

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

In the Matter of	)	
	)	
2010 Quadrennial Regulatory Review -	)	MB Docket No. 09-182
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	MB Docket No. 07-294
Promoting Diversification of	)	
Ownership in the Broadcasting Services	)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ submits these comments in response to the Public Notice² released by the Federal Communications Commission (“FCC” or “Commission”) in the above-referenced proceedings. The Public Notice affords an opportunity for comment on the Media Bureau’s recently released report on FCC Form 323 data (the “Broadcast Ownership Report”).³ As the Commission observed in the Public Notice, the Broadcast Ownership Report confirms that minorities and women own broadcast stations in disproportionately small numbers.⁴ NAB agrees that the numbers remain disproportionately low. Based on our review of the report, we

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

² See *Commission Seeks Comment On Broadcast Ownership Report*, MB Docket Nos. 09-182, 07-294, DA No. 12-1946, Public Notice (rel. Dec. 3, 2012) (“Public Notice”).

³ See *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 09-182, Report on Ownership of Commercial Broadcast Stations, DA 12-1667 (MB, rel. Nov. 14, 2012) (“Broadcast Ownership Report”).

⁴ Public Notice at 1.

also observe some positive developments in the numbers of minority and female owners, attributable interest holders, and positional interest holders. These developments are summarized below. We also reiterate our support for certain proposals in the record in this proceeding to foster greater diversity of broadcast ownership.

I. Review of Report

Although minority and female ownership levels need substantial improvement, the Report reflects some positive developments concerning the number of attributable interest holders and single majority shareholders that are minorities and women. To determine whether these positive developments signal market-based changes in the broadcast industry, it will be necessary to review future FCC reports compiling Form 323 data.⁵

A. The Report Shows Modest Increases in the Number of Women and Minorities Holding a Majority of the Voting Interests in Broadcast Stations

The Report shows increases in the number of stations in which women or minorities, collectively or individually, hold a majority of the voting interests.⁶ For example, Hispanics held a majority of the voting shares in 30 full power television stations in 2009 and 39 stations in 2011 – a 30% increase.⁷ Overall, the number of broadcast stations with Hispanic majority ownership share increased from 455 to 513,

⁵ The Commission notes that waivers of the 2009 biennial filing requirement were approved for 16 full power commercial television stations, 5 LPTV stations, 155 commercial AM stations, and 303 commercial FM stations. See Broadcast Ownership Report at Appendix B. See also Broadcast Ownership Report at ¶ 9, n.10. Thus, it is possible that some of the apparent increases or declines in various areas are attributable to changes in the number of filers in 2011.

⁶ NAB summarizes its analysis of single majority shareholder ownership at Attachment A.

⁷ Broadcast Ownership Report at ¶ 9, Section A.1.b.

or 12.7%.⁸ Racial minorities held a majority of the voting shares in a total of 439 stations in 2009 and 559 stations in 2011 – a 27.3% increase.⁹ Gains also were seen in the number of stations with women holding a majority of voting shares, which increased from 847 in 2009 to 934 stations, or 10.3% more stations.¹⁰

B. The Report Shows Significant Numbers of Attributable Interest Holders that are Minorities and Women

Although the number of full power commercial television stations identifying women as majority owners remains quite low (6.8%),¹¹ women hold attributable interests in 78.5% of the 1,265 full power TV stations that reported having individual attributable interest holders.¹² Based on the Commission's data, it appears that a large number of these attributable interests are "positional interests" (e.g., senior executives such as officers and directors).¹³ Women also held positional interests in 64.4% of the Class A television stations,¹⁴ 58.3% of the low power television ("LPTV") stations,¹⁵

⁸ NAB totaled and compared the reported number of all types of stations with a majority Hispanic voting ownership in 2009 and 2011 to arrive at this percentage. The Report shows that Hispanic majority ownership of Class A stations increased from 25 to 31 stations during this period, LPTV ownership from 85 to 120 stations, and FM ownership from 141 to 151 stations. See Broadcast Ownership Report at ¶ 9, Sections A.1.b, B.1.b, C.1.b., E.1.b. There was a slight decline in AM ownership from 174 to 172. *Id.* at ¶ 9, Section D.1.b.

⁹ NAB totaled and compared the reported number of all types of stations with racial minorities as a majority of their voting stockholders in 2009 and 2011 to arrive at this percentage. See Broadcast Ownership Report at ¶ 9, Sections A.1.c., B.1.c, C.1.c., D.1.c, E.1.c. There was no change in the number of full power TV stations reportedly owned by racial minorities during this period. *Id.* at ¶ 9, Section A.1.c.

