moreover, the Commission should use this transaction to enforce standards for tax certificates that, consistent with providing legitimate minority broadcasters an opportunity to participate in the marketplace, prescribe (a) minimum minority equity percentages, (b) minimum holding periods for minority equity positions and actual control, and (c) minimum standards for put/calls on minority interests to assure that individual minority persons are not exploited as short-term window dressing while the real beneficiaries are not minorities as groups but rather non-minority investors seeking an unjustified benefit.

Respectfully submitted,

COOK INLET REGION, INC.



Roy M. Huhndorf
President and CEO

RMH/p

cc: Honorable James M. Quello, Acting Chairman, Rm 802
Honorable Andrew C. Barrett, Rm 844
Honorable Ervin S. Duggan, Rm 832
Mr. Roy E. Stewart, Chief, Mass Media Bureau, Rm 314
Ms. Barbara A. Kreisman, Chief Video Services Division, Rm 702
Mr. Clay Pendarvis, Chief, Television Branch Rm 700
Mr. Alan Glasser, Mass Media Bureau, Rm 700
William R. Richardson, Jr., Esq.
(Wilmer, Cutler & Pickering)
Richard J. Bodorff, Esq.
(Wilmer, Cutler & Pickering)

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 14 1993

IN REPLY REFER TO:
1800E1-AEG

Roy M. Huhndorf, President
Cook Inlet Region, Inc.
CIRI Building
2525 C Street
P.O. Box 93330
Anchorage, Alaska 99509-3330

Dear Mr. Huhndorf:

This is in reference to your letter of June 4, 1993, concerning the applications (BALCT-930408KE-KF) to assign the licenses of television stations KTVI, St. Louis, Missouri, and WVIM, Birmingham, Alabama, from KTVI-TV, Inc. and WVIM-TV, Inc., respectively, to KTVI Argyle Television, Inc. and WVIM Argyle Television, Inc., respectively. The applications were granted on May 14, 1993. Since KTVI Argyle Television, Inc. and WVIM Argyle Television, Inc. are controlled by Ibrahim Morales, a Cuban American, a tax certificate was issued on May 17, 1993, to KTVI-TV, Inc. and WVIM-TV, Inc., because the sale effectuated the Commission's policy of fostering minority ownership. For reasons set out below, you object to the issuance of the tax certificate.

You state that the issuance of a tax certificate here trivializes the minority tax certificate policy and threatens its continued viability for minority entities, such as Cook Inlet Region, Inc., which has been a long term investor in broadcasting and has invested substantial equity in operating broadcast stations. Specifically, you state that the notion that Mr. Morales will control the operation of the stations is not credible. This, you believe, is demonstrated by the fact that, while he will have 51 percent of the voting stock, Mr. Morales has invested a very insignificant amount for his controlling interest. Further, because Mr. Morales has no television station management experience, and because another principal, E. Blake Byrne, does, you assert that it is obvious the Mr. Morales will not be directing the stations' operations. Additionally, you state that the Commission should use this transaction to prescribe additional requirements restricting the issuance of tax certificates in minority transactions unless the minority has invested capital in a meaningful amount, and will hold the investment and control of the operation for a reasonable period of time.

Please be advised that your letter, which was filed subsequent to the grant of the KTVI and WVIM license assignment applications and issuance of the associated tax certificate, cannot be considered either as a formal petition to deny or as an informal objection. See Sections 73.3584 and 73.3587 of the Commission's Rules. Nor have you provided a basis for treating your letter as a petition for reconsideration. See Section 1.106 of the Commission's Rules. Nevertheless, in reviewing the matters set forth in your letter, we find that you have provided

no facts that demonstrate that the issuance of the tax certificate here violates the Commission's minority ownership policies. While you view Mr. Morales' investment as insignificant, it is uncontroverted that he possess de jure control (i.e., more than a 50 percent voting stock interest), the benchmark established by the Commission with respect to minority-controlled corporate licensees. See Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979, 983 n. 20 (1978). Nor do your suspicions as to Mr. Bryne's future participation, if any, at the stations raise a substantial and material question that Mr. Morales will not, in fact, control the corporate licensees, consistent with his corporate positions and 51 percent voting stock interest. It should also be noted that, as required by the Commission's minority ownership policies, Mr. Morales will retain his interests for a minimum of one year. See Amendment of Section 73.3597, 99 FCC 2d 971, 974 (1985). Finally, the additional matters raised in your letter are more properly subjects for future advancement and consideration in an appropriate rulemaking proceeding, rather than with respect to the instant transaction.

I trust the foregoing in responsive to your letter.

Sincerely,

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

cc: William R. Richardson, Jr., Esq.
Richard J. Bodorff, Esq.

AGlasser:MMB:VSD
/usr/VIDEO/glasser/cookinlet

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

February 15, 1995

BY COURIER

Alysa M. McDaniel
Joint Committee on Taxation
U.S. Congress
1015 Longworth Building
Washington, DC 20515

Dear Alysa,

The following is a partial response to your February 13 letter.

1. Cable:

- a. Copies of items 4 and 27 on your chart are enclosed. We are searching for a copy of item 2.
- b. The Fairbanks, Alaska sale has been added to our cable chart. We will provide you with an updated chart in the next several days.
- c. When we locate item 2, we will be in a better position to determine why the minority group was identified as Black in one case and Asian American in another. As I told you, "East Indian" and "Asian American" identify the same minority group.

2. Television:

- a. We will provide a copy of item 10.
- b. The certificates you identified have been added to our chart.
- c. As we discussed, items 18 and 22 are not internally inconsistent, but represent two separate transactions.
- d. We have revised item 7 to reflect the correct holding period.

3. Radio:

- a. Seventeen tax certificates located since we last provided copies of tax certificates to the Committee are enclosed. Included among them are the following items from your list: 60(KYNN); 67(WDZZ); 77(WANT); and 115(KAEZ). I understand from our telephone conversation yesterday that you have located a copy of item 86 (WSKQ).

Alysa M. McDaniel

February 15, 1995

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- b. We were not able to locate copies of the following items in our archived files, and thus will not be able to provide copies to you: 1-8, 10-16, 18-24, 27-46, 48, 50-54, 56-59, 61-63, 65-66, 68-73, 75-76, 78-83, 85, 91, 97-98, 109, 130, 133, 135-40, 152, 156, 168, 188, 228-30, and 249-60. In addition to the items identified in 3(a) above, we have and will send you copies of the following items: 144, 159, 226, 227, 248, 9A, 14A-17A, 22A, 25A-27A.
- c. We have updated our chart to reflect the items you mentioned.
- d. We are researching the duplications you identified. In some cases these may reflect multiple transactions involving the same station.
- e. Item 12A has been added to the television list.

I look forward to working with you to resolve the remaining outstanding issues.

Sincerely,



Abbie G. Baynes
Special Counsel

Enclosures

cc (w/o encl): Kenneth J. Kies
 William E. Kennard

Congress of the United States

JOINT COMMITTEE ON TAXATION

Washington, D.C. 20515

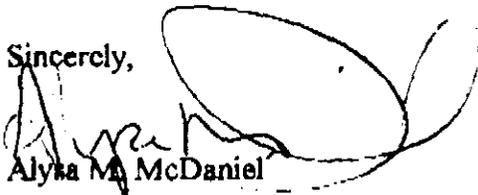
Abbie G. Baynes, Esq.
Page Two

- ✓ *AGB to check for copies, send to Brian*
Certificates issued regarding sale of (1) WTVH-TV in Syracuse, NY to Don W. Cornwell in 1993; (2) K08GD in Ada, OK to Tom L. Johnson in 1985; and (3) K74BC in Hawaii to Sharad Tak in 1987, not on FCC chart. *AGB check for copies*
- ✓ *AGB to find - same as KTV*
Items 18 and 22 are inconsistent with respect to continued ownership of station. *AGB to ask Alysa. Investor IC 10 was for start up capital, 10 for original sale.*
- Item 7 seems inconsistent (year issued and years held). *9 years. will rev. chart*
Brian will check.

Radio

- AGB to check*
Don't have copies of certificates for items 1-8, 10-16, 18-24, 27-46, 48, 50-54, 56-63, 65-73, 75-83, 85-86, 91, 97-98, 109, 115, 130, 133, 135-140, 144, 152, 155-156, 159, 168, 188, 226-230, 241, and 248-260. On chart A: 9, 14-17, 22, and 25-27.
- AGB to check*
Certificates issued regarding sale of (1) KYOU(FM) in Greeley, CO to Willie Davis in 1988; (2) WRXJ(AM) and WCRJ(FM) in Jacksonville, FL - 190 & 199 to Ragan Henry in 1990 (from Nine Chiefs, Inc.); (3) KGVE(FM) in Grove, OK to Barbara Smith in 1988; (4) WKHQ(FM) in Charlevoix, MI to Charles Walker in 1990; (5) WTNC(AM) in Thomasville, NC to L.W. Willis II in 1988; (6) WSKQ(AM) in Newark, NJ (sale of investor interest - 163 (was 86)) in 1990; and (7) KIXI(AM)/KLIX(FM) in Seattle, WA (sale of investor interests) in 1988, not on FCC chart. 164-65
- 159*
There appear to be a number of duplications on the FCC chart. For example, items 67 and 154; (15 and 32A) 228 and 232; 9A and 200; 14A and 221; 16/17A and 222/223; 25A and 166. *162 on new list* *24 on new list*
- Brian to check*
Item 12A is a television station. *correct on final list* *Co changed name - reissuance*

Thanks very much for your help in resolving these issues.

Sincerely,

Alysa M. McDaniel

cc: Kenneth J. Kies

The attached sections of the Commission's Rules were faxed to Steve Rosenthal on 2/14/95. He wanted to find out more about the reconsideration period & when a Commission decision becomes final.

an individual employee. Section 0.201(a) of this chapter describes in general terms the basic categories of delegations which are made by the Commission. Subpart B of Part 0 of this chapter sets forth all delegations which have been made by rule. Sections 1.102 through 1.120 set forth procedural rules governing reconsideration and review of actions taken pursuant to authority delegated under section 5(d) of the Communications Act, and reconsideration of actions taken by the Commission. As used in §§1.102 through 1.117, the term "designated authority" means any person, panel, or board which has been authorized by rule or order to exercise authority under section 5(d) of the Communications Act.

§ 1.103 Effective dates of actions taken pursuant to delegated authority.

(a) *Final actions following review of an initial decision.* (1) Final decisions of the Review Board, a commissioner, or panel of commissioners following review of an initial decision shall be effective 40 days after public release of the full text of such final decision.

(2) If a petition for reconsideration of such final decision is filed, the effect of the decision is stayed until 40 days after release of the final order disposing of the petition.

(3) If an application for review of such final decision is filed, or if the Commission on its own motion orders the record of the proceeding before it for review, the effect of the decision is stayed until the Commission's review of the proceeding has been completed.

(b) *Non-hearing and interlocutory actions.* (1) Non-hearing or interlocutory actions taken pursuant to delegated authority shall, unless otherwise ordered by the designated authority, be effective upon release of the document containing the full text of such action, or in the event such a document is not released, upon release of a public notice announcing the action in question.

(2) If a petition for reconsideration of a non-hearing action is filed, the designated authority may in its discretion stay the effect of its action pending disposition of the petition for reconsideration. Petitions for reconsideration of interlocutory actions will not be entertained.

(3) If an application for review of a non-hearing or interlocutory action is filed, or if the Commission reviews the action on its own motion, the Commission may in its discretion stay the effect of any such action until its review of the matters at issue has been completed.

§ 1.104 Effective dates of Commission actions; finality of Commission actions.

(a) Unless otherwise specified by law or Commission rule (e.g. §§1.102 and 1.427), the effective date of any Commission action shall be the date of public notice of such action as that latter date is defined in §1.4(b) of these rules: *Provided*, That the Commission may, on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action. The designation of an earlier or later effective date shall have no effect on any pleading periods.

(b) Notwithstanding any determinations made under paragraph (a) of this section, Commission action shall be deemed final, for purposes of seeking reconsideration at the Commission or judicial review, on the date of public notice as defined in §1.4(b) of these rules.

(Secs. 4, 303, 307, 46 Stat., as amended, 1083, 1083, 1083; 47 U.S.C. 154, 303, 307)
(46 FR 18556, Mar. 25, 1981)

§ 1.104 Preserving the right of review; deferred consideration of application for review.

(a) The provisions of this section apply to all final actions taken pursuant to delegated authority, including final decisions of the Review Board following review of an initial decision and final actions taken by members of the Commission's staff on nonhearing matters. They do not apply to interlocutory actions of the Chief Administrative Law Judge in hearing proceedings, or to hearing designation orders issued under delegated authority. See §§0.361, 1.106(a) and 1.115(e).

(b) Any person desiring Commission consideration of a final action taken pursuant to delegated authority shall file either a petition for reconsideration or an application for review (but

not both) within 30 days from the date of public notice of such action, as that date is defined in §1.4(b) of these rules. The petition for reconsideration will be acted on by the designated authority or referred by such authority to the Commission: *Provided*, That a petition for reconsideration of an order designating a matter for hearing will in all cases be referred to the Commission. The application for review will in all cases be acted upon by the Commission.

NOTE: In those cases where the Commission does not intend to release a document containing the full text of its action, it will state that fact in the public notice announcing its action.

(c) If in any matter one party files a petition for reconsideration and a second party files an application for review, the Commission will withhold action on the application for review until final action has been taken on the petition for reconsideration.

(d) Any person who has filed a petition for reconsideration may file an application for review within 30 days from the date of public notice of such action, as that date is defined in §1.4(b) of these rules. If a petition for reconsideration has been filed, any person who has filed an application for review may: (1) Withdraw his application for review, or (2) substitute an amended application therefor.

NOTE: In those cases where the Commission does not intend to release a document containing the full text of its action, it will state that fact in the public notice announcing its action.

(Secs. 4, 303, 307, 46 Stat., as amended, 1083, 1083; 47 U.S.C. 154, 303, 307)
46 FR 13415, Nov. 22, 1981, as amended, 46 FR 14871, Apr. 8, 1978; 44 FR 63294, Oct. 17, 1979; 46 FR 18556, Mar. 25, 1981)

§ 1.106 Petitions for reconsideration.

(a)(1) Petitions requesting reconsideration of a final Commission action will be acted on by the Commission. Petitions requesting reconsideration of a final decision of the Review Board will be acted on by the Board or certified to the Commission (see §0.361 (b) and (c) of this chapter). Petitions requesting reconsideration of other final actions taken pursuant to delegated

authority will be acted on by the designated authority or referred by such authority to the Commission. A petition for reconsideration of an order designating a case for hearing will be entertained if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding. Petitions for reconsideration of other interlocutory actions will not be entertained. (For provisions governing reconsideration of Commission action in notice and comment rule making proceedings, see §1.429. This §1.106 does not govern reconsideration of such actions.)

(2) Within the period allowed for filing a petition for reconsideration, any party to the proceeding may request the presiding officer to certify to the Commission the question as to whether, on policy in effect at the time of designation or adopted since designation, and undisputed facts, a hearing should be held. If the presiding officer finds that there is substantial doubt, on established policy and undisputed facts, that a hearing should be held, he will certify the policy question to the Commission with a statement to that effect. No appeal may be filed from an order denying such a request. See also, §§1.229 and 1.251.

(b)(1) Subject to the limitations set forth in paragraph (b)(2) of this section, any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken. If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.

(2) Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances is present:

(1) The petition relies on facts which relate to events which have occurred or circumstances which have changed

since the last opportunity to present such matters; or

(1) The petitioner relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

(3) A petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious.

(c) A petition for reconsideration which relies on facts not previously presented to the Commission or to the designated authority may be granted only under the following circumstances:

(1) The facts fall within one or more of the categories set forth in § 1.106(b)(2); or

(2) The Commission or the designated authority determines that consideration of the facts relied on is required in the public interest.

(d)(1) The petition shall state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed. The petition shall state specifically the form or relief sought and, subject to this requirement, may contain alternative requests.

(2) The petition for reconsideration shall also, where appropriate, cite the findings of fact and/or conclusions of law which petitioner believes to be erroneous, and shall state with particularity the respects in which he believes such findings and conclusions should be changed. The petition may request that additional findings of fact and conclusions of law be made.

(e) Where a petition for reconsideration is based upon a claim of electrical interference, under appropriate rules in this chapter, to an existing station or a station for which a construction permit is outstanding, such petition, in addition to meeting the other requirements of this section, must be accompanied by an affidavit of a qualified radio engineer. Such affidavit shall show, either by following the procedures set forth in this chapter for determining interference in the absence of measurements, or by actual

measurements made in accordance with the methods prescribed in this chapter, that electrical interference will be caused to the station within its normally protected contour.

(f) The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action, as that date is defined in § 1.4(b) of these rules, and shall be served upon parties to the proceeding. The petition for reconsideration shall not exceed 25 double spaced typewritten pages. No supplement or addition to a petition for reconsideration which has not been acted upon by the Commission or by the designated authority, filed after expiration of the 30 day period, will be considered except upon leave granted upon a separate pleading for leave to file, which shall state the grounds therefor.

(g) Oppositions to a petition for reconsideration shall be filed within 10 days after the petition is filed, and shall be served upon petitioner and parties to the proceeding. Oppositions shall not exceed 25 double spaced typewritten pages.

(h) Petitioner may reply to oppositions within seven days after the last day for filing oppositions, and any such reply shall be served upon parties to the proceeding. Replies shall not exceed 10 double spaced typewritten pages, and shall be limited to matters raised in the opposition.

(i) Petitions for reconsideration, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.88 and shall be submitted to the Secretary, Federal Communications Commission, Washington, D.C., 20554.

(j) The Commission or designated authority may grant the petition for reconsideration in whole or in part or may deny the petition. Its order will contain a concise statement of the reasons for the action taken. Where the petition for reconsideration relates to an instrument of authorization granted without hearing, the Commission or designated authority will take such action within 90 days after the petition is filed.

(k)(1) If the Commission or the designated authority grants the petition

for reconsideration in whole or in part, it may, in its decision:

(i) Simultaneously reverse or modify the order from which reconsideration is sought;

(ii) Remand the matter to a bureau or other Commission personnel for such further proceedings, including rehearing, as may be appropriate; or

(iii) Order such other proceedings as may be necessary or appropriate.

(2) If the Commission or designated authority initiates further proceedings, a ruling on the merits of the matter will be deferred pending completion of such proceedings. Following completion of such further proceedings, the Commission or designated authority may affirm, reverse, or modify its original order, or it may set aside the order and remand the matter for such further proceedings, including rehearing, as may be appropriate.

(3) Any order disposing of a petition for reconsideration which reverses or modifies the original order is subject to the same provisions with respect to reconsideration as the original order. In no event, however, shall a ruling which denies a petition for reconsideration be considered a modification of the original order. A petition for reconsideration of an order which has been previously denied on reconsideration may be dismissed by the staff as repetitious.

NOTE: For purposes of this section, the word "order" refers to that portion of its action wherein the Commission announces its judgment. This should be distinguished from the "memorandum opinion" or other material which often accompany and explain the order.

(1) No evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or the designated authority believes should have been taken in the original proceeding shall be taken on any rehearing ordered pursuant to the provisions of this section.

(m) The filing of a petition for reconsideration is not a condition precedent to judicial review of any action taken by the Commission or by the designated authority, except where the person seeking such review was not a

party to the proceeding resulting in the action, or relies on questions of fact or law upon which the Commission or designated authority has been afforded no opportunity to pass. (See § 1.115(c).) Persons in those categories who meet the requirements of this section may qualify to seek judicial review by filing a petition for reconsideration.

(n) Without special order of the Commission, the filing of a petition for reconsideration shall not excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof. However, upon good cause shown, the Commission will stay the effectiveness of its order or requirement pending a decision on the petition for reconsideration. (This paragraph applies only to actions of the Commission en banc. For provisions applicable to actions under delegated authority, see § 1.102.)

(Secs. 4, 308, 307, 405, 49 Stat., as amended, 1088, 1089, 1093, 1095; 47 U.S.C. 154, 308, 307, 405)

[28 FR 12418, Nov. 22, 1963, as amended at 37 FR 7507, Apr. 15, 1972; 41 FR 1297, Jan. 7, 1976; 44 FR 60294, Oct. 19, 1979; 46 FR 18556, Mar. 25, 1981]

§ 1.108 Reconsideration on Commission's own motion.

The Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b) of these rules.

(Secs. 4, 308, 307, 49 Stat., as amended, 1088, 1089; 47 U.S.C. 154, 308, 307)

[28 FR 12418, Nov. 22, 1963, as amended at 46 FR 18556, Mar. 25, 1981]

§ 1.110 Partial grants; rejection and designation for hearing.

Where the Commission without a hearing grants any application in part, or with any privileges, terms, or conditions other than those requested, or subject to any interference that may result to a station if designated application or applications are subsequently granted, the action of the Commission shall be considered as a grant of such application unless the applicant shall,

Congress of the United States
JOINT COMMITTEE ON TAXATION
Washington, D.C. 20515

VIA FAX

February 13, 1995

Abbie G. Baynes, Esq.
Special Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 614
Washington, D.C. 20554

Dear Ms. Baynes:

In comparing the listing of tax certificate transactions that you supplied with the copies of tax certificates that we have received, we have identified certain discrepancies. In some cases, the discrepancies arise from the fact that we do not have copies of certificates listed on the chart or that we have copies of certificates that are not listed on the chart; in other cases, the information on the chart does not seem internally consistent.

Listed below are the discrepancies we've identified thus far. Item numbers correspond to the numbers on the FCC charts. With respect to the radio transactions, the letter A is used to identify transactions listed on the second chart (that lists 33 transactions).

Cable

Barrett has 27

Don't have copies of certificates for items 2, 4 or 27

AGB to look for
Brian was AGB to check

2 = MMB
4 = CSR 3078
17 = CSR 3080
27 = CSR 3048

LM for BB

✓ Certificate issued to Jack Kent Cooke for sale of cable station in Fairbanks, Alaska to Tim Wallis, et al. in 1990 not on FCC chart.

Brian will add to chart

• Items 2, 4 and 17 list minority group as Black, East Indian and Asian American for what appears to be same licensee.

ethnicity - AGB to call Barrett

Television

✓ Don't have copy of certificate for item 10.

KMPN - still #10

Brian to check

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

February 7, 1995

BY TELECOPIER

Ken Kies
Chief of Staff
Joint Committee on Taxation
United States Congress
1015 Longworth Building
Washington, DC 20515-6453

Dear Mr. Kies,

This letter responds to your letter of February 2, 1995, which confirmed your request for certain additional information related to the issuance of minority tax certificates by the Federal Communications Commission. The paragraphs below correspond to the numbered paragraphs in your letter.

(1) According to our records, four of 40 television licenses have been transferred by a minority-controlled entity¹ after the license was acquired in a tax certificate transaction. The average holding period for these four licenses prior to transfer was 2 years. In radio, 130 of 192 stations acquired in tax certificate transactions for which we have sale data² have been sold. The average holding period was 4 years. We are unable to provide data on the number of cable licenses acquired in tax certificate transactions and the average holding period prior to transfer.

(2) A total of eighteen (18) tax certificates have been issued to parties contributing start-up capital to a minority-controlled entity to acquire broadcast or cable properties. Seven investor tax certificates have been issued in radio; five in television; and six in cable.

(3) As was indicated in Abbie Baynes' telephone conversation with you on February 3, we are unable to provide information about the size (i.e., the customer base) of each cable television system that has been sold in a tax certificate transaction. Cable companies requesting tax certificates are not required to provide the Commission with the number of system subscribers. However, as you requested as an alternative, we are developing a list of the communities in which each cable system is franchised so that you may contact the appropriate franchising authority to request the number of subscribers for the systems as of the year of the tax certificate transaction. We expect to be able to provide the list to you by

¹ The term "minority-controlled entity," when used herein, includes both minorities and entities controlled by them.

² We have located tax certificates for 192 of a total of 287 radio tax certificate transactions.

Ken Kies
February 7, 1995
Page 2

the close of business tomorrow.

(4) Based on our analysis of the minority tax certificates we have issued, we are not aware whether Oprah Winfrey, Bill Cosby and Dave Winfield have received or held interests in entities that have received tax certificates. Applicants for tax certificates typically disclose the corporate or partnership name of the minority buyer and its principal equity holders. This information appears on the charts previously provided to the Committee. None of these individuals appears as a principal shareholder in any minority tax certificate transaction. It is possible, however, that they may have held interests through a corporation or partnership, or by owning a small interest (i.e., less than five percent of the equity).

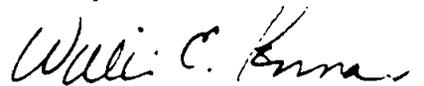
(5) We expect to be able to provide information about the number of tax certificates pending before the Commission by the close of business tomorrow.

(6) Viacom, Inc., Tele-Vue Systems, Inc., and several of Tele-Vue's wholly-owned subsidiaries applied for a tax certificate for the sale of certain cable properties on February 3, 1995.

(7) Our records reflect that we have provided copies of approximately 200 tax certificates to date, rather than the 150 referenced in your letter. We have provided copies of 30 cable certificates, 39 television certificates, and 131 radio certificates. Commission staff have searched our archives in Suitland, Maryland for the remaining certificates. We expect to be able to provide you with copies of approximately 60 more certificates. We will forward them to you as we receive them, and will check with Alicia McDaniel of the Committee staff to reconcile the discrepancy in the total number provided to date.

We are continuing to compile the requested information on an expedited basis. If we learn that we will not be able to provide the remaining information on the schedule outlined herein, we will notify you immediately.

Sincerely,



William E. Kennard
General Counsel

cc: Donna Steele-Flynn
Anthony Williams
Judith Harris
Abbie Baynes

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

February 3, 1995

BY COURIER

Ken Kies
Chief of Staff
Joint Committee on Taxation
United States Congress
1015 Longworth Building
Washington, DC 20515-6453

Dear Ken,

Per our conversation this morning, I enclose hard copies of the summaries of television, cable and radio tax certificate transactions that were telecopied to Steve Rosenthal yesterday. Also enclosed is a narrative summary of this information. Please feel free to call me with any questions once you've had a chance to review the charts.

Sincerely,



Abbie G. Baynes
Special Counsel

cc (w/encl.): William E. Kennard
Anthony L. Williams
Judith Harris

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

February 14, 1995

BY TELECOPIER

Ken Kies
Chief of Staff
Joint Committee on Taxation
United States Congress
1015 Longworth Building
Washington, DC 20515-6453

Dear Mr. Kies,

This letter further responds to your letter of February 2, 1995, requesting certain additional information related to the issuance of minority tax certificates by the Federal Communications Commission. As you requested, I enclose a list identifying minority tax certificate transactions for cable systems. The list identifies the cable franchise holder and the systems involved in each transaction.

As you know, Abbie Baynes of my office plans to meet with Alicia McDaniel this week to complete our transfer of copies of tax certificates to the Committee.

Sincerely,



William E. Kennard
General Counsel

cc: Donna Steele-Flynn
Anthony Williams
Judith Harris
Abbie Baynes

Cable Minority Tax Certificates Community Information

<u>System Operator</u>	<u>Communities Affected</u>	<u>Year Tax Cert(s) Issued</u>
Telecable Broadcasting	East Cleveland OH Jefferson Twp OH	1986
Connection Communications Corp. Columbia Cable Inc.	Newark NJ Brooklyn MI Columbia Twp MI Norvell MI	1987 1987
Spacecoast Cablevision, Inc.	Mims FL Brevard County FL	1988
Specchio Developers, Ltd.	Biggsville IL Joy IL Keithsburg IL Kirkwood IL New Boston IL West Lebanon IN Batavia IA Birmingham IA Denmark IA Donnellson IA Grandview IA Letts IA Milton IA Oakville IA Salem IA Winfield IA	1989
Callais Cablevision, Inc.	Golden Meadow LA Grand Isle, LA LaFourche Parish LA Terrebonne Parish LA	1989
The New York Times Co.	Audubon NJ Audubon Park NJ Barrington NJ Bellmawr NJ Berlin NJ Berlin Twp NJ Camden NJ Carneys Point NJ Chesterfield NJ Clementon NJ Collingswood NJ	1989

<u>System Operator</u>	<u>Communities Affected</u>	<u>Year Tax Cert(s) Issued</u>
The New York Times Co. (cont'd)	Easthampton NJ Evesham Twp NJ Fieldsboro NJ Florence NJ Fort Dix NJ Gibbsboro NJ Gloucester Twp NJ Haddonfield NJ Haddon Heights NJ Haddon Twp NJ Hainesport NJ Hi-Nella NJ Laurel Springs NJ Lawnside NJ Lindenwold NJ Lumberton NJ Magnolia NJ Mansfield Twp NJ McGuire AFB NJ Medford Lakes NJ Medford Twp NJ Merchantville NJ Moorestown NJ Mount Holly NJ Mount Laurel NJ New Hanover Twp NJ North Hanover Twp NJ Oaklyn NJ Pemberton NJ Pemberton Twp NJ Pennsauken NJ Pine Hill NJ Pitman NJ Plumsted Twp NJ Runnemede NJ Shamong Twp NJ Somerdale NJ Southampton Twp NJ Springfield Twp NJ Stratford NJ Tabernacle Twp NJ	

<u>System Operator</u>	<u>Communities Affected</u>	<u>Year Tax Cert(s) Issued</u>
The New York Times Co. (cont'd)	Voorhees Twp NJ	
	Westhampton Twp NJ	
	Woodland Twp NJ	
	Woodlynne NJ	
	Wrightstown NJ	
Barden Cablevision of Inkster, Inc. Brenmore Cable	Inkster MI	1989
	Los Gatos CA	1989
	Milpitas CA	
	Mountain View CA	
	Newark CA	
	Santa Clara CA	
	Santa Clara County CA	
	Saratoga CA	
Robin Cable Systems	Benson AZ	1989
	Davis-Monthan AFB AZ	
	Foothills AZ	
	Fort Huachuca AZ	
	Green Valley AZ	
	Huachuca City AZ	
	Pima County AZ	
	Santa Rita Bel Aire AZ	
	Santos Thomas AZ	
	Sierra Vista AZ	
	South Tucson AZ	
	Tombstone AZ	
	Tucson AZ	
	Willcox AZ	
	Fayette County GA	
	Fayetteville GA	
	Grantville GA	
	Hogansville GA	
	Peachtree City GA	
	Senoia GA	
	Shenandoah GA	
	Aiken SC	
	Aiken County SC	
	Burnettown SC	
	Nashville TN	

<u>System Operator</u>	<u>Communities Affected</u>	<u>Year Tax Cert(s) Issued</u>
Melanie Cable	Flowery Branch GA Gainesville GA Hall County GA Oakwood GA	1990
Falcon Community Cable	Aragon GA Polk County GA Rockmart GA Van Wert GA Astoria OR Clatsop County OR Douglas County OR Gearhart OR Hammond OR Roseburg OR Seaside OR The Dalles OR Warrenton OR Wasco County OR Cathlamet WA Dallesport WA Ilwaco WA Long Beach WA Murdock WA Nahcotta WA Ocean Park WA Pacific County WA Seaview WA	1990
Jack Kent Cooke, Inc.	Eielson AFB AK Fairbanks AK Fairbanks N Star Co AK Fort Greely AK Fort Wainwright AK North Pole AK North Star Borough AK	1990
Louis A. Smith d/b/a Smith Electronics Cable	Benoit MS Cary MS Silver City MS	1990
United Cable	Addison TX Carrollton TX Haslett TX Roanoke TX	1990

<u>System Operator</u>	<u>Communities Affected</u>	<u>Year Tax Cert(s) Issued</u>
United Cable (cont'd)	Southlake TX Trophy Club TX Westlake TX	
Jack Kent Cooke; Cooke Media Group	Ahoskie NC Cofield Village NC Elizabeth City NC Hertford County NC Murfreesboro NC Pasquotank County NC Winton NC Beaufort County SC Hilton Head Island SC Amherst VA Amherst County VA Emporia VA Glasgow VA Greensville County VA Halifax VA Halifax County VA LaCrosse VA Mecklenburg County VA Rockbridge County VA South Boston VA South Hill VA	1990
N-Com, Inc. and N-Com II, Inc.	Belleville MI Brooklyn MI Cambridge Twp MI Canton Twp MI Cement City MI Chelsea MI Clinton MI Columbia Twp MI Dexter MI Dundee MI Franklin Twp MI Hamtramck MI Lima Twp Lodi Twp Manchester MI Milan MI Northville MI	1992

<u>System Operator</u>	<u>Communities Affected</u>	<u>Year Tax Cert(s) Issued</u>
N-Com (cont'd)	Northville Twp MI Norvell Twp MI Onsted MI Plymouth MI Plymouth Twp MI Romulus MI Saline MI Saline Twp MI Somerset Twp MI Sylvan Twp MI Van Buren MI	
Jack Kent Cooke Incorporated	Alcoa TN Arrington TN Blount County TN Bon Aqua TN Brentwood TN Centerville TN Concord TN Crossville TN Cumberland County TN Fairview TN Farragut TN Franklin TN Gatlinburg TN Goodlettsville TN Greenbrier TN Hickman County TN Hohenwald TN La Vergne TN Leipers Fork TN Lenoir City TN Loudon TN Loudon County TN Lyles TN Madisonville TN Maryville TN Monroe County TN Mount Pleasant TN Murfreesboro TN Nolensville TN Pigeon Forge TN	1992

<u>System Operator</u>	<u>Communities Affected</u>	<u>Year Tax Cert(s) Issued</u>
Jack Kent Cooke (cont'd)	Ridgetop TN Rogersville TN Rutherford County TN Sevier County TN Sevierville TN Seymour TN Smyrna TN Springfield TN Sweetwater TN Williamson County TN	
Melanie Cable	Flowery Branch GA Gainesville GA Hall County GA Oakwood GA	1992
1st CableVision, Inc. & TCI Cable- vision of Georgia, Inc.	Stephens County GA Toccoa GA	1992
River Valley Cable	Kingman AZ La Paz County AZ Mohave County AZ Parker AZ Blythe CA Riverside County CA San Bernardino County CA Colorado River Indian Tribe Reservation	1993
Mile Hi Cable	Denver CO Glendale CO Lowry AFB CO	1993
Television Enterprises, Inc.	Brady TX Christoval TX Eden TX Eldorado TX Hunt TX Ingram TX Junction TX Menard TX San Saba TX Sonora TX	1993
Mile Hi Cable	Denver CO Glendale CO Lowry AFB CO	1994

<u>System Operator</u>	<u>Communities Affected</u>	<u>Year Tax Cert(s) Issued</u>
Chambers Cable	San Bernardino CA	1993
	San Bernardino County CA	
River Valley Cable	Coconino County AZ	1994
	Flagstaff AZ	
	Oak Creek Canyon AZ	
	Sedona AZ	
	Yavapai County AZ	
Charter Communications, L.P.	Albertville AL	1994
	Alexander City AL	
	Camp Hill AL	
	Clay County AL	
	Coosa County AL	
	Dadeville AL	
	Dale County AL	
	Goodwater AL	
	Grant AL	
	Guntersville AL	
	Jackson Gap AL	
	Marshall County AL	
	New Site AL	
	Ozark AL	
	Rockford AL	
	Talladega County AL	
	Tallapoosa County AL	
	Ambrose GA	
	Broxton GA	
	Centralhatchee GA	
	Chalybeate Springs GA	
	Chattahoochee County GA	
	Coffee County GA	
	Corinth GA	
	Coweta County GA	
	Cusseta GA	
	Douglas GA	
	Franklin GA	
	Harris County GA	
	Heard County GA	
	LaGrange GA	
	Lone Oak GA	
	Luthersville GA	
	Manchester GA	

<u>System Operator</u>	<u>Communities Affected</u>	<u>Year Tax Cert(s) Issued</u>
Charter Communications (cont'd)	Meriwether County GA Moreland GA Newnan GA Nichols GA Sharpsburg GA Shiloh GA Talbot County GA Talbotton GA Thomaston Troup County GA Turin GA Upton County GA Warm Springs GA Woodland GA Albany LA Amite City LA Bogalusa LA Folsom LA Franklinton LA French Settlement LA Hammond LA Holden LA Independence LA Killian LA Livingston LA Livingston Parish LA Ponchatoula LA Port Vincent LA Roseland LA St. Tammany Parish LA Springfield LA Sun LA Tangipahoa LA Tangipahoa Parish LA Tickfaw LA Washington Parish LA Osyka MS Pearl River County MS	

<u>System Operator</u>	<u>Communities Affected</u>	<u>Year Tax Cert(s) Issued</u>
River Valley Cable	Benson AZ Davis-Monthan AFB AZ Foothills AZ Fort Huachuca AZ Huachuca City AZ Pima County AZ Saint David AZ Santos Thomas AZ Sierra Vista AZ South Tucson AZ Tombstone AZ Tucson AZ Willcox AZ	1994
WT Acquisition Corporation and Transwestern Video, Inc.	Barling AR Charleston AR Lavaca AR Ames OK Binger OK Corn OK Custer City OK Cyril OK Elgin OK Fletcher OK Heavener OK Hydro OK Jones OK Lahoma OK Medicine Park OK Piedmont OK Poteau OK Ringwood OK Spiro OK Waukomis OK Weatherford OK	1994
Time Warner Cable	Mooreland OK Woodward OK Flatonia TX Nixon TX	1994

<u>System Operator</u>	<u>Communities Affected</u>	<u>Year Tax Cert(s) Issued</u>
Fanch Cable	Cortland NY Cortlandville NY Gloversville NY Horner NY Horner (village) NY Johnstown (city) NY Johnstown (town) NY Mayfield (town) NY Mayfield (village) NY McGraw NY	1994

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

February 9, 1995

BY COURIER

Ken Kies
Chief of Staff
Joint Committee on Taxation
United States Congress
1015 Longworth Building
Washington, DC 20515-6453

Dear Mr. Kies,

This letter further responds to your letter of February 2, 1995, to William E. Kennard, which confirmed your request for certain additional information related to the issuance of minority tax certificates by the Federal Communications Commission.

