

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**COMMENTS OF THE NATIONAL HISPANIC MEDIA COALITION
ON THE HISPANIC TELEVISION STUDY**

The National Hispanic Media Coalition (“NHMC”) respectfully submits these comments in response to the Federal Communications Commission’s (“Commission”) Public Notice seeking comment on its *Hispanic Television Study* as part of its quadrennial review of media ownership rules.¹ While NHMC applauds the Commission’s completion of a study on ownership diversity, the first such study completed by the Commission in a number of years, NHMC recognizes that, according to the Commission’s statutory obligations and multiple admonishments from the Third Circuit

¹ *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted 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 Pursuant to Section 202 of the Telecommunications Act of 1996; Promoting Diversification of Ownership In the Broadcasting Services*, MB Docket Nos. 14-50, 09-182, 07-294, Public Notice (rel. May 12, 2016) (“Hispanic TV Study Public Notice”).

Court of Appeals, this study cannot be more than the first step of a, hopefully, aggressive research agenda. This is because the study’s findings only implicate a narrow slice of the impact of Latino-owned broadcasters by focusing primarily on Spanish-language content and Latino audience members. That said, NHMC agrees that the study contributes to the body of research around the Commission’s diversity and localism goals, while offering yet another dismal count of Latino owners in the markets studied.

I. THE HISPANIC TELEVISION STUDY, WHILE VALUABLE, DOES NOT REMEDY THE COMMISSION’S RESEARCH DEFICIT IN THE QUADRENNIAL REVIEW

NHMC has repeatedly urged the Commission to do much more to analyze existing media ownership data and produce studies to examine the impact of its rules on diverse ownership and support proactive efforts to increase ownership diversity.² NHMC agrees that the study is a “useful addition” to the body of research in this field.³ However, if the Commission harbors any belief that this study absolves it of its need for further data and analysis on ownership diversity in the context of its quadrennial review process, it should be disabused of that notion. For at least two reasons, the study is too narrowly focused to meet the various directives imposed by the Third Circuit Court of Appeals in the *Prometheus* cases.

First, by primarily equating Spanish-language content with “Hispanic-oriented” content, the study only focuses on a narrow subset of diverse content and fails to fully value English-language content that Latinos and the general public frequently access, including English-language content produced by Latino-owned stations. The authors of

² See, e.g., Comments of the National Hispanic Media Coalition, MB Docket Nos. 14-50, 09-182, 07-294, 04-256, filed Aug. 6, 2014.

³ FCC Office of Strategic Planning and Policy Analysis and Industry Analysis Division, Media Bureau, Hispanic Television Study (May 6, 2016) at ¶ 1 (“Study”).

the study recognize this shortcoming repeatedly throughout the study, noting, “some of our findings regarding the viewing choices of Hispanic households may be particular to this demographic group because of their interest in Spanish-language programming, and not generalizable to other minority groups.”⁴ The authors further note that using language as a criterion to determine whether programming is “Hispanic-oriented” is “limited . . . because a large fraction of the U.S. Hispanic community is bilingual” and “one can easily imagine English-language content aimed at this community.”⁵ Nowhere are these limitations more evident than in the study’s accounting of NHMC’s home market, Los Angeles. In Los Angeles, the study only identifies three Latino-owned stations out of 28 total stations in the market.⁶ Of these three stations, only one was programmed in Spanish.⁷

Second, by focusing only on Latino audience, the study fails to capture the positive impact of diversity on all television viewers. Indeed, the Commission has “relied on its media ownership rules to ensure that diverse viewpoints and perspectives are available to *the American people* in the content they receive over the broadcast airwaves.”⁸ Further, the Commission has stated that its diversity goal is “premised on the First Amendment, which ‘rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of *the*

⁴ *Id.* at ¶ 5.

⁵ *Id.* at ¶ 9.

⁶ *Id.* at Table 12a.

⁷ *Id.*

⁸ *2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Promoting Diversification of Ownership in the Broadcast Services*, MB Docket Nos. 09-182, 07-294, Notice of Proposed Rulemaking ¶ 16 (rel. Dec. 22, 2011).

public.”⁹ Although promoting diversity in broadcasting is surely important to ensure that women and people of color have more opportunities to see themselves and their interests represented in the media, it is equally important to ensure that “the American people” are presented with a diversity of perspectives. By focusing primarily on the Latino audience, this study fails to account for the value that diverse viewpoints add to our overall media landscape.

Conversely, in the *Prometheus* cases, the Third Circuit repeatedly admonished the Commission for failing to adequately collect and analyze data broadly on the state of ownership by women and people of color and the impact of its rules on that data. In particular, the Court has urged the Commission time and again to ground its various proposals in data and analysis speaking to a proposal’s impact on diversity, particularly when it comes to proactive diversity efforts, such as the establishment of an effective “eligible entity” definition, and changes to its existing ownership rules. In its most recent ruling, *Prometheus III*, the Court succinctly laid out the Commission’s significant and long-running data and analysis shortfall:

After finding the eligible entity definition to be arbitrary and capricious in *Prometheus II*, we noted our expectations for how the FCC should proceed on remand. First, we “anticipate[d]” that the Form 323 changes would “lay necessary groundwork for the Commission’s actions.” Next, we directed the Commission to consider proposed eligible entity definitions before completing the 2010 Quadrennial Review. Consideration of the proposals was particularly urgent because, “[d]espite our prior remand requiring the Commission to consider the effect of its rules on minority and female ownership, and anticipating a workable SDB definition well before this rulemaking was completed, the Commission has in large part punted yet again on this important issue.”

