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## **New Approaches to Minority Media Ownership** **Columbia Institute for Tele-Information, Columbia University**

### **EQUALITY IN THE INFORMATION AGE**

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### **EQUITY POOLING AND MEDIA OWNERSHIP**

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This Article outlines a method of pooling equity for acquiring a portfolio of media properties. Each participant receives a security containing an investment return and a management right. The management right goes only to one successful bidder, offering a cash payment to other investors as an access price. By offering repeat bidding on several properties, different members of a pool achieve ownership while diversifying their risk. Alternatively, an investor not wishing management receives a higher compensating return. The procedure is particularly suited to media properties dependent on local advertising such as radio, "free" community newspapers, and television outlets. These properties are more vulnerable to downturns in local markets. The pooling procedure allows local risks to be diversified away into the larger economy.

### **THE DIGITAL DILEMMA: TEN CHALLENGES FACING MINORITY-OWNED NEW MEDIA VENTURES**

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Minority-owned companies competing in print publishing, radio, broadcast television, cable, and telecommunications industries have had no shortage of challenges, setbacks, and failures. Minority-owned companies are struggling to stake a claim in the new media frontier. Some challenges they face are unique to the underlying technology, uncertainty, and international reach of the Web. There should be a sense of urgency with respect to minority participation on the Web. If the promise of broadband leads to new media outlets that are profitable and more dynamic than traditional media, then minorities cannot afford to be left out.

## **PRIVATE EQUITY FUNDING FOR MINORITY MEDIA OWNERSHIP**

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This Article details the importance of private equity financing to all sizes and types of media companies. Much of the rapid growth of the Internet has been financed by private equity. The private equity market is an important source of funds for minority media companies. It is a large market, able to meet a variety of financing needs. However, the minority media entrepreneur must realize that this is strictly a profit-oriented investment market. The same investment process and criteria will be applied to minority media proposals as will be applied to non-minority media proposals. This process may present some problems for minority entrepreneurs since most private equity investors are not minorities.

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In 1995, Congress eliminated the Federal Communications Commission's (FCC) Minority Tax Certificate Program—a nonintrusive method of encouraging increased participation of minority entrepreneurs as owners in the broadcast and cable industries. Since that time, minorities have faced increased difficulties competing in all facets of the communications industry. These difficulties can be attributed to: (1) increased consolidation within the broadcast industry as a result of provisions of the

Telecommunications Act of 1996 relaxing certain broadcast ownership limitations; (2) recent court decisions adverse to minority-specific programs; and (3) continued obstacles faced by minorities in accessing sufficient capital to acquire licenses and compete in the communications industries. This Article examines the history and benefits of the FCC's Minority Tax Certificate Program and Congress's reasons for eliminating it. This Article also suggests ways in which a new tax certificate program could be created to address Congress's concerns.

## **INVESTMENT IN MINORITY-OWNED MEDIA: A SOCIAL INVESTOR'S PERSPECTIVE**

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Access to capital for minority media remains problematic in the pension and mutual fund world, even among those organizations that practice "socially responsible" investing. The reasons for this include the behavior traits of all institutional investors and the relatively undeveloped state of socially responsible investing. However, modern social research suggests that large media conglomerates, such as Disney, Time-Warner, and Viacom, might be potentially approachable sources of capital for minority media.

## **THE VALUE OF THE TAX CERTIFICATE**

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Tax certificates are an example of successful incentive regulation. Prior to its repeal in 1995, section 1071 of the Internal Revenue Code permitted the tax-free sale or exchange of media properties to effectuate policies of the Federal Communications Commission. Enacted by Congress in 1943, this provision was originally used to soften the hardship created by involuntary sales of broadcast properties made necessary to reduce ownership concentration in the radio industry. In 1978, the tax certificate was used to promote goals to increase minority ownership of a variety of communications properties. This Article discusses the "value" of tax certificates as a public policy tool and measures that tool's efficacy in promoting the particular goal of increased minority ownership. It also discusses the importance of tax certificates in an environment of increased ownership concentration in the radio industry.

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measurable standards, public participation, and industry structure. Applying these five factors to digital television public interest responsibilities and privacy on the Internet, this Article concludes that self-regulation is not likely to be successful in these contexts.

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In 1996, a subcommittee of the Federal Communications Bar Association published a report on legal opinion practice in corporate transactions involving FCC licensees (the *FCBA Report*). The *FCBA Report*, although inspired by the American Bar Association's Legal Opinion Accord and Guidelines (the *Accord*), deviated from the *Accord* in many important respects. The *FCBA Report* likewise is at variance with the recent report of the TriBar Opinion Committee (the *TriBar Report*), which presents a comprehensive treatment of customary legal opinion practice. Given recent developments in case law expanding the liability of lawyers to third parties for their legal opinions, the departure of the *FCBA Report* from the approach of the *Accord* and the *TriBar Report* could expose communications practitioners to unnecessary risk. Communications practitioners should only be asked to opine with respect to matters for which they have a reliable source of factual information and for which they are the least-cost source of the opinion sought. To the extent that the *FCBA Report* departs from these principles, practitioners should follow the approach of the *Accord* and the *TriBar Report*.

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**PRIVATE PROPERTY, ECONOMIC EFFICIENCY, AND SPECTRUM POLICY IN  
THE WAKE OF THE C BLOCK AUCTION**

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In the original spectrum auctions of Personal Communications Services, the FCC designated a portion of the spectrum for woman and minority-owned small businesses (the C block). The Supreme Court's decision in *Adarand v. Peña* caused the FCC to redesign the auction with the result that many bidders overvalued this spectrum. Due to this overvaluation, many bidders could not meet their obligations to the FCC. This Note analyzes FCC auction history, the FCC's response to the original C block auction, how to fix these problems within the given congressional and FCC framework, and argues that the best solution would be to treat spectrum like private property.

**NOT IN MY BACKYARD: THE SITING OF WIRELESS COMMUNICATIONS  
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Given the increasing prominence of wireless communications within the broader realm of technological advancement, the deployment of a national infrastructure capable of meeting the demands of PCS is critical. The Telecommunications Act of 1996 takes substantial steps to ensure the expeditious deployment and ultimate success of such technology. The spur of the 1996 Act is necessary to bring otherwise disinterested communities to the table with providers. While the 1996 Act greatly enhances the position of service providers as they deal with local communities, education and cooperation between federal, state and local governments, and service providers offer the greatest potential for effective resolution of problems. States and municipalities working with providers in the crucible of their jurisdictions continue to develop innovative solutions to the complex issues that they face. As a result, their profound contributions have and will continue to advance the communications revolution.