Enclosed are copies of 41 additional minority tax certificates that we have located. As we locate additional minority tax certificates, we will provide copies to you. Abbie Baynes of this office will continue to work with Alicia McDaniel of the Committee staff regarding additional information that the Committee may need.

Sincerely,



David H. Solomon
Deputy General Counsel

cc: Donna Steele-Flynn
William Kennard
Anthony Williams
Judith Harris
Abbie Baynes

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

February 8, 1995

BY TELECOPIER

Ken Kies
Chief of Staff
Joint Committee on Taxation
United States Congress
1015 Longworth Building
Washington, DC 20515-6453

Dear Mr. Kies,

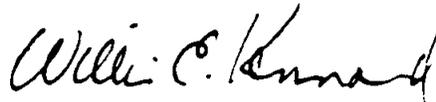
This letter further responds to your letter of February 2, 1995, which confirmed your request for certain additional information related to the issuance of minority tax certificates by the Federal Communications Commission.

(1) Attached hereto is a partial listing of the communities of franchise of those cable systems that have been sold in a tax certificate transaction. We expect to be able to provide the remaining information by the close of business on Monday, February 13.

(2) Nineteen applications for tax certificates are pending before the Commission for broadcast and cable transactions. Attached hereto is a chart identifying the applicant, the station or system involved, and the date of the application, as you requested.

We expect to be able to provide you with copies of the remaining tax certificates by hand delivery tomorrow. If we learn that we will not be able to provide the remaining information on the schedule outlined herein, we will notify you immediately.

Sincerely,



William E. Kennard
General Counsel

cc: Donna Steele-Flynn
Anthony Williams
Judith Harris
Abbie Baynes

CABLE FRANCHISES

System Operator	Community of Franchise	Year Certificate Granted
Telecable Broadcasting	Jefferson Township, OH	1986
Connection Communications Corp.	Newark, NJ	1987
Columbia Cable, Inc.	Brooklyn, MI	1987
	Columbia Twp, MI	
	Norvell, MI	
Spacecoast Cablevision, Inc.	Mims, FL	1988
The New York Times Co.	Brevard County, FL	
	Audubon, NJ	1989
	Audubon Park, NJ	
	Barrington, NJ	
	Bellmawr, NJ	
	Berlin, NJ	
	Berlin Twp, NJ	
	Camden, NJ	
	Carneys Point, NJ	
	Chesterfield, NJ	
	Clementon, NJ	
	Collingswood, NJ	
	Easthampton, NJ	
	Evesham Twp, NJ	
	Fieldsboro, NJ	
	Florence, NJ	
	Fort Dix, NJ	
	Gibbsboro, NJ	
	Gloucester Twp, NJ	
	Haddonfield, NJ	
	Haddon Heights, NJ	
	Haddon Twp, NJ	
	Hainesport, NJ	
	Hi-Nella, NJ	
	Laurel Springs, NJ	
	Lawnside, NJ	
	Lindenwold, NJ	
	Lumberton, NJ	
	Magnolia, NJ	
	Mansfield Twp, NJ	
	McGuire AFB, NJ	
	Medford Lakes, NJ	
	Medford Twp, NJ	
	Merchantville, NJ	
	Moorestown, NJ	
	Mount Holly, NJ	
	Mount Laurel, NJ	
New Hanover Twp, NJ		
North Hanover Twp, NJ		
Oaklyn, NJ		
Pemberton, NJ		
Pemberton Twp, NJ		
Pennsauken, NJ		
Pine Hill, NJ		
Runnemede, NJ		

CABLE FRANCHISES

System Operator	Community of Franchise	Year Certificate Granted		
The New York Times (cont'd)	Shamong Twp, NJ	1989		
	Somerdale, NJ			
	Southampton Twp, NJ			
	Springfield Twp, NJ			
	Stratford Twp, NJ			
	Tabernacle Twp, NJ			
	Vorhees Twp, NJ			
	Westhampton Twp, NJ			
	Woodland Twp, NJ			
	Woodlynne, NJ			
Callais Cablevision, Inc.	Wrightstown, NJ	1989		
	Golden Meadow, LA			
	Terrebonne Parish, LA			
	LaFourche Parish, LA			
Barden Cablevision of Inkster, Inc.	Grand Isle, LA	1989		
	Inkster, MI			
Hearst Cablevision of California	Los Gatos, CA	1989		
	Milpitas, CA			
	Mountain View, CA			
	Newark, CA			
	Santa Clara, CA			
	Santa Clara County, CA			
	Saratoga, CA			
	Jack Kent Cooke, Inc.; Cooke Media Group, Inc.		Benson, AZ	1989
			Davis-Monthan AFB, AZ	
			Foothills, AZ	
Fort Huachuca, AZ				
Green Valley, AZ				
Huachuca City, AZ				
Pima County, AZ				
Santa Rita Bel Aire, AZ				
Santos Thomas, AZ				
Sierra Vista, AZ				
South Tuscon, AZ				
Tombstone, AZ				
Tuscon, AZ				
Willcox, AZ				
Fayette County, GA				
Fayetteville, GA				
Grantville, GA				
Hogansville, GA				
Peachtree City, GA				
Senoia, GA				
Shenandoah, GA				
Aiken, SC				
Aiken County, SC				
Burnettown, SC				
Nashville, TN				

CABLE FRANCHISES

System Operator	Community of Franchise	Year Certificate Granted
United Artists Holdings, Inc.	Flowery Branch, GA Gainesville, GA Hall County, GA	1990
Jack Kent Cooke, Inc.	Oakwood, GA Aragon, GA Polk County, GA Rockmart, GA Van Wert, GA Astoria, OR Clatsop County, OR Douglas County, OR Gearhart, OR Hammond, OR Roseburg, OR Seaside, OR The Dalles, OR Warrenton, OR Wasco Country, OR Cathlamet, WA Dallesport, WA Ilwaco, WA Long Beach, WA Murdock, WA Nahcotta, WA Ocean Park, WA Pacific County, WA Seaview, WA	1990
Jack Kent Cooke, Inc.	Eielson AFB, AK Fairbanks, AK Fairbanks N Star Co, AK Fort Greely, AK Fort Wainwright, AK North Pole, AK North Star Borough, AK	1990
Louis A. Smith d/b/a Smith Electronics Cable	Benoit, MS Cary, MS Silver City, MS	1990
Cablevision Management, Inc.	Addison, TX Carrollton, TX Haslett, TX Roanoke, TX Southlake, TX Trophy Club, TX Westlake, TX	1991

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

February 3, 1995

BY COURIER

Ken Kies
Chief of Staff
Joint Committee on Taxation
United States Congress
1015 Longworth Building
Washington, DC 20515-6453

Dear Ken,

Per our conversation this morning, I enclose hard copies of the summaries of television, cable and radio tax certificate transactions that were telecopied to Steve Rosenthal yesterday. Also enclosed is a narrative summary of this information. Please feel free to call me with any questions once you've had a chance to review the charts.

Sincerely,



Abbie G. Baynes
Special Counsel

cc (w/encl.): William E. Kennard
Anthony L. Williams
Judith Harris

Summary of Tax Certificate Data (as of 2/2/95)

Before 1978, minorities owned approximately one half of one percent (40) of the approximately 8,500 total broadcast licenses issued by the FCC. In fact, the National Association of Black Owned Broadcasters (NABOB) reports that approximately 2 to 3 minority broadcast transactions were consummated each year prior to the implementation of the FCC minority tax certificate policy in 1978. Today, a 1994 study performed by the National Telecommunication and Information Administration at the Department of Commerce, indicates that there are approximately 323 radio and television stations owned by minorities, 2.9% of the total 11,128 licenses held in 1994. This represents a 700% increase in the number of licenses issued to minorities since the application of section 1071 to minority owned broadcast and cable properties (15 years).

<u>Industry Total</u>	<u>Black</u>	<u>Hispanic</u>	<u>Asian</u>	<u>Native American</u>	<u>Minority Totals</u>
AM Stations 4,929	101 (2%)	76 (1.5%)	1 (0%)	2 (0%)	180 (3.7%)
FM Stations 5,044	71 (1.4%)	35 (.7%)	3 (.1%)	3 (.1%)	112 (2.2%)
TV Stations <u>1,155</u>	<u>21 (1.8%)</u>	<u>9 (.8%)</u>	<u>1 (.1%)</u>	<u>0 (0%)</u>	<u>31 (2.7%)</u>
Cumulative Totals 11,128	193 (1.7%)	120 (1.1%)	5 (0%)	5 (0%)	323 (2.9%)

Of the total number of licenses currently held by minorities the data available indicates that up to 30% of the radio stations were acquired with the use of a tax certificate and up to 90% of the television stations were acquired with the use of a tax certificate. Data is unavailable for cable. Also, NABOB reports that the vast majority of existing minority broadcast owners have utilized tax certificates during the past 15 years either: 1) as an incentive to attract initial investors; 2) to purchase a broadcast property; or 3) to sell a broadcast property to another minority.

During the past 15 years, the issuance of minority tax certificates has resulted in the sale or transfer of over 260 radio licenses, 40 television licenses and 30 cable licenses, totalling approximately 330 tax certificates issued for minority deals. In contrast, approximately 117 non-minority tax certificates have been issued during the life of Section 1071.

<u>Type of License</u>	<u>Certificates Issued</u>	<u>of Total</u>
Minority Radio	260	58%
Minority TV	40	9%
Minority Cable	30	7%
Non-minority	<u>117</u>	<u>26%</u>
Total	447	100%

There was a significant increase in the number of minority tax certificates issued between the years 1987 and 1989. This increase corresponds with the robust trading experienced by the broadcast and cable industry during this period. The level of tax certificate activity also declined significantly in 1991 when federal restraints were placed on highly leveraged transactions and access to capital became a problem for the industry as a whole.

<u>Year</u>	<u>Certificates Issued</u>	<u>of Total</u>
1978	4	1%
1979	12	4%
1980	10	3%
1981	15	5%
1982	15	5%
1983	10	3%
1984	11	3%
1985	17	5%
1986	18	5%
1987	33	10%
1988	33	10%
1989	45	14%
1990	46	14%
1991	18	5%
1992	14	4%
1993	21	6%
<u>1994</u>	<u>8</u>	<u>2%</u>
Total	330	100%

Diversity of Ownership:

Ownership data is available for approximately 55% (142) of the tax certificates issued in minority radio transactions. From this sample, there are approximately 77 separate owners (54%) of radio properties listed. Ownership data is available for approximately 98% (39) of the tax certificates in television transactions. From this sample there are approximately 21 (54%) separate owners listed. Ownership data is available for all 40 of the tax certificates issued in cable television transactions. From this listing, there are 20 (66%) separate owners of cable properties. In sum, the data indicates that well over half of

the broadcast and cable properties receiving tax certificates are owned by different individuals or companies.

The racial allocation of the minority tax certificates are as follows:

African Americans	64%
Hispanics	23%
Native American	1%
Alaskan Native	4%
Asian	8%

Holding Period:

Although FCC regulations require the buyer of a property for which a tax certificate is issued to hold that station for one year, the overwhelming majority of minority buyers retain their licenses for much longer. Example, of the total certificates issued, minority buyers of radio and television properties have held their licenses for an average of 5 years. Cable is excluded from these figures because there is insufficient data available on the holding period. However, the Communication Act requires that all cable systems be held for a minimum of three years following either the acquisition or initial construction of such system. Holding period information is available for approximately 83% of the minority radio stations and all of the minority television stations.

Size of Transactions:

After reviewing a sample consisting of 55% of radio stations and 78% of television stations, the data indicates that the great majority of the sales transactions in which tax certificates are awarded are relatively small, averaging a sales price of \$3.5 million for radio stations and \$38 million for television stations. Data is not available for the 30 cable deals, although we know that cable deals tend to be larger transactions.

FCC has no data available on the amount of tax gains actually deferred.

Other Findings:

Although the tax certificate program is not the only FCC program designed to encourage transfer of licenses to minorities, it is the most frequently used program and is often used in concert with the other programs. In addition, various entrepreneurs and industry associations have submitted testimony to FCC which indicates that: "But for the tax certificate program the acquisition of existing broadcast and cable properties by minorities would be significantly more difficult to consummate."

#	Facility Type	Call Letters/ Name of Property	Location/ City of License	Year Certificate Issued	Years Held	Property Still Held by Purchaser	Sales Price	Ownership Group	Licenses	Sellers	Principal Shareholder/ General Partners
1	Full Power	WHEC	Rochester, NY	1979	7	YES	N/A	Black	BENI Broadcasting of Rochester	WHEC, Inc.	Ragen Henry
2	Full Power	KIBY	Anchorage, Alaska	1984	0	NO	\$1,600,000	Asian American	KIBY, Inc.	Totem Broadcasting Corp.	Sharad Tak
3	Full Power	WAOW	Wausau, WI	1985	9	YES	\$22,000,000	Asian American	Wisconsin TV Network Assoc.	Liberty Broadcasting, Inc.	Sharad Tak
4	Full Power	WQOW	East Claire, WI	1985	9	YES		Asian American	Wisconsin TV Network Assoc.	Liberty Broadcasting, Inc.	Sharad Tak
5	Full Power	WXOW	La Crosse, WI	1985	9	YES		Asian American	Wisconsin TV Network Assoc.	Liberty Broadcasting, Inc.	Sharad Tak
6	Full Power	WKOW	Madison, WI	1985	9	YES		Asian American	Wisconsin TV Network Assoc.	Liberty Broadcasting, Inc.	Sharad Tak
7	Full Power	WKDW	Buffalo, NY	1990	8	YES	Start up capital	Black	Queen City Broadcasting, Inc.	Capital Cities Comm., Inc.	Unknown
8	Full Power	KITV	Honolulu, HI	1987	7	YES	\$50,000,000	Asian American	Tak Communications, Inc.	Shamrock Broadcasting, Inc.	Sharad Tak
9	Full Power	KHVO	Hilo, HI	1987	7	YES		Asian American	Tak Communications, Inc.	Shamrock Broadcasting, Inc.	Sharad Tak
10	Full Power	KMAUJ	Wailuku, HI	1987	7	YES		Asian American	Tak Communications, Inc.	Shamrock Broadcasting, Inc.	Sharad Tak
11	Full Power	WTVT	Lampa, FL	1987	3	NO	\$365,000,000	Black	WTVT Holdings, Inc.	Gaylord Broadcasting Co.	Clarence V. McKee
12	Full Power	WMOD now WBSF	Melbourne, FL	1988	6	YES	\$5,000,000	Black	Black Star Communications, Inc.	Press Broadcasting Co. of FL	John Oxendine
13	Full Power	WGRZ	Buffalo, NY	1988	6	YES	\$85,000,000	Asian American	Tak-WGRZ, Inc.	WGRZ Aquisition Corp.	Sharad Tak
14	Full Power	WEEK	Peoria, IL	1988	6	YES	\$30,000,000	Black	Granite Broadcasting Corp.	Eagle Broadcasting Corp.	W. Don Cornwell
15	Full Power	WINH	New Haven, CT	1987	7	YES	Start up capital	Alaskan Native	Cook Inlet Corp.	Paine Webber Capital, Inc. and P.W. Partners, L.P.	Jose Trevino
16	Full Power	KLXN	Rosenburg, TX	1985	9	YES	Start up capital	Hispanic	Pueblo Broadcasting	Alfonso C. Pena	Jose Trevino
17	Full Power	KLTV/KIPE	Tyler, TX	1989	5	YES	\$42,000,000	Black	Civic Communication Corp. II	Burford Television, Inc. of Tyler	Tom Johnson
18	Full Power	KTEN	Ada, OK	1985	3	NO	\$2,439,390	American Indian	Channel 10, L.P.	Bill Hover	Tom Johnson
19	Full Power	WSMV	Nashville, TN	1989	5	YES	\$125,000	Alaskan Native	Cook Inlet Television Partners, LP	Gillett Broadcasting Tenn., Inc.	W. Don Cornwell
20	Full Power	WPTA	Ft. Wayne, Indiana	1989	5	YES	\$27,000,000	Black	Granite Broadcasting Corp.	Pulitzer Broadcasting Co.	W. Don Cornwell
21	Full Power	KNIV	San Jose, CA	1989	5	YES	\$59,000,000	Black	Granite Broadcasting Corp.	Landmark Television, Inc.	W. Don Cornwell
22	Full Power	KTEN	Ada, OK	1989	4	YES	Start up capital	American Indian	Channel 10, LP	Lloyd Wheeler, John Mosley & David Webb	Tom Johnson
23	Full Power	KSMS	Monterey, CA	1990	4	YES	\$2,600,000	Hispanic	KSMS TV Aquisition, LP	Schuyler Broadcasting Corp.	Daniel D. Villanueva
24	Full Power	WLBM no WGBC	Meridian, MS	1991	3	NO	\$85,000	Black	Global Communications, Inc.	TV-3, Inc.	Charles L. Young
25	Full Power	WPIT	Pittsburgh, PA	1991	3	YES	\$55,000,000	Black	WPTI, Inc.	Commercial Radio Institute	Edwin A. Edwards
26	Full Power	WTNH	New Haven, CT	1991	3	YES	Start up capital	Alaskan Native	Cook Inlet Corp.	WCC Associates, LP	Frank & Betty Ponce
27	Full Power	KSLO now KRCA	Riverside, CA	1990	4	YES	\$1,125,000	Hispanic	Ponce Enterprises, Inc.	Sunland Broadcasting Co.	Simon P. Gourdine
28	Full Power	WRBL	Columbus, GA	1990	4	YES	N/A	Black	TCS Television Partners	Malcolm Blazer	Simon P. Gourdine
29	Full Power	WTWO	Terre Haute, IN	1990	4	YES		Black	TCS Television Partners	Malcolm Blazer	Simon P. Gourdine
30	Full Power	KQTV	St. Joseph, MO	1990	4	YES		Black	TCS Television Partners	Malcolm Blazer	Simon P. Gourdine
31	Full Power	KBVO	Austin, TX	1994	1	YES	\$54,000,000	Black	KBVO License, Inc.	Austin Television	W. Don Cornwell/Granite Broadcasting
32	Full Power	KDFW	Dallas, TX	1993	2	YES	\$206,100,000	Hispanic	KDFW Argyle Television, Inc.	KDFY TV, Inc.	Ibrahim Morales
33	Full Power	KTBC	Austin, TX	1993	2	YES	\$48,900,000	Hispanic	KTBC Argyle Television, Inc.	KTBC TV, Inc.	Ibrahim Morales
34	Full Power	KSEE	Fresno, CA	1993	2	YES	N/A	Black	Granite Broadcasting Corp.	Meredith Corporation	W. Don Cornwell
35	Low Power	W53AA	New York, NY	1989	6	YES	\$1,800,000	Asian	Pan Asian Communication, Inc.	Accord Communication, Inc.	Peter Ohm & Andrew Ohm
36	Low Power	W06GG	Chattanooga, TN	1989	6	YES	\$400,000	Hispanic	God Gibben	Mr. Hollis	God Gidden
37	Low Power	W08BY	Milwaukee, WI	1990	5	YES	\$1,800,000	Asian	Myoung Hwa Bae	Charles Woods	Myoung Hwa Bae
38	Low Power	W13BE	Chicago, IL	1990	5	YES		Asian	Myoung Hwa Bae	Charles Woods	Myoung Hwa Bae
39	Low Power	K59DB	Albuquerque, NM	1990	5	YES	\$325,000	Hispanic	Continental Broadcasting Corp.	Spanish TV 59	Jose Molina
40	Low Power	K13VC	N/A	1994	1	YES					
40	TOTAL				Average		Average				20
5	Low Power			33	5.26	35	\$34,235,464				50.00%
35	Full Power										

* Indicates that the license was a part of the previous transaction.

#	Cable Television	Name of Property	Location/ City of License	Year Certificate Issued	Ownership Group	Licensee	Sellers	Principal Shareholder or General Partner
1	Cable	Telecable Broadcasting	East Cleveland, Ohio	1986	Black	TBA, Inc.	Benjamin Davis, Zakee Rashid, Syncom	
2	Cable		Michigan	1986	Black	N-Com Limited Partner ship	Omnicom of Mich. and Clear Cablevision	
3	Cable	Connection Communication	Newark, NJ	1987	Black	Connection Communication	Melvin LuSane, Calvin Reed and Massachusetts Venture Capital Corp.	
4	Cable	Columbia Cable, Inc.	Michigan	1987	East Indian	N-Com Limited Partnership	Columbia Cable, Inc.	Harcharan S. Suri
5	Cable	SpaceCoast	Mims, Florida	1988	Asian American	Brevard Spacecoast Cable	SpaceCoast Cablevision, Inc.	Chien-Ying Jeresa Hren
6	Cable	Audobon	Audobon, NJ	1989	Black	Garden State Cablevision, LP	The New York Times Company	Bruce Llewellyn
7	Cable	Specchio	Illinois, Indiana & Iowa	1989	American Indian	Specchio Pay Television, LP	Specchio Developers, Ltd.	Gap Communications
8	Cable	Callais Cablevision	Golden Meadow, LA	1989	East Indian	Terrebonne Cablevision, LP	Callais Cablevision, Inc.	Swapan K. Bose
9	Cable	Barden Cablevision		1989	Black	Barden Cablevision of Inkster, Inc.	N/A	
10	Cable	Brenmore Cable	Santa Clara, Calif.	1989	Hispanic	Brenmor Cable Partners, L.P.	Hearst Cablevision of California	Ray Hernandez
11	Cable	Robin Cable Systems	SC; TN; GA; AR	1989	Black	Robin Cable Systems, LP	Cooke Media Group, Inc.	Frank Washington
12	Cable	Melanie Cable	Gainesville, GA	1990	Black	Melanie Cable Partners, LP	United Artists Holdings, Inc.	Frank Washington
13	Cable	Smith Electronics Cable	Silver City, Mississippi	1990	Black	AMW Cablevision, LP	Louis A. Smith	Johnny Atkins, Wayne Wright, Louis McCray
14	Cable	Falcon Community	Washington & Georgia	1990	Black, Hispanic Alaskan Native	Falcon Community Enterprises, Inc.	Jack Kent Cooke, Inc., Cooke Media Grp.	
15	Cable	SVHH Cable Acquisition	NC; SC; VA	1990	Asian American	SVHH Holding, Inc.	Jack Kent Cooke, Inc., Cooke Media Grp.	Clarence Xi-Hun Koo
16	Cable	United Cable	Westlake, Texas	1991	Black	United Cable, Inc.	Cablevision Management, Inc.	Richard Mays
17	Cable	N-Com	Michigan	1992	Asian American	N-Com, Inc. and N-Com II, Inc.	N-Com Holding; Irish Hills Cablevision LP Omnicom CATV, LP	Harcharan S. Suri
18	Cable	RCS II	Knoxville & Nashville, TN	1992	Black	RCS-II, LP	Jack Kent Cooke, Inc., 1st Cablevision, Inc.	Frank Washington
19	Cable	TCI Cablevision of Georgia	Tocosa, Georgia	1992	Black	TCI Cablevision of Georgia, Inc.	First Cablevision, Inc.	Frank Washington
20	Cable	Melanie Cable	Gainesville, GA	1992	Black	Melanie Cable Partners, LP	Intermedia Capital Management of Gainesville, LP & TCI Development Corp.	Frank Washington
21	Cable	River Valley Cable	AZ; CA; CO	1993	Asian American	River Valley Cable, LP	Time Warner Entertainment Company, LP	John Smith
22	Cable	Mile Hi Cable	Denver, CO	1993	Black	Mile Hi Cable Partners, L.P.	Mile Hi Cablevision Associates, Ltd.	Robert Johnson
23	Cable	WTAC		1993	Black	WT Acquisition Corp.	Television Enterprises, Inc.	Alexander Green
24	Cable	Chambers Cable	San Bernardino, CA	1993	Hispanic & Black	The Marks Partners, LP	Chambers Communications Corp.	Albert Bracht & Richard Mays
25	Cable	Fanch Cable	Cortland & Jonestown, NY	1994	Hispanic	Fanch Communications of NY, LP	Sammons Communications of New York, Inc.	Ray Ramirez
26	Cable	River Valley Cable	Arizona	1994	Asian American	River Valley Cable, LP	Time Warner Entertainment Company, LP	John Smith
27	Cable	Mile Hi Cable		1994	Black	Mile Hi Cable Partners, L.P.	Liberty Cable Patners, LP	Robert Johnson
28	Cable	WTAC	Oklahoma & Arkansas	1994	Black	WT Acquisition Corp.	Transwestern Video, Inc.	Alexander Green
29	Cable	WTAC	Oklahoma & Texas	1994	Black	WT Acquisition Corp.	Time Warner Cable	Alexander Green
30	Cable	Robin Cable Systems	Arizona	1994	Black & Hispanic	Hernandez Comm. & Mitgo Corp.	TCI of Arizona, Inc.	Frank Washington & Ray Hernandez

	Call Letters	Location	Year Licensed	Year Held	Property Held by Purchaser	Sales Price	Ownership Group	Licenses	Shares	Principal Shareholders
1	FM	WYCH	Harrison, Ohio	1979	16	YES	N/A	Black		
2	AM	WAWA no. WEMP	Milwaukee, Wisconsin	1981	6	NO	N/A	Black		
3	FM	WAWA	Milwaukee, Wisconsin	1981	6	NO	N/A	Black		
4	FM	WBND (WQZR)	Mt. Clemens, Mich	1978	14	NO	N/A	Black		
5	AM	WADO	New York, NY	1987	7	NO	N/A	Hispanic		
6	AM	KTIT (KXED)	Los Angeles, Calif	1984	10	NO	N/A	Black		
7	FM	KUTE (KSCA)	Glendale, Calif	1979	7	NO	N/A	Black		
8	FM	K.A.B. (K.A.H.)	Compton, Calif	1979	16	YES	N/A	Black		
9	FM	FFOZ	Redondo Beach, Calif	1980	N/A	N/A	N/A	Black		
10	AM	KODA	Houston, Texas	1979	5	NO	N/A	Hispanic		
11	AM	WDRD	Jacksonville, Florida	1980	6	NO	N/A	Black		
12	FM	WJUN (WJYU)	Atlantic Beach, Florida	1979	1	NO	N/A	Black		
13	AM	KRBL	St. Charles, Missouri	1979	15	YES	N/A	Black		
14	AM	WOIZ	St. George, SC	N/A	N/A	N/A	N/A	Black		
15	AM	WVLD	New Orleans, LA	1980	13	No	N/A	Black		
16	FM	WVLD	New Orleans, LA	1980	13	No	N/A	Black		
17	AM	WESY	Telard, MS	1980	15	No	N/A	Black		
18	AM	WERA (WHRM)	Providence, RI	1980	7	No	N/A	Black		
19	AM	KLOD	Boston, Mass	1980	15	No	N/A	Black		
20	AM	KZON	Santa Maria, Calif	N/A	N/A	N/A	N/A	Hispanic		
21	AM	KIGI	San Francisco, Calif	1980	15	YES	\$3,000,000	Hispanic		
22	FM	WTWP	Mooresville, SC	N/A	N/A	N/A	N/A	Black		
23	AM	KEYN	Michata, Kansas	N/A	N/A	N/A	N/A	Black		
24	FM	KEYN	Michata, Kansas	N/A	N/A	N/A	N/A	Black		
25	AM	KTNQ	Los Angeles, CA	N/A	N/A	N/A	N/A	Hispanic		
26	AM	WJZK	Kissimmee, FL	N/A	N/A	N/A	N/A	Hispanic		
27	AM	WJFO	Pittsburgh, PA	1981	4	No	\$1,500,000	Black		
28	AM	WCDN	Carlisle, PA	N/A	N/A	N/A	N/A	Black		
29	FM	WCDN	Carlisle, PA	1981	5	No	N/A	Black		
30	FM	KNAC	Long Beach, CA	N/A	N/A	N/A	N/A	Black		
31	AM	WBCE	Williamsburg, VA	N/A	N/A	N/A	N/A	Black		
32	FM	WBCE	Williamsburg, VA	N/A	N/A	N/A	N/A	Black		
33	FM	WFLC	Indianapolis, IN	1981	1	No	\$4,302,921	Black		
34	AM	KNSE	Ontario, CA	N/A	N/A	N/A	N/A	Hispanic		
35	AM	KVSE	Pine Bluff, AR	N/A	N/A	N/A	N/A	Black		
36	AM	WNRD	Norman, OK	N/A	N/A	N/A	N/A	Ameg Indian		
37	AM	KONN	Brewer, WA	1981	5	No	\$750,000	Black		
38	AM	KATZ	St. Louis, MO	N/A	N/A	N/A	N/A	Black		
39	FM	WZEN	Allen, IL	N/A	N/A	N/A	N/A	Black		
40	AM	WHYZ	Greenville, SC	N/A	N/A	N/A	N/A	Black		
41	AM	WYAZ	Yazoo City, MS	N/A	N/A	N/A	N/A	Black		
42	FM	WVAB	Bridgeport, CT	N/A	N/A	N/A	N/A	Black		
43	AM	WERN (WAGG)	Birmingham, AL	1982	13	Yes	\$3,000,000	Black		
44	FM	WERN	Birmingham, AL	1982	13	Yes	N/A	Black		
45	AM	WATL	Clearwater, FL	N/A	N/A	N/A	N/A	Hispanic		
46	AM	WOKD (WQNA)	Albany, NY	1984	2	No	N/A	Black		
47	AM	WGOE (WFTH)	Richmond, VA	N/A	7	No	\$450,000	Black		
48	AM	WSMX	Winston Salem, NC	1982	13	Yes	\$600,000	Black		
49	AM	WUNO	San Juan, PR	1982	7	No	N/A	Hispanic		
50	FM	WMAK (WQQK)	Hendersonville, TN	1982	13	Yes	\$1,350,000	Black		
51	AM	WOKS	Columbus, GA	N/A	N/A	N/A	N/A	Black		
52	FM	WPEE	Columbus, GA	1985	3	No	N/A	Black		
53	AM	WCCN	Cincinnati, OH	1982	3	No	\$425,000	Black		
54	AM	KDCE	Spangola, NM	1982	12	Yes	\$825,000	Hispanic		
55	AM	RVSF	Santa Fe, NM	N/A	N/A	N/A	N/A	Hispanic		
56	AM	WRZR	Raleigh, NC	N/A	N/A	N/A	N/A	Black		
57	AM	WHIT	Miami, FL	N/A	N/A	N/A	N/A	Hispanic		
58	AM	KAYC	Beaumont, TX	1986	3	No	\$1,200,000	Black		
59	FM	KAYD	Beaumont, TX	1986	3	No	\$1,200,000	Black		
60	AM	KYNN	Omaha, NE	N/A	N/A	N/A	N/A	Black		
61	AM	KYST	Texas City, TX	N/A	8	No	\$548,000	Hispanic		
62	AM	WJAM	Madison, AL	N/A	N/A	N/A	N/A	Black		
63	AM	WTMP	Lampa, FL	1983	8	No	\$670,000	Black		
64	AM	KICA	Clavis, MO	1984	7	N/A	\$30,000	Hispanic	Amigos Radio, Inc.	KICA, Inc.
65	FM	KEZO	Omaha, NE	1988	5	No	N/A	Black		
66	FM	WHIT	Tuscola, IL	1984	3	No	N/A	Black		
67	FM	WDZZ	East, MI	1984	6	No	N/A	Black		
68	AM	WACR	Columbus, MS	1984	4	No	N/A	Black		
69	FM	WACR	Columbus, MS	1984	4	No	N/A	Black		
70	FM	WJOY	Chickasaw, AL	1984	4	No	N/A	Hispanic		
71	AM	TELF	New Roads, LA	1984	4	No	N/A	Black		
72	FM	KDYL	New Roads, LA	1984	11	N/A	N/A	Black		
73	FM	KIOD	Atascadero Obispo, CA	1984	11	N/A	N/A	Hispanic		
74	AM	WSTA	St. Thomas, VI	1984	11	N/A	N/A	Black	Orraly Communications Corp.	V.I. Industries, Inc.
75	AM	WITB	Baltimore, MD	1985	1	No	N/A	Black		
76	AM	KCAS	Staten, TX	1985	2	No	N/A	Hispanic		
77	AM	WANT	Richmond, VA	1985	3	No	N/A	Black		
78	AM	WLEY	Bladock, PA	1985	8	No	N/A	Black		
79	AM	KSGR	Wendover, CO	1985	10	N/A	N/A	Hispanic		

