



March 22, 2016

Chairman Tom Wheeler
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: MB Docket No. 14-50

Dear Chairman Wheeler:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national advocacy organizations, we are writing to highlight the importance of media ownership diversity in the broadcast industry, and the role that the upcoming broadcast incentive auction can play in enhancing or eroding the ability of women and people of color to fully participate in the nation's marketplace of ideas.

Broadcast media ownership diversity has been one of the most important priorities for The Leadership Conference and its members. However, this issue has not received the analysis and consideration that it deserves from the Federal Communications Commission, and that failure is all the more evident as we look down the road toward the likely outcome of the broadcast incentive auction. Even as the FCC has taken much needed steps to improve carrier access to spectrum, it has struggled and largely failed to take meaningful steps to improve broadcast ownership diversity. The auction that moves ahead next week will almost certainly further erode the already paltry participation in broadcasting by women and people of color.

The importance of television ownership in changing the national conversation is well-understood¹ and the Commission's legal obligation to address media diversity is longstanding. This obligation is set forth in Section 1 of the Communications Act in clear terms, which directs the FCC "to make available ... to all people of the United States, *without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide and world-wide wire or radio communications service....*"² The Supreme Court has reaffirmed again and again that "it has long been a basic tenet of national communications policy that 'the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public,'" and that "assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment."³ The Court has

¹ University of Southern California Annenberg School for Communication & Journalism in collaboration with the University of Wisconsin – Madison, *Review of the Literature Regarding Critical Information Needs of the American Public* at 54-60; Pew Research Center, "Local News in a Digital Age," at 124 (March 2015) (describing the difference in coverage from independent outlets or outlets serving a particular community) available at: <http://www.journalism.org/2015/03/05/local-news-in-a-digital-age/>

² 47 USC § 151 (emphasis added).

³ *Turner Broadcasting System, Inc. v. FCC*, 512 US 622, 663 (quoting *United States v. Midwest Video Corp.*, 406 US 649, 668 n.27 (1972)(plurality opinion)(quoting *Associated Press v. United States*, 326 US 1, 20 (1945)).

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upheld FCC policies in the past to promote gender diversity in ownership.⁴ In addition, Section 257 of the Communications Act speaks to the importance of diversity, stating that “the Commission shall seek to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity.”⁵

Following the 2012 enactment of legislation authorizing the incentive auction,⁶ The Leadership Conference warned of the significant possibility that the incentive auction process would greatly alter the broadcast television landscape in markets across the country, with a devastating impact on broadcast ownership by women and people of color, driving ownership levels even lower than their current disastrous state.⁷ As UCC OC Inc., National Organization for Women, Communications Workers of America, Common Cause, and others explained, if, as the FCC expected, the lowest valued stations would be the stations most likely to participate in the auction (thus exiting or substantially reducing their penetration in the marketplace), ownership rates of women and people of color would be severely damaged.⁸ In 2014, Asian Americans Advancing Justice-AAJC (AAJC) highlighted the impact of speculative buying in advance of the incentive auction, identifying 37 stations that were purchased by speculators. AAJC documented the loss of nine AAPI-owned television stations, and demonstrated that, regardless of ownership, nearly half all the stations purchased in advance of the auction provided ethnic programming for AAPI communities.⁹

Recently, Howard University announced that it planned to participate in the auction, meaning that the only public station in the country held by an African-American institution could go off the air.¹⁰ While Howard University and other owners of color and their institutions are making the best decisions for themselves, and while nothing should impede their ability to participate in the auction, the FCC must look at the bigger picture to ensure the diversity of viewpoints in the public domain so critical to the health of our democracy can and will be maintained.¹¹

Yet despite being asked to study the impact at a time where action could still be taken to remedy or alter this entirely predictable outcome,¹² the FCC did not incorporate ownership data into the auction process,

⁴ *Metro Broadcasting Inc. v. FCC*, 497 US 547 (1990).

⁵ 47 USC § 257.

⁶ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402, 6403, 125 Stat. 156 (2012).

⁷ The Leadership Conference on Civil and Human Rights, Incentive Auction Comments, GN Docket No. 12-268 (filed Jan. 25, 2013).

