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# Owning a Voice: Broadcasting Policy, Spanish Language Media, and Latina/o Speech Rights

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*Using the sale of Univision in 2007 to a consortium of private equity firms as our case study, this article demonstrates how the regulation of Spanish-language broadcasting has codified exclusionary definitions of media diversity and naturalized English-language citizens as the primary members of the televisual public sphere in the United States. We situate the regulation of Spanish-language broadcasting within the troubled history of media diversity initiatives and alongside the ascent of neoliberal policy-making to highlight how regulators have been unwilling to recognize the importance of linguistic diversity to a multicultural and multiracial society. Drawing on participatory democratic theory, we argue that the regulation of Spanish-language broadcasting has infringed on the political rights of Latino citizens.*

doi:10.1111/cccr.12001

Univision Communications is the largest Spanish-language media corporation in the United States. Since its inception in 1961 Univision, originally named Spanish International Network (SIN), has grown through acquisitions of different media interests and has been bought and sold several times. Starting as a single television station, 5 decades later Univision is a media conglomerate that dominates Spanish-language television and radio, pooling ad revenues above \$2 billion derived from the fastest-growing community in the United States, Latinas/os (Szalai, 2011). In television, Univision has three broadcast networks, Univision, Telefuturo, and Galavision, that often account for more than 80% of Spanish-language television viewers, with Telemundo a distant second. The first week of September 2010, Univision achieved a milestone when it became the most popular television broadcast network in prime-time, in any language, among the coveted 18–34 demographics (Bauder, 2010).

Univision's size, scale, and impact in large part have been enabled by decisions made at critical moments by the Department of Justice and the Federal Communications Commission (FCC), the state agencies most responsible for monitoring

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the health of the media landscape. While the Department of Justice oversees media sales for potential monopolies or oligopolies that may reduce competition, the FCC oversees media sales and acquisitions with the more nebulous goal of protecting the public interest. Historically, both agencies have sanctioned mergers and buyouts in the Spanish-language broadcasting sector that have fostered high levels of media concentration, and that routinely have placed control of Spanish language media in the hands of non-Latino owners. In 2003, the Department of Justice and the FCC permitted Univision, the largest Spanish-language television network, to purchase Hispanic Broadcast Corporation (HBC), the largest Spanish-language radio network, for \$3.25 billion, despite the very real concerns of Latino critics of the merger that it would reduce the number of media options for Spanish speakers (Dougherty, 2003, p.72). In April 2002, when the FCC approved the sale of Telemundo to NBC for \$2.7 billion, it signaled what had been increasingly clear since the 1980s, that it would take few-to-no steps to foster minority media ownership. The FCC subsequently approved the sale of Univision in March 2007 to a private equity consortium led by billionaire Haim Saban. The Spanish-language media sector thus is characterized not only by exceptionally high levels of concentration, but by its inordinate control by non-Latina/o owners. These sales happened in a policy environment committed to extensive deregulation, of which one of the perilous consequences has been the erosion of policies to foster minority and female ownership of broadcast stations (Baynes, 2004; Nuñez, 2006; Owens, 2004; Ofori & Lloyd, 1998–1999).

The size and market power of Univision are not only or even primarily an economic issue. As this article argues, the high levels of concentration of Spanish-language broadcasting coupled with its control by non-Latina/o entities constitute a violation of the speech rights of Latino citizens. Inspired by the work of Laura Stein (2006), who follows John Dewey, Benjamin Barber, and T.H. Green, this article embraces participatory democratic theory to show that the legal and policy decisions that have regulated ownership of Spanish language media infringe upon the speech rights of Latinas/os. While classical liberal and neoliberal theory has embraced a “marketplace of ideas” approach to the First Amendment, one that precludes the state from interfering in the speech rights of the citizenry, participatory democratic theory imagines the state as an instrument that regulates, constructs, and protects speech opportunities for citizens. Understanding that the “marketplace of ideas” can result in a market failure, one in which certain perspectives and viewpoints are not represented, advocates of participatory democratic theory carve a role for the state to engender the conditions for a more robust, diverse, and equitable public sphere. In addition, participatory democratic theory is attentive to how the state, through legal and administrative decisions, has constituted the conditions for the circulation of information and ideas. Presuming, as the courts and the FCC have, that a nexus exists between ownership and viewpoint, we demonstrate that the twin features of Spanish-language broadcasting in the United States, high levels of concentration and non-Latino ownership, violate the speech rights of Latinas/os by profoundly restricting the circulation of speech within this sphere.