Line	Call	City	State	Year	Power	By	Price	Group	Licensee	Seller	General Partner
4	AM	WZLX	Los Angeles, CA	1985	10	N/A	N/A	Hispanic			
5	AM	KRCI	Liberty, MO	1985	10	N/A	N/A	Black			
6	AM	WRNG	Nawman, GA	1985	3	No	N/A	Black			
7	AM	KDAB	Ogden, UT	1985	5	No	N/A	Black			
8	AM	WFLR	Doraville, GA	1985	3	No	N/A	Black			
9	AM	WGDS (WAGH)	Waukegan, IL	1985	4	No	N/A	Hispanic	Price Communications, Inc	REB Radio, Inc	
10	AM	WESJ	Newark, NJ	1988	5	No	N/A	Hispanic			
11	AM	KCSJ	Pueblo, CO	1986	2	No	N/A	Black	Sunbrook Broadcasting Inc	Miller Communications, Inc	
12	AM	KLIX	Mercer Island, WA	1988	2	No	N/A	Black	Thunder Bay Communications Inc	Mark Peterson & Walter Hetsing	
13	AM	KLIX	Seattle, WA	1988	2	No	N/A	Black	Thunder Bay Communications Inc	Mark Peterson & Walter Hetsing	
14	AM	WRDQ	Daytona Beach, FL	1986	8	N/A	N/A	Hispanic	LaPer Broadcasting Inc	Daytona Beach Radio Ltd	
15	AM	WHP	Darien, MI	1986	2	No	N/A	Black			
16	AM	WSSV	Fairfax, VA	1986	5	No	N/A	Black	Paco Jon Broadcasting Corp	Cuse Communications, Inc	
17	AM	WFLZ	Fairfax, VA	1986	5	No	N/A	Black	Paco Jon Broadcasting Corp	Cuse Communications, Inc	
18	AM	WLVW	Salisbury, MD	1986	3	No	N/A	Hispanic	HVS Partners/Salisbury	Radio Salisbury, Inc	
19	AM	WESI	El St Louis, R	1986	8	N/A	N/A	Black	Gateway Communications Corp	WEST, Inc	
20	AM	KRWZ	Palm Desert, CA	1986	2	No	\$700,000	Black			Keith Bass & Kenneth Bass
21	AM	WAEK	Akron, OH	1986	1	No	N/A	Black			
22	AM	WONE	Akron, OH	1986	1	No	N/A	Black			
23	AM	WQMG	Alamogordo, FL	1986	8	N/A	N/A	Black			
24	AM	WQMG	Alamogordo, FL	1986	8	N/A	N/A	Black	Spanish Broadcasting System of FL, Inc	Radio WQMG, Inc	
25	AM	KGFJ	Los Angeles, CA	1986	8	N/A	N/A	Black	East West Broadcasting Inc	Inner City Broadcasting Corp	
26	AM	WOKS	Columbus, GA	1987	8	Yes	N/A	Black	Devis Broadcasting, Inc	Woodfin Group	
27	AM	WFAE	Columbus, GA	1987	8	Yes	N/A	Black	Devis Broadcasting, Inc	Woodfin Group	
28	AM	WTHB	Augusta, GA	1987	8	Yes	N/A	Black	Devis Broadcasting, Inc	Woodfin Group	
29	AM	WFXA	Augusta, GA	1987	8	Yes	N/A	Black	Devis Broadcasting, Inc	Woodfin Group	
30	AM	WFLS	Philadelphia, PA	1987	8	Yes	N/A	Black	TM Communications, Inc	WFLS, Inc	Shafiq Tak
31	AM	WIND	Philadelphia, PA	1988	6	No	N/A	Black	Quality Communications, Inc	Northside, Inc	
32	AM	WSAI (WFFZ)	Clintong, CT	1988	N/A	N/A	N/A	Black	Inner Urban Broadcasting of Cincinnati Inc	Mortenson Broadcasting Company	Mr. Wilson W. M. Wong
33	AM	WVOI	Toledo, OH	1987	6	No	\$663,000	Black			
34	AM	WBLG (now WLKR)	Eng, PA	1987	2	No	\$400,000	Black	Greater Erie Economic Corp	Jeri Broadcasting Co., Inc	
35	AM	KBA	Mission, KS	1987	N/A	N/A	N/A	Black			
36	AM	KXTR	Kansas City, MO	1987	8	Yes	N/A	Black			
37	AM	KWVO	Batesburg, SC	N/A	N/A	N/A	N/A	Black	Columbia Christian Radio, Inc	Wheeler Broadcasting, Inc	
38	AM	LYEA	West Monroe, LA	1987	8	Yes	N/A	Black	Phoenix Broadcasting Company	Morgan Broadcasting Corp	
39	AM	KAEZ (KRRQ)	Indianapolis, IN	1988	3	N/A	N/A	Black			
40	AM	WLYD	Andalusia, AL	N/A	N/A	N/A	N/A	Black	Dr. John Robert E. Lee	Triple H Broadcasting Inc	
41	AM	WLYD (now WXCR)	Andalusia, AL	N/A	N/A	N/A	N/A	Black	Dr. John Robert E. Lee	Triple H Broadcasting Inc	
42	AM	WPGC	Morningside, MD	1987	1	No	\$177,000,000	Alaskan Native	Cook Inlet Radio Partners, L.P.	First Media Corp	
43	AM	WPGC	Morningside, MD	1987	1	No		Alaskan Native	Cook Inlet Radio Partners, L.P.	First Media Corp	
44	AM	KFMV (now KQVO)	Provo, UT	1987	1	No		Alaskan Native	Cook Inlet Radio Partners, L.P.	First Media Corp	
45	AM	KFMV (now KXRE)	Provo, UT	1987	1	No		Alaskan Native	Cook Inlet Radio Partners, L.P.	First Media Corp	
46	AM	KOPB	Scottsdale, AZ	1987	1	No		Alaskan Native	Cook Inlet Radio Partners, L.P.	First Media Corp	
47	AM	KSLK	Scottsdale, AZ	1987	1	No		Alaskan Native	Cook Inlet Radio Partners, L.P.	First Media Corp	
48	AM	WJGG	Atlanta, GA	1987	1	No		Alaskan Native	Cook Inlet Radio Partners, L.P.	First Media Corp	
49	AM	KFMK	Houston, TX	1987	1	No		Alaskan Native	Cook Inlet Radio Partners, L.P.	First Media Corp	
50	AM	WFLX	Boston, MA	1987	2	No		Alaskan Native	Cook Inlet Radio Partners, L.P.	First Media Corp	
51	AM	WUSN	Chicago, IL	1987	5	No		Alaskan Native	Cook Inlet Radio Partners, L.P.	First Media Corp	
52	AM	KUBE	Seattle, WA	1987	5	No		Alaskan Native	Cook Inlet Radio Partners, L.P.	First Media Corp	
53	AM	KNOB	Longbeach, CA	1987	8	Yes	N/A	Hispanic	Spanish Broadcasting System of FL, Inc	Pennino Music Co., Inc	Raul Altescon, Sr.
54	AM	WSAY	Salem, VA	N/A	N/A	N/A	N/A	Black			
55	AM	WJOY	Fl Lauderdale, FL	1988	N/A	N/A	N/A	Black	TM Broadcasting Corp	Tramont Group, Ltd	Mr. Sherad Tak
56	AM	WZRC	Das Plains, R	1988	N/A	N/A	N/A	Black	First Metro Mass Media, Inc	Wall West Enterprise, Inc	Vernon Merrill, Jr
57	AM	WWSG	Mt. Clemens, MI	N/A	N/A	N/A	N/A	Black			
58	AM	WEZS	Richmond, VA	1988	N/A	N/A	N/A	Black	Ragan Henry National Radio L.P.	Professional Broadcasting, Inc	Ragan A. Henry
59	AM	KCNW	Fairway, KS	1988	6	Yes	\$9,500,000	Hispanic			
60	AM	WDCI	Fairfax, VA	1988	6	Yes		Hispanic			
61	AM	KTEK	Atum, TX	1988	6	Yes		Hispanic			
62	AM	WVLO	Jackson, WI	1988	6	Yes		Hispanic			
63	AM	KWJS	Fl Worth, TX	N/A	N/A	N/A	N/A	Hispanic			
64	AM	KLXL	Golden Valley, MN	1988	6	Yes		N/A			
65	AM	WZJY	Mt. Pleasant, SC	1988	3	No	\$272,000	Black	Jesse N. Williams, Jr	William G Dudley, III	
66	AM	WCFR	Springfield, VT	1988	5	No	N/A	Black	Quality Communications, Inc	Connecticut Valley Broadcasting Corp, Inc	Wilson W.M. Wong
67	AM	WCFR	Springfield, VT	1988	5	No	N/A	Black			
68	AM	WPZZ	Franklin, IN	1988	6	Yes	\$703,000	Black	FM 95 Corporation	Radio Franklin, Inc	Bishop L.E. Walls, Sr
69	AM	WOLA	Memphis, TN	1988	6	Yes	\$13,000,000	Black			
70	AM	WVHK	Memphis, TN	1988	6	Yes		Black	Ragan Henry National Radio Assoc LP	Adams Radio of Memphis, Inc	Ragan A. Henry
71	AM	KTMN	Lewis, MI	1988	6	Yes	\$600,000	Asian American	FM 97 Associates, L.P.	Galaxy Communications, L.P.	Milton Ozadi, Wallace Otsuka, John Wada, & Peter Yokamora
72	AM	WDRN (WHBS)	Elk Grove, IL	1988	N/A	N/A	N/A	Black	WORL Radio, Inc	Metropolis Communications, Inc	Wally J. Martin
73	AM	WDAO	Dayton, OH	1988	6	Yes	\$725,000	Black	Johnson Communications Inc	Stoner Broadcasting Sys of Ohio, Inc	
74	AM	KEGF	Great Falls, MT	1988	6	N/A	N/A	Black	Sunbrook Communications LP	Cardon Broadcasting Inc	Edward & Alan Cooper
75	AM	RAAK	Great Falls, MT	1988	N/A	N/A	N/A	Black	Sunbrook Communications LP	Cardon Broadcasting Inc	Edward & Alan Cooper
76	AM	WBXI (WCER)	Canton, OH	1987	4	No	\$85,000	Black			
77	AM	WFDK	Ft. St. MI	1988	2	No		Black	Erie Coast Communications Inc	Flux Metro Mass Media, Inc	Ms. Cheryl A. Walls
78	AM	WDDZ	Ft. St. MI	1988	5	No		Black	Erie Coast Communications Inc	Flux Metro Mass Media, Inc	Ms. Cheryl A. Walls
79	AM	KWZD (KCDD)	Hamden, TX	1988	4	No	\$1,089,250	Black			
80	AM	KRIM (KREB or KJM)	Sherman, TX	1988	4	No	\$525,000	Hispanic			
81	AM	WVTS (WVPT)	Phoenicia, PA	1988	6	Yes	\$1,500,000	Hispanic	Radio Salvation, Inc	Dr. B Sam Hart	
82	AM	KNZO	Henderson, NV	1988	6	Yes	\$6,700,000	Hispanic	Commonwealth Broadcasting of No. CA	Prinnacle Communications Acquisition Corp	Michael D. Padua

#	NAME	NAME OF LICENSEE	LIC. OF LICENSE	Issued	Term filed	By Purchaser	Sales Price	GROUP	LICENSEE	Seller	General Partner
159	FM	WKTR	Lafayette MD	1991	4	No	\$5,000,000	Black	Broad Based Communications I.P.	William Lee Dalton	Vincent A. Henry
160	FM	KFSI	San Francisco, CA	1988	6	Yes	16,000,000	Black	Douglas Broadcasting, Inc.	Marvin Kosofsky	N. John Douglas
161	FM	KMAX	Arcadia CA	1988	6	Yes	\$17,000,000	Black			
162	AM	WJMC	Woodward, NJ	1989	4	No	\$3,350,000	Black	Verah National Radio LP	Ray Broadcasting Company	Regan A. Henry
163	FM	WKFL (WZT)	Walden, NJ	1989	4	No	\$3,350,000	Black	Verah National Radio LP	Ray Broadcasting Company	Regan A. Henry
164	AM	WMDA	Wheaton, MD	1989	6	Yes	1,000,000	Hispanic	Los Corales Television Corp.	Maryland Lotus Corporation	
165	FM	WKYS	Washington, DC	1988	5	No	\$5,000,000	Black	Albmar Properties L.P.	National Broadcasting Co.	Bertram Lee, E. W. Farley, et al
166	AM	WNYM (WWRV)	New York, NY	1989	5	Yes	\$17,000,000	Hispanic	Radio Vision Christiana Mgmt Corp	Salem Media Corporation	
167	FM	KLFA	King City, CA	1989	5	Yes	\$1,000,000	Hispanic	Tiga Radio Corporation	Rain Broadcasting Corp	Hector Villedobos & Carlos Moncada et al.
168	FM	WQWJ	Norfolk, VA	1989	0 83	No	\$8,300,000	Black			
169	AM	WRRJ (WRRJ)	Jacksonville, FL	1990	2	No	\$2,800,000	Black	New Chiefs, Inc.	WRXJ, Inc.	Regan A. Henry
170	FM	WRRJ (WRRJ)	Jacksonville, FL	1990	2	No	\$2,800,000	Black	New Chiefs, Inc.	WRXJ, Inc.	Regan A. Henry
171	AM	WLWH (WIAI)	Manchester, CT	1989	1	No	\$519,600	Hispanic	Elo Broadcasting, Inc.	Sage Broadcasting	Carlos Lopez
172	AM	WZLO	Tupelo MS	1989	4	No	\$1,100,000	Black	Phoenix of Tupelo, Inc.	Big Thicket Broadcasting Co.	Samuel Howard
173	FM	WZLO	Tupelo MS	1989	4	No	\$1,100,000	Black	Phoenix of Tupelo, Inc.	Big Thicket Broadcasting Co.	Samuel Howard
174	FM	WKLE (WRRZ)	Johnstown, OH	1989	5	No	\$18,250,000	Black	Regan Henry National Radio L.P.	Black River Broadcasting Co., Inc.	Regan Henry
175	AM	WRWA	Reading PA	1989	1	No	\$1,000,000	Black	Eight Chiefs, Inc.	City Broadcasting, Inc.	Regan A. Henry
176	FM	WRWY	Reading PA	1989	2	No	\$1,000,000	Black	Eight Chiefs, Inc.	City Broadcasting, Inc.	Regan A. Henry
177	AM	WMGR	Barnbridge, GA	1989	5	No	\$1,175,000	Black	Walton Partners, LP	Guardian Corporation	Patrick Swygert
178	FM	WJAD	Barnbridge, GA	1989	5	No	\$1,175,000	Black	Walton Partners, LP	Guardian Corporation	Patrick Swygert
179	FM	WOFM (WMYK)	Moyock, NC	1989	5	Yes	\$1,000,000	Black			
180	AM	WARR	Warrington, NC	1989	N/A	N/A	\$250,000	Black	1520 Broadcasting Corp.	Warren Broadcasting Corp.	Charles Estella & Eric Reynolds
181	AM	WFGS	Tampa, FL	1989	2	No	\$1,700,000	Hispanic	WTIS AM, Inc.	Forus Communications of FL, Inc.	Me. Albertson
182	AM	KCCV (KCTE)	Independence, MO	1989	5	Yes	\$700,000	Black	Tarstock, Inc.	Boji Broadcasting Company	Regan A. Henry
183	AM	WONE	Alton, OH	1989	4	No	\$513,000	Black	B&B Radio, Inc.	Summit Alton Biscuiting Corp.	Regan A. Henry
184	FM	WONE	Alton, OH	1989	4	No	\$513,000	Black	B&B Radio, Inc.	Summit Alton Biscuiting Corp.	Regan A. Henry
185	AM	EDFI	Farris, TX	1990	3	No	\$1,650,000	Black	Wills Broadcasting	Lois S. Crum & Albert B. Crum	L. E. Wills
186	FM	KFXZ	Maurice LA	1990	4	Yes	\$1,300,000	Black	City Wide Broadcasting	Wills Acquisition Corp.	Wills E. Tucker
187	AM	WVYN (WMLSI)	Tallahassee, FL	1990	N/A	Yes	\$2,800,000	Hispanic	Arso Radio Corp.	Palmer Communications, Inc.	Jesus M. Soto
188	AM	KZOL	N/A	1988	1	N/A	N/A	N/A			
189	FM	WTNT	Tallahassee, FL	N/A	N/A	N/A	N/A	Hispanic	Arso Radio Corp.	Palmer Communications, Inc.	Jesus M. Soto
190	FM	WDSR	Lake City, FL	1990	1	No	\$1,150,000	Hispanic	Arso Radio Corp.	Holder Media, Inc.	Jesus M. Soto
191	FM	WDSR	Lake City, FL	1990	1	No	\$1,150,000	Hispanic	Arso Radio Corp.	Holder Media, Inc.	Jesus M. Soto
192	AM	WFTH	Richmond, VA	1990	N/A	N/A	\$450,000	Black	Tri City Christian Radio, Inc.	Wills Broadcasting Corp.	James I. Johnson, Jr.
193	AM	EBE	Jacksonville, TX	1990	1	No	\$3,250,000	Black	BroadBased Commun, Inc.	Waller Broadcasting	Vincent A. Henry
194	FM	KOOI	Jacksonville, TX	1990	1	No	\$3,250,000	Black	BroadBased Commun, Inc.	Waller Broadcasting	Vincent A. Henry
195	AM	KVLG	La Grange, TX	1990	1	No	\$375,000	Asian American	LaGrange Broadcasting	Fayette Broadcasting Corp.	Roy Henderson
196	FM	KBJK	La Grange, TX	1990	1	No	\$375,000	Asian American	LaGrange Broadcasting	Fayette Broadcasting Corp.	Roy Henderson
197	AM	KLVJ	Haynesville, LA	1990	1	No	\$700,000	Black	Hawkins Broadcasting Co.	Haynesville Biscuiting Corp.	Raymond E. Hawkins
198	FM	KLVJ	Haynesville, LA	1990	1	No	\$700,000	Black	Hawkins Broadcasting Co.	Haynesville Biscuiting Corp.	Raymond E. Hawkins
199	AM	WAMI	Intervale, FL	1990	3	No	\$265,000	Hispanic	Florida American Broadcasting, Inc.	Sage Broadcast of Daytona	Angel F. Bocanegra
200	FM	KRTX	Galveston, TX	1990	N/A	N/A	\$850,000	Asian American	Sarcoma Media Corp.	Sam Davis	Roy E. Henderson
201	AM	WBZN NOW WBXJ	Racine, WI	1990	3	No	\$175,000	Black	Three Chiefs, Inc.	Adams Radio of Milwaukee	Regan A. Henry
202	FM	WBZN	Racine, WI	1990	3	No	\$175,000	Black	Three Chiefs, Inc.	Adams Radio of Milwaukee	Regan A. Henry
203	AM	WGAR	Cleveland OH	1990	2	No	\$200,000	Black	N. John Douglas	Nationwide Commun, Inc.	N. John Douglas
204	FM	W5RO	New York NY	1990	2	No	\$42,500,000	Hispanic	Spanish Broadcasting System of NY, Inc.	The Forward Association	
205	AM	KHVV	El Paso, TX	1990	1	No	\$8,370,000	Black	U.S. Radio, L.P.	WHEV, Inc.	Regan A. Henry
206	AM	KHVV	El Paso, TX	1990	1	No	\$8,370,000	Black	U.S. Radio, L.P.	WHEV, Inc.	Regan A. Henry
207	AM	WBTE	Windsor, NC	1990	1	No	\$1,300,000	Black	93 Broadcasting Corp.	WHEV, Inc.	Regan A. Henry
208	FM	WMD	Havana, FL	1990	3	Yes	\$1,650,000	Black	Niramal, Inc.	JH Winston	Dr. John Robert E. Lee & Wills J. Martin
209	FM	WXRI	Windsor, VA	1990	1	No	\$450,000	Black	Wills Broadcasting Corp.	JD Communications	
210	AM	KVOZ	Laredo, TX	1990	1	No	\$2,960,000	Black	Broad Based Communications, Inc.	Border Broadcasters, Inc.	Vincent Henry
211	FM	KOYE	Laredo, TX	1990	1	No	\$2,960,000	Black	Broad Based Communications, Inc.	Border Broadcasters, Inc.	Vincent Henry
212	FM	KOKI (NOW KTHH)	Osage, OK	1990	5	Yes	\$1,400,000	Black	Integrated Broadcasting, Inc.	Brewer Communications Inc.	Benjamin F. Davis
213	AM	KAM	Wilton, TX	1990	4	Yes	\$150,000	Black	Martin Broadcasting, Inc.	Ammerman Enterprises, Inc.	Darrell E. Martin
214	AM	WRSO	Orangeburg, SC	1990	4	Yes	\$1,015,000	Black	Wills Broadcasting Corp.	Wills-Posey Broadcasting	
215	FM	WBIK	Mobile, AL	1990	4	Yes	\$9,250,000	Black	Apri Broadcasting, Inc.	Tri Broadcasting, Inc.	Jon Smith
216	AM	WBXL	Fairhope, AL	1990	4	Yes	\$1,000,000	Black	Apri Broadcasting, Inc.	Tri Broadcasting, Inc.	Jon Smith
217	AM	WAPA	San Juan Puerto Rico	1991	3	Yes	\$1,820,000	Hispanic	Carlos Ventura, Alfredo Blanco P., G.P.	The Hearst Co.	Carlos Colon Ventura, Alfredo G. Blanco P., G.P.
218	AM	KJUN	Puyallup, Washington	1991	4	Yes	\$750,000	Asian	Joy Broadcasters, Inc.	777 Broadcasting Inc.	Barbara Geesman
219	AM	WKZN (INDW WIAM)	Gorham, ME	1991	4	Yes	\$50,000	Black	Broadcasting Communications Inc.	The Great Portland Wireless	Ronald Wright, Raymond Coleman & Eric Reed
220	FM	WMTT	Morrisstown, NJ	1991	2	No	\$300,000	Black	Signal Communications, LP	Drexel Hill Associates, Inc.	
221	FM	WHDH	Dover, NJ	1991	2	No	\$300,000	Black	Signal Communications, LP	Drexel Hill Associates, Inc.	
222	AM	KHOZ	Harrison, AR	1990	2	No	\$1,250,000	Hispanic			
223	FM	KHOZ	Harrison, AR	1990	2	No	\$1,250,000	Hispanic			
224	AM	KONG	Lafayette, LA	1991	3	Yes	\$1,500,000	Hispanic	Sanchez Communications Corp.	John Huston Corp.	Rodney T. Sanchez
225	FM	KONG	Lafayette, LA	1991	3	Yes	\$1,500,000	Hispanic	Sanchez Communications Corp.	John Huston Corp.	Rodney T. Sanchez
226	AM	KDOS	Laredo, TX	1990	4	Yes	\$250,000	Hispanic			
227	FM	WMXR	Richmond, VA	1991	1	No	\$1,750,000	Black			
228	FM	KWIZ	Santa Ana CA	1991	3	Yes	\$8,700,000	Black			
229	AM	WRFL	Treasure, IL	1991	3	Yes	\$900,000	Asian American			
230	FM	WKXG	Freeport, IL	1991	3	Yes	\$1,000,000	Asian American			
231	FM	WURB	Windsor, NC	1992	2	No	\$413,000	Black	93 Broadcasting, Corp.	Wills Broadcasting Corp.	Eric Reynolds & Charles Reynolds
232	FM	KWIZ	Santa Ana CA	1992	2	No	\$8,750,000	Black	Radio KWIZ Partners, L.P.	Liberian Broadcasting, Inc.	John Douglas
233	AM	WTRM	Sanford, FL	1992	2	Yes	\$300,000	Hispanic			
234	FM	WSLM	Salem, IN	1992	1	No	\$2,400,000	Black	U.S. Radio III	Don Martin	Regan A. Henry
235	AM	KDJJ	San Luis Obispo, CA	1993	1	Yes	\$155,000	Hispanic	Jame Bonilla Valdez	Patricia Jacobsen d/	
236	AM	KHZZ	Carmel Valley, CA	1993	2	Yes	\$84,000	Hispanic	Central Coast Communications, Inc.	Jerry J. Collins	Jame Bonilla Valdez & Mateo R. Camarillo
237	FM	KRLF	Gonzales, CA	1993	2	Yes	\$84,000	Hispanic	Central Coast Communications, Inc.	Jerry J. Collins	Jame Bonilla Valdez & Mateo R. Camarillo

#	Radio	Name of Property	City of License	Issued	Years Held	by Purchase	Sales Price	Owner	Licensee	Buyer	General Partner
236	FM	KRRG	Laredo TX	1993	1	Yes	\$1,200,000	Hispanic	Encarnacion A. Guerra	Sunbelt Radio Group, Inc.	
239	FM	KARU	Raymondville, TX	1993	2	Yes	\$18,000	Hispanic	Christian Ministries of the Valley, Inc.	Lucille Ann Lacy	
240	FM	KFOR	Redondo Beach, CA	1990	2	Yes	\$7,500,000	Asian American	Chapel Communications, Inc.	Torrence Media Partners	
241	AM	KCAL	Redmond, CA	1993	2	Yes	N/A	Hispanic	Redlands Radio, Inc.	Sage Communications	Luis Nogales
242	AM	KNTA	San Jose, CA	1993	2	Yes	\$1,400,000	Hispanic	Impara Enterprises, Inc.	Intertrack Communications, Inc.	Genaro V. Guere
243	FM	KSQL	San Mateo, CA	1990	4	Yes	\$15,500,000	Hispanic	KSQL, LP	International Radio, Inc.	Velasquez
244	AM	WSSO	Stirling, IL	1993	1	No	\$2,851,000	Black	LM&S Communications, Inc.	Stirling Radio Stations, Inc.	Larry Sales & Howard Murphy
245	FM	WSSO	Stirling, IL	1993	1	No		Black	LM & S Communications Inc	Stirling Radio Stations, Inc.	Larry Sales & Howard Murphy
246	AM	WBZZ	Jackson, GA	1993	2	Yes	\$270,000	Black	Brown Broadcasting System, Inc.	Named Broadcasting, Inc.	Bradford Brown
247	AM	KRRS	Santa Rosa, CA	1993	2	Yes	\$400,000	Hispanic	Moon Broadcasting Corp.	Kaffca, Inc.	Abel de Luna
248	AM	KJPN	Wapakoneta, OH	1994	1	Yes	\$415,000	Asian	D B 2001 Company	Lowie Broadcasting	
249	AM	WLV	Louisville, KY	1994	1	Yes	\$375,000	Black			
250	AM	KALI	San Gabriel, CA	1994	1	Yes	\$5,750,000	Asian American	Polyethnic Broadcasting	United Broadcasting Co.	Arthur Liu
251	AM	KURS	San Diego, CA	1994	1	Yes	\$731,159	Hispanic	News Base, Inc.	Mateo Comarallo et al.	Jama Valdes
252	AM	KMYC	Marysville, CA	1994	1	Yes	\$1,500,000	Hispanic	Marysville Radio, Inc.	River Cities Radio, LP	Luis Nogales
253	FM	KRFD	Marysville, CA	1994	1	Yes		Hispanic			
254	FM	KHTX	Riverside, CA	1994	1	Yes	\$10,000,000	Hispanic	San Bernardino Radio, Inc.	Henry Broadcasting Co.	Luis Nogales
255	AM	KHTX	San Bernardino, CA	1994	1	Yes		Hispanic	San Bernardino Radio, Inc.	Henry Broadcasting Co.	Luis Nogales
256	FM	KQDR	Galveston, TX	1994	1	Yes	\$10,500,000	Hispanic	El Dorado Communications	KQDR, Inc.	Thomas Castrow
257	FM	KMGX	San Fernando, CA	1994	1	Yes	N/A	Asian American	Shapel Broadcasting, Inc.	Buckley Communications	Warren W. Cheng
258	AM	WEDN	New York, NY	1995	0	Yes		Asian American	Way Broadcasting, Inc.	United Broadcasting, LP	Arthur Liu
259	AM	KRCX	Roseville, CA	1995	0	Yes	\$2,975,000	Hispanic	Roseville Radio, Inc.	Fuller Jeffrey Broadcasting	Luis Nogales
260	FM	KQJJ	East Porterville, CA	1995	0	Yes	N/A	Black	AZIA's Entertainment, Inc.	Tulare Life Corp.	Shelby & Ledoris Johnson
* Indicates that the property was acquired as a part of the previous transaction.											
260	TOTAL			228	Average		Average				
117	FM's				4.58						
103	AM's					78	\$3,371,260				

Line	Radio	Call Letters/ Name of Proprietor	Location/ City of License	Year Issued	Certificate Years Held	Property De Purchaser	Value \$100,000	Ownership Group	Licensee	Sales	Principal Shareholder/ General Partner
1	FM	WSIX	Christiansburg, VA	1985	5	Yes	1575,000	Black	Family Broadcasting Inc	Suburban Caribbean Communications	Glenn R Mahone
2	AM	WGHI	Newport News, VA	1990	5	Yes	N/A	N/A	Pace Jon Broadcasting Corp of VA	Susquehanna Broadcasting Corp	Glenn R Mahone
3	FM	WGHI	Newport News, VA	1990	5	Yes	N/A	N/A	Pace Jon Broadcasting Corp of VA	Susquehanna Broadcasting Corp	Glenn R Mahone
4	FM	KYFA	West Monroe, LA	1990	5	Yes	\$3,000,000	Black	Broad Based Communications Inc	Phoenix Broadcasting Company	Vincent A. Henry
5	AM	WABJ	Adrian, MI	1990	3	No	\$1,500,000	Hispanic	Friends of Communications of Michigan Inc	Mid America Radio Group, Inc	Eugene Bryan
6	FM	WDTE	Adrian, MI	1990	3	No	\$1,500,000	Hispanic	Friends of Communications of Michigan Inc	Mid America Radio Group, Inc	Eugene Bryan
7	AM	WGLJ	Jacksonville, FL	1989	6	Yes	\$510,000	Black	JBD Communications, Inc	Antelope Broadcasting, Inc	Deborah Maden & Barbara Battle
8	AM	ERTH (KRJJ)	Los Angeles, CA	1990	5	Yes	\$23,000,000	Hispanic	Liberman Broadcasting, Inc	Beasley AM Acquisitions Corp	Hoss Liberman & Leonard Liberman
9	FM	ERTK	Galveston, TX	1990	5	Yes	\$850,000	Asian	Sonoma Media Corp	Asian Davis	Roy E. Henderson
10	FM	WWOQ	Wilmington, NC	1990	N/A	N/A	N/A	Hispanic	HVS Partners	Woolson Broadcasting Corp of Wilmington Inc	Greta B. Huberman
11	FM	EROB	N/A	1991	N/A	N/A	N/A	Hispanic	KDOS, Ltd	Coastal Bond Broadcasting Corp	Luis Munoz, Al Herrera, Amador Garcia
12	N/A	ESLO (RRCDI)	Riverside, CA	1990	5	Yes	\$3,575,000	Hispanic	Fouze Amusement Enterprises, Inc	Sunland Broadcasting Co., Inc.	Frank and Betty Fouze
13	FM	WETM	Waldorf, MD	1991	3	No	\$33,000,000	Black	Communications Management National L.P.	Broad Based Communications L.P.	Ragan A. Henry
14	FM	WDNA	Durham, NC	1991	1	No	\$12,000,000	Black	Sighe Communications L.P.	Dream 148 Associates, Inc.	Ragan A. Henry
15	AM	EMDY	Thousand Oaks, CA	1991	4	Yes	\$300,000	Hispanic	Rena Ventura Communications	Candy Broadcasting Co.	Daniel Villaverde
16	AM	EHQZ	Hanson, AK	1991	1	No	\$2,000,000	Hispanic	New Century Broadcasting Co	Harrison Broadcasting Co	John Rodriguez
17	FM	EHQZ	Hanson, AK	1991	1	No		Hispanic	New Century Broadcasting Co	Harrison Broadcasting Co	John Rodriguez
18	AM	WGTM	Hanson, NC	1991	4	Yes	1450,000	Black	Spirit Broadcasting Inc	Good Faith Broadcasting, Inc.	Celestine I. Walks
19	N/A	WMXB	Richmond, VA	1991	N/A	N/A	\$23,000,000	Black	Ragan Henry Communications Group L.P.	Professional Broadcasting	Ragan Henry Broadcasting Group
20	AM	FRZY	Albuquerque, NM	1990	5	Yes	\$8,100,000	Hispanic	Commonwealth Broadcasting of Northern CA	Wagontrain Broadcasting Corp	Michael D. Padilla
21	FM	FRST	Albuquerque, NM	1990	5	Yes		Hispanic	Commonwealth Broadcasting of Northern CA	Wagontrain Broadcasting Corp	Michael D. Padilla
22	FM	WISV	Windsor, VA	1990	N/A	N/A	1450,000	Black	Wish Broadcasting Corp	24 Communications	Vincent A. Henry
23	FM	WFFM	Panama City, FL	1990	2	No	\$1,500,000	Black	Broad Based Communications, Inc.	Cubaseer Communications, Inc.	W. Patrick Swigert
24	FM	WWKI	Kokomo, IN	1992	3	Yes	\$6,160,000	Black	Waldron Partners, L.P.	Shepard Communications, Inc.	W. Patrick Swigert
25	AM	WNVM	New York, NY	1988	N/A	N/A	N/A	N/A	Radio Vision Christiana Management Corp	Salem Media Corp	
26	AM	KALO	Port Arthur, TX	1994	N/A	N/A	N/A	Black	Faith Broadcasting L.P.	Clear Channel Radio Licenses, Inc.	Anthony R. Chase
27	FM	KHYS	Port Arthur, TX	1994	N/A	N/A	N/A	Black	Faith Broadcasting L.P.	Clear Channel Radio Licenses, Inc.	Anthony R. Chase
28	FM	KLUR	Wichita Falls, TX	1990	N/A	N/A	N/A	Black	Broad Based Communications	Sam F. Beard & Pamela S. Beard	Vincent A. Henry
29	FM	WXRZ	Charleston, MI	1990	N/A	N/A	N/A	Black	A. J. Walker Communications, Inc.	Lakeshore Communications	Charles L. Walker & Evelyn S. Walker
30	AM	WYWR	Brunswick, GA	1988	N/A	N/A	N/A	Black	Silver Star Communications Albany, Inc.	Southeast Broadcasting, Inc.	Dr. John Robert E. Lee
31	FM	WPGO	Brunswick, GA	1988	N/A	N/A	N/A	Black	Silver Star Communications Albany, Inc.	Southeast Broadcasting, Inc.	Dr. John Robert E. Lee
32	FM	IAEZ (RRKO)	Oklahoma City, OK	1988	N/A	N/A	N/A	Black	All American Broadcasting Corp		James E. Miller & Jacquelyn Miller
33	FM	KHIN	Piacerville, CA	1988	N/A	N/A	N/A	Black	Spectrum Broadcasting Limited, Inc.	Foothill Broadcasting Corp.	John Douglas

Congress of the United States
JOINT COMMITTEE ON TAXATION
Washington, DC 20515-6453

February 2, 1995

William E. Kennard, Esq. (VIA FAX)
General Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 614
Washington, D. C. 20554

Dear Mr. Kennard:

We would like to confirm our understanding of certain information that we (and the Subcommittee on Oversight of the Ways and Means Committee) have requested from you, and ask that you provide the requested information as soon as possible. Please transmit each piece of information as it becomes available. Please let me know in writing when we can expect to receive each piece of information.

We need the following information:

(1) the number of licenses that have been transferred by a minority (or by a minority-controlled entity) after the license had been acquired pursuant to a tax-certified transaction (and the length of time between the acquisition and subsequent transfer for each of these transactions);

(2) the number of tax certificates that have been issued to parties that have contributed start-up capital to a minority (or a minority-controlled entity) to acquire broadcast or cable properties;

(3) the size (i.e., the customer base) of each cable system that has been sold pursuant to a sale in which a tax certificate was issued;

(4) whether any of the following individuals have received, or held an interest in any entity that has participated in a transaction that received a tax certificate: Oprah Winfrey, Bill Cosby, and Dave Winfield.

(5) how many applications for tax certificates are before the FCC, who is the applicant, when the application was received, and what is the status of the application;

Congress of the United States
JOINT COMMITTEE ON TAXATION
Washington, DC 20515-6453

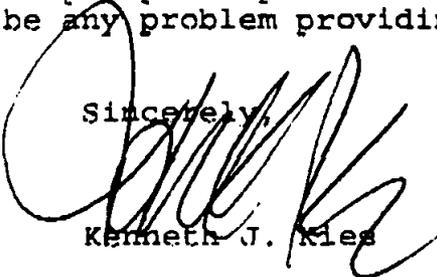
William E. Kennard, Esq.
February 2, 1995
Page two

(6) whether, and when, Viacom Inc. (or a related entity) has applied for a tax certificate for the sale of its cable properties, and what is the status of that application; and

(7) the tax certificates that we have previously requested, but that you have not yet transmitted (we have received approximately 150 of the tax certificates to date).

We look forward to your prompt response. Please let me know immediately if there will be any problem providing the above information.

Sincerely,



Kenneth J. Kies

cc: James D. Clark
Timothy L. Hanford
Donna Steele-Flynn

JOINT COMMITTEE ON TAXATION

**Telecopier/Facsimile Transmission
Facesheet**

Number of Pages to Follow: 2
(not including facesheet)

DATE & TIME: 2-1

TO: William Kennard

FROM: Kenneth Kiser

COMMENTS: _____

This document is transmitted for the Joint Committee on Taxation on a Xerox Model 7024 telecopier which may be accessed by telephone at (202) 225-0832

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SENDER: Sharon 225-3624
[name] [telephone no.]

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

January 27, 1995

BY HAND

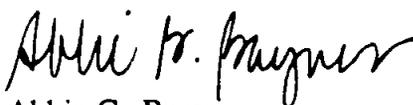
Steve Rosenthal
Legislation Counsel
Joint Committee on Taxation
United States Congress
1015 Longworth Building
Washington, DC 20515

Dear Steve,

Enclosed are tax certificates issued between 1986 and 1993 for AM and FM radio stations. These tax certificates represent approximately one-half of the tax certificates issued by the Commission to radio broadcasters between 1978 and 1994. We are working to provide you with copies of the remaining tax certificates as soon as possible. Please note that some of the remaining certificates were issued between 1986 and 1993.

I will provide summary information for the tax certificates by telecopier. Please call me at 202/418-1700 if you have any questions.

Sincerely,



Abbie G. Baynes
Special Counsel

cc: William E. Kennard
Sara Seidman
Anthony Williams

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

January 26, 1995

BY COURIER

Steve Rosenthal
Legislation Counsel
Joint Committee on Taxation
United States Congress
1015 Longworth Building
Washington, DC 20515

Dear Steve,

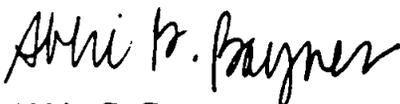
As requested, I enclose the following documents:

1. Report by the National Telecommunications and Information Administration on minority ownership of broadcast stations;
2. Summary of minority business-related programs administered by the FCC;
3. Copies of the tax certificates issued for cable television and broadcast television (including low power television);
4. Copy of the Fifth Memorandum Opinion and Order in PCS.

I will provide summary information for the tax certificates by telecopier, and copies of the remaining tax certificates as soon as they are available.

Please call me at 202/418-1700 if you have any questions.

Sincerely,



Abbie G. Baynes
Special Counsel

cc: William E. Kennard
Sara Seidman
Anthony Williams

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

January 27, 1995

BY HAND

Steve Rosenthal
Legislation Counsel
Joint Committee on Taxation
United States Congress
1015 Longworth Building
Washington, DC 20515

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I will provide summary information for the tax certificates by telecopier. Please call me at 202/418-1700 if you have any questions.

Sincerely,



Abbie G. Baynes
Special Counsel

cc: William E. Kennard
Sara Seidman
Anthony Williams

AFFIRMATIVE OPPORTUNITY FOR THE COMMUNICATIONS REVOLUTION

By
William E. Kennard
General Counsel, Federal Communications Commission

The communications, information and entertainment industries are vitally important, not only because they represent one-sixth of our economy, but because, more than any other industries, they reflect who we are as a nation, both here and around the world.

There should be Affirmative Opportunity for the Communications Revolution. Here are five precepts -- Affirmative Opportunity Principles -- to promote affirmative opportunity for the Communications Revolution.

ONE: AFFIRMATIVE OPPORTUNITY FOR ALL AMERICANS

All disadvantaged businesses deserve an opportunity to participate -- small businesses owned by minorities and women *and* small businesses owned by nonminorities. Small businesses owned by minorities and women face unique obstacles which warrant unique opportunities. Benefits should always be based on relative need.

TWO: THE THREE NOS: No Quotas, No Guarantees, and No Taking From One To Give to Another

We do not establish quotas which award a certain number of FCC licenses or other benefits to a particular group. Nor do we guarantee success to any group. Our rules should always ensure that the beneficiaries of our programs are committed to building businesses for the longterm, not flipping FCC licenses for a quick profit. Affirmative Opportunity seeks to ensure a fair opportunity to compete, not to exclude any competitor.

