

NHMC Statement on Quadrennial Review Process

Thank you. The National Hispanic Media Coalition is a 23 year old non-profit organization whose mission is to (1) improve the image of American Latinos as portrayed by the media; (2) increase Latino employment in all facets of the media industry; and (3) advocate for media and telecommunications policies that benefit the Latino community and other communities of color.

We thank you for inviting us here today to provide our perspective on how the 2010 quadrennial review should proceed. We applaud the Commission for opening the 2010 review in such an open and transparent way. These hearings and the initial process-focused inquiry are essential to fixing a process that is currently broken, and we see this as a great first step towards a thorough and fact-driven review; one that properly considers how current structural media ownership regulations and any proposed changes thereto which might impact communities of color, both in terms of minority ownership as well as in terms of access to diverse viewpoints. This must be addressed in this proceeding, especially now as only 7% of broadcast radio stations are owned by people of color despite that we make up 33% of the population and as Latinos own just 2.9% of radio stations, despite that we comprise 15% of the population.

First I would like to explain what I mean when I refer to this as a broken process. To fully understand I think we need to look at the history of this proceeding:

1. In the 2002 quadrennial review the Commission expansively deregulated without explaining how it would impact minority and female ownership.
2. The Third Circuit reversed and remanded that decision, in part because it found it arbitrary and capricious that the FCC had failed to explain the impact of deregulation on minority and female ownership.
3. The FCC then folded the 2002 remand into the 2006 review. Meanwhile, the Commission did not act on waiver and license renewal requests, thus allowing license renewal applications to remain outstanding for years. In fact, NHMC spent its scarce resources to file a petition to deny a license renewal application over three years ago, and that petition remains

outstanding today. Unfortunately the current Commission has inherited this backlog, and now has to decide what to do about it.

4. The Commission's 2007 order again failed to adequately consider how the rule change would impact minority and female ownership. Instead, the Commission opened a separate docket to address diversity issues. We have seen some progress in that docket, but not the kind of analysis contemplated by the court.
5. NHMC filed a joint petition for reconsideration of the order and other parties appealed the decision.
6. Neither the petition for reconsideration nor the appeals have been resolved.
7. And here we are now, on the verge of the 2010 review. Meanwhile, neither the 2002 nor the 2006 proceedings have been concluded. In addition, countless cross-ownerships have been permitted to endure long past the expiration of their licenses.

We are pleased that Chairman Genachowski has acted so expediently to dive into this issue and ensure it is resolved as quickly as possible. This procedural nightmare was not created by any one individual or decision and we are not here to place blame, but rather to encourage the FCC to cease this opportunity to make some concrete alterations to make the quadrennial review process less dysfunctional – and I use the term “less dysfunctional” very deliberately here, because I earnestly believe that the Section 202(h) mandate requiring quadrennial reviews is unworkable and should be repealed.

In any event, I provide the following recommendations to help clean up this process:

1. Any modification of structural media ownership regulations must be examined not only for its impact on diversity and competition, but also for how it will affect minority and female ownership. To fail to consider this factor would harm the public interest and operate as a disservice to current and potential minority and female broadcasters and the viewers and listeners they serve.

I want to be careful to explain what I mean by this. I do not suggest that we merge this proceeding with the diversity proceeding. The Commission has made progress in that docket, especially as of late, and it should be permitted to advance without being bogged down in the quadrennial review process. We must, however, look at how structural media ownership regulations impact diversity of viewpoints and ownership.

2. Before it can consider the impact of these regulations on minority and female ownership, the FCC must collect the proper data. You have already adopted mechanisms to aid in this process, including a rule that requires broadcasters (including sole proprietors) to report ownership data every two years. You should implement this rule swiftly so that this data is available when it comes time to make substantive decisions. You should also quickly consider the excellent data collection proposals made by Professor Catherine Sandoval and the public interest groups that are jointly represented by Georgetown Law's Institute for Public Representation.

Last time around Free Press did a tremendous amount of work to compile data on minority and female ownership, but this burden should not fall on the public alone.

In addition, the FCC must base their decisions on data that is open and accessible to the public, not proprietary data that is unavailable or only accessible for a cost. This frustrates public participation.

A few questions that I would like to see asked: Whether minority owners have more diverse programming? Do they do a better job of catering to community needs? What factors influence programming decisions?

3. Finally, the Commission must resolve waiver and license renewal applications (and any associated petitions to deny) expediently upon their filing, or at the very least upon expiration of the license. Licensees should not be allowed to operate indefinitely pending quadrennial review, as this

proceeding has been ongoing since virtually 2002 and this would essentially operate as an end run around the rules. This only incentivizes licensees to buy up multiple properties in violation of the rules in hopes that they can convince the Commission to relax the rules to suit their needs. The practical way to proceed is to apply the rule in place at the time of the license's expiration. This would also provide the certainty that broadcasters seek in this proceeding.

Thank you.