APPENDIX A

Testimony of
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Before the

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Committee on Energy and Commerce
Subcommittee on Communications and Technology

Regarding

Media Ownership in the 21st Century
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Summary

For centuries, we have recognized that vibrant and diverse media and communications systems promote democracy and ensure that the American populace is an informed electorate capable of carrying out the duties of citizenship. Our communications infrastructure, particularly broadcasting, makes use of a precious and finite public resource – electromagnetic spectrum. The FCC has an obligation to make sure that this valuable resource is used to serve the public interest by ensuring that it promotes diversity, localism, and competition in the distribution of licenses.

Under the FCC's watch, excessive consolidation has caused a significant decline in ownership of broadcast stations by women and people of color. Many diverse owners have attributed this decline to a relaxation of media ownership rules following the signing of the Telecommunications Act of 1996, and the loss of the "minority tax certificate" program.

In spite of this consolidation, broadcasting remains the dominant way for our communities to access news and information. It continues to outpace the Internet in terms of both reach and impact, particularly in communities of color that often lag others in home broadband adoption. Unfortunately, due to waning diversity and a rise of non-local, conglomerate-owned media outlets, people of color often face negative stereotypes and vicious attacks at the hands of the broadcasters that serve their communities.

The FCC should be encouraged to ramp up efforts to pursue its goals of localism, diversity, and competition. Working within its existing regulatory framework, and tightening its structural rules, is a race- and gender-neutral way to prevent undue concentration of licenses. The FCC has recently taken a positive step by tightening restrictions on the use of Joint Sales Agreements to circumvent the Commission's ownership rules while providing a workable waiver process for stations that can demonstrate that their arrangements serve the public interest.

Introduction

Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, thank you for inviting me to testify today about the media ownership landscape and the Federal Communications Commission's ("FCC") media ownership regulatory framework. My name is Jessica J. González and I am the Executive Vice President & General Counsel of the National Hispanic Media Coalition ("NHMC"), a non-partisan, non-profit, media advocacy and civil rights organization that, for nearly three decades, has sought to ensure Latino participation at all levels of the media industry, combat racism and stereotyping, promote accurate portrayals, and advocate for policies to advance Latinos and other people of color. I am especially pleased to testify here today concerning media ownership because NHMC realized long ago that without an equitable distribution of the nation's airwaves and media properties, our communities are put at a severe disadvantage and are often actively harmed.[1]

NHMC commends Congress' efforts over time to ensure a diversity of viewpoints and prevent discrimination in media ownership. For instance, Section 151 of the Communications Act directs the FCC make broadcast spectrum available to all people "without discrimination on the basis of race."[2] Section 309 of the Act mandates the FCC to ensure competition and innovation by disseminating licenses to "businesses owned by members of minority groups and women."[3] And from 1978 to 1995, Congress' "minority tax certificate" program opened doors for people of color to access broadcast ownership at record rates.[4] Unfortunately, these measures

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[1] I would like to thank my colleague, NHMC's policy director, Michael Scurato, and NHMC's summer policy fellow, Jonathan Diaz, for assisting me with researching and drafting this testimony.
[2] 47 U.S.C. §151 (1996).
[3] 47 U.S.C. § 309(j)(3)(B) (2012).
[4] *See, e.g.*, Erwin G. Krasnow & Lisa M. Fowlkes, *The FCC's Minority Tax Certificate Program: A Proposal for Life After Death,* 51 FED. COMM. L.J. 666 (1999).

and the FCC's related efforts have been met with many challenges, including judicial decisions narrowing the government's ability to enact race-conscious policies.

Deregulation Has Led To Significant Declines In Broadcast Ownership Diversity

Over the past twenty years, since passage of the Telecommunications Act of 1996, media consolidation has been rampant under the FCC's watch, making it more difficult for women and people of color to overcome barriers to entry into this industry. There has been a "long history of recognition by [the FCC], as well as by courts, Congress, and the public, that minorities and women have experienced serious obstacles in attempting to participate in the telecommunications industry [and] that their greater participation would enhance the public interest."[5] The FCC's ability to create strong, structural rules to limit how many media properties a single entity can own is a race- and gender-neutral way to prevent excessive concentration of licenses among incumbents and create opportunities for new entrants.

The Commission itself has recognized that broadcast ownership levels by women and people of color are "dismal."[6] Ownership of television and radio stations by people of color and women has dropped substantially in recent years. According to a recent letter sent to the FCC from the Chairs of the Congressional Hispanic Caucus, the Congressional Black Caucus, and the Congressional Asian Pacific American Caucus:

> Despite Latinos, African Americans, Asian Americans, Native Americans, and other communities of color making up more than thirty-six percent of the population, these groups only owned about three percent of full power television stations in 2011. In fact, according to the Commission's 2011 data, which is the most recent data available, out of 1,348 full power commercial television stations, only thirty-nine were owned by Latinos (with almost half located in Puerto Rico), ten by African Americans, and six by Asian Americans. Women make up fifty-

[5] *Section 257 Proceeding to Identify and Eliminate Mkt. Entry Barriers for Small Businesses*, Report, 12 FCC Rcd 16802, 16931 (1997).
[6] *Promoting Diversification of Ownership,* Report and Order and 4th FNPRM, 24 FCC Rcd 5896, 5897 (2009).

