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August 11, 2014

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Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: MB Docket Nos. 09-182, 07-294, 14-50; BO Docket No. 12-30

Dear Chairman Wheeler and Commissioners,

On behalf of the undersigned members and The Leadership Conference on Civil and Human Rights, we write to comment on the Further Notice of Proposed Rulemaking and the Report and Order beginning the 2014 Quadrennial Review. 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. Media diversity has long been a top priority of The Leadership Conference and our members 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.[1]

We are pleased to see that the Commission postponed rule changes that would have permitted further media consolidation in the 2010 Quadrennial Review. Media concentration, by definition, leads to fewer owners, fewer entrepreneurial opportunities and fewer jobs, while actions to tighten the media ownership rules will lead to more owners and more such opportunities for people of color and women.

Moreover, the Commission took an important step toward increasing the effectiveness of its existing media ownership caps by attributing joint sales agreements. These agreements, which mimic joint ownership but do not offer true operational independence, circumvent ownership caps and lead to the same negative outcomes as media consolidation. At best, a tiny handful of these sharing arrangements promote diversity or employment for journalists or management or help to create wealth for people who face challenges in obtaining access to capital. With full disclosure of contract terms and financial interests, meritorious combinations should be able to easily demonstrate their need for appropriate waivers of Commission rules for the short time they will need to achieve operational independence. Of great benefit, several owners that must come into compliance with the new rules have announced plans to sell their stations to new owners, including people of color.[2]

However, the Commission's recent release of its new ownership data offers no sign of meaningful progress toward increased ownership diversity. As the data in the attachment reveals, the change in ownership rates since the 2011 data was collected is very small. In virtually all cases the ownership rates for women and people of color went up or down by

less than a percent. For full power television, women own 6.3 percent, Hispanics own 3 percent, Asian Americans own 1.3 percent, African American own 0.6 percent, Native Hawaiians and American Indians own less than a percent combined. For FM radio, women own 6.7 percent, Hispanics own 7.4 percent, Asians own 0.7, African Americans own 1.3 percent, and Native Hawaiians and American Indians own less than a percent combined. In contrast, White ownership has increased by 7.8 percent in full power television, 11 percent in Class A television, and 8.2 percent in low power TV.

We urge the Commission to take further action to improve its data collection about the ownership of women and people of color, to undertake more research how to increase that ownership, and to take the steps necessary to ensure more ownership diversity, such as closing loopholes, reducing ownership caps, and addressing equal employment opportunity.

The Commission Must Continue to Improve the 323 Data Collection Process

While this year's process to collect and release the raw ownership data was an improvement over previous collections, resulting in a six-month turnaround rather than the two-year turnaround of past years, the 323 process should receive focused attention to achieve even more complete results in its next iteration. For example, while the Commission's response rates are improving and are virtually complete in full power television, low power television and AM radio continue to suffer significant non-response rates, at 35 percent and 21 percent respectively. This is particularly troubling, since these are the services that might be expected to have the greatest participation by women and people of color. More important, the Commission has conducted no analysis of its data, but instead has released it in raw form, often in a format that is difficult for researchers to use. Notably, the Commission has not looked to determine whether changes in ownership rates are due to changes in response rates or whether these actually represent real changes in the marketplace. A wide range of studies have been proposed by Leadership Conference members, and we strongly suggest the Commission use its own expertise to conduct that research.

The Commission Must Undertake Research Supporting Proactive Steps to Increase Diversity

In our comments in 2012, we outlined in detail the complete failure on the part of the Commission to conduct the research that is required of it. In the 2008 Diversity Order, the Commission justified its narrow revenue-based solutions to promote minority ownership on the grounds that it did not have sufficient data to satisfy Supreme Court guidelines. In 2012, the Commission offered the same rationale, despite a court order that such a response is inadequate. In 2014, after cancelling a major research initiative, the Critical Information Needs (CIN) studies, the Commission finds itself without data to support meaningful action on its professed goals.

