

**STATEMENT OF FCC COMMISSIONER JONATHAN S. ADELSTEIN
EN BANC HEARING & CONFERENCE ON
OVERCOMING BARRIERS TO COMMUNICATIONS FINANCING**

**Schomburg Center for Research in Black Culture
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I am truly pleased that we are holding this hearing today on overcoming barriers to communications financing. The *Diversity Order* we approved last December committed us to holding this event. I am glad we did, because it is critical to get the investment community together with prospective owners to begin building relationships and increasing minority and female ownership.

Let me start by thanking the Schomburg Center for hosting us. It is fitting we are having this hearing in Harlem and Congressman Rangel's historic district. This is where, during the Harlem Renaissance, music like that of Duke Ellington and Jelly Roll Morton, and the literature of Langston Hughes and WEB Dubois, helped bring the African American voice into the American mainstream, and break down racial barriers and stereotypes. We need a rebirth of that spirit in broadcasting. Today's meeting should help in that effort.

The real value added here today will be the wisdom imparted by the experts and the relationships that are formed. I am pleased to see so many friends who have demonstrated a life-long commitment to diversity. We are also privileged to have CNBC's Erin Burnett to moderate the discussion. I want to thank all the fine panelists who are here, as well as the entrepreneurs who have come to network and gather information.

We are here because the FCC has a responsibility to promote broadcast diversity. The Commission's founding charter requires us to protect the public interest by promoting competition, localism, and *diversity*. It requires us to take affirmative steps to *prevent* discrimination on the basis of race, gender, religion, and nationality. It also requires us to take affirmative steps to *promote* diversity of ownership, because, in America, *ownership is the key to having your voice heard*.

Historically, though, minority and female ownership has been ignored by the FCC, to the detriment of all our citizens. The FCC itself has acknowledged that, as a result of our early system of awarding broadcast licenses, no persons of color won a competitive hearing until 1975.

The state of female and minority ownership has not improved nearly enough since then. Media consolidation has shut out new entrants by raising the cost of owning a single broadcast entity. And tax credits no longer exist for minorities and women to access the capital needed to purchase a station.

It is disappointing that the tax certificate was repealed because it was so effective. There was a five-fold increase in the number of broadcast licenses held by minorities from 1978, when the original tax certificate policy was implemented, until its repeal in 1995.¹

Since the repeal of the tax certificate and the roll-back of ownership caps following the 1996 Telecommunications Act, minority and female ownership has been in a tailspin. There has been no increase in minority ownership since 1998. In fact, there has been a drop of nearly 70 percent of African American owned stations during this time.² Recent studies by Free Press have concluded that only 3.4 percent of commercial TV stations and 7.7 percent of commercial radio stations are minority owned, though minorities account for a third of the population.³

Late last year, we missed an enormous opportunity to increase minority and female ownership in the 700 MHz auction. Instead of seizing the opportunity to counter the legacy of discrimination, we made a bad situation even worse, because women and people of color were virtually shut out.

Our *Diversity Order* fell short of doing all we could to improve the situation, because it adopted a weak proxy for minority and female ownership – the eligible entity definition. Eligible entity uses a revenue-based definition of the class of entities entitled to regulatory relief, rather than one more targeted at assisting women and people of color to become owners. Because the definition is so broad, minority and female owned businesses are likely to be incidental beneficiaries, if they benefit at all.

The FCC has not helped the situation by failing to update dilapidated data and stale studies. We need to update our *Adarand* studies to determine whether the adoption of a definition, such as a socially and economically disadvantaged business (SDB), or a process, such as full file and review, could be implemented in a constitutionally acceptable fashion. Our own Diversity Committee is currently reviewing these issues, and I look forward to hearing from our expert panel about what needs to be done.

While increasing minority and female ownership is critical, ensuring equal employment opportunities for these groups also opens a path toward fuller participation in this critical industry and can open pathways to ownership. I was encouraged by the Radio and Television News Directors Association's (RTNDA) recent report that the "percentage of journalists of color and women working in local television and radio news increased in 2007, as did the percentage of both groups in newsroom leadership positions. . . ."⁴

¹ Minority Media and Telecommunications Council, *MMTTC Road Map for Telecommunications Policy*, 2008, at 22, (last visited July 24, 2008), available at: <http://www.mmtconline.org/filemanager/fileview/165/>.

