

WHOSE SPECTRUM IS IT ANYWAY?

HISTORICAL STUDY OF

**Market Entry Barriers, Discrimination and
Changes in Broadcast and Wireless Licensing**

1950 TO PRESENT

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Federal Communications Commission
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I. EXECUTIVE SUMMARY

A. Overview

As part of the Federal Communications Commission’s mandate to identify and eliminate market entry barriers for small businesses under Section 257 of the Telecommunications Act of 1996 (hereafter referred to as “1996 Act”), and its mandate to further opportunities in the allocation of spectrum-based services for small businesses and businesses owned by women and minorities under Section 309(j) of the Communications Act of 1934, the Commission commissioned Ivy Planning Group, LLC¹ to conduct this historical study of barriers to entry into broadcast and wireless licensing experienced by small, minority- and women-owned businesses from 1950 to the present. This study is the first FCC-sponsored historical, anecdotal, qualitative review of the subject.

Other statistical or quantitative studies have focused on this subject matter and have often revealed similar findings.² However, this study offers different insights - the stories - of African-Americans, Hispanics, Native Americans, Asian Americans, and Caucasians who have encountered market entry barriers. It is important to hear from real people about their experiences in order to create context and meaning for the data that is provided from other sources.

This study was designed to put a face on and give a voice to the process of obtaining a broadcast or wireless license. By creating a venue for these voices, the study allows people to say what their experiences were. Each participant provided his or her story independently. Some stories were fragmented and less coherent, while others were articulated clearly and concisely. While the stories vary by year, length, race, gender, circumstance, and narrator, their respective voices provide distinctive yet recurring themes on identifiable market entry barriers. In every case, the stories provide qualitative clarity and specificity to understand the process of obtaining a broadcast or wireless license from 1950 to the present.

Ivy conducted individual telephone interviews with 120 key persons representing small, minority- and women-owned businesses that attempted (successfully or not) to acquire, sell or transfer a license during the years 1950 – present, and 30 telephone interviews with key market participants (e.g., media brokers, lenders, attorneys, industry leaders, and/or FCC officials). The findings indicate that there are unique and significant barriers to entry for small, minority- and women-owned businesses.

¹ The Commission contracted with the Ivy Planning Group, LLC to do this study pursuant to Purchase Order No. PUR00000292, Requisition No. AUC00000135, under the GSA MOBIS schedule GS-23F-9805H.

² See, e.g. *Civil Rights Forum on Communications Policy, When Being No. 1 Is Not Enough* (1999); and R. Suarez and R. Cull, *Capital Formation and Investment in Minority Business Enterprises in the Telecommunications Industries* (1995).

B. Summary of Key Findings

Regardless of the tone and tenor of the many voices of this study, a troubling story line resonates among the interview stories that span a half-century. Women and minorities faced pervasive discrimination, as well as small business market entry barriers, particularly in the fifties and sixties. The FCC attempted to ameliorate that discrimination in the seventies, eighties and early nineties through the tax certificate, distress sales, comparative merit, and lottery preferences.

Minorities and women made modest gains in broadcast ownership during this period, amidst persistent capital market discrimination and other small business market entry barriers. However, those gains were essentially reversed, in 1995, by both Congress's elimination of the tax certificate program and the Supreme Court's decision in Adarand, which made it significantly more difficult for race-specific rules and policies to be implemented by the FCC. The deregulation and the lifting of the ownership caps under the Telecommunications Act of 1996 made these barriers nearly insurmountable for small, minority- and women-owned businesses attempting to thrive or even enter the broadcast industry.

The FCC's and Congress' actions or inaction on particular regulatory or market issues have exacerbated those barriers. These actions and inaction include: the uneven enforcement of EEO policy; under utilized distress sales/license renewals; repeal of the tax certificate program; permitting use by non-minority men of minority and female "fronts" during the comparative hearing process; the lifting of the ownership caps; and minimal small business advocacy before the FCC.

Today small firms face barriers erected by deregulation and consolidation in both wireless and broadcast. Minorities and women confront those same barriers; and yet those obstacles stand high atop a persistent legacy of discrimination in the capital markets, industry, advertising, and community--and prior FCC policies, which worsened the effects of discrimination.

Based on those interviews, the findings revealed several factors that impeded and/or precluded small, minority-and women-owned businesses from entering, successfully competing and surviving in the broadcast and wireless industries including:

- Discrimination in the capital markets causing limited access to debt and equity capital that would be adequate and affordable for minority-and women-owned businesses;
 - Discrimination from the advertising industry against minority-owned and -formatted stations; exclusion of minority and women-owned businesses from the powerful network of information, deals and deal makers;
 - Market deregulation and consolidation caused by the 1996 Act;
-

- Lack of industry experience for women and minorities due to few employment opportunities offered by majority broadcasters and the failure of the FCC to enforce EEO rules;
- Fractured or a lack of advocacy of small, minority- and women-owned communications businesses before the FCC, the courts and Congress;
- Misuse of minority and gender ownership programs by non-minority firms to the disadvantage of female and minority ownership;
- Congressional laws, court rulings, and FCC rules, regulations and policies, which have operated to the detriment of small, minority- and women-owned businesses.

C. Key Conclusions

Based on the shared experiences and perspectives of the study participants, Ivy has formed nine key conclusions concerning past, present and prospective market entry barriers:

- (1) Access to the capital markets is critical to the success of small, minority- and women-owned businesses;
 - (2) There is an absence of a necessary critical mass of small, minority- and women-owned businesses in broadcast and wireless ownership;
 - (3) Congress and the FCC erected and heightened market entry barriers inhibiting the establishment, growth and development of small, minority- and women-owned businesses;
 - (4) Discrimination played an important role as an entry barrier, especially with respect to minority participation in broadcasting;
 - (5) Bidding credits designed to increase the opportunities for participation in wireless auctions by small, minority- and women-owned businesses were ineffective and unsuccessful;
 - (6) The relaxation of ownership caps has significantly decreased the number of small, women- and minority-owned businesses in this industry;
 - (7) The declining participation of small, women- and minority-owned businesses in this industry has resulted in diminished community service and diversity of viewpoints;
 - (8) The declining participation of small, women- and minority-owned businesses in this industry has also resulted in a loss of civic participation, democratic values and freedom of speech; and,
 - (9) The FCC often failed in its role of public trustee of the broadcast and wireless spectrum by not properly taking into account the effect of its programs on small, minority- and women-owned businesses.
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A single question may be heard amidst the many stories, recommendations, commendations, complaints, and perspectives offered: whose spectrum is it anyway? In answering the question, the interviewees consistently responded that spectrum is a public good to be managed by the FCC in the public interest. While interview subjects believe that maximizing auction revenue for the public purse is important, it is equally in the public interest to promote ownership diversity, preserve viewpoint diversity, and eliminate market entry barriers.

II. INTRODUCTION

A. Purpose, Statutory Authority and Legal Basis

The purpose of this study is to provide a historical perspective on what market entry barriers, if any, small, minority- and women-owned businesses have faced in the acquisition, sale or transfer of FCC broadcast and wireless licenses. The study was designed to assist the FCC in implementing Section 257 of the Telecommunications Act of 1996, 47 U.S.C. §257³, which mandates that the FCC identify and eliminate market entry barriers for small telecommunications businesses, and Section 309(j) of the Communications Act of 1934, which requires the FCC to further opportunities in the allocation of spectrum-based services for small businesses and businesses owned by women and minorities.⁴

In addition, this study will assist the Commission in determining whether there is any evidence of discrimination that may establish a compelling governmental interest under Adarand v. Peña, 515 U.S. 200 (1995).

In Adarand the Supreme Court held that any federal program that uses racial or ethnic criteria as a basis for decision-making must serve a compelling governmental interest such as remedying past discrimination, and must be narrowly tailored to serve that interest. In order to demonstrate such an interest, the government cannot rely on general societal discrimination. City of Richmond v. J.A. Croson Co., 488 U.S. 469, 509 (1989). Instead, the government must establish that it is remedying either its own discrimination, or discrimination in the private sector in which the government has become a “passive participant.” Croson, 488 U.S. at 504.⁵

Furthermore, the study was designed, inter alia, to assist the Commission in determining whether the FCC is or has been a passive participant to discrimination in the private market. Accordingly, the study will help determine whether there is the factual predicate and legal premise to adopt programs encouraging women and minority ownership of FCC licenses. Moreover, the study will enable the Commission to gather anecdotal evidence of discrimination, if any, faced by small, minority- or women-owned communications businesses.

Section 257(a) of the 1996 Act, requires the Commission to complete a proceeding for the purpose of identifying and eliminating market entry barriers for entrepreneurs and other small businesses in telecommunications and information services. To meet this mandate, the Commission initiated an omnibus Section 257 proceeding by adopting a notice of inquiry to identify and eliminate barriers for small businesses. *See Market Entry Barriers Notice of Inquiry*,

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), Section 257.

⁴ In addition, the Commission has full authority and power to conduct an inquiry for “any question [that] arise under any of the provisions of [the] Act” pursuant to Section 403 of the Act.

⁵ We note that gender-based classifications need only satisfy intermediate scrutiny. *See United States v. Virginia*, 518 U.S. 515, 531-33 (1996).

11 FCC Rcd 6280 (1996)(NOI).⁶ In this *NOI*, the Commission requested comments on, among other things, whether minority- and women-owned businesses encounter “unique” obstacles in the telecommunications market, and determined that discrimination could be a market entry barrier.⁷ Following the *NOI*, the Commission released a *Section 257 Report* regarding the agency’s implementation of Section 257,⁸ wherein the Commission identified several obstacles that small businesses encounter, including access to capital, access to Commission decision makers, access to information, and Commission procedure.⁹ The report also addressed the Commission’s commitment to identify and remove market barriers experienced by women or minorities, but determined that the agency would have to fully evaluate the record to ensure compliance with constitutional requirements before the agency could take any action. The FCC, then, commenced a comprehensive examination, a series of market entry barrier studies, to further examine the participation of small businesses, including those owned by women and minorities in the provision of telecommunications services and the impact of the Commission’s policies on access to the telecommunications industry.

In rare cases, anecdotal evidence alone may be sufficient to constitute a compelling governmental interest. See *Wessmann v. Gittens*, 160 F.3d 790, 801 (1st Cir. 1998)(“anecdotal evidence alone can establish institutional discrimination that could serve as basis for race-conscious action....only in the most exceptional circumstances.”); *Engineering Contractors Association*, 122 F.3d 895, 925 (11th Cir. 1997)(anecdotal evidence standing alone in rare cases will suffice); *Coral Constr. Co. v. King County*, 941 F.2d 910, 919 (9th Cir. 1991). In any event, the Supreme Court has recognized that anecdotal evidence of discrimination is important because it can “bring the cold numbers convincingly to life.” *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 339 (1977).

Accordingly, this qualitative, anecdotal study is part of the Commission’s comprehensive examination regarding market entry barriers and was commenced in conjunction with several statistical studies¹⁰ and is designed to complement, illuminate and reinforce the findings of those quantitative studies.

⁶ In addition, The Commission’s Office of Communications Business Opportunities (OCBO) and its Office of General Counsel (OGC) held a *Market Entry Barriers Forum* to further explore impediments that small businesses experience.⁶ See *FCC Public Notice, Forum on Small Business Market Entry Barriers*, No. 64975 (Sept. 5, 1996) (Market Entry Barriers Forum)(hearing was held on September 24, 1996).

⁷ *Id.* at 6283.

⁸ *In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Business*, Report, 12 FCC Rcd 16802 (1997).

⁹ *Id.* at 16824-34.

¹⁰ These studies examine: (i) whether there is a link between minority broadcast ownership and news and public affairs programming; (ii) the utilization ratios and probabilities of success in wireless auctions for minorities, women, and non-minorities; and the impact, if any, of capital market discrimination on Broadcast and wireless spectrum business opportunities for minorities

B. Historical Snapshot

The Communications Act of 1934 created the Federal Communications Commission and provided the means and purpose of allocating frequency along the radio spectrum. While the mission of the Agency has generally remained the same, the FCC has used several different means of spectrum allocation.

From 1950 until 1993 the FCC awarded licenses to mutually exclusive competing broadcast applications through comparative hearings. If only one applicant applied, “a singleton”, the FCC awarded the license to that applicant without a hearing, provided the applicant met minimum requirements. The FCC began distributing wireless licenses by lotteries in 1982. Since 1993, the FCC allocates wireless licenses, for commercial use, solely by means of auction. Starting in 1999, broadcast licenses have also been awarded solely through auctions.

In addition to being awarded a license directly by the FCC, an active secondary market for licenses exists wherein they are bought and sold independent of the FCC. Except for requiring FCC approval, the Commission is not generally involved in these transactions.

At varying times and through varying means (see Statutory, Regulatory and Historical Timeline at Appendix A), ownership programs have been made available to small, minority- and women-owned businesses to provide increased opportunities for them to participate in both broadcast and wireless license ownership. For licenses obtained from the FCC, various ownership programs have enhanced the comparative hearing, lottery and auction processes. In the secondary market, tax certificates and distress sales have been implemented as opportunity-creating mechanisms for small, minority and women licensees.

For essentially the first half of the 20th century, the broadcast industry was dominated by White males. Most stations were owned by large corporations such as CBS and NBC and had been awarded by the government at no cost to the licensee. The advantages and opportunities created by the initial award process provide the foundation for today’s telecommunication industry.

There was virtually nothing like today’s ethnic programming on the air. As late as 1943, radio still upheld its longstanding policy that African-Americans, in contrast to Whites, would not be referred to as Mr., Mrs., or Miss on any commercial network show. Furthermore, African-Americans were portrayed on the air as servants or as comical or ignorant characters.

and women; (iii) the estimation of utilization ratios and probabilities of obtaining broadcast licenses from the FCC through the comparative hearing process; and (iv) the impact of advertising practices on minority-owned and minority-formatted broadcast stations.

Against this backdrop, the following list of “firsts” is offered.

- In 1922, Marie Zimmerman became the first White woman to own a radio license.¹¹
- “In 1947, station WDIA-AM in Memphis, Tennessee, became the first radio station to devote all its air time to Black programs.”¹²
- It was not until 1949, when Jesse B. Blayton purchased WERD in the secondary market in Atlanta, that the industry had its first Black radio station owner.¹³
- In 1960, Andrew Langston, a Black man, started his more than 13-year process of acquiring a radio broadcast license from the FCC through a comparative hearing. It was the first time that an African-American had filed an application with the FCC. Mr. Langston was finally awarded his license in 1974.
- In 1973, the FCC issued a construction permit to WGPR-TV (UHF) in Detroit, the first Black owned television station.¹⁴
- The first Hispanic station opened in the middle 1950s. The record of ownership is uncertain; the station operated in the southwestern section of the United States, in either Texas or New Mexico.
- In 1989, after four years in a comparative hearing, Dorothy Brunson became the first African-American woman to own a television station.

¹¹ Halper, Donna. Marie Zimmerman – Broadcasting’s First Female Owner.
<<http://www.olderadio.com/archives/people/zimmerman.html>>.

¹² Alston, Roland (1978, July). Black-Owned Radio: Talking to the Airwaves in a Hurry. *Black Enterprise*, p. 22.

¹³ Id., p.23.

¹⁴ Molden, Vaughncille. Telecommunications and Black Americans: A survey of Ownership, Participation and Control. Washington University: St. Louis, Missouri. August 1975, p. 128. Master of Arts Thesis.

III. METHODOLOGY

Ivy Planning Group, LLC conducted 150 telephone interviews during a four-month period.¹⁵ The study analyzes these interviews, 123 of which were with key persons¹⁶ representing small, minority- and women-owned businesses that attempted to acquire, sell or transfer a license during the years 1950 to present, irrespective of success; and 27 of which were with “key market participants”¹⁷ active in the broadcast and/or wireless markets during the same time frame.¹⁸

We selected a total of 150 interviewees to enable us to talk to a meaningful cross-section of participants in the licensing process from 1950 to present. (See Appendix C for a chart highlighting the demographic breakdown of the interviewees).

Using a knowledge of the market and random sampling, a list of interviewees was compiled relying upon various sources.¹⁹ Approximately half of the interviewees who were licensees were selected based on their role and significance in the industry. The balance of the licensees and unsuccessful applicants were selected at random from the information sources available to us.

As we compiled the list of interviewees, we made every effort to ensure representation by year, method of license acquisition, type of license, type of FCC acquisition rules, race/ethnicity, gender, and size of business. We acquired some of this information through the aforementioned data sources; our initial conversations with prospective interviewees provided us with the remainder.

The list of key market participants was comprised of a sample of people who are known to have had a significant role in the industry and those participants whose names arose during the

¹⁵ See Appendix C for a copy of the Interview Guide.

¹⁶ “Key persons” are defined as those who: (1) have voting control or an equity interest in the company which holds the license and (2) were a driving force behind the company’s acquisition of or attempt to acquire a FCC license on either the primary or secondary market.

¹⁷ “Key market participants” are defined as those individuals who act in an intermediary capacity with respect to FCC broadcast and wireless license acquisition (e.g., media brokers, lenders, venture capitalists, investment bankers, and attorneys) or who are or were part of the FCC (e.g., former Commissioners, Directors, staff members).

¹⁸ With the consent of the interviewees, telephone interviews were recorded and subsequently transcribed. Parenthetical notations after each quote in this document refer to the particular transcript file and page number(s) from which the quote was taken.

¹⁹ Sources used included the following: FCC database and other information; National Telecommunications and Information Administration (NTIA) Minority Commercial Broadcast Ownership Report, 1997-1998; Broadcast Investment Analysts (BIA) databases; American Women in Radio and Television (AWRT); National Association of Black-Owned Broadcasters (NABOB); and referrals from interviewees.

interview process. Key market participants and current licensees identified earlier generations of licensees and applicants.

As a further part of the study, Ivy developed a timeline of key statutory, regulatory and historical developments which have affected the efforts of small, minority- or women-owned businesses to obtain licenses in both the primary and secondary markets. The timeline includes rules, policies, court cases, and statutory regulations that impacted comparative hearings, lotteries, auctions, bidding credits, tax certificates, and distress sales. Further, the timeline includes the number of small, women and minority licensees for selected years between 1950 and present, when available. (The Historical Timeline is attached as Appendix A.)

The analysis of the interviews combined with the information contained in the historical timeline form the basis of this report.

IV. FINDINGS

A. Overview

The findings of this study may assist the FCC in fulfilling its statutory mandate regarding market entry barriers. Section 257 of the 1996 Act mandates that the Federal Communications Commission (“FCC” or “the Commission”) identify and eliminate “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.”

In carrying out the mandate, Section 257(b) states that the Commission “shall seek to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity.” In addition, Section 309(j) of the Communications Act of 1934 requires the FCC to further “economic opportunity for a wide variety of applicants, including businesses owned by members of minority groups and women.”

The study’s findings highlight significant barriers to entry for small businesses including minority- and women-owned businesses. The interviewees uniformly reported that the combination of these barriers has impeded and in many instances precluded these entities from entering, successfully competing and surviving in the broadcast and wireless industries. Interviewees specifically identified the following as market entry barriers.

- Discrimination in the capital markets causing limited access to adequate and affordable debt and equity capital for minority- and women-owned businesses;
 - Discrimination from the advertising industry against minority-formatted and -owned stations resulting in decreased opportunity for revenue generation, cash flow and access to capital;
 - Exclusion of minority- and women-owned businesses from the powerful network of information, deals and deal makers thereby limiting access to license purchase opportunities and the capital to fund them;
 - Market deregulation and consolidation following the 1996 Act resulting in increased competition for national advertising dollars, inflated purchase prices for stations and a loss of diversity of voices and community focus;
 - Lack of industry experience for women and minorities resulting from too few employment opportunities offered by majority broadcasters and the uneven enforcement by the FCC of its EEO policies, thus rendering these groups ill-prepared to compete in a marketplace where industry experience and successful track records are critical elements for market entry and acquisition of capital;
-

- Fractured or lack of advocacy by and on behalf of small, minority- and women-owned communications businesses before and within the FCC, the courts and Congress, thereby leaving the special needs of these licensees under-represented when new rules, policies and laws are proposed;
- A series of FCC actions and inactions which have proven very costly for small, minority- and women-owned businesses, who could ill-afford the added financial burden, and have frequently had a discriminatory impact on these business owners, albeit purportedly unintentional; and
- Misuse of minority and gender ownership policies by majority firms, to the disadvantage of “real” minority and female ownership.

This study covers both broadcast and wireless licensing. Background information on each is presented below to provide context for the discussion of the findings.

1. Broadcasting

Small, minority- and women-owned broadcast licensees and those wanting to enter into broadcasting face significant barriers to entry and growth in today’s market. While there have always been challenges, and especially for women and minorities, the relaxation of ownership restrictions or “caps” by the 1996 Act has changed the landscape of broadcast properties because the statute allows a single entity to own, given the applicable market, a larger number of stations nationwide.

Historically, small broadcasters have served their local markets with a commitment to provide service to their respective geographic or demographic communities, gaining advertising revenue from both national and local businesses. From 1950 until 1985, there was healthy competition among broadcast stations. An individual or company could own only one AM, FM and television station in each market and a total of seven of each type nationally.²⁰ In stark contrast,

²⁰ In 1985, while the rules generally stayed the same with respect to local ownership, the Commission relaxed the rules so that an individual or company could own as many as 12 AM, FM or TV stations in the national market under certain circumstances. In addition, since 1985, the Commission has gradually relaxed the ownership rules. In 1992, one could own 2 AM and 2FM stations, in markets with 15 or more stations, provided the combined share of audience is less than 25%; in markets that have less than 15 stations, 3 stations with no more than 50% of the market’s stations. In the national market, an owner could own 18 AM and 18FM stations, plus a non-controlling interest in 3 AM and 3 FM, provided they are controlled by minorities. Thereafter, in 1996, the Commission removed the ownership restriction allowing no numerical-station limit, but limiting the audience reach to 35% as to the national market. The FCC also relaxed the local ownership rules:

- (a) 8 stations in markets with 45 or more stations (with no more than 5 stations in AM or FM;
 - (b) 7 radio stations in markets with 30-44 stations (with no more than 4 in either service);
-

today, an individual or company can own as many as 8 stations locally, based on the total number of stations in the local market; and there is no numerical limit in the national market but a limit on audience reach. In earlier years when there were more stringent restrictions on broadcast ownership, small business owners were at least making a living. Now it is significantly more difficult to do so.

While a number of interviewees had acquired their licenses through the FCC's comparative hearing process²¹, most of the study participants had purchased their stations from previous license holders. Many of those stations had inferior signals and were purchased out of

(c) 6 radio stations in markets with 15-29 stations (with no more than 4 stations in either service); and

(d) in markets with less than 15 stations, 5 radio stations (with no more than 3 stations in either service.

²¹ In accordance with the Communications Act of 1934, The Federal Communications Commission has allocated and licensed the radio spectrum for use in radio, television and telecommunications. From 1945 until 1993, this spectrum was allocated by comparative hearings from which the successful applicant paid no compensation to the Federal government. If there were mutually-exclusive competing applicants, they went through the comparative hearing process wherein an Administrative Law Judge (ALJ) reviewed the applications and heard the arguments from the applicants, ultimately deciding which one could and would best serve the public interest. While the applicants generally expended significant sums of money for engineering advice and legal representation during the application and hearing process, regulatory and application fees were minimal.

In an effort to refine the process and to provide consistency in decision making, the Commission issued the Policy Statement on Broadcast Comparative Hearings, 1 F.C.C. 2d 393 (1965). This Statement articulated the areas in which applicants would receive credit (or "points") and on which their applications would be judged. The seven areas of review were: diversification of control, integration of ownership into management, proposed program service, past broadcast record, efficient use of the frequency, character, and any other significant and relevant factors to be considered in the decision-making process.

Minority ownership policies did not commence until 1973 in the wake of *TV 9, Inc. v. FCC*, 495 F.2d 929 (D.C. Cir. 1973); and gender ownership policies did not commence until 1978 and the *Mid-Florida Television Corp.*, 69 F.C.C. 2d 607, 651 (Rev. Bd. 1978), set aside on other grounds, 87 F.C.C. 2d 203 (1981).

The 1978 Statement of Policy on Minority Ownership of Broadcasting Facilities formalized the use of minority and gender credits in the comparative hearing process, thereby providing a measure of "preference" to both minority and female applicants. In 1990, the FCC declined to extend enhancement credits for minority ownership under the diversification of ownership criterion. The 1993 decision, *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993), had the effect of freezing comparative hearings. The Telecommunications Act of 1996 eliminated the role of comparative hearings in the renewal of broadcast licenses.

bankruptcy, with the new owner, in his or her eagerness to own a station, sometimes taking on more debt than was prudent.

Access to capital, on a timely basis and in quantities needed to acquire and grow their businesses, has always been a challenge for small broadcasting businesses. Local banks often did not lend on broadcast properties because bankers did not understand the business of radio and television, saw the licenses as too risky (especially since they were not actually owned by the broadcaster and came up for renewal on a regular basis), and were unable and/or unwilling to collateralize their loans with the generally meager assets of the stations themselves. If broadcasters were able to get loans from conventional lenders, often other personal assets had to be pledged as collateral. If one was lucky, the seller of the station was willing to take back a note for a portion of the purchase price.

The interviewees consistently reported that for minority and women licensees these market entry barriers have been compounded by the discrimination they have encountered in the capital markets, in the broadcasting industry itself, in the advertising industry, in the lack of employment opportunities, and as a result of various actions and inaction on the part of the FCC and Congress.

The 1996 Act has heightened these barriers to the point where it appears that it is almost impossible for small, minority- and women-owned businesses to enter the broadcast industry. Broadcast ownership is now determined by Wall Street stock instead of Main Street money. With the lifting of the ownership caps, there has been consolidation of ownership, primarily in radio, by large publicly-traded companies, driving prices up and smaller, independent owners out. Where stations used to sell for between seven and twelve times projected cash flow, prices have now been inflated to 20-22 times cash flow. Without significant equity capital, either from personal funds or outside investors, it is virtually impossible for individuals and non-public companies to acquire stations in today's market.

The consolidation of stations precipitated by the deregulatory provisions of the 1996 Act has also consolidated advertising revenues in the hands of the large broadcast group owners, significantly limiting the ability of smaller broadcasters to earn the money necessary to successfully compete and survive in the business. As a result, smaller station owners, many of whom are minorities, are being presented with two choices: (1) to continue to operate their stations at personal financial risk, which many have done because of their deep commitment to serve and be a voice for their communities, or (2) to sell their stations, which others have done because they believe that it is going to be extremely difficult if not impossible to compete successfully against these large group owners in the future.

With the exit of local, minority radio station owners, consolidation is also having an impact on both the diversity of voices and service to the local communities. With consolidation, the programming, both entertainment and public interest, has become more homogenized. While group owners might have urban-formatted ("Black") stations, for example, in particular markets, interviewees indicated that it is common for the news and community service programming

provided by these stations to not be particularly geared towards the information needs of that specific Black community itself.

Additionally, since news programming was often being produced centrally by the larger companies whose stations covered multiple markets, access by the audience to general local news and public service announcements was diminished. Lastly, fewer opportunities exist for the voice of the minority population to be heard since some minority on-air personalities and other employees are being precluded by their employers from taking public stands on issues relative to their minority group.

These market entry barriers have been exacerbated by the FCC's action, or inaction, on certain regulatory or market issues. For example, they may include enforcement or unenforcement of EEO policy, distress sales/license renewals²², use by non-minority men of minority and female "fronts" during the comparative hearing process²³, the lifting of the ownership caps, and minimal small business advocacy before the FCC. The actions and inactions of the FCC have been made worse with Congress' repeal of the tax certificate program.²⁴

²² The 1978 Statement of Policy on Minority Ownership of Broadcast Facilities, 68 F.C.C. 2d at 981, 42 Rad. Reg. 2d (P & F) at 1691, created the Distress Sale policy which allowed for license owners that were under scrutiny by the FCC (and under threat of license revocation) to sell their station to a minority for 75% of the appraised value. In return, the FCC would cease its inquiry into the suspect license owner.

²³ Interviewees reported that in some instances non-minority men would offer ownership and/or financial resources to minorities and women to become part of their license application team in order to take advantage of the minority and women ownership programs during the comparative hearing process, but rarely giving these "fronts" control over the operation of the business. In these instances, their participation was generally sought after to increase the odds of license award. Alternatively, others would review FCC filings to see if a minority or woman had filed for a new frequency. The apparent motivation was either to: (a) get paid off with "greenmail" to withdraw their application, knowing full well that most women and minorities did not have the resources for a protracted hearing before the Commission and would therefore pay the greenmailer to go away; or (b) come in on the back of someone else's engineering study and wear down the minority or female applicant through appeals or other means, expecting that this applicant would eventually withdraw because he/she did not have the money for a protracted hearing process, thereby leaving the non-minority in a position to receive the license. There were instances where these practices, as described, were quite predatory in their nature.

²⁴ The 1978 Statement of Policy on Minority Ownership of Broadcast Facilities, 68 F.C.C. 2d at 981, 42 Rad. Reg. 2d (P & F) at 1691, created the tax certificate program. This program which provided incentives to broadcast owners who sold their properties to minorities (minority buyer with 50.1% of voting control and 20.1% equity interest). The seller could then defer any gain realized on the sale of that broadcast property provided it was sold to a minority, and the gain was rolled over into a qualified replacement broadcast property within 2 years. Specifically, the tax certificate program encouraged and promoted minority ownership by giving a two-year like-kind-transfer tax break for the sale of licenses to minorities if the proceeds were reinvested in a

And finally, the gains in station ownership that had been achieved by minorities in the latter 1970s, 1980s and early 1990s were essentially reversed by both Congress's elimination of the tax certificate program in 1995 and Adarand decision in 1995, discussed supra, which made it significantly more difficult for race-specific rules and policies to be implemented by the FCC.

Given the historical disadvantages faced by small, minority- and women-owned broadcasting businesses, the confluence of the repeal of tax certificates in 1995, the Adarand decision in 1995 and the deregulation of the broadcast industry in 1996, it appears that it is nearly impossible for small, minority- and women-owned broadcasters to enter, survive and grow in the broadcast industry.

2. Wireless

The barrier to entry in wireless licensing is primarily one of capital. With the passing by Congress of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 388 (1993) (codified, in pertinent part, at 47 U.S.C. §390(j) (1994)), the FCC was given the authority to distribute licenses through a competitive bidding process, or auction. With the enactment of Section 309(j) of the Communications Act, successful license applicants have to pay the FCC for the issuance of wireless licenses whereas before they were issued at no charge to the licensee.²⁵

The financial burden of now having to pay for licenses coupled with 1) the enormous sums of capital needed to build out wireless systems and 2) limited access to capital, has severely disadvantaged small, minority- and women-owned businesses in the acquisition of wireless licenses.

similar communications industry. Since the seller was able to defer its tax payment on the capital gain by selling to a minority, the price was frequently lowered, enabling minority purchasers to mitigate the associated barrier of “lack of access to capital.”

Prior to 1978, minorities owned approximately 40 broadcast licenses, one-half of one percent of approximately 8,500 total broadcast licenses granted by the Commission. From 1978 to 1995, the FCC granted approximately 356 tax certificates to promote minority broadcast and cable ownership (287 radio, 40 TV and 30 cable licenses). This program helped give a much needed boost for minority ownership. In 1982, the tax certificate program was expanded to include cable systems. Subsequently, Congress repealed the tax certificate program with the passing of the Self-Employed Persons Health Insurance Act of 1995, Pub L. No. 104-7, S 2, 109 Stat. 93 (1995).

²⁵ On August 18, 1998, the Commission released its First Report and Order setting forth procedures governing auctions of broadcast service licenses. In October 1999, the FCC held its first auction for broadcast licenses whose distribution was suspended in the wake of the *Bechtel* case.

Furthermore, the elimination of auction ownership programs for women and members of minority groups as a result of the Adarand case, has caused access to outside equity investors and vendor financing for equipment to practically disappear.

A more detailed discussion of these barriers in both broadcast and wireless licensing is presented below.

B. Market Entry Barriers and Other Experiences

Through the years covered by this study, small, minority- and women-owned businesses in both broadcasting and wireless telecommunications encountered multiple market entry barriers. They were erected by discrimination in the capital markets, in communities, in the advertising industry, and in the competitive marketplace; by the effects of deregulation and market consolidation precipitated by the 1996 Act; and by various actions and inaction on the part of the FCC, the courts and Congress. It is important to note that while essentially all small businesses were negatively affected by these barriers, those businesses owned by women and especially those owned by minorities reported the greatest negative impact.

1. Discrimination in Lending and Limited Access to Capital

➤ ***Access to Capital is Key***

... (O)ur number one criteria ... is can they pay for it at the closing and will they pay the most. And that kind of supersedes everything. (Brian Cobb, media broker - BCobb512, p. 13)

Access to capital was clearly the most common and pervasive barrier to entry cited by participants in our study, both among licensees, as well as by most every key market participant (broker, lender, other intermediaries). In a market where access to capital is a critical component for entry and growth, lack thereof basically puts you out of the game. Acquiring money for start-up ventures is difficult enough. If one is a woman or minority, the difficulties in acquiring capital, as the female and minority study participants told us, were exacerbated by discrimination on behalf of the various lending sources and intermediaries.

➤ ***Access to Capital as an Obstacle for Small Business***

Capital affects everything. The more cash-strapped a company is, the less it is able to invest in those things that help it grow and keep it viable. These things include attracting and retaining top personnel; operating out of comfortable, efficient facilities; upgrading to and maintaining state-of-the-art equipment; retaining attorneys to ensure information flow and advocacy;

promoting the business to listeners/customers and advertisers; and acquiring additional licenses to improve competitive advantage.

Access to capital is limited by lending sources' lack of understanding of the broadcast and wireless businesses and their operations; by requirements for collateral in excess of operating cash flow; by increased cost of capital due to consolidation; by exclusion from information and deal-makers' networks; and by advertising agencies' and advertisers' practices.

Discrimination based on education might even play a role in limiting access to capital. As a previous NTIA report on capital market discrimination indicated, at least in the pre-market consolidation era, the fact that minorities who acquired capital were better educated than similarly situated non-minorities may be indicative of discrimination. The study found that education was more important for minorities acquiring capital than even the track record of the business for which the financing was sought.

Erskine Faush, a Black television station owner who acquired his license in 1989, puts it succinctly.

(I)t's always capital. ... Now you know, we can theorize and rationalize all of this. But when it comes right down to it, it's the lack of resources.... (W)hen you have a company with mega bucks, many of them being [publicly] traded, who have ready access to deals in the marketplace, even to make improvements, to do all of those things necessary to grow, to fertilize it if you please, without those resources just how do you make it a level playing field? (EFaush238, p. 15)

Mr. Faush goes on to say that he's not necessarily looking for a hand out but rather a reasonable foundation on which to compete fairly.

. . . (I)t's that access to capital. It's that barrier. And, you know, you're not necessarily looking for preferential treatment – and, yet, I could make a strong case to justify some [of it] because of past practices in the marketplace. I could make a strong case for that, but I won't do that. What I will say is this, that once you remove the barrier that's there, without help you cannot move, and that's the one of capital, you know, everything else – once you do that, give me the wheels to put on my chariot -- do you understand what I mean – I'll drive it. I'll run it.

I don't mind getting in the race with anybody else at any other level and let it be on initiative, your drive, and all those things that you ought to have to be a good, viable business enterprise, you know. You don't have to do that. You don't have to go out and get the business for me. I'll go get it. Do you understand what I'm saying? (B)ut the one thing I can't get over is the fact that I'm starting at the starting gate and I'm expected to ... make the chariot go and there are no wheels on it. Give me some wheels and I'll get at the race line with everybody else and line up, and let's see who can run to the finish line. (EFaush238, p. 26)

Similarly, Ernest James, an African American former licensee (who purchased his station in 1985 and subsequently lost it in bankruptcy proceedings) makes these comments.

I had done all of the things that you need to do. I had done the engineering to ensure that the property that I needed would meet FCC requirements. But I failed, and the reason that I failed had nothing to do with my ability, proven by the fact that I am very successful running [seven stations for Clear Channel], and the stations that I run are not all urban formatted stations. . . (S)o my point is that it wasn't a matter of skill, it was a matter of access to capital. (EJames268, p. 9)

➤ ***SBA Programs Do Not Ease Access to Capital***

During various years, when the “opinion molder rule” was not in effect,²⁶ the Small Business Administration (SBA) was able to lend money for the acquisition of broadcast properties. Several of our interviewees were able to finance their station purchases using the SBA’s loan guarantee program. For example, Joyce Banks, a Black female radio licensee, recalled that SBA was available to help finance her acquisition, but she only learned of its availability through a state government official. As she states:

But still ... so what happened is in contacting, I believe he was a state senator at the time, Paul Simon whom I had worked with for years, had come across ... or one of his staff persons, I believe ... that the SBA had just made the decision to loan money to radio stations. And so a bank whom we had done business with for years then decided that, okay, with that guarantee, they would be willing [to loan us the money]. (JBanks175, pp. 7-9)

Even though the maximum loan amount for broadcasting properties that the SBA will guarantee has increased over the years to its current level of \$750,000, that is too low an amount in today’s marketplace, as Manny Davila, Hispanic radio broadcaster, told us.

[The] SBA, you know, will lend you \$750,000. Well, wow, that’s fine. That means I can go and buy [a station in a small town in] Texas, man. but I can’t buy in San Antonio.

²⁶ The Small Business Administration in the administration of its “opinion molder rule”, generally prohibits governmental financial assistance to business operations relating to the communication of ideas on the basis that the government should refrain from subsidization of particular views or ideas, has led the agency to reconsider the rule because it appears to have had the opposite effect of entangling, rather than extricating, the government in speech matters due to the need for agency determinations of eligibility. The SBA’s opinion molder rule, which was lifted several years ago, provided generally that the federal government was prohibited from granting governmental financial assistance to applicants engaged in the communication of ideas. 13 D.F.R. 120.2

But, yet, the banks, if you want to borrow a couple of mil or a mil or something, no, they don't want to lend you that. They don't – no, if you're not borrowing \$3 to 5 million or \$10 million, they don't want to talk to you. (MDavila 128, p. 42)

Pluria Marshall, Jr., an African-American radio licensee, suggests that the upper limit on SBA loans should be increased gradually from \$750,000 to \$1.5 million to \$2 million. As he said, with only being able to get \$750,000, “*basically you couldn't buy much of anything for that amount of money.*” (PMarshall115, p. 1)

All small businesses face these obstacles. Minority and women licensees reported that because of discrimination, they experienced increased disadvantage.

➤ ***Discrimination As an Obstacle to Capital for Minority- and Women-Owned Businesses***

While small businesses typically have more difficulty getting bank loans, the minorities we spoke with shared stories of even greater difficulty because of pervasive and often subtle discrimination. Bob Carl Bailey, an African-American who acquired his radio station in 1977 said:

(F)inancing broadcast facilities or any business if that [financing] was tied to the success of the business, ... is difficult ... (p)articularly if you're small and even more difficult if you're Black. Next to impossible. (Bob Carl Bailey, African-American radio broadcaster) (BBailey167, pp. 3-4)

James E. Wolf, Jr., another Black radio station owner who acquired his license in 1983, shared the irony of him finally becoming bankable as a result of the windfall he is reaping from the sale of his broadcasting business. Furthermore, he makes reference to the banker's willingness to call him “Mr. Wolf”, an appellation of respect that was obviously lacking before.

The color of the skin I am in is the problem. It has been and still is. Now I'll tell you, since I've gotten this big, large contract on my desk [for the sale of my station], everybody – I had one banker [who I earlier had tried to get financing from] tell me, and this is verbatim. “The kind of deal that you've got, I'm going to have to start calling you ‘Mr. Wolf.’” But now I can get anything I want. But I don't need them, you know. I can get anything I want now. ... You know, ... I've had so much notoriety in this community and all of the servicing work that I've done, any loan ... it had should have been, “All we require is your signature, Mr. Wolf.” That's what it should have been. That's what it should have been. (JWolf281, pp. 21-22, 27)

Andrew Langston, the first African-American to seek a license directly from the FCC in 1960, financed his radio station purchase “*out of my piggy bank ... because the bank wouldn't loan any money.*” Mr. Langston had 12 businesses at the time he was seeking financing for his radio station [in 1974]. He had extensive experience and a track record as a successful businessman.

And still he could not qualify for a bank loan. He was essentially told by the banks to be his own lender.

There was one time I had twelve businesses. . . I borrowed money from [my in-laws] . . . [Banks] wouldn't loan me any money, because they told me I didn't need no money. And that was true, I didn't need any money, I needed to wake up and think. Because here I had a transportation business. I had a public relations business, a promotion business, had an insurance agency. I had revenues coming in from that and I turned around and looked and said "what the hell?" I can loan this money to the station. Which I did. (ALangston112, pp. 1,12)

Mr. Wolf also talked about how even with his industry and community recognition and prominence he was still not able to prove his creditworthiness to the banks.

