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July 22, 2013

Marlene Dortch

Re: MB Docket No. 09-182, *2010 Quadrennial Review*;  
MB Docket No. 07-294, *Diversification of Ownership in the Broadcasting Services*

Dear Ms. Dortch:

The Office of Communication, Inc. of the United Church of Christ, Communications Workers of America, Media Alliance, Media Council Hawai'i, National Organization for Women Foundation, and Prometheus Radio Project, by their attorneys, the Institute for Public Representation, along with the National Hispanic Media Coalition (collectively "UCC et al."), file this letter in response to the Media Bureau's June 7, 2013 request for comments on the study submitted in these dockets by the Minority Media and Telecommunications Council ("MMTC") titled *The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations* ("Study").<sup>1</sup>

In the Study, BIA/Kelsey conducted an eight-question survey of eight minority and/or female owners and six non-minority/non-female owners of broadcast stations, in markets with newspaper-broadcast combinations as well as markets without such combinations. But the Study does not identify what type of

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<sup>1</sup> Mark R. Fratrik, *The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations*, MB Docket No. 07-294 (May 30, 2013).

broadcast station the respondents operate, what market the respondents operate in, or even what type of market the respondents are in (i.e., what type of cross-ownership, if any, exists in their market).<sup>2</sup>

Based on our analysis of the Study, the Study may not and should not be relied on by the Commission in the ongoing media ownership and diversity proceedings, for at least three reasons.

First and most importantly, the Study fails to evaluate the strongest theory advanced by UCC et al. and others why an increase in cross-ownership would harm ownership opportunities for minorities and women. Thus the Study reflects not at all on the arguments that public interest proponents have made in these dockets against relaxing cross-ownership restrictions.

Second, the Study is extremely limited in scope, but the conclusions drawn by Study author BIA/Kelsey with respect to the findings extend far beyond what can reasonably be extracted from the survey responses collected.

Finally, as Free Press explained in a notice of *ex parte* filed on June 26, 2013, the Study has a number of technical flaws.<sup>3</sup>

### **The Study Does Not Even Attempt to Examine the Most Likely Reasons that Cross-Ownership Harm Ownership Opportunities for Women and People of Color**

The Study looks at whether perceived competition is different for minority and/or women owned broadcast stations vis-à-vis similarly situated non-minority/non-women owned broadcast stations in markets with cross-ownership. While it is likely that minority and/or women who own broadcast stations face outright race- or gender-based discrimination that harms their ability to be competitive, this has not been the focus of public interest advocates' opposition to relaxing the cross-ownership rules.

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<sup>2</sup> See *id.* at 2-5.

<sup>3</sup> *Ex Parte* Submission of Free Press, MB Docket No. 07-294 at 1 (filed June 26, 2013).

Rather, UCC et al. have made two arguments – supported by the data collected in this survey – as to why increased cross-ownership presents a threat to ownership by women and people of color. First,

the vast majority of minority-owned stations are not affiliated with any of the four major networks (ABC, CBS, NBC, and Fox). As a result, these stations are particularly vulnerable to acquisition under the FCC's current local television ownership rule as well as under the proposed NBCO rule.<sup>4</sup>

Second,

even if minority-owned full power television stations are not the subjects of cross-ownership acquisition under the Commission's proposal, competition from media giants in an increasingly consolidated marketplace will nevertheless present a rising threat to the viability of those stations. As NABOB details in their comments, broadcasters owned by African Americans often control only one or two stations, which means it is harder for them to compete against large conglomerates.<sup>5</sup>

In other words, those who oppose relaxing cross-ownership restrictions have not focused on the argument that similarly-situated women/minorities and non-women/non-minorities are treated differently. We have instead focused on the fact that women/minorities *are not similarly-situated*. Women/minorities who own broadcast stations tend to be less likely to own multiple stations and/or to own major network affiliates than their non-women, non-minority counterparts, in part because of historic and present-day discrimination. This crucial difference accounts for why these owners would be negatively affected by any relaxation of cross-ownership restrictions.

Moreover, although BIA/Kelsey did not attempt to examine this difference, the survey results do support this theory. All three respondents surveyed in one market with cross-ownership (21.4% of total respondents, or 100% of respondents in that market) mentioned cross-owned interests as having a

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<sup>4</sup> UCC et al. Reply Comments, MB Docket No. 07-294 at 20-21 (filed Apr. 17, 2012).

<sup>5</sup> UCC et al. Data Reply Comments, MB Docket No. 07-294 at 12-13 (filed Jan. 4, 2013).

competitive impact on their stations. As MMTC notes in its May 30, 2013 letter submitting the Study in these dockets, the survey results

indicat[e] that an especially extensive cross-media combination, although lawful under the rules, could materially inhibit “singleton station” operations in the advertising marketplace. Inasmuch as minority owned stations are more likely than others to be singleton stations, we recommend that the Commission be alert to the possibility that a cross-media combination . . . can have sufficient market power to operate as a material detriment to minority and women ownership.<sup>6</sup>

But although one-fifth of the Study respondents *did* see an impact from consolidation and cross-ownership, the Study authors make the remarkable claim that the failure of a mere 11 non-randomly-selected interviewees to mention this problem on a telephone interview means that no problems exist. This conclusion is dramatic and unsupported.