⁸ See UCC OC Inc. et al Ownership Data Comments, MB Docket Nos. 09-182, 07-295, at 16-23 (filed Dec. 26, 2012) (outlining the concern in detail and citing comments and reply comments earlier that year in the media ownership and spectrum auction dockets).

⁹ Advancing Justice | AAJC, Comments, MB Docket No. 14-50 et al. at 8-13 (filed Aug. 7, 2014) (demonstrating in detail the negative impact on AAPI ownership and programming wrought by transactions widely acknowledged to be spectrum speculation in advance of the incentive auction).

¹⁰ Danielle Douglas-Gabriel, “Howard University considers selling its airwaves. Is this the end of WHUT?,” *Washington Post* (Nov. 7, 2015); Dr. Chuka Onwumechili, et al. “Position Paper on the Possible Auction of WHUT-TV,” Howard Media Group (Nov. 3, 2015), available at:

<http://www.howardmediagroup.org/sites/default/files/news/HMG%20Position%20Paper-FINAL.pdf>

¹¹ As noted, the FCC has the obligation to ensure that the public interest is served. Accordingly, Howard University should not be held hostage to the larger public interest obligations that rightly belong to the FCC.

¹² Letter from Earl Williams, UCC OC Inc. and Alex Nogales, NHMC to FCC Chair Julius

so that we continue to be forced to rely on the biennial ownership data collection that was submitted in December.¹³ The data are still not public, and if past practice is any guide, the FCC is unlikely to analyze these data in order to determine their causes, trends, and other influencing factors.¹⁴ The FCC has consistently claimed that it requires more data to take action on media ownership diversity, but nonetheless cancelled the main research initiative it had proposed in the current proceeding.¹⁵ Given that the current FCC has not left itself enough time to take the proactive steps that are necessary to rectify this problem, we believe it must lay a foundation for the next FCC to complete the necessary research, data gathering, and analysis. Just as important, the current FCC must do no harm. Some of the proposals set forth in 2014 would not only permit additional consolidation just as the broadcast television industry is undergoing a radical change through the incentive auction, but could also undermine the constitutional basis for the FCC's consideration of ownership diversity in radio.¹⁶ These proposals must be carefully reviewed and clearly rejected if they have the impact we predict.

Changing course now would make a significant difference to the millions of individuals with disabilities and minority, low-income, and aging households who rely on broadcast television for their news and information. Broadcast television continues to maintain its powerful impact on the national dialogue as studies show again and again that local news is still the main source of news for a significant proportion of people in the U.S.¹⁷ Over-the-air television is becoming more popular, not less, and is now relied upon by 20 percent of U.S. households,¹⁸ and led by younger people and people of color.¹⁹ Local news

Genachowski, et al., ET Docket No. 10-235 (Sept. 21, 2012); Comments of UCC et al., Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, ET Docket No. 10-244, at 4 (Mar. 18, 2011).

¹³ National Hispanic Media Coalition, Incentive Auction Comments, GN Docket No. 12-268 at 5-6 (filed Jan. 15, 2015) (encouraging the FCC to collect 323 data for incentive auction participants); Federal Communications Commission, Public Notice, Media Bureau Announces Opening of Filing Window for 2015 Biennial Ownership Reports, DA 15-1100 (re. September 30, 2015).

¹⁴ See Letter from Wade Henderson and Nancy Zirkin, The Leadership Conference on Civil and Human Rights to FCC Chair Julius Genachowski et al., MB Docket No. 09-182 (filed Dec. 5, 2012); The Leadership Conference on Civil and Human Rights Comments, MB Docket No. 09-182 (filed Dec. 26, 2012).

¹⁵ Joe Flint, "FCC cancels newsroom study after backlash from lawmakers," *LA Times* (Feb. 28, 2014). We understand that the FCC is still working on the Hispanic television study, which it first announced in 2013. FCC Press Release, *FCC Announces New Study Examining Hispanic Television Viewing as Part of Commitment to Encourage Broadcast Diversity* (rel. Oct. 23, 2013) available at: <https://www.fcc.gov/document/fcc-announces-hispanic-tv-viewing-study-next-step-ocbo-study>.