¹⁰ NAB totaled and compared the reported number of all types of stations with women as a majority of their voting stockholders in 2009 and 2011 to arrive at this percentage. See Broadcast Ownership Report at ¶ 9, Sections A.1.a., B.1.a, C.1.a., D.1.a, E.1.a. There was a slight decline in the number of FM stations reportedly owned by women during this period. *Id.* at ¶ 9, Section E.1.a.

¹¹ Broadcast Ownership Report at ¶ 9, Section A.1.a.

¹² *Id.* at ¶ 9, Section A.2.

¹³ *Id.* at ¶ 9, Section A.3.a. (women held positional interests in 77.9% of the 1,029 full power commercial television stations that reported having positional interest holders).

¹⁴ *Id.* at ¶ 9, Section B.3.a

¹⁵ *Id.* at ¶ 9, Section C.3.a.

71.6% of the commercial AM stations,¹⁶ and 75% of the FM stations that reported having positional interest holders.¹⁷

The percentage of stations with a minority holder of a positional interest is also significantly higher than for minority ownership. For example, while Hispanic or Latino persons owned only 2.9% of commercial full power television stations in 2011,¹⁸ they held positional interests in 30.8% of the 1,029 full power TV stations that reported having positional interest holders.¹⁹ Hispanic persons also had positional interests in 36.2% of the Class A television stations,²⁰ 20.2% of the LPTV stations,²¹ 11.3% of the commercial AM stations,²² and 11% of the FM stations that report having positional interest holders.²³

As officers and directors, these positional interest holders have significant influence over the day-to-day operations of a broadcast licensee. NAB is encouraged by the numbers of women and minorities who hold positional interests. Not only do these experienced managers form a strong talent pool from which future owners may emerge, but, under applicable Commission standards, they may already exercise *de facto* control of station operations.

¹⁶ Broadcast Ownership Report at ¶ 9, Section D.3.a.

¹⁷ *Id.* at ¶ 9, Section E.3.a.

¹⁸ *Id.* at ¶ 9, Section A.1.b.

¹⁹ *Id.* at ¶ 9, Section A.3.a.

²⁰ *Id.* at ¶ 9, Section B.3.a.

²¹ *Id.* at ¶ 9, Section C.3.a.

²² *Id.* at ¶ 9, Section D.3.a.

²³ *Id.* at ¶ 9, Section E.3.a.

Positional interest holders are senior executives with significant influence on a licensee's decisions about hiring of personnel, selection of programming, and management of the finances of broadcast stations. As the Broadcast Ownership Report explains, absent the presence of a single majority shareholder, the Commission normally establishes who holds control of a licensee through a *de facto* control analysis.²⁴ Part of that analysis examines the role of parties who hold positional interests.²⁵ Specifically, the Report states that parties with positional interests “may exercise control of a licensee where no single individual holds a majority of the voting interests in that licensee, and are more likely to do so where no attributable voting interests are identified.”²⁶ Since most broadcast licensees are not controlled by a single majority shareholder,²⁷ *de facto* control analysis would be required to determine control in many instances, and positional interest holders may well be the controlling parties. Accordingly, it is a positive development to see increasing numbers of licensees with minorities and women among their senior ranks. We urge the Commission to continue to track changes in the numbers of positional interest holders.

C. The Report Shows Increases in the Number of Single Majority Shareholders that are Minorities and Women

Another positive development is a significant rise in the number of stations controlled by a single majority shareholder who is a woman or a minority. The

²⁴ Broadcast Ownership Report at ¶ 3. Such an analysis “requires access to facts not reported on Form 323.” *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ As shown in the Report, only 489 of the 1,387 full power television stations, 205 of the 495 Class A stations, 585 of the 2,070 LPTV stations, 1,980 of 4,763 commercial AM stations, and 2,615 of 6,530 commercial FM stations are controlled by a single majority shareholder. See Broadcast Ownership Report at Appendix C, Tables A(3)(a), B(3)(a), C(3)(a), D(3)(a), and E(3)(a).

Commission has determined that, where there is a single majority shareholder, other shareholders that would normally be treated as holding attributable interests are exempt from attribution, because they cannot exert sufficient influence over the licensee.²⁸ In single majority shareholder situations, the controlling party is clear.

