

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

2014 Quadrennial Regulatory Review –)	
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules Adopted)	MB Docket No. 14-50
Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
2010 Quadrennial Regulatory Review –)	
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules Adopted)	MB Docket No. 09-182
Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
Promoting Diversification of Ownership In)	MB Docket No. 07-294
the Broadcasting Services)	

COMMENTS OF UCC, *ET AL.* ON HISPANIC TELEVISION STUDY

Office of Communication, Inc. of the United Church of Christ, Media Alliance, National Organization for Women Foundation, Communications Workers of America, Common Cause, Benton Foundation,¹ Media Council Hawai`i, Prometheus Radio Project, and Media Mobilizing Project (“UCC *et al.*”) respectfully submit these brief comments on the staff’s Hispanic Television Study² (“Study”) in response to the invitation published in the Media Bureau’s Public Notice, DA 16-534 (rel. May 12, 2016) (“*Public Notice*”).³ While UCC, *et al.* acknowledge the

¹The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These comments reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

²FCC Office of Strategic Planning and Policy Analysis and Industry Analysis Division, Media Bureau, Hispanic Television Study (May 6, 2016).

³While UCC, *et al.* welcome the Commission’s effort, the release of this study so near to the Commission’s intended resolution of the 2014QR proceeding this month makes it impossible to

difficulty and expense of undertaking studies such as this, they must stress that the Study, while a useful contribution, does not materially advance the task of providing an evidentiary base for evaluating the Commission's ownership policies.

UCC, *et al* endorse the views articulated in the comments being filed in this proceeding by the National Hispanic Media Coalition (NHMC). Like NHMC, UCC, *et al.* welcome the Study as providing additional public policy justification for diversity in broadcast station ownership. The new study is an analysis of the "nexus between ownership, programming, and viewing to expand the discussion and understanding of these relationships."⁴ The Study's most important and valuable findings for purposes of the Commission's current regulatory regime are Hispanic-owned, and independent Hispanic-owned stations, are more likely to carry local Spanish-language programming and local Spanish-language news programming, and that Hispanic-owned stations are more likely to provide local content than Spanish-language networks in general.⁵ These determinations would support the view that promoting Hispanic ownership will advance the Commission's goals.

While the Study provides some useful information, it has minimal immediate bearing on the factors which the Commission has identified as relevant to determining the value of promoting minority and female ownership of broadcasting properties. Because it is focused upon program ratings and popularity, the Study does little to assist the Commission in its

conduct an extensive analysis. The Commission announced that it intended to conduct the study two years ago, yet made it available for review just a few weeks before the Chairman's self-imposed deadline for circulating a draft order in these proceedings. Even with a one week extension, the brief period afforded for comment precludes a fuller analysis than if the FCC had released this study several months ago and permitted a full comment cycle. Commenters do not even have the benefit of the forthcoming peer review process.

⁴Study, p. 1, ¶1.

⁵Study, p. 1, ¶4.

ongoing review of broadcast ownership rules pursuant to Section 202(h) of the Telecommunications Act of 1996.

There are two major reasons why the information adduced does not materially advance the Commission's policymaking. First, to the extent that the Study examines programming popularity, it is unrelated to the Commission's goal of promoting viewpoint diversity. Former Chairman Mark Fowler famously argued that "the public interest is what the public is interested in."⁶ However, Commission policy is based on a very different, and much more nuanced, analysis of what constitutes service in the public interest. In particular, the Commission has determined that its goal is promote a wide range of viewpoints and opinions from many different perspectives. While presentation of programming that viewers want to see is, of course, essential to informing the audience, it is not the central determinant of what is in the public interest. Popularity of programming has never been a consideration in fulfilling the Commission's policy goals.

Second, a considerable portion of the Study is focused upon entertainment programming and formats. However, Commission policy places its entire focus upon programming that addresses issues of community concern and at renewal, broadcasters are required to demonstrate that they have carried non-entertainment programming which is responsive to community concerns. Thus, whether a broadcaster is more or less likely to carry telenovelas is not of value in the current regulatory regime.⁷ It is notable that, over the objections of many in the public

⁶See Fowler and Brenner, "A Marketplace Approach to Broadcast Regulation," 60 Tex L.Rev. 207, 210 (1982) ("The public's interest, then, defines the public interest.")