THREE: ONCE YOU GET A HAND-UP, YOU'RE ON YOUR OWN

Government benefits are a finite resource and should be distributed widely and as needed. Affirmative Opportunity means fair entry-level opportunities for businesses in their early growth phases. There should be limits on how many times a particular member of a disadvantaged group is permitted to invoke the aid of government.

FOUR: MARKET-BASED INCENTIVES WORK BEST

Government should provide opportunities to compete. But the market must ultimately decide which competitor will win. This is the reason why we use techniques such as tax certificates, bidding credits, installment payments and auctions to provide tools for small and minority businesses to attract capital to compete.

FIVE: ONLY DO WHAT'S COST EFFECTIVE

We must continually test our programs under a rigorous cost-benefits analysis. The benefits should be proportional to the desired incentive; the program must be proportional to its costs.

March 7, 1995

Does the FCC's tax certificate program satisfy the Affirmative Opportunity Principles?

The FCC's tax certificate program is the cornerstone of the Commission's policies to remedy the underrepresentation of minorities in the ownership of broadcast and cable television facilities. It has been highly successful in helping minorities surmount the greatest obstacle to ownership -- attracting the necessary capital. It is not a quota or set aside. Rather, it is a minimally intrusive, market-based incentive which has worked.

There is compelling evidence that the program has produced meaningful results. Minority ownership has increased eight-fold since the FCC initiated the program. Most buyers who have benefitted from the program have been small minority businesses.

Nevertheless, as with any program, the tax certificate program could benefit from periodic review and improvement. Because of restrictions imposed by Congress, the Commission has been constrained in its ability to undertake a comprehensive reevaluation of the tax certificate program. If given authority by Congress to do so, the Commission can take steps to conform the policy to our Affirmative Opportunity Principles. The current debate about the tax certificate policy should not focus on a particular transaction or on issues of retroactive application of the tax laws. The debate should focus on how to improve the tax certificate policy.

1. The Commission can do more to ensure that minority entrepreneurs who participate in the tax certificate program are committed to building longterm businesses. To that end, the Commission could extend the holding period for licenses acquired through the benefit of the tax certificate. The current one-year holding period is too short. Although the average broadcast station acquired with the benefit of a tax certificate is held for five years, and many for much longer, formally extending the holding period would eliminate possibilities for abuse. Similarly, the Commission could limit the extent to which minority owners may sell, during the holding period, options, warrants, or other future interests in the company or in their equity in the company.
2. An Affirmative Opportunity Program distributes benefits as widely as possible. It seeks to create entry-level opportunities for businesses in their start-up phases. The Commission could impose limits on the number of times a particular member of a disadvantaged group may use the tax certificate program.
3. The amount of the tax deferred in a given transaction must be proportional to the desired incentive. The Commission, in coordination with the Department of Treasury, could set a cap on the amount of the tax that may be deferred in large transactions. The cap should be expressed as a percentage of the total amount that might otherwise be deferred. This would ensure that, in very large transactions, the deferral benefits are no larger than necessary to create the desired incentive and do not result in a windfall to the seller.

March 7, 1995



Federal Communications Commission
Washington, D.C. 20554

April 12, 1995

By Courier

Doug Letter
Office of the General Counsel
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Doug:

Per our conversation this morning, and your conversation with Bill Kennard yesterday, I enclose the following documents:

1. William E. Kennard, "Affirmative Opportunity for the Communications Revolution."
2. Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978).
3. Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 52 RR 2d 1301 (1982).
4. Permanent Extension of Deduction for Health Insurance Costs of Self-Employed Individuals, S. Rep. No. 16, 104th Cong., 1st Sess. (1995).
5. Self-Employed Health Insurance Act, H. Conf. Rep. No. 92, 104th Cong., 1st Sess. (1995).
6. Correspondence about the tax certificate program between this office and the House and Senate staff.
7. Current list of pending tax certificate applications.
8. Summary data about the distress sale program.
9. Akosua Barthwell Evans, Are Minority Preferences Necessary? Another Look at the Radio Broadcasting Industry, 8 Yale L. & Pol'y Rev. 380 (1990).

Please call me if I can provide additional information or answer any questions.

Best regards,


Abbie G. Baynes
Special Counsel

cc: William E. Kennard

**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

OFFICE OF GENERAL COUNSEL

TO: DOUG LETTER
FAX No: (202) 456-1647

FROM: William E. Kennard
418-1700
fax: 418-2822 or 418-2819

DATE: 4/17/95

Doug - Here is a copy of the information sent to Chris Edley on Friday.

COVER PAGE PLUS 6 Bill

The FCC's Auction Program

- The Commission's program is far more limited than programs the Supreme Court has approved.
- The Commission's program contains no quotas or set-asides.
- The Commission's program involves merely a fine-tuning of financial requirements carefully drawn to address the principal barrier to entry for businesses owned by minorities and women: lack of access to capital. The difficulties minorities and women face obtaining capital are serious and well documented (e.g., Boston Fed study, congressional hearings).
- The Commission's program guarantees a license to no one. It is conceivable that the auction will take place and not a single minority- or women-owned firm will win a license. No minority- or women-owned firms won licenses in national narrowband auction despite bidding credits.
- Had the Commission done nothing, the decision to auction licenses for the first time would have erected a new barrier to participation by minorities and women. Until 1993 Act, Commission had given away licenses for free. Even so, minorities and women were dramatically underrepresented in ownership positions in the communications industry. Without affirmative race- and gender-conscious measures, the auctions would have exacerbated existing inequities.
- The Commission's program relies on the marketplace to ensure that only the most competent receive spectrum licenses.
 - (1) The race and gender aspects of the program apply only at the auctioning of licenses, after which winning bidders are entirely on their own, entitled to no additional governmental assistance. Those winning bidders do not receive licenses to operate a monopoly, but rather to compete with existing cellular providers and the large operations that won licenses in the first PCS auctions. Only the strongest will survive.
 - (2) Even with bidding preferences & favorable installment-payment terms, minority- and women-owned businesses cannot obtain licenses without obtaining substantial amounts of capital from third parties, capital that will be lost if the businesses fail. Thus while the Commission's race- and gender-conscious measures will attract capital to businesses that might otherwise have been ignored, they will attract capital only to businesses that investors determine are likely to succeed and thereby to make the initial investment profitable.
- Helping minority- and women-owned businesses actually makes money for the Treasury. Strengthening weak bidders increases the ultimate winning bid. Also, in the narrowband auctions, minorities paid the same or more than nonminorities, showing that bidding credits & installment-payment terms helped minorities attract capital without costing the Treasury any money.

- 2 -

Constitutional Issue

- **No federal race-based affirmative action program has ever been struck down.**
In *Fullilove*, the Supreme Court upheld a 10% set-aside of public works contracts. In *Metro Broadcasting*, the Supreme Court upheld the Commission's minority broadcast license & distress sale programs.
(Note: Courts have struck down (a) federal gender-based affirmative action programs, Lamprecht (D.C. Cir; gender equivalent of *Metro Broadcasting*), and (b) state race-based aff. action programs, Croson (Richmond, VA, 30% set-aside).)
- **To invalidate the Commission's program, a court would have to find that a constitutional amendment adopted in the wake of the Civil War prevents the federal government from taking limited steps to level a playing field distorted by discrimination (or: ... to bring down barriers erected and maintained by discrimination).**
- **The Congress that drafted the Equal Protection Clause also adopted race-conscious affirmative action measures, as the Supreme Court has pointed out. The Freedman's Bureau Acts authorized the provision of land, education & medical care to blacks. *Metro*.**

AFFIRMATIVE OPPORTUNITY FOR THE COMMUNICATIONS REVOLUTION

By
William E. Kennard
General Counsel, Federal Communications Commission

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Government should provide opportunities to compete. But the market must ultimately decide which competitor will win. This is the reason why we use techniques such as tax certificates, bidding credits, installment payments and auctions to provide tools for small and minority businesses to attract capital to compete.

FIVE: ONLY DO WHAT'S COST EFFECTIVE

We must continually test our programs under a rigorous cost-benefits analysis. The benefits should be proportional to the desired incentive; the program must be proportional to its costs.

March 7, 1995

DATE 1-5

PAGE A15

NEW YORK TIMES _____
 WASHINGTON POST _____
 THE WALL STREET JOURNAL
 LOS ANGELES TIMES _____
 WASHINGTON TIMES _____
 FINANCIAL TIMES _____
 USA TODAY _____

No One Gets Handicap In FCC Competition

In your Dec. 15 editorial "Back to the Future," you give Congress and the FCC "plenty of credit for efficiently introducing" spectrum auctions. We appreciate the compliment.

However, you failed to mention certain significant facts concerning our inclusion of small-business men and women and small-business minorities:

1. For every license in our auctions, men can and will compete against women; nonminorities can and will compete against minorities. (We don't believe in set-asides by race or gender.)

2. In the auctions already completed, small-business entrepreneurs—including men, women, nonminorities and minorities—have already obtained more licenses to participate in wireless communications than were previously granted in the history of the communications revolution. (We don't think opportunity should be available only to big business: Steve Jobs, Bill Gates, etc., didn't start big.)

3. In the biggest auctions we have already held (narrowband or advanced messaging licenses), minority and women winners paid on a net basis the same as white male winners. That is because all investors valued the competitive, multiple licenses as worth essentially the same on a net basis. (So our techniques for broader dissemination of licenses didn't cost the taxpayers a penny.)

4. If anyone defaults—minority or nonminority, male or female—we re-auction the license. The public is not out any money. (In a competitive market you have to expect not everyone will succeed; in this country no one should be guaranteed business success by the government.)

You agree that it would be better for the country if more women and minorities were represented in ownership ranks in the communications businesses of the future. You further state it would be better if all the new small-business men and women, minorities and nonminorities who are competing in our auctions entered the auctions on the same basis as the big companies.

But this ignores the hard facts. As every one of them would tell you, without an opportunity to attract capital, these entrepreneurs would not have a chance if we forced them to bid against the global communications giants that populate today's communications markets. They will tell you that their inability to crack the capital markets is the biggest impediment to their participation in this industry. Our rules, which provide the ability to make installment payments or otherwise to accommodate for the lower cost of capital available to the huge established players, are narrowly tailored to give the new players fair access to capital.

Good intentions or wishful thinking alone won't get results. But our rules have and will—in a way that is fair to the players and fair to the taxpayers.

REED E. HUNDT
Chairman

Federal Communications Commission
Washington

NEW YORK TIMES
WASHINGTON POST
THE WALL STREET JOURNAL
LOS ANGELES TIMES
WASHINGTON TIMES
FINANCIAL TIMES
USA TODAY

7

DATE 12/15

PAGE A14

REVIEW & OUTLOOK

Back to the Future

The Federal Communications Commission is now selling licenses for the next generation of wireless telephone services in the world's largest auction. Congress and the FCC deserve plenty of credit for efficiently introducing this long-overdue, free-market concept to the netherworld of radio spectrum rights. But we continue to wonder why something as complex and changeable as the emerging structure of global telecommunications must first climb over the liberal hurdle known as group rights.

After the conclusion (probably early next year) of the first round of bidding for "broadband personal communications services," the FCC will start another round for the "entrepreneurs' bloc." Approximately one-third of the spectrum space for PCS—which promises to compete with cellular technology—has been set aside for this purpose.

Companies qualify if their gross revenues are under \$125 million ("small businesses"). These firms get to pay for their purchases on a long-term installment plan that involves paying interest only for six years of the loan. If the company is extra small (\$40 million annual revenue) and if its principal owner is nonwhite or nonmale, an extra 25% bidding credit is thrown in, too.

Minority set-asides of one form or another have long been a staple of government contracting—an innovation introduced by President Nixon. They have been especially prevalent in

broadcasting, where the rationale often has been that there is a public interest in ensuring "diverse" programming. But obviously that reasoning doesn't apply to PCS, which is not programming at all but simply the technology to enable communication.

So we asked FCC Chairman Reed Hundt what justifies his set-aside program. As a practical matter, Mr. Hundt pointed at Congress's mandate to ensure minority "participation" in the auctions, though Congress never spelled out how much the FCC must do. The FCC head suggested that his ambitious plan is needed to correct a historical imbalance: Only 2% (others say it's 3%) of telecom companies are owned by women or minorities. This, Mr. Hundt suggests, is not an "ideal picture."

Perhaps that's true. But the issue—and it's an argument that liberals no longer can refuse to join in a serious way—is whether government is the best instrument to effect change in the ownership structure of telecommunications or business generally. The auctions held earlier this year suggests the answer is an emphatic "no."

This summer the FCC auctioned off licenses for interactive voice and data services. Two of the biggest winners were nominally "women-owned" businesses. Both defaulted on their down payments. More embarrassing was how one of the companies qualified for privileged status: The firm's president listed his wife as the majority owner. The FCC is now preparing disciplinary proceedings, though Mr. Hundt insists no great harm was done.

But even when the preferences work as intended—helping companies that are genuinely female- or minority-owned—the results ought to raise some eyebrows.



3

EW YORK TIMES
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 OS ANGELES TIMES
 ASHINGTON TIMES
 INANCIAL TIMES
 SA TODAY

DATE 12/15 PAGE A14 cont'd

In October the FCC auctioned off regional two-way paging licenses. The biggest winner was PCS Development Corp., which received a hefty 40% bidding credit. The company's chairman is Maceo K. Sloan, who runs a \$3 billion investment management firm that is the biggest independent business in North Carolina. His partners in the PCS venture include large, well-established telecom companies such as USA Mobile Communications Inc. What made this high-powered consortium eligible for special treatment is that Mr. Sloan happens to be black.

Commissioner Hundt is proud that his policies "helped bring into telecom a minority investor who might not otherwise be there." OK, but it is difficult to see why it wouldn't have been better had Mr. Sloan come into telecom without Mr. Hundt's intervention in the market.

Subsidies were distorting markets well before they were distributed based on race or gender, and we long have opposed set-asides for corporate fat cats for that reason. Ask Archer Daniels Midland. Indeed, toward the top of the list of tests of Republican resolve is whether the party can eliminate the distorting subsidies in American agriculture. They exist because farmers historically have been accorded status as a special class in the U.S. labor force, with arguments not dissimilar to those now made for minorities and women.

Whatever basis once existed for requiring all Americans to contribute to the preservation of family farming as a protected way of life, hardly anyone makes that argument today. Modern agriculture, like telecommunications, is a fluid and sophisticated business. No one has suggested set asides for female farmers recently.

Again, we understand the moral imperative that Mr. Hundt and others feel obliges them to include these special programs, even for auctions of sophisticated technologies. We just wonder whether it's worth ignoring the problems such programs have manifestly created.

4

Pending Applications for Tax Certificates
As of 2/28/95

RADIO

<u>Applicant</u>	<u>Station</u>	<u>Date Filed</u>	<u>Status</u>
Michael Ginter	WTNX(AM), Lynchburg, TN	4/2/93	Pending
Transcontinental Broadcasting, Inc.	KPRR-FM, El Paso, TX	9/27/94	Pending
Design Media, Inc.	WQUL-FM, Griffin, GA	11/15/94	Pending
Mountain Broadcasting, Inc.	KTOT-FM, Big Bear Lake, CA	2/6/95	Pending

Subtotal: 4 applications

TELEVISION

<u>Applicant</u>	<u>Station</u>	<u>Date Filed</u>	<u>Status</u>
Shareholders of Pueblo Broadcasting, Inc.	KXLN, Rosenberg, TX	11/16/94	Pending
Clarence V. McKee	WTVT, Tampa, FL	10/4/93	Pending
Busse Broadcasting Corp.	WMMT, Kalamazoo, MI	1/11/95	Pending
Quincy D. Jones & Warner Communications, Inc.	WKQL, New Orleans, LA	12/14/94	Pending
Fox Television Stations, Inc.	WATL, Atlanta, GA	12/14/94	Pending
Lewis Broadcasting Corp.	WLTZ, Columbus, GA	6/2/94	Pending

Subtotal: 6 applications

Pending Applications for Tax Certificates

2/28/95

(continued)

Cable Television

<u>Applicant</u>	<u>Community</u>	<u>Date Filed</u>	<u>Status</u>
Garden State Cablevision, Inc. W.K. Communications, Inc.	Audubon, NJ Various systems in Arkansas, Kansas and Missouri	11/3/94 11/23/94	Pending Pending
Scholastic, Inc.	N/A; seeks tax certificate for investment in minority-controlled cable programmer	11/18/94	Pending
Bruce E. Kline	N/A; investor tax certificate request	12/19/94	Pending
CableSouth, Inc.	Cable systems in Alabama	1/13/95	Pending
Time Warner Entertainment Co., L.P.	Cable systems in Arkansas	1/31/95	Pending
Peachtree Cable TV, Inc.	Cable systems in Georgia	2/1/95	Pending
Viacom International, Inc.	Cable systems in San Francisco Bay area; Northern California; Seattle-Tacoma, WA; Dayton, OH; Salem, OR; & Nashville, TN	2/3/95	Pending

Subtotal: 8 applications

Grand Total: 20 tax certificate applications are currently pending for the radio, television and cable services.

HOUSE
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DANIEL PATRICK MOYNIHAN, NEW YORK
MAX BAUCUS, MONTANA

Congress of the United States

JOINT COMMITTEE ON TAXATION
1015 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6453
(202) 225-3621

KENNETH J. KIES
CHIEF OF STAFF
MARY M. SCHMITT
ASSOCIATE CHIEF OF STAFF
(LAW)
BERNARD A. SCHMITT
ASSOCIATE CHIEF OF STAFF
(REVENUE ANALYSIS)

DGC
GC
921

February 23, 1995

VIA FACSIMILE

William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 614
Washington, D.C. 20554

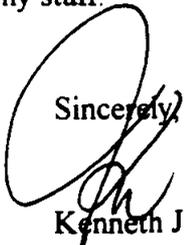
Dear Mr. ^{Bill}Kennard:

The purpose of this letter is to request information regarding the practice of the FCC in issuing tax certificates. It is our understanding that the FCC's usual practice is to issue a tax certificate after final closing of a transaction has occurred. However, we have been informed that, in at least one recent case, the FCC issued a tax certificate prior to closing of a transaction.

We would appreciate it if you could supply us with information regarding what the practice of the FCC has been in issuing tax certificates and whether that practice has changed recently. In addition, please provide us with an updated list of pending tax certificate applications.

Thank you for your prompt attention to this matter. If you have any questions, please contact me or Alysa McDaniel of my staff.

Sincerely,



Kenneth J. Kies

cc: Abbie G. Baynes, Esq.

In August 1993, Congress enacted 47 U.S.C. §309(j), which gave the Federal Communications Commission authority to use auctions to distribute certain licenses to provide telecommunications services, and the Commission has issued a series of orders implementing that authority. With respect to "personal communications services" (PCS) -- which, among other uses, is expected to provide competition to existing cellular service -- the Commission decided to auction six blocks of licenses, designated by the letters A through F, in markets across the United States. In Section 309(j), Congress paid special attention to four groups -- "small businesses, rural telephone companies, and businesses owned by members of minority groups and women" -- which are collectively termed "designated entities." Congress directed the Commission to "ensure" that designated entities "are given the opportunity to participate in the provision of spectrum-based services." §309(j)(4)(D). Congress specifically approved the use of "bidding preferences" and "alternative payment schedules" (as well as "other procedures") to "ensure" that designated entities have the opportunity to participate in the provision of broadband PCS. 47 U.S.C. §309(j)(4)(A); id. §309(j)(4)(D).

The Commission implemented Congress's mandate in part by limiting bidding in the C and F blocks to businesses that have annual gross revenues of less than \$125 million and total assets of less than \$500 million. 47 C.F.R. §24.709(a)(1). Blocks C and F are, accordingly, called the "entrepreneurs' blocks." (Much larger companies, such as AT&T and the Bell Operating Companies, obtained most of the licenses in the A and B block auction that concluded on March 13.) The Commission also established bidding credits within the entrepreneurs' blocks: small businesses (those with annual gross revenues under \$40 million) get a 10% bidding credit, businesses owned by minorities or women get a 15% bidding credit, and small businesses owned by minorities or women get a 25% bidding credit. Thus, a small business owned by a woman that bid \$1 million for a license would have to pay only \$750,000.

Businesses owned by minorities and women also get favorable installment payment terms. This benefit is probably the most important because it makes it easier for successful bidders to raise the necessary capital, which has been a major problem in the past for minorities and women.

The Commission also allows individual members of minority groups to bid in the entrepreneurs' blocks even though they have interests in companies that exceed the revenue cap, as long as those businesses are controlled by members of minority groups.

The Commission believes its program is more limited than the programs approved by the Supreme Court in Fullilove v. Klutznick and Metro Broadcasting. There is no "set aside" here, and no

guarantee that even one minority or woman will receive any of the 493 licenses to be auctioned in the C Block. In addition, license winners will be guaranteed nothing except the opportunity to compete in a highly competitive industry; in general, in each geographical market the winner of a C block license will have to compete against two incumbent cellular operators and the winners of A and B block licenses. Moreover, in order to construct their systems, C block winners will have to attract significant amounts of capital, and investors are unlikely to support businesses that do not have the ability to succeed.

One significant problem with the statute is that Congress did **not** make statutory findings regarding problems that minorities and women have had in obtaining licenses, or the benefits to be gained from the participation of these groups in this industry. Indeed, the relevant House report stated candidly that "[t]he Committee recognizes that, unlike mass media licenses, where diversity in ownership contributes to diversity of viewpoints, most of the licenses issued pursuant to the competitive bidding authority contained in section 309(j) will be for services where the race or gender of the licensee will not affect the delivery of service to the public."

By contrast, the Commission's order establishing the entrepreneurs' blocks clearly ties the grant of bidding credits and favorable installment payment plans to the fact that women and minorities tend to lack access to capital -- a problem that is due, in part, to continuing discrimination on the part of lenders. Thus, the Commission itself provided a justification for the special benefits given to women and minorities. We note that, in addition, the FCC believes that the United States Treasury will obtain more money through these auctions because of these benefits since they increase the number of serious bidders by enabling minorities and women to participate meaningfully in the auctions.

Telephone Electronics Corporation (TEC) -- a rural telephone company based in Mississippi -- was excluded from the entrepreneurs' blocks because, when the revenues of its affiliates were counted, its gross annual revenues exceeded \$125 million. TEC asked the Commission to disregard the revenues of its affiliates so that it would be permitted to bid in the entrepreneurs' blocks. After the Commission denied that request, TEC filed a petition for review in the D.C. Circuit. The company also sought a stay of the auction in the D.C. Circuit. TEC argued that both the underlying statute and the rules established by the Commission to facilitate participation by women and minorities violate equal protection principles. On March 15, the D.C. Circuit (Judges Edwards, Silberman, and Buckley) stayed the C block auction. The court focused on the "minority and gender preferences" and concluded that TEC "has demonstrated the likelihood of success on the merits." The court subsequently

established a schedule calling for oral argument on September 12 (before Judges Wald, Silberman, and Rogers). Under that schedule, the C block auction would not take place until early 1996, because the D.C. Circuit would not issue its decision until October or November, and the Commission has concluded that bidders need at least two months to get their applications in order once an auction is scheduled. The auction is expected to last at least a few months -- the A and B block auctions involving 99 licenses lasted three months, and the C block auction involves 493 licenses. Thus, unless the stay is lifted, C block winners will not receive their licenses until mid-1996.

After the stay was issued, many potential C block bidders complained to TEC and the Commission that a delay until mid-1996 would greatly decrease the value of the licenses. The bidders explained that, as the fifth entrant in most markets, the C block winner would have to compete with cellular companies (who are currently signing up customers at the rate of 28,000 per day) and the A and B block winners (who would have more than a year's head start). There is merit to the argument that a delay in the C block auction will make those licenses much less valuable: the lead headline in the April 10 edition of Communications Daily states that "experts see entrepreneurs block auction delay drying up financing options." Perhaps recognizing that it was shooting itself in the foot, TEC filed a waiver request with the Commission on March 28. Although it previously had sought permission to bid on any of the 493 C block licenses, in its waiver TEC sought permission to bid on only eight licenses, all of which were in rural areas in Mississippi, Alabama, and Tennessee. TEC argued that Congress included "rural telephone companies" such as itself in the list of designated entities because rural telephone companies are in the best position to promptly "build out" the infrastructure needed to provide PCS. TEC stated that it would drop its lawsuit (thus removing the basis for the stay) if its waiver were granted. More than 60 parties commented on TEC's waiver request. More than 50 urged the Commission to grant the waiver, primarily because of the need to conduct the auction quickly. Ten parties opposed, generally arguing that TEC is trying to "hold up" the Commission. Three parties ("me too") urged the Commission to grant TEC's waiver and a waiver to them as well. The Commission intends to act expeditiously on the waiver requests.

If TEC is granted a waiver, the FCC does not believe that any other entity can now legitimately challenge the planned auction on the constitutional grounds that have been raised by TEC. However, it is possible that one of the "me too" companies would attempt to do so.

If this matter is not settled, the Commission would vigorously defend the statute and its implementing rules, and believes that both should be upheld under the existing Supreme

Court precedent (although the expected ruling in Adaran might change the legal landscape). Given the panel we have drawn in the D.C. Circuit, the Commission believes it has a good chance of initial success. (The revenue cap waiver provision may be more vulnerable than the rest of the auction program.) However, if the case were heard by the full D.C. Circuit, the likelihood of prevailing is considerably lower.

were As alluded to above, the statutory scheme and the implementing regulations raise some troubling policy issues. The Supreme Court accepted in Metro Broadcasting the notion that preferences in order to achieve more minority ownership of broadcast stations ~~was~~ justified because data showed that minority-owned stations are more likely to present minority perspectives, which would otherwise not be available to the public. Here, however, no such justification is applicable since the auctions at issue involve merely the question of which company will be making possible personal communications services. (One might argue that minority-owned enterprises will hire more minorities, but we are not aware of data to support this notion.) The special benefits in this instance are in place simply to try to help minority and women-owned businesses to participate in this industry. The FCC believes that such help is needed because of the trouble that such businesses face in raising sufficient capital. Nevertheless, the societal benefit from special assistance in this area is not as easily justified as it is for help in obtaining broadcast licenses.

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tunities to become Commission licensees, and ensure that the adoption of the competitive bidding provisions of this section will not have the effect of excluding small businesses from the Commission's licensing procedures.

The Committee adopted an amendment to ensure that all small businesses will be covered by the Commission's regulations, including those owned by members of minority groups and women. The Committee recognizes that, unlike mass media licenses, where diversity in ownership contributes to diversity of viewpoints, most of the licenses issued pursuant to the competitive bidding authority contained in section 309(j) will be for services where the race or gender of the licensee will not affect the delivery of service to the public. Nevertheless, the Commission should adopt regulations pursuant to this section to ensure that businesses owned by members of minority groups and women are not in any way excluded from the competitive bidding process.

Section 309(j)(4) requires the Commission to establish rules to implement the objectives set forth above. In prescribing these rules, the Commission is required to consider alternative payment schedules and methods of calculation, including initial lump sum payments, installment or royalty payments, guaranteed annual minimum payments, or some combination so as to promote economic opportunity as defined in paragraph 3(b).

One of the primary criticisms of utilizing competitive bidding to issue licenses is that the process could inadvertently have the effect of favoring only those with "deep pockets", and therefore have the wherewithal to participate in the bidding process. This would have the effect of favoring incumbents, with established revenue streams, over new companies or start-ups. The Committee has given the Commission the flexibility to design alternative payment schedules in order that this not occur.

While it is clear that, in many instances, the objectives of section 309(j) will best be served by a traditional, "cash-on-the-barrelhead" auction, it is important that the Commission employ different methodologies as appropriate. Under this subsection, the Commission has the flexibility to utilize any combination of techniques that would serve the public interest.

The Committee anticipates that in some instances the Commission will act in a manner that is comparable to a mortgage banker, who designs new mortgage instruments in order to increase the universe of people who can afford to buy homes. The Commission's adoption of any competitive bidding methodology will have the effect of determining whether there will be widespread participation in the licensing process, or whether participation will be restricted to a few, well-heeled firms. A new and innovative proposal that may have a high risk factor, for example, may lead the Commission to structure a bidding system that requires only minimal payments during the construction phase, followed by higher payments as a revenue stream develops, and perhaps with a balloon payment at the end of the license term. It is the Committee's intention that the Commission's methodology for any given service or class of license be based on the characteristics of the service itself, in order to promote the objectives and requirements of section 309(j).

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SECTION-BY-SECTION ANALYSIS

CHAPTER 1—COMPETITIVE BIDDING AUTHORITY

Section 5201

Short title—"Licensing Improvement Act of 1993".

Section 5202

Findings. The Committee finds that current licensing procedures often delay delivery of services to the public and can result in unjust enrichment of applicants; that if licensees are engaged in reselling the use of the public airwaves to subscribers for a fee, the licensee should pay reasonable compensation to the public for those resources; that a carefully designed system to obtain competitive bids from competing qualified applicants can speed delivery of services, promote efficient and intensive use of the electromagnetic spectrum, prevent unjust enrichment, and produce revenues to compensate the public for the use of the public airwaves; and that therefore, the Federal Communications Commission should have the authority to issue licenses utilizing a system of competitive bids.

Section 5203

Authority to use competitive bidding. This section amends section 309 by adding a new subsection (j), which grants the FCC authority to use a system of competitive bidding as a means of granting licenses. This authority is in addition to the FCC's existing authority to use comparative hearings and lotteries; however, the Commission's authority to use lotteries is circumscribed by section 5206(c). The authority would apply only when there are mutually exclusive applications for an initial license for a use described in subsection 309(j)(2). Competitive bidding would not be permitted to be used for unlicensed uses; in situations where there is only one application for a license, or in the case of for a renewal or modification of the license.

Section 309(j)(2) defines the uses to which bidding may apply. This paragraph provides that where the Commission determines that the principal use of the spectrum will be to, in essence, resell the spectrum to subscribers, and the Commission determines that an auction will meet the objectives in section 309(j)(3) discussed below, then that class of licenses should be subject to competitive bidding. The Committee's extensive record reveals that there are limited cases in which competitive bidding would be appropriate and in the public interest. The limited grant of authority contained in this section is designed so that only those classes of licenses would be issued utilizing a system of competitive bidding. The enactment of section 309(j) should not affect the manner in which the Commission issues licenses for virtually all private services, including frequencies utilized by Public Safety Services, the Broadcast Auxiliary Service, and for subcarriers and other services where the signal is indivisible from the main channel signal. Similarly, inasmuch as mass media broadcast signals are provided to the general public without the payment of a subscription fee, the current licensing practices of the FCC remain unchanged. The fact that some

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television licensees may receive compensation from cable television operators as a result of the enactment of the "retransmission consent" provisions of the Cable Act should have no effect on the Commission's licensing of television stations.

It is the Committee's intention that the enactment of this section will not affect the Commission's current procedures for granting licenses for private use.

The Committee remains committed to protect public safety users from adverse effects of competitive bidding, and encourages the Commission to take into account the needs of public safety users in making allocation decisions.

The Committee intends that the determination required by section 309(j)(2) will be made when a service or class of service is defined by the Commission. The Commission is also expected to review existing services to determine whether they meet the test set forth in section 309(j)(2).

Section 309(j)(3) requires the Commission to establish a methodology for each kind of service subject to competitive bidding, and to test alternative methodologies. The Committee expects the Commission to match auction methodologies with the characteristics of the service. Nothing in this section should preclude the Commission from using the same methodology for more than one service.

This paragraph also sets out the objectives the FCC must follow in creating an auction system.

In its regulations implementing this section, the Commission must seek to promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays.

In addition, the Commission's regulations must promote economic opportunity and competition, and ensure that new and innovative technologies are readily accessible to the American people. The Commission will realize these goals by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women.

The Committee does not intend that the Commission should apply any particular antitrust or other test in order to avoid concentration of licenses, but rather should apply a common sense approach. If a single licensee dominates any particular service, or if it dominates a significant group of services, then the Commission should take that into account. The Committee does not intend that this objective dominate the Commission's decision-making when it adopts regulations to implement the competitive bidding process.

The Committee is concerned that, unless the Commission is sensitive to the need to maintain opportunities for small businesses, competitive bidding could result in a significant increase in concentration in the telecommunications industries. The Committee recognizes that the characteristics of some services are inherently national in scope, and are therefore ill-suited for small business. However, other services are local, and could well provide new opportunities for small business participation. In those cases, the Committee anticipates that the Commission will adopt regulations that will ensure that small businesses will continue to have oppor-

OMNIBUS BUDGET RECONCILIATION ACT OF 1993

P.L. 103-66, see page 107 Stat. 312

DATES OF CONSIDERATION AND PASSAGE

House: May 27, August 5, 1993

Senate: June 23, 24, 25, August 6, 1993

Confg. Record Vol. 139 (1993)

House Report (Budget Committee) No. 103-111, May 25, 1993
[To accompany H.R. 2264]

House Conference Report No. 103-213, Aug. 3, 1993
[To accompany H.R. 2264]

No Senate Report was submitted with this legislation. The House Report (this page) is set out below and the House Conference Report (page 1088) follows.

HOUSE REPORT NO. 103-111

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF
CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

OVERVIEW

The Conference Agreement on the Omnibus Budget Reconciliation Act of 1993 is a carefully crafted, rational and constructive compromise which implements the basic objectives of both the House and the Senate bills. It embodies the President's economic program and meets the objectives of the House and Senate conferees. It confirms and extends those budget process changes enacted in the Budget Enforcement Act of 1990 which have exercised effective discipline over the Federal budget.

In February of this year, President Clinton proposed to move the American economy in a new direction. The Congressional budget resolution passed in March adopted and strengthened the President's budget proposal. By passing this conference agreement, the Congress will fulfill the promise of the budget resolution. This conference agreement, unlike the substitute bills that were offered in both Houses, will:

Reduce Federal deficits by approximately \$500 billion over the five years 1994-1998, with more than half the reduction coming from spending cuts and the remainder from tax increases;

Restore fairness to our tax system;

Shift the nation's priorities towards investment.

With the passage of this conference agreement, America will begin to move to a new path of lower deficits and higher wages and standards of living for America's working families.

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censes will be issued as the result of the enactment of this legislation. Similarly, although such licensees are permitted to receive payments from such MMDS operators, such payments are not to be construed by the Commission to indicate that ITFS licensees are receiving compensation from "subscribers" as that term is used in section 309(j)(2).

SECTION 309 (j)(3)

House bill

Paragraph (3) of the House bill requires the Commission to establish competitive bidding systems that meet the requirements of this section. In particular, the Commission is required to develop methodologies that promote the development and rapid deployment of new technologies; promote economic opportunity and competition and ensure that new and innovative technologies are available to the American people by avoiding excessive concentration and by disseminating licenses among a wide variety of applicants, including small business and businesses owned by members of minority groups and women; recover for the public a portion of the value of the public spectrum resource made available to the licensee and the avoidance of unjust enrichment; and promote the efficient and intensive use of the spectrum.

Senate amendment

Section 309(j)(2) requires the Commission seek to adopt rules to implement competitive bidding, and requires that such rules include safeguards to protect the public interest and ensure the opportunity for successful participation by small businesses and minority-owned businesses.

The original House provision requires the Commission to disseminate licenses to a wide variety of applicants, including small businesses and businesses owned by minority groups and women. The Amendment adds rural telephone companies to the list of examples of the term "wide variety of applicants."

Conference agreement

The Conference Agreement adopts the provisions of the House bill with an amendment. The amendment requires that the Commission disseminate licenses among a wide variety of applicants, including small business, rural telephone companies, and businesses owned by members of minority groups and women.

SECTION 309(j)(4)

House bill

Section 309(j)(4) contains requirements for the rules that the Commission must issue in order to implement this section. The Commission is required to consider alternative payment schedules and methods of calculation, including initial lump sums, installment or royalty payments, guaranteed annual minimum payments, or other schedules or methods (including combinations of methods) that promote the objectives of this Act.

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In addition, the Commission is required to include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural and other areas, and to prevent stockpiling of frequencies.

Consistent with the public interest, the purposes of this Act, and the characteristics of the proposed service, the Commission is also required to prescribe area designations and bandwidth assignments that promote an equitable distribution of licenses and services among geographic areas; economic opportunity for a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women; and investment in and rapid deployment of new technologies and services.

Finally, the Commission must require such transfer disclosures and antitrafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses.

Senate amendment

Section 309(j)(2)(C) requires that the Commission's rules implementing the amendments to section 309(j) establish the method of bidding (including but not limited to sealed bids) and the basis for payment (such as installment of lump payments, royalties on future income, a combination thereof, or other reasonable forms of payment as specified by the Commission).

Section 309(j)(3) requires the Commission to establish at least one license per market as a "rural program license" for any service that will compete with telephone exchange service provided by a qualified common carrier. This section also stipulates the terms and conditions for any such license, including requirements to pay an amount equal to the value of comparable licenses issued utilizing competitive bids.

Conference agreement

The Conference Agreement adopts the House provisions, with several amendments.

First, the Conference Agreement modifies the requirements regarding the use of installment or royalty payments and guaranteed annual minimum payments. The modification clarifies that the Commission can utilize payment schedules that include lump sums or guaranteed installment payments, with or without royalty payments.

