Multicultural Media, Telecom
& Internet Council
1919 Pennsylvania Ave. N.W., Suite 725
Washington, D.C. 20006
Phone: 202-332-0500
www.mmtconline.org

Testimony of Maurita Coley
President and CEO
Multicultural Media, Telecom and Internet Council (MMTC)

Before the Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives

Hearing on "Lifting Voices: Legislation to Promote Media Marketplace Diversity"

January 15, 2019

Good Morning, Chairmen Pallone and Doyle, Ranking Members Walden and Latta, and Members of the Subcommittee.

My name is Maurita Coley, and I am the President and CEO of the Multicultural Media, Telecom and Internet Council (MMTC). MMTC sincerely appreciates this opportunity to provide our views on ownership and employment diversity in the media marketplace.

MMTC's Background and Interest in This Proceeding

Since our founding in 1986 as a national nonprofit organization, MMTC remains dedicated to our core mission of promoting and preserving equal opportunity in employment, ownership, and the supply chain in the media, telecommunications, tech, and broadband sectors. We also work to close the digital divide and ensure full digital inclusion for all by advocating before federal agencies, particularly the Federal Communications Commission (FCC).

I am proud to say that MMTC has played a direct, pivotal role in media diversity, both through our policy advocacy on the FCC's tax certificate policy and EEO rules, as well as through MMTC Media and Telecom Brokers' work to ensure that minority and women prospective owners obtain timely information about upcoming deals, and can receive hands-on management and ownership experience.

I joined MMTC in 2012 following a long career as a communications lawyer and later as a programming network executive for BET. My private sector experience during the inception of the original FCC tax certificate policy and its elimination in 1995 enabled me to bear witness to what is possible when opportunity and policy connect. During my career, I represented minority-owned broadcast and cable entities such as BET, Radio and TV One, and Barden Cablevision of Detroit. I advised a number of clients on the availability of the minority tax certificate to help facilitate transactions. I also represented Syncom Venture Partners and Syndicated Communications, Inc., the leading minority-owned venture capital firm investing in over 150 minority-and women-owned media and telecom companies over a 35-year period.[1]

Support for the Proposed Legislation and Resolution

Communities of color represent a large proprotion of our nation, and are projected to represent a majority before 2050. Of course, this means there is a large demand for content created by and geared toward diverse groups. It also means that when these groups are left out of employment and ownership opportunities, often due to the persistent remnants of a different America, business and industry suffer because they are not reaching the full breadth of our nation's creative potential. Simply put, media diversity is good for consumers, it is good for business, and it is good for American leadership and competitiveness on the world stage. As it stands, however, people of color are critically underrepresented in both media employment and ownership.

For these reasons, today's hearing and the legislation under consideration are of vital importance to every aspect of our nation's future.

Collectively, this legislation seeks to reestablish the FCC's commitment to employment and ownership diversity, and the significance of access to capital as a means to ensure ownership diversity. We enthusiastically endorse these goals for the following reasons.

1. <u>**Ownership Diversity and Access to Capital Are Essential to Promoting Media Diversity**</u>

It is impossible to promote employment and ownership diversity without also addressing access to capital and the persistent entry barriers minority owners face obtaining capital. For example, rejected by over 30 banks, Radio One pioneer Cathy Hughes persisted until finally acquiring WOL-AM under the FCC's distress sales policy. The minority tax certificate policy, which existed between 1978 and 1995 and originally focused on broadcast ownership before being expanded to cable and telecom, opened doors that allowed Radio One to purchase three of its earliest radio stations using the tax certificate and build a major broadcast company whose stock is publicly traded. Today, Radio One, recently rebranded "Urban One," is a phenomenally successful multimedia enterprise that serves the African American market with 54 radio stations serving 15 million weekly listeners, cable programming networks TV One and CLEO-TV serving 59 million households, and a variety of digital platforms.