The CIN studies would have been thoughtful, groundbreaking research that would have potentially permitted the agency to avoid the challenges of meeting the *Adarand* legal standard by focusing on characteristics other than race or gender, and would have broadened the Commission's focus beyond one segment of the media—broadcasting—to a more holistic look at the full media environment. Having abandoned that path, the Commission must return its focus to producing *Adarand* studies, an effort the Commission has not taken seriously since the Clinton administration. Rather than the approach taken in the FNPRM, the Commission should explore all of its options with respect to justifying race-conscious policies and not prematurely rule out any for lack of evidence that it has not collected, as recommended by Leadership Conference member Asian Americans Advancing Justice | AAJC. Moreover, as we as we requested in March 2012, the Commission should collect the evidence it needs:

- Appropriately fund and commence analysis at a quality needed to meet the dual goals of promoting diverse ownership and adhering to Supreme Court guidelines.
- Utilize that analysis to design creative solutions to promote diverse ownership that satisfy the Supreme Court guidelines.
- Implement those solutions as quickly as possible and in a manner that promotes diverse ownership.
- Apply an inclusive public comment process for each of the above steps.

The Commission Should Take Other Steps to Foster Ownership Diversity

There are several other steps the Commission can take to promote diverse media ownership. These include:

- *Closing remaining loopholes*. We support immediate action to make shared service agreements public so that the Commission and the public can analyze those agreements to determine what steps the Commission should take. We believe that available evidence gives the Commission reason to believe these agreements are eroding jobs in journalism, broadcasting, and damaging local news production.
- *Reducing ownership caps*. As some Leadership Conference members have recommended, the Commission should strongly consider lowering the existing ownership caps. The Commission's recent action has led to at least two transactions where stations are being spun off into the hands of new owners. More efforts like this are needed, particularly if they are achieved in concert with meaningful policies that can promote the transfer of those stations to women, people of color and other members of underrepresented groups.
- *Address Equal Employment Opportunity.* As outlined by Leadership Conference member National Hispanic Media Coalition, the Commission should revisit its reluctance to collect data on equal employment opportunities. While past litigation does limit to some degree the Commission's ability to act in this area, employment in the broadcast industry is one mechanism to develop a cadre of experienced individuals ready to take on operation of a broadcast license.

A commitment to promote diverse media ownership is a fundamental component of our nation's communications policy. We look forward to working with you to effectuate this goal. Please contact Leadership Conference Media/Telecommunications Co-Chairs Cheryl Leanza, United Church of Christ, OC Inc. at 202-904-2168, or Gabe Rottman, ACLU, at (202) 675-2325, or Corrine Yu, Leadership Conference Managing Policy Director at 202-466-5670, if you would like to discuss the above issues or any other issues of importance to The Leadership Conference.

Sincerely,

American Civil Liberties Union
Asian Americans Advancing Justice | AAJC
Communication Workers of America
The Leadership Conference on Civil and Human Rights
NAACP
National Consumer Law Center, on behalf of its low-income clients
National Organization for Women Foundation
United Church of Christ, OC Inc.

[1] Several members of The Leadership Conference's Media/ Telecommunications Task Force have filed separately in this proceeding. In this joint filing, we provide an overview of our consensus position, and direct the Commission's attention to the more detailed filings by our members in this docket. The Leadership Conference will continue to work collaboratively and file additional comments in this docket as appropriate to flesh out the record.

[2] *See, e.g.*, Richard Prince, "Deal Could Almost Double Black Owned Television Stations," The Root (June 8, 2014), available at: www.theroot.com/blogs/journalisms/2014/06/nexstar_broadcasting_group_deal_with_pluria_marshall_jr_could_double_number.html. The Leadership Conference takes no position on these transactions, but notes that the trend of divesting stations to new owners is a positive step.

