

June 2, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: *Media Bureau Seeks Comment on Hispanic Television Study as Part of Quadrennial Review of Media Ownership Rules and Diversity of Ownership of Broadcast Media, MB Docket Nos. 14-50, 09-182, 07-294*

Public Knowledge and Common Cause (collectively, “Commenters”) submit the following comments on the May 2016 Hispanic Television Study,¹ released by the Office of Strategic Planning and Policy Analysis, and by the Industry Analysis Division of the Media Bureau.

The study examines potential links between minority ownership, program content and viewership. It was conducted against the backdrop of longstanding efforts by the FCC to foster and nurture viewpoint diversity, efforts that Commenters have long supported as critical to the agency’s fulfillment of its various mandates to regulate in the public interest. The study looks at Hispanic TV ownership in part because Hispanics are the largest US minority group and, at the time of the study, Hispanics owned more television broadcast stations than any other minority group. But even though Hispanic ownership of television stations during the 2011-12 time period focused on in the study exceeded the abysmally low levels of such ownership by other minority groups, it was itself still very low—only 23 Hispanic-owned stations served as the sample size for the study.²

In part due to this small sample size, the study draws few definitive conclusions. Commenters note nonetheless that the study’s “results suggest that local Spanish-language and local Spanish-language news programming are more likely to be associated with Hispanic ownership than other types of programming” and that “[t]here is some evidence that Hispanic ownership is associated with higher Hispanic viewing....”³ Commenters have long supported Commission initiatives to promote vitally important news and local programming, and do so again here in the context of these findings by the study.

These comments have another purpose, however--to note the significant impact increasing consolidation within the television industry (the potential public interest dangers of which Commenters have long warned the Commission about) has had on minority ownership during the years-long delay between the time period reviewed in the study and the study’s release. Phrased another way, the study has been issued at a critical juncture, as consolidation

¹ Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0512/DOC-339345A1.pdf.

² Study ¶ 5.

³ Study ¶ 17.

continues to have direct consequences on the fragile minority ownership ecosystem which underpins the study.

In particular, the study's snapshot of facts as they existed in 2011-12 is now outdated. In 2013, after consummation of the sharply contested Comcast/NBCUniversal merger, Comcast bought WWSI, Atlantic City, NJ and KTLM, Rio Grande City, TX, two of the eight previously independently owned Telemundo affiliates shown in Table 8 at page 21 (out of a total universe of 23 "Hispanic-owned" stations that were the subject of the Study). The only Hispanic-owned network included in the 23-station sample is Liberman Broadcasting's Estrella TV (Liberman owns and operates some of the stations which comprise the network). Table 8 shows that Liberman accounted for seven, or more than 30 percent, of the Hispanic-owned stations studied.

This is particularly relevant given than the Comcast/NBCU merger may threaten even this limited minority ownership pool. Liberman has recently filed a program carriage complaint with the Commission alleging that Comcast has violated 47 U.S.C. § 536, its implementing regulations, and the conditions attached to the FCC's grant of the Comcast/NBCU merger. While Commenters are not in a position to pass judgment on the merits of Liberman's complaint, if its allegations that Comcast is denying Liberman fair distribution and compensation, in order to benefit Comcast's own Telemundo and NBC Universo networks are true, it would demonstrate yet another way in which media consolidation and vertical integration in particular threaten diversity and the public interest.

In the same vein, the FCC recently approved the merger of Time Warner Cable, Bright House, and Charter, in express reliance on a set of conditions designed to protect consumers, competition, and the diversity of viewpoints. As FCC General Counsel Jonathan Sallet recently noted, while enforcement of competition law "in speech industries can serve free speech interests," the Commission can act to promote diversity even in the absence of traditional antitrust harms, because "the public interest in free expression and diversity of views can be, in and of itself, a sufficient basis for action."⁴ The Commission has recently used this basis for action, among other things, to ensure that the conditions it places on mergers serve a variety of public interest ends, including viewpoint diversity.

This use of behavioral conditions to overcome structural issues in a merger underscores the need for the Commission to ensure that these conditions are strictly enforced--the Charter conditions, the ComcastNBCU conditions, and the conditions attached to any other merger. This includes, but is not limited to, giving a careful hearing to complaints by the public, programmers, consumer groups, or any other affected party that the merged entity has failed to comply with its commitments, or has tried to circumvent them.

In sum, we commend the Commission for undertaking this study of important issues relevant to minority ownership and viewpoint diversity. But we also urge the FCC to also take note that the minority ownership landscape has shifted since the study's 2011-12 snapshot was

⁴ Remarks of Jon Sallet, General Counsel, Federal Communications Commission as prepared for delivery at The Media Institute (May 24, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0524/DOC-339507A1.pdf

taken. While merger conditions are not the only or even the best way for the Commission to ensure media diversity and promote the public interest, in this environment, ensuring that existing conditions are fulfilled is an important part of ensuring that the video marketplace is open to minority voices.

Respectfully submitted,

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PUBLIC KNOWLEDGE

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