

September 22, 2010

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation  
Media Bureau Docket No. 07-57

Dear Ms. Dortch:

On September 21, 2010, representatives of Howard University held a series of meetings with FCC officials to discuss the above referenced proceeding. The first meeting was with William Lake, Chief of the Media Bureau, Sarah Whitesell, Associate Bureau Chief, Jennifer Tatel, Chief of the Industry Analysis Division, and Marcia Glauberman, Deputy Division Chief. The second meeting was with Dave Grimaldi, Chief of Staff and Media Legal Advisor to Commissioner Clyburn, along with Eloise Gore, Acting Legal Advisor in the same office. The third meeting was with Brad Gillen, Legal Advisor to Commissioner Attwell Baker, and the fourth meeting was with Joshua Cinelli, Media Advisor to Commissioner Copps. On September 22, 2010, representatives of Howard University met with Rosemary Harold, Legal Advisor to Commissioner McDowell. Participating in each of the meetings on behalf of Howard University were Jim Watkins, General Manager of WHUR radio, and the undersigned.

The Howard University representatives urged prompt implementation of the Sirius XM set-aside commitment for Qualified Entities. In order to facilitate prompt implementation, the Howard University representatives argued that, although the proposals of the Minority Media and Telecommunications Council have merit and deserve thorough consideration, ultimately the Commission should implement the set-aside commitment in a manner that avoids a significant threat of a judicial challenge.

The Howard University representatives also expressed concern about the possible adoption of a limitation on the number of set-aside channels that might be available to entities that hold licenses for full power broadcast stations. The Sirius XM set-aside commitment provides an opportunity to introduce new programming voices to consumers on a nationwide basis. In contrast, a license for one radio or television station provides the licensee with a programming voice that is inherently local in nature. Therefore, the possession of a single full power broadcast station license should not disqualify or limit an applicant from demonstrating its qualifications to program any of the Sirius XM set-aside channels.

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The imposition of a limitation involving a single radio or television station could also inadvertently exclude or limit otherwise highly desirable applicants. Most major colleges and universities hold licenses for radio and/or television broadcast stations, many of which are licensed on a full power basis in commercial (non-educational) frequency bands. Further, some tribal organizations operate radio or television stations, the numbers of which the Commission is actively trying to increase.<sup>1</sup>

In contrast, many companies that do not hold licenses for full power broadcast stations already provide programming services on a nationwide basis, such as producers of cable or satellite television programming and producers of Internet video programming. Therefore, a prohibition or limitation that is linked to the ownership of a single full power radio or television station arguably would not further the goals that are meant to be achieved, *i.e.*, the introduction of new programming voices on a nationwide basis.

If the Commission does deem it appropriate to maintain a restriction or limitation that is applicable to full power broadcast station licensees, Howard University urged the Commission to apply that restriction or limitation solely to entities that own multiple radio stations or multiple television stations. Specifically, such a limitation should apply solely to entities that hold either:

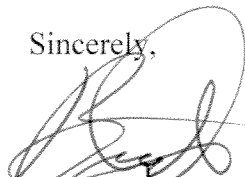
- (1) more than one full power broadcast station in each service (*i.e.*, more than one full power FM, one full power AM, or one full power DTV station), or
- (2) more than one full power commercial broadcast station in any service.

Such an approach could help facilitate the Commission's goal of introducing new programming voices on a nationwide basis, while not inadvertently excluding or limiting otherwise qualified and potentially desirable applicants.

The two sets of attached talking points were distributed during the meetings. The first set of talking points was distributed during the meetings with the Media Bureau and Commissioner Clyburn's staff. The second set of talking points was distributed during the remaining meetings.

Thank you for your attention to this matter. Please let us know if you have any questions.

Sincerely,



Bruce A. Olcott

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<sup>1</sup> See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, FCC Order 10-24, MB Docket No. 09-52 (Feb. 3, 2010).

**Proposed Procedures for Implementing  
The Sirius XM Third-Party Access Commitment**

**Howard University**

**MB Docket 07-57**

**September 2010**

- The Commission should promptly adopt rules implementing the Sirius XM set aside commitment to prevent this nationwide resource from continuing to remain fallow
- The Commission should refrain from modifying the Sirius XM commitment in a manner that would eviscerate its original intent
- Proposals have been made to the Commission that could further the underlying intent of the commitment without violating Constitutional requirements
  - The Minority Media and Telecommunications Council proposal merits further consideration. The proposal includes three race neutral qualification factors:
    - Institutions the mission of which is to serve minority populations, such as
      - Historically Black Colleges and Universities
      - Hispanic Serving Institutions
      - Asian American Serving Institutions
      - Native American Serving Institutions
    - Multilingual programmers (focusing on language)
    - Tribal organizations (focusing on treaty relationships)
- The Commission should also exercise caution in considering potentially arbitrary restrictions that may inadvertently exclude or limit otherwise qualified and desirable candidates to program the Sirius XM set aside channels
  - Many entities (particularly educational institutions) that would make optimal candidates also own full power radio or television stations
    - For example, Howard University owns two full power broadcast stations
      - WHUT-TV, which is an full power educational DTV station
      - WHUR-FM, which operates on a commercial basis on a commercial (non-educational) frequency assignment
  - The Commission is also currently promoting increased ownership of radio stations by tribal organizations (*See* FCC Order 10-24, MB Docket No. 09-52)
- If such a limitation is deemed necessary, it should be modified solely to restrict entities owning more than one full power broadcast station in each service (i.e., more than one full power FM, AM, or DTV station)

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- The Commission should refrain from modifying the Sirius XM commitment in a manner that would eviscerate its original intent
- Proposals have been made to the Commission that could further the underlying intent of the commitment without violating Constitutional requirements
  - The Minority Media and Telecommunications Council proposal addressing qualified types of entities (i.e., institutions serving minorities, multilingual programmers, and tribal organizations) merits further consideration
  - Restrictions should not be adopted based solely on the size of an applicant without exceptions for educational and other potentially desirable institutions
- The Commission should also exercise caution in considering potentially arbitrary restrictions that may inadvertently exclude or limit otherwise qualified and desirable candidates to program the Sirius XM set aside channels
  - Many entities (particularly educational institutions) that would make optimal candidates also own full power radio or television stations
    - For example, Howard University owns two full power broadcast stations
      - WHUT-TV, which is an full power educational DTV station
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  - The Commission is also currently promoting increased ownership of radio stations by tribal organizations (*See* FCC Order 10-24, MB Docket No. 09-52)
- Any such limitation should be modified to only restrict entities owning either:
  - More than one full power broadcast station in each service (i.e., more than one full power FM, AM, or DTV station), or
  - More than one full power commercial broadcast station in any service
- Sirius XM is nationwide, while a single radio or television station is inherently local. Thus, any owner of a single radio or television station should be deemed fully qualified as a new programming voice as it pertains to nationwide programming services