Female Ownership	2009	2011	2013	% of 2013 Population	Change in ownership from 2011 to 2013
% of Full Power Commercial TV Stations Owned	5.5	6.8	6.3	50.8	-0.5
% of Class A TV Stations Owned	8.3	8.6	7.6	50.8	-1
% of Low Power TV Stations Owned	15.1	14.8	14.9	50.8	0.1
% of Commercial FM Radio Owned	6.2	5.8	6.7	50.8	0.9
% of Commercial AM Radio Owned	7	7.8	8.3	50.8	0.5
Hispanic Ownership	**2009**	**2011**	**2013**	**% of 2013 Population**	
% of Full Power Commercial TV Stations Owned	2.5	2.9	3	17.1	0.1
% of Class A TV Stations Owned	6.3	7.6	7.4	17.1	-0.2
% of Low Power TV Stations Owned	8.2	9.6	10	17.1	0.4
% of Commercial FM Radio Stations Owned	2.7	2.7	3.2	17.1	0.5
% of Commercial AM Radio Stations Owned	4.6	4.5	5.2	17.1	0.7
Asian Ownership	**2009**	**2011**	**2013**	**% of 2013 Population**	
% of Full Power Commercial TV Stations Owned	0.7	0.4	1.4	5.09	1
% of Class A TV Stations Owned	2.1	1.9	1.5	5.09	-0.4
% of Low Power TV Stations Owned	3.3	2.2	1.1	5.09	-1.1
% of Commercial FM Radio Stations Owned	0.4	0.8	0.7	5.09	-0.1
% of Commercial AM Radio Stations Owned	2.6	2.6	2.8	5.09	0.2
African American Ownership	**2009**	**2011**	**2013**	**% of 2013 Population**	
% of Full Power Commercial TV Stations Owned	1	0.7	0.6	12.36	-0.1
% of Class A TV Stations Owned	2.3	1.5	2.1	12.36	0.6
% of Low Power TV Stations Owned	0.7	1.3	1.3	12.36	0
% of Commercial FM Radio Stations Owned	1.2	1.7	1.3	12.36	-0.4
% of Commercial AM Radio Stations Owned	2.3	2.8	2.5	12.36	-0.3
Native Hawaiian and Pacific Islander Ownership	**2009**	**2011**	**2013**	**% of 2013 Population**	
% of Full Power Commercial TV Stations Owned	0.1	0.1	0.1	0.17	0
% of Class A TV Stations Owned	0	0	0	0.17	0
% of Low Power TV Stations Owned	0.3	0.2	0	0.17	-0.2
% of Commercial FM Radio Stations Owned	0.3	0.4	0.5	0.17	0.1
% of Commercial AM Radio Stations Owned	0.1	0.2	0.2	0.17	0
American Indian and Alaska Native Ownership	**2009**	**2011**	**2013**	**% of 2013 Population**	
% of Full Power Commercial TV Stations Owned	0.6	0.9	0.8	0.74	-0.1
% of Class A TV Stations Owned	0.8	1	0.5	0.74	-0.5
% of Low Power TV Stations Owned	0.1	0.3	0.1	0.74	-0.2
% of Commercial FM Radio Stations Owned	0.3	0.5	0.4	0.74	-0.1
% of Commercial AM Radio Stations Owned	0.2	0.4	0.3	0.74	-0.1
Minorities plus Hispanic Ownership	**2009**	**2011**	**2013**	**% of 2013 Population**	
% of Full Power Commercial TV Stations Owned	5	5.1	6	35.46	0.9
% of Class A TV Stations Owned	12.1	13.4	13.3	35.46	-0.1
% of Low Power TV Stations Owned	12.7	14.1	12.3	35.46	-1.8
% of Commercial FM Radio Stations Owned	4.8	5.9	5.7	35.46	-0.2
% of Commercial AM Radio Stations Owned	9.7	10.4	11	35.46	0.6
White Ownership (Not Hispanic)	**2009**	**2011**	**2013**	**% of 2013 Population**	
% of Full Power Commercial TV Stations Owned	63.4	69.4	77.2	62.58	7.8
% of Class A TV Stations Owned	71.2	71.9	83	62.58	11.1
% of Low Power TV Stations Owned	70.1	76.1	84.3	62.58	8.2
% of Commercial FM Radio Stations Owned	79.7	79.6	80	62.58	0.4
% of Commercial AM Radio Stations Owned by Whites	78.5	77.3	77.4	62.58	0.1