MMTC board member Raúl Alarcón used the tax certificate in 1983 to purchase WSKQ-AM, a

[1] While these transactions did not necessarily involve the FCC's tax certificate policy, we acknowledge for the record Syncom's pivotal role in increasing diversity in media and telecommunications. Syncom's portfolio investments included Bob Johnson of BET Holdings, Cathy Hughes and Alfred Liggins of Radio and TV One; Moctesuma Esparza of Buena Vista Television and Maya Cinemas; Tom Castro of El Dorado Communication; Sí TV (which became NuvoTV and is now Fuse Music); and Z-Spanish Media Corporation, among many others.

station in New York. Under his stewardship, Spanish Broadcasting System (SBS) has grown from that single station to a portfolio of media assets that includes a radio division comprised of heritage FM outlets in the nation's top markets; the 250+ affiliate AIRE Radio Networks; Mega TV, a television network with over-the-air, cable, and satellite distribution; SBS Entertainment, the largest independent producer/promoter of Hispanic concerts and events; and LaMusica, a music and video streaming mobile app catering to Hispanic millennials.

In a society where media consolidation increasingly has diluted the diversity of voices and viewpoints in media, news, and entertainment, Ms. Hughes' and Mr. Alarcón's stories demonstrate the potential for and critical importance of a revived minority tax certificate policy for promoting diverse ownership.

In general, and to be quite frank, the tax certificate policy gave minority owners "currency" to participate in a network of owners who are often acquaintances and sell their stations to one another. The tax certificate policy was an elegant, win-win solution to this problem that led to an explosion of media diversity – but ownership predictably languished after its repeal in 1995.

By 2000, just five years after the repeal of the policy, the National Telecommunications and Information Administration (NTIA) reported what it called "disturbing trends" and cause for "continued concern." For example, "The 23 full power commercial television stations owned by minorities in 2000 represented 1.9 percent of the country's 1,288 such licensed stations, […] the lowest level since the [Minority Telecommunications Development Program] began issuing reports in 1990."[2] Note that this report is almost 20 years old – since then, there has been lamentably little research and a wide gap in both data collection and FCC enforcement of diversity rules and policies.

H.R. 3957, introduced by Congressman Butterfield in July, laudably proposes to reinstate a version of the former tax certificate policy. MMTC strongly expressed our support in a statement, which has been submitted in the record. In our statement, I noted that "[the] FCC's original tax certificate policy resulted in unprecedented increases in the number of diverse owners in broadcasting, cable, and telecommunication properties" – specifically, the number of minority-owned stations quintupled. MMTC Board Chair and Treasurer Dr. Ronald Johnson stated, "This much-needed policy will provide welcome access to capital for hard-working individuals, creating opportunities for minorities and women across the nation. At the same time, this bill incentivizes investors who see the inherent value of diverse ownership."

I note that legislation to restore the tax certificate policy previously was introduced by Senators McCain and Menendez, and by Congressmen Rush and Rangel. Their bipartisan efforts would have extended the policy to include telecommunications. I respectfully urge this Committee consider extending the tax certificate policy in H.R. 3957 to advance opportunities for minorities and women in cable and telecommunications businesses as well. Their innovations

[2] "Changes, Challenges, and Charting New Courses: Minority Broadcast Ownership in the United States," National Telecommunications and Information Administration, U. S. Department of Commerce, Dec. 2000. Available at https://www.ntia.doc.gov/files/ntia/publications/mtdpreportv2.pdf.

of legacy and emerging communications technologies are necessary to promote the nation's global competitiveness.

2. Equal Employment Opportunity Is Essential to a Diverse Media Marketplace, and Data Collection Is Critical to Government's Policy Development and Implementation

Equal employment opportunity is also essential to a diverse media marketplace. MMTC Founder, Former President and CEO, and Senior Advisor David Honig published a law review article in 2018 that described EEO as "the route to a broadcast management track that can lead to ownership." The article, which we have submitted in the record, reports that "[thanks] to the pioneering efforts of the Office of Communication of the United Church of Christ, the FCC adopted broadcast, cable, and common carrier EEO rules in the 1970s – and then almost always proceeded not to enforce them. What slight EEO enforcement the FCC undertook in the 1990s died in 2001."

