



Testimony of
Michael Scurato, Vice President, Policy
National Hispanic Media Coalition

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Committee on Energy and Commerce
Subcommittee on Communications and Technology

Broadcast Ownership in the 21st Century

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Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, thank you for inviting me to testify this morning.

I represent the National Hispanic Media Coalition (NHMC), a media advocacy and civil rights organization working towards a media that is fair, inclusive, and accessible to all people.

A little over a year ago, my colleague, Jessica González, testified before this Subcommittee at a hearing similar to this one, entitled “Media Ownership in the 21st Century.” I am glad that the Subcommittee is continuing to examine this issue and I am thankful for the desire to explore ways to promote ownership diversity.

Broadcasting remains incredibly important in today’s media landscape. Broadcast content reaches nearly everybody in this country on a regular basis and facilitates local and national discourse on important issues. Yet, despite an increasingly diverse population and near-universal recognition of the importance of broadcast ownership diversity, women and people of color continue to be shut out of this industry.

NHMC recommends that Congress urge the Federal Communications Commission (FCC or Commission) to tighten its current media ownership rules to create opportunities for new

entrants. The FCC's recent action to make Joint Sales Agreements (JSAs) attributable ownership interests closed a loophole that limited the efficacy of the FCC's existing rules and it has already paid dividends by allowing a number of diverse owners to purchase stations. NHMC also recommends that Congress support FCC efforts to continue to improve its collection of ownership data and perform the analysis necessary to create proactive policies that promote diversity. Finally, NHMC recommends that Congress reinstate the "minority tax certificate."

Broadcasting Remains A Critically Important Source Of News And Information, Particularly For Diverse Communities

Promoting ownership diversity among traditional media outlets should be a top priority given the role of the media in fostering public discourse on critical issues and providing important local news and information. The FCC also has a statutory obligation to promote diversity. Broadcast television reaches 98 percent of Americans and reliance on over the air television is prevalent in poor, rural and non-English speaking communities. Nearly 1 in 4 Latinos rely on over-the-air signals to receive television programming. Radio is similarly pervasive, reaching over 90 percent of Americans each week. In Los Angeles, California, where many of NHMC's employees reside, over 95 percent of the population listens to the radio during the week in the morning to midday hours, including 98 percent of Latinos and almost 99 percent of Spanish-speaking Latinos. Further, studies demonstrate that broadcasters are incredibly influential in shaping attitudes and behaviors among and towards people of color, women, rural communities, and so on.

However, excessive consolidation and lack of diversity have directly resulted in harm to diverse communities and led to the inability of these communities to fully benefit from the public resource that broadcasters use to serve them. Last year, before this Subcommittee, NHMC compellingly recounted the numerous harms that result from the prevalence of hate speech in the

media. Unfortunately, this remains a significant problem. A few examples from just the past few weeks include one host on a conglomerate-owned station in Iowa recently suggesting that all undocumented immigrants be enslaved by the state. Additionally, the repeated broadcast of the hateful remarks of one high-profile public figure was revealed to be directly responsible for the vicious and violent beating and degradation of a Latino in Boston, Massachusetts.

For two key reasons, the Internet is not yet able to match the power of broadcasting. First, as many as 1 in 3 Americans lack home broadband access. Low-income, rural communities are among the most disconnected. For example, nearly 70 percent of families making less than \$35,000 per year in Brownsville, Texas, lack home Internet access. People living in rural areas, Latinos, African-Americans, seniors, the poor, non-English speakers and people with disabilities are far less likely to be connected to the Internet. Second, online news and information still, by and large, originates from traditional media sources, such as local newspapers and broadcasters.

Broadcast Ownership Diversity Remains Virtually Non-Existent

As I was preparing NHMC's testimony last year, I had the opportunity to review FCC data on the number of broadcast outlets owned by women and people of color. Examining the data, I could not help but recall the word that the Commission itself had used to describe these numbers just a few years earlier: "dismal."

About two weeks after NHMC's testimony, the FCC released the results of its 2013 biennial ownership data collection. Unbelievably, in many respects, the latest numbers are the worst yet.

Below is a selection of shameful statistics found in the latest data:

Latinos held a majority interest in only 3 percent of full power commercial television stations, virtually unchanged from the 2.9 percent in 2011. This is despite currently accounting for more than 17 percent of the population.

