

UCC OC INC. QR 2014 POSITIONS

1. Reject Commission analysis that radio does not contribute to viewpoint diversity.
 - a. If the Commission adopts legal analysis that finds radio does not contribute to viewpoint diversity *could prevent the FCC from ever adopting any policy to promote ownership diversity in the future.*
 - b. The Commission’s analysis conflates its localism principle with its diversity principle. Diversity emphasizes whether many speakers are available to the public to express a wide range of views, not whether the speakers provide local news.¹ Moreover, the Commission has recognized radio can serve localism even without providing local news.²
 - c. Radio continues to be an important source of news and information for the American public and makes significant contributions to localism and diverse viewpoint—particularly in communities of color, often linked with increased voter participation in the studies on the record.³
 - d. Reject conclusion that format can never be used to study viewpoint diversity (see also study recommendation below).⁴
2. Correct other erroneous and problematic constitutional and legal analyses which could likely have long-range future impact on FCC authority in this area.
 - a. Affirm remediation in addition to viewpoint diversity as a constitutional justification for the FCC’s approach.⁵
 - b. Retract its tentative conclusion that it must emulate university admissions in order to pursue viewpoint diversity and thus lacks the capacity to adopt a race-conscious standard.⁶
 - c. Retract any implication that no data could ever meet the *Adarand* standard, whether or not the FCC has yet met that standard.⁷
 - d. Correct the Commission’s erroneous description included in the FNPRM of the legal standard for showing “passive participation” in a biased industry.⁸
 - e. Clarify that *Lutheran Church* does not apply to the present circumstance because the DC Circuit in *Lutheran Church* was concerned about the Commission’s interest in diversity within a station, but did not address the Commission’s strong obligation to promote diversity among stations.⁹
3. Adopt Commission proposal to maintain local TV ownership, radio ownership rules.
 - a. Maintenance of local TV rule is particularly appropriate given the incentive auction and likely negative impact on ownership diversity.¹⁰

¹ Comments of United Church of Christ, Office of Communication, Inc. et al., MB Docket. Nos. 14-50, 09-182, 07-294, 04-256, at 28 (filed Aug. 6, 2014) (“UCC OC Inc. et al. Comments”) (“UCC et al. Comments”).

² UCC et al. Comments at 32.

³ UCC et al. Comments at 33-40; Appendix D (examples of viewpoint in non-news programming in radio serving communities of color).

⁴ Joint Reply Comments of United Church of Christ, OC Inc. and Common Cause, MB Docket. Nos. 14-50, 09-182, 07-294, 04-256 at 11-12 (filed Sept. 8, 2014) (citing NPRM ¶¶ 294, 298) (“UCC-Common Cause Joint Reply”).

⁵ UCC-Common Cause Joint Reply at 1.

⁶ UCC-Common Cause Joint Reply at 13 (citing NPRM ¶ 298).

⁷ UCC-Common Cause Joint Reply at 2-6.

⁸ UCC-Common Cause Joint Reply at 3-4.

⁹ UCC-Common Cause Joint Reply at 14.

¹⁰ UCC et al. Comments at 28.

- b. Re-adoption of the local TV rules explicitly condoned and invited by the 3rd Circuit in *Prometheus III*.¹¹ (See also below, #8 on JSAs).
- c. Retain the local TV top-four network affiliation prohibition and do not permit affiliation swaps just prior to the rule's enactment to be insulated from enforcement.¹²
 - i. Do not relax the failed station waiver and particularly do not reduce the three-year negative cash flow requirement to one year, which would ignore the cyclical nature of broadcasting.¹³
- d. Local radio rule should be maintained and ideally tightened by ending grandfathering or lowering the limits.¹⁴ The most current available data show diversity in radio is declining in many instances, particularly for African Americans.¹⁵
- 4. Reject proposed waiver standard for Newspaper-broadcast rule.
 - a. Adopt mechanism to provide public notice and comment of waivers to this rule.¹⁶
 - b. The newspaper industry's claims that merging operations would preserve viewpoint diversity contrasts with the numerous examples of merged newsrooms and the business imperative to combine operations is belied by the current plans to spin off newspaper operations.¹⁷
- 5. Reject proposal to eliminate the radio-TV cross ownership rule because the Commission has no data to support its hypothesis that it does not augment minority/female ownership, clearly in violation of the three Third Circuit remands.¹⁸
- 6. Reject other proposals until the FCC can support, with evidence, their positive impact on ownership diversity.
 - a. Do not permit transfer of grandfathered combination that exceed the FCC's ownership rules.¹⁹
 - b. The EDP (equity debt plus) rule cannot be evaluated until the FCC ends the exception for ownership filings by non-attributed EDP ownership investments.²⁰
 - c. Do not permit incubator proposals that permit licensees to exceed the ownership rules because permitting further consolidation will harm the very small businesses and minority owners the FCC is intending to help.²¹
- 7. Adopt a research agenda so that the Commission will have an adequate record for decision-making in the QR2018.