The reason for the modification is to ensure that the Commission is not placed in the position of evaluating bids that are submitted solely in the form of promises to pay a royalty on future income, and attempting to determine which bid is greater based on speculation about the amount of money that will be generated thereby. Such a situation would force the Commission to assume all of the risk that is properly borne by the licensee and its financial underwriters, and force the Commission to make determinations that surely would be litigated, further delaying the availability of service to the public.

The Conferees anticipate that under some circumstances, the Commission will require bidders to agree to pay a stipulated lump sum or annual minimum, and, in addition to those amounts, a per-

centage of future revenue. Such a requirement would encourage litigation that could delay and hold the Commission's future revenue.

The Conference Agreement provides economic opportunity to small business and minority groups and women.

The Conference Agreement also provides to include a provision, that requires rural telephone groups and women provision of the use of procedures.

House bill

Section 309(j) that will assure meet the Commission shall be granted cant is qualified tions 308(b) and it requires the resolution of any qualifications.

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centage of future revenues that are derived from the use of the license. Such an approach will reduce the likelihood of protracted litigation that could delay the availability of service to the public, and hold the Commission harmless in the event that projections of future revenue fall short.

The Conferees also agreed to require that the Commission provide economic opportunities for rural telephone companies in addition to small business and businesses owned by members of minority groups and women.

The Conference Agreement also modifies the House provision to include a provision, based on but not identical to a Senate provision, that requires the Commission to ensure that small businesses, rural telephone companies, and businesses owned by minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences and other procedures.

SECTION 309(j)(5)

House bill

Section 309(j)(5) requires the Commission to adopt procedures that will assure that no license is accepted for filing that does not meet the Commission's requirements. It provides that no license shall be granted unless the Commission determines that the applicant is qualified pursuant to subsection (a) of section 309 and sections 308(b) and 310 of the Communications Act of 1934. Finally, it requires the Commission to adopt expedited procedures for the resolution of any substantial and material issues of fact concerning qualifications.

Senate bill

Section 309(j)(2)(B) instructs the Commission to prescribe rules that require potential bidders to file a first-stage application indicating an intent to participate in the competitive bidding process, and containing such other information as the Commission finds necessary. After conducting the bidding, the Commission must require the winner to submit such other information as it deems necessary in order to determine that the bidder is qualified.

This section also clarifies that participants in the competitive bidding process shall be subject to the schedule of charges contained in section 8 of the Communications Act.

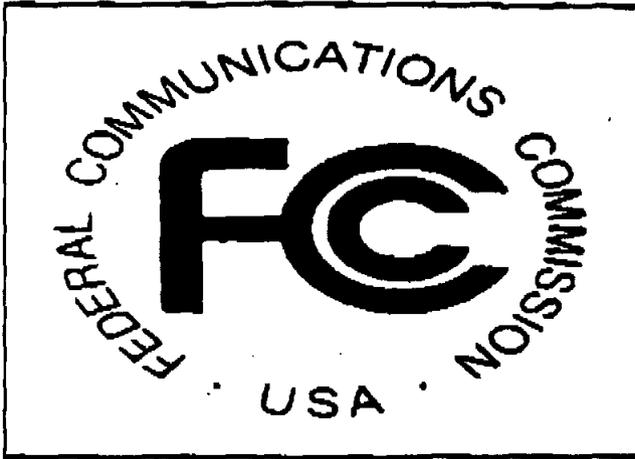
Conference agreement

The Conference Agreement adopts the House provisions.

SECTION 309(j)(6)

House bill

Section 309(j)(6) contains rules of construction, and stipulates that nothing in the use of competitive bidding for the award of licenses shall limit or otherwise affect the requirements of the Communications Act that limit the rights of licensees, or require the Commission to adhere to other requirements. In particular, the



facsimile transmission

Office of General Counsel
Litigation Division
Washington, D.C. 20554

Date: 4-11-95

To: *Doug Letto*

Phone Number: _____

FAX Number: 456-1647

From: *Chris Wright*

Phone Number: (202) 418-1740

FAX Number: (202) 418-2819

This is page 1 of 11 pages

Message:

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of differences
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B. Performance Requirements

90. The Budget Act requires the Commission to "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."⁶³ In the Second Report and Order we decided that it was unnecessary and undesirable to impose additional performance requirements, beyond those already provided in the service rules, for all auctionable services. The broadband PCS service rules already contain specific performance requirements, such as the requirement to construct within a specified period of time. See, e.g., 47 C.F.R. § 24.203. Failure to satisfy these construction requirements will result in forfeiture of the license. Accordingly, we do not see the need to adopt any additional performance requirements in this Report and Order.

C. Rules Prohibiting Collusion

91. In the Second Report and Order, we adopted a special rule prohibiting collusive conduct in the context of competitive bidding. See 47 C.F.R. § 1.2105(c). We referred to the Notice, wherein we indicated our belief that such a rule would serve the objectives of the Budget Act by preventing parties, especially the largest firms, from agreeing in advance to bidding strategies that divide the market according to their strategic interests and disadvantage other bidders. See Second Report and Order at ¶ 221. We believe that this rule is nowhere more necessary than with respect to broadband PCS auctions, where we expect bidder interest to be high and the incentives to collude to be great. Thus, Section 1.2105(c) will apply to broadband PCS auctions. This rule provides that from the time the short-form applications are filed until the winning bidder has made its required down payment, all bidders will be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application. In addition, as discussed in Section IV, supra, bidders will be required by Section 1.2105(a)(2) of the Commission's Rules to identify on their Form 175 applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. Bidders will also be required to certify that they have not entered and will

⁶² We note that these transfer disclosure provisions are in addition to the limitations on transfers that we have adopted in the Broadband PCS Reconsideration Order (with respect to spectrum disaggregation) or elsewhere in this Order (with respect to transfers of licenses in the entrepreneurs' blocks).

⁶³ See Section 309(j)(4)(B) of the Communications Act, as amended.

not enter into any explicit or implicit agreements, arrangements or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

92. Winning bidders in broadband PCS auctions will also be subject to Section 1.2107 of the Commission's Rules, which among other things requires each winning bidder to attach as an exhibit to the Form 401 long-form application a detailed explanation of the terms and conditions and parties involved in any bidding consortium, joint venture, partnership, or other agreement or arrangement they had entered into relating to the competitive bidding process prior to the close of bidding. All such arrangements must have been entered into prior to the filing of short-form applications. In addition, where specific instances of collusion in the competitive bidding process are alleged during the petition to deny process, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with participation in the auction process may be subject to forfeiture of their down payment or their full bid amount and revocation of their license(s), and they may be prohibited from participating in future auctions.

VII. TREATMENT OF DESIGNATED ENTITIES

A. Overview and Objectives

93. Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." 47 U.S.C. § 309(j)(4)(D). To achieve this goal, the statute requires the Commission to "consider the use of tax certificates, bidding preferences, and other procedures." Thus, while providing that we charge for licenses, Congress has ordered that the Commission design its auction procedures to ensure that designated entities have opportunities to obtain licenses and provide service. For that purpose, the law does not mandate the use of any particular procedure, but it specifically approves the use of "tax certificates, bidding preferences, and other procedures." The use of any such procedure is, in our view, mandated where necessary to achieve Congress's objective of ensuring that designated entities have the opportunity to participate in broadband PCS.

94. In addition to this mandate, the statute sets forth various congressional objectives. For example, it provides that in establishing eligibility criteria and bidding methodologies the Commission shall "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." 47 U.S.C. § 309(j)(3)(B); see also id. §309(j)(4)(C) (requiring the Commission when prescribing area designations and bandwidth

assignments, to promote "economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women).⁶⁴ Further, Section 309(j)(4)(A) provides that to promote the statute's objectives the Commission shall "consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods . . . and combinations of such schedules and methods."

95. To satisfy these statutory mandates and objectives, we established in the Second Report and Order eligibility criteria and general rules that would govern the special measures for small businesses, rural telephone companies, and businesses owned by members of minority groups and women. We also identified several measures, including installment payments, spectrum set-asides, bidding credits and tax certificates, that we could choose from in establishing rules for auctionable spectrum-based services. We stated that we would decide whether and how to use these special provisions, or others, when we developed specific competitive bidding rules for particular services. In addition, we set forth rules designed to prevent unjust enrichment by designated entities who transfer ownership in licenses obtained through the use of these special measures or who otherwise lose their designated entity status.

96. We intend in the new broadband personal communications service to meet fully the statutory mandate of Section 309(j)(4)(D), as well as the objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. As explained more fully in this Order, in some respects it is necessary to do more to ensure that businesses owned by members of minority groups and women have a meaningful opportunity to participate in the provision of personal communications services than is necessary to ensure participation by other designated entities. In particular, we have concluded that steps such as adoption of bidding credits, tax certificates, alternate payment plans and relaxed attribution rules, must be taken to encourage investment in minority and women-owned businesses. These special provisions are tailored to address the major problem facing minorities and women desiring to offer PCS -- lack of access to capital. Moreover, because broadband PCS licenses in many cases are expected to be auctioned for large sums of money in the competitive bidding process, and because build-out costs are likely to be high, it is necessary to do more to ensure that designated entities have the opportunity to participate in broadband PCS than is necessary in

⁶⁴ As noted in the Second Report and Order, the statute also requires the Commission to promote the purposes specified in Section 1 of the Communications Act, which include, among other things, "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." 47 U.S.C. § 151; Second Report and Order at n. 3.

other, less costly spectrum-based services. In our view, these steps and the others we adopt are required to fulfill Congress's mandate that designated entities have the opportunity to participate in the provision of PCS. The measures we adopt today will also increase the likelihood that designated entities who win licenses in the auctions become strong competitors in the provision of broadband PCS service.

97. In instructing the Commission to ensure the opportunity for designated entities to participate in auctions and spectrum-based services, Congress was well aware of the difficulties these groups encounter in accessing capital. Indeed, less than two years ago, Congress made specific findings in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that "small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit."⁶⁵ Because of these problems, Congress resolved to consider carefully legislation and regulations "to ensure that small business concerns are not negatively impacted" and to give priority to passage of "legislation and regulations that enhance the viability of small business concerns."⁶⁶

98. Congress also recognized that these funding problems are even more severe for minority and women-owned businesses, who face discrimination in the private lending market. For example, Congress explicitly found that businesses owned by minorities and women have particular difficulties in obtaining capital and that problems encountered by minorities in this regard are "extraordinary."⁶⁷ A number of studies also amply support the existence of widespread discrimination against minorities in lending practices. In October, 1992, the year prior to passage of the auction law, the Federal Reserve Bank of Boston released an important and highly-publicized study demonstrating that a black or Hispanic applicant in the Boston area is roughly 60 percent more likely to be denied a mortgage loan than a similarly situated white applicant.⁶⁸ The researchers measured every variable mentioned as important in numerous conversations with lenders, underwriters, and examiners and found that minority applicants are more likely to be denied mortgages even where they have the same obligation ratios, credit history, loan to value and property characteristics as white applicants. The lending discrimination that occurs, the study found, does not involve the application of specific rules, but instead occurs where discretionary decisions are made. Based on the Boston study, it is reasonable to expect that race would affect business loans that are based on more subjective criteria to an even greater extent than the mortgage loan

⁶⁵ Small Business Credit and Business Opportunity Enhancement Act of 1992, Section 331(a) (3), Pub. Law 102-366, Sept. 4, 1992.

⁶⁶ *Id.*, Section 331(b)(2),(3).

⁶⁷ *Id.*, Section 112(4); 331(a)(4).

⁶⁸ Mortgage Lending in Boston: Interpreting HMDA Data, Federal Reserve Bank of Boston, Working Paper 92-7 (October 1992).

process, which uses more standard rules.

99. Importantly, the Boston study also found that, because most loan applicants have some negative attributes, most loan denials will appear legitimate by some objective standard. Accordingly, the study stated, the lending discrimination that occurs is very difficult to document at the institution level, so legal remedies may be largely ineffective. Indeed, Congress had already attempted to address discriminatory lending practices through laws that bar discrimination in lending, such as the Equal Credit Opportunity Act, enacted in 1974 and amended many times since then. Congress, therefore, could reasonably assume, based on the Boston study, and its legislative experience regarding discriminatory lending practices, that minority applicants for licenses issued in spectrum auctions would face substantial (albeit subtle) barriers to obtaining financing. Any legal remedies, even if effective, would, moreover, come too late to ensure that minorities are able to participate in spectrum auctions and obtain licenses.

100. Similar evidence presented in testimony before the House Minority Enterprise Subcommittee on May 20, 1994 indicates that African American business borrowers have difficulty raising capital mainly because they have less equity to invest, they receive fewer loan dollars per dollar of equity investment, and they are less likely to have alternate loan sources, such as affluent family or friends. Assuming two hypothetical college educated, similarly-situated male entrepreneurs, one black, one white, the testimony indicated that the white candidate would have access to \$1.85 in bank loans for each dollar of owner equity invested, while the black candidate would have access to only \$1.16. According to the testimony, the problems associated with lower incomes and intergenerational wealth, as well as the discriminatory treatment minorities receive from financial institutions, make it much more likely that minorities will be shut out of capital intensive industries, such as telecommunications. This testimony also noted that African American representation in communications is so low that it was not possible to generate meaningful summary statistics on underrepresentation.⁶⁹

101. The inability to access capital is also a major impediment to the successful participation of women in broadband PCS auctions. In enacting the Women's Business Ownership Act in 1988, Congress made findings that women, as a group, are subject to discrimination that adversely affects their ability to raise or secure capital.⁷⁰ As AWRT

⁶⁹ Testimony of Dr. Timothy Bates, Visiting Fellow, The Woodrow Wilson Center, before the U.S. House of Representatives Committee on Small Business, Subcommittee on Minority Enterprise, Finance, and Urban Development (House Minority Enterprise Subcommittee), May 20, 1994.

⁷⁰ Pub. L. 100-533 (1988). In 1991, Congress enacted the Women's Business Development Act of 1991 to further assist the development of small businesses owned by women. See Pub. L. 102-191 (1991).

documents, these discriminatory barriers still exist today. Indeed, AWRT reports that while venture capital is an important source of funding for telecommunications companies, women-owned companies received only approximately one percent of the \$3 billion invested by institutional venture capitalists in 1993. Citing a 1992 National Women's Business Council report, AWRT further argues that even successful women-owned companies did not overcome these financing obstacles after they had reached a level of funding and profitability adequate for most other businesses.⁷¹

102. A study prepared in 1993 by the National Foundation for Women Business Owners (NFWBO) further illustrates the barriers faced by women-owned businesses. For example, it finds that women-owned firms are 22 percent more likely to report problems dealing with their banks than are businesses at large. In addition, the NFWBO study finds that the largest single type of short-term financing used by women business owners is credit cards and that over half of women-owned firms use credit cards for such purposes, as compared to 18 percent of all small to medium-sized businesses, which generally use bank loans and vendor credit for short-term credit needs. With regard to long-term financing, the study states that a greater proportion of women-owned firms are turning, or are forced to turn, to private sources, and to a wider variety of sources, to fulfill their needs. Based on these findings, the NFWBO study concludes that removal of financial barriers would encourage stronger growth among women-owned businesses, resulting in much greater growth throughout the economy.⁷²

103. If we are to meet the congressional goals of promoting economic opportunity and competition by disseminating licenses among a wide variety of providers, we must find ways to counteract these barriers to entry. Over the years, both Congress and the Commission have tried various methods to enhance access to the broadcast and cable industries by minorities and women. For example, in the late 1960s, the FCC began to promote nondiscriminatory employment policies by broadcast licensees. These equal employment opportunity efforts have taken the form of Commission rules and policies that require licensees not to discriminate, to report hiring and promotion statistics, and to implement affirmative action programs.⁷³ The Commission also has adopted similar equal employment rules for licensees in the common carrier, public mobile, and international fixed

⁷¹ See Letter of AWRT to the Honorable Kweisi Mfume, Chairman, House Minority Enterprise Subcommittee, June 1, 1994.

⁷² See The National Foundation for Women Business Owners, Financing the Business, A Report on Financial Issues from the 1992 Biennial Membership Survey of Women Business Owners, October 1993.

⁷³ 47 C.F.R. § 73.2080 (broadcasters must "establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of the station's employment policy and practice").

public radio communication services,⁷⁴ as well for cable operators.⁷⁵ The cable EEO rules were recently revised as part of the implementation of the Cable Act of 1992, and they now apply to cable entities, satellite master antenna television operators serving 50 or more subscribers and any multichannel video programming distributor.⁷⁶

104. A decade after it first addressed discriminatory hiring practices, the Commission began to look into the serious underrepresentation of minorities among owners of broadcast stations. Recognizing that it could play an important role in alleviating this problem through the licensing process, the Commission adopted its tax certificate and distress sale policies in 1978 to encourage minority ownership of broadcast facilities.⁷⁷ It noted that full minority participation in the ownership and management of broadcast facilities would result in a more diverse selection of programming and would inevitably enhance the diversity of control of a valuable resource, the electromagnetic spectrum.⁷⁸

105. In implementing these ownership policies, the Commission identified lack of access to capital as one of the principal barriers to minority entry. Thus, in 1981, the Commission created the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications (the "Rivera Committee") to investigate financing methods and to give recommendations to the FCC on ways to encourage minority ownership of telecommunications facilities.⁷⁹ The Rivera Committee confirmed that the shortage of

⁷⁴ 47 C.F.R. §§ 21.307, 22.307, 23.55.

⁷⁵ 47 C.F.R. §§ 76.71-76.79.

⁷⁶ See 47 U.S.C. § 554. In addition, the Commission has proposed adopting EEO requirements for all CMRS licensees, including PCS licensees. Regulatory Treatment of Mobile Services, Further Notice of Proposed Rule Making, GN Docket 93-252, FCC 94-100 (released May 20, 1994).

⁷⁷ See Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982) (1982 Policy Statement); see also Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978) (1978 Policy Statement).

⁷⁸ Because of the role of cable television systems in retransmitting broadcast signals, the Commission has also issued tax certificates in connection with sales of cable systems. See Statement of Policy on Minority Ownership of CATV Systems, FCC 82-524, released December 22, 1982.

⁷⁹ Strategies for Advancing Minority Ownership Opportunities in Telecommunications, The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications to the Federal Communications Commission, May 1982 (Rivera Committee Report).

capital is a principal problem facing minorities seeking ownership opportunities and further found that this shortage was due to minority inexperience in obtaining financing, financial institution misconceptions about potential minority borrowers, and marketplace structural problems, such as high interest rates and low broadcast industry earnings growth. Among other things, the Rivera Committee suggested educational and outreach programs and expanding the tax certificate program to nonbroadcast properties such as common carrier and land mobile. In response to this recommendation, the FCC submitted draft legislation to Congress proposing to broaden the scope of the Commission's authority to issue tax certificates in connection with the sale or exchange of any type of telecommunications facilities.⁸⁰ On March 24, 1983, The Minority Telecommunications Ownership Tax Act of 1983, H.R. 2331, which incorporated the Commission's proposals, was introduced in the House of Representatives.⁸¹

106. Congress also took steps to address the problem of minority underrepresentation in communications. In 1982, it mandated the grant of a "significant preference" to minority applicants participating in lotteries for spectrum-based services. 47 U.S.C. § 309(i)(3)(A). And, in 1988 and each fiscal year thereafter, Congress attached a provision to the FCC appropriations legislation, which precluded the Commission from spending any appropriated funds to examine or change its minority broadcast preference policies.⁸²

107. These efforts have met with limited success. The record shows that women and minorities have not gained substantial ownership representation in either the broadcast or non-broadcast telecommunications industries. For example, a 1993 report conducted by the National Telecommunications and Information Administration's (NTIA) Minority Telecommunications Development Program shows that, as of August 1993, only 2.7 percent of commercial broadcast stations were owned by minorities. Another study commissioned by the Commerce Department's Minority Business Development Agency in 1991 found that only one half of one percent of the telecommunications firms in the country were minority owned. The study also identified only 15 minority cable operators and 11 minority firms engaged in the delivery of cellular, specialized mobile radio, radio paging or messaging services in the

⁸⁰ See Federal Communications Draft Legislation Revising Section 1071 of the Internal Revenue Code of 1954 (January 17, 1983).

⁸¹ The Minority Telecommunications Ownership Tax Act of 1983, H.R. 2331, 98th Congress, 1st Sess., March 24, 1983.

⁸² See Continuing Appropriations Act for Fiscal Year 1988, Pub. L. 100-102, 101 Stat. 1329-31; Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1994, Pub. L. 103-121, 107 Stat. 1167.

United States.⁸³ And, according to the last available U.S. Census, only 24 percent of the communications firms in the country were owned by women, and these women-owned firms generated only approximately 8.7 percent of the revenues earned by communications companies.⁸⁴ When companies without paid employees are removed from the equation, firms with women owners represent only 14.5 percent of the communications companies in the country.⁸⁵ One result of these low numbers is that there are very few minority or women-owned businesses that bring experience or infrastructure to PCS. They thus face an additional barrier relative to many existing service providers.

108. Small businesses also have not become major participants in the telecommunications industry. For instance, one commenter asserts that ten large companies -- six Regional Bell Operating Companies (RBOCs), AirTouch (formerly owned by Pacific Telesis), McCaw, GTE and Sprint -- control nearly 86 percent of the cellular industry. This commenter further contends that nine of these ten companies control 95 percent of the cellular licenses and population in the 50 BTAs that have one million or more people.⁸⁶

109. Congress directed the Commission to ensure that, together with other designated entities, rural telephone companies have the opportunity to participate in the provision of PCS. Rural areas, because of their more dispersed populations, tend to be less profitable to serve than more densely populated urban areas. Therefore, service to these areas may not be a priority for many PCS licensees. Rural telephone companies, however, are well positioned because of their existing infrastructure to serve these areas profitably. We, therefore, have adopted special provisions to encourage their participation, increasing the likelihood of rapid introduction of service to rural areas.

110. In the new auction law, Congress directed the Commission to remedy this

⁸³ See Testimony of Larry Irving, Assistant Secretary for Communications and Information, U.S. Department of Commerce, before the House Minority Enterprise Subcommittee, May 20, 1994. In his testimony at this same hearing, FCC Chairman Reed Hundt cited some of these statistics and noted that in light of this serious underrepresentation, there remains "a fundamental obligation for both Congress and the FCC to examine new and creative ways to ensure minority opportunity." Testimony of Reed E. Hundt, Chairman, Federal Communications Commission, before the House Minority Enterprise Subcommittee, May 20, 1994.

⁸⁴ See Women-Owned Businesses, 1987 Economic Censuses, U.S. Department of Commerce, issued August 1990, at 7, 147. The census data includes partnerships, and subchapter S corporations. We have no statistics regarding women representation among owners of larger communications companies.

⁸⁵ Id.

⁸⁶ Ex parte filing of DCR Communications, May 31, 1994.

serious imbalance in the participation by certain groups, especially minorities and women. The record indicates that, in the absence of meaningful efforts to assist designated entities, there would be good reason to think that participation by these groups, particularly businesses owned by women and minorities, would continue to be severely limited. Indeed, the auction law itself envisions a process that requires payment of funds to acquire an initial license, unlike existing licensing methods such as comparative hearings or lotteries. It is therefore possible that participation by those with limited access to capital could be further diminished by operation of the statute, absent affirmative provisions to create competitive opportunity for designated entities. The measures we adopt in this Fifth Report and Order thus will carry out Congress's directive to provide meaningful opportunities for small entities, rural telephone companies, and businesses owned by women and minorities to provide broadband PCS services. The rules also are expressly designed to address the funding problems that face these groups and that are their principal barriers to entry.

111. We also intend that designated entities who win licenses have the opportunity to become strong competitors in this service. While the new broadband PCS service presents tremendous opportunities for designated entities to participate in the provision of the next generation of innovative wireless mobile telecommunications services, it is expected to be a highly competitive service, and the estimated costs of acquiring a license and constructing facilities are substantial. In the Broadband PCS Reconsideration Order, which was adopted June 9, 1994, we took specific steps to assist designated entities to become viable competitors in the provision of broadband PCS. For example, we modified the PCS spectrum allocation plan by shifting all channels blocks to a contiguous lower segment of the "emerging technologies band" in part to bolster the ability of designated entities to obtain more competitively viable licenses. In addition, we relaxed some of the ownership and attribution rules with respect to cellular operators' participation in PCS to foster investment in designated entity ventures,⁸⁷ and we also relaxed the PCS/cellular cross-ownership rule for designated entities with cellular holdings to allow them to further expand their opportunities in broadband PCS.⁸⁸ Further, we took steps that will result in lower capital costs for designated entities that obtain PCS licenses, including adoption of a band plan that will reduce the costs of clearing the PCS spectrum of incumbent microwave users as well as relaxing the construction requirements.

112. The measures we establish today to encourage the entry of designated entities also are designed to promote strong, long-term bona fide competitors. For example, we have revised the definition of a small business set forth in the Second Report and Order to include entities with up to \$40 million in gross revenues, and we will allow these small businesses to pool their resources and form consortia to bid in the entrepreneurs' blocks. We also adopt rules that allow entrepreneurial businesses, small businesses, and businesses owned by women

⁸⁷ Broadband PCS Reconsideration Order at ¶127.

⁸⁸ Id. at ¶125.

and minorities to raise capital by attracting passive equity investors. At the same time, we have designed these rules to ensure that the special provisions adopted for such businesses accrue to the intended beneficiaries.

B. Summary of Special Provisions for Designated Entities

113. As discussed more fully below, many commenters in this proceeding believe that the inability of designated entities to obtain adequate funding has a profoundly adverse effect on the potential for these businesses to bid successfully in auctions against very large, established businesses. Therefore, we take a number of steps in this Order to help address this imbalance.

- We establish two "entrepreneurs' blocks" (frequency blocks C and F) in which large companies (those with \$125 million or more in annual gross revenues or \$500 million or more in total assets) will be prohibited from bidding.
- Bidding credits will be granted both to small businesses and to businesses owned by women and minorities in the entrepreneurs' blocks to provide them with a better opportunity to compete successfully in broadband PCS auctions.
- Certain winning bidders in frequency blocks C and F will be permitted to pay the license price in installments, and the interest rate and moratorium on principal payments will be adjusted to assist small businesses and women and minority-owned businesses.
- We adopt a tax certificate program for minority and women-owned businesses, which will provide additional assistance in their efforts to attract equity investors.
- Rural telephone companies will be allowed to obtain broadband PCS licenses that are geographically partitioned from larger PCS service areas to provide them more flexibility to serve rural subscribers.⁸⁹
- Bidders in the entrepreneurs' blocks will be required to pay an upfront payment of only \$0.015 per MHz per pop, in contrast to the \$0.02 per MHz per pop required in the other blocks.

⁸⁹ In a Further Notice of Proposed Rule Making in this docket, we will seek comment on whether a partitioning option for small businesses or businesses owned by women or minorities, as suggested by some of the commenters, may be appropriate. In that Further Notice, we also will seek comment on whether the Commission should impose a restriction on the assignment or transfer of control of partitioned licenses by rural telephone companies or other designated entities for some period of time.

114. The following chart highlights the major provisions adopted for businesses bidding in the entrepreneurs' blocks.⁹⁰

	<u>Bidding Credits</u>	<u>Installment Payments</u>	<u>Tax Certificates for Investors</u>
Entrepreneurial Businesses (\$40 MM - \$125 MM in revenue and less than \$500 MM in total assets)	0	Interest only for 1 year; rate equal to 10-year Treasury note plus 2.5%; (for businesses with revenues greater than \$75 MM, available only in top 50 markets)	No
Small Businesses (less than \$40 MM revenues)	10%	Interest only for 2 years; rate equal to 10-year Treasury note plus 2.5%;	No
Businesses Owned by Minorities and/or Women (\$40 MM - \$125 MM in revenues)	15%	Interest only for 3 years; rate equal to 10-year Treasury note;	Yes
Small Businesses Owned by Minorities and/or Women (less than \$40 MM revenues)	25%	Interest only for 5 years; rate equal to 10-year treasury note;	Yes

C. Summary of Eligibility Requirements and Definitions

1. Entrepreneurs' Blocks and Small Business Eligibility

115. The following points summarize the principal rules regarding eligibility to bid in the entrepreneurs' blocks and to qualify as a small business. In addition, they summarize the attribution rules we will use to assess whether an applicant satisfies the various financial thresholds. More precise details are discussed in the subsections that follow.

⁹⁰ This table is not comprehensive and therefore it does not present all the provisions established for designated entities, especially those available outside the entrepreneurs' blocks.

Minority views
not represented

past req. + diversity

497 vs 547

1971 reforms proposed-

FCC proposed putting caps

not right to allow persons to use it many times

FCC meeting with
Hunt + Kennard on

4/13

Diversity of voices/diversity of ownership

↙
not relevant in anything other than cable, satellite, +
broadcast

Could require a common carrier model - has not been
supported in laws + courts + tradition struck down

Reagan supported Fowler view diversity of ownership
important

Since '87, FCC been denied ability to study link
between ownership + voices

Little data but seems to be correlation between
diversity of views, more blacks in shows, etc.

FCC
after no ways left to require diversity of voices
ownership caps don't work; distress sales don't work

Different language broadcasts

Low power stations try to reach other audiences - likely
to be eliminated as technology changes.

As switch to digital technology for TV one question is whether to transfer ownership to current TV owners - over 1,000 only about 38 minority.

Transition problem - keep anybody new out

If don't take steps discrim in capital markets - will be lent at higher rates - this will go to one group.

PCS new industry - can address systemic problem of minority access to capital. Will get higher auction prices

Bidding credits have attracted attention of capital holders - this has then led to greater attention on the installment ~~split~~ pay system

So much capital involved + have to compete - thus insures quality through market

Of 30 in first auction, 11 went to min + woman owned

5 year transfer restriction; + if sell then 5-10 years to non-minority must pay back installment

is the control test - linked to ownership - is "front" problem a serious one?

here money being given to Govt - flip side of contract - should this matter?

Non-minority money will be backing a minority owner.

Narrow band auction showed that other bids were therefore higher. If more competitors - bids are higher.

Whites need not apply sign does not apply in auction area.

AFFIRMATIVE OPPORTUNITY FOR THE COMMUNICATIONS REVOLUTION

By
William E. Kennard
General Counsel, Federal Communications Commission

The communications, information and entertainment industries are vitally important, not only because they represent one-sixth of our economy, but because, more than any other industries, they reflect who we are as a nation, both here and around the world.

There should be Affirmative Opportunity for the Communications Revolution. Here are five precepts -- Affirmative Opportunity Principles -- to promote affirmative opportunity for the Communications Revolution.

ONE: AFFIRMATIVE OPPORTUNITY FOR ALL AMERICANS

All disadvantaged businesses deserve an opportunity to participate -- small businesses owned by minorities and women *and* small businesses owned by nonminorities. Small businesses owned by minorities and women face unique obstacles which warrant unique opportunities. Benefits should always be based on relative need.

TWO: THE THREE NOS: No Quotas, No Guarantees, and No Exclusion

We do not establish quotas which award a certain number of FCC licenses or other benefits to a particular group. Nor do we guarantee success to any group. Our rules should always ensure that the beneficiaries of our programs are committed to building businesses for the longterm, not flipping FCC licenses for a quick profit. Affirmative Opportunity seeks to ensure a fair opportunity to compete, not to exclude any competitor.

THREE: ONCE YOU GET A HAND-UP, YOU'RE ON YOUR OWN

Government benefits are a finite resource and should be distributed widely and as needed. Affirmative Opportunity means fair entry-level opportunities for businesses in their early growth phases. There should be limits on how many times a particular member of a disadvantaged group is permitted to invoke the aid of government.

FOUR: MARKET-BASED INCENTIVES WORK BEST

Government should provide opportunities to compete. But the market must ultimately decide which competitor will win. This is the reason why we use techniques such as tax certificates, bidding credits, installment payments and auctions to provide tools for small and minority businesses to attract capital to compete.

FIVE: ONLY DO WHAT'S COST EFFECTIVE

We must continually test our programs under a rigorous cost-benefits analysis. The benefits should be proportional to the desired incentive; the program must be proportional to its costs.

March 6, 1995

TALKING POINTS

RE: "C Block" Auction

Constitutional Issue

- No federal race-based affirmative action program has ever been struck down.
In *Fullilove*, the Supreme Court upheld a 10% set-aside of public works contracts. In *Metro Broadcasting*, the Supreme Court upheld the Commission's minority broadcast license & distress sale programs.
(Note: Courts have struck down (a) federal gender-based affirmative action programs, *Lamprecht* (D.C. Cir; gender equivalent of *Metro Broadcasting*), and (b) state race-based aff. action programs, *Crosen* (Richmond, VA, 30% set-aside).)
- To invalidate the Commission's program, a court would have to find that a constitutional amendment adopted in the wake of the Civil War prevents the federal government from taking limited steps to level a playing field distorted by discrimination (or: ... to bring down barriers erected and maintained by discrimination).
- The Congress that drafted the Equal Protection Clause also adopted race-conscious affirmative action measures, as the Supreme Court has pointed out. The Freedman's Bureau Acts authorized the provision of land, education & medical care to blacks. *Metro*.

The Commission's program

- The Commission's program is far more limited than programs the Supreme Court has approved.
- The Commission's program contains no quotas or set-asides.
- The Commission's program involves merely a fine-tuning of financial requirements carefully drawn to address the principal barrier to entry for businesses owned by minorities and women: lack of access to capital. The difficulties minorities and women face obtaining capital are serious and well documented (e.g., Boston Fed study, congressional hearings).
- The Commission's program guarantees a license to no one. It is conceivable that the auction will take place and not a single minority- or women-owned firm will win a license. No minority- or women-owned firms won licenses in national narrowband auction despite bidding credits.
- Had the Commission done nothing, the decision to auction licenses for the first time would have have erected a new barrier to participation by minorities and women. Until 1993 Act, Commission had given away licenses for free. Even so, minorities and women were dramatically underrepresented in ownership positions in the communications industry. Auction would have exacerbated existing inequities.
- Helping minority- and women-owned businesses actually makes money for the Treasury. Strengthening weak bidders increases the ultimate winning bid.

TEC

- Halting the auction was never TEC's first choice. It told the D.C. Circuit that its strong preference was for a limited stay that would allow the auction to proceed with it in it.

STATEMENT OF

WILLIAM E. KENNARD
GENERAL COUNSEL
FEDERAL COMMUNICATIONS COMMISSION

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON FINANCE

ON

FCC ADMINISTRATION OF INTERNAL REVENUE CODE SECTION 1071

MARCH 7, 1995

Chairman Packwood and Members of the Committee:

Thank you for the opportunity to explain how the Federal Communications Commission has used Section 1071 of the Internal Revenue Code to further the FCC's and Congress' policies.

I. Introduction and Overview

Section 1071 of the Internal Revenue Code authorizes the FCC to permit sellers of broadcast properties to defer capital gains taxes on a sale or exchange if the sale or exchange is deemed by the agency to be "necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations." 26 U.S.C. § 1071.

Section 1071 was enacted in 1943 to alleviate the hardship of involuntary divestiture associated with the Commission's newly adopted multiple ownership rules. Those rules limited radio licensees to ownership of one outlet per market, and, as a result, some broadcast licensees were required to sell overlapping stations. Later, tax certificates were used in voluntary transfers as an incentive to licensees to divest themselves of properties grandfathered under another provision of the multiple ownership rules which limited the number of stations a single entity could own nationwide.

Since that time, the FCC has used tax certificates in other contexts to further the goals of national communications policy. Today, the FCC issues tax certificates to encourage:

- licensees to come into compliance with the FCC's multiple ownership rules
- microwave licensees to relocate to other frequencies to facilitate licensing of personal communications services
- owners of AM radio to divest themselves of licenses in certain frequency bands to reduce interference
- minority ownership.

I understand that this Committee is most interested in the FCC's use of tax certificates to promote minority ownership of broadcasting stations and cable television systems so I will focus on that area in my testimony today.

II. The FCC's Minority Tax Certificate Policy

A. Development of the Policy

Recognizing that the viewing and listening public suffers when minorities are underrepresented among owners of broadcast stations, the Commission began working to encourage minority participation in broadcasting in the late 1960s. Its first step was to formulate rules to prohibit discrimination in hiring and, several years later, in response to a court decision, it began to consider minority status in comparative licensing proceedings.

The decision to grant tax certificates in sales involving minority buyers was prompted by requests from the broadcasting industry and others in the late 1970s. In 1978, the

Commission's Minority Ownership Task Force reported that although minorities constituted approximately 20 percent of the population, they controlled fewer than one percent of the 8500 commercial radio and television stations then operating in the United States. Thus, the National Association of Broadcasters (NAB) proposed that the FCC establish a minority tax certificate policy to provide incentives for established broadcasters to sell radio and television stations to minority entrepreneurs.

The Commission agreed with NAB that underrepresentation by minorities contributed to a dearth of representation of minority views over the public airwaves. The Commission determined that an increase in ownership by minorities would inevitably enhance the diversity of programming available to the American public. Therefore, in 1978, the Commission issued a policy statement in which it determined that it would grant tax certificates to licensees that assign or transfer control of their authorizations to minority-controlled entities. Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978).

In 1981, the Chairman of the FCC, Mark Fowler, began a review of the Commission's minority ownership policies with the goal of finding new ways to advance minority ownership. To assist in this effort, he established the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications. The Advisory Committee identified lack of access to capital as the largest obstacle to minority ownership and identified the tax certificate as a successful way to enable minorities to attract financing.

