



Response to Additional Questions

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Before the

United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications and Technology

Regarding

Media Ownership in the 21st Century
June 11, 2014

The Honorable Anna Eshoo

- 1. The FCC’s most recent statistics show that less than 6.8 percent of full power commercial TV stations are majority owned by women. The numbers for racial minorities are even lower. What impact does a lack of ownership diversity have on our national discourse? What specific data or information does the FCC need to do its job and promote diversity that reflects the richness of the American people?**

The lack of ownership diversity in our media system has a severe impact on our national discourse. NHMC has long recognized that television news, radio programs and newspaper stories inadequately represent the concerns, culture, and knowledge of women and people of color. The way the public looks at issues – and whether or not the public is even aware of certain issues like fair housing, quality education and full employment – is directly related to the way these issues are covered by media. The way that media covers these issues is directly related to who is employed by the media – the reporters, anchors, editors, producers and executives who tell and green light the stories. Who is employed by the media is directly related to who *owns* the media.¹ And who owns the media is directly related to policies that determine who gets a license to operate. In each of these instances, our communities need equitable media rules that keep media platforms accessible, affordable, and accountable. With increased consolidation and a lack of strong media ownership rules, and a lack of diverse ownership, women and communities of color are unable to tell their own stories and represent themselves in important debates about the future of this country. Beyond that, outlets that lack diversity often target these communities with hate speech, calls to action and violence, and negative stereotypes.

Lack of ownership diversity also leads to a dearth of viewpoint diversity - viewpoints of people of color and women are particularly underrepresented in media. In 2012 the UCLA Chicano Studies Research Center released a study that examined how some commercial talk radio hosts are “able to spread information and opinion and exert influence vis à vis ideological messages that target vulnerable groups.”² The study focused on the social network generated by the hosts of five commercial talk radio shows: *The Rush Limbaugh Show*, *The Sean Hannity Show*, *The Glenn Beck Program*, *The Savage Nation*, and *The John & Ken Show*. Four of the five programs were nationally syndicated at the time of analysis and three were distributed by Premiere Radio Networks, a wholly owned subsidiary of Clear Channel Communications. The fourth program, *The Savage Nation*, was syndicated by Talk Radio Network.

The study revealed some startling insights into some of the most prominent programs in the highly-consolidated radio business:

¹ Catherine J. K. Sandoval, *Minority Commercial Radio Ownership in 2009: FCC Licensing and Consolidation Policies, Entry Windows, and the Nexus Between Ownership, Diversity and Service in the Public Interest* 4 (2009), http://centerformediajustice.org/wp-content/files/Minority_Commercial_Radio_Broadcasters_Sandoval_MMTC_2009_final.pdf.

² Chon A. Noriega & Francisco Javier Iribarren, *Social Networks For Hate Speech; Commercial Talk Radio And New Media* 2 (2012), http://www.nhmc.org/nhmcnew/wp-content/uploads/2013/03/SocialNetworksforHateSpeech_UCLACSRC.pdf [hereinafter, *Social Networks*].

- The hosts promoted an insular discourse that focused, for example, on anti-immigrant and anti-Islam positions, and this discourse found repetition and amplification through social media.³ “What is surprising about this insularity is the extent to which it is dominated by political figures and media personalities, and less so by issue-driven organizations, advocacy groups, and experts.”⁴
- Of the 102 guests that appeared on these programs during the study, 91 were white, and only 4 were Latino, 3 were black, and 2 were Asian (the race/ethnicity of two guests could not be determined). While eighty-three (81 percent of) guests were male, only 19 (19 percent) were female.⁵
- Of the 28 political figures that were guests during the study period, 26 were members of the GOP, 1 had no political affiliation and 1 was a Democrat.⁶

In comments recently filed with the Commission in the 2010/2014 Quadrennial Review proceedings, NHMC argued that the Commission has failed to meet its statutory obligations and stated policy goals with respect to diversity. NHMC commented at length about what data and information the FCC needs to do its job. The relevant section of NHMC’s comments will be informative in this context and is reproduced below:

The Third Circuit *Prometheus* opinions require the Commission to collect, release, and publicly analyze data, and direct the completion of studies that would use that data to determine the effects of its rules on ownership diversity.⁷ Although a tremendous amount of time has passed since the Commission was made aware of the expectations of the Court, and an immense amount of effort and resources have been expended at the Commission to design research, we are, unfortunately, left in largely the same position that the *Prometheus II* Court found us – with no completed *Adarand* studies, none on the horizon, and no clear indication that the Commission is interested in moving forward in a way that would respond to the Third Circuit.