> one percent of the population but only own about seven percent of full-power commercial radio and television stations. These numbers are woeful.[7]

Current numbers are likely to be much lower. For instance, there are currently only four full power commercial television stations owned by African Americans, representing a sixty percent decrease in the past three years alone and nearly an eighty percent decrease since 2006.[8] Perhaps even more troubling, these downward trends have occurred at a time when the share of the population made up of people of color has increased, accounting for over a third of all Americans.

Ownership Diversity Leads To Better Informed And Healthier Communities

Courts, Congress and the FCC itself have noted "a nexus between minority ownership and broadcasting diversity."[9] Extensive evidence from the field corroborates that conclusion.[10] This is particularly important because all communities – especially rural communities and communities of color – hold distinguishing knowledge that makes each unique. This knowledge reflects a community's interests, and is often derived from centuries of living within certain geographies.

Geographically, racially, and ethnically, American culture is more diverse than ever before, but that diversity is not reflected in our media. In today's media landscape, television

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[7] Letter from Tri-Caucus Chairs to Tom Wheeler, Chairman, Federal Communications Commission (Mar. 18, 2014).

[8] Notice of Ex Parte of Free Press, MB Dkt. No. 09-182, Filed Mar. 24, 2014; *See also* S. Derek Turner & Mark Cooper, *Out of the Picture: Minority and Female TV Station Ownership in the United States,* FREE PRESS (October 2006), *available at* http://www.freepress.net/sites/default/files/fp-legacy/out_of_the_picture.pdf.

[9] *Prometheus Radio Project v. Federal Communications Commission*, 652 F.3d 431, 471 (3d Cir. 2011) ("*Prometheus II*") (stating that "the conclusion that there is a nexus between minority ownership and broadcasting diversity…is corroborated by a host of empirical evidence." (quoting *Metro Broadcasting Inc. v. FCC*, 497 U.S. 547, 567 (1990) (overruled on other grounds, use of intermediate scrutiny, in *Adarand v. Peña*, 515 U.S. 200 (1995))).

[10] *See, e.g.*, Comments of Free Press, MB Dkt. Nos. 09-182, 07-294 (filed Mar. 5, 2012).

news, radio programs and newspaper stories do not represent the concerns, culture, and knowledge of people of color and rural people. 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. And the way that media covers these issues is directly related to who is employed in the media – the reporters, anchors, editors, producers and executives who tell and green light the stories. Employment within the media is directly related to who *owns* the media[11], and who owns the media is directly related to policies that determine who operates a broadcast stations. In each of these instances, our communities continue to lack equitable media rules that keep media platforms accessible, affordable, and accountable. With increased consolidation and a lack of strong media ownership rules, our communities are subject to a distribution of media rights, access, and influence that continues to create significant inequities in public debate and public policy.

The FCC's Media Ownership Regulatory Framework Remains Important Today

For almost a century, Americans have recognized a number of important principles about our communications networks:

- Spectrum used to transmit communications is a finite resource that is owned by the public and operated under a public trust;
- Spectrum should be used to serve the public interest, convenience, and necessity;
- The public interest is served through the promotion of competition, diversity, and localism;
- Access to diverse voices and viewpoints benefits our democracy and serves the public interest; and

[11] 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), *available at* http://law.scu.edu/wp-content/uploads/faculty/Minority%20Commercial%20Radio%20Broadcasters%20Sandoval%20MMTC%202009%20final%20.pdf.

- The unique wireless, one-to-many transmission profile of broadcasting makes it an efficient, pervasive and powerful means of communication.

These principles are no less true today than they were seventy years ago. For that reason, the FCC's ability to regulate spectrum licenses, promote diversity, and prevent concentration remains vital to the health of our democracy, especially as broadcasting remains critically important to staying informed and continues to be the primary source for the vast majority of American news content.

