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JD

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ACTING CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
before the
NATIONAL BLACK MEDIA COALITION
EIGHTH ANNUAL MEDIA CONFERENCE
MAYFLOWER HOTEL
WASHINGTON, D.C.

OCTOBER 8, 1981

How can a society which denied the
humanity of whole races of people,
now turn to the affected groups and
ask them to compete as if they had
always enjoyed full equality of
economic and social opportunity, of
educational preparation and politi-
cal involvement?*/

THE DEARTH OF MINORITY VOICES IN THE INFORMATION MIX

The National Black Media Coalition (NBMC) is and has been a significant and formidable force in maintaining and enlarging minority voices in the broadcast industry and in the Federal Communications Commission. I take this opportunity to commend you for continued advocacy on the moral question of equal employment opportunity within and without the Federal Communications Commission. See Remarks of Pluria W. Marshall, Chairman National Black Media Coalition, Third Annual Conference, September 2-4, 1977 (Marshall stated, "[NBMC] must watch the promotion system in the FCC to assure that Black lawyers and engineers are not being mistreated by the old boys in the Broadcast and other Bureaus." p.5).

*/ Edward Brooke, U.S. Senator (R., Mass), paper delivered before A National Conference on the Crises in Affirmative Action at Georgetown Law Center, Washington, D.C., May 25, 1977.

I.

I take no light interest in the subject of equal employment opportunity because the telecommunications industry takes its cue from the Chairman and the members of the Federal Communications Commission. If the Commission is silent on the moral question of equal employment opportunity--the telecommunications industry may take this silence as a signal that discrimination will not be considered as inconsistent with the public interest standard of the Communications Act of 1934. I have every confidence that the Federal Communications Commission will take the lead in its articulation of the importance of equal employment opportunity as an ingredient of its internal management by objective standards and encourage the private sector to make equal employment opportunity part of their MBO standards.

In this connection, I am encouraged by the public pledge of Mark S. Fowler, the Chairman of the Federal Communications Commission, made to the National Association of Black Owned Broadcasters, Inc., on September 24, 1981. Chairman Fowler, commenting on the tough decisions that he and the Federal Communications Commission face, affirmed that under his leadership minority gains would not be frustrated. He stated,

You'll find that we at the FCC...are committed to making the tough decisions, but they will not be used to stop or turn back the gains made by minorities in this country and they will not frustrate the gains made by minorities in telecommunications as long as I am Chairman. FCC Release 003550, at p. 3.

This is good language and rings with words of strong moral commitment which should not be misinterpreted by the broadcast industry or managers within the Commission responsible for the fair and equal treatment of minorities employed therein. There have been several gains made by minorities within the FCC and memorialized in numerous policy statements, court submissions, and Commission policies relating to internal affirmative action and orders dealing with a variety of matters, such as the short term renewal policy and other sanctions for violations of the law, and the policies regarding minority ownership. Hence, the importance of Chairman Fowler's statement can be measured in terms of these gains.

II.

On several occasions it has come to my attention that a member of the Federal Communications Commission has tried to persuade her colleagues that the responsibility for EEO presently in FCC rules and regulations should be repealed. In addition, she argues that the sole responsibility for equal employment opportunity rests solely with the Equal Employment Opportunity Commission. I would like to offer my own comment in response to her proffer. As long as the FCC is mandated to regulate licensees in the public interest, the FCC has a high duty to assume that its regulatees are not discriminators^{*/} for the reason expressed by Chairman Fowler in his speech before the

*/ See also, representations made to the U.S. Court of Appeals for the District of Columbia by vote of FCC on September 16, 1977. FCC Release No. 77-649.

National Association of Black Owned Broadcasters, Inc. In that speech Chairman Fowler appropriately remarked that minority ownership issues associated with the FCC's tax certificate and distress sales policies "...do not...address the fundamental problem of attempting to increase minority voices in the information mix." The FCC's equal employment opportunity rules do just that. The successes--such as they are--of minority ownership grew as a result of the employment and training of Blacks at radio stations, who subsequently started their own stations. These minority voices are Blacks, Hispanics and women who write script in radio and television newsrooms in America, and who we see and hear in various capacities via the electromagnetic spectrum.

Finally, the courts of the land do not agree with those who believe that the Federal Communications Commission has no authority or responsibility in the area of equal employment opportunity oversight. For example, the following quote from National Organization of Women (N.Y.C.) v. FCC, 555 F.2d 1002 (D.C. Cir. 1977) is supportive of this assertion:

Our inquiry must begin, as the FCC recognized, with an understanding of the respective functions of the FCC and the EEOC in this area. The FCC's review of equal employment practices is based upon its mandate under the Communications Act to regulate broadcasting in the "public interest."

The scope of the power delegated by these words take meaning from the purposes of the regulatory legislation. Thus, the FCC considers the employment practices of its licensees, to the extent those practices affect the obligation of the licensee to provide programing that fairly reflects the taste and viewing points of minority groups and to the extent those practices raise questions about character qualifications of the licensee.

