

STATEMENT OF COMMISSIONER ROBERT M. MCDOWELL

Re: Promoting Diversification of Ownership in the Broadcasting Services et al,
Report and Order and Third Further Notice of Proposed Rulemaking, MB Docket
Nos. 07-294, 06-121, 02-277, 01-235, 01-317, 00-244 and 04-228

In considering the important issues we decide today, we explore a vexing question: what can the FCC do to promote ownership among people of color and women? Many positive and constructive ideas before the Commission may be hobbled by Supreme Court rulings regarding race-specific remedies on one side, and a lack of statutory authority for doing much more on the other side. Like it or not, whatever the Commission does must withstand constitutional muster to succeed. What we have done in this Order is to focus on the possible -- and the legally sustainable. While perhaps imperfect and incomplete, I hope the ideas we adopt today will increase ownership of traditional media properties by women and people of color.

At the outset, we face the difficult constitutional question of how to define the groups eligible for relief under the proposals we adopt. Given the Supreme Court's decision in *Adarand v. Peña*, which prohibits distinctions based on race, in today's Order, we define these "eligible entities" as any entity that would qualify as a small business, under the Small Business Administration standards for industry grouping, based on revenue. This means that television stations with no more than \$13 million in annual receipts and radio stations with no more than \$6.5 million in annual receipts are eligible entities.

We have heard from many who are concerned that this definition will not benefit minority and women-owned broadcasters. I disagree. As the order explains, concerns that our definition of eligible entities would be regressive are based on flawed calculations. Large companies controlling smaller subsidiaries are not included in our definition, despite allegations to the contrary. Our definition does not dilute the ownership position of women and people of color, as some have suggested. Rather, the position of those most in need have been enhanced. The definition we adopt today, although not perfect, is the best option we have before us now. The record does not contain, nor has the Commission been able to develop, any race-conscious definition of a socially and economically disadvantaged business that would pass constitutional muster. The "full file review system" suggested by some parties, while intriguing and potentially beneficial, would be too vague a standard as it is written currently and extremely difficult to administer or defend on appeal. However, we invite comment on alternative definitions of an eligible entity.

I also beseech Congress to give us more statutory authority to help this situation, especially the hardest challenge which lies at the beginning of the process: gaining access to capital. But I guess we'll have to wait for that.

I thank our Diversity Committee and the Minority Media and Telecommunications Council for their tireless work developing and advocating these

measures. I hope that the “small steps” measures we adopt today will spur the education, investment and economic incentives necessary to improve the state of diversity in broadcast ownership. I look forward continuing to work with you toward the day when we are free to bound ahead more boldly.

I thank the Chairman for his leadership on this issue and thank the Bureau for their hard work, into the wee hours, on this Order.