I just really ... positioned myself – I've won every award that you can think of from the cities, economic development awards, from the State of Tennessee. (W)e tried unsuccessfully so many times [to raise capital]. . . . (T)hese are the pressures really that made me actually sell at this time, you know. It's because I just got tired of begging people, even though you prove yourself over and over. I'm on the Chamber [of Commerce's] Economic Development Board. I've won the pinnacle award of the Chamber of Commerce. I've won the small business award. I've won every large award, industry award, that you can win here, but I've never proved myself to banks. (JWolf281, pp. 20-21)

Some minority owners found that the banks were unwilling to lend them money, but the banks used the information that they received from the minority applicants against them. For example, William Galloway, a Black male radio licensee, recalled the following story:

We could not borrow any money, and to this day, we don't need any money. Because they just would not lend money to a minority, and especially in the radio business, because they found that banks are not familiar with lending money to broadcast radio stations, and I live in Buford, South Carolina. And they're not going to lend me any money for this radio station. They will now. I was told no on 3 or 4 occasions, but someone found out, I guess in the bank, from a friend, I guess, because I was approached. They offered me \$85,000 for the radio station and I said, well, first of all, how did you know I was trying to borrow \$50,000? That was supposed to be confidential. Evidently it was not. I live in a small town. Everyone knows everybody's business. And so I said, well, if it's worth 85 to you, why isn't it worth 50 to the bank? And of course I said, well I'm not gonna sell. And I refused to sell. And I do not need any money at this point. My radio station's free and clear. I do not owe anybody any money. And the only reason is, because it's free and clear, and I'm afraid to borrow any money. Because, I can borrow more than I can afford to pay back. And, since I have refused to sell, the good way to get me is to lend me more than I can afford to pay back, and call the advertisers, who are their friends, and say, look, let's not advertise. We can get Galloway's station. So that's a way for them to get it from me without my agreeing to sell. (WGalloway183, pp. 4-5)

➤ **Prominence and Prior Business Success Is Not Enough**

As in Mr. Wolf's case, many minorities we spoke with were prominent in their communities, often had other successful businesses, aligned themselves with other leading individuals as equity investors, and still had great difficulty receiving the financing they needed. Often they had to approach several lending institutions before they succeeded, if at all.

Notable among them is Percy Sutton, who in 1971 co-founded Inner City Broadcasting. At the time, Mr. Sutton was Manhattan Borough President, principal owner of the *Amsterdam News*, a leading Black newspaper in New York, and an owner of a cable television company. As his son, Pierre Sutton, President of Inner City and Chairman of the National Association of Black-Owned Broadcasters (NABOB), reports:

We didn't have access to capital, we didn't. We had an opportunity to purchase but we were unable to find a bank that would back us in [1971]. In fact we went to some 30 banks in New York looking for backing and this was to buy an AM daytime radio station in Harlem. . . . (W)e were fortunate in that one of our shareholders had saved the life of Bunny Berkley, who was then the [child of the] Chairman of the Board of Chemical Bank, and that's how we got additional financing. But it was just dumb luck. He [the shareholder] was a counselor at summer camp and he had saved the life of the [child] from drowning, saved the life of this man's child. It's kind of extreme access. (PSutton, pp. 1-2)

Mr. Sutton's poignant story illustrates the extreme lengths to which minorities had to go to secure financing almost 30 years ago. These barriers compare to those faced by minorities today as a result of: market consolidation, the lifting of the ownership caps, the repeal of the tax certificate program, the issuance of the Adarand decision, and the ending of FCC minority and women ownership policies (comparative merit, installment payments and bidding credits).

Greg Davis, a Black radio licensee, who also has 25 years of experience, had a more difficult experience:

As minorities we found it – I found it extremely difficult, and even with my 25 years in the business, and even proven record having been there for 12 or 15 years. It was still very difficult to get conventional financing. So we ended up having to do venture capitalist money and so forth. So the cost of capital has always been a very strong deterrent for minorities participating in the broadcast industry, whether it's wireless, cable, television, or radio...I want that to be very clear, that it's not only the accessibility, but it's also the cost of doing business. It's been extremely difficult for us to come ahead. (GDavis202, pp. 4-12)

Richard Weaver-Bey, an African-American who owns both a real estate company and his radio station, which he acquired in 1981, had put together a team of highly visible partners - three lawyers and a doctor. “... and still the bank would not lend to us.” The bank said “they were

doing what they called asset lending, and they questioned whether or not the radio station had the ability to sustain or to repay the loan.” Ultimately the bank agreed to do the loan, but only “if it would be guaranteed 90% by the SBA.” (RWeaver-Bey171, p. 7)

Jeffrey Hutton, a White small radio station owner, had a markedly different experience with his bank. While Mr. Sutton and Mr. Wolf, with their visibility in the community and record of business success, were deemed uncreditworthy, Mr. Hutton got his loan, two years later in 1983, based on the fact that he was an “*upstanding citizen of the community.*” The contrast is stunning.

I went down to the bank [in 1983] and got a loan, and they gave me a loan based on two criteria. Number one, the collateral I was able to put on the table and number two, my personal credibility because I was employed as a vice president of a local hospital in town when I went to my bank. And so as a result I was what they call an upstanding citizen of the community and you know, served on a United Way board and things like that so they were really, as I was told later on, they were loaning the money to Jeff Hutton because of Jeff Hutton not necessarily because they thought that this business venture was going to fly and make money.

(F)or a period of time when banks were in trouble back in the ‘80’s, they didn’t want to loan money to radio stations because it was too speculative. But I’ve been fortunate, both of the banks I dealt with have done so because of me and they understand my work ethic and how I do things. . . . No, I never had problems with banks. I mean every time I’ve gone to the bank and asked them to do something they’ve done it. (JHutton383, pp. 5, 6, 7)

➤ <i>The Administrative Cost of Capital – Extraordinary Efforts to Secure Loans</i>

Several minority interviewees indicated that it took extraordinary efforts to get loans. They were sometimes turned down by several banks; they may have been treated disrespectfully by bank officials; they may have been unsuccessful and had to finance by other means; often their loan agreements required different or more stringent terms; and their deals received more detailed scrutiny.

Art Gilliam, a Black radio owner who after visiting 10-15 banks in 1977 was able to get his loan, nevertheless, considers his experience a fortunate one.

Well, we were very fortunate.... (W)e went to really, I guess ten or fifteen banks, and most of them said no. And many of them right off the bat without looking at our proposal, but we did have relationships with some of the banks and the one that had financed [us] initially indicated they would do it along with the minority bank which we’d done a lot of business with in the interim. (AGilliam117, p. 11)

Hispanics have had similar experiences with banks to those of African-Americans, as Manuel Davila (“Daddy D”), a second-generation Hispanic radio station owner and on-air personality, shared.

[W]e went to several banks [over two decades, from 1974 to 1996] and they all turned us down. . . . The banks won’t lend you money because [they believe with Mexicans] all you do is drink and you all beat your wives and you have a lot of kids and you all have tattoos and you wear gold chains.... [We] couldn’t get money. (MDavila128, p. 26)

James Wolf, Jr., an African-American broadcaster, tells us further that he “... got turned down by every bank, every traditional institution. We were redlined and I started to sue – redlined. And we had proven that there was nothing in our history that suggested that we were going to do anything other than [be] good stewards of the money we were loaned at the time. I got rejected all the way up until 1996, 12 years later.” (JWolf281, pp. 20-21)

Many minority interviewees had similar experiences of being turned down by several banks, and in some instances despite their efforts to comply with the banks’ requirements and suggestions. For example, Greg Davis, a Black radio licensee recounts:

I went to almost nine different banks in various parts of the country, and my story was pretty – I’ll tell you straight to the point. It was a very long, tedious process. And initially I would go to the bank, and one of the banks would tell me your business plan isn’t thorough enough. And I’d correct everything that they would tell me. I’d go to the next bank and the next bank would tell me that you don’t have enough experience. I would correct that ... I would tell you that it was very, very difficult initially to raise the capital to invest in our company...It took six years. I started in 1980. No, they never loaned me the money.... I’d go back and correct it and they would say, no, we’re just not interested for a lot of reasons. So access to capital has been a tremendously difficult task, at least from my perspective, in trying to start a company...(GDavis202, pp. 4-12)

Certain minorities had to take out home equity loans in order to finance the purchase of their communications property. For example, Leodis Harris, a Black male radio licensee, recalled the following:

The only way I was able to do it was to go into my home equity. I had some small purchase price, but the balance of it I had to get from a home equity loan.... Especially with a new owner having no broadcast history, it was just almost, well, it was impossible. I had some big plans when I purchased the station, market studies and kinds of proposals for sales and so on. However, they were based on my being able to get a loan, a bank loan, I was trying to get a loan of I think \$585,000 or something of that sort. But of course I ended up not being able to ever succeed in getting that loan.... With the station not up and with me not being able to show any kind of history or any kind of prospect except my hopes and dreams, it was difficult and all the banks turned me down. (LHarris276, pp. 1-4)

Even though some minorities had access to some personal capital, this access did not preclude discriminatory treatment. For instance, Nancy Waters, a black female radio licensee, recalled the following:

When I went looking for money, you know, all the local banks had turned me down. That was back in '79. It didn't matter that my husband had \$200,000 in profit sharing at the local bank. They said that I didn't know broadcasting, and I was way over my head. (NWaters178, p. 5)

Some banks have treated minority applicants as if they were unsophisticated borrowers, irrespective of their level of sophistication. For instance, Joyce Banks, a Black female radio licensee, recalls that:

[I]t was just very difficult to start the business with advertising being very tight. The banks ... we had no history of broadcast experience, and though a lot of the bankers knew me, they still knew me in a light that didn't have anything to do with the radio business. So as we put together loan packages some of them were quite insulting. We would come ... my husband accompanied me ... we would go to some of the banks, and they would look at you like you need to put together this or that or the other. We knew what to put together. And it would surprise them, and yet they would not consider it because we were asking for quite a bit of money. Again, we were asking for six hundred and some thousand dollars for a start-up business, and they were not willing to take the chance. Well, just because some of the conversations, and I sincerely mean, were insulting. "Now, well, you don't need to ... well, you do have to put a plan together; we can't take things brought in a shoe box. You know, people will bring ..." Not even noticing that there was a bound book with a planned budget and all of that sitting right in front of them. . (JBanks175, pp. 7-9)

Jim Winston, Executive Director of the National Association of Black-Owned Broadcasters (NABOB), relayed the fact that minorities often experienced more stringent loan terms than their non-minority counterparts.

There was always the ongoing problem being a minority buyer, the terms were always stiffer. If you could get a lending institution to talk to you, the terms they came up with were always stiffer, so that minority buyers often found themselves having to sign a personal guarantee to the bank when they borrowed money against the station. So, essentially, they would take a security interest in all the assets of the station, and would still come to the borrower and say, I want a personal guarantee from you on top of that. There always seemed to be the stories of guys who were buying their second or third or fourth stations, who were still being required to do personal guarantees. And, nobody was seeing anybody else's bank loan documents. But there was this view that the restrictions were – that personal guarantees stayed with our guys longer. (JWinston502, pp. 24-25)

Some minorities indicated that the banks over-scrutinized their transactions in comparison to their non-minority counterparts. Pluria Marshall, Jr., Black male radio licensee, shares his experience.

I know friends of mine that are in the business that are able to go in and get deals done, and if I come in with the same kinds of deals, my deals get scrutinized ten times tougher... And I'm a real small operator. So it doesn't really matter how good, how well you can function in the business, I mean it just doesn't matter. A Black man's gonna have problems and that's it. (PMarshall115, pp. 9-10)

➤ **Limited Access to Capital: Banks Don't Understand Broadcasting**

Several interviewees observed that yet another obstacle to the access of capital is that banks simply do not understand the broadcasting business and are, therefore, reluctant to loan money to loan applicants attempting to start a broadcast business. Bud Price, a White male radio licensee, recalls the following:

There were two banks in town. One bank we filled the application out and he said, "You know, if this was a hog farm, we know hog farms. But we don't know anything about radio, so we're going to turn you down." So I went to the bank across the street and they looked over the application and he said, "You know, the guy across the street who's president of the other bank told me that he doesn't know anything about radio and neither do we." And I said, ... "What do you need to know besides my willingness to pay, my cash flow, my ability to pay, my credit history?" He said, "Well, you know, if we have to have a fire sale and you go under, we've got to get that money back and we don't know anything about radio."... None of that mattered when it came to financing a radio station, because it was a unique, one of a kind animal in the community and in the region, and they didn't know anything about it; and there was no access to typical lines of credit. You know, the only people I know talking of wild success stories are on the corporate level, that are buying a lot of radio stations, dumping a lot of people, curtailing the services, operating it much leaner and, you know, trying to make a little profit off a lot of stations rather than a living wage off of one station. (BPrice243, pp. 6, 45)

The primary asset of a broadcast company is generally its cash flow from advertising revenue. It is not unusual for smaller broadcast companies, especially in smaller markets, to encounter difficulties in acquiring debt financing, as they are often seen as higher-risk borrowers based on the size of their operations and their ability to generate cash. These companies rarely own the hard assets – buildings, equipment, inventory – that banks generally use to collateralize business loans. Furthermore, since a broadcast license is subject to FCC and public scrutiny upon regular renewal every eight years, banks do not consider the license adequate or appropriate collateral.

Absent these business assets, a banker often requires the licensee to secure the loan with other personal assets such as real property, marketable securities or compensating bank balances (e.g., stocks and bonds, treasury bills, certificates of deposit, etc). An alternative or addendum to

personal assets as collateral was often an increased interest rate on the loan to compensate the lender for the perceived additional risk. In the absence of business or personal assets, licensees were largely unable to secure loans for either acquisition or working capital purposes. The more comfortable the lender was with the borrower, though, the more he was inclined to look to the operations (cash flow) of the business rather than to hard assets for his security.

Our study found that while historically small broadcasting and wireless telecommunications businesses have had difficulty gaining access to affordable and sufficient capital, discriminatory practices in the banking industry have disadvantaged minority- and women-owned businesses more so than White male-owned small businesses. Additionally, when required to pledge personal assets as collateral for loans, minorities are frequently confronted with an added market entry barrier due to historic disparities in intergenerational wealth transfers. If mortgaging the proverbial farm is necessary to secure a bank loan, a minority's farm, if they have one at all, is likely to be smaller than that of their White counterpart.

S. Jennell Trigg, a communications attorney, highlighted the fact that the Small Business Advisory Committee *“show[s] that minorities have less collateral and less personal equity before they entered into business than non-minorities. So they're always starting off at a deficit when it comes to cash. And the longer it takes to acquire the property, the more legal fees. And again, at one point, you reach a point of no return. If you give up, you've got nothing to show for it... You're pouring...bad money into good. (JTrigg536, p. 30)*

Charles Cherry, an African American who acquired his first station in 1988, summed it up this way.

[Banks] don't understand broadcasting and they look at it strictly [on the basis of] collateral And then, of course, debt is always tough because if you go to a conventional lender they don't understand how radio works. . . (t)hey're looking at hard assets . . . and we've had people say, you know, we don't lend on cash flow. [But it's my cash flow that's going to pay you]. (CCherry262, pp. 3, 19)

Robert Fink, a White small town radio broadcaster who bought his station in 1998, echoes these comments when he says, *“. . . (Y)ou go to the small local banks, like we would have here, and they'll at least be polite and let you make a presentation, but they deem it too risky because they don't understand the [broadcasting] business.*

Amador Bustos, President of Z-Spanish Broadcasting, a successful Spanish-language broadcaster with 33 radio stations nationwide who first went into the radio business in 1992, had similar experiences when he was first starting out.

[We went to your traditional banks], the Bank of America, the Wells Fargo, the people that we knew. That was the only banking relationship that we had at the time. Being in the broadcast industry and not in the finance industry we didn't know any investment bankers or anybody in New York or anything. So we just went to the traditional commercial banks. And since broadcasting does not carry a lot of assets – it's just the

value of the franchise and the license – they did not understand that kind of financing. They didn't like the collateral of the broadcasting industry. (ABustos12, pp. 10-11)

Minority broadcasters might be uneasy about educating the banks about the broadcast industry in order to get a loan, probably because banks could use the information to the minority applicant's disadvantage. For instance, Pablo de Jesus Colon, a Hispanic male radio licensee, recalls:

In 1982, when the \$400,000 note ballooned, and we didn't have any money, ... we went to a couple of banks, I'd say, one bank, they took forever to give you a no answer. Yes, we had the Fleet Bank. OK, and the Fleet Bank told us that I think it was a troubled credit, [and they] couldn't give us the loan. The other bank was Founders Bank, and we were a little upset at this bank, because we'd prepared a 5-inch binder book with all the information on our radio station from the beginning, in 1989 to 1993. And when we talked to the bank, to the officer at the bank, he was very excited, because we had given him so much information about the radio industry and he came out and announced to us that he had never done a loan for radio, for broadcasting before. But he had another Anglo group that was trying to get a loan from the same bank, and he said, now this information that you have given me, gives the opportunity to read and get myself knowledgeable about this industry, so that I can work out these loans. But the other people got the loan and we didn't. So we prepared this man with enough information to make a right decision and the other loan for the Anglo group, and our information was not good enough for us to get a loan. (PColon244, p. 8)

➤ **Limited Access to Capital: Broadcast Station Assets
Undervalued As Collateral**

Even when owners who were known in the community had businesses with sufficient hard assets to use for collateral, as was the case for African-American Erskine Faush, minority owners were still not successful in getting bank financing.

(E)ach of us, my partner and I, the two Blacks, we put in \$40,000, which was all we had. [We went to] (a)t least three or four [banks] and were getting virtually the same story. In some instances, I can remember a couple of them at least going through the motions of coming out and looking at the[station] property [which we owned].... This station had some real assets, its studio and the property on which the studio sits. So it was not just the intangibles that are associated with the broadcast industry. Therefore, there was some real tangible assets and the station had enjoyed some years of operation so it had a track record in terms of its credit rating and paying its bills and that sort of thing.

We were both indigenous to the soil, to the extent that we also had personal records. In addition to being a broadcaster I am a minister and have pastored the largest Black Methodist church in this area. And I retired from that after 20-1/2 years there. So we were not new or novices, and we had personal credit records, you know, if personal guarantees were necessary. So everything was there, I would think, by any yardstick or

measure in a general situation, that would qualify us for the loan. [And still we were unsuccessful.] . . . (If you measure us by any yardstick that you measure the general population, I could find no reason not to justify granting the loan. So what else is left [but discrimination]? (EFaush238, pp. 3, 4-6)

William Saunders, a Black FM station owner, who acquired licenses in 1971 and 1983, had similar experiences. He owns free and clear 34 acres of land “right on the water” which is probably worth 20 times the amount of the loan of \$250,000 he is seeking, “but we can’t get [the loan].” His waterfront property is somehow considered inadequate collateral to provide comfort to the banks he is dealing with. Due to delays in finding money, his business has been put into receivership.

Even when some minorities had appraisals of their broadcast properties, banks sometimes still refused to loan them money.

... (W)e did go to a couple of banks that had loaned money to radio stations. We found that out and approached them because we weren’t talking to a new entity. They would tell us that the collateral in this type of business was ... that we didn’t have enough to make them comfortable, even when we had letters from – one from an appraiser, one from a person who had offered to buy us before we even started. And the appraisal was saying that the license in itself at that time was worth about \$800,000... (JBanks175, pp. 7-9)

➤ **Limited Access to Capital: Personal Assets as Collateral**

Since broadcast lending is based on cash flow versus hard assets, it was not uncommon for license holders to have to secure their loans with other personal assets. Michael Carter, a White radio station owner who first acquired a license in 1977, told us that “. . . [he] had to mortgage a farm” in order to provide collateral to cover his loan “. . . because [the banks] don’t value the FCC licenses. It was terrible.” (MCarter230, pp. 2, 3, 4)

In talking with Dale Gehman, a Native American radio station owner who acquired his license in 1991, he tells of how his father mortgaged the family home and put up the assets of their furniture businesses to get a loan.

[My dad] mortgaged our house ... for the tower site property, and then the assets of the furniture business [which was] the only way the leasing company would [provide the loan] – I mean, at least he could help pay the payment if we couldn’t. And, of course, he never had to . . . I guess looking at any other minority trying to get in those days, in the early ‘80s there, he was hopeless. I don’t see how anybody could have done it with the banks. The banks are just impossible. [We also] tried the Small Business Administration and really got nowhere there. (DGehman132, pp. 10-11)

But for Native American tribes, gaining access to capital is very complicated because of their unique status. For instance, Jim Casey, a communications attorney, states:

The primary barrier, not surprisingly, is capital. Tribes have a very difficult time raising capital, because of the nature of their assets. Their assets are typically held in trust by the Federal Government. They cannot be pledged in a financing arrangement. So they start out at a disadvantage in getting financing. Another difficulty they have with financing is their sovereign immunity status. They are often put into a position to waive their sovereign immunity in order to get a financier to work with them. (JCasey535, p. 6)

William Saunders, a Black radio station owner, talks about his struggle to acquire much needed capital for his two stations from 1971-1983 and everything he put at risk to do so.

I ended up with the two stations and really could not get the capital that I needed to make it run. I needed operating money, I needed stuff for promotion, I need a lot of things, and we just couldn't get any of it. And we went into a deal, that happens to minorities most times, I bought 49% of the FM station and then my partner, or the White guy that I was in the partnership with, had a real bad reputation, but a lot of stuff was against him that I didn't know and I couldn't find out even from the White friends that I had. They all said he was a good guy. But he wasn't.

And eventually, the bank attempted to foreclose on him. But [they] allow[ed] me to take over the note, because that's the only way I would have been able to get money. They would not loan me the money but if I would take over what the station owed, which was about \$631,000. And what I did, like a fool, I signed on as guarantor for it, and as a guarantor, it brought in my AM station, and it brought in my house and my real property and everything, and the bank got a receivership on it for all of my real property and the two stations. (WSaunders163, pp. 4-6)

When evaluating loan applications, lenders look to the cash flow from the business to determine borrowing capacity and to adequately cover debt service. Accordingly, they will often ask to review a company's business plan and cash flow projections. If lenders believe the projections to be too optimistic, they will discount (reduce) them. As a result, the amount of money that the loan applicant can borrow, if they can borrow at all, is less. For radio stations, cash flow comes from advertising dollars. Reflecting the frequent experience of urban radio broadcasters with discriminatory practices in the advertising industry, it was not uncommon for licensees who had urban-formatted stations to experience discounting of their cash flows by lenders. Charles Cherry, an African-American radio licensee, highlighted this point.

The bankers do what the industry does, which is they discount – if you are trying to go into an urban format, they discount the buying power, the purchasing power, of the market that you're trying to serve. (CCherry262, p. 14)

The discounting of minority-formatted stations is worse than would appear at first glance. If banks discount the buying power of minorities and advertisers diminish cash flow by also discounting advertising buys and/or refusing to advertise on minority formatted stations, the broadcast property is undervalued in at least two respects. Accordingly, debt capital is all the more difficult to obtain.

➤ ***Limited Access to Capital: Use of Personal Capital in Lieu of Bank Debt***

Several interviewees shared how they had to get creative with raising funds for the purchase and operation of their stations. Many used cash savings and proceeds from the sale of other personal and business assets.

Jose Molina, a Hispanic owner of both radio and television properties, tells how in 1970 he purchased a one-bedroom house in an undesirable section of Hollywood, California for \$25,000, with \$3,000 down. Most weekends, his buddies and he, for the cost of lumber, worked on the house until it grew to four bedrooms. He then refinanced his mortgage to pull \$80,000 out of his house and combined that with \$70,000 of private equity to make his \$150,000 down payment. *“The lady [seller] carried \$500,000 in a 10-year note. So I didn’t have to go to banks because I knew I wouldn’t qualify. She carried the paper. . . . (T)his person was a cream puff. . . . (T)he time period that she gave me was a godsend. Ten years.”* (JMolina121, pp. 9-10)

Since many minorities were not able to secure bank financing, they had no choice but to sell or mortgage other holdings to generate the cash needed to buy or build out their stations. In order to buy his low power television station in 1983, Eduardo Caballero, a Hispanic licensee, tells us, *“ . . . the money I raised has been mostly by virtue of selling my business and getting some personal loans, not necessarily business loans, but my personal loans and giving it to the company.”* (ECaballero123, pp. 12, 13)

While White male-owned small business licensees typically had an easier time securing bank financing, they were not immune to having to pledge assets in excess of those owned by their stations and invest significant capital themselves. Robert Fink and Bob Darling, White radio station owners who acquired their station in 1998, had to put in 75% of their own money and borrowed the remaining 25%. *“I mean they wouldn’t take the station as collateral. I . . . had to put up . . . everything I had . . . my home, I had some rental properties, and I had to sign those over. Literally everything I owned.”* (RFink235, pp. 12-13)

John Tupper, a White TV station owner, also used his own capital to finance his business in 1995.

We probably could have gotten funding had we personally signed for the loan and provided some other collateral to back up any debt that we would have incurred to build the stations. But the assets themselves were not bankable collateral to stand on their own. . . . So we decided to bank it ourselves instead of paying interest to somebody else

when in fact we would have had basically the same assets tied up either way as collateral. (JTupper216, p.6)

➤ **Women Experienced Discrimination as Well**

Historically, many women were of the opinion that banks were uninterested in helping them finance their acquisition of a communication property. For instance, Ruby Unger, a White female radio licensee, stated:

It would seem real clear to me during that whole process and in my years with AWRT [American Women in Radio and Television] and other women's groups and small business women's groups – it really did make a difference in those days if you were going for funding and you were a woman, boy, you had a tough, tough road, a very big, uphill battle. Yeah. It just – you know, when you're sitting across from a banker who's a man – if you're a White man you have a much better chance, and obviously all the numbers bear that out. I mean, it was something like one or two percent of all of the radio and TV stations in the United States were owned or managed by women. I mean, come on. (RUnger367, p. 10)

Similarly, Bernadine Nash, a Black daytime AM station owner whose late husband bought their Boston radio station in 1980, offered her experiences.

I think [being a one-station business owned by a Black female has] made it virtually impossible [to raise outside capital]. . . .I mean, I think that certainly being small is a distinct disadvantage, and I think that would be the case for anyone, regardless of whether or not they are male, female, Black, White, whatever. Just because the tenor within the industry is that bigger is better. However, the additional burden of being female . . . (Y)ou know, the reality is that when you are owning and operating your own business and you're a female and you're small . . . and a minority, they don't take you seriously. (BNash118, pp. 11, 14)

Francine Rienstra, a White station owner in Arizona, spent an exceptionally long time in the application and comparative hearing process from 1987 to 1993 using up a great deal of her money to wage that fight. As a result, she had to go into a Local Marketing Agreement (“LMA” – alternatively referred to as a Lease Management Agreement), giving someone else the right to use her license and broadcast facilities for their own benefit in exchange for a monthly fee.

[We went after the LMA in the first place because] it was the need for funding. No one wanted to fund a radio station. No banks in town wanted to fund a radio station. . . . I did talk to venture capital people, and a lot of the people that I talked to only wanted to do large deals. They didn't want to do a small deal because, really, I didn't need a whole lot of money to get the station up and running. I was asking for about \$1 million. . . . And I did try that route [talking to the SBA]. I did talk to . . . in fact, I talked to some of the

national SBA people, and they would not lend to broadcast or print industries. (FRienstra360, pp. 17-18)

When Ms. Rienstra, who had put together an all-woman team to apply for the license, went to the banks she had these experiences which were compounded by the fact that she and her partners were women..

So, I put my group together. We had pooled our money together. We had put together a business plan, and I had started meeting with three to four people for financing through local banks here. And I had gone to three banks, the first of which was one of the larger banks in town, and I literally got laughed out of the office. Because they took one look at me and assumed that I didn't know what I was doing. So that was the first bank that I went to. The second bank that I went to insisted that if I were going to try to get a loan or even to apply for a loan, that I needed to have, not only all of my partners' signatures, but I had to have all of our husbands' signatures. And we were an all-women group. Now, granted we live [in a community property state]. But by the same token, I don't know that they would have asked a man that. That was the second bank. And the third bank said that they do not loan for such risky ventures. (FRienstra360, p. 1-3)

Bennett Kessler, a White female radio licensee, relays a story of how the banks were particularly unhelpful to her because she was a woman.

...I'm about to get my first bank loan. But the banks were very unhelpful... I will say that the banks I felt were not helpful to women. That was my general impression and also, the story that I heard from other people. ... But it is my general impression, it has been my general impression in this area, which I guess you could call kind of a redneck area, that a woman named Bennett is really not going to do that well. I try to explain that it was my great-great grandmother's maiden name. That helps a little bit... (BKessler313, pp. 13,18)

Patty Ruiz, a Hispanic female television licensee, states:

I think it was a lot easier for a man to get financial backing than it is for a woman. Oh, yeah. I think those barriers are finally coming down a little bit, but at that time, you know, seven, eight years ago that was tough...(PRuiz452, pp. 14-15)

Not all minorities and women had the same difficulties highlighted above. Some were in the right place at the right time. Johnny and Opal Shaw, Black radio owners, gave their bank an A+ [although they also spoke of the challenges in getting their loan]. Originally, Mr. Shaw was general manager of the radio station he ultimately purchased in 1987. The station owner got into financial trouble and offered to sell the station to Mr. and Mrs. Shaw. They financed the purchase of their station with personal savings, seller financing and a loan for approximately 60% of the purchase price from their local bank. Furthermore, when it was time to upgrade and buy new equipment, their bank was willing to refinance their loan. (DSutter205, p. 5)

Mr. Shaw feels that his ability to get a loan quickly to purchase a station from his boss was the result of the prior owner putting in a good word for Mr. Shaw with the bank. “... *I was a little bit surprised [at their willingness to loan me money]. I think [the sellers] had something to do with me probably getting that loan as quick as I did because – you know, I don’t have evidence of this, but I want to feel like they said, hey, look, we really need to sell this station, and this guy does have the capabilities of running it. He’s had the experience and so forth, and we need to get it off our hands, and we need you to help him get it.*” (JShaw185, p. 3)

He went on to give his bank high marks for the opportunities he was given, especially because he was a minority.

I have to say at this point in time that I think, as an African American, I would have to give my bank an A+. My bank has worked with me very well throughout this whole process. But we’ve always been responsible to them. But at this juncture I think they realize that it’s okay, you know, they can trust us and we can trust them. So our bank has done well. (JShaw185, pp. 17-18)

➤ <i>The Importance of An Informal Industry Network to Success in Acquiring Capital</i>

A number of study participants told us how important it was to have contacts with lenders and equity investors along with personal financial sophistication to help overcome the market entry barrier of limited access to capital. Tyrone Brown thinks that “... *today, finance is the most important thing. The most important thing is you [have to] understand finance because you [have to] put together a financial package and not only understand it but you need contacts in the field.*” (TBrown510, p. 13)

John Thomas, a Black radio licensee who acquired his station in 1992, believed that his previous banking experience and relationships made all the difference in his ability to eventually get a loan for his station.

(M)y banking experience and the relationships that I had developed over the years in the banking industry helped me tremendously. I did have a small amount of capital, but primarily all of the money was from bank financing. . . . [But] it was [still] difficult because, again, I came in, I did not have any experience operating a radio station. Second, the station was in bankruptcy, so it was very, very difficult to convince people that it was worth putting money behind. But I was persistent and I just kept looking for ways to put the deal together, and eventually it happened. (JThomas277, p. 4)

➤ ***White Males had Greater Ease and Success Securing Debt Financing***

Like White radio broadcaster Jeffrey Hutton above, several of the White male licensees we spoke with had very different experiences compared to those of their minority and female counterparts. Wireless license owner Dennis Miller, who is White, has had positive experiences with banks helping to fund his company's expansion, even going so far as to have lenders eager to provide capital. Mr. Miller shares "*[As we have grown, raising capital has been] very easy to do. We've gone to traditional banks. Real Telephone Finance has been providing our financing now for the last three years. Part of that was CoBank, but we have investment bankers there, very anxious to provide us funds. Well actually, we've grown and we've been very successful in our enterprise here, and so as you get more successful, you get on more radar screens. (DMiller147, pp. 5-6)*

Trent Boaldin, another White male wireless license holder who acquired his licenses from 1976-1999, similarly had a relatively easy time raising money for his new venture. Unlike his female and minority counterparts, who typically approached multiple lenders and still received very little, if any, assistance from bankers to ensure their success in acquiring a loan regardless of their backgrounds and personal financial strength, his bankers were helpful in suggesting to him how he might improve his chances of getting a loan. In addition to their wireless holdings, his family also owns cable television and wireline telephone in his rural market.

We approached three lenders. . . They had some suggestions for changes to make to the assumptions and improvements to make in the plan. So we incorporated the various suggestions from each one that we talked to, revised the plan, and sent it back. . . (A)nd then at that point we got the indication from one of them that they were willing to go. . . We're pleased with what we've got. (TBoaldin307, pp. 9, 10)

➤ ***Increased Cost of Capital for Small, Minority- and Women-Owned Businesses***

One way for a banker to mitigate the risk of lending is to charge a higher interest rate for those loans that are perceived to be more risky. Business size, type, operating history, and age impact perceived risk as does the track record and personal creditworthiness of the borrower. Often for small businesses, the higher interest expense noticeably impacts their viability and opportunity for growth. For new businesses, the increased cost of capital can render their business plans unworkable.

When asked how the size of his business and the fact that it was a new venture impacted his cost of capital, Mr. Boaldin responded, "*I don't know what the exact difference would be, but I imagine it's very significant, yes. . . [The interest and terms that we got] obviously fit into the business plan. I think it's just the nature of a small business. That's one of the down sides of a*

small business. But, you know, small business has lots of upsides. That just happens to be one of them that's always an issue. (TBoaldin307, pp. 9, 10)

The higher cost of capital for small businesses was also noted by other study participants. Anthony Chase, an African-American radio and wireless licensee who acquired his licenses from 1992 to 1994, says that a higher cost of capital for small businesses comes with the territory, and you just have to learn to work with it.

. . . (M)y sense is that the [cost of capital] is always very high for start up businesses and it's certainly no exception in my case. It's very high. It's a real barrier to entry in the business. And you know, you just [have to] suffer through it and hope that your first deal doesn't necessarily become your last because you have to pay pawnshop rates to get into the business. (AChase119, p. 6)

Minorities told us that they perceived they were paying a premium for capital, perhaps more than their White male small business counterparts. Mary Helen Barro, a previously successful Hispanic radio broadcaster who acquired licenses from 1987 to 1992 and is now in bankruptcy primarily because she was not able to obtain adequate financing, tells us that she “*had a very difficult time raising capital. I was a minority woman. If I did get [the money] it was very expensive. I had to go to venture capitalists; the banks just didn't want to assist us at all.*” (MHBarro190, p. 3)

Dorothy Brunson, one of the first Black women in broadcasting and a current owner of a UHF television station which she started operating in 1989, also had to pay a higher interest rate for her borrowed capital.

Every time we've had to borrow money, we've had to borrow it at 15%, 16% interest rates because the history and the growth of the station and the level of profitability was not there in the early stages. So people still look at us as high risk. . . . And so you, you're constantly paying extra dollars to be able to do the basic things that most people can do with 5 or 6 or 7% dollars, and the same dollars would cost us 12%, 15%. (DBrunson105, p. 9)

As discussed, interest rates are reflective of the perceived risk involved in the transaction. Charles Cherry, an African-American licensee, thinks that “*race probably adds an additional risk factor, but [he] can't say that that's the sole sort of determinative in these kinds of deals... [His] gut tells [him] that he's paying a high price [because he is a minority].*” (CCherry262, p. 13)

➤ **Minority Small Business Investment Corporations (MESBICs)**

Those minority study participants who had to deal with Minority Enterprise Small Business Investment Corporations (MESBICs)²⁷ shared their negative experiences with the process. W. Don Cornwell, an African-American who is a former senior executive at the investment banking firm of Goldman Sachs and current President of Granite Broadcasting, a publicly-held television broadcaster, told us his story.

Oh, it's awful [dealing with MESBICs in 1988]. You know, disorganized and not reliable as investors. We had a group of MESBICs that committed to put up about \$2 million in the group. I did not want that in the deal because all the experiences I had had with my prior life of helping other small guys get financed, because I used to do that just as a sideline on a pro bono basis when I was [a senior executive] at Goldman [Sachs]. And my experience had always been that these guys were not good for the money, but I was [approached] by a guy who ran one of these, who I had known, and I got a lot of smoke blown at me, how I was the kind of guy they really needed to back, and you know, this was going to be professional and blah-blah-blah.

Anyway, the long and short of it all is that they waited until a month before it was time to close, and then they started imposing demands, and I conceded to one of them which was a pricing change, which was in their favor, and against my best interest. But then they started to try to take, in effect, control of the company. And to be candid with you, one, I wasn't going for it; but, two, I had a couple of my other investors, including Goldman Sachs, basically tell me that they wouldn't be in the deal if these terms were put in the deal [by the MESBIC]. So it was just not a good experience.

I've been told that this industry has cleaned its act up a little bit, and it's better. Some of the people who were part of this group after I basically kicked them out -- because I did, they were shocked, because they're used to having people who are frankly on their knees, and because of my background, I knew how to raise capital. And so I kicked them out, which shocked them. (WDCornwell103, pp. 22-23)

²⁷ MESBICs are small business investment companies (SBICs) that address the needs of entrepreneurs who have been denied the opportunity to own and operate a business because of social or economic disadvantage. SBICs were created by Congress in 1958, and licensed by the Small Business Administration. MESBICs are privately organized and privately managed investment firms. Possessing their own capital and with funds borrowed at favorable rates from the Federal government, SBICs provide venture capital to small independent businesses. Small Business Association, Alternative Financing, (visited Aug. 30, 2000).

<<http://www.sba.gov/gopher/Business-Development/Womens-Business-Ownership/Financial-Alternatives/wfin1.txt>>

Pierre Sutton also had an experience with a MESBIC in 1971 that was more costly than it might have been with a different lender or if he had not had to use a MESBIC, especially since he had to give up equity in his company to get the financing. Now, however, with the company's track record, his experience has changed.

Initially I don't think [my cost of capital was the same as for non-minorities]; I know they weren't. My cost of capital was high getting started because [the MESBIC] said I had to give up points, I had to give up 10% of the company. I eventually bought those back. In fact, I got that back before we went out and bought additional radio stations. But, no I had to give up points, I had higher interest rates, because it was a MESBIC. I was getting charged what banking business would consider usury rates. . . . but I can't say that now, I know that now we're not getting the same kind of treatment either because we're better, we're more established, having been in business 20 years, 25 years, we know what we're doing almost 30 years. And we have a good track record. We're just not going to take it any more, you know. (PSutton110, p. 14)

Merrill Charles, a Black male radio licensee, is of the opinion that some MESBICs may take advantage of minority borrowers.

I don't want to characterize all of the MESBICs ... but I think it was very clear that a lot of these organizations that were designated as, you know, SSBIC's, and you know, got the SBA certification and all of that to loan money were definitely taking advantage of their opportunity to supply funding for people. I mean by taking out heavily on warrants and kickbacks for them as a result. (MCharles458, p. 9)

➤ <i>Increased Station Prices Brought on By Consolidation Further Limits Access to Capital and Raises Barriers to Entry</i>

As our study participants told us, capital has historically been difficult to raise for small businesses. It appears that it has been nearly impossible for minorities and women. Lacking access to capital, the ability of these businesses to enter the broadcasting and wireless markets has been curtailed. With the consolidation of the broadcast market, the economics of the industry have changed, resulting in significant implications for small, minority- and women-owned businesses. The most notable change is the dramatic escalation in prices that apparently has made it nearly impossible for them to either acquire new stations or enter the industry for the first time.

The restructuring of the market, with its increased station prices, has also necessitated a restructuring in the sources of capital needed to finance purchases. For those needing cash to buy stations, as compared to having stock to trade, the bar has been raised just that much higher. Frank Montero, former Director of the FCC's Office of Communications Business Opportunities (OCBO) offers this perspective.

... (P)rices for stations and the like have gotten so high that while there is still difficulty in getting access to capital, at the same time, you know, the brass ring is pulling farther and farther away from them because the prices are going up faster than the supplements to capital are appearing. And, likewise, what's tied into this is that lenders or potential investors see what the dynamic in the marketplace is, namely that markets are being carved up into larger but fewer large competitors, and so they are becoming more and more reluctant to, absent some sort of a mandate, invest in these new entrants to the market when they know that this new entrant is essentially going to be a relatively small player competing against larger and larger competitive players in the marketplace and that the viability of that venture is questionable as to whether they are really going to be able to succeed. (FMontero509, pp. 9-10)

With stations now selling in the multi-million dollar price range, anyone trying to enter the market today has to find not only debt financing but equity capital, as well. These new financing requirements raise a different set of market entry barriers for would-be entrants.

Lenders of debt typically look to the interest income generated from the loan to cover their risk, charging higher rates as their perceived risk goes up. However, there is only so much they will lend on broadcast properties regardless of the cash flow. With stations selling for upwards of 20-22 times projected cash flow, and with media lenders only willing to lend up to 5-7 times cash flow, station purchasers have to raise equity capital equal to approximately 15 times cash flow. Given the size of the deals, it is almost certain that prospective purchasers will have to look to venture capitalists to fill the lion's share of this gap, with the balance coming either from personal funds or private equity investors other than traditional venture capitalists. Understandably, there are very few individuals who can play at this level.

One of the paradoxes of dealing with media lenders and venture capitalists, especially these days, is that they are generally not interested in funding deals that are smaller than \$10 million, nor are they interested in single-station, single-market opportunities, unless perhaps they are in a top 10 market. This does not bode well for the individual or group that wants to start out in a small market with a small station. As Robert Fink, a White radio licensee tells us, their financing options are drying up.

... (T)he banks won't look at you if you're not looking at \$10 million deals. Okay? And most of these stations in the small markets, you're looking at anywhere from \$300,000 to maybe a million dollars in the small market situation. We're too small for them to worry about. And that's the biggest complaint that we small broadcasters still have [is that there is] virtually no outside assistance, and I have tons of friends in the business over the years, and I am sure they would just echo my comments. We have to almost always go out and just find it through private individuals; in other words, all the money in our station basically is what Bob and I put into it. We're too small for the big guys that are in the broadcast; they're into the big corporations. And the saying in radio is that if you don't have a \$10 million deal, they won't give you the time of day. (RFink235, pp. 9-10)

Diane Sutter, a successful White television broadcaster, echoes these thoughts and provides additional insight.