In a particularly disappointing episode, the Commission recently abandoned plans to undertake a study into the Critical Information Needs of Communities – a study that had been contemplated and worked on for many months under previous Chairs Genachowski and Clyburn. This study had the potential to fulfill the FCC “obligation to Congress to identify barriers to entry into the communications marketplace faced by entrepreneurs and other small businesses,” yet the Commission determined not to go forward with the study, and has yet to come up with a suitable replacement.⁸

³ See *Social Networks*, *supra* note 2 at 1.

⁴ *Id.* at 24.

⁵ *Id.* at 10.

⁶ *Id.* at 15.

⁷ *Prometheus Radio Project v. FCC (Prometheus I)*, 373 F.3d 372, 421, n.58 (3rd Cir. 2004); *Prometheus Radio Project v. FCC (Prometheus II)*, 652 F.3d 431, 471 (3rd Cir. 2011).

⁸ Press Release, Federal Communications Commission, Statement on Critical Information Needs Study (Feb. 28, 2014), available at <http://www.fcc.gov/document/statement-critical-information-needs-study>.

On a more positive note, the FCC’s ongoing Hispanic television market study, initiated under the leadership of Acting Chairwoman Clyburn, is the first step in a long process towards understanding how the Commission can achieve its statutory goal of a more diverse media ecosystem in the face of an exceptionally low number of women and people of color owning and controlling media outlets. This study should only be the beginning. For meaningful improvements to occur, the Commission must engage in an ongoing dialogue with the community to ensure that it is compiling a complete picture of the broadcast ownership landscape for analysis.

The Commission’s work to collect, clean, and release to the public its Form 323 ownership data is laudable, and the Commission’s goal of “provid[ing] a reliable basis for analyzing ownership trends in the industry, including ownership by racial and ethnic minorities and women” is important.⁹ However, it is past time that the Commission begins performing its own analysis of the data that it has collected, particularly analysis relating to causal factors or market structures that are keeping the numbers of diverse owners inexcusably low.¹⁰ Statements made in the 2014 FNPRM suggest that the Commission believes that the data can and should be analyzed further, although it seems to imply that the burden of completing such analysis should fall on third parties.¹¹ While third parties have certainly gone to great lengths in the past to analyze data where the Commission has not,¹² it is unrealistic and contradictory to the Third Circuit’s mandate to expect third parties to be the only source of data analysis in the Commission’s record. The time is long overdue for the Commission to reap the fruits of its efforts to clean up the Form 323 data collection and begin analyzing the data to inform its rulemaking process.

⁹ *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, Report on Ownership of Commercial Broadcast Stations* Report at ¶ 2, MB Dkt. 14-50, rel. June 27, 2014, available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0627/DA-14-924A1.pdf (“2014 Ownership Report”).

¹⁰ *See 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, Report on Ownership of Commercial Broadcast Stations* FNPRM at n.745 (“2014 FNPRM”); Comments of Free Press at 16, MB Dkt. 09-182, filed Mar. 5, 2012 (“Free Press 2011 Comments”).

¹¹ *See* 2014 FNPRM n.746 (listing studies that were completed using 2009 Form 323 data); 2014 FNPRM n.749 (noting “that no party to this proceeding submitted studies utilizing the minority or female ownership data collected via the revised Form 323 2009 biennial filings, even though the data from these filings were made available to the public when the forms were filed with the Commission in 2010”).