¹¹ *Prometheus III* slip op. at 55 (“On remand, if the Commission is able to justify (by finding they are in the public interest) the existing ownership rules to which television JSA attribution applies—or, in the alternative, if it replaces the current rules with new ones it determines to be in the public interest—nothing in our opinion would prevent it from readopting the JSA rule at that time.”)

¹² UCC et al. Comments at 27; see also Reply Comments of United Church of Christ, Office of Communication, Inc. et al., MB Docket. Nos. 14-50, 09-182, 07-294, 04-256, at 13-15 (filed Sept. 8, 2014) (“UCC et al. Reply Comments”).

¹³ UCC et al. Reply Comments at 16.

¹⁴ UCC et al. Comments at 30.

¹⁵ UCC et al. Comments at 31.

¹⁶ UCC et al. Comments at 44 (citing Comments of Media Access Project and Prometheus Radio Project, at 6-10, 2010 QR, Docket No. 09-182 (filed Mar. 5, 2012) (describing process for public comment for newspaper-broadcast waivers)).

¹⁷ UCC et al. Reply Comments at 20.

¹⁸ UCC et al. Comments at 41-43.

¹⁹ UCC et al. Reply Comments at 24-25.

²⁰ UCC et al. Reply Comments at 22-24.

²¹ UCC et al. Reply Comments at 25.

- a. Immediately remedy the FCC's 323 ownership data collection, particularly if the Commission continues to blame inaction on a lack of adequate data.²²
 - b. Articulate a research agenda, including the evidence it believes would support action by the Commission and collaborate with the civil rights community in finding a way to fund it. Consider the numerous suggestions by UCC OC Inc. and others of useful studies to conduct in the development of this agenda. Explain why the existing proposals cannot be conducted.²³
 - c. If the Commission has a broader or more fundamental critique with regard to the data sets used in research on media ownership and content, it is up to the Commission to identify the flaws in detail, enabling adequate research to be completed.²⁴
 - d. Acknowledge and summarize findings of previous *Adarand* studies and conduct a further study building on that analysis to identify legally sufficient evidence of a disparity between the number of minority and women owned broadcast stations and the number of qualified minority and women owned firms.²⁵
 - e. Study whether discriminatory access to financing for broadcast businesses is different from other businesses.²⁶
 - f. Procure additional historical analysis to identify evidence of active or passive FCC participation in discrimination.²⁷
 - g. In order to meet the test mandated in *Grutter*, study the impact of the race-neutral rules it has already adopted, acquiring expertise in how to study small sample size where necessary.²⁸
 - i. Assess impact of small business or SDB definition on ownership diversity.²⁹
 - ii. See also other studies proposed by UCC OC Inc.³⁰
 - h. Outline a series of workshops, to commence immediately upon adoption of the order, considering the underlying concepts necessary to conduct research in media, starting with a workshop on the study of viewpoint diversity and how it does or does not relate to format diversity.³¹
8. After re-adopting the JSA attribution rule pursuant to the *Prometheus III* remand, the Commission should collect SSA agreements and any other sharing agreement for study and analysis.³²

²² UCC-Common Cause Joint Reply at 9.

²³ Summary of Studies Recommended by UCC OC Inc., Attachment to Letter from Cheryl A. Leanza, UCC OC Inc. to Marlene Dortch, FCC, Docket Nos. 14-50, 09-182, 07-294 (filed Dec. 11, 2014), available at: <http://apps.fcc.gov/ecfs/document/view?id=60001008946>.

²⁴ UCC-Common Cause Joint Reply at 9.

²⁵ UCC-Common Cause Joint Reply at 4 (citing NPRM ¶ 303).

²⁶ UCC-Common Cause Joint Reply at 5.

²⁷ UCC-Common Cause Joint Reply at 6.

²⁸ UCC-Common Cause Joint Reply at 14.

²⁹ UCC et al. Comments at 15.

³⁰ Summary of Studies, *supra*.

³¹ UCC-Common Cause Joint Reply at 11-12.

³² *Prometheus III* slip op. at 55, *supra*; UCC et al. Comments at 1-11; see also UCC et al. Reply Comment at 7-12.