Single stations are very difficult for anyone to do, but a first-time entrepreneur especially because most of your equity companies as well as your banks, don't like to have all of their risk in one place. They're much happier if they can spread the risk amongst other [broadcast] properties so that you don't have to rely on one single station to support the debt service. So they're very difficult to do. The hardest thing to do, probably, a single-station deal. They're also usually small. And most of your private equity funds as well as venture capital and other sources ignore the group of potential people that you can do business with because of the size of the deal. So . . . a combination of factors makes it more challenging to try and finance a single-station deal. (DSutter205, p. 4)

Ernest James, a former radio station owner who now works for Clear Channel, the largest broadcasting group owner, wanted to buy a portion of the stations that Clear Channel was required to divest when they merged with AM/FM. Even with his successful track record running stations, the size of the package he would have had to put together to be competitive in today's market was way beyond his reach. He estimated that in order for a start-up venture to be competitive he would have needed to raise a half billion dollars to buy multiple stations.

"I am not able to buy stations because in order to buy a station now or buy a group of stations the capital that I would need access to would approach half a billion dollars to really start a company and be competitive. . . . (T)he stations I wanted to buy from Clear Channel would have cost and I looked at them and my original request was going to be to buy 37 stations, it ended up, I kept whittling it down and whittling it down until I was trying to buy a package of 11 stations, and even 11 stations was approaching a billion dollars, and then at 20 times multiples, I mean, nobody was going to give me that money. So OK, maybe I could raise half a million, or maybe a million would be my seed money to the deal, but [that's nothing as my share on a billion dollars]. (EJames268, pp. 28-29)

In the secondary market, the ability to access information about opportunities to buy and sell stations determines one's success; and in today's market, access to that information is created and maintained through access to capital. The distribution of previously issued licenses by means of a private market structure necessarily begets a process driven by financial resources. This need for capital too often proves prohibitive for small and capital-starved businesses to adequately compete.

➤ ***Limited Access to Capital: The Impact of Wall Street on the Type and Size of Transactions***

Another change precipitated by deregulation which has heightened market entry barriers for small, minority- and women-owned businesses is the move away from "mom-and-pop" local broadcasters to a situation where the broadcasting industry is mostly owned by large publicly-traded companies. These group owners have two advantages over their smaller counterparts: (1)

they have stations to trade with each other if they need to divest in certain markets; and (2) they often buy and sell stations, as well as whole groups, using stock. In both instances they are in a position to receive more favorable tax treatment than if they had done an all-cash transaction, which is what smaller, non-public broadcasters would have had to do. Dale Gehman, a Native American former radio licensee, summarizes it this way.

It's just a conglomerate [game] now, and they use stock market money, and any facility of any size [goes to] the highest bidder, and the price [is so high] -- there's no way I can get in right now and pay the price that you'll get for an FM station in any kind of medium- to smaller-size market, and pay that money back on any kind of 10-year, 20-year amortization. It's a speculative price right now. [W]hat's really hurting is the big conglomerates are giving stock, so they beat the taxes. So they're getting a little bit of cash, lots of stock, no big capital gains tax up front. The stock market is going crazy. They're making fortunes. And a little guy without access to capital from the market, I don't know how you possibly could do it. I can't figure out a way [to finance it] right now. That's why I'm not in it, quite honestly. And I know there's some bond money. I think, with my track record and showing what we did, I think at some point I can get in, but it's going to be extremely hard even with my history of raising that kind of capital. (DGehman132, pp. 35-36)

Manuel Davila, a Hispanic radio station owner, shares this observation when he says, “unless you’re lucky, and actually got a station in a big market a long time ago, we don’t have a chance. . . . Where [will a small guy] get \$40 million?” (MDavila128, p. 52)

➤ **Limited Access to Capital: Buyers Need Money in Hand - Time is No Longer Given to Raise Capital**

Because the market is super-heated and there is acquisition frenzy, only those people who can quickly bring money to the table are even considered potential purchasers for properties. If you couple the fact that it generally takes much longer to raise venture capital than it does debt financing with the market reality that enormous sums of equity financing are now required, you end up with a situation where only the big players who are already in the market and have large coffers of cash and/or stock to trade can participate in the buying of stations. The days of the small business owner being given time to raise the needed capital for station acquisition are long gone.

Art Gilliam, an African-American radio licensee who started acquiring stations in 1977, makes the point.

I found out about the opportunity [to buy an AM station in 1977] through a broker. At that time, quite different from now, if you made an agreement with a seller, you had more time to go and find the funds. Today, in the environment in light of the Telecommunications Act, if you’re not there with the funds in hand, then you’re not going to be a viable buyer. (AGilliam117, p. 1)

Bruce Dickenson, a media broker, shares his perspective that the speed with which a deal has to get done depends on the actual broadcast property. *"Certainly, with a very expensive property you must have your money ready. . . . The smaller and less attractive the property, the more time people potentially have to put together their financing. [Since] we don't get paid until we get a deal done, it behooves us to pick deals that we think we can get done . . ."* (BDickenson517, pp. 5-6)

John Tupper, a White television licensee who acquired his station in 1995, adds:

[Regarding smaller companies acquiring stations], the biggest issue from the standpoint of the seller of the station is which group is most likely to close the deal. . . . And, you know, obviously if you are dealing with a company that has the capability of just writing a check to acquire the station, that's very different than dealing with someone who has to align venture capital and bank debt financing to put together a transaction. . . . And, there are those who are very successful in putting together their venture capital and bank financing to acquire stations, and once they've done a few they seem to be able to do that repeatedly. There are others who aren't so good at it and, therefore, you take more risk in trying to do a deal with them. And it, becomes a decision that both we and the seller have to make as to with whom we want to do business. (JTupper216, p. 27)

➤ **Consolidation, Brokers and the "Old Boys Network"**

Diane Sutter, a White former television station owner, who has bought and sold one television station and is now in the market for another, explains the chicken-and-egg nature of current financing realities as well as the need to have in place relations with high-quality brokers, lenders and venture capitalists.

You can't get the money until you have the deal. And you can't get the deal, until, especially with a new company, until they're sure you're going to have the money. Well, I'd love to sell it to you, Diane, but you know, show me your money. Now the thing that really helped me was that when I went to someone, even when I was in the middle of doing the first deal, but not having gotten done yet and I was looking for other stations, and they say well, who's your money? And I can say Bank Boston or Burr Egan, two well-known quality firms that people go 'Oh, OK, you're real. You're for real. I can probably sell it to you.' (DSutter205, pp. 20-21)

In this market of rapid turnaround on media properties, not only do brokers, lenders and equity partners weigh in on the prospective buyer. The seller often approves the list of buyers prepared by the broker. It is up to the broker to make the seller feel comfortable with the list prior to sending out marketing materials, solicitation of offer letters and confidentiality agreements. If an entry on the list is for someone with whom the broker has not yet done business, it puts the broker at risk with his client, the seller, to push for its inclusion. Brian Cobb, a media broker explained his process as follows:

. . . (T)hey will almost always ask as they go through the list, if they don't recognize a name, they'll say, "Who is that?" You know, I have to tell them who it is and have to demonstrate that this person belongs on the list. If I don't have a good answer, they'll tend to take it off, and the answer usually is do they have the money. . . . (I)t gets down to a conversation of do they have it, can they get it, or do you think they can get it. (M)ost of the times they'll leave it on the list [if I can vouch for the person], but some people just say, "No, I don't want to go through with it. Take them off the list." (BCobb512, pp. 17-18)

➤ ***Financial Sophistication and Track Record are Paramount***

As the consolidation in the broadcast market has driven up prices and gobbled up properties, the criteria for consideration as a viable candidate for receipt of multi-million dollar debt and equity financing has become more heavily weighted towards proof of significant industry experience or a successful track record managing and growing a business enterprise, sophistication with financing means and methods, a vision for multi-property holdings, and a desire and/or willingness to participate in an exit strategy that brings significant returns and on-going upside potential to debt and equity partners

With the need to acquire equity capital, the selection criteria for who gets funded becomes more complicated than those used to qualify bank borrowers. With debt financing, the lender usually looks to the cash flow of the business and his collateral to cover his risk and repay his money. Venture capitalists have no such protection. They are giving the business owner their money on the expectation that 1) their investment will multiply many times over in three to five years and 2) the company will be in a position to either go public or be acquired. This requirement puts enormous pressure on both the business plan and the quality and track record of the management team. These two elements become paramount to the venture partner's willingness and desire to invest equity capital. In today's market, if a team or individual business owner lacks this success profile, money is virtually impossible to obtain.

Robert Fink, a White radio broadcaster, explains:

... (I)t's a business that is totally dominated by the management of the company, and a successful station can be a failure the next day if it's not the right management in there. And so acquiring capital has just been extremely difficult for anybody that again doesn't have the borrowing power to talk big time, so it's really left the small market people or people trying to enter into the business without much, without any help at all, really. I mean, we have not gained, in my opinion, in the position that we were in since I started in the business way back when the banks wouldn't even talk to you at all. Now it's just the big guys. If you've got a \$10 million deal and we think you are strong enough to buy a station in a major market, we'll talk to you. But people like ourselves aren't strong enough for that, so we're stuck in the small markets (RFink235, pp. 9-10)

Bruce Dickenson, another media broker, shared with us his primary criteria for evaluating potential buyers. He was quick to say *“financial capacity, integrity, proven track record.”* To get the process started in creating a relationship with a broker, a critical task if one has the desire to participate in today’s broadcast market, Bruce suggests that the buyer *“give us a call, let us know they’re looking for [properties]. . . . To be honest, it’s a process of learning about them and as we learn about them we start to make judgments about their ability to do what they’re trying to do. Who they’ve surrounded themselves with in terms of deals, financial folks. You know it’s clearly a process to get anybody to the point of making an offer to us on a multi-million dollar property. Bruce adds “known quantities, where you don’t have to educate the people very much, are more desirable than brand new buyers. (BDickenson517, pp. 1-2, 6)*

Diane Sutter, a successful White former television owner who purchased her first station in 1997, was unique among our interviewees. She was the only female who, as a result of her employment with Shamrock Broadcasting, Roy Disney’s company, had developed a significant employment track record as well as a network of key market intermediaries in broadcasting. Ms. Sutter relates that her past work experience as a group executive with Shamrock made all the difference in the world when she went to raise both debt and equity capital. With Shamrock, Ms. Sutter was involved in mergers and acquisitions, among other things, dealing with the station owners, banks and venture capitalists she would eventually have to approach for her own television deal.

One of the things that I had that was working in my favor, which was very unique, and I was very fortunate to have this, is that I had spent six years at the corporate office of Shamrock prior to [owning my own station]. And my responsibilities at Shamrock was working with the banks . . . When they were doing financing deals, I was part of those. I already had one, the access to the information of what it took do these kinds of things, which, as I say, I was very fortunate, because there aren’t many women at all who get that opportunity, and two, I had the relationship. (DSutter205, p. 5)

Building credibility with a banker or venture capitalist is key, which is why it is even more difficult for new entrants into the marketplace, and especially difficult for minorities and women. If you add to that the extremely high prices for stations in today’s market, borrowing becomes almost impossible. Tyrone Brown, an African-American communications attorney and a former FCC Commissioner, highlights this point when he says *“If you’re a minority or a woman in this country, while you’re probably better off than you are anywhere else in the world, the fact of the matter is you still have to get up earlier and go to bed later in order to get ahead. Don’t ever forget that. Because somebody will remind you of it in a way that will be hurtful . . . you really [have to] bring something to the table that is more than ordinary. It really is a capital game today and you’ve got to convince the people who you’re asking to turn over money to you that you’ve got something that most other people don’t have. . . .It is true if you’re Black or you’re a woman and you go and talk to these investment bankers. (TBrown510, p. 29)*

Media broker Brian Cobb echoes that point.

You've got to show your financial credibility . . . [This is] a big handicap for somebody starting out that doesn't have a lot of money or maybe has certain talents but doesn't have the sophistication in the financial area to put that package together. (BCobb512, p. 14)

George Dobbins, an African-American who acquired his wireless license in 1996, sums it up this way when he questions “Why would you want to provide the dollars for a small start-up company when you're already providing the dollars and playing with the companies that [are] already in place?” (GDobbins362, p. 7)

Rev. Everett Parker, with the United Church of Christ and a pioneer in the area of civil rights and communications policy, shares Mr. Dobbins' view.

... (W)hen the time comes, really the thing that you're interested in – it really comes down to the point of is Citibank going to give \$50 million or \$100 million or a billion dollars to what they consider to be an untested group when they can get somebody who they think is tested to borrow that money? (EParker504, p. 20)

Others spoke about the need to prove themselves with the banks and to develop a track record. Of course, it helps if you can get a loan in the first place. Dennis Miller, a wireless license owner who is White and acquired his first license in 1990, shares his perspective.

(W)e're reasonably aggressive on our business plans and we're meeting them. I guess if there's one thing that a new entity needs to do, that's to create that track record with the financing community. You need to meet your projection. Make them realistic and meet the projections. . . . (O)ne of the investment bankers I think characterized it the best - that they're betting on jockeys, not on horses. And as a management team, you need to be able to instill confidence in these folks that you can actually deliver on this business plan. (DMiller147, pp. 5-6)

But even with industry experience, some minorities have complained that they still were not treated seriously. For instance, Peter W. Fong, an Asian-American wireless license applicant, recalled:

It just seemed like we don't have any track record, and it is very difficult for people to take us creditably. You have to start somewhere, and we are not coming off from some Chinese restaurant, you know, jumping into telecommunications. I myself have 15 years working with the telephone company, and my partner had 25 years, and so we know what we are doing, but still it ... it is just very difficult for people to take us seriously. (PFong365, p. 11)

Don Cornwell, an African-American who is President of Granite Broadcasting, which owns 11 television stations, understands how this process of building credibility works. He acknowledges that those who get to “play” are already the players. So how does one get to be a player?

“. . . what tends to happen is that once you get in the game the brokers discover you. The brokers don't particularly want to call you until they know you can actually buy something. And once you've bought something, to them, that's prima facie evidence that you can do it. . . . The guy who's not known, who has no properties and is starting out, is almost going to have to convince the broker -- not "is almost" -- is going to have to convince the broker that they've got the financial wherewithal to do the deal. So that means that they've got a bank reference that they can point the person to, or they've got an equity partner that has financial wherewithal that they can point the broker to, et cetera. They've got to do some fancy talking to get to that next step.” (WDCornwell103, pp. 16, 17)

As the market has consolidated, properties become more expensive, and deals have to close more quickly, the job of the “gatekeepers” (the brokers, lenders, investors, sellers) becomes more important and has the potential to be more exclusionary. The tendency is to work with who they know, people they have done business with before. And in a lot of instances, except for a few notable exceptions, that does not include women and minorities.

The interviewees reported that in the wake of consolidation, the “club” (brokers, bankers, lenders, and investors), into which minorities and women were rarely invited prior to consolidation, has become even more exclusive. This market-driven exclusion rests upon decades of historical disadvantage that has existed since the infancy of the broadcast industry. Allowed to run unchecked, the market has created a clear insider/outsider, have/have not environment.

Don Cornwell says that he’s “not aware of any [discriminatory practices]. It doesn't mean that they don't exist. Look, it's a club. And I think that people have to understand it's a club. I work pretty hard to get at least on the periphery of the club so I know most of the broadcasters. . . . And when you're in the club, then you hear about things, okay? You hear about what's for sale, what it isn't, et cetera. I think that's no different than the old thing about well, the deals get done on the golf course and so forth. So the answer to your question is, of course, there's discrimination, but could I give you a specific example? No.” When asked what the price of admission was to the club, Mr. Cornwell answered as follows: “I think the price of admission is admission. You know what I mean? In other words, I think that the folks at Radio One are in the club now. They've got a billion dollars of property, you know, or more. I think the guy who's trying to get started is going to really have to rely on the pressure of the FCC and others to crack the door open a little bit, to give them a chance to get a shot. And there they have to have both access and capital to actually ever have anything happen.” (WDCornwell103, pp. 24-26)

Erwin Krasnow, a communications attorney, explains exactly how the contracting process may differ for those without a track record and for those about whom the banks have doubts about the applicants’ ability to close the deal.

If there are any doubts about someone closing, the contract process is miserable, because the seller, because they're very, very unsure about the buyer's qualifications asks for, usually will ask for a much higher percentage of the purchase price to be put in as escrow as liquidated damages.... to protect themselves in case the deal doesn't go through....(EKrasnow500, pp. 11-13)

➤ ***Racial and Gender Stereotyping in the Capital Markets***

None of the interviewees recounted a specific example of discrimination by brokers or larger media lenders, but that is not surprising given the limited contact between and among the groups. The brokers and large lenders interviewed indicated that they had worked with very few or no women and minorities.

The women and minorities, however, all observe examples of exclusion from this “old-boy’s” network. If barriers for women and minorities do exist, many are precipitated by the perceptions about the ability of women and minorities to raise the required capital in the stated time frame. Brian Cobb, a media broker, offers his observations:

. . . I can't name an instance where I have seen that it was a rejection because of [race or gender]. But on the same token, with a female buyer or a minority buyer a seller will ask more questions and want more documentation as to the financial capability. . . . I don't think it's a matter of prejudice on – it's not overt prejudice. It's a matter of – it's a perception that [minorities and women] may not have as much money to close, so they ask more questions. (BCobb512, pp. 21-22)

Whether it is considered prejudice or not, a seller who subjects minority buyers and/or female buyers to greater scrutiny and requires additional documentation based on ethnic or gender stereotypes is engaging in discrimination. The fact that this heightened and discriminatory scrutiny is not considered prejudice but due diligence speaks to both the subtlety and profundity of the problem.

Sometimes when brokers have had bad experiences with a few minorities, they might have reservations about dealing with other minorities. For instance, John Lauer, a media broker, indicated:

There aren't as many minority buyers. And sellers go to the obvious places that would know big advantage. They'll take the best deal that comes to them. Well, like I said there are more of them, number one, that have money. Also, in some instances – and this has happened. I've seen this happen. Blacks, minorities – say Blacks, minorities, get to the point where they are ready to close and are out of money, even though they've warned them ...that's been my experience.... Letter of credit, letter from a bank, between the time that they make the deal, the time the deal is ready to close, the bank has changed its mind and the lender has changed its mind. Backing out. (JLauer533, pp. 18-19)

Henry Rivera, a communications attorney, past FCC Commissioner, and Chairman of the Board of the Minority Media Telecommunications Council, tells us *“(I)t’s hard to say that [brokers’ practices are in fact discriminatory]. I think it’s pretty easy to see what the effect of the way they do businesses has been, but it’s hard to say that that is driven by discriminatory intent;. [and they want a deal that can close]. . . so they don’t want to deal with minorities typically. . . .They don’t because again, they do not see minorities as a potentially good buyer. I don’t think it’s because they don’t like Black people. . . . That’s my perception at least. I don’t think they’re being overtly discriminating. (HRivera516, pp. 28-29)*

Jim Casey, a communications attorney, observes that Native Americans also confront racial stereotypes.

Getting...financing in the [Indian] country is very difficult for a number of reasons. The asset, not being able to pledge. We will say that the asset is one very big problem. Sovereign immunity is another big problem. Just the hesitancy to do business with Indians is another. The assumptions are that they can't afford it, they are not going to pay their bill, and you're dealing with a very poor population so there's simply assumed to be a very high risk when it comes to a loan or financing. (JCasey535, p. 21)

➤ <i>The Inability to Obtain Financing Forces Some Broadcasters to Sell Their Stations</i>

For many minorities dealing with the inability to obtain financing, their choice is either to sell their stations or lose them.

James Wolf, Jr., an African-American radio licensee, decided to give up the fight and sell his station since he could not raise the financing that he needed to successfully operate in a changing competitive environment.

I was probably the only African-American that had a hot [adult contemporary] format. And I never could get this money financed to get out of my LMA. And I stayed in it for two years, up until '98. And I was so frustrated with – you know, because I wasn’t able to get the monies I needed to do the financing. And I just really been with all these big conglomerates, like Capstar, AM-FM Radio, coming at me and offering big bucks. I said, why am I killing myself. I can’t get what I need. I might as well just go and sell it, you know. (JWolf281, p. 28)

Even Granite Broadcasting, a public company run by Don Cornwell, an African-American, was forced to sell stations to raise the capital needed to purchase other more desirable properties.

We sold two properties in Michigan to a company called Freedom Newspapers, and in all candor we're not sellers of properties. It's a reluctant thing we do. We decided to sell those two Michigan properties because we were in the process of buying a station in San Francisco and we needed the money to do that, and we would rather have kept the

properties and just bought San Francisco, but we didn't have the capital. So we made that decision. (WDCornwell103, p. 20)

Others, like William Saunders, an African-American radio licensee who acquired his most recent station in 1983, also chose to sell properties they would rather have kept. Mr. Saunders saw the sale to Clear Channel as an opportunity to get out of debt, not necessarily to make enormous profit on the sale. Ultimately, in 1998, he had to sell his AM station that had been in the community for 50 years.

... (W)e were able to actually do a sale of the AM to satisfy most of the debt for everybody, and that's how I again, got Clear Channel[in the deal]. . . . (M)y AM station was what they wanted for a talk program. . . . and so they offered me just about enough money to pay off my debt and to take that, because I would prefer having the AM instead of the FM. You know the AM had been in the community for about 50 years at that time from 1947, and it's been the only station that Blacks have had access to. In our area so we wanted that more than anything else, but they didn't want [that], they had 4 or 5 FMs in the market at that. I lost it all in 1998, December of 1998. (WSaunders163, pp. 4-6)

➤ ***Luck Played a Part in Some Acquisition Opportunities***

From our interviews, it was clearly evident that small businesses and especially minorities were having significant difficulties getting access not only to capital but also to purchase opportunities. Some, however, had luck with either financing or station acquisition and took advantage of it.

Pierre Sutton, an African-American who earlier spoke of his company's difficulty in raising capital for their first station in 1971, was later presented with opportunities by those in his network of industry-related professionals.

... (O)ne time I bought a radio station from a guy in Philadelphia because I was sitting down at lunch with the President of the bank [that was courting us at the time] in Philadelphia and he asked me if I knew the owner of this particular radio station in Philadelphia that wasn't paying him. And I said, yeah, I've known him for years. How would [you] like to own his radio station? And so he put me together with him and we worked out something so we became majority owners of that property. Another time a friend of mine, Stevie Wonder, called and said that there's a guy who used to work for me as a newsman who is in trouble in Ft. Lauderdale, Fl with his radio station. And so I wind up getting that station from him. (PSutton110, p. 15)

Pierre Sutton shared another story about his father, Percy Sutton, impressing a radio station owner with on-air reporting at the time of the 1967 Harlem riots. As a result of that experience the owner told the senior Mr. Sutton that “if he ever elected to get out of the [radio] business, he would like to be able to sell to [my father]. And my father was currently still in public affairs, in politics, and so he couldn't do it. So I had the opportunity to play.” (PSutton110, p. 9)

➤ ***The Impact of Limited Access to Capital on Operations***

Even with occasional luck, most minority participants had to struggle to bring capital into the business. Since advertising revenues were generally not on par with their White counterparts, cash had to be generated elsewhere through such means as personal loans to the business or mortgaging of personal assets. Without sufficient capital, the ability to acquire the necessary equipment, to recruit and retain top talent, and to promote the business was diminished.

Erskine Faush, an African-American television licensee, explained it this way.

Well, I'm saying that if you need personnel, if you need promotion, if you need equipment, whatever it is that you need, goes back – you know, you can't keep good personnel unless you have the salary level where you can attract and keep good people. In many instances even if you have entry-level people and take them right out of college, right out of school, you bring them in, you train them and, of course, once they get to a certain level then the others with the resources can hire them away from you. Capital – I'm saying whatever area you want to get into, it is capital. (EFaush238, p. 16)

George Dobbins, an African-American wireless licensee, also expressed his concern over the effect limited capital was having on his ability to attract and retain a good management team. As capital sources told us, the quality of management was a major determinant of a business's credit worthiness.

Well, capital won't solve every problem. The other problem is management and expertise. But if you have the capital you can employ the expertise, just go out and do – the way I do now in business is if we see a sharp, young person we want in our business we come up with a deal to bring them in. But if you don't have the capital it's difficult to manage the management team. You know, the management team is making money – there's a demand for sharp people in the telecommunications industry now. So if they are out there making a significant income, they're not about to go with a broke company. (GDobbins362, pp. 7-8)

2. Discrimination in the Community As a Market Entry Barrier

Several female and minority interviewees spoke of resistance and downright discrimination that they encountered in their communities when they were first starting out as well as through their years of operation. Such things as disputes over tower locations slowed down licensees' ability to start up their stations. Menacing calls from racially biased groups made programming and selling more difficult. Local politics interfered with the acquisition of financing.

Most poignantly, James Wolf, Jr., an African-American, was confronted by the Ku Klux Klan over the positioning of his microwave tower. The fight was taken to the courts. His life was threatened in the process.

The [White community] had never really had local autonomy in Black broadcasting, never a voice in Black broadcasting, and they didn't know what that meant. . . . The White community, they were just totally opposed to us, you know. As a matter of fact we ran into confrontation with the [Ku Klux] Klan and all of that. We had some major stuff in this small community here that we're in.

(T)hey tried to stop the erection of our microwave, free-standing tower. (W)e got hung up in court, in court battles and so on. Finally we surmised that we needed to bring the media involved in it, so we brought a local television station in[to] it, and I brought the newspaper in[to] it and I brought [in] others from other communities inside of this zoning median. We took pictures of all the towers around the town which were hazards, and we showed where our tower was going to withstand winds of 220 miles per hour. And they finally, after looking down the cameras and all, said – they granted it. But we had threats . . . phone calls from the KKK that said don't build this, don't open this up, you know. It was a lot of life threatening stuff that I went through, you know. (JWolf281, pp. 11-12)

Dale Gehman, a Native American, saw it as “*a political situation where you've got a license, you're going to service the community, then you become an influence in the community, and I think there's a lot behind the scenes that we learned later that we were blocked in every move we made, unfortunately.*” (DGehman 132, p. 5)

Willie Walls, a Black radio station owner, stated that his number one obstacle in 1962 when his station was organized was that “*it was a time of some integration, and we had a problem being Black owned and operated, listing ads, and you know,[we] had opposition*”. (WWalls403, p. 4)

Others, like James Wolf, Jr., had experiences of being pressured to change their format away from urban and toward something less minority focused. He told this story .

[Steve, a White male and one of Mr. Wolf's partners] wanted to . . . go country and western, but he compromised it and tried to fuse in pop. And so I had to stand up. I stood up – and they had a new program director that we had brought in, which is a White program director from Alabama. And he had nothing but real red neck in him. So he was glad to do [country and western]. So what I did, I walked in after about 20 hours, not quite a day, of listening to it, and I told him to put everything back just the way he found it, and to pack his stuff and go back to Alabama.

... Steve was a part of our organization then, you know, and we had to demonstrate that since these great White fathers had helped me to get this money to sustain and so on and so forth, one of the conditions that they wanted was him to be in as a general manager and . . . It was one of those situations where we had challenges, because they were getting pressures from the White community, because they didn't like the Black music, you know.

... Steve had lost a lot of his friends because of the nature of the beast that we had created, you know. And so he was just trying to justify – “I’m still White, you know. Look here, I can change this, you know.” That’s what that was all about. (JWolf281, pp. 18-20)

3. Discrimination in the Industry as a Market Entry Barrier

Not only was discrimination experienced in the capital markets and in the communities, but minority and women licensees also encountered discrimination within the industry itself, coming from other station owners or from employment practices among the large broadcasters.

➤ <i>Discrimination in Media Portrayals and Coverage of Minorities</i>

Rev. Everett Parker, with the United Church of Christ and a long time civil rights activist in the area of communications policy, shared stories of how WLBT (Mississippi) reported news about African-Americans in the 1960s. It highlights the extensive power of the broadcast medium to affect community views and actions. The following comments by Rev. Parker and Mr. Faush provide a historical context for the market entry barriers that African-Americans have faced in their attempts to become broadcast licensees.

Well, in all of the South stations referred to Blacks only by their last name. And women just the same. They refused to give Blacks the opportunity to present their views on political issues of great importance to them, such as at that time of school desegregation. WLBT, when Meredith was admitted to the University of Mississippi, the manager of the station got on the air and told the people, “You get up there and stand shoulder to shoulder with the governor and you keep that nigger out of Old Miss,” and they did. They took their ax handles and their pistols and they went up there and you know there was a riot and I think some people were killed. The manager of WLBT [told people to do that].

... For WLBT, when the Brown v. The Board of Education was decided and Justice Thurgood Marshall ... was on the Today Show, WLBT put up a sign, “Sorry, cable trouble.” And when the kids from Tougaloo College sat in at the Woolworth store in Jackson, WLBT covered it for NBC but did not carry it, and things of that sort. And that was true all over the South. . . . (Y)ou could go all over the South and it was the same. (EParker504, pp. 6-8)

Broadcasters discriminated against their listeners in ways other than just what news they reported or how they presented it. Rev. Parker shared that “*The broadcast industry at the time – back in the ‘60s – had no interest in Black people as [an] audience. They said – well, this manager at WLBT, later after he lost his job and everything, he says, ‘Well, if I thought those Negroes had any money to spend I’d have given them time.’*” (EParker504, pp. 13-14)

➤ **Discrimination in the Workplace**

Mr. Faush, an African-American television station owner, talked about his experiences with segregation during his earlier days in broadcasting.

... (I)t goes back to the days of segregated everything and what all that involves, whether you're talking about public facilities or access to anything. So I came through all that era and was here, you know, through the demonstrations and everything. (W)e'd always had the hope [of becoming owners], okay. But obviously the fact that certain gains were made in certain areas would certainly increase that hope that you'd finally get to the point where you'd talk about ownership rather than just being employed.

[The segregation that I experienced did stand in the way of that hope] of course. Being realistic, you're looking at getting Black-owned, Black-programmed radio stations that were all owned by Whites. I mean, no matter what hope you have, you're looking at something that is in front of you. And you know if your hope takes on any reality at all and so forth, you know that something has got to have a dramatic change.

You know, we worked inside the radio station where you had Black and White toilets. I mean, not just outside but inside, you know. The owner of the station and the White employees had their restroom; the Black employees had theirs. I mean, you came in one door and they went in another door, yet, you're in the same facility. Now how blatant can it be? You don't have to go out on the street anymore to see a sign separating people on a bus, behind a water fountain that said, "Colored," or "White." (EFaush238, pp. 19-20)

Nancy Waters, a Black radio licensee, talked about her difficulties earning respect from her staff when she first acquired her station.

With me being Black, I had no respect from the staff when I started. White men – they would address my husband. You know, I'd say to him, you have to come up and get on to them, because they won't listen to me about this, and won't listen to me about that. So I was dealing with the double bias everywhere I went. (NWaters178, p. 16)

While not nearly as blatant, Rev. Parker told us that discrimination still exists in the hiring practices of large companies.

Well, you certainly see [discrimination] in a [large] company (T)hey could . . . certainly have a policy of even just fair promotion, which would open upper management spots, middle management spots, to anybody who has the capability, and they could hire for that purpose. And any one of these companies could do that. Certainly they discriminate. How is it that only White males get onto the decision making level? Maybe a women here and there. Look at the boards of directors of these companies. They have maybe one or two women and they are mostly window dressing. But how many of these

big companies really have important people of color on their boards of directors? Just go over all of these communications companies. (EParker504, p. 27)

Even in small broadcasting companies, disadvantaged groups have difficulties with employment. Stuart Martin, a White male television licensee, articulated a perception that may hamper the advancement of women within broadcasting.

The issue on Equal Employment and Fair Employment of women in this business has been self-correcting. For instance, in our news department, our problem is finding White males. It's almost like horseback riding. It's being dominated by women. I don't know why. And all come in and are very eager until they approach 30, then all of the sudden, somehow or other they seem to drift off in marriage. What happens is, of course, they get along and all of the sudden, they begin to get the urge to have a family and once they have a kid or two, they find it's a hell of a lot more rewarding than pacing around after stories. Over and over again I see that. (SMartin212, pp. 17-18)

➤ ***Ethnic and Gender Marginalizing Practices by Competitors***

Minorities have also had their share of difficulties with competitors. Again, Erskine Faush, an African-American, shares his recollections of how ratings were distorted by his White counterparts.

I can remember the time when we were number one in the market. But when the [audience share] ratings came out . . . the general market stations would put up billboards. And perhaps they were number three or four or whatever, and they would call themselves number one in the market and with an asterisk by it. In fine print at the bottom it would say, "excluding ethnic stations." They just couldn't bear the thought of a Black, even programmed, facility being number one in the city. (EFaush238, p. 9)

Such practices have the effect of marginalizing minority-formatted stations, justifying discounted advertising or no advertising on those stations.

Given the difficulty of acquiring stations, some minorities, just to get started with their community-specific programming, bought time on others' stations. Andres Neidig, a Hispanic radio owner, called all 42 stations in Denver to try to buy time to produce a Hispanic show, and none of them made any time available for him to buy, "even the stations that were losing money." The general response he got was "Hell, no. I'm not going to put a Mexican program on the air." (ANeidig426, p. 18)

Bernadine Nash, an African-American radio broadcaster, talked about the marked difference in her experiences trying to buy stations both during and after the repeal in 1995 of the Tax Certificate program.

Well, it was a no-brainer for people in this market [to find me for tax certificate deals] because I'm the only [minority here]. So, if they wanted ... I mean there is only one person within the market that they would call. So that was a no-brainer for them.

On the other side of it, and this is where I realized after the tax certificate went away, that the more institutionalized issues around race began to surface. Because there were actually two properties that I knew were for sale, that I was interested in (b)ecause my goal had been to get a 24-hour signal. I didn't care if it was AM, FM, whatever.

And I would put calls in and then not get calls back, and then I would get a little pissed off, so . . . then I would like decide, it would become a challenge, so I was determined to get through. And I would finally get through and I would be told either that the property was no longer available, or I was given a purchase price that seemed irrational to me. And after maybe the second time, I had a friend of mine do that game you do sometimes in housing. And we got different answers. We got different answers [in terms of both availability and pricing]. (BNash118, pp. 17-18)

Ms. Nash and a friend not known to the local broadcasters both inquired about the availability and pricing of stations; thereafter they compared the answers. In so doing, Nash employed a technique, widely recognized by the courts, for ferreting out illegal bias, namely discrimination testing. The fact that her friend received more favorable answers, in terms of availability and pricing, underscores not only the importance of the Tax Certificate but why discrimination makes it necessary.

Nancy Logan, President of American Women in Radio and Television (AWRT), recalls hearing about the experience of a woman who had been marginalized by a group of local broadcast competitors.

I remember hearing this woman on the NAB panel speaking about having a difficulty in her marketplace being [that she owned only] one station and, plus, that she was a woman owner, and that the guys who ran the stations in town that were groups would, you know, literally gang up on her in the business way, in the market. (NLogan523, p. 14)

Some women, like Patty Ruiz, a Hispanic female television licensee, told us she had to prove herself in the male-dominated communications industry.

The truth of it is there's a lot of barriers; it's a man's world especially in the communications industry. You really have to struggle to make them, not only believe in your capabilities, because you are woman, and because you are a minority. You know, you were always banging your head against the wall. You had to really prove yourself to show that you knew what you were doing and knew the industry and loved the industry. I mean you got to love and have a passion for the industry to survive. (PRuiz452, pp. 14-15)

She expounded on how she had to prove herself as a woman so that others could take her seriously:

Also, I think the engineering studies were, you know, you had to really know what you were talking about, because you're dealing with – talk about a man's world. And so you had to constantly prove yourself, and make sure that you understood the lingo and everything that goes with it. That they took you seriously, that they just didn't think, you know, this girl doesn't know what the hell she's doing. So you had to work twice as hard to read and learn about engineering. The sites and where, you know, the towers would go, and the height and reach, all that great stuff that comes with it. (PRuiz452, pp. 14-15)

In addition to being excluded by local group owners, S. Jennell Trigg, a communications attorney, opines on the inability of minorities and women to rely on the National Association of Broadcasters (NAB) for guidance.

I know for small licensees that were not members of groups, independent stand-alones; [but] if you were minority, you certainly didn't have a voice at NAB. You were dependent on NABOB. If you were woman owned, you really couldn't depend on NAB, you had to deal with American Women in Radio and Television.... there are all kinds of politics going on with NAB that the small guys, and if you're minority, you get lost in my opinion. (JTrigg536, pp. 37-38)

➤ ***Restricted Access to Information and Opportunity***

Getting into the “deal flow” is a critical step in the acquisition process. Deal flow refers to being in the loop to receive information about purchase opportunities. This information can come from sellers, lenders, brokers, and investors. It is all in who you know.

Diane Sutter, who has managed to get herself into the deal flow for television station purchase opportunities talks about the lack of incentive for sellers to seek out women and minorities as prospective buyers.

Well, the problem still exists that you can't find stations that you can afford to buy whether you're male or female, and at the same time, it's even harder for the women and minorities because generally they're not in the deal flow arena. And because there's no reason to sell it to a woman or a minority, because there are no Tax Certificates available today, there's no incentive to sell it to any of us, so why not just keep it in the family? And everybody, and you know, it's like Monopoly. Everybody sits at the board and they shuffle their hotels around. You know, I'll trade you a Boardwalk and a Park Place for St. James Place, and (a “get out of jail free” card). . . . I think it's especially difficult—and I'm atypical because I've had a lot of things that have worked in my favor. But someone else going in to do this, today, with consolidation? I think it's enormously difficult. (DSutter205, pp. 19)

Brian McNeill, a media investment banker, talks about his experience with women and minorities and how he judges their ability to participate in a deal.

. . . (W)e look at deals dispassionately based on quality of management, the quality of the purchase price and how much upside there is. But you know, having said that, . . . it seems to me, but I've never actually done this statistical arithmetic, [that] the bulk of the deals we see are more from, I think more men are in the business, so I get more plans from men than women, and minorities are still minorities so we see more plans from Caucasian men and companies than we do from minorities. So I don't really know the statistical breakdown. (BMcneill513, p. 7)

Diane Sutter shared more of her experience when she told us that “when I hired Bank Boston’s M&A department to do my investment banking for me . . . one of [the two people I was working with] said to me that I was the first woman client they had ever had. . . . And when I went to the [venture capital] firms, I think it is safe to say that not one of them had invested in a women entrepreneur in broadcast. (DSutter205, pp. 8-9)

Willie D. Davis, a Black male radio licensee, observes that minorities are often the last to know about broadcast deals because they are not a part of the network; and that by the time minorities find out, the deals have become public and the negotiations have already taken place.

Most of the deals sometimes they're done kind of behind the scenes and they only [be]come public pretty much [when] the filing with the FCC takes place. In other words, the negotiations many times have started very much on an inside track and it only becomes public when they file. Well, as you probably would surmise, not being heavily plugged into that network, I would say it's almost fair to say that minorities are the last to know. (WDavis120, p. 15)

Mutter D. Evans, a Black female radio licensee, echoes that observation by pointing out that “[y]ou don’t know what properties are available unless you [are] in the inner circle. Who’s always been in it? Those who control. White men.” (MEvans275, p. 26)

➤ **Access to Station Purchase Opportunities Through the Informal Network of Owners**

Manny Davila, a Hispanic radio licensee, talked about how stations for sale passed among the members of the “good old boy network.” What made it difficult for him is that “(t)here wasn’t a lot of minority ownership. . . . It was basically conservative Anglo, you know, and hey, this guy will sell it to this guy, this guy will sell it to – and it was basically almost like a little group there. (MDavila128, p. 15)

In contrast to Mr. Davila’s experiences, Robert Fink, a White radio station owner, shared how easy it has been for him to find properties for sale through his network of other station owners

and brokers. Even if he were to enter a new market, he expressed confidence that he could find a broker who would be willing to work with him.

(I)n fact, I never used a broker to find anything I bought. It's just kind of being in the business and keeping your eyes and ears open and, you know, hearing scuttlebutt and hearing that this person might be for sale and that type of thing. And that's always kind of been, you know, it's a small group, we broadcasters, and you talk to friends and you get an idea, and you think, hey, I might want to go there, and I hear that so-and-so is having some problems. And you talk to them. And so, it's really kind of old-fashioned, just exploring and seeing what you are doing. Now that's for me, because I've been so active here in California basically, that I have the network. If I were to buy or look for a station in Michigan, I would obviously have to go to a broker because I don't know anybody there. (RFink235, pp. 16-17)

4. Discrimination in Advertising

Discrimination in the advertising industry against minority-owned and –formatted stations has been well documented in recent years, most notably in the report prepared by the Civil Rights Forum on Communications Policy for the FCC, *When Being No. 1 is Not Enough: The Impact of Advertising Practices on Minority-Owned and Minority-Formatted Broadcast Stations* (submitted in January 1999). Our study revealed similar findings as reported below.

The small, minority and women broadcast licensees that we spoke with frequently cited routine discriminatory behavior on the part of advertisers and advertising agencies based on:

- the race or ethnicity of a broadcast licensee,
- the minority audience targeted by a format,
- the operational size and scale of a licensee (e.g. WalMart's common refusal to purchase local advertising other than through national agency representatives), and
- whether a licensee could afford to subscribe to rating services (e.g. Arbitron).

➤ ***Advertising Dollars are the Life Blood of A Station***

Advertising dollars are the lifeblood of a station. Ad revenues provide the much needed working capital to pay for on-air and behind the scenes professionals, local news crews, new or upgraded equipment, syndicated programs, community sponsorships, general station promotion, and return on the owner's investment. Further, since stations are valued at a multiple of their cash flow, any diminishment in advertising revenue reduces many times over the market value of a broadcast property.

If one takes into account the market entry barriers created by limited access to capital experienced by small, minority- and women-owned radio stations and couples it with the discrimination that they have traditionally experienced from advertisers, one begins to understand how serious a problem this discrimination is for these business owners. The combined lack of resources severely impacts their ability to compete, grow and, quite simply, survive. Further, in the face of industry consolidation, the value of their stations suffers to a point where, if they decide or are forced to sell, the proceeds from the sale may well be less than the station would be worth if it were owned by or formatted for non-minorities.