⁷As an historic matter, that the public interest community has favored a broad view of what constitutes service in the public interest. They have argued that the Commission should examine service to particular segments of the community, and that broadcasters should be required to carry minimum amounts of news, public affairs and other programming which can meet the needs of their communities of license. However, that is not current policy.

interest community, the Commission specifically disclaimed any interest in examining entertainment programming formats as an element of determining whether a broadcaster's programming is in the public interest.⁸

In addition, given that the Commission's study seems to preview a more sophisticated consideration of measuring viewpoint, it is ironic that the Study relies primarily on studies whose utility the Commission disclaimed in the associated NPRM. Specifically, the FCC discounted the use of the Waldfogel study's use of format to measure viewpoint while engaging in similar assumptions in this study.⁹ UCC, *et al.* welcome the FCC's conclusion that "the use of radio format to characterize station content is a reasonable but imperfect indicator"¹⁰ as a new-found respect for Prof. Waldfogel's research which was dismissed in the NPRM. However, this falls far short of the request made by UCC OC Inc. and Common Cause during the comment cycle in this proceeding. As they stated at that time:

For the Commission to completely dismiss Waldfogel Study 7, because it references format, without taking a detailed review of the use of viewpoint measurement and analysis, is error. This is particularly the case because Prof. Waldfogel's use of format shows how format intersects with audience choice for information sources and owner identity. Thus, his findings do not necessarily equate format with viewpoint in a simplistic manner, but show that audience and market behavior demonstrate a detectable difference in content based on the identity of a broadcast owner.¹¹

It appears the FCC has started to move in the recommended direction by acknowledging

⁸See *FCC v. WNCN Listeners Guild*, 445 U.S. 914 (1980).

⁹See *2014 Quadrennial Review*, 28 FCCRcd 4371, 4504 (2014), at ¶294 (2014 QR").

¹⁰Study, p. 9, ¶27.

¹¹*Joint Reply Comments of United Church of Christ OC, Inc. and Common Cause* (September 8, 2014) at p. 11 (citing 2014 QR at ¶294).

sophisticated approaches to measure viewpoint, but the FCC still has not undertaken the fundamental analysis that would improve the conclusions of this study as well as all research in this area with respect to viewpoint measurement. Indeed, before the Study even began, UCC and Common Cause warned in their September 8, 2014 *Joint Reply Comments* in these dockets that

The one study the Commission proposes to initiate, the Hispanic TV study, proposes to study “Hispanic-oriented” content that the Commission seems to elsewhere discount as useful to race-conscious analysis. Specifically, the Commission states that the study will analyze the provision of “Hispanic-oriented” programming, without describing whether or how it will consider this analysis in relationship to its conclusions with respect to viewpoint diversity.¹²

UCC, *et al.* thus encourage the Commission to move promptly to initiate additional studies, including the recommended steps we suggested two years ago to consider the appropriate ways to measure viewpoint diversity.¹³

To conduct any study in this area, it is necessary to employ a narrow focus. Inevitably, this means that the analysis will have limitations. Of particular note in this regard is the Study’s exclusive focus on the viewing habits of Hispanic viewers and the implicit assumption that Hispanic ownership is somehow of benefit only to Hispanic viewers.¹⁴ But the Commission has always recognized that expanding diversity of ownership benefits all viewers. Indeed, in its seminal *Statement of Policy on Minority Ownership of Broadcast Facilities*, the Commission stated that

[W]e are compelled to observe that the views of racial minorities continue to be

¹²*Id.*, at p. 11, n. 57.

¹³*See id.*, at p. 11 (suggesting methodologies that might be employed to measure viewpoint diversity).

¹⁴The data about Spanish language programming generated in the Study is useful. However, to the extent it suggests a policy preference for Spanish language programming, this overlooks the value of English language programming for many Hispanics and for non-Hispanic audiences who seek access to diverse viewpoints and perspectives.

inadequately represented in the broadcast media. This situation is detrimental not only to the minority audience but to all of the viewing and listening public. Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the non-minority audience. It enhances the diversified programming which is a key objective not only of the Communications Act of 1934 but also of the First Amendment.¹⁵

Plainly, then, an examination limited to the viewing habits of Hispanic audiences does not address many aspects of the Commission's mandate under the public interest standard.

CONCLUSION

The Hispanic Television Study represents one small data element of what must be a much more extensive research agenda. UCC, *et al.* urge the Commission to do much, much more, and to do it much, much more quickly.

Respectfully submitted,

/s/

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June 2, 2016

¹⁵*Id.*, 68 FCC2d at 980-981