Significantly, as we demonstrate, the regulation of Spanish-language broadcasting not only has operated against the backdrop of a wide-scale embrace of media deregulation, but it simultaneously has occurred alongside the troubled and capricious history of media diversity initiatives. Within the regulatory arena, Spanish-language broadcasting has been understood as apart from, rather than intrinsically intertwined with, minority media rights. During the social and political ferment of the 1960s, African American Civil Rights activists capably asserted that broadcasting practices and policies had operated as technologies of white privilege that imperiled the rights of people of color. The regulatory response, an effort to address the paucity of people of color in broadcasting, was crafted to address African American Civil Rights concerns and delimited how the policy-making community has conceived of minority media rights. Subsequently, broadcast regulators have failed to conceive of linguistic difference as an essential component of minority media and speech rights. Defining Spanish-language broadcasting as a “format,” analogous to easy listening or classical music, rather than a public sphere for Latino citizens, the FCC has not understood the Spanish-language mediascape as crucial to the project of media diversity. The high levels of concentration and non-Latino ownership of Spanish-language outlets, we argue, have been facilitated by this particular history and by the privileging of English-language citizens as the primary members of the public sphere at its center.

In making this argument, we do not suggest that all Latinas/os are exclusively Spanish-speakers or do not consume English-language programming. Indeed, as Catherine Sandoval (2005–2006) has argued, the FCC needs a vastly more sophisticated understanding of the porousness of media use across English, Spanish, and Spanglish broadcasting stations in the United States. That said, Spanish is the second-most-spoken language in the United States and, according to a 2009 U.S. Census survey, it is the primary language spoken at home by over 35 million people in the United States. The tremendous size of the Spanish-speaking Latina/o population thus requires the consideration of Spanish-language broadcasting as a critical component of the Latina/o public sphere and critical to the citizenship rights of its audience (Dávila, 2001).

Using the sale of Univision in 2007 to a consortium of private equity firms as our case study, we demonstrate how the regulation of Spanish-language broadcasting has codified exclusionary definitions of media diversity and naturalized English-language citizens as the primary members of the public sphere. We first provide an overview of the 2007 sale and highlight its consequences for the speech rights of Latino citizens. We then situate the sale within two interlocking histories, of the development of minority media rights and of the role and regulation of Spanish-language media in the United States. These narratives provide the crucial context to understand not only the current state of Spanish-language broadcast regulation, but the operation of linguistic difference in conceptions of diversity and citizenship in the United States. In summary, this article exposes how the regulation of media technologies have constituted the linguistic contours of the civic body, foreclosing the speech rights of non-English speakers in general, and Spanish language speakers in particular.

## Deregulation: Univision and Saban

Broadcasting policy in the United States, dating back to the Radio Act of 1927, has hinged on a trade-off. The public retained ownership over the airwaves, but private entities would be licensed by a federal regulatory agency to use them. The airwaves were understood to be a scarce resource, so far fewer entities would be licensed to broadcast than the number of qualified applicants desiring to use them. In exchange for the license, broadcasters would be expected to serve the “public interest, convenience, or necessity.” Though what constitutes the “public interest” would continue to be a topic of debate and dispute, the FCC historically has interpreted it as encompassing localism, diversity, and competition. From 1940 through the 1970s, the FCC adopted both structural and content regulations to assure that broadcasters provided audiences with diverse perspectives, a range of programming formats, and content of relevance to local communities. In the 1980s, the FCC would retain its commitment to this trifecta of public interest concerns, but would embrace a “marketplace approach to broadcast regulation” (Fowler & Brenner, 1981–1982) in which an unencumbered market, rather than federal regulations, was imagined to be the best arbiter of the polity’s communication needs. As the FCC rescinded or diminished many of its regulations, the mediascape grew increasingly concentrated. To many, levels of consolidation were not a problem because the rise of cable and later the Internet multiplied media outlets. For others, high rates of consolidation coupled with few public interest requirements had yielded a media environment in which audiences lacked access to multiple perspectives, to programming that reflected the multicultural and multiracial composition of local communities, and to news and public affairs content addressing the exigencies of the day. While media reformers, intellectuals, educators, public officials, and others would increasingly panic over this state of English-language media, the status of Spanish-language broadcasting with regard to meeting the public interest needs of its audience was far worse.

The Univision sale to the Saban group occurred against the backdrop of a series of regulatory decisions in which the FCC allowed for the increased consolidation of Spanish language media and permitted non-Latino control of Spanish-language broadcasting. Such actions diminished the ability of Latinas/os to participate in the political and civic life of the nation by restricting their access to diverse viewpoints and to content directly addressing the exigent issues facing them. In addition, the disparate treatment afforded Spanish-language and English-language broadcasting in the United States by the FCC has constituted a form of discrimination, in which Spanish-speaking citizens are not afforded the same speech rights as their English-speaking counterparts. Media policy decisions, as the story of the Univision sale demonstrates, have been arenas where the contours of the civic body and the distribution of speech rights have been determined.

