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April 6, 2016

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Promoting the Availability of Diverse and Independent Sources of Video
Programming, MB Docket No. 16-41

Dear Ms. Dortch:

On behalf of The Leadership Conference on Civil and Human Rights and its Media and Telecommunications Task Force, we write to comment on the Notice of Inquiry considering Diverse and Independent Sources of Video Programming (“Notice”) and provide the perspective of viewers and listeners who are too often unheard and unseen in the modern media environment. The Leadership Conference is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States. The Leadership Conference’s Media/Telecommunications Task Force is committed to ensuring a diverse media landscape because we understand that meaningful protection of civil rights and advancement of key policy objectives rely in great measure on an accurate, independent, and diverse media that serves our constituencies.

Our nation’s current media landscape is significantly lacking in programming that features women and people of color as actors, directors, and producers in popular entertainment and news, and thus, there is much to gain from improvements in the video programming market. As discussed in more detail below, we urge the Commission to take into account the following points:

- People of color and women are vastly underrepresented in the cable and broadcast programming today—not only in front of and behind the camera, but also as owners of entertainment companies.
- Who owns the media matters, as there is a direct connection between those who own broadcast stations and the content they transmit, and studies demonstrate owners of color are more likely to offer content that serves underserved audiences.
- A fully dynamic and competitive market will also produce more jobs and help to increase the diversity of voices available to all audiences.



People of Color, Women and Many Other Groups are Not Well Represented in the Media

It is indisputable that women and people of color, as well as many other groups such as people with disabilities and the LGBTQ community, are not well-represented in the current media landscape.

Women. Women remain underrepresented on almost every front, from cable and television news to entertainment fare. According to a 2016 Hollywood Diversity report by the Bunche African American Studies Center at UCLA (“the Hollywood Diversity report”), women are outnumbered by nearly 2 to 1 among cable scripted leads; 2 to 1 among broadcast reality and other leads; nearly 2 to 1 among cable reality and other leads; nearly 2 to 1 among broadcast scripted leads; nearly 2 to 1 among creators of broadcast scripted shows; and greater than 2 to 1 among creators of cable scripted shows.¹ According to the most recent Women’s Media Center, which commissioned research focusing on women in news, women comprised 41.2 percent of all TV news employees in 2014, up from 40.3 percent in 2013; and 30.8 percent of TV news directors in 2014.²

Latinos. According to the FCC’s 2013 biennial ownership data collection, Latinos held a majority interest in only three percent of 1,386 full power commercial television stations in 2013 despite accounting for more than 17 percent of the American population, a figure that was virtually unchanged from 2011’s figure of 2.9 percent. Half of these Latino-owned stations in 2011 were located in Puerto Rico. These dismal numbers are correlated to similarly low on-screen statistics. According to the Hollywood Diversity Report, between 2013 and 2014, Latino actors made up only 5 percent of all roles on scripted broadcast television shows, making them the most underrepresented among minority groups.³ Latinos’ share of cable acting roles on broadcast and cable scripted was only 4 percent, and for digital shows, a slightly better but by still no means representative share of 9 percent.⁴ A recent study by the Columbia Journalism Review, *The Latino Media Gap*, demonstrated shocking losses in Latino representation on television entertainment and news, even as the numbers of Latinos in the U.S. has increased dramatically. For example, between 2010 and 2013, Latinos comprised none of the top ten television show creators, 1.1 percent of producers, 2 percent of writers, and 4.1 percent of directors.⁵ Moreover, in news, Latinos constitute less than 1 percent of news media coverage, and the majority of these stories feature Latinos as lawbreakers, and as of 2013, there were no Latino anchors or executive producers in any of the nation’s top news programs. According to available data, only 1.8 percent of news producers are Latinos.⁶