A bit of history – in 1968, the FCC became the first federal agency to ban racial and gender discrimination by regulated companies. Recognizing that financiers were inclined to invest in projects involving experienced broadcasters, the following year the FCC began requiring broadcasters to disseminate job postings broadly enough to reach qualified minority and women candidates. Vigorous enforcement of the rules contributed to a doubling of minority broadcast employees between 1971 and 1977.

Our nation's EEO rules have a strong basis in the history of the FCC and the courts. Since 1980, the FCC has determined that word-of-mouth recruitment from a homogeneous workplace is inherently discriminatory; and since 1966, the D.C. Circuit has recognized that an intentional discriminator is not qualified to hold a broadcast license. However, the FCC has not collected EEO data or enforced the anti-discrimination element of the EEO rules since 2000. Yet the cable industry has been tracking D&I metrics consistently for 10 years – proof that it's not only achievable, but entirely feasible.

To fulfill the promise of equal employment opportunity to advance diverse ownership of communications assets, the FCC also must require companies to submit accurate and timely data to measure the effect of companies' recruitment and hiring efforts. Without measurement, there can be no enforcement. The Commission already has the authority to gather this data and report it in anonymized form. However, the FCC has dragged its feet for the past 16 years on gathering and using the data; consequently, congressional intervention is apparently necessary to motivate the agency to act.

It is important to note that the current Commission has taken some positive steps. On July 3, 2018, the 50th anniversary of the EEO Rule, the FCC under Chairman Ajit Pai's leadership adopted the recommendation of 38 national minority organizations led by MMTC to move the FCC's EEO staff from the Media Bureau to the Enforcement Bureau. We are encouraged that this move will allow the FCC to prioritize the enforcement of the rules and, in the words of Chairman Pai at MMTC's 2018 conference, allow the FCC "to make sure, through enforcement resources, […] that everybody is free to compete for these jobs without the legacy of discrimination that has held too many back for so long."[3]

The Commission's recent reassignment of EEO staff to the Enforcement Bureau reflects acknowledgement of its obligation to enforce its rules in furtherance of its policies to promote diverse media ownership. But this is the first of many steps needed to advance ownership diversity.

Conclusion

Despite resistance by some media companies to tracking EEO data, the cable industry has been tracking D&I metrics consistently for 10 years. A recent survey conducted by the Kaitz Foundation and Mercer revealed that those tracking efforts resulted in metrics that exceeded national benchmarks – proof-positive that diversity is not only achievable, but entirely feasible, as stated above.[4]

Media and telecom companies such as Comcast/NBCU, Charter Communications, and the New T-Mobile have voluntarily entered into MOUs to foster diverse employment, ownership, and procurement, at all levels C-suite, board, and beyond. Comcast, which actually went above and beyond the requirements of its MOU in some areas, launched ten new minority-owned and programmed cable networks, two of which – Cleo TV and AfroTV – were launched just last year. While EEO compliance remains a low priority for far too many, a number of major media companies have excellent EEO records, such as iHeart, Urban One, SBS, Cox Media, Disney, Nexstar, Verizon, Univision, and AT&T.

We hope that Congress gives the media marketplace the regulatory nudge it needs to foster a diverse media landscape that reflects the "true colors" of America, and the true fabric of our nation.

I thank you again for the invitation to join this important hearing, and I look forward to answering your questions.

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[3] "Chairman Pai at MMTC's 9th Annual Broadband and Social Justice Summit," Hon. Ajit Pai, Chairman, Federal Communications Commission, February 6, 2018. Available at https://www.fcc.gov/document/chairman-pai-mmtcs-9th-annual-broadband-and-social-justice-summit.

[4] "Survey" Cable's Diversity Efforts Exceed National Benchmarks in Several Areas," NCTA – The Internet and Television Association, September 26, 2019. Available at https://www.ncta.com/whats-new/survey-cables-diversity-efforts-exceed-national-benchmarks-in-several-areas.