² S. Derek Turner, Mark Cooper, *Out of the Picture 2007: Minority and Female TV Station Ownership in the United States*, Oct. 2007 update and revision, at 2, (last visited July 24, 2008), <http://www.freepress.net/files/otp2007.pdf>.

³ *Id.* at 3.

⁴ RTNDA/Hofstra University, *2008 Women and Minorities Survey Results*, July 21, 2008, (last visited July 24, 2008), <http://rtnda.org/pages/posts/rtndahofstra-survey-women-and-journalists-of-color-advance-in-local-broadcast-news247.php>.

The bigger picture is more troublesome. From 1996 to 2007, the RTNDA reports that minority employment in radio journalism dropped from 14.6 percent to 6.2 percent.⁵ MMTC has calculated that “when minority employment at minority owned and Spanish language stations are factored out of the RTNDA’s 6.2 percent statistic, the number of minorities working in English language, non-minority owned radio journalism is statistically zero – about where it was in 1950.”⁶

Unfortunately, the Commission’s lack of relevant data prevents adequate enforcement against discriminatory hiring practices. In fact, the size of the Commission’s EEO docket is down 96 percent over what it was from 1995-1997.⁷

Though the situation has been bleak for minority and female broadcasters, the Commission has made some positive rule changes in recent months that can make a real difference.

The *Diversity Order* adopts several key reform measures such as banning discrimination in broadcast transactions, adopting a zero tolerance standard for ownership fraud, and requiring a nondiscrimination provision in advertising sales contracts designed to avoid “no urban/no Spanish” dictates. Some say that this nondiscrimination rule is “the first new federal civil rights mandate on any subject in 31 years.”⁸ The rule outlaws the practice of advertisers telling their agencies not to advertise in Black or Spanish media because of the race of members of the audience.

The *Order* also takes a few steps toward making capital more accessible to eligible entities through creating favorable incubation, distress sale, loan, and divesture rules for eligible entities.

Besides informing you of opportunities created by our rule changes, I want to pass along a few ideas we heard from the MMTC conference about access to capital. We heard that prospective owners need to integrate new media strategies into their business plan and not rely solely upon traditional media. Investors want entrepreneurs to think of media as a series of distribution channels and the product as the content to be distributed as widely as possible. For example, we heard about Radio One, which acquired a social networking site to serve as another advertising outlet and marketing tool.

We also heard about creative ways of generating junior capital. One example is leasing the broadcast tower that accompanies the purchase of a broadcast station. Broadcast towers, when leased, can generate steady revenue that can make up 20 to 30 percent of the junior capital needed to secure the rest of a new entrant’s financing.

⁵ MMTC, *supra* note 1, at 22.

⁶ *Id.*

⁷ *Id.* (There were 251 enforcement cases from 1994-1997 and from 2004-2007 there were just 10, and the total forfeiture amounts imposed annually have also decreased 96% from \$312,250 in 1994-1997 to \$12,125 in 2004-2007.)

⁸ *Id.* at 6.

Another big part of this effort is reinstating tax certificates for minority owned stations. Congressman Rangel's and Senator Menendez's proposed tax certificate bill is an important step toward renewing our commitment to minority ownership, which we broke in 1995 when the credit was repealed.

Finally, I would like to hear your thoughts about Arbitron's new Portable People Meter (PPM) rating system. We have heard allegations that the current PPM research methodology has resulted in serious underreporting of minority radio listenership. We at the FCC are concerned, because we rely on Arbitron ratings for developing and implementing our ownership rules. I look forward to hearing from representatives on both sides of the issue. We need to learn the facts from you about PPM so that our ability to promote media ownership diversity is not frustrated.

The Commission has a long way to go in terms of increasing minority and female ownership, but we have taken some positive steps. There is a legacy of discrimination that we have a moral responsibility to redress.

Thank you for being here. The conversation we have today and the relationships that are made can pave the way for real progress.