➤ ***Personal Attacks and Racial Slurs***

Minority broadcasters have long had to suffer personal discrimination that was blatant and insulting. Not only were advertising dollars withheld because of this discrimination, but also minority owners had to endure personal attacks and racial slurs. To the extent that such attacks and slurs were general indicia of the status and standing of minorities and women in the market, they are instructive. James Wolf, Jr., an African-American radio broadcaster, shared his historical and more recent experiences with us.

(W)e had comments made to some of our [Account executives – AEs]. [Some business owners] said, “We don’t want those kinds of folks in our business.” [So they wouldn’t do advertising on our station..] Well, see, they would say it to my White AEs. They would never say it to my African-American AEs. They would always come back and tell me, you know. But they never said it to African-Americans.

Now recently my brother got – he faced some discrimination. He works in operations here. And he had a client that said that – “I normally don’t want niggers coming in my business.” He said, “But you seem like you’re kind of nice.” He said, “I think I’m going to buy some advertising from you. You’re kind of different from them,” you know. “I’m just going to give you a little advertising just because of your attitude. But I normally don’t care for niggers coming in my business.” He said that. And my brother said he let him write that contract up. He said he wrote that contract. He was so mad. He said, “Man, I’ve taken more time than I’ve taken in a long –“ that happened last year as a matter of fact. (JWolf281, pp. 37-38)

Jose Molina, a Hispanic radio and television licensee who acquired his licenses between 1980 and 1997, had experiences that were not as blatant as Mr. Wolf’s, yet the feelings of discrimination were there just the same.

Overtly, no [I didn’t experience discrimination because of my minority status]. But sometimes I walked away [from sales meetings with prospective customers] with a feeling with, hmm, what could have happened here? ... [I don’t exactly know what gave me that feeling.] I guess that if you are, I don’t know, maybe like in that Bruce Willis movie, the Sixth Sense, you know. . . . (I)t’s almost impossible to put words on when somebody treats you real, real nice, you know, ha ha ha, that sort of thing. [If I had to draw an analogy of

what it was like], (a)t the beginning it would have been like The Jeffersons show. Remember that? Just like George Jefferson, who is a buffoon. That's how you would feel coming out of a meeting;[and if I felt that the discrimination was not present, it] would feel like you're coming out like Top Gun. But it wasn't one of these cruel types of discriminations, you know what I mean, [like] Jim Crow. . . . (I)t's very subtle. (JMolina121, pp. 16-17)

➤ **Disparity Between Market Share and Revenue Share**

More often, the discrimination took the form of withholding advertising “buys” from the stations. It was not uncommon that stations would be ranked in the top five in terms of audience share but be positioned well below that level in terms of share of advertising dollars.

William Saunders, an African-American whose radio station was No. 1 in the market as far as listeners, yet he could not get his fair share of advertising dollars.

Well in the marketplace, two things were happening. Our station ended up being number 1 in the market, but we still couldn't get advertising. They said you [have to] be a certain place in the [ratings] book, a number between 1 and 4. And no matter where [we got] in the book, and our station WPAL AM was number 1 in the whole area, and still we couldn't get that crossover advertisement, so it really didn't [matter], and we needed the capital to make it run. And it put a strain on the corporation. (WSaunders163, p. 4)

Andrew Langston, an African-American radio licensee who was a pioneer in the industry, had similar experiences being No. 4 in the market with his station.

I'm No. 4 in this market and I've been there for 18 months. That's a year and a half I'm locked in it. The number one station is WHAM . . . , No. 2 station is . . . a country station, No. 3 station is . . . a hip-hop, that's a rock and roll station. No. 4 is [my station,] DKX. Now, I'm not (just) saying that to you. Here's the classic frustration. Now am I No. 4 in income? No. And am I No. 5, No. 6, No. 7, they make it all the way down there, am I No. 9 is income? Hell, no. All right? That's what is unfair here and how in the world can you let agencies which some way or another do this and then they like Blackball you. You don't get this, you don't get that. (ALangston112, p. 4)

➤ **The “Katz Memo” – It's Implications for Minority Broadcasters**

As recently as last year, Tom Joyner, a well-known and well-regarded African-American radio personality with a popular, widely-syndicated morning radio program, released an internal memo that had been written at the Katz Advertising Agency (“the Katz memo”) which essentially said that media buyers should not place ads with minority-formatted stations since their clients were looking to advertise to “prospects, not suspects.” As one might imagine, the disclosure of that

memo caused a giant ground swell inside and outside of the industry. Richard Weaver-Bey, an African-American broadcaster, responded to the Katz memo this way.

[T]he Katz memo was sort of the final spike in the coffin, and that was just last year . . . that that memo came out. And that's where a large advertising agency in New York is saying to its people don't buy Black media. I mean, when you say that and then you look at stations that are sixth or seventh in the market in the ratings by Arbitron and 24th or 25th in ad revenue, it says that there is blatant disregard for the stations that are owned by minorities or geared to minority listeners. I mean, it can't be anymore poignant than that when you look at the facts. You know, many people are saying why are African-Americans or minority people always crying, but the facts are the facts. (Rweaver-Bey171, p.8)

Broadcasters like Black radio station owner Art Gilliam see part of the problem as lack of awareness on the part of advertisers and agencies. He thinks there is an opportunity to educate the public about African-American markets and spending power.

I think the advertising community operates in the general framework as the rest of society in the sense that many of the advertisers, particularly the agencies, have not much awareness of African-American markets or their value. So that if you have a real good sales staff, they can go out and talk directly to retailers and many of those retailers if they have an interest in Black markets, will be responsive and some can be convinced of the importance of that market.

But within the agencies, there's a lot less of that and over the years we've experienced that and unlike radio, where there are certain EEO requirements which put in place people who understand African-American markets, that doesn't apply in the advertising business and consequently if you have for example a lily White advertising agency, that has no awareness of Black media, Black markets or anything along that line, then you're going to have a harder time convincing them to buy Black radio. So there's no question that there is, I don't, I wouldn't necessarily even call it discrimination, but just an absence of awareness in that market. (AGilliam117, p. 20)

Charles Cherry, a fellow Black broadcaster, shares Mr. Gilliam's views.

. . . As far as trying to market the station to other folks. . . you have to educate them in reference to the fact that Black people are a viable market, because a lot of folks just don't understand that. They just don't believe that Black people buy anything. And you would think that people who deal with numbers and understand what statistics say could see the purchasing power of Black America, the allure to Black America, the high level of listenership, the susceptibility . . . or the effectiveness the advertising has on the purchasing power and the habits of Black America -- (CCherry262, pp.6, 32)

➤ **Discounted Pricing for Ads on Minority-Formatted Stations**

In addition to withholding advertising altogether, many minorities have had to accept discounted pricing on their advertising spots. Dorothy Brunson, the first African-American woman television broadcaster, shares that “(t)here has never been an equal process in terms of advertisers. If you have 10 listeners who happen to be Black, they may be worth \$2.00; if you have 10 listeners who happen to be White, they may be worth \$5.00.” (DBrunson105, p. 5) As Ms. Brunson continued, she indicated that she understood that this was the way it was and learned to take that into account in the operation of her stations.

This dramatic disparity in prices for ads was not unique to Ms. Brunson’s experience. William Saunders, another African-American broadcaster, had similar experiences and shared the choices that he had to make as a result.

Normally our price [for advertising spots] would be lower . . . (p)robably sometimes 50%. . . . We wouldn’t even attempt Wal-Mart; it’s not even worth raising the effort. But get down to just car dealers, large car dealers, here, and I don’t know if you know much about South Carolina, but the coast of South Carolina, where we are, Blacks have always been 40-50% of the area, and some of the counties now are still 80% Black. And the area where we live, Blacks buy about 70% of the cars. These are their estimates, not ours. We think it’s higher than that. But the advertiser goes to the other stations or to, I mean these companies sponsor golf tournament and fishing things and all kinds of stuff that has no relationship to my market or my business and the African American community gets nothing out of spending their money with these merchants.

So that’s where the problem lies. And even when we do something, like I just did a deal with Rick Hendricks, he’s the largest dealer here in the Charleston area, automobile dealer, and we wanted to do an education program called Focus on Education, a half an hour a week. And for a year to run this program, it would cost us \$13,000. And we went to them with it and they said well anytime that we want to do something with the community or we if want to reach the community, we always want to do it with you, and we want to just buy advertisement, then we go to these other people. Don’t make too much sense to me, but they ended with the numbers, but they came back to me and said, well, our advertising people are saying that the program on your station would only be worth \$5200. So what they do in a sense, they put a price on my product. And you either take it or you leave it. And you know what we did was you know we wanted the program so we said that WPAL will sponsor that other part of that \$13,000, but not changing our price. (WSaunders163, pp. 8-9)

Some people, such as Bob Carl Bailey, an African-American radio licensee who acquired his station in 1977, took bolder actions vis-à-vis their communities. Mr. Bailey risked alienating one of his largest advertisers when his station was critical of one of his “biggest food chain advertisers for the low numbers of Black people it’s hired in the management ranks of the store. Nine locations, very few Blacks . . . so how the hell’s he going to write me a check when I take that kind of stand against him?” he asks. Furthermore, his station insisted that Black people be

hired by the Census Bureau to be the enumerators in the Black neighborhoods. “*That hurts you financially,*” he offered.

➤ ***National vs. Local Advertising Revenue***

For radio broadcasters, it is important to receive a significant percentage of their advertising revenue from national accounts vs. local advertisers. The national advertisers are more able to afford advertising than their local counterparts and advertise with more regularity and frequency. Historically, minorities have had difficulty acquiring national accounts. Some, like Willie Walls, an African-American radio station owner, felt it was because they did not move in the same circles with those who made advertising decisions.

Well, the discrimination was, basically, that we were not able to get national accounts and some local accounts that maybe a counterpart ... of another race, would do. Because they had inside contacts with people. They ate with them, they worshipped with them, which we did not do. And they had a better chance of getting ads and advertisement that we sometimes did not get. (WWalls403, pp. 4-5)

Richard Weaver-Bey, an African-American who in addition to his radio station owns a real estate business and is active in his community, noted that the lack of contact with the “right” people has impacted his ability to gain advertising revenue.

I was right here in the Hartford area and I run a real estate business as well. What I had planned to do was to take control of the radio station and use my community contacts and a number of boards – I sit on a little better than half a dozen boards of directors from the Chamber of Commerce to the school board, to the Board of Education to Community In The Arts organization. So I thought that there would be enough community contacts for me to be able to encourage people to advertise and thereby getting enough revenue to make our station profitable or at least break even.

But unfortunately that’s not the case that we minority media are finding around the country. We’re finding ... that when stations that are owned by minority individuals, whether they’re first in the marketplace or not, they’re not generally first in ad revenues, because ad revenues basically are doled out by large advertising agencies and many of those deals are made on the golf courses and in the country clubs, and that’s not really the area that is frequented by minority individuals or females. (RWeaver-Bey171, p.2)

Johnny Shaw, a fellow Black broadcaster, felt that because local, independent stations are providing service to their communities, “*there ought to be some regulations put into place to say that independent owners, especially if they pull good numbers, if they’ve got the listenership, ought to get at least a fair, what I would term as, a fair share of those national dollars. And when I say national dollars, I speak in term of agencies and, not just local people because you’ve got to understand local business, small businesses can’t afford to spend a whole lot of dollars for*

advertisement. I'm talking about, you know, your big conglomerate companies who can spend those dollars. I think some of those dollars should be shared with us. (JShaw185, pp. 15-16)

Mateo Camarillo, a Hispanic radio licensee, discussed how being in smaller markets coupled with his minority status and minority programming markedly affected his ratio of local to national advertising. He raised the issue of how advertising reps are compensated for placing ads.

[Our radio stations] were in the obviously smaller markets in [California]. One of the problems of having [stations in smaller markets is that] the percentage of local vs. national support is very skewed so that it's . . . heavily laden with local support as opposed to the typical formula 60-40 national to local, it's more closer to 100% local.

And there's a, and I won't say conspiracy, but there's also the media reps, [who] have an incentive just to stay with big cities. And so even though they may represent you, your representation is not a very strong advocacy for the smaller markets. So the media reps play a role in the finances and the ability of a medium- to smaller-market station's being able to get national advertising, which is a real problem in this industry. And I don't have a solution, but I'm just saying is that there are very few Hispanic media reps, so the understanding of that issue is not as clear as it ought to be.

And the consolidation that's taking place, even marginalizes those few that are, so they have to concentrate on the larger markets where the consolidation is taking place. So the smaller and medium-sized markets, which is where the area of Hispanic ownership of licenses happens to be because they can't afford the bigger cities unless they themselves have the wherewithal to become a public entity, the majority of Hispanic licensees are having to struggle. That's why I got out of broadcasting. That's why this year I sold the end of my stock and I actually started shifting away in '95. (MCamarillo375, pp. 18-19)

➤ ***The Impact of Rating Services Practices on Minority Broadcasters***

Another variable that factors into whether and at what level small broadcasters receive advertising revenues are the audience rating services such as Arbitron²⁸. Sampling practices, geographic market definition and the cost of the service are all impediments for minorities in the ratings game.

²⁸ Arbitron is an independent company which collects radio listening habits and market share information from a sampling of families throughout the U.S. using various survey instruments and methods. Arbitron measures radio audiences in 270+ local markets. This listenership information is used by broadcasters to attract advertisers. Only those broadcasters who become members of Arbitron are allowed to quote the data during the selling process.

Ed Gomez, a Hispanic radio licensee, shared his experiences with Arbitron's efforts to capture the Hispanic audience listening patterns and the reactions of other Arbitron members to the company's efforts to accurately capture the data.

Arbitron was another thorn in our side. Arbitron ... when Arbitron instituted a methodology that they called personal placement and retrieval ... PPR meant that over a survey period... they had a policy of sending so many diaries into high density Hispanic areas and high density Black areas. Well, both the Blacks and Hispanics, and particularly the Hispanics, were terrible at returning the diaries. They just, you know ... they would agree to do it and then they wouldn't do it.

And it was hard for Arbitron to get back any semblance of diaries from the Hispanic communities. So they instituted personal placement and retrieval, and they would hire people here in Albuquerque to go into the south valley, which is a high density Hispanic area, or the north valley, and put in, you know, 50 diaries. And it was a four-week survey. They had to keep the diaries. In between the four weeks, these people were required to call or even go back and make sure that the people were not having any difficulties with the diaries and making sure that they were keeping them; And at the end of the survey period, go and get them, retrieve them.

Well, all of a sudden, stations in large Hispanic markets began to generate some really high numbers; some high rating numbers. Because they were finally really measuring the Hispanic markets. Well, the general market members of Arbitron began to complain, and they said, you know, you shouldn't play favorites. I mean you are doing this simply to help the Spanish stations, and they didn't want that to happen. So they dropped that methodology and went to something else... it was just going back to what they did before. And so, if you didn't have 80% of the population Hispanic in your market, you lost all of your numbers.... And that was, in my opinion, blatant discrimination (EGomez370, pp. 34-36)

Many like Black radio station owner James Wolf, Jr. were confronted with the impact of Arbitron ratings on their ability to secure local advertising dollars. Without the ratings, which one had to be a member of Arbitron to use in selling efforts, advertisers could use that as an excuse for not buying time on a particular station.

Well, ... I've had difficult times with much of the advertisers, especially locally. Unless you've got the numbers, you know, the Arbitron numbers, you know, you still are not going to do well, you know. . . . Oh, they bought from us because we always had the numbers, you know.... [But] we were brutalized on the local [advertising] end of it. (JWolf281, pp. 37-38)

Art Gilliam, an African-American radio licensee, talked about how Arbitron's definition of metropolitan areas can severely impact the smaller, low power broadcaster.

The Arbitron rating area, therefore, what they consider their metro becomes an important factor for us, because if they expand what they call the metro, it impacts stations with less power. Now, our position is, and has always been, that the objective way to determine the metro is to let the government determine what that metro is, which the government does define standard metropolitan areas, whereas Arbitron, at the request in many instances of its subscribers, can expand the metro and has done it in the past, beyond what is the actual government defined metro and that creates a hardship for stations with less power.

And I don't know to what extent the FCC or government could play a role in that but it gets very expensive to take it through the Department of Justice or try to claim anti-Trust or anything like that, but it's definitely an area that it's time to consider, especially given that there are offenses taking place now. (AGilliam117, pp. 22-23)

Johnny Shaw and Richard Weaver-Bey, both African-American broadcasters, talked about the prohibitive cost for small broadcasters of being a subscriber to Arbitron and the fact that if you do not subscribe, you cannot quote your Arbitron ratings when you sell advertising. Since advertising agencies, who place the bulk of national advertising dollars, almost always use Arbitron ratings as variables in the “buy” decision, lacking such ratings is a severe handicap for those who cannot pay the price of admission.

Johnny Shaw offered these experiences.

And that's what hurt us the most as independent owners who are trying to – [get advertising dollars]. We can't even afford to invest in Arbitron because it costs so much money. And I'm not complaining about Arbitron, ... (t)he least I can get by with to buy the Arbitron figures is \$10,000. (JShaw185, p. 16.)

Richard Weaver-Bey echoes these comments.

[We don't] subscribe to Arbitron because our numbers are not strong enough, our coverage area is not that broad and it's expensive to subscribe to Arbitron. And if you don't pay for a subscription to Arbitron, then they do not focus on your audience in order to publish your numbers and you're not able to quote the Arbitron numbers. So that becomes a very difficult challenge. (RWeaver-Bey171, p. 11)

Who gets sampled and how they are sampled determines the accuracy of the information collected by the ratings agencies. Erskine Faush, a Black television broadcaster, takes exception with Arbitron's sampling practices.

I've always had a thing with the rating people. I don't think it's done fairly. I don't think it's truly representative. I don't think there's enough sampling. I don't think, you know – I don't think it's ever been. And I've still got in my possession, as I said, time when the stations – our ratings, you know, exceeded those of the general market stations even. And, yet, it was always with the asterisk. We can't sell on the numbers. We're not a

subscriber [to the rating services], okay, because of the enormous cost. (EFaush238, pp. 21-22)

Jeffrey Hutton, a White radio broadcaster, made us aware of the fact that small, non-minority-owned stations have related problems with Arbitron.

I'm in an unrated market, I can't afford to pay Arbitron to tell me how many people listen. It wouldn't be accurate anyway because in a county our size, they only send out like 20 or 25 diaries so I have to be able to sell my results. I have to be able to explain to people why working with my station will put butts in their buildings, so to speak. And, business does not come to us, I go to everything. I go to everybody and that's how we survive. (JHutton383, pp. 9-11)

Mr. Hutton also shared that since he is “a hometown radio station” in very small city, “people with national buys never come” to his town. Like his minority counterparts, (t)he [advertisers] don't get to me; I go to them. I have to, I mean, very rarely will somebody ring my telephone or send me a fax and say I want to buy advertising. I go out every day and knock on doors and introduce myself to people and try to sell advertising. (JHutton383, pp. 9-11)

In contrast, Robert Fink, a White radio broadcaster, told of experiences selling advertising time quite different from those we heard about from minority broadcasters. He characterized whatever difficulty he might have with capturing local advertising dollars as purely a function of small advertisers' budgets, not discrimination. With national advertisers, he shared Mr. Hutton's experience being in a small market.

Basically [our experience of going out and getting advertisers has been] really good. And I've been a sales manager in Los Angeles, so I've had the experience of, you know, “the big time” and the small time. In a small community, they tend to realize that they do need you, and it's a difficult sale simply because, again, their budgets are so small, and it's more a budgetary problem with our clients than whether or not they want to do something with us. Some people don't even want to give you the time of day. But anybody that's somewhat trying to make their business successful, they will talk to you

... I'd say in the small market the biggest problem tends to be the budget problem of the local merchants. (L)ocally we're accepted fine because we're just one of the people. Where we don't get our share is, we do not get our share of what we term regional or national dollars. [With] the local mom-and-pop, we don't have a problem except for budget; the bigger type of people, their hands are controlled by their corporate offices that basically give them no dollars to spend on a small market. (RFink235, pp. 18-20)

5. Effect of Deregulation and Consolidation

On par with discrimination as a long-standing barrier to broadcast and wireless entry, study participants cited industry consolidation pursuant to the 1996 Act, as a fundamental and significant barrier to entry in recent years.

Johnny Shaw, an African-American radio station owner, characterizes the raising of the caps on the number of radio stations one can own in a market as *“the lowest blow for independent owners. I think that probably has hurt more than anything else.”* (JShaw185, p. 21)

➤ ***The Shift from Local, Independent Owners to Large National Group Owners – Opening the Floodgates That Virtually Wiped Out Small Radio Stations***

With the consolidation resulting from the 1996 Act, there has been a shift away from independent local owners to large, Wall Street-financed group owners. Manuel Davila, a Hispanic radio broadcaster, recognizes the shift from community focus to earnings per share.

[I]t’s basically all corporate, you know, because they have to answer to . . . investors now. The investors don’t give a damn if it’s an Hispanic radio station or it’s a Black disk jockey or it’s a Chinese salesperson. They care about if they get 10 cents on the damn investment. . . . All the government did is help the big guys. And that’s what’s happened. The big guys, corporate America, have taken over communications, and it seems to be okay with everybody, or it seems to be okay with everybody that’s of importance, I guess. Now I may not like it. You may not like it. My dealerships[who advertise with me] may not like it but, hell, there’s nothing he can do about it. (MDavila128, pp. 50-51)

Many believe that the deregulation of broadcasting was motivated and driven by politics, i.e. donations made to legislators by large broadcasting enterprises. John Tupper, a White television licensee suggests that *“[C]ongress and the FCC shouldn’t be fooled by the contributions being made by the networks to their campaigns for the purpose of gobbling up more of the voices out there that are going to be more homogenized over time.”* (JTupper216, p. 36)

Mary Helen Barro, a Hispanic former broadcaster, talked about the impact of raising the caps as *“open[ing] the floodgates.”* While caps had been lifted gradually from 1985 to 1996, the big jump allowed by the 1996 Act *“ended up wiping us all out.”* She went on to say:

The big corporations got what they wanted, and the little people are out of business. Bottom line. . . . They kept bumping them up because you know the big corporations wanted it. . . . (W)e were pleading with them, we were saying, “No! You’re going to put us out of business! We can’t grow fast enough, we can’t . . .” . . . (W)e went to the FCC, we went to hearings, we wrote letters . . . to the Congress. It did not matter. (MHBarro190, p. 13)

Manuel Davila, a Hispanic broadcaster, blames the government for the predicament in which small broadcasters find themselves today. He feels that the only thing the 1996 Act is going to do for the “little guy” is help him or her get a better price for his station once he or she sells because he or she can not compete anymore.

Who’s going to lend us \$30 million [to buy a station]? Because the government, the government had dictated that big business is going to own communications. And that’s the government’s fault, man. Because somewhere along the line the government said it was all right to own 400 radio stations. ... (L)et me tell you the scenario that I see.

Originally you could own seven stations. . . . Okay, that’s kind of back in the old days. And then that changed to 14 because there was AM and FM. And then as the people acquired what they needed to acquire – and I’m not knocking it but, you know, the big guys, they acquired what they needed, but they said, you know, it’s time to change the rule again. So let’s go to 20 stations. Okay, the government says yeah. They ram this thing through. Now they can own 20 AMs and 20 FMs, something like that. And then all the big guys buy what they can buy. And then they said, you know, we think it’s better if we own 25. Well, the government changes the rule again ... And now they can own all these things.

And they’re saying this is all to help the little guys. I haven’t seen a little guy get big yet, you know. I’m not saying they haven’t, okay. Then the government says, you know what, the big guys have bought all the markets that they can possibly own, New York, LA, Chicago, San Antonio, Dallas, Houston, El Paso, et cetera, et cetera, et cetera, down the row. You know what, we think those rules should be changed so we can own two FMs in those markets because we’ve bought everything we can buy and we want to get bigger. So the government says, you know, that’s a great idea. The next thing you know, the rules have changed, again, under the pretense to help the little guy. All this did for the little guy is allow him to sell his station. That’s about all this did for the little guy. Because he couldn’t afford to buy the big guy out, so he had to almost out of default sell. (MDavila128, pp. 45-46.)

Mary Helen Barro also acknowledges that deregulation did not help the independent broadcasters, but rather put them out of business. She further sees market consolidation as a threat to freedom of speech as smaller and often minority-owned and minority-formatted stations are forced out of business.

They put us out of business bottom line.... Yeah, no doubt about it. I’d be in business today if it weren’t for the FCC.... the American Hispanic-Owned Radio Associations broadcasters [fought] individually for years as the FCC and the Congress kept pushing for higher ownership caps, trying to gratify the large corporations who wanted to expand and they wanted to buy up stations and expand. Now there were some small broadcasters who did want to sell. There was no doubt about that. But for every one that wanted to sell, there were 10 of us that were struggling to stay in business.

And when the FCC raised the ownership cap, they literally shoved us out of the business. And if you look at broadcasting today, you will see that the vast majority are large corporations, fewer minorities ... And what I don't think has been discussed up 'til now but what I consider a very grave threat is loss of freedom of speech. With fewer and fewer companies owning more and more licenses, there is a real threat to freedom of speech. (MHBarro190, pp. 1-2)

➤ ***Economies of Size and Scale***

The findings of this study point to an unprecedented level of market dominance and influence enjoyed by public companies utilizing scale economies, inexpensive capital, stock-funded acquisitions of licenses, and similar financial and operational advantages. These attributes of size and scale represent insurmountable obstacles to competitiveness for small, women- and minority-owned companies lacking such advantages.

In broadcasting, participation by small and local businesses had been historically supported due to a regulatory structure that set licensee ownership levels and encouraged local ownership. Through the 1980's and early 1990's, the industry saw significant increases in minority and female ownership, stemming from regulatory initiatives that included comparative hearing minority ownership policies, distress sales, and tax certificates. Since 1996, however, small, women- and minority- owned companies, and the communities they serve, have, and continue to be, dramatically impacted by a broadcast industry rapidly responding to the deregulatory nature of The Act by consolidating license ownership.

(a) Impact Upon Licensees

➤ ***Deregulation as a Barrier to Entry***

Deregulation and the resulting industry consolidation have formed multi-faceted barriers to new entry for small, women- and minority-owned companies. The dramatic increase in the price of stations, and the predominance of Wall Street-funded companies with stock and stations to use as currency for station acquisition, have severely disadvantaged the small, independent broadcaster. Given the history of limited access to capital traditionally experienced by small companies, and especially those owned by woman and minorities, it appears that this disadvantage is virtually insurmountable.

Brian McNeill, a media investment banker, explains how the economic landscape for broadcasters has changed in recent years.

... (T)he bulk of our business used to be financing entrepreneurs in the radio and television business, but as consolidation has played itself out, most of the assets have gone into the hands of public companies, there are just quite frankly less opportunities

for private companies and entrepreneurs, and even less opportunities still for start ups. There's just less opportunities.... (A) much greater proportion of the stations are owned by large public companies so there's just less turnover, there's less activity, and in fact, prices have been driven up by public companies and that makes it harder for entrepreneurs to make the numbers work. So for both of those reasons there is just a lot less activity for private companies and entrepreneurs and individuals to buy assets in the media businesses. (BMcneill513, pp. 5-6)

Mr. McNeill goes on to talk about how this change of station ownership from private to public companies has negatively affected small businesses.

(M)aybe I'm naïve and maybe there's a lot of prejudice and hardship that goes on at a level that I'm not aware of, but I think the world is getting pretty focused on quality and pretty color- and gender-blind. I think the difficult thing is that the structure of the industry has changed, and I think it's just really difficult now because ten years ago, there was a very small percentage of the assets in the hands of public companies. A very large [number] of the assets are [now] in the hands of public companies and that's just made doing deals a lot harder for everybody... It shifted into high gear in 1996, when they had the 1996 Deregulation Act. ... So since 1996, it's more the private and small companies [that] are disadvantaged, vis-à-vis, big and public companies. That's been a more dominant theme than minorities and women being disadvantaged. (BMcneill513, p. 25)

Art Gilliam, an African-American radio broadcaster, explains how this shift affects access to both acquisition opportunities and capital.

The [large companies] can go to the market place, get funded and buy properties, they can also bid up the price because they can wait for a number of years to turn a profit. So you have a situation where they're able to obtain financing ... so that creates upward pressure in terms of pricing. So it's very difficult to find stations and to compete for financing with companies that are in that position. (AGilliam117, p. 19)

Frank Montero, former Director of the FCC's Office of Communications Business Opportunities, talked about the change from a different perspective. Historically, he has seen that small, minority- and women-owned companies have “... frequently focused on the smaller markets or the medium-sized markets as opposed to the big markets because the economies are easier to maintain ...” He remarks that initially consolidation took place in the larger, more lucrative market. He sees that changing now and notes that new entrants will have more difficulty than before. “... I can tell you that consolidation is definitely moving downstream as you are seeing these large companies definitely starting to inquire into the middle and I think eventually into the smaller markets. I think that doesn't bode well for new entrants, for new people coming into the marketplace. (FMontero509, pp. 10-11)

➤ ***Deregulation as a Barrier to Expansion***

For small, women- and minority-owned companies already operating as licensees, deregulation and consolidation have meant severe difficulties in growing their stations, adding to their holdings and remaining competitive. Growth of existing operations is generally a function of advertising revenue and access to working capital. Growth in holdings is a function of access to large sums of capital. With discrimination in advertising and the capital markets coupled with the effect of deregulation on national advertising practices and station prices, smaller broadcasters have virtually lost their ability to compete.

Alfredo Alonzo, a Hispanic male radio licensee, explains how deregulation has restricted the growth opportunities for small businesses.

You know when the FCC deregulated ownership, in '96 was it? I really feel that that hurt the small business owner because of the fact that these larger entities were able to buy literally almost all the radio stations in the big markets. And it really didn't leave a whole lot of pickings for anybody else. A case in point, in Tampa, we happen to have 2 AMs and an FM in Tampa, and if you look at Cox, Clear Channel, and CBS, between the three companies, they own like 80% of all the radio stations in the market. So it only leaves 20%. Before 1996, the most you could own was 2 AMs or 2 FMs [in each market]. And prior to that, a number of years before, the most you could own were 8 AMs and 8 FMs throughout the whole country. So I just feel that deregulation has hurt the ability of a small business entrepreneur to really grow. Because you just don't have assets available to you. These companies have grown; they set up these portfolios where they have, you know, 8 radio stations in their given market, and since they're not forced to sell because they could legally own them, they drove up the price because they were able to pay more money than the small business owner, so I really think deregulation has hurt the small businessman more than anything else. (AAlonzo377, pp. 7-8)

Erskine Faush, a Black television station owner, told us of his recent attempt to buy a station in Birmingham, Alabama. He made an offer on the station and thought he had a deal. "... but over the weekend something happened to that deal and one of the major companies came in with more bucks and bought it. (EFaush238, pp. 12-13)

Even though Mr. Faush was trying to buy another station, many small broadcasters are being marginalized and often forced to sell. Mateo Camarillo, a Hispanic broadcaster, says:

... (A)s I mentioned to you, my preference is to look at the world with more rosy-colored glasses than looking at it half empty and being pessimistic about things. But you know, as I see things, it's a real challenge, it's difficult to see positive things with the trends, the impact of consolidation, with the market being controlled by the big guys and the impact with most minorities not being big guys, being marginalized and squeezed to the point that ... if it wasn't for their dedication and commitment to community, it [would] make life real difficult. But still their life is difficult. I see few rays of hope. (MCamarillo375, pp. 27-28)

Tyrone Brown, an African-American communications attorney and former FCC Commissioner, understands that the need to grow or die is what is driving many small broadcasters, and largely minorities, to sell their stations. “Well, I can’t get big enough to stay in this game so I better get out now.” (TBrown510, p. 11)

Patrick Prout, an African-American radio licensee, told us why he was selling his station.

If one does not have a huge number of stations – at least that’s my perception and it’s my belief and others’ – one cannot survive as a small broadcaster.... when you have to compete now that the cap is off in terms of how many stations one can own in a particular marketplace. We were actually in an LMA [Local Marketing Agreement] situation. We ended up in an LMA situation.... (T)he owners of the stations that we were LMA-ing to were selling their stations, and we decided to go in as part of the package. For one, we would get out from under this thing. Secondly, I’m still on a full-time basis trying to drive cash flow to feed my family. So I couldn’t afford to – just to - put the time into this endeavor, and decided I might as well just sell it. (PProut284, p. 9)

➤ **Economies of Size and Scale as a Barrier to Expansion**

Small, women- and minority-owned companies report their viability is being made more vulnerable due to increasingly larger consolidated competitors who enjoy natural operational advantages that smaller companies cannot match. With more stations, one has more clout with advertisers. For single-station or very small group owners, the remaining piece of the advertising pie is very small.

Additionally, larger, more well-financed broadcasters have the capital to finance station improvements, attract and retain top management and on-air talent, and purchase syndicated programming. For some, the struggle to stay competitive in today’s market reality is no longer worth it.

Diane Sutter, a White former television licensee, also explains that size and scale have impacted the small licensee’s ability to compete.

Well, the trouble with doing anything in radio is ... the monopoly game has already been played for a long time, and if you can’t get 4 or 5 or 6 or 8 stations in a market I think it’s very difficult to survive. I think that’s already happened... for me, I don’t think there’s a place for me in radio right now. I mean let’s face it; when Lowry Mays [Chairman of Clear Channel] is selling off a bulk of stations that if someone had bought those would have been the 3rd largest group in the country and Mel Karmizian’s [CEO of CBS radio] got 180. That’s not an arena in which someone like myself can compete very successful(ly)... (DSutter205, pp. 23-24)

Dorothy Brunson paints a bleak picture for African-American-owned television stations, such as hers, over the next few years. Ms. Brunson predicts that being small, non-network-affiliated stations, struggling to get carried by cable and satellite systems and still being required to conform to the new digital television requirements, will cause all of them to be out of business in the next two years.

When I look at the number of African-Americans that own television stations in this country, I think there's twelve of us, if I recall correctly.... And I'm sure that in the next two years, we won't exist. There will probably be none, because certainly, it's going to be more difficult for me. As high definition comes about, I've got to find funding to do that.... (L)ike right now, because I'm not [affiliated with] one of the big four [networks], the cable and the satellite companies don't have to carry me for two years. How am I going to survive for two years? And that's happening to all of the smaller market stations, where we [African-Americans] are. Two of us are in large markets and the others are in small- to medium-sized markets.

What's going to happen when the satellite (television) companies don't have to carry you, and that becomes as important as cable...And what happens to most carriers in the interval? For us, it's life and death. But for others, they can market because they've got the better programs. Well, you sell out. You've got to get out. There's no way you can survive, you've got to get out. So then [the station under the new owner] becomes an ABC affiliate or somebody else who can go in and lower the boom on those [satellite and cable] guys.

And the Commission says, well go in and ... negotiate with those guys. I have not been able to get in the door. I haven't been able to get in the door of those satellite companies'. Those cable guys, I'm still fighting against the opposition from most carriers of seven to eight years ago... There's just no way that we can survive. In radio, you probably can do a little better, because you don't have the technical, you know, those hindrances. And you're not on the cutting edge, but I just don't see, I don't see many of us staying in television. I just don't see it. I talked to five to six of these people all the time. And they're scared. I mean, we can do the basics, but we can't compete with the big guys, you know, we just don't have the wherewithal. Someone said, well, why don't you all band together? But if you take a lot of little nothings and put them together, you still got a big nothing. (DBrunson105, pp. 23-24)

➤ ***Small Businesses Unprepared for Speed and Impact of Consolidation***

Mary Helen Barro, a Hispanic former radio broadcaster, shared the impact that consolidation has had on her life. She lost her stations as did some of her Hispanic colleagues. Consolidation happened too quickly for her to put into place a meaningful competitive strategy. At 61, she is “on food stamps” and back in college to get herself “... a teaching credential so I can earn a living.” She feels lucky that she did not lose everything. She knows many who did.

Patrick Prout, a Black radio licensee, asks the FCC to find some way to help the small owners, a lot of whom are minorities, compete with the larger players.

With the consolidation and the mega broadcasting companies today, that certainly has driven a lot of small players out of the marketplace and a lot of your African-Americans who are coming in – or minorities, period, coming in -- were the smaller players. Some sold to make money and get out. Others sold because they felt they had to. They couldn't compete. I think the FCC needs to somehow figure out how they can put an umbrella around the small players or do something to help the small players compete with the larger players. (PProut284, p. 19-20)

➤ ***The Impact on Access to Capital***

Beyond their relative disadvantage with respect to simple access to capital, small, women- and minority-owned companies perceive a diminished supply of capital available to them, resulting from structural changes and responses in the industry with consolidation, and with harmful impact on their ability to enter the industry and sustain their businesses.

Where personal resources and perhaps a bank loan used to be the cash requirements for license acquisition, ballooning station prices have necessitated access to huge sums of both debt and equity financing. Stations are now selling for millions rather than hundreds of thousands of dollars. Whereas before, banks might finance three-quarters of the cash needed to buy a stations, they are currently lending only up to approximately one-third of the purchase price for stations. The balance has to be financed with either venture capital funds or personal assets. Few people have personal assets large enough to forego the venture capital route.

Having been traditionally hampered in their efforts to acquire capital during the pre-1996 Act years, small businesses and especially minorities, are virtually precluded from gaining access to the financial wherewithal needed to be able to participate in today's consolidating broadcast marketplace.

Charles Cherry, a Black radio broadcaster, tells us that “*Consolidation sucks. ... (T)wo-thirds of the people that were in this business five years ago are now gone and [for] the people who want to stay in and grow the business there's no incentive because you can't get any help from anybody to do it. I mean, they just look at you like, you're just too small.*” (CCherry262, pp. 24, 28)

Michael Carter, a White radio licensee, who benefited from high station prices when he sold his station, acknowledges that consolidation has hurt the “*little guy.*”

Well, [raising the caps] helped me. It helped me get more money for WHB [upon the sale of the station], but it's not good for radio. What's good for Mike doesn't mean it's good

for the industry . . . because a little guy like me doesn't have a chance to get in today. We really don't with these mega corporations. I don't have a chance.... You can't compete with their money. Three radio stations in Kansas City sold the other day for \$113 million. I can't raise that. (MCarter230, pp. 14, 15)

Manny Davila, a Hispanic radio broadcaster, shares the irrationality of the prices as they relate to the amount of capital a small radio operator can possibly raise for station acquisition.

What [does the FCC] do? Well, we're going to make it better. We're going to do a bidding process [among the buyers]. We're going to do a bidding process and make it fair for everybody. So you and I go bid for – you know, what are we going to bid? How would you like [to be] doing the cable network in New York, how about that? I want the cable network in New York. You and I go bid. What are you going to bid, girl? What am I going to bid?

Well, I've got – damn, I've got 50 pencils here, man. And with your 25 bucks, we've got 25 bucks here. Oh, by the way, this guy just bid \$10 million and he don't even know [squat] – but he's got it. You know ... come on, has it opened up for all of America? No, it's opened up for corporate America. Are we saying that maybe we should be on the corporate ladder? Yes, we should be on the corporate ladder. Have we had a chance, a real fighting chance to get on the corporate ladder? Hell, no, we haven't. Because, unless you're lucky, and actually got a station in a big market a long time ago – we don't have a chance.... I talked to a guy in San Antonio. And the guy says, well, you know, they're going to sell these stations for \$40 million, two FM's that I'd like to buy, \$40 million. Where is this guy going to get \$40 million? (MDavila128, p. 51)

Mary Helen Barro shared her story about how the timing of the FCC's announcement regarding the lifting of the ownership caps killed her deal to buy additional radio stations and ultimately forced her into bankruptcy. She was “(t)wo weeks away from signing a refinancing deal that would have kept me alive and I would have ended up with 2 AM s and 2 FM s.... Two weeks away from signing my papers, the FCC announces that they're going to raise the ownership caps and this time they're going to raise them so high, ... (i)t scared my financing to death and they backed out. They said, “That's the end of small business in broadcasting.” ... So my whole house of cards fell apart.... And, well, I went through bankruptcy. I lost everything. Yeah, I wasn't able to go through on the deal, I lost my FM, OK? My FM that I had on the air, I lost it.” (MHBarro190, pp. 11-12)

➤ **Impact on Cost of Capital**

Along with access to capital, cost of capital constitutes a competitive disadvantage and barrier to entry for small, women- and minority-owned companies. Large, publicly-traded companies have an advantage due to their ability to acquire debt financing at lower interest rates than can their small business counterparts; and they can use their stock as payment for station and company acquisitions.

As Diane Sutter, a White former television licensee, explains, a lower cost of capital enables the purchaser to bid a higher price than a could a competitor who had access only to more expensive money.

Well, if a deal is going to a broker, it's virtually an auction. And, it's very unlikely that an entrepreneur, especially in a larger market, that an entrepreneur can compete [in an auction for a station] because of his cost of money. So once you get to an auction... I couldn't compete with the public marketplace, because the cost of my money versus the cost of a Sinclair, of a River City at the time, of any of these other groups, when they have public financing, when they have public money, and their multiples, you know, they were trading [their stock on the stock market] at 15, 16, 17, 18 times multiples.

So they could afford to pay a 14 or a 15 times multiple [that is the purchase price was a multiple of cash flow] to buy a station. And they had other stations that they had acquired earlier in a less inflationary market, so they could amortize their cost throughout and spread them throughout their stations, so an entrepreneur like myself, who had expensive money, if you will, I would bid \$20 million on a station, and Sinclair would bid \$23, \$24 [million] because their cost of money was so much less than mine, they could afford to do that. (DSutter205, pp. 13-14)

➤ **Competition for Revenue – the Struggle for a Proportionate Share**

Small, women- and minority-owned broadcasting businesses experience particularly acute problems in the advertising marketplace since deregulation according to existing licensees competing against much larger firms. Access to national advertisers' dollars is especially difficult and very necessary for independent station survival. This lack of access raises a huge market entry barrier for them.