¹² *See* S. DEREK TURNER, *OFF THE DIAL: FEMALE AND MINORITY RADIO OWNERSHIP IN THE UNITED STATES* (Free Press, 2007), available at http://www.freepress.net/sites/default/files/resources/off_the_dial.pdf; S. DEREK TURNER, *OUT OF THE PICTURE: MINORITY AND FEMALE TV STATION OWNERSHIP IN THE UNITED STATES* (Free Press, 2006), available at http://www.freepress.net/sites/default/files/fp-legacy/out_of_the_picture.pdf.

Additionally, the FCC should reinstate Form 395, which required that each station report EEO data on the number of employees in each of nine job categories by race and gender.¹³ Reinstating the collection and public release of broadcast stations' employment demographics would allow the public to hold broadcast stations accountable for their minority hiring practices and give the Commission a strong record upon which to build new policies to promote diverse ownership. Previously, this information was made publicly available by station, and was used by the FCC to compile annual "trend reports" tracking the aggregate percentage of people of color and women employed in each job category.¹⁴ However, following the D.C. Circuit's determination that portions of the FCC's EEO rules were unconstitutional in *Lutheran Church-Missouri Synod v. FCC*¹⁵ and *MD/DC/DE Broadcasters Association v. FCC*,¹⁶ the FCC stopped gathering Form 395 data.¹⁷ In response to those two decisions, the FCC revised its Form 395 information gathering rules in 2002, emphasizing that the data would be used only to provide trend reports, and not to determine compliance with EEO regulations; however, the FCC deferred its decision to reinstate the broadcast and multi-channel video providers ("MCVP") employment data filing requirements until 2004.¹⁸ However, the FCC did not make Form 395-B available – instead seeking comment as to whether the information should be kept private under the Confidential Information Protection and Statistical Efficiency Act of 2002 ("CIPSEA")¹⁹. As of 2010, the FCC had not made a decision as to keeping the information confidential, and had still not collected or disseminated employment data.

2. The FCC has previously concluded that allowing more combinations between newspapers and radio stations should be permitted. Do you agree with the FCC's view that local radio is not a major source of local news and information and, therefore, that eliminating newspaper/radio restrictions would not impact viewpoint diversity?

NHMC strongly disagrees with the FCC's view that local radio is not a major source of news and information and, therefore, does not contribute to viewpoint diversity. NHMC has told the Commission that this premise is severely flawed and that any relaxation of media ownership rules, including the elimination of the newspaper/radio cross-ownership rule, would be a mistake that would harm diversity. Indeed, NHMC has repeatedly urged the FCC to tighten its radio ownership limits as a race-neutral way to diversify the radio waves and create opportunities for more speech to counter the hate and dehumanization that pervades many conglomerate-owned radio stations. NHMC commented extensively on the value of local radio in comments recently

¹³ Reply Comment of National Hispanic Media Coalition, et al. at 2, MB Docket 10-103 (filed Sept. 13, 2010) ("NHMC Reply Comment").

¹⁴ *Id* at 2.

¹⁵ *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998).

¹⁶ *MD/DC/DE Broadcasters Ass'n v. FCC*, 236 F.3d 13 (D.C. Cir. 2001).

¹⁷ NHMC Reply Comment *supra* note 13 at 1.

¹⁸ *Review of the Commission's Broadcast and Cable Equal Opportunity Rules and Policies*, 2d R&O and 3d NPRM, 17 FCC Rcd. 24018, 24025 (2002).