Only 33 commercial full power TV stations were held by a woman single majority shareholder in 2009, but this figure rose to 50 stations in 2011.²⁹ During this period, the numbers of women single majority shareholders rose or remained steady for all types of broadcast outlets, rising 6.3% from 2009 to 2011³⁰ (from 20 to 22 Class As; 110 to 123 LPTVs; 216 to 225 AMs; and 271 FM stations both years).³¹ Similarly, an increasing number of broadcast outlets are controlled by an Hispanic or Latino single majority shareholder, including 25 commercial full power TV stations (up from 20 in 2009), 27 Class A television stations (up from 22 in 2009), 93 LPTV stations (up from 69 in 2009) and 126 commercial FM stations (up from 117 in 2009).³² Although the number of AM stations with an Hispanic or Latino single majority shareholder declined (from 149 to 134),³³ overall, the total number of stations with an Hispanic or Latino single majority

²⁸ See 47 C.F.R. § 73.3555 Note 2(b). See also *Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, Report and Order, 97 FCC 2d at 1008-09 (1984) (holding that it is “neither necessary nor appropriate to attribute an interest to any other stockholder in the corporation” because “the minority interest holders, even acting collaboratively, would be unable to direct the affairs or activities of the licensee on the basis of their shareholdings.”). Holders of positional interests and certain equity/debt interests remain attributable even where there is a single majority shareholder.

²⁹ Broadcast Ownership Report at ¶ 9, Section A.3.b.

³⁰ NAB totaled and compared the reported number of all types of stations with a female single majority shareholder in 2009 and 2011 to arrive at this percentage.

³¹ Broadcast Ownership Report at ¶ 9, Sections B.3.b.; C.3.b.; D.3.b.; E.3.b.

³² *Id.* at ¶ 9, Sections A.3.b.; B.3.b.; C.3.b.; E.3.b.

³³ *Id.* at ¶ 9, Section D.3.b.

shareholder increased by 7.4% from 2009 to 2011.³⁴ The number of racial minorities serving as single majority shareholders also is on the rise. In fact, the most significant positive gains in this area can be seen in the numbers of stations that report racial minorities as their single majority shareholders, a figure that rose 24.5% between 2009 and 2011.³⁵

II. NAB Proposals for Change

While the Report provides evidence of some positive changes in the diversity of broadcast ownership, there remains a need for a sustained effort to expand opportunities, through both private sector initiatives and regulatory and legislative solutions. As previously explained, NAB believes that proposals must be designed to address the leading barrier to entry into the broadcast industry: access to capital. NAB continues its successful initiatives to promote the advancement of women and minorities in broadcasting. For more than ten years, the NAB Education Foundation (“NABEF”) and the Broadcast Education Association (“BEA”) have sponsored a variety of programs to provide professionals and students with access to employment in the broadcasting industry, as well as with the tools they need to excel in broadcast management and ownership.³⁶ NABEF’s flagship program, the Broadcast Leadership Training program, offers MBA-style executive training for station managers and others

³⁴ NAB totaled and compared the reported number of all types of stations with an Hispanic or Latino single majority shareholder in 2009 and 2011 to arrive at this percentage.

³⁵ See Broadcast Ownership Report at ¶ 9, Sections A.3.b.; B.3.b.; C.3.b.; D.3.b.; E.3.b. Although slightly fewer full power TV and Class A stations are now held by a single majority shareholder who is a racial minority, racial minorities are the single majority shareholders for 62 LPTV stations (up from 53 in 2009), 208 commercial AM stations (up from 184 stations in 2009) and 175 commercial FM stations (up from just 107 stations in 2009). NAB totaled and compared the reported number of all types of stations with a single majority shareholder who is a racial minority in 2009 and 2011 to arrive at this percentage.

³⁶ See NAB Notice of Inquiry Comments in MB Docket No. 09-182 (filed July 10, 2010) at Attachment D.

who aspire to own stations or advance to senior management. To date, 32 graduates of the program currently own (or have owned) broadcast stations and many others have been promoted within their companies or are in various stages of station acquisition.

NAB also has specifically urged the FCC to:

- Sponsor primers on investment and financing of broadcast enterprises for smaller and regional lenders so that they may be better informed about the industry and more willing to make loans to new owners.
- Adopt an incubator or waiver program that would give broadcasters incentives to finance qualifying businesses and to ensure that ownership of communications outlets reflects the demographics of the audiences and communities they serve.
- Adopt subchannel licensing programs that would permit the sale of broadcast subchannels to qualifying entities to facilitate better opportunities for prospective subchannel operators by making it easier to obtain financing.
- Modify its rules to allow sellers to hold a reversionary interest in broadcast licenses pursuant to certain guidelines to incentivize sellers to be more willing to finance a station purchased by a new owner by retaining the ability to reacquire the station in the event of a default.
- Reinstate a relaxed attribution standard for qualifying entities to improve their ability to attract financing.
- Reinstate the policy that permitted the transfer of grandfathered radio station combinations to any entity so long as the buyer assigns the excess stations to a qualifying business within one year.
- Urge Congress to provide tax incentives to station owners who sell broadcast properties to qualifying owners.³⁷