Consolidation has affected not only the rates that one can get for advertising slots but also the absolute amount of dollars. Large group owners in a market can offer national advertisers packaged deals within and across markets, essentially eliminating the need for ad dollars to be spent with small, independent broadcasters. Large group owners are gaining a disproportionate percent of total market advertising dollars relative to their market share of listeners.

Benny Turner, an African-American radio broadcaster who first got into radio in 1985, explains it this way.

[The 1996 Act] has basically allowed for consolidation of ownership which in this market has allowed a concentration of ownership that affects the rates that we are able to get for our product, and it's basically decreased competition and has almost given ownership in this market the power to basically give their urban formats away, which is what we basically pursue. [It is very difficult to grow our station, to have it be economically viable] because we basically have been competing against [companies

who] had several formats and basically what they tell the advertisers is, “If you buy our country station or rock station, we’ll basically give you the urban station”, and so it made it difficult for us to command a decent rate, when they were basically giving the [urban] format away. (BTurner108, pp. 10-11, 12)

Francine Rienstra, a White radio licensee, says that “Nowadays, because of the deregulation and the [companies] owning so many stations, we’ve got really four groups in this market that wield the entire ratings and wield the entire dollar. And everything else is struggling. (FRienstra360, p. 29)

Richard Weaver-Bey, a Black radio station owner, addresses the effectiveness of having more stations to “sell” to advertisers.

And since consolidation we’ve seen an extraordinary dip in our ability to sell because you have Infinity and SFX and Clear Channel buying up five and six stations in the market, consolidating, moving all of their stations into one location, and when their salespeople go out they can sell five stations in one swoop. And so why does an advertiser need to think about a small station that’s in a little corner of the market? (RWeaver-Bey171, p. 12)

(b) Impact Upon the Public

Licensees and key market players interviewed expressed significant concern as to the impact of consolidation on the public; freedom of speech; diversity of views; and on quality of service to small, rural and minority communities, and the resulting increases in barriers to entry for small, women- and minority-owned companies. Henry Rivera, communications attorney and former FCC Commissioner, made this observation.

Well I think that [the lifting of the ownership caps] has hurt ... because you are seeing a consolidation of the radio industry that I don’t think anybody envisioned. And you have a lot of people who were in the business who are selling out. Or people who are going up against these big conglomerates, trying to buy a station; and they can’t afford the same prices because [the consolidation is] driving the prices up. So it is not a climate that induces a diversity of voices and viewpoints. Rather it’s a climate that encourages consolidation and voices. So any time you’ve got that kind of a situation, you’re going to have fewer minorities involved in the broadcast industry. It’s just a, it’s just the way things are. (HRivera516, p. 13)

➤ Loss to the Public Interest

Erskine Faush, an African-American television licensee, spoke passionately about the obligations broadcasters assume as public trustees and the impact industry consolidation is having on diversity of opinion and voices.

Let me put it this way. I never thought I'd see in my lifetime prior to the Telecommunications Act, you know, the mega-mergers and so forth, that that much control of this industry would be in the hands of a few people. I think it has had its impact in terms of diversity of opinion, [and the] access of the community. I think it's had a profound effect.

... (W)e always understood that, as a public trustee, the community's interests, not only just your being able to have a viable entity in order to make money – and, of course, that's not a bad word at all, you know, in business. In our economy, you are either going to make money and stay in business or you don't make any and you're out. It's very simple. But by the same token you have an obligation as a licensee and public trustee to act in the public interest with those things that are going to make, hopefully, the quality of life better for people.

And we have sought to do that in every way we can, to be involved in the voice of the voiceless and to give access and be involved in those things that are going to serve the public interest. And seemingly much of that is on the back burner. In fact, we have, you know, at least in my opinion, persons who obviously have no broadcast experience, persons who are in the business... with only a profit motive. Again, I'm not saying that that's a bad idea, but it's always been our understanding from everything that we've understood coming out, that this industry had an obligation, that the airwaves belonged not to you. You are a trustee. And when you are entrusted with anything that belongs to someone else ... you have an obligation to act in their interest and not just your own.

... I think serious injury has been done, and frankly I don't know how it will ever be corrected. I think that we would have been out of business at this time, along with many others ..., except that we have a survival mentality and it's been forced upon us by generally the whole ethos of society. And given our experience, again, in coming up through the, prior to the, civil rights movement, the struggles that all of that engendered, coming from that time to where we are today – and I'm not unmindful of the tremendous strides that have been made, but I'm also keenly aware of how far it remains to go. (EFaush238, pp. 13-15)

➤ <i>Loss of Freedom of Speech</i>

With fewer and fewer companies owning more and more licenses, there is a real threat to freedom of speech... (Mary Helen Barro, former Hispanic radio broadcaster) (MHBarro190, p. 2)

Many licensees saw a loss of freedom of speech as a serious consequence of market consolidation. They attributed this impact to the diminishing number of small and minority-owned stations and the consolidation of broadcast properties into the hands of the few. They expressed concern that formats, news and public service programming were becoming

homogenized and less targeted to the needs of individual communities. Overwhelmingly, they worried that no one would serve the segment of the market to which they had committed themselves if they were forced to either close or sell their station.

Mary Helen Barro offered her view.

We little broadcasters dedicated a great deal of time and effort to community service, to public service, to informing, especially those of us in Spanish radio. We had a lot of activities to inform people about what was going on to educate them, to encourage them to become citizens, to register and vote, and become active in the process. The big corporations, they do a minimum token job of that.

Your small broadcasters were much more dedicated to community involvement and getting people involved in the process. Your big corporations don't do that. And I think it's been a great loss to the community. And, as I say again, freedom of speech. ... You don't understand the real threat to freedom of expression that has occurred due to the FCC's policies. Not only did you shut out the little guy, you shut out the opportunity for expression. So it's not like other industries. When you're talking about broadcasting, when you're talking about media, you're talking about freedom of speech. (MHBarro190, p. 15)

➤ ***Loss of Diversity of Viewpoint***

The Commission has long since recognized that a “[d]iversity of ownership fosters [a] diversity of viewpoints,”²⁹ and aptly observed in its *Statement on Policy on Minority Ownership of Broadcasting Facilities* that “[a]dequate 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....and enhances the diversified programming which is a key objective not only of the Communications Act of 1934 but also of the First Amendment.”³⁰ The Commission’s cornerstone responsibility of protecting and acting in the best interest of the public interest requires the agency to promote a diversity of viewpoints.³¹ Many of the interviewees expressed concern over the loss of diversity of viewpoints.

²⁹ In the Matter of 1998 Biennial Regulatory Review - Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 2000 WL 791562, FCC 00-191 (June 20, 2000).

³⁰ See *Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979, 981 (1978).

³¹ See *Public Interest Obligations Of TV Broadcast Licenses*, Notice of Inquiry, 14 FCC Rcd. 21,633 (1999)(The Commission’s “public interest standard should promote diversity over the public airwaves.”).

John Tupper, a White television licensee and network affiliate, remembered a time when there was more diversity among owners of affiliate stations and the innovation that came from that diversity.

[You had] ideas that came from affiliates who were innovative because there was more diversity spread about in the license holding which resulted in basically better programming, new ideas being tried, et cetera. ... (W)hen you get away from that and you deal with all ideas emanating from programmers in Burbank, you get a different mix of service to the public than if you had more diversity in the ownership. (JTupper216, p. 36)

Erskine Faush, an African-American television broadcaster who has devoted himself to responsible, informative broadcasting to his community, is proud of the contribution he has been able to make.

[Members of the community] know ... we are the friend that they can call, whatever they need. We have a talk program on in the mornings and so forth where we attack the issues, and have been doing it for years, of giving a voice to the community. And this is what we exist on because, as I said, we grew up in that time when we felt that that was an obligation to the community to be involved and to be the voice of those who had no voice. And I'm glad somebody is paying attention [with this study] to some of the things that's going on, you know.... I'm glad to have this opportunity, not for my sake but for the generations and things that will come along. There's a long way yet to go. And somebody needs to be picking up the mantle and running forward with it. (EFaush238 pp. 24-25)

➤ **Loss of Community Service**

The theme of centralized broadcasting versus a local community focus emerged repeatedly throughout the interviews. Benny Turner shared that he was concerned about the local voice being lost with consolidation. “Yes it does pose a threat and creates a greater opportunity for syndicated or centralized broadcasting away from the local community. (BTurner108, p. 14)

Trent Boaldin, a White wireless licensee whose family owns wireless and cable systems, expressed that “(s)erving the community is very much a driver for what we do. I mean this is a family business. I’m a third generation member of the family. (TBoaldin307, pp. 21)

Mateo Camarillo, a Hispanic radio licensee, expressed concern that large corporations are more interested in serving their shareholders than they are in serving the communities from which their audience come.

And I really believe that ownership has a lot to do with the end product, whether you're talking about voice, service to the community, truly fulfilling the public trusteeship that you have in that license, to serve all of the public that's in your community, because you

know a corporation in New York City doesn't have the same [interests], the shareholders are interested in a profit, and they may not be as interested in serving the neighborhood in Barrio Logan. (MCamarillo375, p. 28)

Manny Davila, another Hispanic radio broadcaster, got into radio to serve his community.

We're the last independent(ly) owned station in San Antonio, and we're the last radio station that somebody can come into off the street with a tape that he recorded in his garage and we will play the damn song... And so you're talking about guys that got into radio when the FCC basically said that this is a community thing, and you're supposed to help the community. And we said, you know, that's the kind of jobs that we want, and in the meanwhile we might even make some money, because it was never the money that motivated us. (MDavila128, pp. 21-22.)

Others, such as Richard Weaver-Bey, an African-American, discussed their discomfort with selling their stations believing that there will no longer be a voice of the community it serves when the station is gone.

Diversity of voices and views is a pillar of our democracy... So right now we're looking at selling the station, and I really am not comfortable having to do that because I understand how strongly the station is needed in the community and that it is the voice of our community. (RWeaver-Bey171, p. 8, 14)

Johnny Shaw, who with his wife, Opal, owns a radio station, feels an obligation to serve his African-American community. His commitment was expressed this way.

"... (I)t goes back to the service that we provide for the community. And I feel that I'm obligated, because this window of opportunity [to acquire a station] was open for us, to do this. To me, when we acquired that license from the FCC, it's kind of like we married the community, and we agreed that we would serve the community. I think when you sell, again, to the larger companies, I think you are selling your community out, because the larger companies are only going to focus on advertising dollars. They are not going to care about announcing the PTA meeting of the night. Do you know what I'm saying? . . . and I'm sure in talking to me you can tell I'm big on this idea of serving the community, being in the community, being a part of the community. (JShaw185, p. 22, 31)

➤ **Loss to Minority Communities**

Minority licensees especially felt their commitment to their respective communities - to keep them informed, to empower them, to report on current events from the perspective of those whom the events would most impact.

Mateo Camarillo, a Hispanic radio licensee, was one such broadcaster.

I'm an immigrant and ... I've always identified with the Hispanic community; and my first discipline is social [work]. I have a Masters in social work. I started a school of social work to train Hispanics to work with the Hispanic community. So I'm very committed to the community that I grew up in that I feel obligated to pay back and develop that community. And one of the things that is very obvious is that it doesn't have the required resources or tools to be able to develop.

One of the commitments I have made to myself is to help empower the Hispanic community to be at least on equal footing and one of the issues is information. And information is not readily available. The closest thing to information are papers that come out once a month or every 2 weeks, or whatever; it's not real-time information. So by the time you learn about an opportunity, whether it's a job application, or a request for a proposal, the deadline has passed. The opportunity [has passed]. So that is knowledge, such as that the City Council is meeting to decide the fate of something important to you or the school board is going to decide about the quality of education for your kid. You know you don't get the information when you need it. So I had always wanted to help get real time information so that people can be more efficient and effective in trying to do things that impact their life. (MCamarillo375, p. 8)

William Saunders, an African-American, entered broadcasting because he wanted to make sure that the news about his community was reported accurately and completely. “*And every time that we did something, when it would end up on the radio and TV and the newspaper, it was different from what we did. And I felt that there had to be a way that we could tell people what we were about, the truth about the whole situation, and that basically is how I got involved.*”

Many participants discussed how the perspective of the speaker affects the nature of what is spoken. Mr. Saunders highlighted that point.

The information that people need, they normally get it from a certain source; and then they get it better if it's presented by the source that also [is] impacted by that kind of information. So I think that that's the driving force and I think that's what the original Telecommunications Act was about in 1934, was to really be able to serve the community. (WSaunders163, pp. 15-16)

Mr. Saunders adds, “*... (W)e really like to do the kind of programs that work for our community. I would like to see a program that ... could deal with having a teacher of the 3rd grade coming in on the afternoon just for kids to do homework. And to be able to have that kind of program sponsored by somebody. I think that is important. (WSaunders163, pp. 10-11)*

6. FCC Actions/ Inaction and Discriminatory Effects

Since the enactment of the Communications Act of 1934, the FCC has regulated the allocation methods and use of the radio spectrum. The FCC has used three primary methods to allocate a license when two or more mutually exclusive applicants have applied:

- 1) Comparative Hearings: An FCC proceeding, presided over by an Administrative Law Judge (ALJ), to determine, which broadcast applicant was ‘best qualified’ to hold the license. The 1965 Policy Statement on Broadcast Comparative Hearings defined the two primary objectives of comparative hearings to be: first, ‘the best practicable service to the public’ and second, ‘maximum diffusion of control of the media for mass communications.’ See Policy Statement on Broadcast Comparative Hearings, 1 F.C.C. 2d 393 (1965). The FCC provided seven criteria to the Administrative Law Judges (ALJs) upon which they should decide the comparative merit of the competing applicants:
 - (i) Diversification of control of the media of mass communications;
 - (ii) Full-time participation in station operation by owners;
 - (iii) Proposed program service;
 - (iv) Past broadcast record;
 - (v) Efficient use of frequency;
 - (vi) Character; and
 - (vii) Other factors.

In 1978, the FCC observed a continuation of an extreme disparity between the representation of minorities in our population and in the broadcasting industry and issued the Statement of Policy on Minority Ownership of Broadcasting Facilities, which formalized the use of minority and gender credits in comparative hearings. 68 F.C.C. 2d 979, 982 (1978). The FCC extended the credit to women owners in Mid-Florida Television Corp., 70 F.C.C.2d 281 (Rev. Bd. 1978), set aside on other grounds, 87 F.C.C. 2d 203 (1981). In 1992, the D.C. Circuit held that the FCC’s use of gender integration as a “plus factor” in comparative hearings was unconstitutional. In 1993, the DC Circuit held that the integration credit of the FCC’s comparative hearing criteria was arbitrary and capricious. Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993). In 1994, as a consequence of the Bechtel decision, the FCC suspended all active comparative hearings. In 1995, the Supreme Court held that any federal program that uses racial or ethnic criteria as a basis for decision making must serve a compelling governmental interest such as remedying past discrimination and must be narrowly tailored to serve that interest. Adarand v. Pena, 515 U.S. 200 (1995);

- 2) Lotteries: In 1982, Congress enacted Section 309(i) of the Communications Act of 1934 to allow the FCC to select licensees by random selection. 47 U.S.C. §309(i). Section 309(i) also required the FCC to establish incentives, rules and procedures ensuring a "significant preference" for minority-controlled applicants in awarding
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licenses by lottery. 47 U.S.C. §309(i)(3)(A); 47 C.F.R. § 1.1622 The FCC used this section to award wireless licenses for cellular, specialized mobile radio, and low power TV. As Part of the Omnibus Budget Reconciliation Act of 1993, Congress limited the use of random selections to "applications accepted for filing" by the FCC before July 26, 1993, and Section 309(i) required an FCC determination that the use of the communications spectrum is not to be distributed by auction. 47 U.S.C. §309(i)(1)(B). In 1997, Congress enacted legislation that caused §309(i) to expire effective July 1, 1997 except for the award of licenses and permits for public, noncommercial television stations. Pub.L. No. 105-33, 111 Stat. 251 (1997) §3002(1)(2) and;

3) Auctions: Section 309(j) allows the FCC to select licensees by auction. Section 309(j)(3)(B) instructed the FCC to establish competitive bidding procedures that would "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people...disseminating licenses among...businesses owned by members of minority groups and women...." 47 U.S.C. §309(j)(3)(B). Again in section 309(j)(4)(C)(ii), Congress requires the FCC, in prescribing area designations and bandwidth assignments, to promote "economic opportunity for a wide variety of applicants, including small businesses...and businesses owned by members of minority groups and women." 47 U.S.C. §399(j)(4)(C)(ii). In creating these opportunities, Section 309(j)(4)(C)(ii) suggests that the FCC consider using "tax certificates, bidding preferences, and other procedures." 47 U.S.C. §309(j)(4)(C)(ii).

Each method of license allocation had advantages and disadvantages. Both comparative hearings and auctions are expensive. The comparative-hearing process often cost hundreds of thousands of dollars in legal and engineering fees. Like many legal proceedings, the comparative hearing process often was prolonged. Members of the communications industry sometimes either engaged in predatory practices towards minority and women broadcast applicants or abused the minority and women ownership program by adding minority or women "fronts" to their applications.

Acquiring a wireless license through the auction process is a costly venture, as well, especially when one adds in the cost of building out the wireless system. Wireless licenses obtained through auction can therefore cost considerably more than those licenses acquired through comparative hearings.

The nature and excitement of the auction process, especially in the entrepreneurs' C-block auction with its small business bidding credits and numerous delays, tempted and encouraged those with less experience in the industry to "overbid" for their licenses, thus rendering many business plans unworkable and unattractive as a financing opportunity. In contrast, the lottery process was the most cost effective allocation process from the standpoint of the licensee, but given its randomness, it did not necessarily allocate the license to the most "qualified," or to those interested in providing services that would best serve the public interest. However, the lottery process was effective in allocating a representative proportion of low power television licenses to minority-owned businesses.

For each method of license allocation, the FCC has instituted policies, programs and rules which attempted to increase opportunities for small, minority and women applicants in the acquisition of broadcast and wireless licenses. For instance, in the comparative hearing process, the FCC provided extra credit to those applications with participation by women and minorities. In the lottery process, the FCC provided minority applicants with a mechanism for additional participation in those licenses that they attempted to acquire. In the auction process, the FCC established bidding credits, installment payments and discounted interest rates that had some benefit for small, minority- and women-owned businesses.

Two other FCC programs attempted to increase opportunities for minority-owned businesses in the secondary market transactions, i.e., the minority tax certificate program and the distress sale program. In 1978, the FCC implemented the minority tax certificate³² policy, which provided incentives to owners of existing broadcast properties to sell the properties to minorities.³³ The tax certificate program allowed the seller of a broadcast property to defer any gain realized on the sale if the property was sold to a minority purchaser, and the gain was rolled over into a qualified replacement broadcast property.

Congress repealed the tax certificate program for minorities in an appropriations rider to the Self Employed Persons Health Care Extension Act of 1995.³⁴ The legislative history of this rider demonstrates that Congress believed the certificate program constituted bad tax policy.³⁵

³² In 1981, Congress amended section 309(j) of The Communications Act and granted discretion to the FCC to award broadcast licenses by lottery. Subsequently, the FCC claimed that the lottery statute was too vague and declined to implement such an allocation scheme. After the FCC requested a statutory mandate with greater specificity, Congress responded in 1982 by passing subsection 309(i)(C)(ii), which specified Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders constituting a minority group. Thereafter, the FCC interpreted section 309 as precluding women from being included as minorities under lotteries; and thus not entitled to a preference. In re-Amendment of the Commission's Rules to allow the Selection from among Certain Competing Applications Using Random Selection or lotteries Instead of Comparative Hearing, 58 RR 2d 1077 (1985). Accord *Pappas v. FCC*, 807 F. 2d 1019 (D.C Cir. 1986).

³³ 1978 Policy Statement, 68 F.C.C 2d 979; Commission Policies Regarding the Advancement of Minority Ownership in Broadcasting, 92 F.C.C. 2d 849 (1982), proceeding terminated, 99 F.C.C. 2d 1249 (1985).

³⁴ 109 Stat. 93 (1995), Pub. L. No. 1044-7 (1995).

³⁵ For instance, Congress believed that the policy evolved far beyond what Congress originally contemplated, and that the FCC granted the certificates routinely for a wide range of communications properties *Id.* Moreover, Congress found that the FCC had developed no standard for issuing the certificates and that grants "frequently resulted in transitory minority ownership of broadcast properties." See Greg Forster; *Tax Breaks for Being Black*, The Wall Street Journal at A21 (Jan. 8, 1995; but see *Testimony, Minority Tax Preferences*, Statement of William Kennard, General Counsel of the Federal Communications Commission, Before U.S. Senate Committee on Finance, 1995 Westlaw 93492 (F.D.C.H.) (Jan. 27, 19995); Statement of

However, the tax certificate program was a very effective means of disseminating broadcast licenses to minority-owned businesses. Prior to 1978, minorities owned approximately 40 broadcast licenses, one half of one percent of approximately 8,500 total broadcast license by the Commission. From 1978 to 1995, the FCC granted approximately 356 tax certificates to promote minority broadcast and cable ownership (287 radio, 40 TV and 30 cable licenses). This helped give a much needed boost for minority ownership. In 1982, the tax certificate program was expanded to cable systems. As noted above, Congress subsequently eliminated the tax certificate program.³⁶

In 1978, the FCC implemented the distress sale policy, which allowed a broadcast licensee whose license has been designated for a revocation hearing to sell its station to a minority-controlled entity at 75% or less of the station's fair-market value. Underlying the distress sale policy was the dearth of minority ownership. Although highly effective, the FCC rarely used the distress sale program. In fact, in seventeen years, approximately 48 licenses were transferred to minority-owned business through the distress sale program. The distress sale policy still technically exists but its constitutionality is in question since Adarand.³⁷ There were instances in which these programs worked well and others in which they were abused.

In 1969, the FCC issued the Nondiscriminatory Employment Policy, which forbade discrimination on the basis of race, gender, color, religion, or national origin in employment practice by licensees of commercial or noncommercial broadcast stations. To ensure compliance, the FCC required each broadcast station to establish a proactive equal employment opportunity program. In 1998, the DC Circuit Court held that the FCC's equal opportunity rules were unconstitutional on equal protection grounds. See Lutheran Church-Missouri Synod v. FCC, F. 3d (D.C. Cir. 1998). The FCC promulgated new rules that focus on outreach, which are now also subject to constitutional challenge. Despite the fact that the FCC Nondiscriminatory Policy is the most longstanding of the FCC's rules in the area of equal opportunity, many of the interviewees believe that the FCC has unevenly enforced these rules. They see this lack of

William Kennard, General Counsel of the Federal Communications Commission, Hearing Before the Subcommittee On Oversight of the Committee on Ways And Means, House of Representatives, 1995 Westlaw 30799 (F.D.C.H.) (Jan.27, 1995) thus frustrating the stated goal of encouraging minority ownership, 109 Stat. 93 (1995), Pub. L. No. 104-7 (1995). Congress also found that the tax certificate policy was not subject to systematic review by the IRS or any other governmental body to evaluate the cost to the government. *Id.* However, at least one senator was of the opinion that there was no showing of "past (or current) discrimination" to justify the tax certificate program. Senator Packwood, in describing the tax certificate program posed the following question: "Do we want a Government policy where there is no evidence of discrimination?" See *Proceedings and Debates of the 104th Congress*, 141 Cong. Rec S4532-04 Mar. 24, 1995).

³⁶ Self-Employed Health Insurance Act of 1995, Pub L. No. 104-7, S 2, 109 Stat. 93 (1995).

³⁷ The distress sale program was one of two programs explicitly upheld in Metro Broadcasting, although under intermediate scrutiny. No court has addressed the program's constitutionality under strict scrutiny since Adarand was decided.

enforcement as a missed opportunity that could have positioned more women and members of minority groups to have the kind of track record and corporate broadcast experience needed to leverage themselves into ownership opportunities. The right kind of experience can open doors to ownership opportunities, and debt and equity financing

Many people we interviewed believed that the FCC's actions, inaction, policies, and rules were not intentionally discriminatory, but the impact - the unintended consequences – allowed for discrimination by third parties against FCC licensees and applicants and clearly disadvantaged many small, minority and women licensees making them ill-positioned to compete successfully in either a deregulated broadcasting or capital-intensive wireless market.

Jerry Byrne, a White male who with his Asian partner owns wireless licenses, shared his perspective on the FCC and discrimination.

When [the FCC] lay[s] out rules, the rules are not discriminatory, the way they're laid out. [But] if they don't enforce the rules that they set out from the start, then there's a discriminatory process taking place. My point is this, if they want to be inclusive, they can. They can to a point. . . . But, if the rules are allowed to be broken during the process, then on its own, discrimination is taking place. (JByrne141, p.40)

Art Gilliam, an African-American radio station owner, talks about the political influence at the FCC Commissioner level and how that might translate into discrimination on the part of the FCC.

No I didn't think there was discrimination—well, let's see, I don't have a perception of the FCC at its . . . staff level engaging in discrimination. I have not experienced that personally. At the same time, I think at the Commissioner level, which is an appointed level, that there is political influence that can be brought to bear down through the organization . . . (w)hich is different than discrimination, but it's discrimination in the institutionalized sense in that most [of those who] have political influence are less likely to be African American. (AGilliam117, p. 17)

Henry Rivera, a communications attorney and former FCC Commissioner, gave us a historical perspective on a series of changes that affected minorities' opportunities to participate successfully in the acquisition of wireless and broadcast licenses.

. . . I think in terms of things that have happened to the minority community, clearly one of the most devastating has to have been the repeal of the Tax Certificate. I mean when we lost that, we really did lose a terrific vehicle toward increasing minority ownership. That was devastating. Secondly, we lost the Comparative Hearing Process, which awarded minorities with preferences in the Comparative Hearing Process. That was also a real blow. The Commission really doesn't designate licenses for hearing anymore. There was a policy that was called the Distress Sale Policy which benefited a broadcaster to sell his station to a minority if he had been designated for hearing. And I think that policy is still alive, but in fact there are so few licenses that are designated it

really doesn't make much of a difference. Then we've had the whole series of anti-affirmative action decisions by the courts, which have hurt the FCC's EEO policy [which the] Commissioner's trying to . . . re-institute now³⁸. But . . . this series of things that has happened [has] been extremely hard on the policy of fostering minority ownership and I think that the figures show that. They're have really not been any increases in minority ownership over these many years. (HRivera516, pp. 12-13)

George Dobbins, an African-American wireless licensee, provided his understanding of the regulatory and market realities.

Many of the employees at the FCC, you know, they wanted to see some small and minority companies succeed. But it wasn't a lot at that point [after the Adarand decision] that the FCC could do, because if you don't have any advantages, I mean, the FCC couldn't do anything about it. So the thing that enabled the few, the handful of major companies that you see out there now that are successful [e.g., Radio One, Granite Broadcasting, Z Spanish] really become successful was when they had the advantages to give the opportunity to small and minority companies to get involved. If you put it out on an open playing field, it's just about impossible for some of the small Black companies out there, undercapitalized, not enough managers [adequate resources] to compete against these major players. I mean, that's the history of it and that's going to be the future of it. The history is not going to change. There's a clear-cut pattern of that, and it doesn't take a genius to figure it out. (GDobbins362, p. 6)

(a) The FCC Does a Tough Job Well

In speaking with the study participants, many shared their frustrations, travails and disappointments in dealing with the FCC. However, several participants had kudos for the Commission, acknowledging that even in the face of the FCC's tough and complicated job, they felt well served. While the primary objective of the study was to examine market entry barriers, it is important to note the FCC's successes.

³⁸On January 20, 2000, the Commission adopted new EEO rules that emphasize broad outreach to all qualified job candidates for positions at radio, television and cable companies. The new rules prohibit discrimination on the basis of race, religion, color, national origin or gender and, require, inter alia, broadcast licensees to widely disseminate information about job openings to all segments of the community to ensure that all qualified job candidates have an opportunity to compete for positions. See *In The Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity rules and Policies*, Report and Order, MM Docket No. 98-204, 15 FCC Rcd. 2329 (2000). The rules respond to the D.C. Circuit Court of Appeals' 1998 decision in *Lutheran Church* [141 F.3d 344 (D.C. Cir. 1998)] which held that the Commission's previous broadcast EEO requirements were unconstitutional. The new EEO rules are also now subject to constitutional challenge, and 50 of the state broadcast associations have recently appealed their implementation. *State Assns. Appeal New EEO Rules*, *Television Digest*, Volume 40, Issue 33, Monday, August 14, 2000.

Tazbah McCullah, a Navajo woman who oversees the operation of a tribal-owned commercial radio station shares her experience with the FCC.

The [FCC] ha[s] never hindered our efforts in becoming a licensee. Or during the construction permit process, either. They've been very helpful. They've provided us extensions pretty readily. (TMcCullah133, p. 7)

Mia Lovink, a female wireless license holder told us that “*The bidding process [in the auctions] was easy. I mean it was – the FCC made it easy. Their tech support was always – you didn't have to wait at all. They were very helpful. (MLovink323, p. 6)*” Her experiences with the process itself were shared by all wireless license applicants who we interviewed.

Several small licensees were of the opinion that they were under an unfair financial burden and unrealistic time constraints because they were subject to the same reporting requirements as large group owners. In contrast, other licensees, like Jose Molina, a Hispanic radio and television licensee, believed that if one does what the FCC requires, he'll have no problem.

Oh, the FCC, [I've] got no problems with them. You do things right the FCC is cool. You screw up, the FCC will give you a chance to unscrew it; but I[ve] never been in that situation because it is easier to do a good job and to follow the rules and the law, then to do a sloppy job and have to patch it up. (JMolina121, p. 9)

Jose Molina, adds to his prior praise of the FCC.

I really like the FCC and I tell you, the FCC is not composed of a body of non-visionaries. The FCC has visionary people. . . . I am sure that they are already working very hard at fixing this situation [of the negative impact on small station owners in a consolidating market]. How they're going to do it, I haven't the slightest idea. But they know that those Americans like me who are hard working people, that don't stiff banks, no bankruptcies, nothing, you know what I mean? (JMolina121, p. 20)

John Thomas, an African-American radio broadcaster found the FCC staff helpful even though he wouldn't “*say that is was necessarily easy [dealing with them].*” He did offer that “*it was understandable.*” He acknowledged that the “*people that I dealt with . . . were very clear about what I needed to do and how things were supposed to be done.*” He concludes that he has “*not had any problems with the FCC at all. My relationship has been good.*” (JThomas277, p.. 8)

Others, like Eduardo Caballero, another Hispanic radio and low power television station owner, were laudatory and deeply thankful for the assistance they received from the Commission's staff.

Well, they seem to have a great deal of understanding of the problems that a minority individual with limited resources had to meet the deadlines. Because they give you a [construction permit] for a limited period of time and you are supposed to build within that time. But then if you don't, you have to go back and say I need an extension. And if

you don't [again,] you have to go back and ask for another extension. And then at one point they are going to tell you show me that you're doing something to build the station in order to give you an additional extension, and they would understand that I was building one station and that my resources did not allow me to build another station at the same time.

So I would go there and say, "(T)his is what I'm doing. I'm building the station in Bakersfield, but these other 11 construction permits are about to expire and I don't have a way to build at the present time. I don't want to lose them. This is something I always wanted to do; I always wanted to have." And they will get back to me and say, well, show me that you are serious about your efforts. And I will go there and I will show them that I signed a contract to lease equipment or to buy a piece of equipment, and they were extremely helpful in understanding.

And actually, I have to praise particularly a gentleman. He is in the Mass Media Bureau. . . . And most people in there have been, as I say, very, very understanding of our difficulties and our problems. [This gentleman] is a supervisory engineer of the low power television branch of the Mass Media Bureau. That man will have my eternal gratitude for being so understanding. And I feel very good telling you that the FCC must be proud of having somebody like him there. (ECaballero124, pp. 15-16)

(b) FCC Inaction When Confronting Private Discrimination

According to many interview subjects, historically, some individuals at the FCC have tried to reduce market entry barriers for small, women- and minority-owned businesses, but have encountered Commission-created obstacles and difficulties. Had these obstacles been non-existent, women- and minority-owned businesses might very well have been able to gain financial and managerial strength, thus better preparing them to compete successfully within the framework of today's marketplace.

The FCC instituted several successful programs, like the tax certificate program, to increase the opportunities for small, women- and minority-owned businesses. However, it appears that in some instances the FCC chose to ignore discriminatory practices in the primary and secondary market for licenses.

Rev. Everett Parker provided his insights into the historical challenges facing those who tried to overcome discrimination and provide a fair opportunity for small, minority- and women-owned businesses before the FCC. He told us, "Oh, sure I've seen discrimination [at the FCC]. I've never won a vote at the FCC. The only time I've ever won anything at the FCC was when we sued them. He has been extensively involved in civil rights issues as they impact broadcasting – both licensing and employment. He shared two of his experiences with the FCC.

(W)hen the Civil Rights Act and the effort to protect minorities in particular came along, I looked at the stations throughout the South and we decided that we should do something

about the mistreatment of Blacks by stations in the South. And the first thing we did was to ask the NAB – Governor Collins was then the head of the NAB – to ask their [member] stations to treat Blacks the same way they treated Whites, to use courtesy titles [e.g., Mr. Or Mrs.] and to give them the opportunity to present their views, especially [on] Brown v. The Board of Education. . . . Collins wanted to do that. But the board of the FCC flatly turned us down. (EParker504, p. 3)

Rev. Parker went on to tell us about a license renewal battle he fought with the FCC and ultimately won.

We went down to the South and looked at stations and picked WLBT in Jackson and the Channel 13 also, the two stations in Jackson, because they were the stations which were owned by Newhouse in Birmingham and which we later went after and got Newhouse out of the broadcasting business. . . .

And we went to Jackson because it's the college there, Tougaloo College, which was being attacked every day on WLBT. And we monitored for a week and then we petitioned the FCC – everybody thinks that we were after the license or something. But we petitioned the FCC to have a hearing knowing full well that they would not accept public information, that they would send it to the station and the station would say, "I didn't do it," or "I'll stop doing it," and then they would send you the mimeograph sheet and would put it in the file that we looked at.

And we filed a bill of particulars with the FCC instead of filing the information. We told them the things that we thought they should look at in a review of license renewal. Already the station had been in trouble with the White House. And so we filed a bill of particulars the way you would in a federal court, which the FCC had never done before. And of course, the station came back and said throw them out, they didn't put in 21 copies, which you had to put in in those days, and all the other things.

The FCC wrote us back the usual stuff. And at that point we presented our proof, and they didn't know what to do with it and they sat on it for a year. And then they renewed the license at Channel 13 and they gave WLBT a one-year renewal, knowing full well that they'd come back at the end of the year and they'd get their license and that the public would say look what we did.

And they had no thought that we would go to court. But, of course, that's what we did, and we got this landmark decision by the circuit, written by Burger.³⁹ You know, it was

³⁹ In *Office of Communications, United Church of Christ v. FCC*, 425 F. 2d 543, 549 (D.C. Cir. 1969), then-Judge Burger stated that "The [Hearing] Examiner and the Commission exhibited at best a reluctant tolerance of this court's mandate and at worst a profound hostility to the participation of the Public Intervenors and their efforts. The record now before us leaves us with a profound concern over the entire handling of this case following the remand to the Commission. The impatience with the Public Intervenors, the hostility toward their efforts to

the most conservative panel that you could get on the circuit. And we then had to have the hearing, and it was held in Jackson. And we presented our evidence there and, of course, the hearing examiner, which he was called in those days, absolutely paid no attention to our stuff and he made so many errors that the court – when the commission renewed the license and we again appealed to the court, which had kept jurisdiction, the court dispersed it and the court, for the very first time, lifted the license. It didn't send it back to the FCC for further action.

So that's the story of how and why we did these things. But as soon as we had the court decision giving the rights to the public to intervene in the affairs of federal regulatory agencies, that's when we petitioned the commission in 1968 to issue EEO rules and to make the reports of the stations public, which they did after much pressure. (EParker504, pp. 2-5)

Former Commissioner Henry Rivera shared with us the difficulties around enforcing the Commission's EEO policies.

There were many moves to curtail the Equal Employment Opportunity Policy in the early 80s, to do a lot of things that were not terribly favorable to minorities; and, instead to look to marketplace solutions to help them, rather than to government initiatives. I think that's the most charitable way to put it. (HRivera516, p. 4)

He goes on to recount how the Commission handled the Multi-Point Multiple Distribution Service in such a way as to avoid overtly assisting minority ownership.

There was . . . a new service, called Multi-Point Multiple Distribution Service [MMDS]. . . . And initially that was supposed to be a broadcast service and the Commission was supposed to grant preferences to minorities in issuing those licenses; but they didn't want to, so what they did was they classified it as a common carrier service where the minority preferences did not apply. So that was an interesting thing. I think they did the same thing with Direct Broadcast Satellite. So there were a number of instances like that,

satisfy a surprisingly strict standard of proof, plain errors in rulings and findings lead us, albeit reluctantly, to the conclusion that it will serve no useful purpose to ask the commission to reconsider the examiner's actions and its own Decision and Order under a correct allocation of the burden of proof. The administrative conduct reflected in this record is beyond repair.

“The Commission, itself, with more specific documentation of the licensee's shortcomings than it had in 1965 has now found virtues in the licensee which it was unable to perceive in 1965 and now finds the grant of a full three-year license to be in the public interest. We are compelled to hold, on the whole record, that the Commission's conclusion is not supported by substantial evidence. For this reason the grant of a license must be vacated forthwith and the Commission is directed to invite applications to be filed for the license.” See *Office of Communications, United Church of Christ v. FCC*, 425 F. 2d 543, 549 (D.C. Cir. 1969).

where the Commission was doing things to avoid overtly assisting minority ownership. (HRivera516, pp. 9-10)

Mateo Camarillo, a Hispanic owner of both radio and PCS licenses, talked of his frustration with the FCC's response to the Adarand decision as it affected the delay of the C-block auction of PCS licenses.

. . . (T)he Supreme Court ruling [in Adarand] did not say that you could not have those [race- and gender-based] programs; it said you had to have a justification, it be on a narrow basis, but the FCC just threw out everything. (MCamarillo375, p. 21)

Further, David Honig, Executive Director of the Minority Media Telecommunications Council, a non-profit advocacy group for minorities in media and representing multiple civil rights organizations, shares his knowledge of the FCC's activities around the distribution of licenses for educational broadcasting, the precursor to public broadcasting as we know it today. This is an example of the FCC's enabling a state (Alabama) agency to discriminate.

And you look . . . at the way that they handed out the public television and public radio licenses in the country. This is before the Carnegie Commission report in 1967 which sort of created what we now know as public broadcasting. Then it was called educational broadcasting.

One of the main purposes [of the educational broadcasting licenses] was to train people who would then go out and work in commercial broadcasting, and the schools were much more prominent among licensees than they are now.

Well, state agencies also were granted some of these licenses. All of the television licenses for public TV in the state of Alabama were given to something called the Alabama Educational Television Commission, between 1958 and 1962. And the agency was a branch of the Alabama State Government. And it's members were appointed by the governor of Alabama, George Wallace. So you have to assume that the FCC had heard of George Wallace, seen him standing in the schoolhouse door and had actual notice of what he was going to do with the television stations and who he would allow to work there, and thus who was going to get the training in Alabama to be able to qualify someday to get a bank loan as an experienced broadcaster to apply for and obtain a commercial broadcast license. This must have occurred to [the FCC].⁴⁰

⁴⁰ In *Applications of Alabama Educational Television Commission*, 50 FCC 2d 461 (FCC 1975), the FCC held that Alabama Educational Television stations engaged in discriminatory practices because they had few minority performers. The FCC specifically held "while it is true that there is no evidence that direct orders were ever issued to discriminate on the basis of race, the absence of such evidence is hardly dispositive. A policy of discrimination may be inferred from conduct and practices which display a pattern of under-representation or exclusion of minorities from a broadcast licensee's overall programming." *Radio Station WSNT, Inc.*, 27 FCC 2d 993 (1971). In light of the facts of the record set forth below, we find a compelling inference that [Alabama

. . . (W)e took a look at . . . state and public colleges and when the colleges got their licenses, because often the state college systems in Texas and Maryland and Mississippi and Alabama and Florida and so on would apply for public broadcast licenses for the White schools, not the Black schools. So [the Black schools] got them like ten years later and [the stations] were much lower power [than the ones for the White schools].

I mean the University of Maryland got one way before [Historically Black Colleges] Bowie State or Morgan State did. Cochran still doesn't have one. Coppin State in Baltimore was running a broadcast program with no school, I mean can you imagine trying to run an airline program to train pilots and they don't have an airplane? They've got to train [solely] on simulators? Or medical school that doesn't have cadavers, they have to train on models? How would you like to be operated on by a doctor like that? Actually, managing to keep the school going there with no broadcast license. I mean there's nothing [that] substitute(s) for the immediacy and unpredictability of . . . what happens when you're on the air live and you can't turn it off and say sorry, we have to pause and figure out what to do. There's no substitute for that.

And that's why when the Commission rubber stamped these applications, the question shouldn't be what were they thinking? The question should be, they were thinking and they didn't care. It was an entirely predictable consequence. They were basically ratifying and validating the decisions of segregationists public and private. (DHonig521 #2, pp. 6-7)

Mr. Rivera explains that the Congress and the courts have often impeded the FCC's efforts to increase opportunities for small, minority, women-owned businesses.