¹⁹ NHMC Reply Comment *supra* note 13 at 3-4.

filed with the Commission in the 2010/2014 Quadrennial Review proceedings. The relevant section of our comments is directly responsive to this question and is reproduced below:

In the 2014 FNPRM, the Commission “seek[s] comment on whether the newspaper/radio cross-ownership restriction advances our interest in promoting viewpoint diversity or whether we should eliminate the restriction” and “seek[s] comment on the Commission’s tentative conclusions that radio stations are not the primary outlets that contribute to viewpoint diversity in local markets and that consumers rely predominantly on other outlets for local news and information.”²⁰ Further, the Commission “seek[s] comment on whether the radio/television cross-ownership rule, which limits the combined number of commercial radio and television stations a single entity may own in the same market, is still necessary in the public interest or whether it should be repealed.”²¹ The Commission goes on to note that “promoting viewpoint diversity has been the Commission’s lone justification” for retaining its radio cross-ownership restrictions,²² and implies that it is unlikely that radio contributes to viewpoint diversity because consumers reportedly rely less on radio for news and because there are few all-news radio stations.

However, this logic is flawed because it rests on the faulty premise that music format stations do not contribute to viewpoint diversity nor disseminate news and information to the public. The available evidence suggests that this premise and the logic that flows from it is particularly off-base when it comes to describing the consumption habits of the Latino community, which continues to rely on radio stations, including both music format and news/talk stations, for news and information, making radio an important source of viewpoint diversity. Additionally, apart from viewpoint diversity, retention of the Commission’s current media ownership rules promotes ownership diversity by preventing consolidation and preserving opportunities for new entrants.

The Latino Community Continues To Rely On Radio For News And Information

Radio remains an influential medium and an important outlet for Latino communities across the country. According to a recent report by Arbitron (now Nielsen Audio):

About 95% of Hispanic consumers tune to the radio in an average week, underscoring a strong relationship with an important and growing listener segment. Radio listenership among Hispanic consumers is bigger than other ethnic groups measured by Arbitron. Radio remains a reliable entertainment and information source for Hispanic listeners, regardless of their language preference, country of origin, age, gender, income, or listening location.

Radio’s reach among 25-54 Hispanic listeners is even better, reaching nearly 97% of women 35-44 weekly. In an era where all consumers are presented with many

²⁰ 2014 FNPRM at 4371 at ¶¶ 144-145.

²¹ *Id.* at ¶ 200.

²² *Id.* at ¶ 145.

media choices, time spent listening to radio among Hispanic persons is holding steady (and in some cases, increasing) in key demographics.²³

Available data suggests that Latinos don't just "tune in," but they spend a great deal of time listening to the radio. According to AdAge, "Hispanic listeners age 12+ averaged 12 hours, 54 minutes per week."²⁴ Latino men between the ages of 55 and 64 listen to the radio for an average of 16 hours and 26 minutes per week.²⁵ On a typical weekday, 56 percent of Latinos say they get their news from radio.²⁶

Radio Stations, Including Both Music Format Stations And News/Talk Stations, Contribute To Viewpoint Diversity

Radio stations, particularly those that are owned, operated by or serving Latinos (collectively, "Latino stations"), unquestionably contribute to viewpoint diversity in their communities of license. This is true of both traditional news/talk format stations and music format stations, which often provide local news and information to listeners. Although NHMC contends that even stations that exclusively program music contribute to viewpoint diversity, it will focus on instances where news and information is offered for the purposes of these comments.²⁷

Latino stations across the country very often blur the lines between different formats and programming choices and are often responsive to their communities' interests to the point of altering programming decisions with very little notice to serve their communities' needs. This is often out of necessity as the extremely limited number of Latino stations across the country are required to be a "one-stop shop" for an audience with a diverse set of interests and needs and a small number of outlets to choose from. One example of this phenomenon is KQSE – La Nueva Mix in Colorado. According to a recent article about the success of the station, and its non-traditional format:

²³ ARBITRON, HISPANIC RADIO TODAY 2013: HOW HISPANIC AMERICA LISTENS TO RADIO 2 (2013), available at http://www.arbitron.com/downloads/Hispanic_Radio_Today_2013_execsum.pdf.

²⁴ *11th Annual Hispanic Fact Pack*, ADVERTISING AGE, July 28, 2014, at 24, available at http://gaia.adage.com/images/bin/pdf/Hispanic_Fact_Pack_2014_web.pdf.

