TAX CERTIFICATE POLICY

David Honig
President Emeritus and Senior Advisor
Multicultural Media,Telecom and Internet Council

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Broadcasting is the most influential industry in the nation.

The deliberate exclusion of people of color from ownership of the airwaves would be profoundly anti-competitive.

- Yet it happened from 1932 to 1978, and in some aspects it continues today.

While people of color often appear in front of the camera and in front of the microphone, they are less likely to appear in positions of authority behind the camera and microphone.

Before The Adoption Of The Tax Certificate Policy

- In 1950, minorities owned zero radio stations but had owned at various intervals, since the early 19th century, over 3,000 newspapers (mostly weekly and a few daily), as well as several magazines.

- In *TV 9, Inc. v. F.C.C.,* 495 F.2d 929, 938 (D.C. Cir. 1973), the Court stated:

  "It is consistent with the primary objective of maximum diversification of ownership of mass communications media for the Commission in a comparative license proceeding to afford favorable consideration to an applicant who, [. . .] gives a local minority group media entrepreneurship. We hold only that when minority ownership is likely to increase diversity of content, especially of opinion and viewpoint, merit should be awarded."

Before The Adoption Of The Tax Certificate Policy

- The extreme disparity between the representation of minorities in our population and in the broadcasting industry required further Commission action. In 1978, there was only one minority owned television station and there were 60 minority owned radio stations. At the time, minorities constituted approximately 20 percent of the population, but they controlled fewer than one percent of the 8,500 commercial radio and television stations. *See Bachman, Dynamics of Black Radio (1977).*

Origins Of The Tax Certificate Policy

- By 1977, aware of much of this history and troubled by it, FCC Chairman Richard E. Wiley convened the Minority Ownership Task Force and charged it with arriving at new, pro-active policies to advance minority broadcast ownership.

- In 1978, the FCC, led by Chairman Wiley's successor Charles Ferris, adopted the Statement of Policy on Minority Ownership Of Broadcasters Facilities, 68 FCC2d 979 (1978), which contained the Tax Certificate Policy.

- The FCC emphasized that adequate representation of minority viewpoints in programming served the needs and interests of the minority community, and enriched and educated the entire audience.

Tax Code Element Of The Tax Certificate Policy

- Originally, tax certificates were used to alleviate the hardship of involuntary transfers as a result of divestitures imposed by the Commission's multiple ownership rules. In 1970, the FCC authorized tax certificates in voluntary sales as an incentive to licensees to divest themselves of communications properties grandfathered under the multiple ownership rules. *Issuance of Tax Certificates*, 19 P&F Radio Reg. 2d 1831 (1970).

- In such a transaction, the seller was permitted to defer payment of the tax on capital gains provided the seller reinvested in comparable property, such as the stock of another broadcast company.

Birth Of The Tax Certificate Policy

- In 1978, the Commission expanded its 1970 policy to include transactions where the buyer’s majority equity interest was held by minorities, and there was a substantial likelihood of increasing diversity of programming.

- In its triennial “Section 257 Reports” to Congress, submitted since 1996 with Congress and addressing media diversity and competition, the Commission has repeatedly recommended to Congress that it reinstate the policy.

Creation Of The Tax Certificate Policy

- This Policy rests upon the same First Amendment-based diversity rationale that led the Supreme Court to validate FCC minority ownership policies in *Metro Broad., Inc. v. F.C.C.*, 497 U.S. 547, 552 (1990). (*Metro Broadcasting* was later partly overruled by *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 132 (1995)).

- The Policy quintupled minority station ownership until 1995, when Congress terminated the policy.

- Tax Certificate applications were closely reviewed by FCC staff. From 1978 to 1995, there were over 200 Tax Certificate transactions, only one of which (involving a Pittsburgh TV station) was ever found to involve fraud.

Why Should The Policy Be Reinstated?

- The Tax Certificate Policy would:
  - Help enable minorities to compete effectively by operating successfully, staying on the air, and serving the public
  - Empower minority entrepreneurs to use their skills and backgrounds to compete in the marketplace
  - Allow facilities owned by minorities and reaching minority audiences to help advertisers reach the entire public.

Why Should The Policy Be Reinstated?

- Additionally, the Policy would:
    - Identify potential rating measurement metrics for minority and women-owned broadcasters by attracting sustainable advertising revenue from local and regional advertisers
    - Help women, minority and multi-ethnic broadcasters attract the patronage of major advertising agencies
    - Support the use of a broad range of broadcasters, including those that particularly serve minority communities, to air federal, state and local government advertising campaigns regarding important initiatives such as public health information during the COVID-19 pandemic.

Conclusion

The 1978 Minority Tax Certificate Policy was a successful program that profoundly improved diversity in broadcasting. Because of its societal and economic benefits, Congress and the FCC should reestablish the program.