. . . (A) lot of the things that I suggest[ed] earlier that have happened to minorities and small businesses and women have happened as a result of things external to the Commission. You add in [a few FCC Chairmen] ... who have been very concerned about fostering minority ownership, but have had the pins knocked out from under them, basically. And it's very difficult for a, I mean, there's not much that could have been done that has not been done at the FCC up to this point in the last two [White House] administrations. (HRivera516, p. 15)

Mr. Rivera's perspective is shared by Benny Turner, an African-American owner of radio and television licenses, recognizing that the FCC operates in a world influenced by political realities and the courts. He believes that the FCC hasn't "*. . . been very effective [in helping minorities]. I think [that's in] large part a result of the decisions rendered by the courts and actions taken by Congress that seem to have the effect of limiting the authority of the FCC to be more aggressive in leveling the playing field. (BTurner108, p. 10)*

Educational Television] followed a racially discriminatory policy in its overall programming practices during the license period. See *In Re Applications of Alabama Educational Television Commission*, 50 FCC 2d 461 (FCC 1975).

(c) Policies and Processes

Some interviewees discussed the time-consuming nature of FCC practices and procedures. The longer it takes to get a decision from the FCC, the more money it costs for attorneys, engineers, trips to Washington, D.C., etc. – money that generally cash-strapped small businesses can ill afford. Henry Rivera describes the situation this way:

No, I never did [think anyone at the FCC was intentionally slowing things down so people who couldn't afford the fight would drop out], although I think that if one were interested in being anti-minority, the Commission processes by themselves would often have [that] result. I mean it just takes a long time to get anything done at the Commission, and if you're a minority or a small business, you generally don't have the capital to finance the particular matter through to its conclusion at the Commission. It just takes a long time. There are a lot of pleadings involved and so forth, and you have to have the staying power to see your way through those proceedings. So, as I said, you didn't need to be discriminatory, you just didn't need to do anything extraordinary and the Commission processes by themselves would take their toll. (HRivera516, p. 7)

Many people who we interviewed discussed the repeated appeals or petitions process that the FCC allowed to take place. Dennis Miller, a White male owner of wireless licenses, shared his perception that two competitors of his abused the petition process to gain competitive advantage over him.

There have been two instances where people—this is a personal opinion now . . . where people have abused the process. Filing petitions to deny the transfers to our company, only in one case, the settlement papers say one thing, the other issue, the real reason was they wanted a lower roaming rate, and they knew by filing that petition to deny [our license] it'd gum the gears up for six months at the minimum. . . . I think the motive in both cases was financial on their side to change the dynamics of a business relationship or a separate contract, roaming; being specific it was roaming. . . . (T)hey knew that we would be steadfast in closing the transaction; but what happens to you from a business perspective is once the transactions have been announced and you go on public notice at the Commission, it becomes public knowledge that company A is selling to company B. And if you can slow that process down in "never-never land" or in the middle of it, you gain a competitive advantage. (DMiller147, p. 14)

The pace of change, especially in telecommunications and wireless technology, has also created delays in FCC decisions. As the Commission seeks to transform from rigidly service-specific Bureaus towards a New FCC⁴¹, responsive to technological and market convergence, some new entrants contend they are bucking up against an old bureau mindset – costing scarce resources. Toni Cook Bush, co-owner of a newly-formed, multi-ethnic, all-female-owned company using

⁴¹ FCC Chairman William E. Kennard, A New FCC for the 21st Century: Draft Strategic Plan. (visited Aug. 30 1999). <http://www.fcc.gov/21st_century>

integrated technology to create a new television network distribution concept, discusses her frustration in trying to get the necessary approvals and licenses from the FCC.

So I think . . . we have two strikes against us [at the FCC]. One, that we're, you know, a small company that nobody knows, and that two, we're proposing something different than what the FCC has seen before and they have not figured out a way to treat applicants who are seeking the same resource but are in two different bureaus; how to treat them the same way. (TBush378, pp. 17-18)

(d) Staff Responsiveness and Impact of Bureaucracy

Many of the licensees who we interviewed had direct dealings with the FCC other than the licensees usual reporting requirements and license transfer transactions. While some shared their deep appreciation for the assistance they received from various staff members and the FCC, others spoke of the difficulty they have had with the FCC including the following: non-responsive staff members, access to Commission information, access to the Commission web site, or staff members out-of-touch with the small broadcasters' condition.

Rev. Everett Parker, who has a long history of dealing with the FCC, has a different perspective on staff assistance and FCC structure.

. . . (W)e could get a lot more help from the staff at the FCC than we get. You know, you make decisions at the top and nothing happens at the bottom. Remember what Eisenhower said, "I push all these buttons and nothing happens." So, no, the FCC is not set up to go out and see what the public needs and try to do something about it. (EParker504, p. 28)

James E. Wolf, Jr., who has had multiple problems maintaining his radio interests, shared one of his "many challenges with the FCC."

I'm going to tell you. I had so many challenges with the FCC, even when somebody required that I move off of my signal. But I used to be at 95.9. They forced me down to 95.7 to accommodate their power increase. When they did that, you know, it brought a short spacing to the west of my signal, which meant that we were relegated to a 6,000 watt station.

And I was trying to get my power raised. So just like the [other] adversities [I spoke about] – the FCC was always, "we don't care as long as we serve more people," . . . in this case it was [metropolitan] Illinois, to be able to serve more people. . . . And so when they did that it brought frustration on my behalf, you know, because I got boxed in and I could never raise my power up. And I thought we are always going to be a small signal, small station. . . .

I got reimbursed just the other day. And this has been going on since 1993. I just got – not total reimbursement, but I just got some money, . . . (f)or the move that I had to make to accommodate the station. I made the move back in 1996, you know. I mean, I haven't even cashed the check. I've still got it. I just got it the other day.

[I had to go through] (l)itigation – and what really, really bothered me is the FCC said you guys settle this out of court here. This is not an FCC matter. They sent documents, papers, and everything, down to me. I said this is crazy. I said, you put me in this matter. But, you know, there's so much insensitivity here.

And then finally I asked them to go back and review it again. They went back and reviewed and said, well, yeah, it is an FCC matter. It was just callousness on their behalf, you know. And so they went back in and they made the [other] corporation reimburse me the money, but I didn't get nearly the money I should have gotten. They kept me strung out for half of a decade, and I only got \$6,000 out of it. And I think it was just ludicrous, you know, that they operate like that. (JWolf281, pp. 28-29)

Jeffrey Hutton, a White male operating a small-town radio station, shares his concern over his perception that the FCC doesn't 'have a grasp [of small market radio], his unhappiness with the FCC's low power FM decision and his own story about signal strength impeding his ability to compete adequately.

. . . (T)o me the FCC is a regulatory agency and they don't have a grasp, they preach small market radio and then they go and do this thing with all these little micro-stations [low power FM]. They don't have a clue how it works in real life. They're bureaucratic businessmen and women sitting in Washington that don't get out in the field and they don't know how it works.

So let me just give you a good example. I'm in a town that has a population of 600. . . . (I)t was probably my fault because I didn't know how to do proper due diligence, but this station cannot be upgraded. Okay, logically, for me to be able to have a better station I have to be able to broadcast with more power from a higher antenna, so I can reach more of an area, so I can go out to try to sell more advertising to more people. Well, because of the spectrum spacing rule of the Commission, I can't do that. I'm locked out.

Now they'll turn right around you know and allow a station in a big market to increase its power which is somewhat ridiculous because you know everybody lives within just a small radius there. They can hear the station fine. But that kind of activity blocks out the smaller stations like me so, you know, I have to, literally, it's a day-to-day struggle to survive with this radio station because I don't have any power. I get walked all over by these bigger stations in towns far, far away from here that interfere with my signal so I can't even serve the county I'm in. There are portions of the county that can't hear me because we're only a 6,000 watt station. And I find that very frustrating.

People all the time saying you are a good station, why don't you increase your power so we can hear you better and things like that, and I can't do that. So that's my biggest point of contention with the FCC from a realistic perspective, they don't have any idea what's going on out here. (JHutton385, pp. 7-8)

Toni Cook Bush raises the issue that even though more recent FCC Chairmen have worked hard to make it “better . . . for minorities and women . . . the fact of the matter [is] in the bowels of all those Bureaus, it's the same old guys who've been doing this for 20 years. That has not changed. But you don't get to the top [of the FCC] unless you can get through some of these guys at the bottom. . . . I think that is very problematic.” (TBush378, p. 20)

Mary Helen Barro, former president of the American Hispanic-Owned Radio Association and owner of multiple radio stations, shares her views on the differences between broadcasters and FCC staff, both in terms of priorities and time frames.

I think the FCC truly does not listen to the small broadcasters. . . . I think they think like bureaucrats. They don't think like business people and it has hurt the small broadcaster. Whenever broadcasters have been in need, and its very common, the wheels of government are on a different timetable than private industry is on. Government thinks in terms of months and years. Private industry thinks in terms of days and weeks. And the response time often times by the FCC when small broadcasters were in need was just not timely. And it hurt small business a great deal. You don't have that problem nearly today because frankly there is little or no small business [left] in broadcasting [since the deregulation in broadcasting]. (MHBarro190, p. 8)

(e) Equal Employment Opportunity

In 1969, the FCC issued a Policy Statement which forbade discrimination on the basis of race, color, religion, or national origin in employment practices by licensees of commercial and non-commercial broadcast stations.⁴² Accordingly, each station had to establish a proactive equal employment opportunity (EEO) program. This was the first time the FCC had directly addressed the issue of race in a formal policy ruling. This Policy Statement established the Commission's right to revoke licenses and to hear allegations of EEO violations in comparative hearings.

In 1998, the D.C. Circuit Court of Appeals held in Lutheran Church – Missouri Synod v. FCC, 141 F.3d 344 (D.C. Cir. 1998) that certain provisions of the FCC's radio broadcast EEO rules were unconstitutional. The Commission suspended the requirement for broadcast licensees to

⁴² See *Non-Discrimination in Employment Practices*, 18 FCC 2d 240, 16 RR 2d 1561 (1969)

file annual employment reports on September 30, 1998.⁴³ It wasn't until Spring of 2000 that a new EEO Policy Statement was issued. These new rules are once again before the courts.⁴⁴

Rev. Everett Parker was instrumental in pushing for the first set of EEO rules. He understood early on that meaningful employment opportunity within existing, broadcast companies was critical if women and minorities were to have a fair chance of becoming licensees. Today, more so than ever, prior experience and a significant track record of success in broadcasting is a primary determining factor for participation in the secondary market for radio and television licenses. Rev. Parker shared his recollection of the FCC's handling of the EEO reporting requirements.

[With] the first EEO rules, when EEO reports were turned in, the FCC didn't even open them. They threw them into boxes and took them into the library and stored them. . . . They never have examined [radio and television] stations in detail for their [EEO] performance even though they are supposed to. And you know, license renewal has always been a farce. And the staff at the FCC certainly did not want to be bothered with these hundreds and hundreds of reports and analysis.

In the end, since we were issuing these analyses every year we made a deal with the then chairman....(H)e and I made an agreement that [we] would do the analysis and would have the figures. And as long as he was Chair everything was just wonderful.

But then, of course, the [President] Reagan FCC came along and after that, you know, they just said they weren't going to enforce the EEO rules and the hiring and promotion of minorities and women went down again. By the time the Reagan administration came in, television, at least, was as high as any industry in having minorities and women in upper level jobs, not at the corporate level, but in the stations. (EParker504, pp. 8-10)

Former Commissioner Rivera, who was at the FCC from approximately 1981 to 1985, experienced during his tenure that “*there were very few things that were positive at all [for women and minorities during the years that I was at the FCC].*” He especially highlighted the lack of enforcement of the Commission's EEO policy and the negative impact that had on the creation of a “*farm team,*” those individuals who should have gotten the experience needed to one day become licensees.

I think most of the things that happened were negative. I think that one of the things that happened that hurt a lot was the Commission's decision basically to stop enforcing its EEO policies. And there was no, I mean, clearly, I think [the then Chairman] thought that this was a bad thing to do, that it was not appropriate for the government to be sticking its nose in enforcing broadcasters to hire minorities. And, as I said, I think that

⁴³ See SUSPENSION OF REQUIREMENT FOR FILING OF BROADCAST STATION ANNUAL EMPLOYMENT REPORTS AND PROGRAM REPORTS, 13 FCC Red 21998 (1998)

⁴⁴ Supra note 34.

hurt a lot, because, that's your farm team, basically. Those are the folks that you look to in the future to get into ownership. And the Commission basically—you can look through the records during that period of time and you will find very few enforcement actions that had anything to do with EEO. So it was a pretty bad time at the Commission in that regard. . (HRivera516, p. 9)

(f) Distress Sales

The 1978 Broadcast Policy Statement: Statement of Policy on Minority Ownership of Broadcast Facilities, 68 FCC 2d 979, 983 (1978) also created the Distress Sale policy which allowed a broadcast licensee designated for a revocation hearing to sell their broadcast station to a minority-controlled entity at no more than 75% of the station's fair market value.⁴⁵

The FCC developed the distress sale policy. It was created at the same time as the tax certificate. Virtually none of the study participants had acquired their station(s) in this fashion as the license renewal process rarely resulted in the threat of revocation.

Richard Weaver-Bey, one of the few broadcasters who did acquire his station under the distress sale program, spoke of delays in the process which cost him scarce financial resources and advertising revenues, forced him into default on his SBA loan. After Mr. Weaver-Bey traveled to Washington, DC to meet with the Commission staff, the FCC approved his license transfer.

We were being told that the FCC was not processing [our] paperwork or whatever. And we would call down and not get answers. So we decided that we would take a trip to Washington [D.C.] and see if we [could] make some headway. . . (W)e were able to have a couple of meetings during the course of that day, one in the mid-morning and one in the late afternoon, to provide information to two of those individuals. [O]ur[license transfer] process, when we got back after that, moved along at warp speed and we were finally able to come to a closing.

So, I think what the Commission could have done at that point in time was to make sure that if there was a distress sale and that if there were buyers who were ready to close, that the Commission forced the expeditious closing of the station. And that didn't happen. So that set us back and cost us a lot of money, as well as when we did get into the station, by the time we got into the station, there were a number of advertisers that had been brought on in trade and things of that nature that were just very difficult to overcome [contracts had been negotiated, etc.] So our station was sort of behind the

⁴⁵ Lee Broadcasting Corp., 76 FCC2d 462 (1980); Statement of Policy on Minority Ownership of Broadcast Facilities, 68 FCC2d 979 (1978); and Clarification of Distress Sale Policy, 44 RR2d 479 (1978).

eight ball . . . from the start, and it was very difficult in attempting to catch up, so we fell into default with the SBA loan. (RWeaver-Bey171, pp. 5-6)

(g) Comparative Hearings

The FCC used the comparative hearing process from 1945 through 1994 to award licenses when there were two or more mutually exclusive applicants for the same frequency. In 1978, the Commission formalized the use of minority and gender credits in the comparative hearing process, with the goal being to increase participation by minorities and women. This meant that if a minority or woman was a controlling member of an applicant's management team, that application was given more "points" during the hearing process. The Bechtel decision in 1993, which invalidated the FCC's integration criteria, led to the FCC's suspension of the comparative hearing process in 1994. Thereafter, the 1996 Act officially eliminated comparative hearings.

Amador Bustos, a successful Hispanic multi-station owner, speaks to the effectiveness of the comparative hearings as a means to encourage minority broadcast license ownership. *"I think that [the FCC was] well intentioned but not effective. I think that the comparative hearing was really not an effective process to try to get minorities into the hopper and into the system."* (ABustos122, p. 12)

The study participants who went through comparative hearings spoke of multiple obstacles, challenges, frustrations, and commitment during the process. The length of time and money expended to acquire a license was a real burden for these applicants. Ben Perez, a communications attorney and low power television licensee, represented many minority groups in comparative hearings before the FCC. He shared his view on the effectiveness and impact of the process on minority applicants.

This hearing process is horrible. It destroy[ed] the hopes and fortunes of virtually every minority applicant, doing tremendous damage, and the outcome is not more minority grants. In fact, if anything, it's probably less than it used to be. And the FCC was very good about refusing to count either the composition of applicants, minority versus [non-minority] or the composition of winners. They never, they refused to gather statistics, because they, I feel, because they knew if they quantified, then people would hold them accountable for what was happening. Claiming to be helping minorities, but the licenses are not going that way. If they quantified the Comparative Hearing, what percentage of applicants were minority? What percentage won and got licenses? The numbers would have been horrible. They did not, and they never have, and they still haven't. (BPerez540, p. 36)

Mr. Perez saw the hearing process as a "war of attrition." He detailed it this way.

Hearings by their nature were a war of attrition. The big broadcaster who had the most players to expend and had the most appreciation of the value of the license would spend the most and wear down and defeat all the other applicants. That's another permutation

of the same thing, but if they couldn't buy them out they would wear them down, and they [would] get financially exhausted. They literally financially exhausted them. And, you know, more depositions, longer trials, more appeals. And if they fought long and hard enough and this was the creed of the broadcast Comparative Hearing attorney – I could tell my client, if you're willing to fight hard and long enough, I'll win this for you. (BPerez540, p. 28)

Ruby Unger, a White female radio licensee, primarily felt that the FCC wanted to push onto the applicants themselves the responsibility for making the decision about who would end up with the license.

... [What] the FCC basically wants the applicants to do is knock each other out. The FCC did not want to make a decision. They did not want to rule in anyone's favor. They really wanted to have somebody buy out the competition, you know, give them money to go away. And when the depositions were taken here in Novato preliminary to the hearings in Washington, it was very clear that our application would be the top or the second in line.... that was the general consensus. I think it was clear once the process started that – and I don't really remember who said that specifically, but it could have been my FCC attorney.... (T)he upshot is I did settle on the night before I was going to testify. And I did that because I was advised to do that by my attorney. And in hindsight it really was the best thing to do. It was really difficult. It's like being pregnant and then the night before you're going to give birth you decide, okay, I won't have this baby. It was really sad. (RUnger367, pp. 2-5)

Mateo Camarillo, a Hispanic radio and wireless licensee, who holds a masters degree in social work, previously started a school of social work to aid his Hispanic community, has been an extremely successful multi-unit McDonald's franchisee, and was a university professor for 10 years, talked of his experience with the comparative hearings as being “a horrible process.”

(T)here were multiple parties seeking that frequency, seeking that spectrum and so obviously I had an attorney, and I thought it was, a good firm; it was highly recommended to me. And we proceeded to go through the process, the comparative hearing process which, you know, meant going to Washington for hearings before the administrative law judge.

I was not very pleased with the competency of the administrative judge, [who] shall remain nameless. . . . he would be falling asleep while people were making presentations in front of him, things that even a lay person would say, gee, what's going on? You know he would ask questions [of] presenters that already had answered the question in their presentation. Things that led you to believe, is this person awake? And so I didn't have much faith in a rational recommendation coming out of that process.

So what eventually I did is I was able to show that of all the applicants, I was the most qualified in reference to the criteria. There was another firm out of San Francisco, who was also very tenacious and it came down in my opinion to that entity and our entity. I

formed [my] company with two other associates and we had an S Corporation . . . three stockholders.

. . . And what I did then is I was very motivated to win and very aggressive in the proceedings and then I even hired a private investigator too because I knew [the other applicant] was lying. The applicant had lied. The top competitor had lied and I knew it. And my attorney said it's a big difference between you knowing somebody lied and proving to the FCC that they lied. And it was, and he was right. There was a big difference.

... So it was very frustrating. So I knew that the odds were, it wasn't a level playing field. And so what I eventually did, I made him an offer to buy him out, his application, which went against my grain and my principles because you know I knew I had beat him outright, but I offered to pay him what he had expended, which was the rule at that time, . . . they couldn't make a profit. They could recover what they had spent. So that's in fact what happened. Because I didn't believe that I could win, based on what had transpired, even though I was the best applicant, even though the other person, the other party had lied. So that left a bad taste.

It was a long process. It was from '81 to '85. It was four years. . . . (B)ecause we bought out the other applicant, we were kind of what you might say the only ones left standing at the OK Coral. But again, I didn't think it was a fair process. I don't think we won on merits. We shouldn't have to win, people shouldn't have to win by having the fattest wallet. We should have won based on the merits. (MCamarillo375, pp. 3-5)

Francine Rienstra, a White woman who holds an FM license in Tucson, Arizona, had a different yet no less difficult experience with her 10-year-long comparative hearing process. She encountered from one individual three appeals of the decision to award her a license. Ultimately she prevailed, but by then her resources had so dwindled that she had to engage in a Local Marketing Agreement (LMA) in order to generate the funds to build out her station. Eighteen months after the station went on the air in 1994, Ms. Rienstra sold her station to her LMA partner per their original agreement. She tells her story this way.

Initially, in 1984 I formed a company to acquire a brand new FM radio license in Tucson. It was part of the Docket 80/90 batch of licenses; approximately 700 licenses across the country were being auctioned off [distributed under comparative hearings]. I had estimated that it might take a couple of years to try to acquire that license and was prepared to go ahead and apply for a license, even if it took 2 to 2½ years, or 3 years at the outside. I figured that was worth it, and I was working another job in the meantime. [It actually took] ten years.

I sent in a letter [to the FCC]... initially ... stating that I would apply for a station should they allocate a license here. The FCC said they would allocate a license. Then they said that the . . . signal wouldn't work for a class A station. Tucson is in a valley, but it is surrounded by mountains. But we have plenty of stations here that give good signals.

And I was in competition with, initially, 40 other groups. And then by the time it got to that point where the FCC said, no, we're not going to allocate a station here, I'm thinking there are 40 other groups here that want this license and there was only one license to be allocated to this market. And if somebody doesn't say something or do something, then they're not going to allocate a license here.

I couldn't wait for everybody else to make a move, so I spent my money and had my engineer do an engineering study stating that we could get city-grade coverage for a class A station. . . . [The FCC] said that they were not going to allocate a license because you couldn't get good city-grade coverage. Based on their figures that they did from their computers, I guess, I'm not really sure, I guess from their computers. And I believe what happened is that they took the 10,000-foot mountain and said that you'd be broadcasting from below ground and couldn't get a tower high enough to get a good signal. And I said that that's not true and talked to my engineer who said that's not true, and I asked him to put together an engineering study.

And we did, and we essentially appealed to the FCC. No other group did that; I was the only one that did. And the FCC made some changes, changed the channel number and the frequency, and then they allocated us a channel number here.

So, continuing in the process, then you have to send in your application when they request that you do that, and I did, and so did 20 some odd other groups ... or no, it was more than 20, probably around 30. And then the FCC weeds them down; they weed down six months, and then you have to re-apply. They weed it down and weed it down, and every time they weed down, it takes six months to weed down. . . . (W)e all applied, and then there was some more weeding-down process based on how good of an application you put together. And in order to get the 80/90 Docket, there were certain rules that you had to follow, and the closer you stuck to those rules, the more points you got.

. . . [We were an all-woman group] and we were all local. We had not ... this was part of their parameters ... we had not owned any other broadcast entity. I had a minority in my group. I had a radio background. . . . All this time, while this whole process was going on, I'd been working for radio and television stations as a sales person and then as a sales manager. And then, we got to the point of weeding it down to [a point where] we did depositions and it weeded down, and then there were four groups, and really I was the strongest out of the four groups.

And we went to a comparative hearing in Washington, D.C. [in 1990], and that's when I was declared the winner. And then one gentleman, who had applied for many, many different stations around the country, as well as owning a couple of stations in California, had applied for this one, too, and he was part of the four remaining groups at the comparative hearings. After I had won, he appealed it.... I think he said something about my engineering wasn't right, and that wasn't true. Because the FCC denied him

and said that I was still the winner. That was six months long. He appealed it again... and I won it again. He appealed it a third time.

See, the FCC had formed some kind of a group at that time, and this was supposed to make the process easier because then it wouldn't have to go back to the FCC. Well, it did. It went through that group, and I was the winner. He appealed it back again to the FCC, and I was the winner. He did appeal it one more time, and then they said I was the winner. And in order for me to get that license on the air and to even try to get more funding, because now we had used almost all . . . of our funding . . . for attorneys, for engineers, for trips, all the research and everything else that we did. So we had used quite a bit of funding, and we were still pouring money out of our pockets. This was all out of pocket. (FRienstra360, pp. 1,6-13)

(h) Repeal of the Tax Certificate

The 1978 Broadcast Policy Statement created the tax certificate program which provided tax benefits to the seller of a media property if it was sold to a minority business. The tax certificate policy encouraged and promoted minority ownership by giving a two-year like-kind transfer tax break (a deferral) for the sale of licenses to minorities if the proceeds were reinvested in a similar communication industry. In 1995, as part of the Self-Employed Persons Health Care Deduction Extension Act, Congress repealed the tax certificate program because of alleged abuse .

This tax certificate program was the single most effective program in lowering market entry barriers and providing opportunities for minorities to acquire broadcast licenses in the secondary market. Virtually every minority broadcaster with whom we spoke commented on the program's effectiveness and recommended its reinstatement as a means to increase opportunities for minority ownership. While it did not guarantee that transactions would be consummated, the tax certificate program did motivate sellers to seek out and offer an increased number of broadcast properties for sale to minorities.

Bernadine Nash, a minority daytime-only AM radio station owner in Boston, summed up the benefits of the program and the negative impact of its repeal.

The biggest blow for us, really, has been the dissolution of the minority tax certificate. Because ...when the minority tax certificate was in existence, I actually had people approach me when they wanted to sell their radio stations because there were significant tax breaks to be derived from it. When that went away, not only did I not get phone calls, I couldn't get phone calls returned when I was inquiring about properties. I've been trying like crazy and have hit, I can't tell you how many, brick walls, and have come to the realization that in this market it is not going to happen within the framework that I imagined that it would. (BNash118, pp. 7-8)

Dorothy Brunson, an African-American UHF licensee explained the economic benefit of the program to the buyer.

It lowered the [purchase price]. . . . Because what happened, if you needed that crucial 20% down payment, and you only had 5%, if you got a tax certificate, and that person was able to defer those capital gains of 17 or 18 percent of tax on that money, they would then be willing to give you maybe a 10% swing [on the price of the station]. Or even 12%, if it was big enough. And that 12%, with your 5%, well, they'd give you a 20% push to be able to pull that deal out, so if you can now get 15 times cash flow [in financing], you're going to be able to manage that, because you've already got a 20% equity stake. (DBrunson105, p. 25)

Amador Bustos, who was quoted earlier on the ineffectiveness of the comparative hearing process, said that “(t)he only thing that was effective was the tax certificate [because it] allowed minorities, as in our case, access to get some property that we would not otherwise get, because the seller was motivated by the fact that they could defer the tax for a period of time. (ABustos122, p. 12)

Dorothy Brunson, who commented that “it was a travesty when the Congress overruled the Commission on the tax certificates,” provided some statistics on the program’s success.

(I)f you go back and look at the number of cases where I went back and I believe it was 1997, '96, you probably had about oh, I would say close to 250 properties that were owned by African-Americans, maybe with Hispanics with the radio stations and one or two TV stations in the West, we were looking at probably about 315 properties. Out of that 300, probably better than about 100, 150, were based on tax certificates.

You have to look at some of the historical research. It was tremendous. Yeah, there were some who came in and got out, bought with tax certificates, turned around and sold [the stations]; but you're always going to have somebody who's going to abuse the system, but you don't throw the baby out with the bath. But it could have been better done if the tax certificates were regulated, and all they had to do was put a clause in that the persons who had the tax certificates, would a) have to hold [the station] for a minimum of two years, or three years and/or b) [the FCC] could have limited them - they (could) say no tax certificates over \$300,000 or \$400,000 or whatever, you know. But, not to just kill the whole program. (DBrunson105 p. 24)

Henry Rivera’s perspective that the repeal of the tax certificate was “devastating” to minorities was shared by many.

I think in terms of things that have happened to the minority community, clearly one of the most devastating has to have been the repeal of the Tax Certificate. I mean when we lost that, we really did lose a terrific vehicle toward increasing minority ownership. That was devastating. (HRivera516, p. 12)

(i) **Auctions**

The Omnibus Budget Reconciliation Act of 1993 (which added Section 309(j) to the Communications Act of 1934) gave the FCC authority to distribute licenses through a competitive bidding process, or auctions. Initially the auctions were used only for wireless licenses. The first broadcast auction, the “Bechtel auction”, took place in 1999.

The most significant difference between the auctions and the previous means of distributing licenses (comparative hearings and lotteries) is that now successful applicants, as a result of the auction bidding process, are required to pay tens and often hundreds of thousands of dollars to the FCC for each license awarded to them. The FCC at one time allocated the spectrum to qualified applicants without receiving any compensation from the applicants, now the prospective licensee with the deepest pockets wins.

For already capital-deficient small, minority- and women-owned businesses, the huge sums of money needed to both acquire the licenses and build out the systems has created an enormous barrier to entry.

To help counter the financial impact of the auctions, the FCC originally created bidding credits and later favorable financing for small businesses, with additional credits being given to minority- and women-owned businesses. The FCC set the C and F blocks of PCS spectrum aside as entrepreneur blocks with the expectation, at least with the C-block auction, that small businesses would get a head start in the market with PCS service over the larger telephone service providers who were scheduled to bid for their licenses in the subsequent A- and B-block auctions.

Unfortunately, the decision in the Adarand case prompted the FCC not only to delay the C-block auction beyond the date of the A- and B-block auctions but also to remove any special credits that had been available for minorities and woman and to extend those credits to all small businesses participating in the auction.

The delay in timing of the C-block auction, coupled with the loss of minority and women bidding credits, impaired bidding strategies, pricing estimates, and ultimately limited the opportunities for small, minority-, and women-owned businesses to get financing, meet their installment payments, and build out their systems.

But more than anything, most interviewees who offered an opinion about the auction process indicated that, because of the capital requirements of the process, small business owners would be shut out of the process and relegated, if given a chance at all, to the least desirable and therefore most affordable spectrum. Carl Davis, a wireless licensee characterized the FCC as “*a money-grubbing organization*” which “*isn’t fair any longer.*” (CDavis322, p. 27)

Brian Cobb, a media broker had this perspective on the auction process:

. . . (T)he bulk of [the wireless spectrum] is being provided to whoever pays the most money. But . . . the system got perverted when [the FCC] got greedy and started selling to the highest bidder, so all they are doing is turning over all the frequency to the largest corporations in the country. That's what's happening. I call it corporate socialism, because I'm a big fan of small business. (BCobb512, p. 32)

Toni Cook Bush sees the auction authority as one which now drives and defines choices made by people at the FCC. *"The bottom line that I figured out from at least some of the conversations that I've had at the Commission is that they really do just want to raise money, and they view their job just to try to figure out ways to get [companies] into an auction."* (TBush378, p. 27)

Henry Rivera sees it this way:

The Administration . . . and the Congress like the fact that there's money being generated out of something that the Commission is doing and the Commission likes that. So, they like to be patted on the back and given attaboys and attagirls and you guys are doing a great job and you're raising all this money for the Treasury and we think you're great. . . . [But] that's the ball they tend to keep their eye on rather than, you know, what can we do about helping minorities? What can we do about fostering new technology . . . but I think that their mind is not necessarily on advancing the public interest as much as it should be but rather [on] how much money can we generate from this particular auction. (HRivera516, p. 21)

Brian Cobb asks a more fundamental question about the rationale behind the auction process.

They haven't had a very viable solution yet [for issuing licenses]. . . . They tried to set rules that said, okay, if a minority is involved then they get favoritism or if there is more localism. . . . So then in the [comparative hearing] process everybody was trying to eat each other, and they got tied up for years and years and years. That wasn't very good. And so the ultimate solution was to make it as simple as possible, whoever has got the most money gets the frequency; and I don't understand the rationale in that. I mean, I understand the economic rationale, but if you say it's the public frequency, why did you do that. (BCobb512, pp. 33-34)

Frank Blount also believes that the FCC is focused now on money with little consideration of the "small business guy".

And the FCC, I think that this whole thing has been geared to boy, let's get the billions of dollars. But, what have they done to the small business guy? They have shut him completely out of the market. (FBlount153, pp. 23-24.)

Carl Davis shared more of his feelings about the impact of auctions on the “rank and file.”

Really, in my opinion, auctions are illegal...because the airwaves belong to the general pops, the general population in the United States. And why should you have to pay the Federal Government? It all belongs to the people. And . . . I don't [think] we should have to pay for those licenses. We never paid. People never paid prior to this. So essentially what happened, the bulk of the licenses were given away to people. And then all of a sudden when you bring in the rank and file, more or less, then they start charging (CDavis322, pp. 17-18)

When the C-block auction finally took place, the result was super-inflated prices driven by a few supposedly well-financed bidders; and the belief that this was the last real chance for entrepreneurs to get a meaningful part of the wireless spectrum. The A- and B-block auctions, which had already put spectrum in the hands of the large companies, had taken place. Whatever advantage that was expected to accrue to the “entrepreneur block” by being first to market had been erased when the C-block auction was delayed.

Brian Fontes, a Senior Vice President at the Cellular Telecommunications Industry Association (CTIA), offered his perspective on the viability of C block licensees given the timing of their market entry.

I don't think the Commission did small businesses any great favor with the C-Block; [the C-block license holders are] the last to market - the small business, women-, minority-owned, Telco-type businesses, which were originally stated under the auction authority, and Adarand kind of wiped that out. And now it's just a small business exemption or a small business category. I mean, they auctioned off first the A-Block, then the B-Block, then the C-Block. So in terms of when these blocks of spectrum become available means that the other blocks – it's kind of last to market. And I think anybody that's last to market will have a more difficult time – one, raising capital and two, competing. (BFontes524, p.11)

C Block licenses sold for considerably more money per population covered by the license than the A and B blocks. Many applicants either dropped out of the process early, were able to afford only much less attractive secondary or tertiary market licenses, or considerably overbid for their licenses thus rendering their business plan uneconomic. Therefore these C-Block business plans became unattractive as a financial investment either for conventional lenders, equity partners or vendors.

Many C-block licensees have been unable to meet their installment payments; many have filed for bankruptcy. In either case, they have had to return their licenses to the Commission, per the auction rules. Some C block licenses have already been reaucted. Another block of licenses is scheduled for reauction on December 12, 2000.

Mateo Camarillo, a Hispanic wireless licensee, whose experience with comparative hearings was presented above, also shared his disappointing auction experience with us. His story is illustrative of the stories shared by many other C block participants.

When I became aware of [the C Block] and I found that there was receptivity to those suggestions [about preferences for minorities such as bidding credits and installment payments], and they became policy, then I decided to shift focus and I left the administration of running the radio stations to get involved in PCS and formed a company, . . . Integrated Communications Group. And we then were successful in getting investors and other parties to commit to work with us [prior to the beginning of the auction].

Anyway, what happened is the Supreme Court ruled on a case called Adarand vs. Peña, and after that ruling came down we lost millions. All our investors went away. All our investors went away. Because [with] the FCC's interpretation of the ruling, the Supreme Court Ruling did not say that you could not have those [minority] programs, it said you had to have a justification, it be on a narrow basis, but the FCC just threw out everything and so that's why our investors went away.

And when they in fact promulgated new rules later that year, we had committed so much time, so much energy, we went ahead and participated on a reduced scale. And despite the fact that we lost millions from our investors, we just scaled down. However, we ran into the same problem that we ran into in radio broadcasting, being in secondary and tertiary markets, we subsequently found we did bid and prevail in the auction both the C Block and F Block and obtained 11 licenses. However none were, and our strategy was along the [U.S. – Mexico] border because that was our niche, that was our strength is marketing and reaching the Hispanic market which is on both sides of the border, and we thought that gave us an advantage over you know Joe Doe company that didn't even understand that community.

However, we had the Next Waves of the world who outbid us and drove the bidding prices out of sight, so we had to drop out in Corpus Christi, in Brownsville, in markets that were important, and so we ended up with tertiary markets.

The problem that we eventually found out is that it was very difficult to attract investors [and to get] the attention of suppliers, the Motorolas of the world, the Qualcomms of the world, in secondary and tertiary [wireless] markets. So that was another huge problem and so we're now currently in escrow to sell our licenses because we can't raise the millions needed to [make installment payments on the licenses or build them out], that we had before Adarand.

We had everything lined up. We had manufacturers. We had investors, we had all kinds of things. But we had so much invested in time and energy we thought that we could still make it work on a smaller scale; but we subsequently learned the hard way that people aren't interested in Timbuktu of the world. Which is where minorities tend to end up

because they don't have the capital, they don't have the wherewithal to go public, to have the critical mass to have this staying power. (MCamarillo375, pp. 21-22)

While few interviewees that were involved in the C-Block auction expressly talked about the benefit of being able to pay for their licenses using installment payments, it was apparent from their comments that this program encouraged them to participate in the auction process. The difficulties for most arose, however, with the delay in the timing of the C-Block auction due to Adarand.

As was the case with Mr. Camarillo above, lenders and investors lost confidence in the C-Block applicants and generally decided to withdraw their support. Furthermore, when the auction finally did take place, the bidding was very active, with prices escalating beyond the point of economic prudence. Many bidders, given their lack of sophistication with the industry and financing in general, used all of their available money to make the license down payment, perhaps naively expecting that since they had time until their first installment payment they would be able to raise the needed capital from outside sources. With prices for the licenses generally being higher in most markets than their business plans could accommodate, it became virtually impossible for licensees to raise the capital needed to build out their systems and make their installment payments on a timely basis. Several licensees have defaulted on their payments requiring them to forfeit their licenses.

(j) Interactive Video and Data Services (IVDS)

The FCC auctioned Interactive Video and Data Service (“IVDS”) and targeted this spectrum to small, minority, and women-owned businesses. Many interviewees stated that, during the IVDS auction, they came to believe that certain necessary technology was available and carried the imprimatur of the FCC. In fact the technology did not exist and many have been unable to make use of their licenses. Realizing the problem, the FCC suspended the requirement that license installment payments be made. In some cases the FCC has refunded the installment payments made to date by the licensees in exchange for the return of the license. However, the down payments made by the winning bidders remain in the hands of the FCC.

Nancy Douglas, an IVDS licensee, talked about the basic problem with this spectrum.

Interactive Video and Data is what it was called, but that name now has gone by the wayside. Now they just call it 218-219, because it certainly is not interactive video, it never did do that, could not do that, [even though the FCC] said that it could. It turns out that the equipment, the amount of spectrum which is 1000 mhz of spectrum, will not even do what they said that it will do. You need a lot more spectrum to be able to do that. You need really broadband, you know. So, even that was incorrect, which is basic engineering. You know, which again shows that the FCC did something that was totally wrong. And the FCC has refused to take any responsibility for that. (NDouglas155, p. 9)

Carl Davis, who holds five wireless IVDS licenses, among others, explains the financial impact on him of the IVDS auction process.

I was a winning bidder on five licenses in the IVDS . . . and subsequently put 10% down. And at that point in time, I think virtually everyone who had bid for those licenses realized that the company who had stated that they had the equipment to operate at those frequencies did not have the equipment. And at that point in time, virtually everyone who had outside financing, the financial community backed off and left us high and dry.

. . . I had deposited for the initial down payment something like \$272,000. So then the financial backing that I had at that point in time decided to back out and left me dry and I couldn't come up with the other \$272,000 for the [other half of the], I believe, 20% down. . . . A lot of people got collared. I don't know the numbers totally, but a number of people did. . . . I had used my own funds for the initial down payment, but I had backing for the additional ten percent and the subsequent payments - I think it was an additional \$3 million. [I had] \$272,000 [of my own money in the deal].

The Federal Communications Commission kept [my down payment]. . . . Since I didn't make the additional 10 percent down . . . they claimed that I did not uphold the agreement, and, therefore, they confiscated the license. The FCC's position has been, and still continues to be, we should have done due diligence [on the equipment and the spectrum]. And I think that's a cop out because the Federal Communications Commission is the one who incessantly tapped onto, Answer TV is what it was called, stating that they had the equipment, and the FCC was touting this around in the newspapers and through their correspondence with us. That they're equipment essentially did exist.

However, in further research, we found that the Federal Communications Commission did not even check to see if Answer TV had the equipment. They issued the licenses based [on technology that] . . . was hypothetical.

Altogether, with respect to IVDS, I spent a total of a half million dollars - in developing my system [with QVC] that I thought was there, hiring people to write things for me with respect to how we were going to market this thing; paying attorneys; and doing research of all sorts. (CDavis322, pp. 1-3, 11-12)

Mr. Davis continued on to conjecture why, with the failure of IVDS, the Commission will not return licensees' down payments.

So I'm in contact with a lot of licensees. And they're complaining. You know even though they made a second down payment and a few installment payments, they're saying well, how come I can't get all my money back? You know, what's precluding the Federal Communications Commission from giving all my money back? There's no reason for it. And come to find out there is a reason. And the reason is this - a company called Next Wave.

[They] (p)ut down half a billion dollars [for licenses in the C-block auction], on the licenses they bid for on PCS, I think it was called. And they didn't come up with the additional half, which was another half a billion. . . . So they are in default. Now because they are in default, and we're in default, the FCC doesn't want to necessarily give our money back, our down payments back because if they do, it would set a precedent and then they would get their money back, or in this case, Next Wave is attempting to, they want their down payment, but the FCC wants to really confiscate that fine and put it back on the market because now the licenses are worth about ten billion. So they can make a lot more money. And it's become a money hungry business. (CDavis322, pp. 26-27)

Mr. Davis also reports that he has finally found a use for IVDS and the accompanying technology to make it operational. However, since he failed to pay the second half of his down payment, as reported above, the FCC has confiscated his license and is leaving him without any way to recoup his personal investment.

This is the public notice, [the Order], to IVDS people (and we are called 218-219 mhz service): . . . they tell you how to get your money back, that is your installment payments. If that is the case, or they give you another option, you can go ahead and continue to[pay on the] installments, and they will commence 3 months henceforth, or you can request a return of your installment payments, or you can pay off the entire loan. Now I have proposed to pay off the entire loan... But they say I don't own the license because I didn't put the additional 10% down. I have found and a number of other people have found that we can utilize the license for digital information data transfer. So now the license would at least be able to get some of our money back. And I think the price I paid was close to \$4 million, for the license totally, three point seven, three point eight, something like that. I could [earn] that money back in a period of five years.