²⁵ *Id.*

²⁶ MARK HUGO LOPEZ & ANA GONZALEZ BARRERA, A GROWING SHARE OF LATINOS GET THEIR NEWS IN ENGLISH 1 (Pew Research Hispanic Trends Project, 2013), available at <http://www.pewhispanic.org/2013/07/23/a-growing-share-of-latinos-get-their-news-in-english/>.

²⁷ There is a large body of research concerning the usage of music to share knowledge, create political power, and advance social movements. See Ugo Corte, *Music matters to social movements and in a number of ways, but can we use it to advance our understanding of emotions and the body?*, MOBILIZING IDEAS, Jun. 3, 2013, available at <http://mobilizingideas.wordpress.com/2013/06/03/music-matters-to-social-movements-and-in-a-number-of-ways-but-can-we-use-it-to-advance-our-understanding-of-emotions-and-the-body/>.

La Nueva Mix is primarily a music station, playing Norteño ballads and other Latin American tunes. But since its debut six years ago, program director Axel Contreras has also introduced talk shows on health, real estate and dealing with police encounters. By far the most popular, though, is *Punto Legal*, a weekly immigration law call-in.

...

Conteras, a Guatemalan who came to the U.S. illegally 20 years ago and is now a legal resident, hopes that the news and information he airs help immigrants integrate into American society. "Our station is just a bridge for the Latino community," he says. Its approach has attracted a broad listenership[.]

...

In times of crisis, Contreras converts La Nueva Mix into a sort of emergency warning system. In 2011, for instance, during the "Strawberry Days" carnival down the street from the station, federal immigration agents conducted a raid, disrupting the festivities and arresting several suspected undocumented immigrants. Immediately, Contreras took to the airwaves and urged people to avoid the carnival.²⁸

Perhaps the most profound example of Latino stations coming together to share diverse views and information with their communities, regardless of their format, was the role that radio played in facilitating the 2006 immigration rallies across the country. The rallies represented an important political moment for Latinos in the United States:

During four short months in the spring of 2006, an estimated 3.5 to 5.1 million Latinos protested in the streets of over 160 cities in the United States. Several cities held multiple marches, each drawing tens of thousands of participants. The unprecedented Latino activism was a public response to the threat of House Bill 4437 (HR 4437) that would have increased penalties on undocumented immigrants as well as those who employ and assist them.²⁹

Subsequent research into the organization of these rallies reveals that Latino stations and disc jockeys, and their unique viewpoints, played a pivotal role in educating and mobilizing Latinos in communities across the country. According to one Latina leader from Chicago, "It was very helpful to talk to them about this, they understood the problems of the community, they were very collaborative ... every radio deejay was talking about this big thing that was going to happen."³⁰ A similar sentiment was echoed in Central Florida by another community leader who said, "The commitments that our radio stations have to the community are different ... When you have disc jockeys talking about their own stories ... how they have friends and families and co-

²⁸ Nelson Harvey, *Latino radio stations connect immigrant communities*, HIGH COUNTRY NEWS, Jun. 10, 2013, available at <http://www.hcn.org/issues/45.10/latino-radio-stations-connect-immigrant-communities>.

²⁹ Matt A. Baretto et al., *Mobilization, Participation, and Solidaridad: Latino Participation in the 2006 Immigration Protest Rallies*, 44 *Urban Affairs Review* 736, 736-737 (2009), available at http://www.mattbarreto.com/papers/uar_immig.pdf (internal citations omitted).

³⁰ *Id.* at 744-745.

workers that will be affected, I think they directly connect with the community.”³¹ In Los Angeles, a coalition of radio personalities from rival stations (almost exclusively music format stations), devoted airtime to the cause and helped spark one of the largest demonstrations in the history of Los Angeles:

Rally supporters, including immigrant-rights activists, churches, and labor and community groups, agreed that the active advocacy of the region's top Spanish-language radio personalities was critical in drawing the enormous crowds, who marched more than 20 blocks along Spring and Main streets and Broadway to City Hall, wearing white "peace" shirts and waving American and Mexican flags.