We cautioned that the FCC could not merely fall back on *Adarand* to justify further delays: “Stating that the task is difficult in light of

⁹ *Id.*

Adarand does not constitute ‘considering’ proposals using an SDB definition.” We also addressed the data gap, concluding that the “FCC’s own failure to collect or analyze data, and lay other necessary groundwork, may help to explain, but does not excuse, its failure to consider the proposals presented over many years. If the Commission requires more and better data to complete the necessary *Adarand* studies, it must get the data and conduct up-to-date studies ...” (Internal citations omitted).¹⁰

In *Prometheus III*, the Court found that the Commission’s ongoing inability to adopt a well-reasoned “eligible entity” definition constituted unreasonable delay. The Commission has routinely justified its inability to adopt such a definition by claiming that it lacks sufficient analysis to promulgate a data-driven solution. The *Prometheus III* court also stated that:

...[I]n addition to § 202(h)’s requirement to review [media ownership] rules to see if they are necessary in light of competition, the Quadrennial Review must also, per our previous decisions, include a determination about “the effect of [the] rules on minority and female ownership.” In studying this, the Commission should consider how the ongoing broadcast incentive auction affects minority and female ownership. (Internal citations omitted).¹¹

The Commission cannot rely on this study alone to justify the impact of a particular “eligible entity” definition or as evidence that it should move forward with relaxing any of its rules because the study does not speak to either issue. Moreover, as discussed above, the findings of this study are far too narrow to allow any implications to be made about the impact of an “eligible entity” definition or rule change on ownership by women and people of color.

¹⁰ *Prometheus Radio Project v. FCC (Prometheus III)*, Nos. 15-3863, 15-3864, 15-3865, 15-3866, at 22-23 (3rd Cir. Apr. 19, 2016).

¹¹ *Id.* at 42, fn. 13.

II. THE STUDY OFFERS VALUABLE FINDINGS REGARDING LOCALISM AND THE APPALLINGLY LOW NUMBER OF LATINO-OWNED STATIONS IN MAJOR LATINO MARKETS

Despite the unavoidable inability of this single study to satisfy the directives of the Third Circuit and, consequently, the Commission's statutory obligations, it is clear that its authors worked incredibly hard on it and it yielded some very interesting findings. Notably, the study issued a number of findings regarding the relationship between Latino ownership and the dissemination of local news and information. Also, the study's extensive data sets yielded additional insight into the poor state of ownership diversity in some of the country's top media markets.

One of the study's more interesting findings concerns the impact of ownership on production of local programming. The study found that "local programming [is] more likely to be shown on Hispanic-owned stations than other types of programming."¹² This result is significant because it demonstrates overlap between the Commission's goals of promoting diversity and localism and it reaffirms that diversity should become an important driver of the Commission's media ownership policies.

Further, the study provides yet another disheartening account of diverse ownership in broadcasting providing further evidence that the Commission should act with haste to examine remedial measures. One of the reasons that "Hispanic television" was selected as the topic of this study is because, according to the study's authors, "Hispanic-owned television stations are more readily analyzed because there are more of them than stations owned by any other minority group."¹³ So what does it look like to be the best represented group of people of color in broadcasting? The study measured 39

¹² Study at ¶ 3.

¹³ Study at ¶ 8.

geographic television markets accounting for nearly 80 percent of the Latino audience and examined 544 stations – yet only had 23 Latino-owned stations in its sample.¹⁴ In fact, the authors note “the accuracy and precision of our models may be affected by the rather limited set of stations identified as Hispanic-owned for which we have programming and viewing data” and many results are “limited by sample size.”¹⁵ Indeed, many of the top media markets in the country with large shares of the Latino audience, only had a handful of Latino-owned stations – Los Angeles had three, Miami had four, Dallas had one, Houston had one, and Chicago had one.¹⁶ And some of the top Latino markets – like New York, San Antonio, San Francisco, Sacramento, San Diego, and Fresno – had no Latino-owned stations at all.¹⁷ These results on their own should reaffirm that any past efforts to promote diversity in broadcasting have been woefully inadequate and new efforts must be commenced immediately.

CONCLUSION

NHMC is pleased that the Commission has undertaken and completed this analysis of Latino broadcasting and applauds the work of the researchers involved in the study. However, recognizing the directives of the Third Circuit in the *Prometheus* cases, this study should have been one of many in a robust catalog of Commission research into this important issue, rather than the first study completed in many years, near the close of a quadrennial review. While this study could have been a useful complement to other Commission efforts, and it certainly adds to the body of research on media diversity, it is far too narrowly focused to adequately undergird policy. The study’s findings only

¹⁴ Study at ¶¶ 10-12.

¹⁵ Study at ¶¶ 4-5.

¹⁶ Study at Table 12a.

¹⁷ *Id.*