To refuse to enforce FCC policies in connection with equal employment opportunity would reverse 15 years of gains made by minorities and women in the telecommunications industry. These policies have received the bipartisan support of every Commission since 1968. These policies have had incidental non-regulatory impact on equal pay for women and industry mobility for Blacks, women and Hispanics. Hence, I believe that those who believe that the EEOC can substitute its individual case processing system for FCC industrial oversight are blind to the positive forces of existing FCC policy. The gains made by the FCC in the last 15 years in the area of equal employment opportunity must not be "frustrated."

III.

The quest for minority ownership is not new. Minority ownership was the subject of a two day workshop at the FCC on April 25-26, 1978. FCC Report on Minority Ownership In Broadcasting, May 17, 1978; Statement of Policy on Minority Ownership of Broadcast Facilities, FCC Release 78-322, May 25, 1978. Richard E. Wiley, a Republican and Benjamin L. Hooks, a Democrat, were responsible for this historic conference. See Compendium of Statements and Opinions of Commissioner Benjamin L. Hooks on Minority Ownership In the Broadcast Industry, FCC Minority Ownership Conference April 25-26, 1977; Opening Remarks of Chairman Richard E. Wiley, FCC Minority Ownership Conference, April 25, 1977, FCC Minute Number 81276.

The minority ownership task force planned this conference for nearly six months. It was a success. The transcript of the conference should be on file in the FCC library where I personally filed one full set thereof. The conditions that existed in 1978 and now have not changed. While there are a few more minority owners--there should be more. I highly recommend that any new task force or study groups appointed to assess the dearth of minority ownership, review the transcripts and the associated papers of the 1978 minority ownership conference. By doing so, you will quickly get to the root of problems and will no doubt draw the same conclusions. There is not much difference in fact or fiction today than existed when the first and second minority ownership conferences were convened.^{*/}

*/ See also papers delivered during the FCC Enterprise Opportunities For Minorities in Telecommunications workshop, Washington, D.C., December 2-3, 1980. (second conference) See especially remarks by Chairman Charles D. Ferris, FCC minute number 04436, Commissioner Tyrone Brown, minute number 04435, and FCC news release of Charles L. Brown, AT&T Chairman minute number 04480.

Also see three interesting and well written statements by Bernard Gorden, in the Policy and Rules Division of the Broadcast Bureau on the subject of "Minority Ownership of Broadcast Stations (A Minority Opinion)," February 15, 1978; Id. (Second Edition), November 29, 1979; and on the subject of "Minority Participation," May 4, 1978. These papers should be carefully reviewed.

Note also, C. McKee, "Fresh Voices: A New Direction for Minority Ownership of Broadcast Facilities," before the National Association of Radio Broadcasters Convention, Miami Beach, Florida, September 15, 1981; Curtis T. White, "Public Policy and Minority Ownership of Broadcast Media: An Argument for Policy Reform and the Maximization of Minority Participation In the Equity Arena," April 25, 1977; Tony Brown, "The Federal Communications Commission and Contemporary Issues" before the Congressional Black Caucus Brain Trust on Communications, July 25, 1977; Joseph Aguayo, "A Plan For the Development and Acquisition of Broadcast Stations for the Latino Community," before the FCC Conference on Minority Broadcast

It is, however, important to note that it has been the creative and aggressive policies of the FCC that has made the most significant difference in the whole broadcast industry concerning minority ownership, and, I predict that it will be the FCC policies that will cushion present gains, increase present gains, or reverse present gains in the area of minority ownership, or internal staff and industry equal employment opportunity.

A vital point must be emphasized here. At no time during the minority ownership conference did the FCC staff or the participants ever contemplate that equal employment opportunity in the broadcast industry should be a substitute for or compromised in the name of minority ownership. From the very beginning, the FCC staff and the Commission separated these two vital policy directions. These policies are and have always been separate, and minority ownership interests must never sell out the equal employment interests of the Federal Communications Commission. To do so would bankrupt the minority ownership policies since prospective owners have traditionally come from the employment ranks of the broadcast industry. And, this focus must assuredly never be forgotten by Black broadcasters, who know this fact better than anyone else.

Ownership, April 26, 1977; Hollie West, "A Question of Control, Ownership and Role - Black Radio," Washington Post, Col. 1, at B-1, Jan. 29, 1973. J. Clay Smith, Jr., "The Minority Ownership Conference on the Subject of Public Policy Relating to Minority Ownership," September, 1977.

I would like to take this opportunity to commend Richard E. Wiley and Benjamin L. Hooks for the courageous, moral and bold initiation of the first Minority Ownership Conference. This single conference--more than any rhetoric--brought the issue to the public eye and made it a matter of cooperative discussion with the National Association of Broadcasters. It is the FCC and it will always be the leadership of the seven Commissioners that will secure the presence of minorities in the employment profiles of the telecommunications industry or whose written or oral pronouncements will close them out.