Asian Americans. Asian Americans and Pacific Islanders (AAPIs) comprise about 5 percent of the U.S. population. Often concentrated in urban areas throughout the United States, AAPI populations in major US metropolitan areas range from more than 46 percent in Honolulu, HI to 4.7 percent in Clark County, NV. Despite the increased number of roles for AAPIs, these communities still remain largely invisible within the network and cable sphere. According to 2013 FCC data, Asian Americans own 1.4 percent of full power television stations in the U.S. According to the Hollywood Diversity Report, Asian Americans only make up 4 percent of actors on broadcast TV; 2 percent of actors on cable; and 5 percent of actors on digital shows⁷. Similarly, AAPIs are also underrepresented behind the camera. A 2016 Writers Guild of America, West report on diversity showed that Asian Americans were underrepresented by a factor of about 2 to 1⁸ when comparing rates of Asian American writers to the general Asian American



population. And unique for Asian Americans, cable networks dedicated to serving that population have faced difficulties. Thus, for example, despite the increased number of AAPIs on TV, almost none of the narratives told or characters portrayed represent Southeast Asian or Pacific Islanders.⁹

African Americans. As is the case with the overall population of our nation, the number of African Americans in the United States continues to increase; there are currently more than 323,000,000 people with African Americans currently representing more than 13 percent of the total. Despite the steady growth, the number of African American-owned media outlets has not kept pace. African American ownership remains particularly low, hovering at less than 1 percent of all television properties, and less than 2 percent of radio. Representation of African Americans on national television shows tend to also be at or below overall black representation in the U.S. population: African Americans make up 9 percent of roles on broadcast scripted TV; 12 percent on cable scripted shows; and 6 percent for digital scripted shows.¹⁰ Furthermore, the portrayal of African American remains stereotypical and mostly negative. For example, a 2014 study of four local news stations in New York City showed that they were dramatically overstating the number of African American people involved in local crime.¹¹

People with disabilities and the LGBTQ community. GLAAD's annual report *Where We Are on Television* tracks the appearance of people with disabilities and LGBTQ characters on television. According to the most recent report, the percentage of characters with disabilities (measured as any character whose disability would be covered by the Americans with Disabilities Act) has hovered around 1 percent since 2010, and went down in the last year to 0.9 percent from 1.4 percent in 2014.¹² For the LGBTQ community, the report found of the 881 regular characters expected to appear on broadcast primetime programming in the coming year, 35 (4 percent) were identified as gay, lesbian, or bisexual. And the 2015 Bunche Center report found that LGBT characters were relegated to lower credited actors in "diverse" shows.¹³

In order to augment the record, we have included several of the most helpful reports addressing diversity in media as attachments to this filing.

Ownership Matters

We note that in other contexts, the FCC has compiled significant data demonstrating that the identity of an owner or producer of programming influences the content offered in that programming. While much of this analysis was originally conducted with regard to the ownership of local broadcast stations, the same conclusions can easily apply to programming networks that produce and purchase programming as part of content bundles.

The research compiled in the Commission's Critical Information Needs Analysis is especially relevant to this inquiry.¹⁴ For example, Dam Hee Kim's meta-analysis of 42 studies (a significant portion of all studies ever conducted to consider the connection between viewpoint and identity) identifies 18 studies

that find a connection between ownership and content.¹⁵ Kim's study states:

*A review of studies of the nexus among minority ownership, employment and content suggests ... a nexus between minority ownership and content tailored toward minority communities. It appears that the prevalence of minority owners has been related to the employment of a more diverse group; the employment of minority groups seems to be associated to the provision of diverse content; and minority-owned stations have tried to air content tailored toward minority communities more than white-owned stations.*¹⁶

Studies from other parts of the broadcast ownership docket make similar important findings. One study demonstrates that minority-owned stations spend more time covering minority politicians, a critical source of information for a well-informed electorate,¹⁷ and that minority ownership increases diversity in health reporting.¹⁸ Other research concludes that "minority audiences have different format tastes than white audiences and that minority-owned stations disproportionately cater to these tastes. In addition, the regression analyses ... show that, on a market-wide basis, the presence of minority-owned stations increases the amount of minority-targeted programming and that the availability of minority-targeted formats attracts more minorities to listening."¹⁹ These findings are robust and compelling.²⁰

A Competitive Marketplace Leads to More Independent Diverse Programming and More Quality Jobs and Journalism

A vibrant news industry produces information needed to undergird the operation of democracy. Competitive marketplaces lead to more employment, more jobs, and more economic success. However, the current media marketplace is not characterized by full competition, damaging the opportunities of the many people who make their living in the media industry, including actors, writers, journalists, television camera operators, and the myriad of support vendors that take on every aspect of television production from catering to transportation to make-up and special effects.