Broadcasting Remains The Dominant Way To Acquire News And Information

Due to decades of infrastructure build out and deployment, broadcasting reaches all corners of our nation. Broadcast television has maintained a penetration rate near ninety-eight percent nationwide for decades.[12] In fact, nearly one in four Latinos rely exclusively on over-the-air ("OTA") signals to receive television programming. In some markets this number approaches forty percent.[13] Not only do many in the Latino community rely on broadcast content to access local news, weather, and emergency information, but also a significant percentage still relies on traditional OTA television service. The disproportionate reliance on OTA television is partially due to the high cost of pay television services.[14]

Radio broadcasting is similarly pervasive, reaching over ninety percent of Americans each week. For instance, in Los Angeles over ninety-five percent of the population listens to the radio during the week in the morning to midday hours;[15] ninety-eight percent of Latinos and

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[12] *TV Basics: a report on the growth and scope of television*, TVB, (July 2012), *available at* http://www.tvb.org/media/file/TV_Basics.pdf.
[13] Knowledge Networks, *2011 Home Technology Monitor Survey*, (Jan. 2011).
[14] *See, e.g*. Jaime Rivera, Total cost of ownership for an iPhone 5 is $1,800, *Pocket Now* (Oct. 3, 2012), *available at* http://pocketnow.com/2012/10/03/the-total-for-an-iphone-5-is-1800.
[15] Southern California Broadcasters Association, *Los Angeles Metro Report* (2010), http://rope.zscb.fimc.net/pdfs/LA%20Metro%20Profile.pdf.

almost ninety-nine percent of Spanish-speaking Latinos in Los Angeles listen to the radio during that same time.[16]

Other Content Sources Are Far From Overtaking Broadcasting As A Primary Source Of News And Information

Broadcasting remains the primary way that Americans access news, and local and network television broadcast news are the prime sources. According to a recent Pew Research Center report, "[a]lmost three out of four U.S. adults [seventy-one percent] watch local television news and [sixty-five percent] view network newscasts over the course of a month" while only thirty-eight percent of adults watch some cable news.[17] In fact, another recent analysis found that, over the course of a month, local broadcast TV news in the New York designated market area ("DMA") alone reached more people than the top five cable news networks combined.[18]

Despite a great deal of promise, Internet sources have not achieved parity with broadcasting for creation and distribution of news and information across the country. The persistent digital divide is one reason why Internet sources are not yet a viable substitute to broadcasting for distributing news and information to diverse communities. Although home broadband adoption rates have improved since broadband service was introduced, the adoption rate still lags among certain segments of the population – including Latinos, African-Americans, seniors, struggling families, people with disabilities, and the less educated. Indeed, as Aaron

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[16] *Id*.

[17] Kenneth Olmstead, Mark Jurkowitz, Amy Mitchell & Jodi Enda, *How Americans Get TV News At Home,* PEW RESEARCH JOURNALISM PROJECT (Oct. 11, 2013), *available at* http://www.journalism.org/2013/10/11/how-americans-get-tv-news-at-home/.

[18] *See* TVB Analysis: Top TV Market Bests Cable News National Audience; Top 10 Markets Dwarf Cable's National and In-Market News, *available at* http://www.tvb.org/research/2053636/local_news_audience_dwarfs_national_cable.

Smith of the Pew Research Center's Internet Project observed during recent testimony in the Senate, the pace of broadband adoption overall has "slowed substantially" in recent years.[19]

The Latino community, in particular, has struggled to adopt broadband at home. According to a recent Pew report, only fifty-three percent of Latinos have adopted broadband at home, meaning that almost half of Latinos remain disconnected.[20] And those who prefer to speak Spanish at home have proven to be one of the most difficult groups to reach, with only thirty-eight percent having access to broadband within the home.[21]

Further, even when folks have access to a broadband Internet connection, the content available online is still, by and large, being created and distributed by traditional media sources. According to a recent study by the Project for Excellence in Journalism that examined news in Baltimore, ninety-five percent of digital stories with original information came directly from traditional media sources.[22]

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[19] *Broadband Adoption: The Next Mile: Hearing Before the Subcomm. On Commc'ns., Tech., and the Internet of the S. Comm. On Commerce, Sci., and Transp.*, 113th Cong. 1 (2013) (statement of Aaron Smith, Senior Researcher, Pew Research Center's Internet Project), *available at* http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=8919d402-a852-4246-916e-de623778e7e5 (pointing out that "[a]fter increasing by an average of nearly seven percentage points per year from 2000 through 2009, the national broadband adoption level increased by a total of just seven percentage points from 2009 through 2013.").

[20] Kathryn Zickuhr & Aaron Smith, *Home Broadband 2013* at 3, PEW INTERNET AND AMERICAN LIFE PROJECT (Aug. 26, 2013), *available at* http://www.pewinternet.org/~/media//Files/Reports/2013/PIP_Broadband%202013_082613.pdf.

[21] Lee Rainie, *The State of Digital Divides*, Presentation at Washington Post Live: Bridging the Digital Divide forum (Nov. 5, 2013), *available at* http://www.pewinternet.org/2013/11/05/the-state-of-digital-divides-video-slides.

[22] Ben Fritz, *Most original news reporting comes from traditional sources, study finds*, L.A. TIMES (Jan. 11, 2010), *available at* http://articles.latimes.com/2010/jan/11/business/la-fi-ct-newspapers11-2010jan11.