The promoters included such on-air celebrities as KHJ's Humberto Luna, KBUE's Ricardo "El Mandril" (The Baboon) Sanchez, Renan "El Cucuy" (The Boogeyman) Almendarez Coello — whose often risqué show has cast him as a sort of Latino version of Howard Stern — and [Eddie] Sotelo, better known to listeners as "El Piolin," or Tweety Bird.

...
“The Latino media played it more as how will this affect you, how will it affect your job, how will it affect your kids,” [Felix] Gutierrez[, a journalism professor at USC's Annenberg School for Communication] said. “They were much closer to their audience, in terms of the direct effect.”³²

As the examples above show, the Commission's characterization of radio and justification for considering elimination of radio cross-ownership rules is not supported by the facts. Latino media and Latino communities yield countless examples of the importance of radio in contributing to the overall viewpoint diversity of our media system. Without diverse owners and employees of radio outlets, certain views might never be shared and the needs of communities would not be met.

Further, radio outlets have also been well known to espouse very strong viewpoints that have been harmful to the Latino communities that they serve. For instance, over the years, NHMC has documented many instances of Clear Channel radio outlets targeting Latinos and other diverse communities over their airwaves, with hate speech, calls to action and violence, and negative stereotypes.³³ And because Clear Channel often owns numerous radio stations in the markets that it serves, it is able to insulate offending programs from community outcry and market-based consequences by shifting advertising among its other outlets. While these

³¹ Jose Cardenas & Eric Deggans, *Immigrant Rallies Born on Air*, ST. PETERSBURG TIMES, Apr. 12, 2006, available at http://www.sptimes.com/2006/04/12/news_pf/State/Immigrant_rallies_bor.shtml.

³² Teresa Watanabe & Hector Becerra, *How DJs Put 50,000 Marchers in Motion*, LATIMES.COM, Mar. 28, 2006, available at <http://colombiareport.ss.uci.edu/webdocs/TheImmigrationDebate.pdf>.

³³ See e.g. *Media Ownership in the 21st Century: Hearing Before the Subcomm. on Communications and Technology of the H. Comm. on Energy and Commerce*, 113th Cong. (2014) (testimony of Jessica J. González, Executive Vice President and General Counsel, National Hispanic Media Coalition).

viewpoints are not always welcome, and a strong case can be made that airing them contravenes public interest obligations of broadcast license holders, it is wrong for the Commission to imply that radio outlets do not contribute to viewpoint diversity.

Even If The Commission Finds That Radio Does Not Contribute To Viewpoint Diversity, It Should Still Justify Retention Of Rules To Promote New Entrants And Ownership Diversity

Even if the Commission is correct in saying that radio stations do not contribute to viewpoint diversity, it should still justify retention of the radio/newspaper and radio/television cross-ownership rules using the rationale that such rules promote ownership diversity by limiting consolidation in the media industry and preserving opportunities for new entrants. The Commission recognizes that repeal of rules “would potentially allow for the acquisition of a limited number of additional radio stations in some markets by incumbent[s and] we seek comment on the impact that elimination of the rule would have on media consolidation and thus on small broadcast owners, including minority and women owners.”³⁴

Any rule change, such as the ones contemplated here, which would allow incumbent owners of media properties to own additional media properties or allow well-capitalized new entrants to simultaneously purchase multiple outlets, would largely limit ownership opportunities for diverse individuals such as women and people of color. Given the discouragingly low numbers of women or people of color who are incumbent media outlet owners, it is unlikely that the considered rule changes would do anything to facilitate more stations being acquired by diverse individuals. And given the well-documented challenges that diverse new entrants have with obtaining access to capital required to purchase one outlet, it is unlikely that a rule blessing the simultaneous purchase of multiple outlets would serve the interests of diverse parties. Therefore, by retaining the rules and limiting the number and types of outlets that one party can simultaneously own, the Commission would be preserving opportunities for the diverse new entrants that would be required to create any demonstrable change to the current levels of ownership by women and people of color.

³⁴ 2014 FNPRM at ¶ 223.