In the present media system, content creation and distribution are both highly concentrated. Independent artists and creative entrepreneurs, who are often women and people of color, have a very difficult time bringing to Americans the perspectives and content that reflects the true diversity of our nation. This means that mainstream programming, which does not reflect the full diversity of our nation, is widely available, while independent programming, which could better serve and represent the full range of our population, is often left on the sidelines.

Thus, the challenges highlighted in the Commission's Notice, which illustrate the potential anti-competitive impact of contractual clauses on independent programmers,²¹ should not be analyzed solely in terms of enhancing competition; their impact on a diverse media should also be examined. For example, an independent programmer that cannot simultaneously distribute its programming through online media, or a programmer that is bound to offer a particularly attractive deal to all distributors, may face particular challenges in reaching profitability. In the cases where these contractual provisions are used, whether they unjustly impede the success of underrepresented groups in the media marketplace must be examined. Further, the Commission should undertake an analysis to determine how increased



competition can produce more high-quality jobs in the industry, and analyze how the current make-up of the industry may influence the quality and quantity of content produced. The Commission should take special care to consider whether the current environment is producing more or less news from more or fewer sources and from more or less representative journalists, producers, and companies.

Conclusion

The Leadership Conference welcomes this Notice examining the role and opportunities for people in the United States to see independent programming. Such programming is important not only for the vibrant marketplace of ideas in our country, but also for the important perspectives it can bring on behalf of women, people of color ,and other underrepresented groups in the U.S. media. We encourage the Commission to undertake a thorough examination of the record and to set forth proposals that can be quickly enacted in order to improve access to audiences by independent programmers. Thank you for considering our views. Please contact Leadership Conference Media/Telecommunications Task Force Co-Chairs Cheryl Leanza, UCC Office of Communication, Inc., at 202-904-2168, Michael Macleod-Ball, ACLU, at 202- 675-2309, or Corrine Yu, Leadership Conference Managing Policy Director at 202-466-5670, if you would like to discuss the above issues.

Sincerely,

American Civil Liberties Union
Common Cause
Communications Workers of America
The Leadership Conference on Civil and Human Rights
NAACP

National Consumer Law Center, on behalf of its low-income clients
National Disability Rights Network
National Hispanic Media Coalition
National Urban League
OCA – Asian Pacific American Advocates
United Church of Christ, OC Inc.

¹ Hunt, Darnell, Ana-Christina Ramon, and Michael Tran. 2016 Hollywood Diversity Report: Busine\$\$ as Usual at 1 (2016), available at <http://www.bunchecenter.ucla.edu/wp-content/uploads/2016/02/2016-Hollywood-Diversity-Report-2-25-16.pdf>.

² Women’s Media Center, The Status of Women in the U.S. Media 2015 at 7 available at: <http://www.womensmediacenter.com/pages/2015-statistics>. See also Global Media Monitoring Project, 2015, National Report: USA available at: http://cdn.agilitycms.com/who-makes-the-news/Imported/reports_2015/national/USA.pdf (highlighting lack of women in media as sources, subjects, experts).

³ Hunt, Darnell, Ana-Christina Ramon, and Michael Tran. 2016 Hollywood Diversity Report: Busine\$\$ as Usual at 21 (2016), available at <http://www.bunchecenter.ucla.edu/wp-content/uploads/2016/02/2016-Hollywood-Diversity-Report-2-25-16.pdf>.

⁴ Id. at 21.

⁵ Frances Negron-Muntaner, The Latino Media Gap, at 2-3 available at http://www.columbia.edu/cu/cser/downloads/Latino_Media_Gap_Report.pdf.

⁶ Id. at 3.

⁷ Hunt, Darnell, Ana-Christina Ramon, and Michael Tran. 2016 Hollywood Diversity Report: Busine\$\$ as Usual (2016), available at <http://www.bunchecenter.ucla.edu/wp-content/uploads/2016/02/2016-Hollywood-Diversity-Report-2-25-16.pdf>.