The FCC Must Be Allowed To Pursue Its Goals Of Competition, Localism, And Diversity Through Its Existing Regulatory Framework

The long-standing FCC goal to promote localism, competition, and diversity and ensure that broadcasters serve the public interest has gone largely unmet after intense deregulation and the loss of race-conscious programs in the mid-1990s.[23] The FCC must be allowed and encouraged to use its existing statutory authority and regulatory framework to make positive progress. There is much work to be done.

Ownership Diversity Matters

Media consolidation leads to a less diverse, less responsive, less responsible media. Research has demonstrated that diverse media owners are highly likely to air programming aimed at communities of color.[24] Professor Leonard Baynes has also analyzed evidence of the relationship between racially diverse ownership and content, concluding, "[I]t is clear that minority-owned broadcasters continue to broadcast distinct and different programming than their non-minority counterparts."[25] Georgetown Law's Institute for Public Representation has cogently explained the need for diversity in media:[26]

> A report prepared for the National Association of Hispanic Journalists (NAHJ) found that Latinos are under-represented on network news and even when they are seen, the coverage is often negative and one-sided.[27] This report examined

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[23] The Minority Tax Certificate, which was abandoned in 1995, remains one of the few programs that made positive contributions to ownership diversity.

[24] Sandoval, *supra* note 12 at 21-22; *accord* Peter Siegelman & Joel Waldfogel, *Race and Radio: Preference Externalities and the Provision of Programming to Minorities* at 4 (2001), *available at* http://www.fcc.gov/ownership/roundtable_docs/Waldfogel-c.pdf.

[25] Leonard Baynes, *Making the Case for a Compelling Governmental Interest and Re-Establishing FCC Affirmative Action Programs for Broadcast Licensing*, 57 RUTGERS L. REV 235, 252-53 (2004).

[26] Comments of Office of Communication, United Church of Christ, Inc., National Organization for Women, Media Alliance, Common Cause and Benton Foundation at 10-12, 13-14, *2006 Quadrennial Regulatory Review et al*., MB Dkt. No. 06-121 *et al*. (Oct. 23, 2006).

[27] Daniela Montalvo & Joseph Torres, *Network Brownout Report 2006: The Portrayal of Latinos & Latino Issues on Network Television News*, 19 (2006) ("Brownout 2006").

news stories that were aired on the ABC, CBS and NBC network evening newscasts. Among other things, it found that of the estimated 12,600 stories that aired on these channels in 2005, only 105 (0.83%) were exclusively about Latinos.[28] Only five of these stories featured Latino reporters.[29] Moreover, Latinos appeared as sources in only about 1.7% of non-Latino-related stories.[30]

A study of network news by Entman and Rojecki found that the range of topics attributed to Black interviewees was quite limited. The study examined videotapes of four randomly chosen weeks of evening news from the ABC, CBS, and NBC networks in 1997.[31] The study found that White people were given 1,289 total "sound bites" in the sample, while Black people had a mere [ninety-five].[32] In the sample, only one Black person said anything in an economics story, compared with [eighty-six] sound bites for Whites.[33] Only one said anything in story on foreign affairs, compared with [ninety-nine] White sound bites.[34] White voices were heard [seventy-nine] times on electoral politics, whereas not one Black person said anything on the subject.[35] The disparities were almost as great in any other area that either "invoked the common experiences or interests of Americans as a whole (disasters, foreign affairs, politics, death/rituals)," or that "involved technical expertise (science, economics)."[36] Black voices were much more common in stories dealing with entertainment, sports, or discrimination – topics already stereotypically associated with African Americans.[37]

When minorities do appear in news programs, they are often portrayed in ways that reinforce negative stereotypes.[38] Professors Bachen, et al. have conducted an exhaustive review of studies of television news coverage of race from the time of the Kerner Commission Report in 1968 to the present.[39] They find consistent

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[28] *Id*. at 4.
[29] *Id*. at 4; 9-10.
[30] *Id*. at 4.
[31] Robert M. Entman & Andrew Rojecki, *The Black Image in the White Mind: Media and Race in America* 62, University of Chicago Press (2000). These samples were collected for a report commissioned by the President's Initiative on Race. *Id*. at 246 n.9.
[32] *Id*. at 64.
[33] *Id*.
[34] *Id*.
[35] *Id*.
[36] *Id*.
[37] *Id*.
[38] *See* Leonard M. Baynes, *WHITE OUT: The Absence and Stereotyping of People of Color by the Broadcast Networks in Prime Time Entertainment Programming*, 227-67 *in* Philip M. Napoli, *Media Diversity and Localism: Meaning and Metrics* (Lawrence Erlbaum Associates 2007). ("WHITE OUT").
[39] The Kerner Commission investigation into the causes of the 1967 civil unrest found that one of the contributing factors was the media's ongoing failure to depict the conditions and difficulties faced by African Americans living in ghettos. *See* Christine M. Bachen, Allen S. Hammond, IV,

evidence that "minorities are under-represented in the media or, when present, are portrayed in limited or stereotypical roles."[40] For example, many studies have found that local television newscasts more often feature Blacks and Latinos as perpetrators of crime compared to Whites. Moreover, Whites are overrepresented as victims of homicide and other violent crime, while Blacks and Latinos were under-represented when compared to crime statistics for the area.[41]