As a result, the Commission, by a unanimous vote, took a number of steps in 1982 to make the tax certificate policy more effective in providing meaningful opportunities for minorities to enter the communications business.

First, it extended the tax certificate policy to sales of cable television systems. The Commission determined that cable operators, like broadcasters, exercise discretion in determining which broadcast and non-broadcast signals they will carry and, thus, taking steps to increase minority ownership would help to ensure that the viewpoints of minorities are adequately represented in cable television system programming.

In expanding the tax certificate program to cable systems, Chairman Fowler emphasized in a separate statement endorsing the Commission's decision that such actions aim squarely at the problem of minority financing opportunities. Mr. Fowler noted: "As President Reagan has said, the best hope for a strong economic future rests with a healthy, growing private sector. And the private sector does best when all have opportunities to enter it." See Statement of Policy on Minority Ownership of CATV Facilities, 52 R.R.2d 1469 (1982).

Second, the Commission modified the policy to allow issuance of tax certificates to investors in a minority-controlled broadcast or cable company upon the sale of their interests, provided that the interests were acquired to provide "start-up" capital to assist the company in acquiring its first broadcast or cable facilities. Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982). The

Commission found that by broadening the tax certificate policy in this manner "the pressing dilemma minority entrepreneurs face -- the lack of available financing to capitalize their telecommunications ventures -- is met and a creative tool of financing is created."

In 1990, the FCC's minority ownership programs were upheld as constitutional by the United States Supreme Court. The Court held that the Commission's policies designed to increase minority ownership were substantially related to the achievement of a legitimate government interest in broadcast diversity and that they did not impose an impermissible burden on nonminorities. Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990). The Supreme Court cited numerous empirical studies demonstrating that there is a nexus between minority ownership and increased program diversity. Although the Court decision did not specifically involve tax certificates, the rationale for the decision clearly applies to this program.

B. Legislative Constraints on Changes to the Minority Tax Certificate Policy

Late in 1986, the Commission commenced a proceeding to determine whether its minority ownership programs were appropriate as a matter of policy and constitutional law. It asked for public comment on a number of issues, including whether the Commission should continue to grant preferences to minorities and what social or other costs might result from the policies. Reexamination of the Commission's Comparative Licensing, Distress Sales and

Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications, 1 FCC Rcd 1315 (1986).

Congress reacted to the Commission's attempt to reevaluate its minority ownership policies by attaching a rider to the FCC's 1988 appropriations bill explicitly denying the Commission authority to spend any appropriated funds "to repeal, to retroactively apply changes in, or to continue a reexamination of, the policies of the Federal Communications Commission with respect to comparative licensing, distress sales and tax certificates granted under 26 U.S.C. 1071, to expand minority ownership of broadcasting licenses" Congress also ordered the Commission to terminate the proceeding reexamining its minority ownership programs and to reinstate the prior policy. Pub. L. No. 100-202, 101 Stat. 1329 (1987). This rider has been reenacted by Congress each year since 1988.

In the 1994 appropriations legislation, Congress clarified in the House Conference Report that the prohibition on reexamination is "intended to prevent the Commission from backtracking on its policies that provide incentives for minority participation in broadcasting" but that it "does not prohibit the agency from taking steps to create greater opportunities for minority ownership." H. Conf. Rep. No. 103-708, 103d Cong. 2d Sess. 40 (1994) (emphasis added). Therefore, the Commission has been greatly constrained in its ability to review the administration and effectiveness of the tax certificate program.

C. Administration of the Tax Certificate Program

Because the rider to the FCC's appropriations bill prevents the Commission from spending appropriated funds to impose limitations on the minority tax certificate program, the Commission must consider tax certificate requests in accordance with the policy as it was in effect in 1986, subject only to changes that would expand the policy.

A tax certificate allows a seller to defer capital gains taxes incurred in the sale of a communications property. Under Section 1071 of the Internal Revenue Code, this deferral can be accomplished by treating the sale as an involuntary conversion under 26 U.S.C. § 1033, with the recognition of gain postponed by the acquisition of qualified replacement property, or by electing to reduce the basis of certain depreciable property, or both.

Thus, the certificate provides incentives to licensees to sell to minority entrepreneurs, while at the same time enhancing the buyer's bargaining position and ability to attract capital. Section 1071 also encourages reinvestment in communications infrastructure by requiring the seller to reinvest the gains from a tax certificate transaction in similar property.

A request for a tax certificate is submitted to the Commission in letter or petition form. The request is usually filed in conjunction with a sale and, thus, the parties also are required to submit applications for consent to assign or transfer control of the relevant licenses. Ownership information about both the seller and buyer is contained in these

applications, and any interested party may oppose the grant of the tax certificate or of the sale.

To qualify for a tax certificate, the minority buyer must demonstrate that minorities have voting control of the company that is purchasing the broadcast station or cable system, and that they own more than 20% of the company's equity. Minorities must maintain both legal and actual control over the operation of the business. The Commission evaluates these criteria to determine whether issuance of a tax certificate is warranted. Many requests for tax certificates have been denied or withdrawn because the proposed transaction did not meet FCC standards.

The minority status of individuals is determined by reference to the Office of Management and Budget's ethnic group or country of origin classifications. Qualified minority groups include African Americans, Hispanics, American Indians, Alaska Natives, Asians and Pacific Islanders.

The Commission reviews applications and tax certificate requests carefully and often asks the parties for additional information. The Commission has denied grant of tax certificates when the parties failed to demonstrate minority control or to satisfy other criteria. If the Commission determines that grant of a tax certificate is warranted under its tax certificate policies and prior tax certificate decisions, it will issue the certificate to the seller, which in turn submits it to the Internal Revenue Service with its tax return.

D. Results of the Tax Certificate Policy

The Commission's tax certificate policy has been instrumental in substantially increasing the number of broadcast licenses owned by minorities. Before 1978, minorities owned approximately .05 percent (40) of the approximately 8,500 total broadcast licenses issued by the FCC. A 1994 study performed by the National Telecommunications and Information Administration of the Department of Commerce indicates that as of September 1994, there were approximately 323 commercial radio and television stations owned by minorities, 2.9 percent of the total 11,128 licenses. The more than eight-fold increase in the number of broadcast licenses owned by minorities in the seventeen-year history of the Commission's tax certificate program underscores its importance and effectiveness in helping minorities overcome what the Commission identified in 1981 as the biggest obstacle to ownership -- lack of access to capital . The following chart details current minority broadcast ownership levels by industry and by ethnicity.

<u>Industry Total</u>	<u>Black</u>	<u>Hispanic</u>	<u>Asian</u>	<u>Native American</u>	<u>Minority Totals</u>
AM Stations 4,929	101 (2%)	76 (1.5%)	1 (0%)	2 (0%)	180 (3.7%)
FM Stations 5,044	71 (1.4%)	35 (.7%)	3 (.1%)	3 (.1%)	112 (2.2%)
TV Stations 1,155	21 (1.8%)	9 (.8%)	1 (.1%)	0 (0%)	31 (2.7%)
Cumulative Totals 11,128	193(1.7%)	120(1.1%)	5(0%)	5(0%)	323 (2.9%)

Between 1943 and 1994, the Commission issued approximately 536 tax certificates; 419 were issued between 1978 and 1994. Approximately 359 of the total involved sales to minority-owned entities. Of these, 285 involved radio station sales, 43 involved television and low power television sales, and 31 involved cable television transactions.

Although FCC regulations require the buyer of a property for which a tax certificate is issued to hold that station for one year, the overwhelming majority of minority buyers retain their licenses for much longer. Of the 303 broadcast transactions in which tax certificates were granted between 1978 and 1993, the average holding period was approximately five years. We have not included 1994 tax certificate transactions in this figure because those licenses have been held for less than one year. In more than 100 cases in which minority tax certificates were granted, the station still is held by the original minority purchaser.

The great majority of the transactions in which tax certificates are awarded are relatively small, averaging a sale price of \$3.8 million for radio. The 43 minority tax certificates transactions involving television station sales have a higher average sale price of \$32 million. Data is not available for the 31 cable sales, although we know that cable transactions tend to be larger than broadcast transactions.

The Committee expressed an interest in use of the tax certificate program during the last five years. Between 1990 and 1994, the Commission issued 128 minority tax certificates: 17 for television sales, 91 for radio transactions and 20 for cable transactions. The following chart breaks down the activity in each service by year.

<u>Year</u>	<u>TV</u>	<u>Radio</u>	<u>Cable</u>	<u>Total</u>
1990	8	38	5	51
1991	3	19	1	23
1992	0	9	4	13
1993	4	13	4	21
1994	2	12	6	20
Totals	17	91	20	128

III. Conclusion

The minority tax certificate policy is the cornerstone of the Commission's policies to remedy the underrepresentation of minorities in the ownership of broadcast and cable television facilities. Many of the broadcast and cable television facilities acquired by minorities since 1978 were acquired with the benefit of the tax certificate policy. The tax certificate program has been remarkably effective in helping minorities surmount the greatest obstacle to ownership -- attracting the necessary capital. Moreover, the tax certificate program is not a set aside or quota program. Rather, it is a minimally intrusive market-based

incentive to remedy the underrepresentation of minorities in the ownership of broadcast and cable facilities. The program does not seem to have suffered from rampant abuse, such as a lack of real minority control of licenses or quick "flipping" of facilities.

At the same time, the Commission has been constrained in its ability to subject the program to a comprehensive reexamination. As with any program, this one could benefit from periodic review and improvement. If given the authority by Congress to undertake a reevaluation of the tax certificate policy, I am confident that the Commission could improve the administration and cost effectiveness of the minority tax certificate program.

This concludes my formal remarks. Once again, thank you for inviting the FCC to testify this morning. I would be happy to answer any of your questions.

Jerome Thomas LAMPRECHT,
Appellant,

v.

**FEDERAL COMMUNICATIONS
COMMISSION,** Appellee,

**Barbara Driscoll Marmet and
Dragon Communications,
Inc.,** Intervenors.

No. 88-1395.

United States Court of Appeals,
District of Columbia Circuit.

Argued Jan. 25, 1991.

Decided Feb. 19, 1992.

Appeal was taken from order of Federal Communications Commission (FCC) awarding to woman permit to build radio station. The Court of Appeals, Thomas, Circuit Justice, held that preference for women owners violated equal protection principles.

Vacated and remanded.

Buckley, Circuit Judge, concurred and filed opinion.

Mikva, Chief Judge, dissented and filed opinion.

1. Federal Courts ⇨546

Addressing separate statutory and constitutional contentions of intervenor in appeal would be grossly imprudent, where intervenor did not raise arguments in proper fashion by appeal and offered no excuse.

2. Federal Courts ⇨546

Except in extraordinary cases, intervenors may only join into a matter that has been brought before court by another party and cannot expand the proceedings.

3. Constitutional Law ⇨46(1)

When federal court is asked to answer constitutional question, basic tenets of judicial restraint and separation of powers call upon it first to consider alternative grounds for resolution.

4. Statutes ⇨2

Fact that laws at issue are appropriations riders does not change their status as the law.

5. Constitutional Law ⇨70.1(4), 70.3(1)

Congress' judgment must be reviewed deferentially without reweighing evidence de novo in deciding constitutionality of statute.

6. Constitutional Law ⇨211(2)

Any predictive judgments concerning group behavior and differences in behavior among different groups must at the very least be sustained by meaningful evidence in order to withstand equal protection challenge. U.S.C.A. Const.Amends. 5, 14.

7. Constitutional Law ⇨224(1)

Unless generalization about men or women asserted in defense of sex-based classification is grounded in some degree of fact, classification which is being challenged on equal protection grounds cannot possibly advance any legitimate state interest, much less an important one. U.S.C.A. Const.Amends. 5, 14.

8. Constitutional Law ⇨48(6), 224(1)

Generalization about gender is not presumed true; rather, burden of showing exceedingly persuasive justification falls on party seeking to uphold statute that classifies individuals on the basis of gender and is challenged under equal protection clause. U.S.C.A. Const.Amends. 5, 14.

9. Constitutional Law ⇨224(2)

Telecommunications ⇨389

Preference for woman owner in granting permit to build radio station was not substantially related to achieving diversity on air waves and, therefore, violated equal protection principles; Congressional Research Service Report, "Minority Broadcast Station Ownership and Broadcast Programming: Is There a Nexus?" failed to establish any statistically meaningful link between ownership by women and programming of any particular kind. Continuing Appropriations, Fiscal Year 1988, § 1 et seq., 101 Stat. 1329; U.S.C.A. Const. Amends. 5, 14.

10. Constitutional Law ¶224(1)

When government treats people differently because of their sex, equal protection principles at the very least require that there be meaningful factual predicate supporting link between government's means and its ends. U.S.C.A. Const. Amends. 5, 14.

11. Telecommunications ¶426

Remand to Federal Communications Commission (FCC), rather than award of permit to male applicant to build radio station, was proper remedy for invalidation of unconstitutional policy of preferring women owners; FCC did not assign precise numerical values for each factor that it considered, and its ultimate decision was thus not susceptible to mathematical adjustment by Court of Appeals.

Appeal from an Order of the Federal Communications Commission.

Michael A. Carvin, with whom Michael P. McDonald, Washington, D.C., was on the brief, for appellant.

C. Grey Pash, Jr., Counsel, F.C.C., Washington, D.C., for appellee. With him on the brief, were Robert L. Pettit, Gen. Counsel, Daniel M. Armstrong, Associate Gen. Counsel, and Laurel R. Bergold, Counsel, F.C.C., Washington, D.C.

Robert Lewis Thompson, Washington, D.C., was on the brief, for intervenor Drag-on Communications, Inc.

Harold K. McCombs, Jr., Washington, D.C., entered an appearance, for intervenor Barbara Driscoll Marmet.

Before MIKVA, Chief Judge, BUCKLEY, Circuit Judge, and THOMAS, Circuit Justice.*

Opinion for the Court filed by Circuit Justice THOMAS.

* Justice Thomas was a member of this court when the case was briefed and argued and is

Concurring opinion filed by Circuit Judge BUCKLEY.

Dissenting opinion filed by Chief Judge MIKVA.

THOMAS, Circuit Justice:

When Barbara Driscoll Marmet applied for permission to build a radio station, the Federal Communications Commission, pursuant to policy, awarded her extra credit for being a woman. Jerome Thomas Lamprecht contends that the Commission's policy deprived him of his constitutional right to the equal protection of the laws. We agree.

I

A

The Communications Act of 1934, Pub.L. No. 73-416, 48 Stat. 1064 (codified as amended in scattered sections of 47 U.S.C.), empowers the Federal Communications Commission to grant construction permits and operation licenses for radio and television stations when "public convenience, interest, or necessity will be served thereby." 47 U.S.C. §§ 307(a), 309(a); see also *id.* § 303. In 1965, the Commission first set out the general policy that it follows when it entertains mutually exclusive applications. *Policy Statement on Comparative Broadcast Hearings*, 1 F.C.C.2d 393 (1965), modified, 2 F.C.C.2d 667 (1966). Two principal goals guide the Commission in its choice. In furthering the first objective, "a maximum diffusion of control of the media of mass communications," the Commission examines each applicant's interests in other media properties, taking into account the significance of the other media properties and the extent of the applicant's interests. See 1 F.C.C.2d, at 394-95. In furthering the second objective, "the best practicable service to the public," the Commission awards what it calls "quantitative-integration credit," a term of art that describes the degree to which prospective owners will participate in their stations' day-to-day management. See *id.*

designated today a Circuit Justice of this circuit. See 28 U.S.C. §§ 42, 43(b).

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The Commission then "enhances" the quantitative-integration credit based on "qualitative" factors, such as an owner's character and the service an owner proposes to offer, as well as (to the extent applicable) an owner's local residence, involvement in civic affairs, and experience and education in broadcasting. See *id.*, at 396-99.

In 1972, the Commission's Review Board held that it was barred by statute from giving applicants qualitative-enhancement credit for being members of particular racial or ethnic groups. See *Mid-Florida Television Corp.*, 33 F.C.C.2d 1, 17 (Rev. Bd.), review denied, 37 F.C.C.2d 559 (1972). This court disagreed. See *TV 9, Inc. v. FCC*, 495 F.2d 929 (D.C.Cir.1973) (reversing *Mid-Florida*), cert. denied, 419 U.S. 986, 95 S.Ct. 245, 42 L.Ed.2d 194 (1974). A later case clarified that in this circuit's view the public-interest mandate of the Communications Act in effect requires the Commission to award applicants credit for being minorities. See *Garrett v. FCC*, 513 F.2d 1056, 1063 (D.C.Cir.1975); see also *West Michigan Broadcasting Co. v. FCC*, 735 F.2d 601, 609-11 (D.C.Cir.1984), cert. denied, 470 U.S. 1027, 105 S.Ct. 1392, 84 L.Ed.2d 782 (1985). In 1978, the Commission reacted to *TV 9* and *Garrett* by expressly adopting three programs: the awarding of tax certificates, the holding of distress sales, and the giving of preferences in the comparative-licensing process. See *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 F.C.C.2d 979, 982-83 (1978); *WPIX, Inc.*, 68 F.C.C.2d 381, 411-12 (1978); see also *Reexamination of the Commission's Comparative Licensing, Distress Sales and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications*, 1 F.C.C. Rcd. 1315, 1315 (1986) (notice of inquiry), modified, 2 F.C.C. Rcd. 2377 (1987). Each of the three programs was meant to benefit members of only certain minority groups, specifically people of "Black, Hispanic Surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction." *Statement of Policy on Minority Ownership*, 68 F.C.C.2d, at 980 n. 8.

Women fared differently. In June 1978, the Review Board decided "[u]pon further reflection," but without explanation, to give preferences to women in its comparative-licensing program. *Gainesville Media, Inc.*, 70 F.C.C.2d 143, 149 (Rev. Bd. 1978). Early the next month, the Board offered reasons in support of its policy:

We hold that merit for female ownership and participation is warranted upon essentially the same basis as the merit given for black ownership and participation, but that it is a merit of lesser significance. The basic policy considerations are the same. Women are a general population group which has suffered from a discriminatory attitude in various fields of activity, and one which, partly as a consequence, has certain separate needs and interests with respect to which the inclusion of women in broadcast ownership and operation can be of value. On the other hand, it is equally obvious that the need for diversity and sensitivity reflected in the structure of a broadcast station is not so pressing with respect to women as it is with respect to blacks—women have not been excluded from the mainstream of society as have black people.

Mid-Florida Television Corp., 70 F.C.C.2d 281, 326 (Rev. Bd. 1978), set aside on other grounds, 87 F.C.C.2d 203 (1981). Later that year, however, the Commission decided that women who are not also minorities may not participate in the tax-certificate or distress-sale programs. See *National Telecommunications & Information Admin.*, 69 F.C.C.2d 1591, 1593 n. 8 (1978) (petition for notice of inquiry) (stating that "we have not concluded that the historical and contemporary disadvantage [sic] suffered by women is of the same order, or has the same contemporary consequences, which would justify inclusion of a majority of the nation's population in a preferential category defined by the presence of 'minority groups'"); see also *Wuene' el Broadcasting Co.*, 74 F.C.C.2d 389 (1979) (refusing to include women in a program that expedites the processing of minorities' applications).

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In 1983, James U. Steele was denied a construction permit in a case in which the sex of a competing applicant proved to be "decisively important." *Cannon's Point Broadcasting Co.*, 93 F.C.C.2d 643, 656-57 (Rev.Bd.1983), review denied, No. 86-161 (Comm'n Apr. 13, 1984). Steele then challenged the Commission's sex-conscious policy in this court. In *Steele v. FCC*, we struck the policy down. 770 F.2d 1192 (D.C.Cir.1985) (reversing *Cannon's Point*). Noting first that the Review Board's reasoning had been unclear, Judge Tamm, joined by Judge Scalia, accepted the Commission's assertion that it sought to increase the quantity of women's viewpoints on the air. Comparing the Commission's ethnic-preference policy, the court then asked whether a station owner with ancestors from Italy, for example, "would primarily program Italian operas or would eschew Wagner in favor of Verdi," *id.*, at 1198, an assumption based in turn on two other presumed truths: that a station owner's heritage will determine the owner's interests, and that a station owner will indulge his or her own tastes and ignore the tastes of the members of the relevant programming audience.

Whatever the merit of these assumptions as applied to cohesive ethnic cultures, it simply is not reasonable to expect that granting preferences to women will increase programming diversity. Women transcend ethnic, religious, and other cultural barriers. In their social and political opinions and beliefs, for example, women in fact appear to be just as divided among themselves as are men. Therefore it is not reasonable to expect that a woman would manifest a distinctly "female" viewpoint.

Id., at 1199. We concluded that the policy violated the Communications Act. "Presumably, the Board thought that [its policy] was a Good Idea and would lead to a Better World. [But] a mandate to serve the public interest is not a license to conduct experiments in social engineering conceived seemingly by whim and rationalized by conclusory dicta." *Id.*

A majority of the active judges in the circuit then voted to rehear the case en

banc and vacated the panel's opinion and judgment. *Steele v. FCC*, No. 84-1176 (D.C.Cir. Oct. 31, 1985) (en banc). After the court instructed the parties to file supplemental briefs, the Commission responded by admitting that it had assumed, with no factual support, a causal link between its preference schemes and increased diversity of viewpoints. See Brief for the Federal Communications Commission at 17-30, *Steele v. FCC* (D.C.Cir.) (No. 84-1176) (en banc). The Commission acknowledged that it thought its race- and sex-preference policies contrary to both the Communications Act and the Constitution, and it asked us to remand the *Steele* case for reconsideration. We granted the motion, and the Commission proceeded to call for comments on the wisdom and effectiveness of its policies. See *Reexamination of the Commission's Comparative Licensing, Distress Sales and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications*, 1 F.C.C. Rcd. 1315 (1986) (notice of inquiry), modified, 2 F.C.C. Rcd. 2377 (1987).

Soon after the Commission began to try to make a record, however, Congress ordered it to freeze. In a rider to the Continuing Appropriations Act for Fiscal Year 1988, Congress instructed that "none of the funds appropriated by this Act shall be used to repeal, to retroactively apply changes in, or to continue a reexamination of, the policies of the . . . Commission with respect to comparative licensing, distress sales and tax certificates . . . to expand minority and women ownership of broadcasting licenses . . . other than to close [the pending reexamination] with a reinstatement of prior policy." Pub.L. No. 100-202, 101 Stat. 1329, 1329-1331 (1987). Congress has passed identical riders in each year since. See Pub.L. No. 101-515, 104 Stat. 2101, 2136-2137 (1990); Pub.L. No. 101-162, 103 Stat. 988, 1020-1021 (1989); Pub.L. No. 100-459, 102 Stat. 2186, 2216-2217 (1988). Obeying Congress's order, the Commission continues to apply its preference policies. See, e.g., *Cannon's Point Broadcasting Co.*, 3 F.C.C. Rcd. 864 (1988) (reaffirming the original decision, including the sex preference, after the remand in

Steele); see also *James U. Steele*, 4 F.C.C. Rcd. 4700 (1989), reaff'd, 5 F.C.C. Rcd. 4121 (1990).

Disappointed applicants meanwhile continued to challenge the Commission's policies on both constitutional and statutory grounds. In *Shurberg Broadcasting, Inc. v. FCC*, 876 F.2d 902 (D.C.Cir.1989), a divided panel of this court struck down as unconstitutional the Commission's distress-sale program, and in *Winter Park Communications, Inc. v. FCC*, 873 F.2d 347 (D.C.Cir.1989), a divided panel upheld on statutory and constitutional grounds the Commission's comparative-licensing program for racial and ethnic minorities. In *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 110 S.Ct. 2997, 111 L.Ed.2d 445 (1990), the Supreme Court reversed *Shurberg* and affirmed *Winter Park*, thus upholding two of the Commission's methods for preferring applicants on the basis of race, ethnicity, or surname. The *Metro Broadcasting* Court expressly refused to pass judgment on the Commission's policy of preferring

1. Our dissenting colleague suggests throughout that the Supreme Court already has decided that the Commission's sex-based policy passes constitutional muster. "[A]s a matter of law," he writes, "the constitutionality of this affirmative action program is clear—at least until the Supreme Court overturns *Metro*." *Post*, at 415. "In striking down the preference policy," he writes, "my colleagues have done precisely what the Supreme Court forbids them to do." *Post*, at 404. And "it strikes me as impossible," our colleague writes, "to reconcile the Supreme Court's decision in *Metro Broadcasting* with [this court's] decision today." *Post*, at 404. With all due respect, we think it impossible to reconcile our dissenting colleague's suggestion with the unambiguous reservation of *Metro Broadcasting* itself: "[T]he Commission's gender preference policy is not before us today." 110 S.Ct., at 3005 n. 7.

The Commission's gender-preference policy is, however, before us today, and though its subject may challenge certain articles of faith, this case deserves the fair, careful, and dispassionate treatment that we try to accord all of the cases we decide. Our dissenting colleague nonetheless accuses us of "telling the first branch how to make national policy," *post*, at 415, and of "pay[ing] lip service to Justice Brennan's majority opinion" in *Metro Broadcasting* while "apply[ing] in practice ... Justice O'Connor's dissent," *post*, at 404 thereby showing disrespect not only to a coordinate branch of government, see *post*, at 415 ("[J]udges who are devoted to

applicants on the basis of sex. See 110 S.Ct., at 3005 n. 7 ("[T]he Commission's gender preference policy is not before us today.")¹ We had previously held this case in abeyance, and we reopened proceedings after the Supreme Court's decision.

B

This case began in 1982, when Jerome Thomas Lamprecht, Barbara Driscoll Marmet, Dragon Communications, Inc., and Port Royal Broadcasting, Inc. filed mutually exclusive applications to build a radio station that would broadcast on channel 276A (103.1 MHz), out of Middletown, Maryland. Discovery ensued and ended early in 1984. The record reveals the following facts.

Jerome Thomas Lamprecht, of Baltimore, Maryland, was twenty-seven when he applied for the construction permit. Lamprecht attended the University of Maryland full-time from 1974-1977 and part-time from 1977-1984. He graduated in

the original intention of the framers of the Constitution ... ignore the original intentions of selected representatives in Congress."); *post*, at 406 ("There is not even a pretense of deference to Congress anywhere in their opinion."), but also to our own branch of government, see *post*, at 415 ("Today my colleagues thwart not only the intentions of Congress and the executive, but also the intentions of the Supreme Court."); *post*, at 404 ("[A]s appellate judges, our duty is to follow Supreme Court precedents, not to anticipate them."), and, for good measure, to the lawyers for one of the parties, in their efforts before and at oral argument, see *post*, at 412 ("[M]y colleagues have belittled their efforts at every turn.... [T]he questioning judge repeatedly cut off the lawyer's attempt to explain the government's reasoning."). We welcome vigorous debate, of course, but with all due respect, we think our colleague's overheated approach discouraging: not so much an invitation to invigorating debate as a bid to provoke a shouting match. One hopeful note, however: if taking seriously the responsibility of judicial review is a vice, it is a vice that fortunately is shared, at least at times, across the jurisprudential spectrum. See, e.g., *Action for Children's Television v. FCC*, 932 F.2d 1504, 1509-10 (D.C.Cir.1991) ("[J]ust as the FCC may not ignore the dictates of the legislative branch, neither may the judiciary ignore its independent duty to check the constitutional excesses of Congress.").

for vacating the judgment. But the entire thrust of the Government's brief is that the result reached by the Court of Appeals was correct.

A confession of error is at least a deliberate decision on the part of the Government to concede that a Court of Appeals *judgment* in favor of the Government was wrong. In the present case, however, we have only the above-quoted statement of the Government in its brief opposing a grant of certiorari. If we are now to vacate judgments on the basis of what are essentially observations in the Government's brief about the "approach" of the Court of Appeals in a particular case, I fear we may find the Government's future briefs in opposition much less explicit and frank than they have been in the past. Since we depend heavily on the Government in deciding whether to grant certiorari in cases in which the Government is a party, the Court will be the loser as a result.

METRO BROADCASTING, INC. v. FEDERAL COMMUNICATIONS COMMISSION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 89-453. Argued March 28, 1990—Decided June 27, 1990*

These cases consider the constitutionality of two minority preference policies adopted by the Federal Communications Commission (FCC). First, the FCC awards an enhancement for minority ownership and participation in management, which is weighed together with all other relevant factors, in comparing mutually exclusive applications for licenses for new radio or television broadcast stations. Second, the FCC's so-called "distress sale" policy allows a radio or television broadcaster whose qualifications to hold a license have come into question to transfer that license before the FCC resolves the matter in a noncomparative hearing, but only if the transferee is a minority enterprise that meets certain requirements. The FCC adopted these policies in an attempt to satisfy its obligation under the Communications Act of 1934 to promote diversification of programming, taking the position that its past efforts to encourage minority participation in the broadcast industry had not resulted in sufficient broadcast diversity, and that this situation was detrimental not only to the minority audience but to all of the viewing and listening public. Metro Broadcasting, Inc., petitioner in No. 89-453, sought review in the Court of Appeals of an FCC order awarding a new television license to Rainbow Broadcasting in a comparative proceeding, which action was based on the ruling that the substantial enhancement granted Rainbow because of its minority ownership outweighed factors favoring Metro. The court remanded the appeal for further consideration in light of the FCC's separate, ongoing Docket 86-484 inquiry into the validity of its minority ownership policies. Prior to completion of that inquiry, however, Congress enacted the FCC appropriations legislation for fiscal year 1988, which prohibited the FCC from spending any appropriated funds to examine or change its minority policies. Thus, the FCC closed its Docket 86-484 inquiry and reaffirmed its grant of the license to Rainbow, and the Court of Appeals affirmed. Shurberg Broadcasting of Hartford, Inc., one of the respondents in No. 89-700,

*Together with No. 89-700, *Astroline Communications Company Limited Partnership v. Shurberg Broadcasting of Hartford, Inc., et al.*, also on certiorari to the same court.

JUSTICE BRENNAN delivered the opinion of the Court.

The issue in these cases, consolidated for decision today, is whether certain minority preference policies of the Federal Communications Commission violate the equal protection component of the Fifth Amendment. The policies in question are (1) a program awarding an enhancement for minority ownership in comparative proceedings for new licenses, and (2) the minority "distress sale" program, which permits a limited category of existing radio and television broadcast stations to be transferred only to minority-controlled firms. We hold that these policies do not violate equal protection principles.

I

A

The policies before us today can best be understood by reference to the history of federal efforts to promote minority

J. Campbell, Andrew Jay Schwartzman, and Elliot Minberg; for Capital Cities/ABC, Inc., by J. Roger Wollenberg, Carl Willner, and Stephen A. Weiswasser; for Cook Inlet Region, Inc., et al. by Vernon E. Jordan, Jr., and Daniel Joseph; for Giles Television, Inc., by Douglas B. McFadden and Donald J. Evans; for the Lawyers' Committee for Civil Rights Under Law by John Payton, Mark S. Hersh, Robert F. Mullen, David S. Tatel, and Norman Redlich; for the NAACP Legal Defense & Educational Fund, Inc., by Julius L. Chambers, Charles Stephen Ralston, Ronald L. Ellis, Eric Schnapper, Clyde E. Murphy, and Nolan A. Bowie; and for the National League of Cities et al. by Benna Ruth Solomon and Richard A. Simpson.

Briefs of *amici curiae* urging affirmance in No. 89-700 were filed for the United States by *Acting Solicitor General Roberts, Acting Assistant Attorney General Turner, Deputy Solicitor General Merrill, Deputy Assistant Attorney General Clegg, and Michael R. Lazerwitz; for the Pacific Legal Foundation by Ronald A. Zumbrun, Anthony T. Caso, and Sharon L. Browne; and for Southeastern Legal Foundation, Inc., by Robert L. Barr, Jr., and G. Stephen Parker.*

Briefs of *amici curiae* in No. 89-453 were filed for American Women in Radio and Television, Inc., by *Richard P. Holme; and for Jerome Thomas Lamprecht by Michael P. McDonald.*

participation in the broadcasting industry.¹ In the Communications Act of 1934, 48 Stat. 1064, as amended, Congress assigned to the Federal Communications Commission (FCC or Commission) exclusive authority to grant licenses, based on "public convenience, interest, or necessity," to persons wishing to construct and operate radio and television broadcast stations in the United States. See 47 U. S. C. §§ 151, 301, 303, 307, 309 (1982 ed.). Although for the past two decades minorities have constituted at least one-fifth of the United States population, during this time relatively few members of minority groups have held broadcast licenses. In 1971, minorities owned only 10 of the approximately 7,500 radio stations in the country and none of the more than 1,000 television stations, see *TV 9, Inc. v. FCC*, 161 U. S. App. D. C. 349, 357, n. 28, 495 F. 2d 929, 937, n. 28 (1973), cert. denied, 419 U. S. 986 (1974); see also 1 U. S. Commission on Civil Rights, *Federal Civil Rights Enforcement Effort—1974*, p. 49 (Nov. 1974); in 1978, minorities owned less than 1 percent of the Nation's radio and television stations, see FCC Minority Ownership Task Force, *Report on Minority Ownership in Broadcasting 1* (1978) (hereinafter *Task Force Report*); and in 1986, they owned just 2.1 percent of the more than 11,000 radio and television stations in the United States. See National Association of Broadcasters, *Minority Broadcasting Facts 6* (Sept. 1986). Moreover, these statistics fail to reflect the fact that, as late entrants who often have been able to obtain only the less valuable stations, many minority

¹The FCC has defined the term "minority" to include "those of Black, Hispanic Surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction." *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 F. C. C. 2d 979, 980, n. 3 (1978). See also *Commission Policy Regarding Advancement of Minority Ownership in Broadcasting*, 92 F. C. C. 2d 849, 849, n. 1 (1982), citing 47 U. S. C. § 309(i)(3)(C) (1982 ed.).

broadcasters serve geographically limited markets with relatively small audiences.²

The Commission has recognized that the viewing and listening public suffers when minorities are underrepresented among owners of television and radio stations:

“Acute underrepresentation of minorities among the owners of broadcast properties is troublesome because it is the licensee who is ultimately responsible for identifying and serving the needs and interests of his or her audience. Unless minorities are encouraged to enter the mainstream of the commercial broadcasting business, a substantial portion of our citizenry will remain underserved and the larger, non-minority audience will be deprived of the views of minorities.” Task Force Report 1.

The Commission has therefore worked to encourage minority participation in the broadcast industry. The FCC began by formulating rules to prohibit licensees from discriminating against minorities in employment.³ The FCC explained that “broadcasting is an important mass media form which, because it makes use of the airwaves belonging to the public, must obtain a Federal license under a public interest standard and must operate in the public interest in order to obtain periodic renewals of that license.” *Nondiscrimination Employment Practices of Broadcast Licensees*, 13 F. C. C. 2d 766, 769 (1968). Regulations dealing with employment practices were justified as necessary to enable the FCC to satisfy

²See Task Force Report 1; Wimmer, *Deregulation and Market Failure in Minority Programming: The Socioeconomic Dimensions of Broadcast Reform*, 8 *Comm/Ent L. J.* 329, 426, n. 516 (1986). See also n. 46, *infra*.

³See, e. g., *Nondiscrimination Employment Practices of Broadcast Licensees*, 18 F. C. C. 2d 240 (1969); *Nondiscrimination Employment Practices of Broadcast Licensees*, 23 F. C. C. 2d 430 (1970); *Nondiscrimination in Employment Policies and Practices of Broadcast Licensees*, 54 F. C. C. 2d 354 (1975); *Nondiscrimination in Employment Policies and Practices of Broadcast Licensees*, 60 F. C. C. 2d 226 (1976). The FCC's current equal employment opportunity policy is outlined at 47 CFR § 73.2080 (1989).

its obligation under the Communications Act of 1934 to promote diversity of programming. See *NAACP v. FCC*, 425 U. S. 662, 670, n. 7 (1976). The United States Department of Justice, for example, contended that equal employment opportunity in the broadcast industry could “contribute significantly toward reducing and ending discrimination in other industries” because of the “enormous impact which television and radio have upon American life.” *Nondiscrimination Employment Practices*, *supra*, at 771 (citation omitted).

Initially, the FCC did not consider minority status as a factor in licensing decisions, maintaining as a matter of Commission policy that no preference to minority ownership was warranted where the record in a particular case did not give assurances that the owner's race likely would affect the content of the station's broadcast service to the public. See *Mid-Florida Television Corp.*, 33 F. C. C. 2d 1, 17–18 (Rev. Bd.), review denied, 37 F. C. C. 2d 559 (1972), rev'd, *TV 9, Inc. v. FCC*, *supra*. The Court of Appeals for the District of Columbia Circuit, however, rejected the Commission's position that an “assurance of superior community service attributable to . . . Black ownership and participation” was required before a preference could be awarded. *TV 9, Inc.*, *supra*, at 358, 495 F. 2d, at 938. “Reasonable expectation,” the court held, “not advance demonstration, is a basis for merit to be accorded relevant factors.” *Ibid.* See also *Garrett v. FCC*, 168 U. S. App. D. C. 266, 273, 513 F. 2d 1056, 1063 (1975).

