



August 17, 2017

Chairman Ajit Pai
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Modernization of Media Regulation, MB Docket No. 17-105; 2014 Quadrennial
Regulatory Review, MB Dockets No. 14-50, 07-294

Dear Chairman Pai:

On behalf of The Leadership Conference on Civil and Human Rights and its Media/Telecommunications Task Force, we write to strongly oppose any proposal to delay or eliminate broadcaster diversity reporting obligations. Any such proposal would undermine our nation's interest in ensuring diversity in media ownership, contravene your own commitment to conduct policymaking with sound data and analysis, as well as violate federal court directives to this agency to increase and improve its analysis of media ownership diversity.

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. The most recent data released by the Commission demonstrate the continued severe underrepresentation of women and people of color in broadcasting:

- In the Full Power TV service, women comprise 7.4 percent of licensees and people of color and Hispanics comprise a total of 7.1 percent of licensees;
- The second most diverse service is Class A TV, where 9.3 percent of licensees are women and 15.2 percent are people of color and Hispanics;
- For the most diverse service, Low Power TV—which is about to be drastically scaled back after the post-incentive auction transition—women control 11 percent of licenses and people of color and Hispanics control 15.8 percent.¹

For decades, the Commission's response to intolerably low minority and female broadcast ownership levels has been woefully inadequate. Delay is particularly inappropriate now because the 2017 data collection will be the first collection after the incentive auction, which will radically change the ownership of local broadcast television stations. As of yet, no

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comprehensive analysis of the auction's impact on diversity in ownership is currently available and will, in fact, not be available until the Commission collects the new data.

A decision to reduce or eliminate collection of ownership data is inconsistent with your commitment, as Chairman, to make policy based on sound data and objective analysis. As you have stated, "Using analytics doesn't dictate what your choices will be. But not using it means your decisions are more likely to go wrong."² At a meeting with Leadership Conference staff and member organizations earlier this year, you and your staff expressed profound disappointment that the media ownership data collected during the prior year had not yet been released. Given these expressed concerns, we urge you to continue collecting and promptly releasing the same quality and quantity of ownership data, and to start analyzing the data for use in Commission decision-making. Accurate data will define the problem and help policymakers know whether it has been addressed.

The Third Circuit's directives in the *Prometheus* cases call for the collection of ownership data. The court has, three times, directed the Commission to obtain data to support its decisions in light of its obligation to promote diversity and reversed Commission orders for its failure to do so. The Commission was reversed in its definition of "eligible entity" in 2011.³ After acknowledging that the data available in the record were "insufficient ... to address the concerns raised" by the Third Circuit, the Commission failed again to conduct the research but committed to do so in preparation for the 2014 review.⁴ When the Commission finally issued an order concluding both the 2010 and 2014 quadrennial reviews in August 2016, it still had not obtained the necessary data or conducted the necessary studies.⁵ This failure, which your dissent acknowledged at the time,⁶ is again being challenged through litigation. Thus, any Commission decision to reduce, rather than augment, media ownership data collection would violate the mandate of the federal court.

Broadcaster proposals⁷ to now eliminate or reduce the data used to measure current ownership levels are irresponsible and flawed. The National Association of Broadcasters claims that the data collected is only necessary at the time a broadcast licensee changes hands, and at the same time asserts that collecting the data needed is burdensome and difficult because owners and board members must conduct extensive review to verify the filings.⁸ If detailed analysis is required, then the data have changed and updates are necessary; and if the data were unchanged, refileing the same data would be simple. A joint filing by CBS, Disney, Fox and Univision suggests that ownership reports are not required for companies that file at the Securities and Exchange Commission (SEC),⁹ but SEC filings do not report the race and gender of broadcast licensees. The Leadership Conference supports proposals that would ease the administrative burden on broadcasters,¹⁰ as well as facilitate the use of this data by our organizations, researchers, and members of the public through a searchable database, but we categorically oppose any proposal to delay or reduce the quantity or quality of the information collected. Indeed, we have been seeking improvements in the data collection and analysis for decades.

A commitment to promote diverse media ownership is a fundamental component of our nation's communications policy. A decision by the Commission to reduce the obligations on broadcasters to report ownership diversity data would run counter to this fundamental principle, be inconsistent with good governance, and violate court directives. Should you require further information or have any questions



regarding this issue please contact Media/Telecommunications Task Force Co-Chairs Cheryl Leanza, United Church of Christ, OC Inc., at 202-904-2168 or cleanza@alhmail.com, or Michael Macleod-Ball, on behalf of the American Civil Liberties Union, at 202-253-7589 or macleod@627consulting.com, or Corrine Yu, Leadership Conference Managing Policy Director at 202-466-5670 or yu@civilrights.org.

Sincerely,

Asian Americans Advancing Justice – AAJC
American Civil Liberties Union
Common Cause
Communications Workers of America
The Leadership Conference on Civil and Human Rights
NAACP
National Association of Broadcast Employees and Technicians - CWA
National Consumer Law Center, on behalf of their low-income clients
National Hispanic Media Coalition
National Organization for Women
OCA – Asian Pacific American Advocates
United Church of Christ, OC Inc.

cc: Commissioner Mignon Clyburn
Commissioner Michael O’Rielly
Commissioner Jessica Rosenworcel
Commissioner Brendan Carr

¹ Individual racial and ethnic group totals in many services border on zero. For example, in the full power TV service, totals for Asians, African-Americans, Native Americans, and Native Hawaiians are less than 1 percent. Women control only 8 percent of FM radio stations, Hispanics 4.2 percent, African-Americans 1.3 percent, and Asians 0.4 percent. Media Bureau, Third Report on Ownership of Commercial Broadcast Stations (May 2017), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-344821A1.pdf.

² Remarks of FCC Chairman Ajit Pai at The Hudson Institute, “The Importance of Economic Analysis At the FCC,” Washington, D.C. (April 5, 2017).

³ In *Prometheus II*, the court remanded the FCC’s definition of “eligible entity” because the Commission failed to provide any data showing that the definition would increase broadcast ownership by minorities and women, and the court ordered the FCC to collect the necessary data and conduct the necessary studies in the 2010 Quadrennial Review. *Prometheus Radio Project v. FCC*, 652 F.3d 43, 470-72 & n.42 (3d Cir. 2011).

⁴ 2010 Quadrennial Review NPRM, 26 FCC Rcd 17489, 17550 (2011).

⁵ 2014 Quadrennial Review, 31 FCC Rcd 9864 (2016). In *Prometheus III*, the court directed the Commission “to act promptly to bring the eligible entity definition to a close. It must make a final determination as to whether to adopt a new definition. If it needs more data to do so, it must get it.” 824 F.3d 33, 49 (3d Cir. 2016).

⁶ 2014 Quadrennial Review, Dissent of Commissioner Pai.



⁷ CBS, Disney, Fox and Univision jointly propose to exempt publicly traded corporations from having to file biennial reports at all. Content Companies Comments at 3. National Association of Broadcasters asks that stations be required to file ownership reports only when a license is obtained or transferred. NAB Comments at 16. NAB has also urged the FCC postpone the filing of Form 323 for 2017. NAB Comments at 15 and NAB Request to Suspend December 1, 2017 Ownership Report Filing Deadline, MB Docket Nos. 07-294 & 10-103 (filed July 19, 2017). Others suggest that ownership reports should be filed every four years instead of two. Jack Goodman Comments at 2, Public Broadcasters Comments at 14.

⁸ NAB Comments at 14-15.

⁹ Content Companies Comments at 3.

¹⁰ NAB Comments at 13-14.