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While the studies cited above examine the portrayal and participation of minorities and women in broadcast news programming, other studies have found that minorities and women are also under-represented or stereotyped in entertainment programming. Professor Baynes has examined the portrayal of minorities in primetime television.[42] He finds that networks have aired few dramatic series with Black casts.[43] Moreover, less than one-fifth of situation comedies have racially mixed casts.[44] Some popular shows such as "Friends" and "Seinfeld", which are set in New York City, with all of its diversity, have all White casts. Likewise, very few Latino/a actors star in nighttime dramas or situation comedies, although a few have succeeded as non-Latino characters.[45] When Latinos do appear, they are frequently depicted as violent foreigners "with no ties to the United States."[46] Asian Pacific Americans and Native Americans rarely star in television shows, and when portrayed at all, are often presented in an offensive, stereotypic manner.[47] Additionally, a study by Children Now found

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and Catherine J.K. Sandoval, S*erving the Public Interest: Broadcast News*, *Public Affairs Programming*, *and the Case for Minority Ownership*, 432 in Philip M. Napoli, *Media Diversity and Localism: Meaning and Metrics* (Lawrence Erlbaum Associates 2007) ("Serving the Public Interest").

[40] *Id*. at 274.

[41] *Id*. at 275-76; *see also* Leonard Baynes, *Making the Case for a Compelling Governmental Interest and Re-Establishing FCC Affirmative Action Programs for Broadcast Licensing*, 57 RUTGERS L. REV 235, 258 (2004), ("Making the Case") (citing Daniel Romer, et al., *The Treatment of Persons of Color in Local Television News: Ethnic Blame Discourse or Realistic Group Conflict?*, 25 COMM. RES. 286 (1998) (study of television news found that African Americans and Latinos were twice as likely to be shown in local crime stories and than in other stories and were more often shown as perpetrators than victims)).

[42] Baynes, *WHITE OUT* at 239-48.

[43] *Id*. at 240.

[44] *Id*.

[45] *Id*. at 242. For example, Martin Sheen starred in *The West Wing*, but not as a Hispanic character.

[46] *Id*. at 243.

[47] *Id*. at 386-90. For example, many Asians (especially older Asians) are depicted as speaking English poorly, whereas, Native Americans are presented as one-dimensional, antiquated stereotypes -- either as savage warriors or hyper-spiritualistic shamans.

> that nearly half of all middle-eastern characters appearing in primetime television are cast as criminals.[48]

Despite the fact that this analysis was written several years ago, all of its observations and conclusions hold true today.

Further, the few stations owned by people of color often face significant competitive challenges. A recent analysis of Commission data reveals that people of color frequently own smaller outlets in large markets with forty-six percent of stations owned by people of color located outside of the top four ranked stations in the largest twenty DMAs.[49] According to the same analysis, people of color are often single owners in markets with widespread consolidation, making financial distress much more likely and creating pressure to exit the market, perhaps through the upcoming incentive auction.[50]

Unfortunately, none of these numbers are particularly surprising. Immediately after the 1996 Act eliminated and significantly relaxed a number of key broadcast ownership limits, women and people of color were pushed from the market as mega-media conglomerates grew. According to data collected by the National Telecommunications and Information Administration in 1997:

> Most of the minority owners interviewed reported that they believe the decline seen in this year's numbers is a direct result of increased ownership limits, which has given a significant competitive advantage to groups owners, who are more likely to be non-minority and have greater financial resources. The ability to own multiple stations in the same market has proven to be an effective tool for obtaining market share while increasing economies of scale for those who are well-financed. These owners also are more likely to be non-minority. The minority owners interviewed contend that the 1996 Act and the FCC's new ownership limits have the potential to translate into even greater economic possibilities for a handful of companies that already were generating high streams

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[48] Children Now, *Fall Colors: Primetime Diversity Report 2003-2004*, 6 ("Fall Colors 2003-2004").
[49] Comments of Free Press, MB Docket Nos. 09-182, 07-294, filed Dec. 21, 2012, *available at* http://apps.fcc.gov/ecfs/document/view?id=7022089263 ("Comments of Free Press").
[50] *Id*. at 17-23.

