



May 25, 2016

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

Re: *Ex Parte* disclosure pursuant to 47 CFR § 1.1206(b) in 14-50, 09-182, 07-294

Dear Ms. Dortch:

On May 23, Cheryl Leanza of UCC OC Inc. met with the following staff in the Media Bureau, with regard to the above-captioned dockets. Mary Beth Murphy, Brendan Holland, Benjamin Arden, Susan Singer, Jake Riehm, Chad Guo, Chris Clark, and Jamila Bess Johnson.

I met to discuss UCC OC Inc.'s and other allied organizations' pleadings in the 2014 Quadrennial Review. I emphasized the following, which have been the position of UCC OC Inc. throughout this proceeding and previous quadrennial reviews:

The Commission may not have sufficient data on the record at this time to adopt a race or gender conscious standard, but this means that under the two, and as of today three, remands from the Third Circuit **the FCC's obligation is to gather the necessary data.**

I also reviewed the following points, which have already been made in our written comments:

- Issue the 323 Ownership Data report very soon with enough time for the public to analyze the content and give input on it before the FCC circulates its draft QR2014 order at the end of June. In the past the FCC has circulate the report simultaneously with the circulation of a draft order, which does not permit the public to review the data upon which the FCC is basing its decision, which caused a very negative reaction in the civil rights community.¹ Although it is not likely to be able to correct this problem now, prior to the circulation of the QR2014, to the degree that the FCC is concerned that the public is not using the existing data, the FCC should create the database it promised to create, and should correct the flaws in the 323 data that have been plaguing scholarly use of that data. UCC OC Inc. asked the Commission to improve response rates for the other services beyond full-power TV.²
- The FCC makes some serious mis-statements that, if left uncorrected, could damage future consideration of these questions once the FCC does create a sufficient statistical record. In particular, the FCC's FNPRM did not acknowledge the previous work done on Adarand

¹ See, e.g., Letter from Wade Henderson and Nancy Zirkin to Chairman Genachowski *et al.* (filed in MB Docket 09-182) (Dec. 5, 2012) (the abbreviated comment cycle of two weeks, inter alia, "leaves the Commission open to challenge ... because it is self-evidently insufficient") available at:

<http://apps.fcc.gov/ecfs/document/view?id=7022073817>.

² See UCC OC Inc. *et al* comments at 17, available at: <http://apps.fcc.gov/ecfs/document/view?id=7521751451>. In 2013 only 65% of low power TV licensees responded and only 79% of AM radio licensees responded.

studies. In the same vein, we urge, as explained in the joint UCC OC Inc./Common Cause Reply Comment, that the Commission to step back from its tentative conclusion that it must emulate university admissions in order to pursue viewpoint diversity and thus lacks the capacity to adopt a racially-conscious standard. There is no reason the Commission couldn't pursue an 8a style approach followed by other agencies which does not require the resources of a university process as envisioned in the FNPRM.³

- As explained by Asian Americans Advancing Justice | AAJC in their comments, the Commission cannot conduct a strict-scrutiny analysis without a specific proposed policy. The Supreme Court's four-prong *Grutter* test requires the agency to evaluate: (1) whether race is one of many factors; (2) race-neutral alternatives; (3) harm to individuals who are not members of favored racial and ethnic groups, and (4) sunset provisions. The FCC has no proposed race or gender based criteria to take the place of an eligible entity standard. For example, how can the FCC consider whether race is only a component of the proposed standard if it does not have a proposed criterion? Simply postulating an abstract "race conscious" standard is not sufficiently specific to conduct the *Grutter* analysis, and the FCC's FNPRM did not conduct that analysis in any event—specifically the FCC could conduct more analysis to consider race-neutral alternatives, although it is not yet clear how much analysis the FCC would consider sufficient to conclude that its race-neutral approaches have been successful to meet the *Grutter* standard.⁴
- In addition, we discussed the tentative conclusion with respect to radio's contribution to viewpoint diversity. In particular, UCC OC Inc. believes that the conclusion that radio has such a small contribution to viewpoint diversity that it could be jointly owned with a local newspaper could undermine the FCC's constitutional authority to consider ownership identity for radio. It would be inconsistent with other FCC actions recently to increase diversity in radio, such as the creation of the LPFM service.⁵ Moreover, the tentative conclusion that radio does not contribute to viewpoint diversity because there are few all-news local radio stations is factually incorrect. As our comments demonstrated, many radio personalities cover issues from a particular vantage point even if they are not producing news.⁶ And studies in the record also demonstrate that radio stations focused on particular underserved communities can increase voting participation.⁷

Further, while we did not have the opportunity to discuss all these matters during the meeting, I encourage the staff to review the following items from UCC OC Inc.'s pleadings:

- Commission should pursue jointly theories of viewpoint diversity and remediation, not choose between them.⁸
- The Commission misstates the legal standard for showing "passive participation" in a biased industry, rejecting evidence it procured to meet the correct standard.⁹

³ Joint Reply comments of UCC OC Inc. and Common Cause at 13 available at <http://apps.fcc.gov/ecfs/document/view?id=60000979207>; see also FNPRM at para. 298.

⁴ Joint Reply comments of UCC OC Inc. and Common Cause at 14.

⁵ See, e.g., Creation of a Low Power Radio Service, ¶4, ¶29 (LPFM will bring new voices to the airwaves, barring cross-ownership of LPFMs will increase diversity) (2000).

⁶ UCC OC Inc. Comments at 33-43 (data and analysis describing the importance of radio) and Appendix D (examples of non-news viewpoint contributions).

⁷ Joint Reply comments of UCC OC Inc. and Common Cause at 9-10.

⁸ *Id.* at 3, 12-13.

⁹ *Id.* at 3-4.

- The Commission was incorrect to apply Lutheran Church 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.¹⁰

At the conclusion of the meeting, I explained that the above issues do not comprise all of the key concerns of UCC OC Inc., but served highlight several of the key items and illustrate the sophisticated analysis which the agency must undertake in this proceeding. I explained that some of UCC OC Inc.'s colleagues would like to discuss the waiver standards for newspaper/broadcast cross ownership and collection of SSA documents.

I look forward to continued exchange with the staff on these matters.

Sincerely,



Cheryl A. Leanza
Policy Advisor

¹⁰ *Id.* at 14.