In April 1977, the FCC conducted a conference on minority ownership policies, at which participants testified that minority preferences were justified as a means of increasing diversity of broadcast viewpoint. See Task Force Report 4–6. Building on the results of the conference, the recommendations of the task force, the decisions of the Court of Appeals for the District of Columbia Circuit, and a petition proposing



several minority ownership policies filed with the Commission in January 1978 by the Office of Telecommunications Policy (then part of the Executive Office of the President) and the Department of Commerce,⁴ the FCC adopted in May 1978 its *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 F. C. C. 2d 979. After recounting its past efforts to expand broadcast diversity, the FCC concluded:

“[W]e are compelled to observe that the views of racial minorities continue to be inadequately represented in the broadcast media. This situation is detrimental not only to the minority audience but to all of the viewing and listening public. Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the non-minority audience. It enhances the diversified programming which is a key objective not only of the Communications Act of 1934 but also of the First Amendment.” *Id.*, at 980–981 (footnotes omitted).

Describing its actions as only “first steps,” *id.*, at 984, the FCC outlined two elements of a minority ownership policy.

First, the Commission pledged to consider minority ownership as one factor in comparative proceedings for new licenses. When the Commission compares mutually exclusive applications for new radio or television broadcast stations,⁵ it

⁴See Telecommunications Minority Assistance Program, Public Papers of the Presidents, Jimmy Carter, Vol. 1, Jan. 31, 1978, pp. 252, 253 (1979). The petition observed that “[m]inority ownership markedly serves the public interest, for it ensures the sustained and increased sensitivity to minority audiences.” *Id.*, at 252. See also n. 45, *infra*.

⁵In *Ashbacker Radio Corp. v. FCC*, 326 U. S. 327 (1945), we held that when the Commission was faced with two “mutually exclusive” bona fide applications for license—that is, two proposed stations that would be incompatible technologically—it was obligated to set the applications for a comparative hearing. See *id.*, at 333.

looks principally at six factors: diversification of control of mass media communications, full-time participation in station operation by owners (commonly referred to as the “integration” of ownership and management), proposed program service, past broadcast record, efficient use of the frequency, and the character of the applicants. See *Policy Statement on Comparative Broadcast Hearings*, 1 F. C. C. 2d 393, 394–399 (1965); *West Michigan Broadcasting Co. v. FCC*, 236 U. S. App. D. C. 335, 338–339, 735 F. 2d 601, 604–607 (1984), cert. denied, 470 U. S. 1027 (1985). In the Policy Statement on Minority Ownership, the FCC announced that minority ownership and participation in management would be considered in a comparative hearing as a “plus” to be weighed together with all other relevant factors. See *WPIX, Inc.*, 68 F. C. C. 2d 381, 411–412 (1978). The “plus” is awarded only to the extent that a minority owner actively participates in the day-to-day management of the station.

Second, the FCC outlined a plan to increase minority opportunities to receive reassigned and transferred licenses through the so-called “distress sale” policy. See 68 F. C. C. 2d, at 983. As a general rule, a licensee whose qualifications to hold a broadcast license come into question may not assign or transfer that license until the FCC has resolved its doubts in a noncomparative hearing. The distress sale policy is an exception to that practice, allowing a broadcaster whose license has been designated for a revocation hearing, or whose renewal application has been designated for hearing, to assign the license to an FCC-approved minority enterprise. See *ibid.*; *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, 92 F. C. C. 2d 849, 851 (1982). The assignee must meet the FCC’s basic qualifications, and the minority ownership must exceed 50 percent or be controlling.⁶ The buyer must purchase the license be-

⁶In 1982, the FCC determined that a limited partnership could qualify as a minority enterprise if the general partner is a member of a minority

fore the start of the revocation or renewal hearing, and the price must not exceed 75 percent of fair market value. These two Commission minority ownership policies are at issue today.⁷

B

1

In No. 89-453, petitioner Metro Broadcasting, Inc. (Metro), challenges the Commission's policy awarding preferences to minority owners in comparative licensing proceedings. Several applicants, including Metro and Rainbow Broadcasting (Rainbow), were involved in a comparative proceeding to select among three mutually exclusive proposals to construct and operate a new UHF television station in the Orlando, Florida, metropolitan area. After an evidentiary hearing, an Administrative Law Judge (ALJ) granted Metro's application. *Metro Broadcasting, Inc.*, 96 F. C. C. 2d 1073 (1983). The ALJ disqualified Rainbow from consideration because of "misrepresentations" in its application. *Id.*, at 1087. On review of the ALJ's decision, however, the Commission's Review Board disagreed with the ALJ's finding regarding Rainbow's candor and concluded that Rainbow was qualified. *Metro Broadcasting, Inc.*, 99 F. C. C. 2d 688 (1984). The Board proceeded to consider Rainbow's comparative showing and found it superior to Metro's. In so doing, the Review Board awarded Rainbow a substantial enhance-

group who holds at least a 20 percent interest and who will exercise "complete control over a station's affairs." 92 F. C. C. 2d, at 855.

⁷The FCC also announced in its 1978 statement a tax certificate policy and other minority preferences, see 68 F. C. C. 2d, at 983, and n. 19; 92 F. C. C. 2d, at 850-851, which are not at issue today. Similarly, the Commission's gender preference policy, see *Gainesville Media, Inc.*, 70 F. C. C. 2d 143, 149 (Rev. Bd. 1978); *Mid-Florida Television Corp.*, 69 F. C. C. 2d 607, 651-652 (Rev. Bd. 1978), set aside on other grounds, 87 F. C. C. 2d 203 (1981), is not before us today. See *Winter Park Communications, Inc. v. FCC*, 277 U. S. App. D. C. 134, 139-140, n. 5, 873 F. 2d 347, 352-353, n. 5 (1989); *Metro Broadcasting, Inc.*, 3 F. C. C. Red 866, 867, n. 1 (1988).

ment on the ground that it was 90 percent Hispanic owned, whereas Metro had only one minority partner who owned 19.8 percent of the enterprise. The Review Board found that Rainbow's minority credit outweighed Metro's local residence and civic participation advantage. *Id.*, at 704. The Commission denied review of the Board's decision largely without discussion, stating merely that it "agree[d] with the Board's resolution of this case." No. 85-558 (Oct. 18, 1985), p. 2, App. to Pet. for Cert. in No. 89-453, p. 61a.

Metro sought review of the Commission's order in the United States Court of Appeals for the District of Columbia Circuit, but the appeal's disposition was delayed; at the Commission's request, the court granted a remand of the record for further consideration in light of a separate ongoing inquiry at the Commission regarding the validity of its minority and female ownership policies, including the minority enhancement credit. See *Notice of Inquiry on Racial, Ethnic or Gender Classifications*, 1 F. C. C. Red 1315 (1986) (Docket 86-484).⁸ The Commission determined that the outcome in the licensing proceeding between Rainbow and Metro might depend on whatever the Commission concluded

⁸That inquiry grew out of the Court of Appeals' decision in *Steele v. FCC*, 248 U. S. App. D. C. 279, 770 F. 2d 1192 (1985), in which a panel of the Court of Appeals held that the FCC lacks statutory authority to grant enhancement credits in comparative license proceedings to women owners. Although the panel expressly stated that "[u]nder our decisions, the Commission's authority to adopt minority preferences . . . is clear," *id.*, at 283, 770 F. 2d, at 1196, the Commission believed that the court's opinion nevertheless raised questions concerning its minority ownership policies. After the en banc court vacated the panel opinion and set the case for rehearing, the FCC requested that the Court of Appeals remand the case without considering the merits to allow the FCC to reconsider the basis of its preference policy. The request was granted. The Commission, "despite its prior misgivings, has now indicated clearly that it supports the distress sale" and other minority ownership policies, *Shurberg Broadcasting of Hartford, Inc. v. FCC*, 278 U. S. App. D. C. 24, 81, 876 F. 2d 902, 959 (1989) (Wald, C. J., dissenting from denial of rehearing en banc), and has defended them before this Court.

in its general evaluation of minority ownership policies, and accordingly it held the licensing proceeding in abeyance pending further developments in the Docket 86-484 review. See *Metro Broadcasting, Inc.*, 2 F. C. C. Rcd 1474, 1475 (1987).

Prior to the Commission's completion of its Docket 86-484 inquiry, however, Congress enacted and the President signed into law the FCC appropriations legislation for fiscal year 1988. The measure prohibited the Commission from spending any appropriated funds to examine or change its minority ownership policies.⁹ Complying with this directive, the Commission closed its Docket 86-484 inquiry. See *Re-examination of Racial, Ethnic or Gender Classifications, Order*, 3 F. C. C. Rcd 766 (1988). The FCC also reaffirmed its grant of the license in this case to Rainbow Broadcasting. See *Metro Broadcasting, Inc.*, 3 F. C. C. Rcd 866 (1988).

The case returned to the Court of Appeals, and a divided panel affirmed the Commission's order awarding the license to Rainbow. The court concluded that its decision was controlled by prior Circuit precedent and noted that the Commission's action was supported by "highly relevant congressional action that showed clear recognition of the extreme underrepresentation of minorities and their perspectives in

⁹The appropriations legislation provided:

"That none of the funds appropriated by this Act shall be used to repeal, to retroactively apply changes in, or to continue a reexamination of, the policies of the Federal Communications Commission with respect to comparative licensing, distress sales and tax certificates granted under 26 U. S. C. § 1071, to expand minority and women ownership of broadcasting licenses, including those established in Statement of Policy on Minority Ownership of Broadcast Facilities, 68 F. C. C. 2d 979 and 69 F. C. C. 2d 1591, as amended, 52 R. R. 2d [1301] (1982) and Mid-Florida Television Corp., [69] F. C. C. 2d 607 Rev. Bd. (1978) which were effective prior to September 12, 1986, other than to close MM Docket No. 86-484 with a reinstatement of prior policy and a lifting of suspension of any sales, licenses, applications, or proceedings, which were suspended pending the conclusion of the inquiry." Continuing Appropriations Act for Fiscal Year 1988, Pub. L. 100-202, 101 Stat. 1329-31.

the broadcast mass media.'" *Winter Park Communications, Inc. v. FCC*, 277 U. S. App. D. C. 134, 140, 873 F. 2d 347, 353 (1989), quoting *West Michigan*, 236 U. S. App. D. C., at 347, 735 F. 2d, at 613. After petitions for rehearing and suggestions for rehearing en banc were denied, we granted certiorari. 493 U. S. 1017 (1990).

2

The dispute in No. 89-700 emerged from a series of attempts by Faith Center, Inc., the licensee of a Hartford, Connecticut, television station, to execute a minority distress sale. In December 1980, the FCC designated for a hearing Faith Center's application for renewal of its license. See *Faith Center, Inc.*, FCC 80-680 (Dec. 21, 1980). In February 1981, Faith Center filed with the FCC a petition for special relief seeking permission to transfer its license under the distress sale policy. The Commission granted the request, see *Faith Center, Inc.*, 88 F. C. C. 2d 788 (1981), but the proposed sale was not completed, apparently due to the purchaser's inability to obtain adequate financing. In September 1983, the Commission granted a second request by Faith Center to pursue a distress sale to another minority-controlled buyer. The FCC rejected objections to the distress sale raised by Alan Shurberg, who at that time was acting in his individual capacity.¹⁰ See *Faith Center, Inc.*, 54 Radio Reg. 2d (P&F) 1286, 1287-1288 (1983); *Faith Center, Inc.*, 55 Radio Reg. 2d (P&F) 41, 44-46 (Mass Media Bur. 1984). This second distress sale also was not consummated, apparently because of similar financial difficulties on the buyer's part.

In December 1983, respondent Shurberg Broadcasting of Hartford, Inc. (Shurberg), applied to the Commission for a permit to build a television station in Hartford. The application was mutually exclusive with Faith Center's renewal

¹⁰Mr. Shurberg is the sole owner of Shurberg Broadcasting of Hartford, Inc., respondent in No. 89-700.

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at 638. We disagree that the distress sale policy imposes an undue burden on nonminorities. By its terms, the policy may be invoked at the Commission's discretion only with respect to a small fraction of broadcast licenses—those designated for revocation or renewal hearings to examine basic qualification issues—and only when the licensee chooses to sell out at a distress price rather than to go through with the

boro, Inc., 100 F. C. C. 2d 941, 945–946 (1985); *Lamprecht*, 99 F. C. C. 2d 1219, 1223 (Rev. Bd. 1984), review denied, 3 F. C. C. Rcd 2527 (1988), appeal pending, *Lamprecht v. FCC*, No. 88–1395 (CADC); *Horne Industries, Inc.*, 98 F. C. C. 2d 601, 603 (1984); *Vacationland Broadcasting Co.*, 97 F. C. C. 2d 485, 514–517 (Rev. Bd. 1984), modified, 58 Radio Reg. 2d (P&F) 439 (1985); *Las Misiones de Bejar Television Co.*, 93 F. C. C. 2d 191, 195 (Rev. Bd. 1983), review denied, FCC 84–97 (May 16, 1984); *Waters Broadcasting Corp.*, 88 F. C. C. 2d 1204, 1211–1212 (Rev. Bd. 1981).

In many cases cited by Metro, even when the minority applicant prevailed, the enhancement for minority status was not the dispositive factor in the Commission's decision to award the license. See, e.g., *Silver Springs Communications, Inc.*, 5 F. C. C. Rcd 469, 479 (ALJ 1990); *Richardson Broadcasting Group*, 4 F. C. C. Rcd 7989, 7999 (ALJ 1989); *Pueblo Radio Broadcasting Service*, 4 F. C. C. Rcd 7802, 7812 (ALJ 1989); *Poughkeepsie Broadcasting Limited Partnership*, 4 F. C. C. Rcd 6543, 6551, and n. 4 (ALJ 1989); *Barden*, 4 F. C. C. Rcd 7043, 7045 (ALJ 1989); *Perry Television, Inc.*, 4 F. C. C. Rcd 4603, 4618, 4620 (ALJ 1989); *Corydon Broadcasting, Ltd.*, 4 F. C. C. Rcd 1537, 1539 (ALJ 1989), remanded, Order of Dec. 6, 1989 (Rev. Bd.); *Breaux Bridge Broadcasters Limited Partnership*, 4 F. C. C. Rcd 581, 585 (ALJ 1989); *Key Broadcasting Corp.*, 3 F. C. C. Rcd 6587, 6600 (ALJ 1988); *62 Broadcasting, Inc.*, 3 F. C. C. Rcd 4429, 4450 (ALJ 1988), aff'd, 4 F. C. C. Rcd 1768, 1774 (Rev. Bd. 1989), review denied, 5 F. C. C. Rcd 830 (1990); *Gali Communications, Inc.*, 2 F. C. C. Rcd 6967, 6994 (ALJ 1987); *Bogner Newton Corp.*, 2 F. C. C. Rcd 4792, 4805 (ALJ 1987); *Garcia*, 2 F. C. C. Rcd 4166, 4168, n. 1 (ALJ 1987), aff'd, 3 F. C. C. Rcd 1065 (Rev. Bd.), review denied, 3 F. C. C. Rcd 4767 (1988); *Magdalene Gunden Partnership*, 2 F. C. C. Rcd 1223, 1238 (ALJ 1987), aff'd, 2 F. C. C. Rcd 5513 (Rev. Bd. 1987), reconsideration denied, 3 F. C. C. Rcd 488 (Rev. Bd.), review denied, 3 F. C. C. Rcd 7186 (1988); *Tulsa Broadcasting Group*, 2 F. C. C. Rcd 1149, 1162 (ALJ), aff'd, 2 F. C. C. Rcd 6124 (Rev. Bd. 1987), review denied, 3 F. C. C. Rcd 4541 (1988); *Tomko*, 2 F. C. C. Rcd 206, 209, n. 3 (ALJ 1987).

hearing. The distress sale policy is not a quota or fixed quantity set-aside. Indeed, the nonminority firm exercises control over whether a distress sale will ever occur at all, because the policy operates only where the qualifications of an existing licensee to continue broadcasting have been designated for hearing and no other applications for the station in question have been filed with the Commission at the time of the designation. See *Clarification of Distress Sale Policy*, 44 Radio Reg. 2d (P&F) 479 (1978). Thus, a nonminority can prevent the distress sale procedures from ever being invoked by filing a competing application in a timely manner.⁵¹

In practice, distress sales have represented a tiny fraction—less than 0.4 percent—of all broadcast sales since 1979. See Brief for Federal Communications Commission in No. 89–700, p. 44. There have been only 38 distress sales since the policy was commenced in 1978. See A. Barrett, Federal Communications Commission, *Minority Employment and Ownership in the Communications Market: What's Ahead in the 90's?*, p. 7 (Address to the Bay Area Black

⁵¹ Faith Center also held broadcast licenses for three California stations, and in 1978, the FCC designated for a hearing Faith Center's renewal application for its San Bernadino station because of allegations of fraud in connection with over-the-air solicitation for funds and for failure to cooperate with an FCC investigation. Although respondent Shurberg did not file a competing application prior to the Commission's decision to designate for hearing Faith Center's renewal application for its Hartford station, timely filed competing applications against two of Faith Center's California stations prevented their transfer under the distress sale policy. See *Faith Center, Inc.*, 89 F. C. C. 2d 1054 (1982), and *Faith Center, Inc.*, 90 F. C. C. 2d 519 (1982).

Of course, a competitor may be unable to foresee that the FCC might designate a license for a revocation or renewal hearing, and so might neglect to file a competing application in timely fashion. But it is precisely in such circumstances that the minority distress sale policy would least disrupt any of the competitor's settled expectations. From the competitor's perspective, it has been denied an opportunity only at a windfall; it expected the current licensee to continue broadcasting indefinitely and did not anticipate that the license would become available.

Media Conference, San Francisco, Apr. 21, 1990). This means that, on average, only about 0.2 percent of renewal applications filed each year have resulted in distress sales since the policy was commenced in 1978. See 54 FCC Ann. Rep. 33 (1988).²² Nonminority firms are free to compete for the vast remainder of license opportunities available in a market that contains over 11,000 broadcast properties. Nonminorities can apply for a new station, buy an existing station, file a competing application against a renewal application of an existing station, or seek financial participation in enterprises that qualify for distress sale treatment. See Task Force Report 9-10. The burden on nonminority firms is at least as "relatively light" as that created by the program at issue in *Fullilove*, which set aside for minorities 10 percent of federal funds granted for local public works projects. 448 U. S., at 484 (opinion of Burger, C. J.); see also *id.*, at 485, n. 72.

III

The Commission's minority ownership policies bear the *imprimatur* of longstanding congressional support and direction and are substantially related to the achievement of the important governmental objective of broadcast diversity. The judgment in No. 89-453 is affirmed, the judgment in

²² Even for troubled licensees, distress sales are relatively rare phenomena; most stations presented with the possibility of license revocation opt not to utilize the distress sale policy. Many seek and are granted special relief from the FCC enabling them to transfer the license to another concern as part of a negotiated settlement with the Commission, see *Coalition for the Preservation of Hispanic Broadcasting v. FCC*, 282 U. S. App. D. C. 200, 203-204, 893 F. 2d 1349, 1352-1353 (1990); bankrupt licensees can effect a sale for the benefit of innocent creditors under the "Second Thursday" doctrine, see *Second Thursday Corp.*, 22 F. C. C. 2d 515, 520-521 (1970), reconsideration granted, 25 F. C. C. 2d 112, 113-115 (1970); *Northwestern Indiana Broadcasting Corp. (WLTH)*, 65 F. C. C. 2d 66, 70-71 (1977); and still others elect to defend their practices at hearing.

No. 89-700 is reversed, and the cases are remanded for proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, concurring.

Today the Court squarely rejects the proposition that a governmental decision that rests on a racial classification is never permissible except as a remedy for a past wrong. *Ante*, at 564-565. I endorse this focus on the future benefit, rather than the remedial justification, of such decisions.¹

I remain convinced, of course, that racial or ethnic characteristics provide a relevant basis for disparate treatment only in extremely rare situations and that it is therefore "especially important that the reasons for any such classification be clearly identified and unquestionably legitimate." *Fullilove v. Klutznick*, 448 U. S. 448, 534-535 (1980) (dissenting opinion). The Court's opinion explains how both elements of that standard are satisfied. Specifically, the reason for the classification—the recognized interest in broadcast diversity—is clearly identified and does not imply any judgment concerning the abilities of owners of different races or the merits of different kinds of programming. Neither the favored nor the disfavored class is stigmatized in any way.² In addition, the Court demonstrates that these cases fall within the extremely narrow category of governmental decisions for which racial or ethnic heritage may provide a rational basis for differential treatment.³ The public interest in broadcast diver-

¹ See *Richmond v. J. A. Croson Co.*, 488 U. S. 469, 511-513 (1989) (STEVENS, J., concurring in part and concurring in judgment); *Wygant v. Jackson Board of Education*, 476 U. S. 267, 313-315 (1986) (STEVENS, J., dissenting).

² Cf. *Croson*, 488 U. S., at 516-517; *Fullilove*, 448 U. S., at 545, and n. 17.

³ See *Cleburne v. Cleburne Living Center, Inc.*, 473 U. S. 432, 452-454 (1985) (STEVENS, J., concurring) (in examining the "rational basis" for a classification, the "term 'rational,' of course, includes a requirement that an impartial lawmaker could logically believe that the classification would serve a legitimate public purpose that transcends the harm to the members

purposes; or (E) a State or local government, or a political or special district;

public telecommunications facilities applicant;

shall construct, operate, and maintain such facilities will be available when

such facilities will be used for public telecommunications services. Such public telecommunications services shall not interfere with the provision of other telecommunications services as required in this section.

shall be included in comprehensive planning for such facilities in the area which shall include such planning has included such planning and coordination with other agencies, as appropriate;

to ensure the most efficient use of the

under this section with respect to public telecommunications facilities shall be determined by the applicant in an amount that such amount shall not be determined by the Secretary to be such project.

shall be determined as the Secretary deems appropriate for which construction is necessary. An applicant for such facilities shall provide assurances that such applicant meets the eligible requirements of this section to receive construction

under this section. Each grant recipient under this section shall, if such studies are received under this section.

(e) Rules and regulations

The Secretary shall establish such rules and regulations as may be necessary to carry out this subpart, including rules and regulations relating to the order of priority in approving applications for construction projects and relating to determining the amount of each grant for such projects.

(f) Minorities and women

In establishing criteria for grants pursuant to section 393 of this title and in establishing procedures relating to the order of priority established in subsection (e) of this section in approving applications for grants, the Secretary shall give special consideration to applications which would increase minority and women's ownership of, operation of, and participation in public telecommunications entities. The Secretary shall take affirmative steps to inform minorities and women of the availability of funds under this subpart, and the localities where new public telecommunications facilities are needed, and to provide such other assistance and information as may be appropriate.

(g) Recovering funds

If, within 10 years after completion of any project for construction of public telecommunications facilities with respect to which a grant has been made under this section—

(1) the applicant or other owner of such facilities ceases to be an agency, institution, foundation, corporation, association, or other entity described in subsection (a)(1) of this section; or

(2) such facilities cease to be used primarily for the provision of public telecommunications services (or the use of such public telecommunications facilities for purposes other than the provision of public telecommunications services interferes with the provision of such public telecommunications services as required in this part);

the United States shall be entitled to recover from the applicant or other owner of such facilities the amount bearing the same ratio to the value of such facilities at the time the applicant ceases to be such an entity or at the time of such determination (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facilities are situated), as the amount of the Federal participation bore to the cost of construction of such facilities.

(h) Recordkeeping requirements

Each recipient of assistance under this subpart shall keep such records as may be reasonably necessary to enable the Secretary to

paragraph (10), to grant such license or permit to a qualified applicant through the use of a system of competitive bidding that meets the requirements of this subsection.

(2) Uses to which bidding may apply

A use of the electromagnetic spectrum is described in this paragraph if the Commission determines that—

(A) the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers in return for which the licensee—

(i) enables those subscribers to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate; or

(ii) enables those subscribers to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate; and

(B) a system of competitive bidding will promote the objectives described in paragraph (3).

(3) Design of systems of competitive bidding

For each class of licenses or permits that the Commission grants through the use of a competitive bidding system, the Commission shall, by regulation, establish a competitive bidding methodology. The Commission shall seek to design and test multiple alternative methodologies under appropriate circumstances. In identifying classes of licenses and permits to be issued by competitive bidding, in specifying eligibility and other characteristics of such licenses and permits, and in designing the methodologies for use under this subsection, the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in section 151 of this title and the following objectives:

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

(C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and

(D) efficient and intensive use of the electromagnetic spectrum.

(4) Contents of regulations

In prescribing regulations pursuant to paragraph (3), the Commission shall—

(A) consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods that promote the objectives described in paragraph (3)(B), and combinations of such schedules and methods;

(B) include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services;

(C) consistent with the public interest, convenience, and necessity, the purposes of this chapter, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority

groups and women, and
technologies and services;

(D) ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures; and

(E) require such transfer disclosures and antitrafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits.

(5) Bidder and licensee qualification

No person shall be permitted to participate in a system of competitive bidding pursuant to this subsection unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing. No license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to subsection (a) of this section and sections 308(b) and 310 of this title. Consistent with the objectives described in paragraph (3), the Commission shall, by regulation, prescribe expedited procedures consistent with the procedures authorized by subsection (i)(2) of this section for the resolution of any substantial and material issues of fact concerning qualifications.

(6) Rules of construction

Nothing in this subsection, or in the use of competitive bidding, shall—

(A) alter spectrum allocation criteria and procedures established by the other provisions of this chapter;

(B) limit or otherwise affect the requirements of subsection (h) of this section, section 301, 304, 307, 310, or 606 of this title or any other provision of this chapter (other than subsections (d)(2) and (e) of this section);

(C) diminish the authority of the Commission under the other provisions of this chapter to regulate or reclaim spectrum licenses;

(D) be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant to this subsection;

(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;

(F) be construed to prohibit the Commission from issuing nationwide, regional, or local licenses or permits;

(G) be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology; or

(H) be construed to relieve any applicant for a license or permit of the obligation to pay charges imposed pursuant to section 158 of this title.

(7) Consideration of revenues in public interest determinations

(A) Consideration prohibited

In making a decision pursuant to section 303(c) of this title to assign a band of frequencies to a use for which licenses or permits will be issued pursuant to this subsection, and in prescribing regulations pursuant to paragraph (4)(C) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

(B) Consideration limited

In prescribing regulations pursuant to paragraph (4)(A) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

84TH ITEM of Level 1 printed in FULL format.

Statement of Policy on Minority Ownership of Broadcasting
Facilities

FEDERAL COMMUNICATIONS COMMISSION

68 F.C.C.2d 979; 1978 FCC LEXIS 861; 42 Rad. Reg. 2d (P & F)
1689

RELEASE-NUMBER: FCC 78-322

May 25, 1978

OPINION:

[*1]

One decade ago, as as a partial response to the concerns expressed in the Report of the National Advisory Committee on Civil Disorders ("The Kerner Report"), n1 the Commission articulated policies and principles which would guide it in its consideration of complaints that its licensees -- or those who would be its licensees -- had discriminated against minorities in their employment practices. n2 We observed that "we simply do not see how the Commission could make the public interest findings as to a broadcast applicant who is deliberately pursuing or preparing to pursue a policy of discrimination -- of violating the National Policy." n3

n1 Report of the National Advisory Commission on civil Disorders (New York: Bantam Books, 1968).

n2 Petition for Rulemaking to Request Licensees to Show Non-discrimination in Their Employment Practices, 13 FCC 2d 766 (1968). ("(A) petition or complaint raising substantial issues of fact concerning discrimination in employment practices calls for full exploration by the Commission before the grant of the broadcast application before it.")

n3 Id. at 769.

One year later, July 16, 1969, the Commission adopted rules which, in addition to forbidding [*2] discrimination on the basis of race, color, religion or national origin, also required that "equal opportunity in employment... be afforded by all licensees or permittees... to all qualified persons." n4 To meet this goal, licensees were required to develop a program of specific practices designed to assure equal opportunity in every aspect of station employment policy and practice. On May 20, 1970, the Commission adopted rules requiring most of the licensees within its jurisdiction to file annual employment reports and a written equal employment opportunity program with certain application forms.

n4 Nondiscrimination Employment Practices of Broadcast Licensees, 13 FCC 2d 240 (1969). "Sex" was added as an impermissible basis for discrimination in May, 1970. Nondiscrimination Employment Practices of Broadcast Licensees, 23 FCC 2d 430 (1970).

Just two years ago, we reiterated and clarified our policy on employment discrimination. We emphasized that our rules embodied the concepts of nondiscrimination and affirmative action, observing that:

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An Affirmative Action Plan is a set of specific and result-oriented procedures which broadcasters must follow to assure that minorities [*3] and women are given equal and full consideration for job opportunities. n5

n5 Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees, 54 FCC 2d 354, 358 (1975).

In adopting the Model EEO Program proposed in 1975, the Commission noted that:

As we have moved with steadily increasing actions to strengthen our rules and policies in the area of nondiscrimination in the employment policies and practices of broadcast station licensees, we have attempted to do so in line with our primary statutory mandate -- the regulation of communication by wire and radio in the public interest....

[We] have sought to limit our role to that of assuring on an overall basis that stations are engaging in employment practices which are compatible with their responsibilities in the field of public service broadcasting. n6

n6 Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees, 60 FCC 2d 226, 229-230 (1976).

The Supreme Court has spoken favorably of such Commission actions. In NAACP v FPC, 425 US 662, 670 n. 7 (1976) the Court observed:

The Federal Communications Commission has adopted regulations dealing with the employment practices [*4] of its regulations.... These regulations can be justified as necessary to enable the FCC to satisfy its obligation under the Communications Act of 1934... to ensure that its licensees' programming fairly reflects the tests and viewpoints of minority groups.

The Commission has taken action on other fronts as well to assure that the needs, interests and problems of a licensee's community (including minorities within that community) are both ascertained and treated in the programming of the licensee. Under our ascertainment requirements n7 licensees are required to contact community leaders and members of the general public to obtain information about community interests and to present programming responsive to those interests. To aid licensees in these efforts, we have developed a community leader checklist consisting of 20 groupings or institutions which we believe are found in most communities. Reflecting our commitment to the expression of minority viewpoints, we have required that licensees specifically contact minorities in a community as a district grouping or institution (among the 20 groupings outlined by the Commission) from which representative leaders are to be drawn. [*5] Moreover, the Commission requires that the licensee interview minorities and women within the 19 "non-minority" institutions or groupings which it also expects the licensee to contact as part of its ascertainment procedure.

n7 Ascertainment of Community Problems by Broadcast Applicants, 57 FCC 2d 418 (1976).

While the broadcasting industry has on the whole responded positively to its ascertainment obligations and has made significant strides in its employment practices, we are compelled to observe that the views of racial minorities n8 continue to be inadequately represented in the broadcast media. n9 This situation is detrimental not only to the minority audience but to all of the

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viewing and listening public. Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the non-minority audience. It enhances the diversified programming which is a key objective not only of the Communications Act of 1934 but also of the First Amendment.

n8 For purposes of this statement, minorities include those of Black, Hispanic Surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction.

n9 See Federal Communications Commission's Minority Ownership Task Force, Minority Ownership Report (1978); U.S. Commission on Civil Rights, Window Dressing on the Set (1977); See also The Kerner Report, supra at 207, 208, 210. [*6]

Thus, despite the importance of our equal employment opportunity rules and ascertainment policies in assuring diversity of programming it appears that additional measures are necessary and appropriate. In this regard, the Commission believes that ownership of broadcast facilities by minorities is another significant way of fostering the inclusion of minority views in the area of programming.

As the Commission's Minority Ownership Task Force Report recounts: Despite the fact that minorities constitute approximately 20 percent of the population, they control fewer than one percent of the 8,500 commercial radio and television stations currently operating in this country. Acute underrepresentation of minorities among the owners of broadcast properties is troublesome in that it is the licensee who is ultimately responsible for identifying and serving the needs and interests of his audience. Unless minorities are encouraged to enter the mainstream of the commercial broadcasting business, a substantial proportion of our citizenry will remain underserved, and the larger non-minority audience will be deprived of the views of minorities. n10

n10 Minority Ownership Report, supra. [*7] It is apparent that there is a dearth of minority ownership in the broadcast industry. Full minority participation in the ownership and management of broadcast facilities results in a more diverse selection of programming. In addition, an increase in ownership by minorities will inevitably enhance the diversity of control of a limited resource, the spectrum. And, of course, we have long been committed to the concept of diversity of control because "diversification... is a public good in a free society, and is additionally desirable where a government licensing system limits access by the public to the use of radio and television facilities." n11 What is more, affecting programming by means of increased minority ownership -- as is also the case both with respect to our equal employment opportunity and ascertainment policies -- avoids direct government intrusion into programming decisions.

n11 Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393, 394 (1965).

Hence, the present lack of minority representation in the ownership of broadcast properties is a concern to us. We believe that diversification in the areas of programming and ownership -- legitimate public [*8] interest

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objectives of this Commission -- can be more fully developed through our encouragement of minority ownership of broadcast properties. In this regard, the Commission is aware of and relies upon court pronouncements on this subject.

The United States Court of Appeals for the District of Columbia observed in *Citizens Communications Center v. FCC*, 447 F.2d 1201 (D.C. Cir. 1971): Since one very significant aspect of the 'public interest, convenience, and necessity' is the need for diverse and antagonistic sources of information, the Commission simply cannot make a valid public interest determination without considering the extent to which the ownership of the media will be concentrated or diversified by the grant of one or another of the applications before it.

* * *

As new interest groups and hitherto silent minorities emerge in our society, they should be given the same stake in the chance to broadcast on our radio and television frequencies. n12

n12 447 F.2d at 1213 n. 36.

In *TV 9 Inc. v. FCC*, 495 F.2d 929 (D.C. Cir. 1973), cert. denied, 418 U.S. 986 (1974), the Court again dealt with the issue of minority ownership. In reversing a decision where the Commission [*9] had refused to award merit to an applicant in a comparative proceeding based upon minority ownership and participation the Court emphasized:

It is consistent with the primary objective of maximum diversification of ownership of mass communications media for the Commission in a comparative license proceeding to afford favorable consideration to an applicant who, not as a mere token but in good faith, as broadening community representation, gives a local minority group media entrepreneurship....

We hold only that when minority ownership is likely to increase diversity of content, especially on opinion and viewpoint, merit should be awarded.

* * *

The fact that other applicants propose to present the views of such minority groups in their programming, although relevant, does not offset the fact that it is upon ownership that public policy places primary reliance with respect to diversification of content, and that historically has proved to be significantly influential with respect to editorial comment and the presentation of news. n13

n13 495 F.2d at 937-38 (emphasis added).

The Court made plain that minority ownership and participation in station management is in the [*10] public interest both because it would inevitably increase the diversification of control of the media and because it could be expected to increase the diversity of program content. n14

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n14 As the Court observed in a subsequent opinion: "The entire thrust of TV 9 is that Black ownership and participation together are themselves likely to bring about programming that is responsive to the needs of the black citizenry, and that that reasonable expectation without 'advance demonstration' gives them relevance." Garrett v. FCC, 168 U.S. App. D.C. 266, 273, 513 F.2d 1056, 1063 (1975), 1056, 1063 (D.C. Cir. 1975) (footnote omitted).

The Commission has acted in accordance with these judicial expressions. Its Administrative Law Judges have afforded comparative merit to applicants for construction permits where minority owners were to participate in the operation of the station. n15 The Commission itself has ordered the expedited processing of several applications filed by applicants with significant minority ownership interests. n16

n15 See Flint Family Radio Inc., 41 R.R.2d 1155 (1977).

n16 Atlass Communications, Inc. (WJPC), 61 FCC 2d 995 (1976); Hagadone Capital Corporation, FCC 78-123, 42 P&F Radio Reg. 2d 632 (1978); Letter to Messrs. L. Glaser and Francis E. Fletcher, Jr. FCC 78-167, adopted February 22, 1978; Letter to Ken Goodman, FCC 78-279, adopted April 20, 1978; Letter to Terry E. Tyler, FCC 78-280, adopted April 20, 1978. [*11]

Nevertheless, the continuation of an extreme disparity between the representation of minorities in our population and in the broadcasting industry requires further Commission action. n17 Accordingly, in issuing this statement of policy, we today endorse our commitment to increasing significantly minority ownership of broadcast facilities.

n17 For a general treatment of the growth of Black-owned radio, see Bachman, Dynamics of Black Radio, (1977).

To implement our policy we initiate the first of several steps we expect to consider in fostering the growth of minority ownership.