> of advertising revenues, and to squeeze out smaller stations in weaker markets. Lending some credibility to this claim is the phenomenal growth occurring for companies such as Gulfstar, Clear Channel and Chancellor, and the declining minority ownership numbers, particularly for FM stations.[51]

According to a footnote in the 1997 report:

> In the industry today media concentration has driven up the prices of stations in many markets. In the Washington, D.C. market, the price of radio stations has increased by at least 20 percent over the past two years. Prior to 1997, stations were traded at about 10 times their projected annual revenues. Now, that multiple goes as high as 15.[52]

The dearth of outlets owned by people of color has directly impacted employment at local stations and news coverage in local communities. The National Association of Black Journalists 2012 Diversity Census paints a bleak picture. The census counts newsroom management positions at almost 300 television stations owned by the top conglomerates. It found that at more than half of the stations, not one single person of color was employed in a newsroom management position – despite stations being located in diverse population centers such as New York, San Antonio, Los Angeles, Chicago, and Atlanta.[53] This phenomenon could help explain some of the unbalanced news coverage in major metropolitan areas. For instance, a 2011 study of news in Pittsburgh, PA, found that ninety-seven percent of the news coverage of African American young men and boys consisted of stories about crime or sports.[54]

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[51] National Telecommunications and Information Administration, 1997 Commercial Broadcast Ownership Findings, *available at* http://www.ntia.doc.gov/legacy/reports/97minority/findings.htm.
[52] *Id*. at n.30.
[53] NABJ Diversity Census 2012, *available at* http://c.ymcdn.com/sites/www.nabj.org/resource/resmgr/onrmore.2012_nabj_diversity_.pdf.
[54] *Portrayal and Perception: Two Audits of News Media Reporting on African American Young Men and Boys*, HEINZ ENDOWMENTS' AFRICAN AMERICAN MEN AND BOYS TASK FORCE, Nov. 1, 2011, *available at* http://www.heinz.org/UserFiles/Library/AAMB-MediaReport.pdf.

Excessive Concentration Of Broadcast Licenses Has Frustrated The FCC's Policy Goals And Harmed Local Communities And People Of Color

Excessive consolidation and lack of diversity have directly resulted in harm of diverse communities and led to the inability of these communities to fully benefit from the public resource that broadcasters use to serve them.

Clear Channel's radio station cluster in the Los Angeles DMA is a perfect example of how media consolidation can negatively impact local communities. Los Angeles is renowned for its rich cultural diversity – two-thirds of its residents are people of color. Of the nearly eighteen million people residing within the DMA,[55] forty-five percent are Latino, twelve percent are Asian American, and seven percent are African American.[56] Los Angeles is not only the top Latino DMA in the country, but also the top Asian-American DMA.[57]

Clear Channel, with headquarters in San Antonio, Texas, and nearly 850 radio stations in over 150 cities across the U.S., is out of step with the needs of the local communities that it is supposed to be serving, and some of its outlets pollute the airwaves with vicious hate speech targeting many of the groups that make up the Los Angeles community. Because of its vast consolidation and offsite executive team, it is questionable whether Clear Channel can manage local programming and truly serve the public interest in diversity and localism as expected and

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[55] The Los Angeles DMA includes Los Angeles, Orange, Riverside, San Bernardino, and Ventura counties. *See* Hispanic Market Weekly, *Market Snapshot: Los Angeles*, LATINO BUSINESS TODAY (Feb. 2012), *available at* http://latinbusinesstoday.com/2012/02/market-snapshot-los-angeles.

[56] U.S. Census 2010, http://factfinder2.census.gov/; *see also* U.S. Census 2010, http://www.census.gov/2010census/popmap/ (reporting that 17,877,006 people reside in the Los Angeles DMA. Of those, 8,028,831 are Latino; 2,199,186 are Asian; and 1,245,186 are African American).

[57] *See* TVB Market Profiles, *DMA: Los Angeles, CA*, Local Media Marketing Solutions, http://www.tvb.org/market_profiles#!id=116&type=market.

mandated per FCC regulations. In Los Angeles, Clear Channel has ties to ten stations, owning eight and representing two others for the purpose of selling advertising.[58]

Not only do Clear Channel outlets in Los Angeles fail to serve the local community, but some endlessly bait and antagonize the community while exploiting the lack of strong multiple ownership rules to insulate their stations from any negative repercussions that would come from free market accountability mechanisms, such as losing audience share or advertising revenue. Nowhere is this more apparent than in the case of Clear Channel's KFI-AM 640 AM. In just the past few years, more than 240 consumers have filed FCC complaints about KFI's programming; almost every single complaint was filed in reference to hate speech uttered by KFI's on-air personalities.[59] In the past, John Kobylt and Ken Chiampou, of KFI-AM's "The John and Ken Show," have mercilessly targeted Latinos, Korean Americans, Native Americans, gay men, and the poor. KFI-AM's Los Angeles studio has been the site of countless community protests, most recently by the African American community, which was outraged when John and Ken called the late Whitney Houston a "crack ho" shortly after her death.[60] In the past, Rush Limbaugh, who aired on KFI until just recently when he transitioned to another Los Angeles Clear Channel station, commented, "[S]ome people are just born to be slaves."[61] Limbaugh also referred to a