I have gone out and I've turned over rocks and I've come up with a financing source. And they are willing to pay the FCC off. I have letters to that effect and I've sent the letters to the Federal Communications Commission and given them an opportunity to check these people's credentials and background and make sure they do have this cash; and they still deny me the opportunity to come back, give them the 10% down and pay full price for the license. (CDavis322, pp. 28-29)

Mr. Davis concludes by sharing his perception of how the FCC specifically marketed the IVDS licenses to the small, women- and minority-owned business communities. He feels that these communities were “set up” by the FCC.

Well, this is hypothetical of course on my part. This is what I see happened with IVDS. I think that, it looks like to me, now this is strictly speculative, because I have no evident[iary] proof, the Federal Communications Commission set up the minority community. That is, they touted these IVDS frequencies and spectrum to be the greatest thing that happened in the world since White bread.

And what they did was they made great efforts to reach into the community, into the so-called minority community to get them to apply for these licenses. . . . Thirty-four percent of those [who] won the licenses were of that nature [small, minority- and women-owned businesses]. Hey, really, [the FCC] just touted it like it was a great thing. You know, this is something that it gonna be a breakthrough for the so-called small business person, minority individual, and females. That this is going to be the opportunity for them to get a break in the communication industry, which will render them wealthy, essentially.

And we're gonna give them this chance to do this with this new technology and new ideas and blah, blah, blah, and they went on and they put it in the Wall Street Journal. It was in the Washington Post. It was in every newspaper I ever had, they sent out little brochures, they did everything they could to reach into the communities to get people to bid on these things. And they did it. They turned around and left a sour taste in virtually everybody's mouth. (CDavis322, pp. 33-35)

(k) Abuse of the System

Ownership programs that were designed to benefit minority- and women-owned businesses were sometimes abused by White men using women and minorities as “fronts” for their applications. They would specifically recruit women and minorities to pursue licenses using FCC minority and female programs and credits, but lacked the good faith intentions to include their “partners” in meaningful ownership or decision-making positions.

Alternately, believing that women and minorities did not have the “staying power” to put up a protracted fight for a license, other groups of White men would file applications when they believed a woman or a minority had an excellent chance of winning a license, fully expecting that sooner rather than later the woman or minority applicant would pay them off to withdraw from the selection process. This scheme was referred to as “greenmail”.

Some minority and women interviewees recounted instances when they had to respond to multiple appeals of the FCC’s award of their license. Carl Davis, the study participant who encountered the IVDS difficulties above, shared his story of being greenmailed in his bid for cellular licenses.

[The people who contested the awarding of the cellular license] . . . were two people out of Kentucky. [Their] last names were Peter and Moon. And then there was a so-called committee out there called Committee for a Fair . . . Auction, or something [like that], I forget exactly what their names were. (T) hose were the people that were involved. And we were what they referred to as “greenmailed” at the time. Meaning they were using a technique that the FCC allowed to take place, which was nothing but Blackmail—that is anybody could file a petition to deny a license against you for whatever reason they may have thought they could have done it for.

And it's referred to as greenmail, in the sense that where it was a money-making, illegal in my opinion, concoction of somebody out there in the hyperspace or whatever you want to call it. Because if you didn't [pay them to go away], you would have to go through a hearing process at the FCC and you [would] have to secure lawyers and you [would] have to do all the things involved.

So it costs you a great deal of money just to get to that point in time, get your license awarded to you...They chose a lot of people. I wasn't just the only one. (T)hey [filed a number of complaints]. They went through an entire listing against those they felt probably would pay rather than fight. One guy was, I forgot the first names, but I can remember the last names because they were substantial to me at the time. Peter and Moon, and they were from out of Kentucky.

I ended up paying them a million dollars... Because the FCC was going to carry this thing, and carry it out for a long period of time, so I just paid them a million bucks... I spent a million dollars to pay Peter and Moon, they got \$500,000 a piece. The Committee . . . for a Fair Auction, something to that effect, they got \$168,000 I think it was. And the legal cost of all of this came to, because I had a contingency contract with the attorneys, they ended up getting \$700,000. So all told between Peter and Moon, this Committee for Fair Auction, my lawyer and his marketing firm, who ended up getting \$750,000, so all told it was close to \$2 million dollars. (CDavis322, pp. 12-15)

(I) Inferior Licenses

Whether it was late market entry (in both broadcast and wireless), insufficient funds for the purchase of larger market licenses, or the perception of brokers and sellers that small businesses, especially minority businesses, couldn't afford the more powerful signal stations, small, minority- and women-owned businesses frequently ended up with inferior properties. In the interview process, we found this with minority-owned businesses more than any other demographic group.

Broadcast licensees deemed the quality of their licenses as inferior if they were in small, less populated markets; if their signal strength was weak or spotty because of geographic terrain; if they suffered interference from other stations in the area; if they had their AM station at the 1600 kHz and above, or if they were daytime-only AM stations. Inferior wireless licenses included secondary and tertiary markets or spectrum for which no viable technology exists, such as with IVDS.

As one might imagine, it is more difficult to achieve and maintain profitability with inferior licenses. Further, anything that the FCC does to limit these licensees' ability to offset the economic deficiency such as denying requests for additional power or grandfathering in older more powerful stations when rules regarding frequency interference are changed creates a further burden.

Dale Gehman, a Native American radio station owner, offered his opinion that there are “two sets of rules” – one for new stations and one for the older stations whose signals create interference but who are grandfathered in under newer, more stringent FCC regulations.

It's those that were “the power to be” years ago, and their level of what they're operating at has extreme interference, but that's okay, they're “grandfathered”. But if you do a new facility, a new group, try to do something for their community, “oops,” you got to meet these extreme stringent rules. As far as minorities getting in the market, there should be one rule for everybody. If this certain contour is interference, then by God it should be for everybody. And if that means lowering power on the old stations, so be it.

Or at least go to what the worse condition is in the country, and that's the standard, because the spectrum's used up. If they were to say, okay, here's the rule, because here's what the grandfathered stations are operating at and everyone can now operate at this, then it opens up the spectrum for many more stations.

Of course the existing broadcasters are not going to like that. They're going to say, “hey, that's terrible, there's new stations coming on.” But you're holding people to two standards. You're saying, okay, minority groups, we'd like to have you in broadcasting, and we'll help train you and we'll do our EEO programs, but you really don't want to be in ownership because we're going to limit you because you have to meet these new rules while we operate under these old rules, that really there's no parity at all. It just does not make sense to me, and I don't really understand. . . . It's not right. (DGehman132, pp. 25-26)

We already shared Mateo Camarillo’s story about the C-block auction where, because his funding dried up when the ownership programs were eliminated due to Adarand, he had to significantly scale back his bidding and as a result, acquired licenses in inferior secondary and tertiary markets.

. . . but we subsequently learned the hard way that people aren’t interested in Timbuktu of the world. Which is where minorities tend to end up because they don’t have the capital, they don’t have the wherewithal to go public, to have the critical mass to have this staying power. (MCamarillo375, pp. 21-22)

We’re also reminded of comments made by Cellular Telecommunications Industry Association’s Brian Fontes about C block small businesses being last to market and therefore having “a more difficult time – one, raising capital, and two, competing.” (BFontes524, p.11)

Nancy Douglas, owner of IVDS licenses, shares that “. . . there are no small minority, small business opportunities anymore. They’re gone. There will not be any. [E]verything from now on that they’re selling is really expensive. You know, it’s like the only thing that they have left is stuff way, way up there on the (wireless) spectrum. And that’s stuff’s really expensive to construct. (NDouglas155, p. 19)

(m) Decision-Making and the Role of Key Market Participants

Almost all licensees acknowledged that they needed legal and often engineering representation before the FCC. Although fees for these professionals is often very expensive, most interviewees acknowledged the value. It was a challenge for many, however, to pay Washington, D.C. prices for their professional advisors. Additionally, several study participants spoke of the relationship of key market players, primarily attorneys, to the FCC and its decision-making function. They shared experiences where it was their perception that some licensees, or prospective licensees, were receiving more favorable treatment than one would expect given their application's merits.

Others spoke of those intermediaries who were all too familiar with the rules, regulations and inner workings of the FCC “gaming the system” and causing delays in the process for competing licensees.

Dennis Miller, a wireless license holder, acknowledges the importance of good legal representation before the Commission when he said “[Our law firm is] experienced and understands the [FCC] well. [It] has relationships with the Commission staff, which is vital. (DMiller147, p. 8)

Dale Gehman sees it from another perspective. He shares an experience where he perceived that others were gaining advantage in ways that were expressly against Commission rules.

One thing that really bugs me about the rulemaking branch is that there is a great deal of contact by certain [non-FCC] people that I am convinced helped determine how some of the rulemakings [came] out of there. I'll tell you, there's some more stuff going on behind the scenes.

[A broadcaster I know] was on the phone to the rulemaking branch every other day. And, it's like, those are closed proceedings. You're not even supposed to talk to those people up there. [the FCC] allow[ed] contact in there that should really be prohibited, and I saw this work several places in Alabama [where] I know that there's no way he'd have got[ten] that pulled off, except that he just really befriended the people in the rulemaking branch and just stayed after them and after them, on the phone calling up there every couple days . . .

I don't understand how some people can get things like that done, and then we try to follow everything exactly the way it's supposed to be and we would get [our application] kicked out with the least little thing. I mean, it was just like these little tiny areas in dispute. Our [applications] got kicked out. There'd be other broadcasters around us. They would have major problems with their applications. Their attorneys would go over and sit with the Commission, and they would just set them aside. And we would get kicked out. We would have to go back in the whole proceeding. (DGehman132, pp. 19-23)

Robert Fink talks about trying to use the Commission's web site to help defray legal fees.

I have to spend money on lawyers and research engineers to find if there is something coming up. I mean, go to [the FCC's] web site, and everybody now says, well, everything is available on their web site. Trying to find something on there is nearly impossible anyway. And 90% of the time, when you go to it, it tells you "unavailable at this time"... it just never seems to give us what we want, and, half the time it is under construction and that type of thing. Their maintenance on it is horrendous. And if that could be maintained, that would save us a lot of time but also a lot of [money] ... we have to call our attorney at \$150 an hour to find out stuff. (RFink235, pp. 26-27)

Art Gilliam talked about his experience in the comparative hearing process where he perceived that the outcome of the hearing was "politically influenced."

I have participated in a comparative hearing process . . . This was related to a television matter that took place involving the RKO license . . . there was here in Memphis and . . . some people here put together various groups that competed for the license; and I was a part of one of those groups, but not the leading part of that group in terms of economics. No [we were not successful in getting the license], and I think that the party that was successful probably had political connections because I don't believe that based on the criteria that the FCC set forth that that party would have been able to otherwise win the license, but they did.

They were not local, and it had some considerable differences, based on ethnic criteria. So my conclusion from all of that was that politics does indeed play a considerable role in the outcome, although probably certainly not at the staff level of the FCC. . . . I am personally and totally convinced that the outcome was politically influenced.... when you look at the criteria, you could readily [see] that their integration of management into ownership was not at the level of several of the other groups, they were not local, so several things.

In fact, the lawyers we were using, who are themselves well-connected lawyers, initially told us that they were assessing the groups and said this group basically didn't have that good of a chance that there were about three other groups that really were the main competitors and we were one. Later on, these [same] lawyers, . . . later one came back and kind of hedged a bit and talked about how this [other] group had excellent opportunities. I just believe that they had gotten inside information about this group; and it's not something I can demonstrate by proof, but it's just a matter that I don't believe that, and I guess, subsequent political developments in the country that I've come to be aware of, have convinced me even more so that money can buy licenses.

. . . I don't have a perception of the FCC at its . . . staff level engaging in discrimination. I have not experienced that personally. At the same time, I think at the Commissioner level, which is an appointed level, there is political influence that can be brought to bear down through the organization and I think that's what happened in this case. Which is

different than discrimination, but it's discrimination in the institutionalized sense in that most that have political influence are less likely to be African American. (AGilliam117, pp. 13-17)

Other than the FCC, the media broker appears to wield the most influence over who receives notice of station purchase opportunities. David Honig, Executive Director of the Minority Media Telecommunications Council (MMTC), explained that through the years civil rights organizations have complained “*that minorities weren’t hearing about stations for sale until the deal was announced.*” When stations were offered to minorities, Mr. Honig explains, the properties were often troubled or technically inferior. Dr. Benjamin Hooks, the first African-American FCC Commissioner tried to correct this situation through a ruling at the FCC. He was not successful. David Honig, who worked for one of the organizations that filed a complaint, explains what happened.

What Dr. Hooks was responding to was complaints by some of the civil rights organizations ...that minorities weren’t hearing about stations for sale until the deal was announced. ... that when minorities would get called saying a station is for sale, it was often a station where the owner was desperate that they would even consider minorities and the station was frankly technically inferior, it was on an environmental site, or something was wrong with it. But the really juicy deals, minorities weren’t hearing about.

One difficulty that brokers had often pointed out was, “Well once you start having some of the sales announced publicly and others not, people will move around. It will be a competitive disadvantage if we have to announce it and they don’t close. Then our staff will move over there and we’re sort of selling the continuity of the staff as an asset that we’re selling that affects the price and sometimes when formats change, people want to move and they note that it is and so forth, a good point.

[Dr.] Hooks’ answer was “Fine, let’s have a level playing field.” Everyone who sells a station has to announce the sale 45 days before they can sign a contract on the sale. That way, everyone equally will know what’s for sale, and everyone will have a chance to bid openly. And let the one with the most money win. And that was a radical idea because it didn’t get any other votes. And the reason it didn’t get any other votes, to be fair, was that some of the Commissioners who opposed it felt that then everyone will have their key assets moved somewhere else and depress the value of the industry.

But there was no answer to it in terms of, well, what else are we [going to] look at that might work to open up this brokerage business. Are you going to have any hearings? Because, [Dr.] Hooks was calling for some remedy for discrimination by brokers. This particular idea was one, but then the Commission just dropped the ball and well, we’ll deny this idea and not look at anything else either. There was some boilerplate in it that, well, we think this is an important problem. We’ll continue to look at it. They didn’t. (DHonig521 #2, pp. 19-20)

(n) Ineffective or Unaffordable Advocacy

Many study participants expressed frustrations over their inability to afford a cadre of communication attorneys, as the large group owners and telecommunication companies do, to represent their interests before the FCC and Congress, to respond to rulemakings and to move licensee requests for action quickly through the various processes and Bureaus within the Commission. Advocacy by members of the communications bar provides more opportunities for access to key FCC decision makers.

Several licensees indicated that they had neither the time nor the financial resources to be able to spend time in Washington, D.C. representing their own interests, lobbying members of Congress and meeting with FCC staff.

Ronda McKenzie, an owner of multiple wireless licenses, shared her perspective on the issue of small business advocacy before the FCC.

Well, I'll tell you the biggest problem is these big carriers have tons of money to have 20 lobbyists up on the floor up there with the FCC people and, you know, [the Commission] grease[s] the squeaky wheel. And small businesses and minorities don't have that kind of money, you know. We can't – I mean, we're worker bees. We're out here trying to make it happen and we certainly don't have the funds to pay professional lobbyists to be sitting on the floor to protect our best interests. And there's nobody there to protect us. And no one really is there to represent our interests. And we don't have the money to do – and we can't fight AT&T and Sprint, you know. (RMckenzie158, p. 13)

To assist the small, minority- and women-owned businesses, the Office of Communications Business Opportunities (OCBO) was established. According to Frank Montero, former Director of OCBO, the Office is “*charged with helping small women and minority owned businesses enter into the telecommunications and technology marketplace to try to address barriers that they may be facing in terms of trying to get into that marketplace, either because they are having difficulty obtaining access to capital, or they may have difficulty obtaining information about Commission proceedings that they may be interested in participating in or information on how to apply for a license.*” (FMontero509, p. 1)

Mary Helen Barro, a former owner of radio stations and former President of the American Hispanic-Owned Radio Association, explained her perspective, which was echoed in part by others.

We went to Congress—well Congress, well, forget Congress. They didn't care about the little people. What they cared about and what they've always listened to are their big contributors, which [are] the major corporations, and the major corporations had a lot of money and they wanted in. ... I was pretty much up on what was going on in the industry. I also had very good and expensive attorneys that kept me apprised. But if you did not have the luxury of having an attorney stay on top of things for you, you basically were left out of the loop. You had to spend a lot of money because believe me, the FCC

never told anybody anything. Their system of notification ... is really one that is structured for the large companies that have the money to have attorneys that constantly stay on top of what is going on at the FCC. For the small broadcaster, who is on limited funds, forget it. You're never going to find out anything. (MHBarro190, p. 7-9)

Henry Rivera, having worked with the FCC in multiple capacities for years, noted that “it’s very difficult” for small, minority- and women-owned business. “They really don’t have much of a voice [at the FCC] and they ... don’t have the same stature or muscle power basically that some of the bigger operations in town are able to muster. (HRivera516, pp. 14-15)

Toni Cook Bush highlighted another problem which small businesses, especially new entrants, can be confronted with when trying to secure representation before the FCC.

“It is very hard to find engineers and attorneys that don’t already represent one of these other guys, so you find that minority companies, and I think female companies and smaller companies go in at a disadvantage because there’s nobody for them to hire. So if we could hire another engineer who was better known at the FCC, we would do it in a heartbeat. But we can’t find anybody who doesn’t have a conflict.” (TBush378, p. 19)

To help eliminate some of the reliance on communications attorneys, the Commission and OCBO have worked hard to make access to information and the license application filing process more user-friendly through the use of the Commission’s web site. Frank Montero talked of this transition.

I think ... there is clearly a movement afoot at the Commission to try to break that reliance [on Washington, DC-based FCC attorneys] because obviously people who can’t afford an FCC lawyer in Washington are left out. . . . [Information technology and the Commission’s web site] has certainly broken the inside-the-beltway monopoly on the communications law practice. And perhaps this is the first step of the evolution is that now, ... if you look through the ranks of the Federal Communications Bar Association, it’s amazing how many communications lawyers are outside of Washington.

... Well, there is no way those people could have existed ... five, ten years ago. I mean ... you had to be able to walk over to 1919 M Street to meet with people, to get copies of things from the reference room, to go to the commission meetings. I mean, if you couldn’t do that, make the filings, you just could not have practiced that type of law. The fact that somebody in Little Rock, Arkansas can watch commission meetings because it is being web cast on the computer or make their filings through the electronic filing system, or get any ... information about the status of an application or anything on the computer, it is amazing. (FMontero509, pp. 30-31)

And yet, a web site does not replace the effectiveness usually associated with well-paid attorneys and lobbyists.

7. Education, Training and Experience

The study found that a number of minorities who were in either the broadcast or wireless industries, or both, had significant educational background and work experience, in almost all instances, greater than for their White male or female counterparts.

We interviewed, for example, several people who had undergraduate engineering or broadcasting degrees; one minority woman had a Ph.D. in public policy and had attended a small business executive education program at Harvard Business School; a number of people had law and either undergraduate or graduate business degrees from various well-known universities and colleges; one person had been a senior executive at the investment backing firm of Goldman Sachs; another had been in charge of international advertising for Proctor and Gamble; a third had been publisher of a weekly industry newspaper for the Hispanic radio market; and yet another had a masters in social work, had started a school of social work, had been a successful multi-unit McDonald's franchisee, and a university professor.

While education did not necessarily translate into market success, the kind and quality of prior work experience had an enormous impact on one's ability to raise significant sums of debt and equity financing which ultimately translated into opportunities to purchase stations in the secondary market. For those minorities who experienced greater access to capital than was usual for minorities taken as a group, the common denominator was significant private sector work experience, either in finance, marketing or broadcasting. With this background they were not only able to capitalize on their successful track records but also on their network of contacts to assist in the raising of financing and access to deal flow. Often prior business colleagues became private or venture capital equity partners or investment bankers and lenders.

Especially in today's broadcast industry climate of consolidation, extremely high station prices and far more scrutiny of management expertise by brokers, lenders and venture capitalists, good solid private sector experience is an enormous benefit to both the new entrant and those licensees looking to increase their holdings.

Additionally, many station owners we spoke with had, at one point, been station managers and/or sales managers for others. There is no question that this background was helpful to them when it came time to deal with the day-to-day operations of their stations. However, what was generally lacking in these individuals was knowledge of finance, deal making and business plan development, all qualities that enter into a media broker's evaluation of a prospective buyer's "competency to close."

The findings above point to an increased need for small businesses who are new broadcast entrants or those who currently own stations not only to receive sophisticated business training but also to have access to career tracks which will enable them to gain the kind of experience that opens the doors to opportunity in today's market place.

Many industry-related training programs are available that are not connected with specialized college and university departments. For example, The Minority Telecommunications Development Program (MTDP), under the auspices of the Department of Commerce's National Telecommunications and Information Administration (NTIA), offers training in broadcasting through its ComTrain program. S. Jennell Trigg, a communications attorney, founded and developed The Telecom Opportunity Institute, a not-for-profit corporation which "*promotes career opportunities, employment, and ownership in telecommunications for minorities, women and at-risk youth.*" And starting in September 2000, in conjunction with the National Association of Broadcasters Foundation, Diane Sutter, a successful television station owner, will be presenting a year-long broadcast-related "executive MBA" program for thirty students. Funding has been raised for a three-year pilot program, with specific financial assistance available for up to 15 women and/or minority broadcasters each year.

Classroom training aside, nothing can replace solid on-the-job training. In this study we found clear evidence that prior significant industry-related work experience was critical for access to both capital and opportunities. The failure of the FCC's EEO policies through court action and lack of enforcement severely curtailed the development of a cadre of women and especially minorities who could have gained the experience necessary and been ably prepared and ready to compete in the post-Telecom Act world.

8. Perceived FCC Climate

Several study participants expressed concern over their participation in this study because they did not want to become too visible to the FCC. There were a few study participants who chose not to have their comments taped or transcribed or otherwise asked that their comments not be attributed to them. They felt that if they publicly criticized the Commission they would be opening themselves up to such things as delays and unfavorable rulings, both of which would be costly. In a few instances, interviewees shared experiences in which they were instructed by their legal counsel not to push certain items with the FCC because by doing so they might imperil a favorable decision.

When queried, virtually no licensees were aware of any formal complaints that had been filed against the FCC. Dorothy Brunson, an African-American television owner, offered this explanation.

No, I don't think anybody has that kind of courage. One of the things that people are always aware of is that you've got to live in this environment, and so you can't cut the hand off that's feeding you. You may not be getting a belly full, but you're not starving to death. So, you're caught in a kind of a Catch-22. You don't want to appear persona non-grata, and do something that's going to make you stick out like a sore thumb.

And so you kind of keep your mouth shut and you try to continue to push and shove without making a tremendous amount of noise. Because, you know, you have to survive in this business or you get out. But you can't do both. Especially if I were Preston

Padden (a broadcasting industry lobbyist), or I was any other of the major lobbyists, I could say a lot of things that they say all the time, you know, as it relates to ABC, or relates to the cable or broadcasters or NBC [or] National Association of Broadcasters. But we can't say those things, because we're too small, we're too vulnerable. So do we file? No, nobody in their right mind's going to file. (DBrunson105, p. 21)

Concerns of this nature conceivably have an impact on small, minority and women licensees' willingness to "lobby" the FCC or Congress for programs, regulations and/or rulings that could ultimately either lower barriers to entry or increase opportunity for business growth. Without the resources to hire lobbyists on their behalf, their discomfort with approaching the FCC or Congress muffles the voices of those least likely to be heard.

V. IMPLICATIONS OF THE FINDINGS

Our detailed findings of the experiences of small, woman and minority-owned businesses provide us with the knowledge and perspective to form broad conclusions in nine major areas concerning past, present and prospective market entry barriers, as follows:

A. Capital and Markets are the Drivers

The present broadcast and wireless industries and their regulatory structure, perhaps more than at any time in the history of the FCC and the industry, is, by design, responsive to capital and market forces. Given a well documented, established and accepted fact that (in increasing order of severity) small, women- and minority-owned businesses are capital deficient, there is little wonder that participation by such businesses in FCC licensed industries is alarmingly low, and, by all appearances, on a steep and severe decline.

In the words of one licensee interviewed, we now experience “[what] blind reliance on market forces brings you to.”

B. Absence of Critical Mass

As to women- and minority-owned companies in broadcasting, timing has been everything. Historically and systematically excluded from industry participation due to overt and passive discrimination on the part of local communities, the broadcast and advertising industries, secondary market players, and the FCC, modest inroads were made after 1978, with the adoption of minority and female ownership programs and credits. Their modest gains through the mid-1990s had hardly the opportunity to take root, and grow sufficiently strong, in order to buffer them from and increase their chance of surviving deregulation.

Powerful industry countermeasures, nurtured by Congress and the Courts, and half-heartedly opposed by the FCC, in rapid succession undid a less-than-two-decades effort to redress nearly seventy years of barriers to entry for women and minorities. The sequence of rollbacks of minority and women ownership programs and credits, industry-wide deregulation, industry-wide consolidation, even, the absence of accurate, up-to-date statistics documenting the full impact on women and minority participation, have combined to present significant barriers to women- and minority-owned businesses being significantly represented in broadcast and wireless ownership.

C. The Role of the FCC and Congress

As stated by one interviewee, “there is something besides the market in the world ... if unresolved market forces were to be the criteria under which all would be conducted, why does the Constitution give Congress the power to regulate commerce?”

As a large bureaucracy with wide-ranging responsibilities, the FCC presents myriad faces before the public. When it comes to small, women- and minority-owned businesses, the FCC too often has been perceived as being detrimental to policies, procedures and enforcement that would enhance participation by small, women- and minority-owned businesses.

This study revealed anger, frustration, disappointment, and resignation on the part of numerous small, women- and minority-owned business owners at Congress and FCC actions that have erected and heightened barriers to entry and growth. Their concerns included:

- The FCC “looking the other way” when confronted with Jim Crow discrimination in broadcasting in the American South;
- The perceived lack of strong, corrective action by the FCC on EEO and other discriminatory policies perpetuated by “big industry”;
- The FCC’s acquiescence to the distribution of licenses in the secondary market where information and capital are rationed within “old boy networks”;
- A long-standing give-and-take relationship between organized industries, e.g. broadcasters, local and long distance telephone service providers, and the FCC;
- Routine FCC acquiescence to interests in the private sector, Congress and the Courts opposed to the concerns of small, women- and minority-owned business;
- A perceived lack of responsiveness historically to advocacy by small, minority and female business interests;
- The perception of a willing acquiescence to the abandonment [by Congress] of the minority tax certificates and other “ownership programs” without substantive protest upon the earliest sign of judicial opposition;
- The FCC’s support for auctions, despite possible disparate implications of distributing wireless and broadcast licenses to the highest bidder;
- Self-interest, resistance and inertia within the FCC on small, women- and minority business issues;

Leading up to passage of the 1996 Act, advocacy and representation on behalf of small, minority and female business interests before the FCC was considered weak and ineffective, in comparison with stronger, more influential lobbies representing existing broadcasters and large corporations. Fear of reprisal from those in a bureaucracy perceived as being more concerned with future employment with large corporations served to squelch some from louder, more public dissent.

Many interviewees perceive the FCC as contributing to the lack of opportunities and participation by small, minority- and women-owned businesses in the communications market. It is little wonder that many study participants have reluctantly given up hope of prevailing as competitors in broadcast and wireless industries in the future.

D. Discrimination

Discrimination appears to have played an important role as an entry barrier, especially to minority participation in broadcasting, from;

- segregation in the Jim Crow South, legally depriving African Americans and their communities of information, employment and ownership opportunity,
- pervasive discrimination and structural barriers to financing and economic participation,
- pre-1996 Act barriers to entry and expansion based on advantages of size and scale derived under previously discriminatory advantage,
- the post-1996 Act rollback of previous advances made, primarily from the tax certificate program.

A clear majority of women and minority licensees interviewed in the study believed they had encountered discrimination in their attempts to become licensees: in raising capital, in the secondary market, and in operations. As a result, successful licensees persevered, despite discrimination at many turns, and, despite the belief that their experiences would have been significantly easier, if their circumstances had been exactly the same, and they were White males.

This anecdotal study illustrates the complex, intricate and pernicious working of historical bias and discrimination throughout our society. It demonstrates the tenacity of individuals in the face of such discrimination to persevere, to strive to break through in spite of bias. And it demonstrates the difficulty and enormous resources required to uncover definitive proof of the bias that lies within the hearts and behind the actions of some.

E. Bidding Credits in Wireless Licensing

The study participants perceived the bidding credits as a failure even though the FCC used them in the wireless auctions in an effort to enhance opportunities for small, minority-, and women-owned businesses. Few small businesses, and precious few women and minority businesses, found bidding credits of sufficient value to offset the capital resources of large companies in auction contests. The biggest impact of bidding credits, according to interviewees, was to artificially elevate the final price of wireless licenses, with little or no impact, on the eventual result of licenses being issued to small businesses.

F. Relaxation of Ownership Caps

Small-, women- and minority-owned businesses, with a small number of notable exceptions (e.g., Radio One Communications, Z-Spanish Radio, Granite Broadcasting) have been and continue to be driven rapidly out of radio and television media ownership. Nearly all cite the relaxation of ownership caps under the 1996 Act as the principal cause.

With passage of the 1996 Act, nearly every small businessperson interviewed expressed new and substantial difficulties in competing and surviving, with expansion being virtually out of the question. The result has been an avalanche of station sales to dominant national “consolidators.” This trend appears to have impacted all small and local radio broadcast businesses and has appeared to have affected minority broadcasters particularly.

G. Loss of Community Service and Diversity of Viewpoints

This study’s interviewees uniformly reported that small, minority-owned businesses are more integrated, aligned with, and responsive to the local communities that they serve. Their declining participation in broadcast and wireless ownership, it appears, has resulted in a diminished concern for local issues and needs, which has led to a loss of diversity of viewpoints.

H. Potential Loss of Civic Participation, Democratic Values and Freedom of Speech

Informal networks of licensees, attorneys, brokers and others have worked together to distribute and redistribute licenses among those with access to the secondary market for decades. Only recently have a few women and minorities been included in this network.

The interviewees reported that this lack of access to and inclusion in the secondary market network, made worse by widespread discrimination in the capital markets, and the lack of strong, effective government and regulatory intervention, has contributed to the long-standing underrepresentation of women and minorities in broadcasting.

The present day effect of these conditions, deeply rooted in exclusionary market and regulatory structures and behaviors, create current and future market entry barriers for small, women- and minority-owned businesses of crisis proportions. These barriers result in;

- fewer small, women and minority broadcast licensees,
 - fewer broadcast stations and wireless licenses owned and operated by small, women and minority licensees, and
 - fewer communities served by local and community-based small, women and minority licensees.
-

This impact, especially upon small and minority-owned businesses, as became apparent in this study, was overwhelmingly clear. The result, according to many of those interviewed, has been a dramatic loss in the diversity of viewpoints provided by the nation's mass media, and a concentration of influence and control of the means of mass communication of possibly unprecedented proportions.

I. The FCC is the Public Trustee of the Broadcast and Wireless Spectrum

Passage of the 1996 Act, and the rapid and harmful impact on small, women- and minority-owned businesses as foreseen and testified to by many, calls into question the proper role of the FCC in allocating spectrum consistent with the public interest, convenience and necessity. Questions such as:

- What is the role of the FCC in an era of auctions and consolidation? How does the FCC balance its goal of maximizing revenues with maximizing diversity? Which is the greater public good?
- What constitutes appropriate trusteeship and management of public assets such as radio frequency spectrum? To whom do the airwaves belong? Do they belong to the highest bidder in auctions that will inevitably be controlled by corporations that are nearly 100% controlled by White men?
- Who protects individuals and communities from the excesses and effects of capital and markets without “appropriate constraints” on corporations?
- What governmental body provides protection against anti-competitive behavior in local markets, as the FTC and DOJ provide over national markets?
- In a free-market economy, what is the measure of “appropriate regulation?” Is the current level of FCC regulation insufficient?”

This study revealed a strong linkage between small business, local ownership and the professed core commitment by the business owner to local interest and community service. These values were offered in contrast to the obligations of publicly owned companies consolidating the broadcast industry to maximize profit and shareholder value.

Radio in particular reveals itself in the words of this study's participants to be a uniquely personalized and local voice of the community. This study, therefore, calls into question the meaning and value in our society of public service and community interest.

Frequent mention was made by participants interviewed of “profit taking at the expense of social responsibility” referring to the FCC's sponsoring of auctions to distribute licenses. Has the FCC and the government become “corrupt from greed” as many suggest, exchanging public interest for governmental revenue as its purpose, mission and charter?

In the wake of rapid technological changes and market consolidation, finally, what is the FCC's role in shepherding and leading the protection of our freedoms of speech and diversity of viewpoint on the nation's airwaves? Small, women and minority participants interviewed were passionate in their belief that vital freedoms and values have suffered, perhaps irreparably, from recent consolidations of media power in the hands of relatively few corporate owners.

To the extent that important national trusts are threatened, and possibly compromised, as this study suggests, critical questions are raised concerning the nature of the relationships, responsibilities, accountabilities, and authority between the nation's industries, its legislative and judicial branches, its citizens, and our society.

VI. CONCLUSION

Historically, minorities, and less so women and small businesses in general, have confronted barriers to entry into the broadcasting industry. An anecdotal study of this nature is particularly valuable because it specifically illustrates the difficulties faced by small, minority- and women-owned businesses. This study provides a face and voice to real-life people who have encountered barriers that are all too real. They have faced discrimination in the financial markets, limiting access to capital. They have faced discrimination in their communities, limiting access to employment opportunities and land for communication towers. They have faced discrimination in the secondary market, limiting access to information about and the opportunity to participate in the buying and selling of stations. They have faced discrimination in the advertising industry, limiting access to advertising revenue, the life blood of a broadcasting company. All of these factors have contributed to a disproportionately low number of minority and women owners in broadcasting who have been able to sustain their company's viability and position it for growth.

In the wireless industry, where realistic opportunities for small businesses to participate in acquiring licenses have only been available since the middle 1990s, lack of access to the large sums of capital needed to build out wireless systems has been the greatest barrier to entry. Wireless licensees have encountered the same difficulties acquiring debt and equity financing as those experienced by their broadcast licensee counterparts, causing many of them to default on financial obligations to the FCC, thereby having to forfeit their licenses.

To help mitigate these market forces, both the FCC and Congress have established through the years various ownership programs to increase the opportunities for market entry into both broadcasting and wireless telecommunications for small, minority- and women-owned businesses. Programs such as minority ownership programs in the comparative hearing process; bidding credits in the lotteries; and installment payments, bidding credits and favorable interest rates in the auctions, were established to enhance the probability that women, minorities and small business owners would participate in the FCC's processes for awarding new licenses. The distress sale and especially the tax certificate policies opened up access to the network of sellers and brokers in the secondary market for media properties to the often excluded minority prospective licensee.

Countering these positive programs, Congress and the courts halted what progress was being made in the increase in broadcast ownership by minorities, women and small businesses when in 1995 Congress repealed the tax certificate program and the courts ruled in *Adarand*, and in 1996 Congress passed the Telecommunications Act of 1996 which deregulated broadcasting and brought on a sudden and rapid consolidation of media properties into the hands of the few. It appears that the confluence of these events, with their collective negative impact on small, minority- and women-owned businesses in the broadcasting and wireless industries, has virtually forestalled any progress that was being made and has, in fact, created a crisis in participation in telecommunications by these businesses. The barriers to entry have been raised so high that, left standing, they appear virtually insurmountable. Minority, women and small business ownership

in these industries is diminishing at such an alarming rate that many we spoke with felt we had passed the point of no return.

While discussing passionately the negative financial and personal impact small, minority- and women-owned businesses are sustaining from these converging forces, the greatest concern by far of those with whom we spoke was the loss of service to their communities, the loss of diversity of viewpoint, and the threat to freedom of speech that the market consolidation in telecommunications was creating. They collectively believed that the mission of protecting the public interest must continue to be served and that market forces left to their own devices would seriously erode that purpose.

The participants in this study generally agreed that programs, such as the tax certificate policy, that provide incentives to sellers and investors to conduct business with specific groups of people work well. Without them, if history is a predictor of the future, the network of participants in the secondary market for licenses (sellers, brokers, debt and equity investors) will continue to do business with people they know and with whom they have previously had successful dealings. Without these incentives, the door to opportunity will remain closed to all new entrants except for the lucky few who come to the table with just the right mix of vision, experience, and equity.

Furthermore, we heard repeatedly that small, minority- and women-owned businesses need a louder voice before the Commission if their interests are to be served as mandated. They are lacking the resources, either individually or collectively, to be strong enough advocates for themselves. Whether it is more authority for the Office of Communications Business Opportunities or an office which helps to expedite applications and licensing for small businesses, these entities have special needs for timely responsiveness and an understanding from the Commission of the issues they confront running a small business day-to-day. As a substitute for presence before the FCC, it is also imperative that the Regulatory Flexibility Act be consistently and seriously implemented, as these actions can serve as the ombudsman for those whose voice is but a whisper.

Lastly, what also became clear through our study is that there are three government agencies, the FCC, SBA and the National Telecommunications and Information Administration (Department of Commerce) that are focused on promoting opportunities in telecommunications for small, minority and women-owned businesses. Yet there was little evidence that much, if any, collaborative effort existed to coordinate these agencies' activities to the benefit of those they are trying to serve. To have these agencies speak loudly, with one voice where possible, before the Commission and Congress would meaningfully strengthen the advocacy these businesses so dearly need.

Without serious and swift dialogue around how to overcome the market entry barriers discussed in this report, there will be little chance for small, minority- and women-owned businesses to enter into and succeed in either broadcasting or wireless telecommunications. It is important that Congress, the courts and the FCC consider the impact that market forces, left unchecked, will have on the public good. It seems that the business of telecommunications has shifted its primary focus from serving the people to serving the pocketbook. It is imperative that a new balance be achieved if the public interest is to be served.