Chairman Richard E. Wiley and Commissioners Benjamin L. Hooks, Joseph Fogarty, and Abbott Washburn, must be given high marks for their sustained and positive commitment to the advancement of minorities and women on the employment side and the ownership side. It is my hope that the present composition of the FCC will set yet higher productivity goals in this area. Only time will tell.

IV.

Many of you can understand how I personally view the leadership roles of Blacks and Hispanics within the FCC. Being the first Black FCC policy staff member in the Commission's then 40 year history is something that I shall never forget. Yet, today nearly ten years after I was brought on--and Broadcast Magazine gave me no credit for an advanced law degree and my three years as an antitrust lawyer -- billing my appointment as EEO-Affirmative Action--I do not see much difference in the FCC internal minority profile today, especially in policy making roles which bring

minorities in direct contact on policy matters with the Commissioners.

There are no Bureau Chiefs, Deputy Chiefs or Assistant Chiefs who are Black or Hispanic and few, if any, who are women.

I know that as Chairman Fowler completes his team and evaluates the FCC, he and the other members of the Commission will see to it that diversity remains the centerpiece of the employment profile at the FCC.

V.

What is the current status of Blacks in the Broadcast industry in the area of equal employment opportunity and ownership?

A. EEO

- o 1980 data reveal 8.7% Black participation in full-time positions for stations with five or more full-time employees -- up 0.1% from 1979.
- o Black employment is "levelling off," increasing annually at a much slower rate than in the mid-1970s. Black women continue to make gains in secretarial positions but have won only modest increases elsewhere. Black men are gaining jobs nowhere, and their proportion in officials and managers and sales positions are actually in decline.
- o 299 stations with more than ten employees in 1979, located in communities with 5% Black population or more, had no Black employees in 1979.
- o 42 stations with 15 or more employees in 1980 and at least eleven in 1979 and 1978, located in communities with at least 5% Black population and at least 5% Blacks in the workforce, and not minority-owned, had no Black employees in each of the years 1978, 1979 and 1980. Seventeen of these had none in the years 1975-1978. Some of these were located in or near cities like Milwaukee, Boston, Chicago, New York and Los Angeles.
- o Full-time Black participation in the CATV industry stands at about 6%, mostly in low-paying jobs.
- o Of 786 attorneys listed in the 1981 Broadcasting Yearbook as being "active in communications law" (the list does not include FCC personnel) eleven are Black. Of 123 law firms listed therein as "active in communications law," one is a Black firm. See J.C. Smith, Career Patterns of Black Lawyers In The 1980's, 7 Black L.J. 75, 79-80 (1980). There are no Black broadcast station brokers, and to our knowledge only two Black consulting engineers.

B. OWNERSHIP

- o There are about 124 Black-owned stations on the air now, of which eight are television properties. One of the TV stations is noncommercial, as are six of the radio stations. Only one Black-owned radio station (and no Black-owned TV station) is operated non-commercially without a college or university affiliation.
- o The FCC's tax certificate and distress sales policies were instrumental in bringing about an increase in Black station ownership from 60 stations (59 radio, one TV) in 1978 when the policies were adopted to the present 124.

There has been some improvement in employment and ownership, in recent years but the record reveals that there is need for this improvement. The need for this improvement has been recognized since 1968 when the Commission adopted its first EEO rules. The question is what corrective actions will be taken to make the broadcast, cable and common carrier areas more representative of the American population. No studies or task forces will reveal any significant changes since 1978. While at the FCC I learned one lesson--speeches are fine, task forces are encouraging, but policy is dictated solely by the individual votes by members of the collegial body--no more and no less.

VI.

In closing, you may recall that on October 6, 1979, I spoke at the annual banquet dinner of NBMC at the Mayflower Hotel. The title of my speech was "Don't Shout Too Soon: Revisited." In that speech I voiced concern about the trade-offs I feared might occur between equal employment opportunity and minority ownership. I stated,

The strategy of the future must be to balance regulatory policy between minority ownership and employment opportunities. Both of these interests are vital interests to Black America and indeed to other minorities. Hence, I urge you all -- the black owner and the black job seeker -- do not abandon one for the other. In my view, such a consequence is contraproductive and destructive to both the goal of increasing the number of minority owners and the goal of increasing jobs and protecting employees from job discrimination.

My concerns nor my views have changed. Minority ownership and equal employment opportunity are two separate policy directions which intersect from time-to-time but never envelops the other.

In 1979 I cautioned NBMC not to shout too soon. Today, I do not hear any shouts at all. We are all aware of the "dearth of minority voices in the informational mix." This must change before the close of the decade. However, it will not change without your continued vigilance and your willingness to take a stand for equality and diversity in America.

J. Clay Smith, Jr.
Acting Chairman,
Equal Employment Opportunity Commission