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[58] Clear Channel Radio Sales Station List, KATZ MEDIA, http://www.katz-media.com/uploadedfiles/OUR_*COMPANIES*/CCRS/Stations/CCRS%20stationlist.pdf.
[59] *American Hate Radio: How A Powerful Outlet For Democratic Discourse Has Deteriorated Into Hate, Racism and Extremism*, NATIONAL HISPANIC MEDIA COALITION, at 5 (Jan. 2012), *available at* http://www.nhmc.org/nhmcnew/wp-content/uploads/2013/03/american_hate_radio_nhmc.pdf ("NHMC Hate Radio").
[60] *See* Steve Carney & Greg Braxton, *John and Ken meet with black leaders over Whitney Houston comments*, L.A. TIMES (Feb. 28, 2012), *available at* http://latimesblogs.latimes.com/lanow/2012/02/kfi-john-ken-whitney-houston-crack-ho-black-leaders.html. (This rant earned John and Ken only a brief suspension).
[61] NHMC Hate Radio, *supra* note 59, at 6.

Georgetown Law student a "slut" and a "prostitute" over the course of a number of broadcasts in 2012.[62] The examples of this hate speech on KFI are, unfortunately, bountiful.

Much of the community outrage directed at Clear Channel and KFI results from their hosts' use of calls to action against certain racial or ethnic groups or vulnerable populations following systematic and sustained dehumanization of those populations on the air. John and Ken are infamous for such stunts. The UCLA Chicano Studies Research Center has documented the regular use of unsubstantiated claims, divisive language, and dehumanizing metaphors on "The John and Ken Show," which target vulnerable groups.[63] Listeners have complained that John and Ken often direct this language towards Los Angeles' Latino community. For instance, John and Ken have discussed wanting to beat a "stupid, illegal alien leafblower guy" and decried "[Mexicans] bring[ing] their stupid third world habits [to] foul our life."

As they stoke anger among their listeners with this type of language, John and Ken have, in the past, offered their audience an outlet for their anger with calls to action, giving out the personal cell phone numbers of various private individuals with whom they disagree. One instance involved UCLA student Nancy Meza and resulted in her receiving more than 300 angry phone calls and death threats.[64] The disc jockeys also began selling t-shirts online as part of their campaign, with 'Deport Nancy Meza' printed on the front and a phone number to Immigration

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[62] *See* Limbaugh's Misogynistic Attack On Georgetown Law Student Continues With Increased Vitriol, MEDIA MATTERS FOR AMERICA (Mar. 1, 2012), http://mediamatters.org/blog/201203010012.

[63] Chon A. Noriega & Francisco Javier Iribarren, *Quantifying Hate Speech on Commercial Talk Radio*, UCLA CHICANO STUDIES RESEARCH CENTER, (Nov. 2011), *available at* http://www.chicano.ucla.edu/files/WP1QuantifyingHateSpeech_0.pdf.

[64] Nancy Meza, *Suspension For John And Ken Is Not Enough; Their Hate Speech Needs To Be Taken Off The Air*, THE HUFFINGTON POST (Feb. 29, 2012), *available at* http://www.huffingtonpost.com/nancy-meza/suspension-for-john-and-ken_b_1307373.html.

and Customs Enforcement on the back.[65] Another call to action involved immigrant rights activist Jorge-Mario Cabrera, who received more than 450 threatening calls from John and Ken's listeners.[66]

NHMC and more than forty other multicultural civil rights organizations led a campaign to educate advertisers about the divisive nature of "The John and Ken Show," resulting in nearly thirty major companies removing their advertisements from the program. But because Clear Channel owns so many stations in the market it is able to buy large blocks of advertising across its station cluster, minimizing competition, and eliminating the ability of market forces to remove the hate programming that clearly disserves the public interest, especially in a locale as diverse as Los Angeles. Throughout the education campaign, a number of advertisers who had called Clear Channel to explicitly request that their ads not air on "The John and Ken Show" were seemingly shifted to a different time period or station. Some were simply removed from the radio but kept on the live online streaming broadcast. Because it owns so many media outlets in the market, Clear Channel was able to ignore the community outcry over its programming, while still continuing to profit. Not only are diverse voices rarely heard *on* the airwaves, but – as this case illustrates – they are not heard *by* those that use the airwaves for financial gain. Clear Channel has gone beyond a simple failure to serve the local community and, in many cases, is actively harming it.