APPENDIX A - HISTORICAL TIMELINE

**FEDERAL COMMUNICATIONS COMMISSION
STATUTORY, REGULATORY AND HISTORICAL TIMELINE
1950-Present**

CATEGORY	EVENT	DATE
Primary Market: Comparative Hearings	✓ As a result of <u>Ashbacker Radio Corp. v. FCC</u> , 326 U.S. 327 (1945), the FCC was required to hold comparative hearings for mutually exclusive applications. The Supreme Court held that “[w]here the Federal Communications Commission has before it two applications for broadcasting permits which are mutually exclusive, it may not, in view of the provisions of the Act for a hearing where an application is not granted upon examination, exercise its statutory authority to grant any applications upon examination without a hearing. ...”	1945
	✓ The <u>Policy Statement on Broadcast Comparative Hearings</u> , 1 F.C.C. 2d 393 (1965) articulated and clarified the criteria used in the comparative hearings for assigning licenses. The seven (7) areas for which applicants received credit (or “points”) were: diversification of control, integration of ownership into management, proposed program service, past broadcast record, efficient use of frequency, character, and other significant and relevant factors to be considered in the decision-making process.	1965
	✓ Comint Corp. challenged the FCC’s refusal to explicitly consider race in the comparative hearing process (in which Mid Florida Corp. was awarded the license) and appealed the FCC ruling to the D.C. Court of Appeals. Comint argued that minority ownership should be given comparative credit on the basis of the 1965 Policy Statement on Broadcast Comparative Hearings. The FCC noted that “the Communications Act . . . is color blind and therefore, in a comparative broadcast proceeding . . . Black ownership cannot and should not be an independent comparative factor . . .”	1965

CATEGORY	EVENT	DATE
Primary Market: Comparative Hearings (continued)	✓ In the 1974 <u>TV 9 Inc. v. FCC</u> decision, the DC Court of Appeals reversed the result of the <u>Mid Florida</u> comparative hearing. The Court concluded that minority stock ownership is “a consideration relevant to a choice among applicants of broader community representation and practicable service to the public. ... We hold only that when minority ownership is likely to increase diversity of content, especially on opinion and viewpoint, merit should be awarded.” This decision set a new precedent for the incorporation of minority participation as a factor in the comparative hearing process.	1974
	✓ In <u>Rosemore Broadcasting, Co.</u> (1975), the FCC held that integrated female ownership should be awarded credit in comparative hearings because women, like minorities, are “likely to increase diversity of content.” The FCC went on to state that female participation in an application can be given credit when it “reflects broader community representation.”	1975
	✓ <u>Garrett v. FCC</u> (1975) finds that minority ownership/participation is connected to providing programming responsive to the needs of the minority community.	1975
	✓ In the 1977 <u>Flint Family Radio</u> decision, the FCC clarified the primacy of importance of both minority ownership and the participation of these owners in station affairs. “... the Supplemental Opinion of the Court makes it quite clear that the two essential elements necessary to receive merit are Black ownership and participation by these owners in station affairs.”	1977
	✓ 1978 Statement of Policy on Minority Ownership of Broadcasting Facilities formalized the use of minority and gender credits in the comparative hearing process. In 1990 the FCC declined to extend enhancement credits for minority ownership under diversification of ownership criterion.	1978
	✓ A Review Board hearing the Gainesville Media, Inc. case concluded the “. . . 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.” This decision demonstrated that credit should be applied for female participation in a broadcast license application, but that credit would not be as significant as that credit applied for minority participation.	1978

CATEGORY	EVENT	DATE
Primary Market: Comparative Hearings (continued)	✓ The FCC articulated and explained its renewal expectancy for incumbent broadcasters in license renewal comparative hearings in <u>Cowles Broadcasting, Inc. (WESH-TV)</u> [affirmed <u>Central Florida Enterprises, Inc. v. FCC</u> (1982)].	1981
	✓ Financial qualifications changed from having to <i>prove</i> financial viability to having only to <i>sign a certificate</i> that the applicant was able to meet the financial requirements.	1982
	✓ Until 1986, the term “character” (as a criterion for license assignment) was often interpreted as moral character. On January 14, 1986 the Commission issued its Policy Regarding Character Qualifications in Broadcast Licensing, outlining which character issues should be considered and how they were to be investigated. The issues to be considered involved various acts of fraud, misconduct, misrepresentation, and abuse in commercial and government dealings as well as criminal conviction. Eventually, character issues were eliminated as a comparative criterion but were kept as a basic criterion.	1986
	✓ The Policy Regarding Character Qualifications in Broadcast Licensing, 5 F.C.C.R. 3252 (1990) made certain modifications to FCC policies regarding character qualifications because the previous policy statement “took an overly narrow view of the range of misconduct that should be relevant in licensing decisions covered by it.”	1990
	✓ The decision in the <u>Bechtel v. FCC</u> case (1993) had the effect of freezing comparative hearings .	1993
	✓ The Telecommunications Act of 1996 eliminated the role of comparative hearings in the renewal of broadcast licenses.	1996

CATEGORY	EVENT	DATE
Primary Market: Lotteries	✓ Section 309(i) of the Act granted FCC authority to use lotteries to choose among mutually exclusive applications. Used to award wireless licenses for cellular, Specialized Mobile Radio, Multi-channel Multi-point Distribution Services, and Low Power TV. Congress enacted legislation that caused this section to expire on July 1, 1997.	1982
	✓ Section 390(i) of the Act required the FCC to establish incentives, rules and procedures providing credit for minority-controlled applicants in awarding licenses. Congress enacted legislation that caused this section to expire July 1, 1997.	1982
	✓ In the Lottery Second Report and Order the FCC authorized minority ownership policies for Low Power TV lotteries.	1983
	✓ The 1993 Omnibus Budget Reconciliation Act limited the use of lotteries to the allocation of non-commercial licenses and authorized a competitive bidding system (auctions) to distribute commercial licenses.	1993
Primary Market: Auctions	✓ The Omnibus Budget Reconciliation Act of 1993 (which added Section 309(j) to the Communications Act of 1934) authorized the FCC to allocate licenses through a competitive bidding process (auctions). Initially the auctions were used only for wireless.	1993
	✓ Section 309(j)(3)(B) instructed the FCC to establish competitive bidding procedures that would “disseminat[e] licenses among ... small businesses ... and businesses owned by members of minority groups and women.”	1993
	✓ 1993 Auction Notice of Proposed Rulemaking determined that race- or gender-conscious remedies must meet the intermediate standards of judicial scrutiny; i.e., the remedy must be substantially related to serve a significant governmental interest.	1993

CATEGORY	EVENT	DATE
Primary Market: Auctions (continued)	✓ A 25% bidding credit was made available to women and minority businesses for selected nationwide and regional PCS and Interactive Video and Data Services narrowband auctions. (The <u>Adarand Constructors v. Pena</u> case (1995) held that any federal program or policy which uses race as a basis for its decision-making must withstand strict judicial scrutiny. Post <u>Adarand</u> , the bidding credits were made available to small businesses without distinction for race or gender.)	1994
	✓ The bidding credits for women and minority businesses increased to 40% in two of six auction spectrum blocks in the regional narrowband auctions. Post <u>Adarand</u> , the credits were made available to small businesses without distinction for race or gender.	1994
	✓ The Commission established an installment payment program (for down payments on licenses) and interest rates for small, minority- and women-owned businesses bidding for the basic trading area, major trading area, and regional narrowband licenses. Post <u>Adarand</u> , the small business credits were made available without distinction for race or gender. The FCC has not extended the installment payment program to auction participants since the C and F Block auctions.	1994
	✓ The Competitive Bidding Fifth Report and Order set aside PCS broadband Auction Blocks C and F for designated entities on the basis of their status as minorities, women, small businesses, or rural telephone companies (“Entrepreneurs Blocks”).	1994
	✓ The Competitive Bidding Fifth Report and Order established rules concerning passive non-voting investors, affiliation, additional bidding credits, tax certificates (for initial investors in minority- and women-owned businesses – later dropped after Congress eliminated the tax certificate program in 1995), and installments plans were adopted to enhance opportunities for businesses owned by women and minorities. There was a four-tier range of bidding credits, with the most favorable bidding credits being given to businesses that were small, women-owned and minority-owned.	1994

CATEGORY	EVENT	DATE
Primary Market: Auctions (continued)	✓ The FCC eliminated all race- and gender-based provisions in competitive bidding for the C and F Block auctions. Credits that were available only to members of minority groups and women were now made available to all small businesses.	1995
	✓ The Balanced Budget Act of 1997 expanded the FCC’s competitive bidding authority under Section 309(j) to include mutually exclusive initial license applications for certain types of broadcast licenses. On November 26, 1997, the Commission released a Notice of Proposed Rulemaking proposing general competitive bidding procedures for all auctionable broadcast services within the scope of the amended 309(j), with certain exceptions. This Act also required the FCC to promote “economic opportunity for a wide variety of applicants, including businesses owned by members of minority groups and women.”	1997
	✓ On August 18, 1998, the Commission released its First Report and Order setting forth procedures governing auctions of broadcast service licenses.	1998
	✓ The first broadcast auction (the Bechtel auction) was completed in October 1999.	1999
Secondary Market: Tax Certificates	✓ The 1978 Statement of Policy on Minority Ownership Broadcast Facilities created the Tax Certificate program which provided tax deferral benefits to the seller of a media property if it was sold to a minority business. The tax certificate policy encouraged and promoted minority ownership by giving sellers a two-year like-kind-transfer tax deferral for the sale of licenses to minorities if the proceeds were reinvested in a similar communication property.	1978
	✓ Congress repealed the tax certificate program (due to allegations of abuse) with the passing of the Self-Employed Persons Health Care Deduction Extension Act of 1995.	1995
Secondary Market: Distress Sales	✓ The 1978 Broadcast Policy Statement created the Distress Sale policy which allowed for license owners that were under scrutiny by the FCC (and under threat of license revocation) to sell their station to a minority for 75% of the appraised value. In return, the FCC would cease its inquiry into the suspect license owner. Post <u>Adarand</u> , the FCC has not utilized the distress sale policy.	1978

CATEGORY	EVENT	DATE
Secondary Market: Anti-Trafficking Rules	✓ The three-year trafficking rule applied to an FCC grant of a construction permit or an assignment or transfer by the FCC. If in requesting a grant of FCC approval for a transfer or assignment, it appeared that the licensee held the license for less than three years, the FCC would designate the transfer or assignment for hearing to determine whether the proposed transfer or assignment was in the public interest. The three-year rule did not prohibit someone from transferring or assigning within the three-year period, but it did make it more difficult to do so.	
	✓ The one-year trafficking rule replaced the prior three-year anti-trafficking rule. The one-year rule required the retention of a license acquired through the comparative hearing process or the minority ownership process (i.e., distress sales, tax certificates and comparative hearings) for at least one year, unless it was sold to another minority. Persons who acquired the license from non-minorities in the secondary market were not regulated by the one-year anti-trafficking rule.	
Statutory and Regulatory Developments (not highlighted elsewhere)	✓ The 1969 Non-Discrimination Employment Policy Statement forbade discrimination on the basis of race, color, religion or national origin in employment practices by licensees of commercial or noncommercial broadcast stations. Result: each station had to establish an equal employment opportunity program. This was the first time the FCC directly addressed the issue of race in a formal policy ruling. This Policy Statement established the Commission's right to revoke licenses and to hear allegations of EEO violations in comparative hearings.	1969
	✓ In 1970, the FCC adopted its "one to a customer rule" whereby licensees could have only one AM, FM, and TV license in a given market. (See charts below for more detailed information on ownership rules.)	1970
	✓ In 1971, the FCC modified the ownership rules to allow AM/FM combinations and radio-UHF combinations in the same market; only VHF/radio combinations were banned by the rules.	1971

CATEGORY	EVENT	DATE
Statutory and Regulatory Developments (not highlighted elsewhere – continued)	✓ In 1979 the World Administrative Radio Conference expanded the AM band in the Western Hemisphere. The FCC used the expanded band to reduce congestion in the existing band by allowing existing AM licensees to operate new stations in the expanded band, and then after a transition period, shut down the old stations. The FCC limited the entire expanded band to these existing migrating stations. (1991) Several civil rights groups proposed that the existing broadcasters be offered tax certificates to sell existing (to-be-shut-down) stations to minorities. The FCC rejected this proposal and held that improving congestion was its primary goal. (1993)	1979 1991 1993
	✓ In its 1984 Memorandum Opinion and Order, the FCC declined to extend minority ownership policies to common carrier services.	1984
	✓ In 1986 the FCC initiated a Notice of Inquiry on the topic of race and gender ownership and employment policies in the awarding of broadcast licenses (Reexamination of the Commission’s Comparative Licensing, Distress Sales, and Tax Certificate Policies Premised on Racial, Ethnic, or Gender Classifications). To ensure that those policies were not eliminated, Congress included provisions in the Commission’s appropriations bills from 1988 to 1994 to prohibit the Commission from expending funds on any initiative designed to eliminate the broadcast minority ownership policies.	1986
	✓ In 1988, the FCC announced that it would be inclined to grant waivers to the one-to-a-market ownership rule in those top 25 markets that had at least 30 broadcast voices.	1988
	✓ <u>City of Richmond v. J.A. Croson</u> requires a strong basis in evidence of discrimination for any state or local government conclusion that race-conscious remedial action is necessary. The Court ruled that the government cannot rely on general societal discrimination to make its case. Instead, the government must establish that it is remedying either its own discrimination or discrimination in the private sector in which the government has become a “passive participant.”	1989

CATEGORY	EVENT	DATE
Statutory and Regulatory Developments (not highlighted elsewhere – continued)	✓ In <u>Metro Broadcasting, Inc. v. FCC</u> (1990) the Court, applying intermediate scrutiny, upheld the constitutionality of the FCC’s distress sale and comparative hearing minority ownership policies. The Court stated that the policies served the important governmental interest of promoting diversity in broadcast programming. The Court found that the benefits of programming diversity are shared by two groups – minorities who gain access to the broadcasting industry through ownership and “the American public [who] will benefit by having access to a wider diversity of informational sources.” Second, the Court found that a causal link exists between minority ownership and broadcast diversity and therefore that the minority ownership policies were substantially related to the achievement of the desired end.	1990
	✓ In 1992, the FCC relaxed the duopoly rules so that in markets with fewer than 15 radio stations, licensees were permitted to own up to three stations as long as the number owned was less than 50 percent of the total number of stations in the market. In markets with 15 or more stations, the licensees were permitted to own up to four stations; no more than two could be of the same service, and there was an audience share cap of twenty-five percent.	1992
	✓ The 1993 Omnibus Budget Reconciliation Act contained specific language delegating to the Commission the authority to devise rules to ensure diversity in license ownership. More specifically, the FCC was instructed to ensure that women and minorities have the opportunity to participate in the provision of spectrum-based services.	1993
	✓ In the <u>Bechtel v. FCC</u> decision, the D.C. Circuit Court found that the “continued application of the integration [of ownership, management and programming] credit is arbitrary and capricious, and therefore unlawful.” By invalidating the integration credit the court effectively eliminated gender and race ownership and employment policies associated with the integration credit. In 1994 the FCC suspended all active comparative hearings until an adequate resolution to the issues raised in <u>Bechtel</u> could be formulated.	1993 1994

CATEGORY	EVENT	DATE
Statutory and Regulatory Developments (not highlighted elsewhere – continued)	✓ In <u>Adarand Constructors, Inc. v. Peña</u> the Court ruled that any federal program or policy which uses race as a basis for its decision-making must withstand strict judicial scrutiny. It is not clear whether the diversity rationale that survived the intermediate scrutiny standard of <u>Metro</u> would survive the strict scrutiny standard of <u>Adarand</u> .	1995
	✓ Section 257 (added to the Communications Act of 1934 by the Telecommunications Act of 1996) requires the FCC to eliminate market entry barriers for entrepreneurs and other small businesses.	1996
	✓ In the Telecommunications Act of 1996, Congress directed the FCC to further relax the duopoly rules so that licensees in markets with 45 or more commercial radio stations can “own, operate or control up to 8 stations, not more than 5 of which are in the same service.” In markets with between 30 and 44 stations, the limit is seven stations, “not more than 4 of which are in the same service.” In markets with between 15 and 29 stations, the limit is six stations, of which not more than 4 are in the same service. In markets with 14 or fewer stations, the limit is five stations with not more than three in the same service, except that a party may not own, operate or control more than 50 percent of the stations in such market. Furthermore, the Act eliminated all limits on the number of radio stations that one licensee can own nationally, eliminated the numerical cap on television stations and increased the national audience reach cap to 35% for TV.	1996
	✓ The Telecommunications Development Fund (“TDF”) was authorized by the 1996 Telecommunications Act to provide a source of loans and investment capital to small communications businesses.	1996
	✓ <u>Lutheran Church – Missouri Synod v. FCC</u> (U.S. Court of Appeals, the District of Columbia Circuit, April 1998) held that certain provisions of the FCC’s broadcast EEO rules were subject to strict scrutiny and unconstitutional. The FCC adopted a Notice of Proposed Rulemaking outlining new rules to further equal employment opportunity in broadcasting in a manner that is consistent with the court’s decision (November 1998). New rules were adopted in January 2000.	1998

CATEGORY	EVENT	DATE
Statutory and Regulatory Developments (not highlighted elsewhere – continued)	✓ On January 20, 2000, the FCC adopted rules creating a new, low power FM (LPFM) radio service. The new LPFM service is to be exclusively noncommercial; there will be no commercial LPFM stations. In addition, current broadcast licensees or parties with interests in other media – cable or newspapers - are not be eligible for LPFM stations.	2000
Historical Events	✓ Mrs. Marie Zimmerman became the first woman to own a radio license.	1922
	✓ Station WDIA-AM in Memphis, Tennessee, became the first radio station to devote all its air time to Black programs.	1947
	✓ Mr. Jesse B. Blayton purchased WERD in Atlanta, Georgia, and became the country's first Black radio station owner.	1949
	✓ First Hispanic radio station went on the air.	mid-1950s
	✓ Mr. Andrew Langston becomes the first African American to participate in a comparative hearing. His license was ultimately awarded in 1974.	1960
	✓ The National Association of Black-Owned Broadcasters (NABOB) was created as an outgrowth of a National Association of Broadcasters (NAB) seminar on minority ownership.	1972
	✓ First Black-owned TV license awarded by FCC to WGPR-TV (owned by the International Free and Accepted Modern Masons, Inc., in Detroit, Michigan.	1973
	✓ Dorothy Brunson became the first African-American woman to own a television station.	1989
	✓ MTDP (Department of Commerce) created ComTrain to provide a management training program for minority owners of commercial radio and television stations.	1993

Local, National and Cross-Ownership Rules
(adapted from KPMG, LLP report: *History of the Broadcast License Application Process*)

Year	Local Market			National Market			Notes
	AM	FM	TV	AM	FM	TV	
1950	1	1	1	7	7	7	<i>National TV:</i> Only 5 can be VHF
1970	1	1	1	7	7	7	Prohibit ownership of radio and TV stations in the same market. Grandfathered existing cross ownership.
1975	1	1	1	7	7	7	Additional prohibition of ownership of TV and newspapers in same market. Grandfathered existing cross ownership.
1985	1	1	1	12	12	12	<i>Local TV:</i> Could add a 2 nd station if it was a satellite of the first. <i>National Radio:</i> Could add 2 additional AM and FM stations if they were controlled by minorities or small businesses. <i>National TV:</i> Could add 2 TV stations if they were controlled by minorities or small businesses. TV stations may reach no more than 25% of the population. UHF received 50% credit in population determination.

Year	Local Market			National Market			Notes
	AM	FM	TV	AM	FM	TV	
1992	15+: 2 (<25% mkt share w/ FM) <15: 2 (3) <50% of stations	15+: 2 (<25% mkt share w/ AM) <15: 2 (3) + <50% of stations	1	18	18	12	<i>Local Radio:</i> ✓ In markets with 15 or more stations, 2 AM/FM ,as long as the combined share of audience is less than 25%. ✓ In markets with less than 15 stations, 3 stations with no more than 2 of either AM or FM as long as it was no more than 50% of market's stations. <i>National Radio:</i> Could add 3 AM and 3 FM stations is they were controlled by minorities or small business.
1994	Same as 1992	Same as 1992	Same as 1985	20	20	Same as 1985	<i>National Radio:</i> Could add 3 AM and 3 FM stations if they were controlled by minorities or small businesses.
1996	45+: 5 (8) 30-44: 4 (7) 15-29: 4 (6) <15: 3 (5)	45+: 5 (8) 30-44: 4 (7) 15-29: 4 (6) <15: 3 (5)	Same as 1985	No limit	No limit	No limit, with exception (see Note <i>National TV</i>)	<i>Local Radio:</i> ✓ In markets with 45+ stations, 8 stations with no more than 5 in either AM or FM. ✓ In markets with 30-44 stations, 7 stations with no more than 4 in either service. ✓ In markets with 15-29 stations, 6 stations with no more than 4 in either service. ✓ In markets with fewer than 15 stations, 5 stations with no more than 3 in either service. <i>National TV:</i> No limit as long as the stations did not serve more than 35% of the nation's population. UHF received 50% credit in population determination.

Year	Local Market			National Market			Notes
	AM	FM	TV	AM	FM	TV	
1999	Same as 1996	Same as 1996	See Note <i>Local TV</i>	Same as 1996	Same as 1996	Same as 1996, with exception (see Note <i>National TV</i>)	<i>Local TV:</i> 2 TV stations in market if the second stations is financially troubled, not yet built, or is not among the market's 4 top-rated stations at time of purchase <i>and</i> 8 independently-owned TV stations remain. An owner may also control overlapping stations if they are based in different designated market areas. <i>National TV:</i> Same as 1996 but in markets where firms own 2 TV stations, don't double count towards 35% of nationwide population limit. <i>Cross-Ownership – Local Market::</i> ✓ If the market has at least 20 separately owned broadcast, newspaper, and cable "voices," can own 2 TV and 6 radio stations or 1 TV and 7 radio stations. ✓ If the market has at least 10 separately owned broadcast, newspaper, and cable "voices," can own 2 TV and 4 radio stations. ✓ 1 TV and 1 radio allowed everywhere. ✓ TV/newspaper cross-ownership is prohibited.

Minority Ownership of Broadcasting Licenses

A search of the literature provides limited information about minority ownership of broadcasting licenses. Until the commencement in 1994 of the Department of Commerce's National Telecommunications and Information Administration (NTIA) annual studies on minority commercial broadcast ownership in the United States⁴⁶, information about minority ownership was primarily reported in various trade publications. Data for the 1980s proved elusive. The table below presents the information we were able to obtain.

YEAR	INDUSTRY			MINORITIES			%
	TV	Radio	Total	TV	Radio	Total	
1970 ⁴⁷	N/A	N/A	N/A	N/A	13	N/A	N/A
1972 ⁴⁸	700	>7,000	>7,700	0	<20	<20	<0.3%
1973 ⁴⁹	N/A	7,350	N/A	N/A	33	N/A	N/A
1974 ⁵⁰	N/A	N/A	N/A	N/A	<30	N/A	N/A
1978 ⁵¹	N/A	8,500	N/A	N/A	40	N/A	N/A
1994 ⁵²	1,151	9,870	11,021	29	293	322	2.9%
1995	1,155	9,973	11,128	32	311	343	3.1%
1996	1,221	10,191	11,412	38	312	350	3.1%
1997	1,193	10,282	11,475	38	284	322	2.8%
1998	1,209	10,315	11,524	32	305	337	2.9%

⁴⁶ The most recent NTIA study available is for 1997-1998. The 1999-2000 report is currently in progress.

⁴⁷ Supra note 14, p. 244. Numbers are for Blacks only.

⁴⁸ *Broadcasting*, "Coming Through the Front Door of Ownership: A New Direction for Blacks in Broadcasting," October 30, 1972, p. 25. Numbers are for Blacks only.

⁴⁹ Supra note 14, p. 214. Numbers are for Blacks only.

⁵⁰ Id. Numbers are for Blacks only.

⁵¹ *Federal Communications Law Journal*, Krasnow, Erwin G., Fowlkes, Lisa M., The FCC's Minority Tax Certificate Program: Life after Death," May 1999. 51 Fed. Comm. L.J., 671. Numbers are for minorities taken as a group.

⁵² Ownership numbers for the years 1994 through 1998 are contained in the NTIA Minority Commercial Broadcast Ownership in the United States reports for the respective years. Information was collected on ownership in the following four minority groups: Blacks, Hispanics, Native Americans, and Asian Americans. Numbers for television do not necessarily include low power TV.

In contacting prospective interviewees, it became apparent that a number of minorities were no longer station owners. With consolidation in the marketplace, a few former minority group owners have sold their entire holdings of broadcast properties. The 1999-2000 NTIA report on minority ownership is expected to reveal that there are now far fewer minority broadcast owners than existed in 1998.

APPENDIX B - INTERVIEW GUIDE

FCC HISTORICAL STUDY INTERVIEW GUIDE

Subject Name: _____ Interviewee Control #: _____

Entity: _____

INTRODUCTION

Hello, my name is _____, and I'm calling from Ivy Planning Group at our scheduled time to conduct the telephone interview you agreed to have with us about FCC licensing practices. Is this still a convenient time for you? Great. (Note to interviewer: If this is not a good time, please reschedule for another time as close to this one as possible.)

As a reminder, Ivy Planning Group, a management consulting company, has been hired by the Federal Communications Commission to conduct a historical study of what market barriers, if any, small, minority- and women-owned businesses face or have faced in the acquisition, sale or transfer of FCC broadcast and wireless licenses during the years 1950 to the present.

I will be asking you about your experiences with the process of acquiring, selling, or transferring FCC licenses, even if you were not successful in or chose to withdraw from these endeavors. It is my intention not to ask for any information that is proprietary to you or your company.

Our interview has been scheduled to last an hour. It would be helpful not to have any interruptions during our time on the phone so that I can take as little of your time as possible. I will be asking a series of open-ended questions for you to consider. Please answer them to the best of your ability and recollection. The more you can tell me, the more valuable this report is likely to be for businesses like yours.

As mentioned at the time we scheduled this appointment, I will be recording our conversation to ensure the accuracy and quality of my final report. The tape will be transcribed verbatim and will be archived at the FCC. *(NOTE TO INTERVIEWER: If interviewee insists on not being recorded, turn off the machine and take notes by hand. Let the interviewee know that instead of the recording you will be making written notes of the conversation.)*

Our study, along with several others, will be used by the FCC to determine whether there are or have been market barriers for small, minority- and/or women-owned businesses and, if so, to suggest changes in the FCC rules or practices to eliminate these barriers. At the end of our interview, you will have a chance to make suggestions of your own in this regard.

Well, I'm ready to begin the interview now. Do you have any questions before we start?

To help you understand where I'll be going with the interview, here are the topics to be covered:

TOPICS TO BE COVERED

1. Characteristics of the entity(ies) and key person(s) involved in the entity(ies) (NOTE TO INTERVIEWER: **entities** are small minority- or women-owned businesses; **key persons** are the entities' principals, partners, investors and affiliates, and for publicly traded companies, the controlling shareholders and any controlling officers.)
2. Entity's capital structure and key person(s') experience in raising capital
3. Effect of FCC policies, provisions and rules on cost or availability of raising capital for auctions, lotteries and/or comparative hearings
4. Key person(s') experiences in finding about license acquisition opportunities
5. Key person(s') experiences with barriers to entry or expansion
6. Key person(s') experiences with advertising secondary market license sales transactions
7. Key person(s') reasons for participating in, withdrawing from or succeeding in the license process
8. Suggestions and recommendations of remedies and/or improvements

First, I would like to quickly review the information you previously faxed to me so I can ask the right questions later on.

- a. For the licenses that you currently have, which preferences/incentives/credits, if any, were in place at the time you acquired the licenses? Did you take advantage of all of those to which you were entitled? If not, why not?
- b. Have you ever sold or transferred any licenses? What kind? How many? When? By what means? To whom? Did you take advantage of any preferences/incentives/credits at the time of sale/transfer? If not, why not?

TOPIC 1. Entity and key person characteristics

Opening question. How was your company organized when you obtained (tried to obtain) your first license? What can you tell me about the people involved, and their preparation for being an FCC licensee?

Follow-up topics. Organizational structure and key players (by name, if possible)? Key person(s) demographics, education, employment, business, management, and industry backgrounds (especially with communications and information products and services? Previous unsuccessful attempts?

TOPIC 2. Entity's capital structure and key person(s') experience in raising capital

Opening question. How would you describe your experience in raising capital to become an FCC licensee? How prepared were you, financially, when you first attempted to become a licensee, and when you first succeeded? From where did you eventually, or do you traditionally, receive your capital support? Did you experience any discrimination on the basis of race, ethnicity or gender? Did you experience any difficulties in raising capital because of the size of your company?

Follow-up topics. Capital structure? Access to debt versus equity? Cost of capital? Access to and cost of security, collateral, and funds for deposits? Venture capital? Installment payments? Use of credit cards? Impact of up-front payments, down payments and FCC procedures?

TOPIC 3. Effect of FCC policies, provisions, rules and requirements on cost or availability of raising capital for auctions and/or non-auction activities (lotteries and/or comparative hearings)

Opening Question. How effective has the FCC and/or its policies been in helping or hindering your efforts to become a licensee? How have their policies, licensing provisions, service rules, or requirements affected you and your endeavors?

Follow-up topics. Auction and/or non-auction (lottery, comparative hearings)? Cost or availability of capital? Geographic areas to be licensed? Partitioning and/or disaggregation? Holding periods? Small business, race, or gender based provisions or preferences? Integration and/or bidding credits? Deposit and/or capital requirements? Installment or up-front payments? Distress sales? Tax certificate policy? Other policies, provisions, rules or requirements (e.g., spectrum caps, rules limiting participation to small businesses, etc.)?

TOPIC 4. Key person(s') experiences in finding out about license acquisition opportunities (primary/secondary markets)

Opening Question. How have you learned of opportunities to acquire licenses via auction, lottery and/or comparative hearings? How have you learned about opportunities to acquire licenses on the secondary market? How did you hear of your first opportunity? How did that first experience change over time? How would you or someone like you tend to learn of license acquisition opportunities now?

Follow-up topics. Role and importance of FCC public notices and outreach; other government agencies; informal personal networks; trade associations; business brokers; attorneys; bankers; venture capitalists; other financing sources; Small Business Investment Companies (“SBIC”); Specialized SBICs; incumbent licensees; advertisements in general market, minority- or gender-specific media?

TOPIC 5. Key person(s’) experiences with barriers to entry or expansion

Opening Question. What can you tell us about specific barriers, impediments or roadblocks that you have faced as you have tried to become an FCC licensee (as a small, minority- or woman-owned business)? As you have tried to grow your business? What, if any, market obstacles, such as advertisers’ pricing practices, have you encountered? What, if any, discrimination have you faced in your efforts (as a woman, minority or small business owner)? (NOTE TO INTERVIEWER: *If interviewee has participated or thought of participating in the auction process, ask the following question:* What has been your experience with the new electronic auction bidding process?)

Follow-up topics. Role and importance of FCC public notices and outreach; other government agencies; informal networks; trade associations; business brokers; attorneys; bankers; venture capitalists; other financing sources; SBICs; SSBICs; incumbent licensees.

TOPIC 6. Secondary market prospective license seller(s’) experiences with advertising license sales/transfers

Opening Question. What means did you use to let people know that you wanted to sell or transfer a license?

Follow-up topics. Minority- or gender-specific media, associations, organizations, or networks; informal personal networks; business brokers; attorneys; bankers; venture capitalists; other financing sources; SBICs; Specialized SBICs; incumbent licensees. Are you aware of any alleged discriminatory practices (related to race, gender or size of business) on the secondary market that the FCC has been made aware of by complaint or other means? How were these complaints handled?

TOPIC 7. Key person(s’) reasons for participating, withdrawing or succeeding

Opening Question. Why have you decided to participate in purchasing, selling and/or transferring FCC license(s)? What have been the most important reasons or significant factors for your participation?

Follow-up topics. When you have made decisions not to participate or to withdraw from pursuing/selling/transferring specific licenses, what were the reasons or factors at work? Reasons for succeeding? For not succeeding?

TOPIC 8. Suggestions and recommendations of remedies and/or improvements

Opening Question. Based on your experiences, what suggestions can you give us which would have made your experience in the past easier, or more fair, or which might level the playing field for citizens like yourself in the future?

Follow-up questions. How could these suggestions have helped you in acquiring, selling and/or transferring FCC licenses?

CLOSE

Thank you for time and perspectives. You've been most helpful to our study. I hope you would not mind if we called to clarify or follow up on any points we've covered today. Please feel free to contact us toll free at (877) 448-9477, ext. 29 if you think of additional points or information that may pertain or contribute to our study. Thank you again.

APPENDIX C - DEMOGRAPHIC BREAKDOWN OF INTERVIEWEES

Demographic Breakdown Of Interviewee Pool

A total of 150 licensees, unsuccessful license applicants and key market participants⁵³ were interviewed for this study of market entry barriers from 1950 to the present in broadcast and wireless licensing. The pool of interviewees was comprised of 123 licensees/unsuccessful applicants and 27 key market participants (e.g., brokers, lenders, attorneys).

The following table presents the distribution of the 123 interviewees (82%) who made up the licensee/unsuccessful applicant pool. Of the total, 91 (74%) were from the broadcast industry and 32 (26%) were from wireless. The groups are comprised as follows: (1) licenses owned by minorities (large and small businesses); (2) licenses owned by women (large and small businesses); and (3) licenses owned by white men (small businesses only).

**Demographic Breakdown of 123 Interviewees
(Out of a Total of 150)**

TYPE OF OWNERSHIP	NUMBER IN INTERVIEW POOL		
	Broadcast	Wireless	Total
African American	35	4	39
Hispanic	22	2	24
Asian American	1	5	6
Native American	2	1	3
Women	20	7	27
White men (sm. bsn. only)	11	13	24
TOTALS	91	32	123

The remaining 27 interviewees (26%) were key market participants.

⁵³See Appendix D for a complete listing of interviewees.

APPENDIX D - LIST OF INTERVIEWEES

**Federal Communications Commission
Historical Market Entry Barrier Study
List of Interviewees - Licensees**

<u>Last Name</u>	<u>First Name</u>	<u>Type of Business</u>	<u>Demographic Group *</u>
Acker	Gary	Radio	Black
Adelman	Robert	Radio/TV	Small
Alonzo	Alfredo	Radio	Hispanic
Arroyo	George	Radio	Hispanic
Bailey	Bob Carl	Radio	Black
Banks	Joyce	Radio	Woman (Black)
Barro	Mary Helen	Radio	Woman (Hispanic)
Barton	Ernesto	Radio	Hispanic
Beech	Richard	Wireless	Small
Bennet	Caressa	Wireless	Woman
Blount	Frank	Wireless	Small
Boaldin	Trent	Wireless	Small
Broz	Robert	Wireless	Small
Brunson	Dorothy	TV	Woman (Black)
Bustos	Amador	Radio	Hispanic
Byrne	Jerry	Wireless	Asian American
Caballero	Eduardo	Radio/TV	Hispanic
Camarillo	Mateo	Radio/Wireless	Hispanic
Carter	Michael	Radio	Black
Carter	Michael	Radio	Small
Charles	Merrill (Butch)	Radio	Black
Chase	Anthony	Radio/Wireless	Black
Cherry	Charles	Radio	Black
Chu	Narisa N.Y.	Wireless	Woman (Asian American)
Chung	Sejin	Wireless	Asian American
Clark	Susan	TV	Woman

**Small = White male; Woman (without racial designation) = White woman*

**Federal Communications Commission
Historical Market Entry Barrier Study
List of Interviewees – Licensees
(continued)**

<u>Last Name</u>	<u>First Name</u>	<u>Type of Business</u>	<u>Demographic Group</u>
Colon	Pablo de Jesus	Radio	Hispanic
Cook Bush	Tony	Wireless	Woman
Cornwell	W. Don	TV	Black
Correa de Garcia	Marti	TV	Hispanic
Crutchfield	Ronald	Wireless	Black
Culpepper	Ricahrd	Radio	Black
Davenport, Sr.	Ronald R.	Radio	Black
Davila	Manuel	Radio	Hispanic
Davis	Carl	Wireless	Small
Davis	Greg	Radio	Black
Davis	Willie D.	Radio	Black
DeBose	Helena	Radio	Woman (Black)
Dobbins	George	Wireless	Black
Douglas	Nancy	Wireless	Woman
Douglas	N. John	Radio	Black
Ehlinger	Phyllis	Radio	Woman
Evans	Mutter D.	Radio	Woman (Black)
Faush	Erskine	TV	Black
Ferrufino	Zenon	Radio	Hispanic
Fink	Robert K.	TV	Small
Fong	Peter W.	Wireless	Asian American
Ford	Richard	Radio	Small
Frank	Peter	Wireless	Small
Galloway	William	Radio	Black
Garcia	Joe	Radio	Hispanic
Gehman	Dale	Radio	Native American

**Federal Communications Commission
Historical Market Entry Barrier Study
List of Interviewees – Licensees
(continued)**

<u>Last Name</u>	<u>First Name</u>	<u>Type of Business</u>	<u>Demographic Group</u>
Gilliam	Art	Radio	Black
Gomez	Nelson	Radio	Hispanic
Gomez	Ed	Radio	Hispanic
Guernica	Tony	Radio/TV	Hispanic
Guerra	Belinda	Radio	Woman (Hispanic)
Harris	Leodis	Radio	Black
Hawes-Saunders	Ro-Nita	Radio	Woman (Black)
Helton	Nora	Wireless	Native American
Heyward	Isaac	Radio	Black
Hoffman	Roger	Wireless	Small
Howard	Samuel	Radio	Black
Hutton	Jeffrey	Radio	Small
Ishihara	Glenn	Wireless	Asian American
James	Ernest	Radio	Black
Kessler	Bennett	Radio	Woman
Keys	Brady, Jr.	Radio	Black
Langston	Andrew A.	Radio	Black
Laurel	Oscar M.	TV	Hispanic
Lee	Jang	Radio	Asian American
Love	Ross	Radio	Black
Lovink	Mia	Wireless	Woman
Lucas	Henry M.	Wireless	Small
Lucas	Rochelle	Wireless	Woman (Black)
Malcolm	Colin B.	Radio	Small
Marchant	Byron	Wireless	Black
Marshall, Jr.	Pluria	Radio	Black
Martin	Stuart T.	TV	Small

**Federal Communications Commission
Historical Market Entry Barrier Study
List of Interviewees – Licensees
(continued)**

<u>Last Name</u>	<u>First Name</u>	<u>Type of Business</u>	<u>Demographic Group</u>
McCollum	Amy	Radio	Woman
McCullah	Tazbah	Radio	Native American
McKinzie	Ronda	Wireless	Woman
Miller	Dennis E.	Wireless	Small
Molina	Jose	Radio/TV	Hispanic
Morgan	Tommy	Wireless	Small
Myrick	Charles	Wireless	Small
Nash	Bernadine	Radio	Woman (Black)
Neidig	Andres	Radio	Hispanic
O'Luck	Mark	Wireless	Black
Oxendine	John	TV	Black
Perres	Luis	Radio	Hispanic
Phillips	Martin	Radio	Small
Portillo	Ernesto	Radio	Hispanic
Price	Bud & Cathy	Radio	Small
Prout	Patrick	Radio	Black
Puri	Harish C.	Wireless	Asian American
Rienstra	Francine	Radio	Woman
Riordan	Robert	Wireless	Small
Roberts	Michael	TV	Black
Ruiz	Patty	TV	Woman (Hispanic)
Salva	Isabelle	Radio	Hispanic
Saunders	William	Radio	Small
Shatz	Carol	TV	Woman
Shaw	Johnny & Opal	Radio	Black

**Federal Communications Commission
Historical Market Entry Barrier Study
List of Interviewees – Licensees
(continued)**

<u>Last Name</u>	<u>First Name</u>	<u>Type of Business</u>	<u>Demographic Group</u>
Sherrell	Charles R.	Radio	Black
Simms	Raymond	Radio	Black
Spann	Pervis	Radio	Black
Spann-Cooper	Melody	Radio	Woman (Black)
Sutter	Diane	TV	Woman
Sutton	Pierre M.	Radio	Black
Terry	Mical J.	Wireless	Small
Thomas	John C.	Radio	Black
Tortolero	Carlos	Radio	Hispanic
Tupper	John B.	TV	Small
Turner	Edna	Radio/Wireless	Woman (Black)
Unger	Ruby	Radio	Woman
Valasquez	Art	Radio	Hispanic
Vega, Jr	Richard Pablo	Radio	Hispanic
Walls	Willie	Radio	Black
Waters	Nancy	Radio	Woman (Black)
Weaver-Bey	Richard	Radio	Black
Wolfe	James E., Jr.	Radio	Black
Yunis	Enrique	Wireless	Hispanic

**Federal Communications Commission
Historical Market Entry Barrier Study
List of Interviewees – Key Market Participants**

<u>Last Name</u>	<u>First Name</u>	<u>Company Name</u>	<u>Type of business</u>
Baldon	Virgil	Baldon Media Service	Consultant/Educator
Brown	Tyrone	Wiley, Rein & Fielding	Communications Attorney
Casey	Jim	Greenburg & Traurig	Communications Attorney
Cobb	Brian	Media Venture Partners	Media Broker
Dickenson	Bruce	Daniels & Associates	Media Broker
Ellis	Dwight	National Association of Broadcasters (NAB)	Industry Organization
Fontes	Brian	Cellular Telecommunications Industry Association (CTIA)	Industry Organization
Healey	Steve	Fleet National Bank	Media lender
Honig	David	Minority Media	Advocacy Group
Kalil	Frank	Kalil & Associates	Media Broker
Kilrea	Jeff	FINOVA Capital	Venture Capital
Krasnow	Erwin	Verner, Liipfert, et. al.	Communications Attorney
Lauer	John		Media Broker
Lee	Tony	Swidler Berlin Shereff	Communications Attorney
Logan	Nancy	American Women in Radio and Television (AWRT)	Advocacy Group
McNeill	Brian	Burr Egan (Alta	Investment banker
Montero	Frank	FCC-Office of Communications Business Opportunities (OCBO)	Former Director of OCBO
Parker	Rev. Everett	United Church of Christ	Advocacy Group
Perez	Benjamin	Abacus Communications	Communications Attorney
Rivera	Henry	Ginsberg Feldman & Bress	Former FCC commissioner
Schwartzman	Andrew	Media Access Project	Advocacy Group
Smith	Chic	Benton Foundation	Industry Organization
Trigg	Ms. S. Jennell	Fleischman & Walsh LLP	Communications Attorney
Wilkins	Herbert	Syncom	Venture Capitalist
Williams	Darrell A.	Telecommunications	Venture Capitalist

<u>Last Name</u>	<u>First Name</u>	<u>Company Name</u>	<u>Type of business</u>
Winston	James (Jim)	National Association of Black-Owned Broadcasters	Industry Organization
Winston	John	Federal Communications Commission	Former head of Office of Communications Business Opportunities

APPENDIX E – IVY PLANNING GROUP PROFILE

COMPANY PROFILE

Ivy Planning Group LLC is a full-service management consulting firm. We assist organizations in becoming customer-driven by focusing on strategic and tactical planning, organizational development and redesign, and diversity. Named after the principals' Ivy League educational backgrounds, Ivy supports its customers' continuous improvement processes through the formation of the organizations' strategy; translation of strategy into tactics; and implementation through training, change initiatives and consulting services.

Ivy was honored as a *Black Enterprise* magazine Year 2000 Emerging Company of the Year Finalist and by *Working Woman* magazine for Entrepreneurial Excellence. Ivy was profiled in *DreamMakers: Putting Vision & Values to Work*, a book that chronicles how leading-edge organizations are able to succeed and realize their vision and values. Ivy's President, Janet C. Smith, author of *The Diversity Action Book: 143 Things To Go Do*, was named one of "Twenty-Five Influential Minority Women in Business" by Minority Business & Professional Network, Inc.

Some of the world's most comprehensive and respected methodologies have come from the U.S. government's Reinventing Government initiative, where Ivy Planning Group has been a key player. Ivy was selected by the Federal Quality Institute to participate as a partner in the design, development, and rollout of President Clinton's National Performance Review (NPR) Reinventing Government initiative. Ivy's responsibilities included creating strategies to address valuing diversity, benchmarking, the changing role of leadership, and creating a customer-driven government. Ivy was selected for its ability to translate private sector concepts into public sector initiatives, proven planning methodology, curriculum development and training skills, and its expertise in change management.

Ivy Planning Group supports customers in the public and private sectors. Ivy's clients include the U.S. Environmental Protection Agency; the U.S. Departments of Labor, Treasury, and Justice; the U.S. Patent and Trademark Office; the U.S. Postal Service; the Federal Communications Commission; The Chase Manhattan Bank; Morgan Stanley Dean Witter & Company; IBM; Pennzoil-Quaker State; Xerox; Bell Atlantic/Verizon; United Way of America; and Special Olympics International.

Founded in 1990, Ivy takes pride in the reputation it has built with Federal agencies, Fortune 500 companies, and large non-profits. Ivy is unique in its commitment to provide senior consultants with proven methodological/process skills and experience, who also bring real experience as managers, and as change agents, in large organizations. Thus, Ivy's consultants provide practical solutions to the challenges associated with organizational change initiatives.

Ivy Planning Group provides the skills, experience and professionalism of a large management consulting firm and the flexibility, senior level access, service, and caring attitude of a small, founder-led business.

Ivy Planning Group is a minority- and woman-owned firm certified under the U.S. SBA's 8(a) program. Ivy holds GSA/MOBIS Schedule #GS-23F-9805H.

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