African Americans held a majority interest in only 9 full power commercial television stations in 2013, down from 11 in 2011. Independent research done by FCC Commissioner Pai and others revealed only 4 African American owned stations remained by early 2014.

A footnote in the FCC's report reveals that an apparent increase in Asian ownership of full power television stations was due to a temporary ownership arrangement – meaning that there were actually only 5 Asian owned stations by the end of 2013, down from 6 in 2011.

These numbers are out of a total of 1,386 full power commercial television stations and are persistently bad in the face of increasing diversity within this country, with nearly 38 percent of the population comprised of people of color.

Low power television stations and radio outlets have long been assumed to offer more attractive opportunities for diverse broadcasters, as these stations tend to be more affordable, making access to capital issues slightly less problematic. Unfortunately, the latest data shows that even among these outlets, women and people of color are woefully underrepresented.

African Americans owned only 16 out of 1,258 low power television stations in 2013, the exact same number as in 2011.

Asians owned 14 low power television stations, half of the 28 owned in 2011.

Latinos have been more successful, owning 126 low power television stations in 2013, but that number has remained stagnant for some time and still represents only 10 percent of low power stations.

According to FCC data, there was a 20 percent decrease in African American owned FM radio stations and 10 percent decrease of Asian owned FM stations between 2011 and 2013.

Female ownership has remained stuck at very low levels or decreased across the board. For instance, women owned only 6.3 percent of full power commercial television stations in 2013, down from 6.8 percent in 2011.

There is a strong possibility that many of these numbers could decline sharply following the upcoming incentive auction. A recent analysis of Commission data reveals that people of color frequently own smaller outlets in large markets with 46 percent of stations owned by people of color located outside of the top four ranked stations in the largest 20 Designated Market Areas (DMAs). 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. These characteristics may mean that these broadcasters will be more likely to participate in the upcoming auction and exit the market completely.

Recommendations

Recognizing the continued importance of broadcasting, NHMC has consistently proposed a number of steps that can be taken by the FCC and Congress to help improve this dire situation.

First, NHMC contends that the FCC's media ownership rules play an important role in preserving opportunities for women and people of color who may wish to enter or remain in the market. The FCC's limits and restrictions provide a race- and content- neutral way to curb concentration and create opportunities for new entrants. The FCC's positive move to make certain television JSAs attributable to station ownership, closing a gaping loophole and signaling enforcement of its existing rules, has already paved the way for 10 new stations owned by women or people of color – an impressive number in a short period of time given the low

ownership rates and stagnation described above. Clarifying similar treatment for other types of outsourcing agreements and tightening media ownership rules could create additional opportunities.

Second, NHMC has urged the FCC to explore creating proactive policies that would increase ownership diversity. However, various court decisions prevent the FCC from taking such action without first completing studies analyzing the current state of ownership by women and people of color and assessing the impact of any rules or proposals on ownership diversity. While the FCC's biennial ownership data collection through Form 323 is slowly improving, much work remains. Further, the type of analysis and studies contemplated in a series of decisions by the Third Circuit Court of Appeals remain out of reach. Should the FCC determine that race-conscious measures are necessary, a reasonable conclusion given remarkably bleak levels of ownership diversity, such policies would need to withstand strict scrutiny during any judicial review, a standard only met with robust, data-driven analysis, among other factors.

Third, NHMC has long urged Congress to pass legislation reinstating the "minority tax certificate." From 1978 to 1995, Congress' "minority tax certificate" program opened doors for people of color to own broadcast stations at record rates. However, should Congress choose to pursue this objective, it could also greatly benefit from additional data and analysis about the state of diverse ownership in broadcasting. Reinstating the "minority tax certificate" is a popular idea deserving of serious consideration.

Conclusion

NHMC envisions a world in which broadcasters reflect the diversity of our population, and adequately serve the needs of all communities. Promoting diversity in broadcasting by encouraging the FCC to strengthen its media ownership rules under its existing regulatory

framework and perform the research and analysis necessary to create new diversity initiatives, as well as using your lawmaking power to reinstate the “minority tax certificate” are important steps towards achieving that vision.

Thank you and I look forward to your questions.