Recent polling completed by NHMC and the polling firm, Latino Decisions, has revealed the incredible power of even brief media representations of Latinos – both positive and

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[65] *Id*.
[66] NHMC Hate Radio, *supra* note 59, at 4.

negative.[67] After viewing just one minute of media content, poll respondents changed the way they viewed Latinos. For example, when asked if Latinos were intelligent, those who consumed negative news and entertainment pieces were much more likely to rate Latinos as unintelligent, while those who consumed positive pieces were much more likely to rate Latinos as intelligent. The poll also found that:

- People exposed to negative entertainment or news narratives about Latinos and/or immigrants hold the most unfavorable and hostile views about both groups;
- Negative portrayals of Latinos and immigrants are pervasive in news and entertainment media. Consequently, non-Latinos commonly believe that many media-promoted negative stereotypes about these groups are true;
- For those without direct experience with Latinos, media takes on a larger role in establishing their opinions and attitudes;
- Even those most disposed to positive opinions about Latinos have less favorable opinions when exposed to negative entertainment or news narratives;
- In discussing those in this country without documentation, the term commonly employed by some media outlets, "illegal aliens," elicits much more negatives feelings than the term "undocumented immigrants"; and
- Non-Latinos report seeing Latinos in stereotypically negative or subordinate roles (gardeners, maids, dropouts, and criminals) in television and film.

The FCC's Recent Move To Modestly Tighten Its Rules Is A Step In The Right Direction

Part of the reason for today's hearing is to better understand the FCC's recent move to modestly tighten its media ownership rules by requiring ownership attribution for stations that participate in certain types of sharing arrangements with other stations. While some have contended that the FCC's recent action regarding television joint sales agreements ("JSAs") will harm ownership diversity, NHMC does not share that opinion. To say that restricting some of

[67] *The Impact of Media Stereotypes on Opinions and Attitudes Towards Latinos*, NATIONAL HISPANIC MEDIA COALITION (September 2012), *available at* http://www.nhmc.org/reports/impact-media-stereotypes-opinions-attitudes-towards-latinos/.

these sharing agreements would harm ownership diversity implies that, to date, these arrangements have been a tool to increase diverse ownership of broadcast licenses. Unfortunately, the facts do not support this contention.

Data compiled by Free Press shows that the rise of sharing and coordination agreements between broadcasters has taken place at a time when ownership diversity has continued to plummet.[68] For instance, in 2006, the top broadcasters using outsourcing agreements had thirty-seven agreements in place. They now have 116. In 2006, 3.5 percent of full-power commercial stations were owned by people of color. That now stands at three percent. African American broadcasters have been hit particularly hard in recent years. In 2006, there were nineteen African American owned stations. That number now stands at four. In 2006, the level of African American ownership was 1.4 percent. It is now 0.29 percent. According to recent data compiled by Commissioner Pai, three out of four African American owned stations are currently in an operational agreement.[69] None of the African American owned stations in 2006 were party to such an agreement. While there are surely reasons for these types of agreements to exist, it is clear that promoting diversity is not one of them.

While it seems as though the majority of JSAs are entered into for reasons other than promoting diversity, a small number of anecdotes have emerged where an argument can be made that a JSA or other type of sharing agreement may be providing a unique service to a community. Chairman Wheeler has made it very clear on a number of occasions that, in such situations, the

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[68] *See Cease To Resist: How the FCC's Failure to Enforce Its Rules Created a New Wave of Media Consolidation*, FREE PRESS at 25 (Oct. 17, 2013), *available at* http://www.freepress.net/resource/105083/cease-resist-how-fccs-failure-enforce-its-rules-created-new-wave-media-consolidation.

[69] News Release, *Office Of FCC Commissioner Ajit Pai Releases Results Of Broadcast Ownership Diversity Research* (Mar. 20, 2014), *available at* http://www.fcc.gov/document/comm-pai-releases-results-broadcast-ownership-diversity-research.

broadcasters involved can make their case to the FCC and apply for a waiver of its rules.[70] NHMC believes that this process is appropriate.

Conclusion

To conclude, the FCC's media ownership regulatory framework remains important. Broadcast stations, which use the public airwaves, remain the primary sources of news and information for most of the country. These stations continue to possess extraordinary power to both serve and harm their local communities. It is crucial that the FCC continue to distribute broadcast licenses in a way that promotes diversity, competition, and localism. While recent numbers indicate that there is much work to be done to ensure that women and people of color own their fair share of licenses, the FCC must remain at the forefront of that work and use the authority that it has to work within the existing framework and create positive change by reversing decades of consolidation in the media industry. Only then will we have the diverse media that we all need and deserve. Thank you, again, for the invitation to testify this morning. I look forward to your questions.

[70] *See e.g*. Tom Wheeler, *Protecting Television Consumers By Protecting Competition* (Mar. 6, 2014), *available at* http://www.fcc.gov/blog/protecting-television-consumers-protecting-competition.