Moreover, as discussed in our reply comments in this proceeding, NAB supports several proposals to modify rules governing radio operations advanced in a petition for rulemaking filed by Minority Media and Telecommunications Council (“MMTC”). While many of these proposed rule changes are technical in nature and are not specific to

³⁷ See NAB Reply Comments in MB Docket No. 09-182 at 32-33 (filed Apr. 13, 2012); NAB Comments in MB Docket No. 09-182 at 53, n. 202 (filed Mar. 5, 2012).

ownership, we agree that they would reduce entry barriers and promote efficiencies for existing broadcast stations owned by minorities, women and small entities.³⁸

The incentive-based approaches outlined above can lay the groundwork for a more competitive and diverse broadcast industry.³⁹ By contrast, overly restrictive ownership limits that reduce economic incentives to invest in broadcasting harm the ability of all existing and aspiring broadcasters to raise capital. This impact is felt even more strongly by new entrants and small businesses, including women and minorities, which face the greatest challenges in obtaining investment capital. Revisions to the rules that allow for more efficient and competitively viable broadcast operations will help attract capital to the broadcast industry, to the benefit of both incumbents and newer entrants. NAB observes that, despite the more than 70 years of structural ownership regulation, there has yet to be empirical evidence showing that asymmetric rules restricting broadcast ownership generally have improved minority or female ownership specifically.

³⁸ NAB Reply Comments in MB Docket No. 09-182 at 33. See also NAB Comments in MB Docket No. 09-52 (filed Oct. 23, 2009) (supporting MMTC proposals to remove the nighttime coverage rules from section 73.24(i); modify the principal community coverage rules for commercial stations; replace the minimum efficiency standard for AM stations with a “minimum radiation” standard; allow FM applicants to specify Class C, C0, C1, C2 and C3 facilities in Zones 1 and 1A; remove non-viable FM allotments; relax the limit of four contingent applications; relax the main studio rule; conduct tutorials on the radio engineering rules; and appoint a public engineer).

³⁹ As exemplified by the impact of the previous tax certificate program, incentive-based approaches have a proven track record of success in expanding opportunities and diversity. See, e.g., Erwin Krasnow & Lisa Fowkles, *The FCC’s Minority Tax Certificate Program: A Proposal for Life After Death*, 51 Fed. Comm. L.J. 665, 670 (1999) (“Prior to the adoption of the minority tax certificate policy in 1978, minorities owned only 40 out of 8,500 broadcast stations. During the more than fifteen years of the policy’s existence, the issuance of minority tax certificates resulted in the acquisition of 288 radio stations, 43 television stations, and 31 cable systems.”). NAB was a leading proponent of both the 1978 minority tax certificate program and subsequent efforts to adopt a new tax incentive program to foster more diverse ownership. See, e.g., Statement of Policy on Minority Ownership of Broadcasting Facilities, Public Notice, 68 F.C.C.2d 979, 983, 42 Rad. Reg. 2d (P & F) 1689, 1695 (1978) (discussing NAB’s petition for rulemaking to establish the minority tax certificate program).

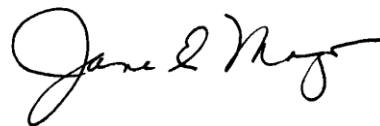
III. Conclusion

NAB looks forward to reviewing other comments on the Broadcast Ownership Report and to the Commission's continued analysis and reporting of FCC Form 323 data to track developments in this area. We continue to urge the Commission to work toward practical solutions grounded in marketplace realities to foster opportunities for entry into the broadcast industry.

Respectfully submitted,

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ATTACHMENT A

Single Majority Shareholder Ownership of Stations

	Outlet Type	Y2009	Y2011	Percent Change
Hispanic/Latino				
	Full Power TV	20	25	25.0%
	Class A	22	27	22.7%
	LPTV	69	93	34.8%
	AM	149	134	-10.1%
	FM	117	126	7.7%
	Total	377	405	7.4%
Women				
	Full Power TV	33	50	51.5%
	Class A	20	22	10.0%
	LPTV	110	123	11.8%
	AM	216	225	4.2%
	FM	271	271	0.0%
	Total	650	691	6.3%
Racial Minorities				
	Full Power TV	22	18	-18.2%
	Class A	22	20	-9.1%
	LPTV	53	62	17.0%
	AM	184	208	13.0%
	FM	107	175	63.6%
	Total	388	483	24.5%

Source: 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182, Report on Ownership of Commercial Broadcast Stations, DA 12-1667 (MB, rel. Nov. 14, 2012) ¶ 9, Sections A.3.b.; B.3.b.; C.3.b.; D.3.b.; E.3.b.