¹⁶ 2014 Quadrennial Review, *Further Notice of Proposed Rulemaking and Report & Order*, MB Docket No. 14-50 et al., (2014) at para 6 (seeking comment on relaxing radio/television cross-ownership rule, relax the newspaper/television cross-ownership rule through waiver mechanisms) and at 144-45 (seeking comment on the Commission's "tentative conclusion that radio stations are not the primary outlets that contribute to viewpoint diversity in local markets" and thus eliminate the radio-newspaper cross-ownership rule).

¹⁷ For example, a Pew study last year found that in three very different U.S. cities, residents relied significantly on local television for news—66 percent, 58 percent, and 68 percent in Macon, GA, Denver, CO and Sioux City, IA respectively. Pew Research Center, "Local News in a Digital Age," at 39 (March 2015) available at: <http://www.journalism.org/2015/03/05/local-news-in-a-digital-age/>

¹⁸ Seventy-eight percent of millennial voters watch broadcast TV on a weekly basis. Nielsen, "Local Watch: Where You Live and Its Impact on Your Choices," (January 2016) available at: <http://www.nielsen.com/us/en/insights/reports/2016/january-2016-local-watch-where-you-live-and-its-impact-on-your-choices.html>

¹⁹ In 2013, people of color made up 41 percent of all broadcast-only homes, led by households that prefer Spanish, half of whom rely on over-the-air television. See National Association of Broadcasters, Over-the-Air TV Renaissance Continues as Pay-TV Cord-Cutting Rises, Press Release (June 21, 2013), available at



coverage dominates the political discussion in our country,²⁰ which is especially important this year when political advertising spending will once again reach record levels.²¹ Though local broadcast television is dominating national political and cultural conversations, it simultaneously presents an incomplete picture by failing to cover communities of color as full and equal participants in our society. Thus, for example, African Americans are often featured in crime and sports stories and little else,²² while the degree to which Latinos and Asians hold certain jobs is often misrepresented.²³ We believe there is a direct connection between those who own broadcast stations and the content they transmit.

We recognize that under your Chairmanship, the FCC has made progress on several important civil rights issues, such as ending predatory prison phone rates and addressing many important needs of people with disabilities. The incentive auction will also be a lasting legacy of your term. We look forward to meeting with you to discuss these concerns and the importance of media ownership diversity in the broadcast industry.

Sincerely,

Wade Henderson
President & CEO

Nancy Zirkin
Executive Vice President

<https://www.nab.org/documents/newsroom/pressRelease.asp?id=3168GfK> (citing Home Technology Monitor 2013 Ownership Survey and Trend Report (2013)).

²⁰ For example, a study by Keller Fay Group concluded that “More than half of all respondents (61%) source their local political conversations from something they saw or heard on local news programming alone.” Keller Fay TVB American Conversation Study, April 9-26, 2013, available at: <http://www.kellerfay.com/people-talking-politics-local-television-drives-political-engagement/>.

²¹ See, e.g., Meg James, “Political ad spending estimated at \$6 billion in 2016,” Los Angeles Times (Nov. 18, 2015) (estimating TV stations will earn \$4 billion of the total \$6 billion of political ad spending in the 2016 election).

²² For example a study of African American coverage in local news media in 2011 found, “[o]f the nearly 5,000 stories studied in both print and broadcast, less than 4 percent featured an African American male engaged in a subject other than crime or sports.” The Heinz Endowments’ African American Men and Boys Task Force, “Portrayal and Perception: Two Audits of New Media Reporting on African American Men and Boys,” at 5 (Nov. 2011) (report covers two analyses of Pittsburgh media, one by Meyer Communications and another by the Pew Research Center’s Project for Excellence in Journalism), available at: <http://www.heinz.org/userfiles/library/aamb-mediareport.pdf>. See also Pew Project for Excellent in Journalism, “How News Happens: A Study of the News Ecosystem of One American City,” at note 7 (2010), available at: <http://www.journalism.org/2010/01/11/how-news-happens/> (highlighting that, across local television, 6 in 10 lead stories on local TV news feature crime and accidents).

²³ See Travis Dixon and Charlotte Williams, “The Changing Misrepresentation of Race and Crime on Network and Cable News” Journal of Communication, vol. 65, Issue 1 (2015); Frances Negron-Mutaner, The Latino Media Gap (2014) (demonstrating Latino acting roles, for example, are less representative quantitatively in the 2000s than they were in the 1950s) available at: http://www.columbia.edu/cu/cser/downloads/Latino_Media_Gap_Report.pdf