In conjunction with our customary examination of assignment and transfer applications, n18 we intend to examine such applications where a sale is proposed to parties with a significant minority interest to determine whether there is a substantial likelihood that diversity of programming will be increased. In such circumstances, we will make use of our authority to grant tax certificates n19 to the assignors or transferors where we find it appropriate to advance our policy of increasing minority ownership. n20 A similar proposal was advanced to us by the National Association of Broadcasters and has [*12] won the endorsement of, among others, the Carter Administration, the American Broadcasting Companies, General Electric Broadcasting Company and the National Black Media Coalition.

n18 See Section 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. @ 310(b).

n19 Under 26 U.S.C.A. Section 1071, the Commission can permit sellers of broadcast properties to defer capital gains taxation on a sale whenever it is deemed "necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by, the Commission with respect to the ownership and control of radio broadcasting stations...." Originally tax certification was

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used to remove the hardship of involuntary transfer as a result of divestiture imposed by the Commission's multiple ownership rules. Now, however, tax certificates are routinely approved in voluntary sales as an incentive to licensees to divest themselves of communications properties grandfathered under the multiple ownership rules. Issuance of Tax Certificates, 19 P & F Radio Reg. 2d 1831 (1970).

n20 We currently contemplate issuing a certificate where minority ownership is in excess of 50% or controlling. Whether certificates would be granted in other cases will depend on whether minority involvement is significant enough to justify the certificate in light of the purpose of the policy announced herein. [*13]

Moreover, in order to further encourage broadcasters to seek out minority purchasers, we will permit licensees whose licenses have been designated for revocation hearing, or whose renewal applications have been designated for hearing on basic qualification issues, but before the hearing is initiated, to transfer or assign their licenses at a "distress sale" price n21 to applicants with a significant minority ownership interest, assuming the proposed assignee or transferee meets our other qualifications.

n21 In order to provide incentive for broadcasters opting for this approach, we would expect that the distress price would be somewhat greater than the value of the unlicensed equipment, which could be realized even in the event of revocation. See Second Thursday Corporation, 22 FCC 2d 515 (1970) recon. granted 25 FCC 2d 112 (1970); Northwestern Broadcasting Corporation (WLTH), 65 FCC 2d 66 (1977).

While we normally permit distress sales when the licensee is either bankrupt or physically or mentally disabled, there is precedent for such sales based on other grounds. See e.g. Radio San Juan, 29 P&F Radio Reg. 2d 607 (1974). The avoidance of time consuming and expensive hearings [*14] will more than compensate for any diminution in the license revocation process as a deterrent to wrongdoing. We contemplate grants of distress sales in circumstances similar to those now obtaining except that the minority ownership interests in the prospective purchaser will be a significant factor. The parties involved in each proposed transaction will be expected to demonstrate to us how the sale would further the goals on which we are today basing the extension of our distress sale policy. All such transactions will be scrutinized closely to avoid abuses.

The Congressional Black Caucus has petitioned for rulemaking to permit distress sales to minorities. While we endorse the goal of such a proposal we have concluded that cases should be reviewed as they arise to determine that the objectives of our policies will be met. Consequently, for the present a rigid rule on such sales will not be adopted.

Applications by parties seeking relief under our tax certificate and distress sale policies can be expected to receive expeditious processing.

We are keenly aware that the first steps we announce today do not approach a total solution to the acute underrepresentation problem. [*15] They are made possible because proposals raising these issues have been submitted to us and these proposals, the collective comments received thereon, and the findings of

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our Minority Ownership Task Force provide us with a compelling record upon which to base our action.

Beyond the steps taken today, we intend to examine, among other things, the recommendations set forth in the Minority Ownership Report. Also, while the immediate area of concern of this statement has been broadcasting, it is expected that in the future attention will also be directed towards improving minority participation in such services as cable television and common carrier. Finally, as was concluded in our Minority Ownership Report, if the goal of significant minority ownership is to be reached, Congress, other governmental agencies, and the private sector must join in these efforts. We welcome petitions for rulemaking or other submissions from concerned parties as to other actions we might take to reach our objectives. n22

n22 For example, while today's actions are limited to minority ownership because of the weight of the evidence on this issue, other clearly definable groups, such as women, may be able to demonstrate that they are eligible for similar treatment. [*16]

Action by the Commission May 17, 1978. Commissioners Ferris (Chairman), Lee, Quello, Washburn, Fogarty, White and Brown.
FEDERAL COMMUNICATIONS COMMISSION

42ND ITEM of Level 1 printed in FULL format.

In the Matter of Commission Policy Regarding the
Advancement of Minority Ownership in Broadcasting

Gen. Docket No. 82-797

FEDERAL COMMUNICATIONS COMMISSION

92 F.C.C.2d 849; 1982 FCC LEXIS 387; 52 Rad. Reg. 2d (P & F)
1301

RELEASE-NUMBER: FCC 82-523

December 13, 1982 Released; Adopted December 2, 1982

ACTION: [*1] POLICY STATEMENT AND NOTICE OF PROPOSED
RULE MAKING

JUDGES:

BY THE COMMISSION: CHAIRMAN FOWLER ISSUING A SEPARATE STATEMENT.

OPINION:

Introduction

1. The Commission has traditionally considered the under-representation of minority points of view over the airwaves as detrimental to minorities n1 and the general public. Accordingly, we have taken steps to enhance the ownership and participation of minorities in the media, with the intent of thereby increasing the diversity in the control of the media and thus diversity in the selection of available programming, benefitting the public and serving the principle of the First Amendment. n2 This Policy Statement will deal with our continuing concern with enhancing minority ownership of broadcast properties.

n1 For purposes of this statement, the term "minority" includes American Indians or Alaskan Natives, Asians and Pacific Islanders, Blacks and Hispanics. 47 U.S.C. @309(i)(3)(C).

n2 The First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public . . ." Associated Press v. United States, 326 U.S. 1, 20 (1943).

Background [*2]

2. To ensure that programming reflects and is responsive to minorities' tastes and viewpoints, the Commission has promulgated equal employment opportunity regulations requiring licensees to institute affirmative action programs, n3 and ascertainment procedures requiring licensees to conduct discussions with significant groups, including minority leaders, in the community. n4 However, it became apparent that in order to broaden minority voices and spheres of influence over the airwaves, additional measures were necessary. In our Statement of Policy on Minority Ownership of Broadcasting Facilities (hereinafter cited as the 1978 Policy Statement), n5 we noted that:

n3 See 47 C.F.R. @@73.125, 73.301, 73.599, 73,680, and 73.793; See also Nondiscrimination in Employment Practices of Broadcast Licensees, 13 F.C.C 2d

92 F.C.C.2d 849; 1982 FCC LEXIS 387, *2;
52 Rad. Reg. 2d (P & F) 1301

766, 774 (1968). It should be noted that the Commission recently extended its equal employment opportunity regulations to two newly authorized services, low power television, Low Policy Television, 47 Fed. Reg. 21468 (May 18, 1982), and direct broadcast satellite systems, Report and Order, 47 Fed. Reg. 31553 (July 21, 1982). See also Nondiscrimination Employment Practices of Broadcast Licensees, 54 F.C.C. 2d 354, 356 (1975).

n4 Ascertainment of Community Problems by Broadcast Applicants, 57 F.C.C. 2d 418, 419 (1976). We should point out that while we eliminated formal ascertainment requirements for commercial radio stations in our radio deregulation proceeding (BC Docket No. 79-219), we nevertheless indicated that broadcasters could not engage in intentional discrimination against minority groups in their selection of issues to be addressed with programming. Deregulation of Radio, 84 F.C.C. 2d 968, 978 (1981). We cautioned that such discrimination would be viewed with "utmost gravity." Id. at 1089.

n5 68 F.C.C. 2d 979, 980-981 (1978). [*3]

While the broadcasting industry has on the whole responded positively to its ascertainment obligations and has made significant strides in its employment practices, we are compelled to observe that the views of racial minorities continue to be inadequately represented in the broadcast media . . . Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the non-minority audience.

3. Thus, in 1978, we articulated the important policy goal of encouraging minority ownership of broadcast facilities, and implemented that policy by announcing the availability of tax certificates and distress sales to minority-owned or controlled enterprises. n6 Tax certificates are authorized, under 26 U.S.C. @1071, in sales or exchanges of broadcasting properties where the Commission determines that such sales or exchanges are "necessary or appropriate to effectuate a change in a policy of, or the adoption of a new policy by the Commission with respect to the ownership and control of radio broadcasting stations . . ." A tax certificate enables the seller of a broadcast station to defer the gain realized [*4] upon a sale, either by: (1) treating it as an involuntary conversion, under 26 U.S.C. @1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property, under 26 U.S.C. @1071, or both. The distress sale policy allows broadcasting licensees whose licenses have been designated for revocation hearing, prior to the commencement of a hearing, to sell their station to a minority-owned or controlled entity, at a price "substantially" below its fair market value. A licensee whose license has been designated for hearing would ordinarily be prohibited from selling, assigning or otherwise disposing of its interest, until the issues have been resolved in the licensee's favor. n7 Thus, extension of the tax certificate and distress sale policies fosters minority ownership by providing broadcast licensees with an incentive to transfer their interests to minority-owned or controlled entities. n8

n6 For a more detailed discussion of tax certificates, see paragraph 13, infra, and of distress sales, see paragraph 19, infra.

92 F.C.C.2d 849; 1982 FCC LEXIS 387, *4;
52 Rad. Reg. 2d (P & F) 1301

n7 Bartell Broadcasting of Florida, Inc., 45 RR 2d 1329, 1331 (1979).

n8 We should point out that licensees whose licenses have been designated for hearing may not avail themselves of a tax certificate in addition to a distress sale. Blue Ribbon Broadcastiny, Inc., 76 F.C.C. 2d 429, 431 n. 6 (1980). [*5]

4. Minority participation in broadcasting was also promoted through other means. The Court of Appeals determined that minority ownership of and participation in broadcasting should be encouraged and afforded merit in a comparative hearing context, recognizing the "connection between diversity of ownership of the mass media and diversity of ideas and expression required by the First Amendment." n9 Additionally, the Commission has indicated that waivers of the trafficking rule n10 and the multiple ownership rules n11 would be considered and might be appropriate where minority ownership is thereby increased. n12 Moreover, we have in fact waived our requirements n13 and awarded comparative merit to minority applicants n14 in the interest of promoting minority entrepreneurship.

n9 TV 9, Inc. v. FCC, 495 F.2d 929, 937-938 (D.C. Cir. 1973) cert. den., 418 U.S. 986 (1974). Additionally the Court of Appeals noted that: The fact that other [licensee] applicants propose to present the views of such minority groups in their programming, although relevant, does not offset the fact that it is upon ownership that public policy places primary reliance with respect to diversification of content, and that historically has proven to be significantly influential with respect to editorial comment and the presentation of news. Id. at 938.

n10 47 C.F.R. @73.36 73.240 and @73.636.

n11 47 C.F.R. @73.3597.

n12 Minority Ownership of Broadcasting Facilities, 69 F.C.C. 2d 1591, 1596-1597 (1978). However, given the myriad of potential factual situations and the competing policies underlying those rules, we declined to specify the kind of cases where waivers would be granted,

n13 E.g., in Atlass Communications, Inc., 61 F.C.C. 2d 995, 997 (1976), the allocation requirements were waived and a Black-owned daytime broadcast station was permitted to operate at night.

n14 E.g., in Rosemore Broadcasting, Co., Inc., 54 F.C.C. 2d 394, 418 (1975), merit was awarded to an applicant whose owner principals were minority women who were also to be involved in the management of the proposed station. [*6]

5. Since 1978, we have approved 27 distress sales and 55 tax certificates, which have contributed significantly to increased minority ownership in broadcasting. However, we consider the ever-present "dearth of minority ownership" in the telecommunications industry to be a serious concern, and we are committed to further encouraging minority entry into the industry. We therefore, created the Advisory Committee on Alternative Financing for Minority Opportunities' in Telecommunications (Advisory Committee) for the purpose of exploring means to facilitate minority ownership of telecommunications properties. n15

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n15 The Advisory Committee was created in September of 1981, and was comprised of leaders in the financial, telecommunications, private and public sectors. For a list of Advisory Committee members, see Appendix A.

6. This Policy Statement emanates from recommendations pertaining to the acquisition of broadcasting facilities that were proposed by the Advisory Committee. The Advisory Committee's recommendations were primarily directed toward ameliorating existing Commission policies which tend to inhibit minority entrance into the broadcasting market. Specifically, the [*7] Committee recommended that the Commission:

(1) clarify the 1978 Policy Statement to indicate that (minority) general partners, holding more than a twenty percent interest in limited partnerships, exercise sufficient control and satisfy the test for tax certificates and distress sales;

(2) adopt a "capitalizing feature" for tax certificates to enable share holders with less than a controlling interest in a minority-controlled broadcasting entity to sell their interest and become eligible for a tax certificate:

(3) expedite the handling of distress sale petitions by delegating authority to the Mass Media Bureau to process and grant those petitions that meet Commission standards and are consistent with Commission policies;

(4) expand the rights of seller-creditors, including the right of reversionary interests in broadcast licenses, in seller financed transactions;

(5) amend the multiple ownership rules to permit increased equity participation by venture capital companies in the acquisition of telecommunications properties by minority entrepreneurs; n16 and

n16 Specifically, the Advisory Committee recommended that the multiple ownership rules (see note 11, supra) be amended to either exempt or raise the "reportable interest" level of venture capital companies (including private venture capital investment companies and small business investment companies). [*8]

(6) amend the multiple ownership rules to permit established broadcasting entrepreneurs to acquire equity interests in minority-controlled entities. n17

n17 As an alternative, the Advisory Committee recommended that "the established multiple owner [be allowed] to acquire the additional prohibited property, provided he assisted a minority in the financing of another comparative venture." Such "joint venturing" was deemed desirable, in that experienced broadcasters afford managerial and technical expertise, and may provide additional financing to minority entrepreneurs just entering the complex field of telecommunications.

The Advisory Committee noted that "financing has remained the single greatest obstacle" to minority entry into the telecommunications industry. Therefore, the Advisory Committee's recommendations mainly focused upon enhancing minority entrepreneurship by increasing their opportunities to attract investors in their enterprises, and thus secure financing.

We believe it is appropriate to defer immediate consideration of items (5) and (6) above, the Advisory Committee's recommended amendments to our multiple ownership rules. We are in the process of undertaking [*9] a comprehensive review of those rules, and we believe it is more productive at this point to consider any minority ownership implications of these rules in the context of our overall review.

Discussion

Limited Partnerships

7. As previously stated, to foster minority ownership of broadcasting facilities, in 1978 we extended the availability of tax certificates and distress sales to minority entities. At that time, we indicated that the purchasing entity would be deemed qualified for purposes of tax certificates where the minority ownership interest in the entity exceeded fifty percent or was controlling. n18 The same ownership requirement has since been applied to distress sales. n19 By so establishing the ownership requirement, we did not intend to preclude from consideration other cases where "minority involvement is significant enough to justify" tax certificates or distress sale treatment. However, the requirement has evolved into a rather rigid standard from which we have departed but once. n20 In William M. Barnard, we determined that issuance of a tax certificate was justified under the circumstances, because minority group members owned, directly or indirectly, 45.5 [*10] percent of the partnership interest in the purchasing entity, and the sole general partner, who had the "exclusive authority to manage and control" its affairs, was a minority individual who owned an 11.4 percent interest individually as well as a 52.4 percent interest in a corporation with a 25 percent limited partnership interest in the entity. By so issuing the tax certificate, we recognized the fact that a limited partnership, by its nature, vests complete control over the station's affairs in the general partner. We also recognized that where the general partner is a minority individual with a substantial, but not controlling, equity interest in the entity, sufficient minority involvement has been demonstrated to justify issuance of a tax certificate. We cautioned, however, that "serious concern would arise where tax certificates are sought for sales to limited partnerships in which minorities exercise control but have no substantial ownership interest."

n18 1978 Policy Statement, *supra*, at 983, n. 20.

n19 E.g. Grayson Enterprises, Inc., 47 RR 2d 287, 294 (1980).

n20 For instance in Long-Pride Broadcasting Co., 48 RR 2d 1243 (1980), we denied the issuance of a tax certificate in connection with the sale of a broadcast station, where the minority owned 45 percent of the purchasing entity's stock, and was able to vote an additional 10 percent through a voting trust. We stated that the minority's involvement was not significant enough to justify issuance of a tax certificate, alluding to the "tenuous nature" of voting trusts. *Id.* at 1245. [*11]

8. The Advisory Committee recommended that the Commission explicitly recognize the unique nature of limited partnerships. The Advisory Committee requested the Commission to indicate that in cases where the general partner is a minority individual and owns more than a 20 percent interest in the

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broadcasting entity, there exists sufficient minority involvement to justify favorable application of the Commission's tax certificate and distress sale policies.

9. Limited partnerships are creatures of statute. While the laws may vary from jurisdiction to jurisdiction, the general scheme -- in terms of constitution, purpose and effect -- remains the same. n21 Essentially, a limited partnership is a business enterprise composed of: (1) one or more general partners who exercise complete managerial control over the business' affairs and who are personally liable for the partnership debts; and (2) one or more limited partners who invest capital and share in the profits, but do not exercise any managerial control and do not incur any personal debts beyond their initial capital contribution. n22 Limited partnerships are designed to encourage trade by uniting parties who possess capital to invest [*12] with parties who are willing to expend their energies and efforts actively running a business. n23 Since complete control and management rests with the general partner, the limited partner's investment is akin to that of a corporate shareholder who has limited liability and lacks a voice in the operation of the enterprise. n24

n21 68 Corpus Juris Secundum, Partnership, @449-450.

n22 Evans v. Galardi, 546 P. 2d 313, 317 (1976).

n23 Id. at 318.

n24 Hirsch v. DuPont, 396 F. Supp. 1214 (S.D. Calif. 1975), affirmed. 553 F.2d 750 (1975); Lichtyger v. Franchord Corp., 223 N.E. 2d 869 873 (1966). In fact, any active participation in the enterprises affairs would remove the limited partner's shelter and subject him to personal liability as a general partner. Lichtyger v. Franchord Corp., supra, at 873; Toor v. Westover, 200 F. 2d 713, 715 (9th Cir. 1953), cert. den., 345 U.S. 975 (1953).

10. In Anax Broadcasting, Inc., n25 we determined that the failure to adequately identify the limited partners in a construction permit application was insignificant and did not require dismissal of the application because, under the limited partnership agreement, [*13] the limited partners had only a passive interest in the enterprise (i.e., they would not participate in the station's daily operations), n26 We also stated that the transfer of additional shares to the general partner (which increased his ownership interest from 28 percent to 99 percent) was insignificant, for "regardless of whether the general partner owned a 28 percent interest in the applicant or a 99 percent interest," the general partner would still have "total operating control." n27

n25 49 RR 2d 1589 (1981).

n26 Id. at 1593-1594.

n27 Id. at 1593.

11. Thus, in Anax Broadcasting, Inc. and William M. Barnard, we already have acknowledged the unique nature of limited partnerships. Accordingly, we are adopting the Advisory Committee's recommendation. We will henceforth consider issuing tax certificates and authorizing distress sales in transfers to limited partnership where the general partner, or partners, owns more than 20 percent

of the broadcasting entity and is a member, or members, of a minority group. n28 We are, thus, explicitly recognizing the "significant minority involvement" which exists by virtue of a minority general partner's ownership [*14] interest and complete control over a station's affairs. n29 Moreover, we are increasing minority opportunities by enabling minority entrepreneurs to capitalize their broadcasting ventures by attracting and utilizing the investments of others to a greater extent. Although we are considering such limited partnerships for tax certificate and distress sale purposes, we should make clear that in order to avoid "sham" arrangements, we will continue to review such agreements to ensure that complete managerial control over the station's operations is reposed in the minority general partner(s).

n28 The minimal ownership requirement of 20 percent was recommended by the Committee as reflecting the realities of the financial and business world. We accept their recommendation, in this regard, as a realistic threshold.

n29 We have generally found "control" to be in those who have authority to determine the basic policies of a station's operations, including programming, personnel and financial matters. Southwest Texas Broadcasting Council, 85 F.C.C. 2d 713, 715 (1981).

Tax Certificates as Creative Financing Mechanisms

12. As noted previously, a tax certificate enables the seller to [*15] defer taxes on capital gains, and thus provides an incentive to transfer a broadcast station to a minority-owned or controlled entity. Moreover, a "tax certificate effectively subsidizes the bargaining position of minority entrepreneurs seeking to enter the telecommunications marketplace" because a "tax certificate is effective only in those situations where the seller's capital gains savings exceeds the difference in purchase price offered by a non-minority and a minority purchaser." n30 While the Advisory Committee recognized that tax certificates have successfully contributed to the acquisition of broadcast properties by minorities, n31 it envisioned a more expansive approach to the administration of tax certificates.

n30 The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications, pp. 8-9 (May 1982) (hereinafter cited as the Final Report).

n31 See paragraph 5, supra.

13. In essence, the Advisory Committee recommended that the Commission adopt a policy whereby shareholders in a minority controlled broadcasting entity would be eligible for a tax certificate upon the sale of their shares, provided their [*16] interest was acquired to assist in the financing of the acquisition of a broadcast facility. According to the Advisory Committee:

This expansion of the tax certificate would enable minority entrepreneurs to attract investors before the transaction is completed, when securing financing is critical, by promising them significant capital gains deferral on the sale of their interest to the controlling shareholder.

[Additionally], this "capitalizing feature" of the tax certificate would enable investors to sell their interest at any time and apply for a tax

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certificate. Therefore, the capitalizing feature would also serve as a major incentive for investment in minority businesses after the entity has acquired a broadcast property, thereby stabilizing the capital base of existing minority-owned or controlled businesses. n32

n32 Final Report, supra at 8.

By so broadening the tax certificate policy, the pressing dilemma minority entrepreneurs face -- the lack of available financing to capitalize their telecommunications ventures -- is met and a creative tool of financing is created. Additionally, the Advisory Committee states that this would allow "minority entrepreneurs to share [*17] more meaningfully in the benefits of Section 1971." n33

n33 Id. at 9.

14. Section 1071 of the Internal Revenue Code confers broad jurisdictional powers upon the Commission, normally reserved to the Treasury, to issue tax certificates. n34 The Commission's grant of a tax certificate is solely dependent upon its finding that a sale or exchange of property is "necessary or appropriate" to effectuate the adoption of a new policy or a change in an existing policy relating to the ownership and control of broadcasting properties. The Commission establishes policies in the first instance and makes the determination as to whether a particular transaction furthers a specific policy. In the past, the Commission's strict construction of the statutory term "necessary or appropriate" led it to require a showing of the "involuntary" nature of the divestiture, n35 and later to require a showing of the "causal relationship" between the divestiture and the specific Commission policy, as a condition for the issuance of a tax certificate. n36 The Commission has since abandoned its strict construction of Section 1071 by recognizing that voluntary divestitures that effectuate specific ownership [*18] policies are "appropriate," and by eliminating the "causal relationship" requirements. n37 In 1978, we further expanded our tax certificate policy by announcing the availability of such certificates in transactions that further minority ownership. n38

n34 Blake and McKenna, Section 1071: Deferral of Tax on FCC Sanctioned Dispositions of Communications Properties, 36 Tax L. Rev. 101, 103 (Fall 1980).

n35 See Public Notice, No. 36410, FCC 56-919 (September 27, 1956), But see Jefferson Standard Broadcasting Co. v. FCC, 305 F. Supp. 744, 748-749 (W.D.N.C. 1969), where the Court determined that Congress did not intend to restrict Section 1071 to involuntary divestitures and ordered the Commission to issue a tax certificate. The Court stated that "[entitlement] to the tax deferral certificate contemplated in Section 1071 is not dependent on whether the sale was 'involuntary' or was directly ordered by court or by the Commission." Id at 749.

n36 In this regard the Commission stated that issuance of a tax certificate was dependent upon its finding as to whether there was a causal relationship between the adoption of a new Commission policy and the sale in question, and whether issuance of the certificate was "necessary or appropriate" to effectuate the new policy. Pertinent factors in determining whether a sale was "necessary or appropriate" included: (1) the occurrence of the sale within a reasonable

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time span of the adoption of a new policy, such as one license period; (2) a showing that the policy was a significant factor in the sale; and (3) a showing that the sale was consistent with our general experience in the broadcast field. Issuance of Tax Certificates 19 RR 1831, 1832 (1970).

n37 In re Issurance of Tax Certificates, 59 F.C.C. 2d 91 (1976).

n38 Prior to 1978 the tax certificate policy only applied to transfers involving multiple ownership. We recently announced our intent to limit the award of tax certificates to those properties whose sale directly effectuates Commission policy. This revised policy was prompted by the difficulties attaching to the application of the 1976 policy to divestitures arising in the context of our cable television cross-ownership rules, 47 C.F.R. 76.501 et seq. We do not anticipate that this revised policy will affect the conferring of tax certificates as creative financing mechanisms to facilitate minority ownership. [*19]

15. In accordance with the Advisory Committee's basic recommendations, we believe that a further expansion of our tax certificate policy to include the Advisory Committee's recommendation (See para. 14, supra) will facilitate initial investments in minority-controlled stations; will contribute toward the stabilization and improvement of their operation, once established; and ultimately will serve to increase minority ownership of broadcast properties. The use of tax certificates as creative financing tools will facilitate significantly minority entrepreneurs' access to necessary financing, thus effectuating the important policy of promoting minority ownership. Accordingly, we are expanding our tax certificate policy in this area.

16. Generally, to be eligible for a tax certificate, such transactions must not reduce minority ownership of and control in the entity below 51 percent. n39 However, our expansion of the tax policy differs in some respects from that contemplated by the Committee. First, tax certificates will only be available to initial investors who provide "start-up" financing, which allows for the acquisition of the property, and those investors who purchase shares [*20] within the first year after license insurance, which allows for the stabilization of the entity's capital base. (The Committee's recommendations did not include any time limitation.) We believe that to extend the availability of tax certificates beyond those shareholders would invite abuse and overprotect minority entrepreneurs against the realities of the marketplace which all licensees must face. Additionally, the identity of the divesting shareholders, as well as the identity of those purchasing the divested shares, is not material, because the goal behind expanding the tax certificate policy is to provide minorities opportunities to procure financing and thereby increase minority ownership of broadcasting stations. n40

n39 By so requiring remaining 51 percent minority control, we do not mean to preclude consideration of cases where "minority involvement would have been significant enough" to justify the issuance of a tax certificate in the first instance. (See paras. 8 and 12, supra).

n40 For example assume shareholder A, a Black person, owns 70 percent of Corporation X, while shareholders B and C each own 15 percent. If B and C purchased their shares before or within one year after acquisition of a license, they can later sell their interest and be eligible to receive a tax

certificate. Whether B and C and/or the subsequent buyers are racial or ethnic minorities would be inconsequential -- what is relevant is that B and C provided necessary financing enabling a minority-owned or controlled entity to acquire and start a broadcasting station, thereby increasing minority ownership in the market. So long as the entity is minority controlled, it is immaterial whether minority members own 51% or 91%. [*21]

17. Generally, tax certificates have been issued only upon completion of sale transactions. However, upon request we have issued advisory opinions on whether a tax certificate would be forthcoming once the sale or exchange occurred. n41 Given the inherent uncertainties attendant on negotiations and various potential factual circumstances, we still would be reluctant to issue tax certificates prior to the actual sale or exchange. Thus, we are adopting the Committee's proposal but limiting it to indicate that tax certificates will be available upon the actual divestiture of shares by investors who initially purchase shares in the broadcasting entity or purchase shares within one year after the issuance of a broadcast license, and who show that their capitalization either enabled a minority owned or controlled entity to acquire a broadcast property or provided necessary start-up financing. If parties have uncertainties regarding the tax consequences of prospective transactions, they always can, of course, request a declaratory ruling from the Commission. Such requests will be handled as expeditiously as possible.

n41 William S. Green, 59 F.C.C. 2d 78, 79 (1979); J. A. W. Iglehart, 38 F.C.C. 2d 541, 542 (1972). [*22]

Expedited Processing of Distress Sales

18. The Committee recommended that the Commission delegate authority to the Mass Media Bureau to process and grant distress sale petitions that are consistent with established Commission policy. As we previously noted, our distress sale policy marks a departure from our long established practice of prohibiting a licensee in a renewal or revocation hearing from disposing of its interest prior to the resolution of issues in its favor. n42 In 1978, we stated that "applications by parties seeking relief under our . . . distress sale policies can be expected to receive expeditious processing." However, to safeguard against possible abuse and to ensure that our policy objectives were being met, the Commission stated that it (rather than the staff) would administer distress sales on a case-by-case basis. n43

n42 1978 Policy Statement, supra at 983.

n43 Id. at 983.

19. The evolving nature of our distress sale policy necessitated such an individualized approach. However, we believe that the subsequent case law has established sufficient safeguards and standards by which prospective distress sale petitions may be reviewed and processed [*23] by our staff. n44 Therefore, to further facilitate minority ownership and expedite the handling of distress sale petitions, we are delegating authority to the Mass Media Bureau to process and grant those petitions that are consistent with established Commission policy and do not involve novel questions of fact, law or policy in the area of distress sales.

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n44 We have applied the tax certificate standard (minority ownership which exceeds 50 percent or constitutes a controlling interest -- Policy Statement, supra at 983 n. 20) to distress sales. We have also established procedures for determining the adequacy of a distress sale price. Grayson Enterprises, Inc., 77 F.C.C. 2d 156, 163-164 (1980); Northland Television, Inc., 72 F.C.C. 2d 51-54-56 (1979).

NOTICE OF PROPOSED RULE MAKING -- Seller-Creditors' Rights

20. Given the current economic conditions of the telecommunications market, n45 the Committee stated that seller financing in station transfers has become a prevalent practice and should be encouraged, particularly since it is obviously one of the ways that minorities can obtain broadcasting properties. n46 Although a seller-creditor currently may [*24] take a security interest in the station's physical assets or stock in the corporate licensee n47 as protection against the purchaser's possible default, the Committee believed that seller-financed transfers further would be stimulated if the seller were afforded additional protection. Specifically, the Committee recommended that in those cases where the seller provides financing, the seller-creditor's rights be expanded to include a right of reversionary interest in the license.

n45 The Committee cited two structural problems in the marketplace that affect "all broadcasters, particularly small ones," in obtaining capital as including: (1) The current high interest rates which reduce the comfort level of lenders in all investments (thereby increasing the level of equity required to attain a given capitalization), and which consume cash flow (reducing immediate return on equity); and (2) The fact that presently broadcasting is not providing a high enough return on equity invested to attract venture capital participation. Final Report, supra, at 25-27.

n46 According to the Committee, "[in] 1981, of the 487 station transfer filed with the FCC, two-thirds involved some form of seller financing." Final Report, supra, at 33 (citing Broadcast Investor, April 22, 1982, Issue No. 11, p. 1, Paul Kagan Associates, Inc., Carmel, Calif.).

n47 The Commission already recognizes and approves of contracted arrangements, whereby 50% or more of the stock is pledged, where the contract (1) provides that the licensee-borrower retains the voting rights; and (2) provides for a public or private sale which would ensure that the licensee's equity is protected. Moreover, 49.99% of the stock (representing the absence of positive or negative control) currently may be foreclosed, without prior Commission approval under 47 U.S.C. @310. [*25]

21. There is a long-standing principle, followed by the Commission n48 and affirmed by the United States Supreme Court, n49 that a broadcast license is a valuable, though limited, privilege to utilize the airwaves, rather than a property right. As such, the license has not been subject to a reversionary interest, a mortgage, a lien, a pledge or any other form of security. n50 This principle appears to be dictated by the Communications Act of 1934, as amended. Specifically, 47 U.S.C. @301 states, in pertinent part, that it is the purpose of the Act "to provide for the use of [radio transmissions] channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions and period of the license . . ."

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(Emphasis added). Additionally, 47 U.S.C. @304 requires an applicant for a license to "waive any claims to the use of any particular frequency . . . because of the previous use of the same, whether by license or otherwise;" and 47 U.S.C. @309 (h) requires a station license to contain the following statement: "The station license shall not vest [*26] in the licensee any right to operate the station nor any right in the use of the frequencies designated by the license beyond the term thereof. . . ." Finally, 47 U.S.C. @310 (d) requires Commission approval prior to the transfer, assignment or disposal of rights in a construction permit or station license. The corollary Commission rule is contained in 47 C.F. R. @73.1150 which prohibits agreements, express or implied, that allow a licensee to: (1) retain an interest in the license; (2) claim a right to future assignment of the license; or (3) reserve a privilege to use the broadcast facilities, upon the sale or transfer of its interest in the broadcast station. n51

n48 See eg., *Churchill Tabernacle v. FCC*, 160 C. 2d 244 (D.C. Cir. 1947); *Radio KDAN, Inc.*, 11 F.C.C. 2d 934 (1968); *Yankee Network, Inc.*, 13 F.C. C. 1014 (1949), *Bonanza Broadcasting Corp.*, 11 RR 2d 1072 (1967); *Alabama Polytechnic Institute*, 7 F.C.C. 225 (1939); *Associated Broadcasters Inc.*, 6 F.C.C. 387 (1938).

n49 *Ashbacker Radio Corp., v. FCC*, 326 U.S. 327, 331-32 (1945); *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 475 (1940).

n50 For instance, in *Radio KOAN, Inc.*, 13 RR 2d 100 (1968), the Commission declared a contractual provision that purported to mortgage and create a reversionary interest in the license as void ab initio. The Commission stated, "The extraordinary notion that a station license issued by this Commission is a mortgageable chattel in the ordinary commercial sense is untenable." *Id.* at 101. Likewise, the Commission has prohibited the sale or transfer of a bare license. *Bonanza Broadcasting Corp.*, 11 RR 2d 1072, 1073 (1967); *Donald L. Horton*, 11 RR 2d 417, 419-20 (1967).

n51 Specifically, @73.1150 provides: (a) in transferring a broadcast station, the licensee may retain no right of reversion of the license, no right to reassignment of the license in the future, and may not reserve the right to use the facilities of the station for any period whatsoever; (b) no license, renewal of license, assignment of license or transfer of control of a corporate licensee will be granted or authorized if there is contract, arrangement or understanding, express or implied pursuant to which, as consideration or partial consideration for the assignment or transfer, such rights, as stated in paragraph (a) of this section, are retained. [*27]

22. We recognize that seller financing may facilitate the sale of a broadcast property, but limitations have been imposed on the types of security interests sellers can retain as part of the financing arrangements. We believe it appropriate to inquire as to whether certain limitations could be removed, consistent with the provisions of the Communications Act, so as to further encourage the use of this financing tool, particularly where the transaction would enhance minority ownership of the media of mass communications. Accordingly, interested parties are invited to address themselves to the type of security interest that can be retained by a seller-creditor; whether that interest can or should include a reversionary interest in the license itself; and the legal process, if any, that should be required before the creditor

could exercise its reversionary interest.

Conclusion

23. The Commission issues this Policy Statement to expand and reaffirm the 1978 Policy Statement with the hope that the policies initiated herein will offer meaningful new opportunities to increase minority ownership. Accordingly, this Policy Statement is but the latest step in an ongoing effort. [*28] The Commission will revisit these policies to assess their effectiveness and, if necessary, explore additional policies and procedures to remedy the underrepresentation of minorities in media ownership. Henceforth we will consider:

(1) Issuing tax certificates and authorizing distress sales in transfers to limited partnerships where a minority general partner (or partners) owns more than 20 percent of the broadcasting entity; and (2) Issuing tax certificates to shareholders upon divestiture of their interest in minority controlled broadcasting entities, where divestiture furthers minority ownership. Moreover, to expedite the handling of distress sale petitions, we are delegating authority to the Mass Media Bureau to process and grant those petitions which are consistent with Commission precedent and policy. Finally, we are instituting a rule making proceeding, subject to public notice and comment, with a view toward expanding seller-creditors' rights and protections.

Regulatory Flexibility Act -- Initial Analysis

I. Reason for action:

Since seller-financed transactions represent one method by which minorities may acquire broadcast facilities, we are proposing to examine [*29] the protections currently available to seller-lenders with a view towards possibly expanding their protection and thereby stimulating such transactions.

II. The objective:

To encourage seller financed transactions as a means to facilitate the transfer of broadcast properties.

III. Legal basis:

Authority to consider expanding seller-creditors' protection is premised upon 47 U.S.C. §310 (d) which empowers the Commission to approve of transfers.

IV. Description of potential impact and number of small entities affected:

In general, the impact of affording licenses-sellers additional protections may encourage seller-financing and thus may assist new entrants into the broadcasting industry. Established, as well as potential, broadcasters may be affected.

V. Record keeping and other compliance requirements:

The proposal would impose no new record keeping burdens for broadcasters. VI. Federal rules which overlap, duplicate or conflict with these rules

one.

VII. Any significant alternatives minimizing impact on small entities and consistent with stated objectives:

The expansion of seller-creditor's protections would not impose any burdens upon small entities, rather [*30] it may increase small entities' opportunities to enter the broadcasting industry.

Filing Responses to This Notice

24. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that ex parte contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a Public Notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an ex parte presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written ex parte presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral ex parte presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare [*31] a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each ex parte presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's Rules and Regulations, 47 C.F.R. @1.1231.

25. Pursuant to applicable procedures set out in Sections 1.4, 1.415 and 1.419 of the Commission's Rules and Regulations, 47 C.F.R. @1-4, @1-415 and @1.419, interested parties may file comments on or before March 14, 1983 and reply comments on or before March 29, 1983. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Reply comments shall be served on the person(s) who filed comments to which the reply is directed.

26. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, 47 C.F.R. @1.419, an original and 5 copies [*32] of all comments, reply comments, pleadings, briefs or other documents shall be furnished the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the heading. All filings in this proceeding will be available for public inspection by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

27. For further information contact Ava H. Berland, Mass Media Bureau, (202) 632-7792.

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FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico Secretary