⁸ Hunt, Darnell. The 2016 Hollywood Writers Report: Renaissance in Reverse? at 21 (2016), available at http://www.wga.org/uploadedFiles/who_we_are/HWR16.pdf.

⁹ Unlike some other minority communities with specific networks dedicated to their communities, AAPI owned networks have struggled on cable. The 2010 Comcast merger created one of the few Asian owned networks, MNET. However, MNET continues to struggle despite its expanded footprint, in part because it receives no subscription fees and only profits from advertising. With only one real viable Asian owned network and continued underrepresentation in front of and behind the camera, AAPI content and portrayal remains one-dimensional despite the increased roles of AAPIs..

¹⁰ Hunt, Darnell, Ana-Christina Ramon, and Michael Tran. 2016 Hollywood Diversity Report: Busine\$\$ as Usual at 22 (2016), available at <http://www.bunchecenter.ucla.edu/wp-content/uploads/2016/02/2016-Hollywood-Diversity-Report-2-25-16.pdf>.

¹¹ The percentage of African Americans who appeared as suspects in stations’ crime stories was much higher than the percentage of Blacks who actually committed crimes. On average, 51 percent of the people the NYPD arrest for murder, assault and theft are African American, according to NYPD crime data from 2010-2013. However, between 75 and 82 percent of the people newscasters present as perpetrators of those crimes in New York City are African American, depending on the station. ColorofChange.org, “Not to Be Trusted: Dangerous Levels of Inaccuracy in TV Crime Reporting in NYC” March, 2015, available at <http://www.media-alliance.org/downloads/ColorOfChangeNewsAccuracyReportCardNYC.pdf>

¹² While the U.S. Census Bureau’s 2012 American Community Survey’s 1-year estimates reports that 12 percent (37.6 million people) of U.S. non-institutionalized citizens report living with an apparent disability, which is a smaller population than the total number of people who are covered by the ADA. See GLAAD, Where We Are on TV 2015-16 at 25, available at: <http://www.glaad.org/files/GLAAD-2015-WWAT.pdf>

¹³ Id at 5; Hunt, Darnell, and Ana-Christina Ramon. *2015 Hollywood Diversity Report: Flipping the Script* at 45 (2015), available at <http://www.bunchecenter.ucla.edu/wp-content/uploads/2015/02/2015-Hollywood-Diversity-Report-2-25-15.pdf>. “Diverse” shows were a select group of shows analyzed for their particular attention to diverse groups. See id. at 41.

¹⁴ Lewis Friedland, *et al.*, Review of the Literature Regarding Critical Information Needs of the American Public submitted to the Federal Communications Commission by the Communication Policy Research Network, available at https://transition.fcc.gov/bureaus/ocbo/Final_Literature_Review.pdf.

¹⁵ Dam Hee Kim, *The Triangle of Minority Ownership, Employment and Content: A Review of Studies of Minority Ownership and Diversity* at 15 (emphasis added).

¹⁶ Kim at 12, 17.



¹⁷ Media Ownership Study 8B, Diversity in Local Television News, by Lisa M. George and Felix Oberholzer-Gee (2011).

¹⁸ George/Oberholzer-Gee/8B at 15.

¹⁹ Waldfoegel Media Ownership Study 7 at 2, 7-10, 17-24.

²⁰ See Berry, S., J. Waldfoegel. Do Mergers Increase Product Variety? Evidence from Radio Broadcasting. *Quarterly Journal of Economics*, 116, 1009-1025 (2001); Gentzkow, Matthew. "Television and Voter Turnout." *Quarterly Journal of Economics* 121, no. 3(2006): 931-72; George, Lisa M. and Joel Waldfoegel, "National Media and Local Political Participation: The Case of the New York Times" in Roumeen Islam, ed., *Information and Public Choice: From Media Markets to Policymaking*. Washington, DC: World Bank Publications, pp. 33-48 (2008); Oberholzer-Gee, Felix, and Joel Waldfoegel. "Media Markets and Localism: Does Local News *En Español* Boost Hispanic Voter Turnout?" *American Economic Review*, 99, no. 5 (2009): 2120-28.

²¹ Notice at paras. 5-14.