### **BIA/Kelsey Makes Overbroad Conclusions Regarding the Study Results**

Taking aside the fact that BIA/Kelsey may in fact have found – and essentially ignored – evidence that cross-ownership harms opportunities for women and people of color, BIA/Kelsey also substantially overstates its findings in at least two ways. BIA/Kelsey 1) misleadingly characterizes what it considers to be an *absence of evidence* (from a very small sample size) that cross-ownership harms ownership opportunities for minorities and women as *evidence that it does not* and 2) irresponsibly characterizes its examination of *one possible link* between cross-ownership and ownership opportunities for minorities and women as relevant to the question of whether *any such link* exists.

Responsible research does not do these things. When a study fails to find a statistically significant result, but is not a large enough study to exclude such a result, it is misleading and inaccurate to characterize the study as proof that such a result has been ruled out. This is a well-established guideline of research.<sup>7</sup>

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<sup>6</sup> *Ex Parte* Submission of MMTC, MB Docket No. 07-294 at 2 (filed May 30, 2013).

<sup>7</sup> See Douglas G. Altman & J. Martin Bland, *Absence of Evidence Is Not Evidence of Absence*, 311 *Brit. Med. J.* 485 (1995) (“Randomised controlled clinical trials that do not show a significant difference

Moreover, it is common sense that a researcher who fails to find one possible difference between two groups should not rule out the possibility that another possible difference that was not even examined may yet exist.

The Study examines only a very limited question: whether or not minority or women owners of broadcast stations in markets with cross-media operations respond differently to a survey about perceived competition than non-minority and non-women owners in the same markets. But the Study's authors characterize it as focusing on a much broader question: "whether the existence of a commonly owned cross-media operation has a disparate impact on minority and/or women owned broadcast stations." And when the survey results—with only 14 respondents—fail to reveal clear differences, the authors incredibly make the amazing leap to conclude that "it appears from this study that cross-media interests' impact on minority and women broadcast ownership is not sufficiently material to be a material justification for tightening or retaining the rules." The Study does not even begin to support this overbroad conclusion. Not only is the lack of evidence from the small sample size insufficient to support a conclusion that no link exists, but the Study does not look at any alternate explanations for how cross-media interests may impact minority and women broadcast ownership.

The conclusions drawn by BIA/Kelsey go far beyond what can reasonably be extracted from its survey results.

### **As Other Commenters Have Noted, the Study is "Deeply Flawed in Numerous Ways"**

As representatives of Free Press discussed with staff of Acting Chairwoman Clyburn in a meeting on June 25 and summarized in a filing on June 26, the

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between the treatments being compared are often called 'negative.' This term wrongly implies that the study has shown that there is no difference, whereas usually all that has been shown is an absence of evidence of a difference. These are quite different statements."); *Absence of Evidence is Not Evidence of Absence: We Need to Report Uncertain Results and Do It Clearly*, 328 Brit. Med. J. 476 (2004) ("Altman and Bland considered the dangers of misinterpreting differences that do not reach significance, criticising use of the term "negative" to describe studies that had not found statistically significant differences. Such studies may not have been large enough to exclude important differences. To leave the impression that they have proved that no effect or no difference exists is misleading.").

Study has a number of technical flaws. Among the problems cited by Free Press representatives:

- The Study fails to adequately describe its sample.
- The Study conflates newspaper-radio cross-ownership with newspaper-TV cross-ownership.
- The Study only examines markets with grandfathered cross-ownerships.
- The Study is no substitute for quantitative empirical research.<sup>8</sup>

UCC et al. agree with the critiques set forth by Free Press.

### **The Commission May Not and Should Not Rely on the BIA/Kelsey Study to Relax Cross-Ownership Restrictions**

Although the Study performed by BIA/Kelsey and submitted in these dockets by MMTC provides an interesting look into perceived competitive forces encountered by both women/minority and non-women/non-minority broadcast owners in markets with cross-ownership, it does not even approach the depth, breadth, or rigor of a study that could support policymaking decisions. First, the Study completely fails to address the leading theories as to how an expansion of cross-ownership would harm broadcast ownership opportunities for women and people of color. Second, the Study's conclusions constitute misleading and overbroad characterizations of their results. Finally, the Study is deeply flawed in a technical sense.

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<sup>8</sup> *Ex Parte* Submission of Free Press, MB Docket No. 07-294 at 1-3 (filed June 26, 2013).

For these reasons, the Commission may not and should not rely on the BIA/Kelsey Study in the ongoing media ownership and diversity proceedings.

Sincerely,

/s/ \_\_\_\_\_

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