In February 2006, Univision announced that it would offer itself for sale. Televisa, the world’s largest Spanish-language network that already owned 11% of

Univision and provided a large proportion of its content including its most popular telenovelas, was one of the earliest bidders. Televisa had partnered with a consortium of American firms—Bill Gates's Cascade Investments, Bain Capital, the Blackstone Group, the Carlyle Group, and Kohlberg Kravis Roberts & Co.—and Venevision, which, along with Televisa, was the one of the largest shareholders and content providers for Univision. Haim Saban, along with a consortium of private equity firms called Broadcasting Media Partners, Inc. (BMPI), and composed of Madison Dearborn Partners, LLC; Providence Equity Partners, Inc.; Texas Pacific Group; Thomas H. Lee Partners, LP was the other primary bidder on Univision (Goldsmith, 2006; Lauria, 2006; O'Boyle, 2006a; Sorkin & Edmonston, 2006). Televisa, under Emilio Azcarraga, had been the original owner of Univision until the FCC enforced a rule that prohibited foreign entities from controlling more than 25% of a U.S. broadcasting entity (Sherman, 2006, p. 18).

Televisa's group was considered widely to be the likely purchaser of Univision, despite the animosity between Emilio Azcarraga Jean, Televisa's CEO, and Jerold Perenchio, the head of Univision. In addition to the obvious synergies that such a sale would foster, Televisa and Univision were at the time embroiled in a legal battle over the distribution of broadcast content online, and Televisa had filed a 2005 lawsuit alleging that Univision had failed to pay royalties and had engaged in unauthorized editing of Televisa programming. Had Televisa's group successfully purchased Univision, these legal troubles would have become moot. Azcarraga Jean furthermore suggested that should Televisa lose the bid, Televisa may launch a rival Spanish-language network in the United States. At the last minute, Televisa's bid hit some trouble when three of its investors withdrew from the deal (De La Fuente & Guider, 2006; Hart & Masters, 2006; Kouwe, 2006). The Televisa group stuck with it, though ultimately was outbid by Saban's team (Sorkin, 2006b; Sorkin, 2006a). Televisa was not especially gracious at the end of the process, insisting that Univision had not negotiated in good faith, hinting it may block the deal, and reasserting its threat to start its own Spanish-language network in the United States (Learmonth & Goldsmith, 2006; Lieberman & Petrecca, 2006; O'Boyle, 2006b). The FCC approved the sale to the Saban group in March 2007.

Significantly, it was not the accusations leveled by Televisa that would prove to be obstacles to garner FCC consent. Rather, the commission's decision considered both the public interest performance of Univision and the potential ownership violations that the sale would produce. The United Church of Christ and the National Hispanic Media Coalition both had filed petitions to deny license renewals of Univision stations in Cleveland and San Francisco, respectively. The petitioners charged that Univision had violated the Children's Television Act, which requires broadcasters to provide at minimum of 3 hours per week of educational programming for children. Univision fulfilled this mandate with telenovelas, programs that the petitioners argued in no way could be considered educational or informational for children. In addition, Theodore White had filed a complaint against Univision's actions during an ownership dispute over WFDC in Arlington, Virginia. Rincon and Associates also

had filed a petition to deny the sale, arguing that it would violate the public interest (Federal Communications Commission, 2007).

The Rincon petition, which was the most extensive and substantial, relied on four arguments. It asserted that Univision was not eligible for a grant of transfer because the company was already in violation of the FCC's ownership rules and the sale to the Saban group would increase the number of markets in which Univision would exceed the FCC's ownership restrictions; given the company's past failure to adhere to these rules, Rincon reasoned it likely that it would continue to ignore federal ownership regulations after the sale. In addition, Rincon asserted that Univision's reliance on foreign and syndicated programming failed to meet the needs of local communities and did not provide content relevant to the Latino communities in which it broadcast. Rincon also questioned, given the profoundly dominant position of Univision in many markets, whether it should have to adhere to a higher standard of performance. Finally, Rincon asserted that the potential buyer of Univision lacked the experience and expertise to address the network's "extraordinarily poor record of stewardship." If Univision had failed in its public interest obligations, Rincon insisted that the Saban group had no previous background that would suggest that it would correct the programming deficiencies that had marked Univision's record (Rincon and Associates, 2006).

In approving the sale, the FCC acted on the accusations against Univision's failure to provide children's programming, and rejected Rincon's complaints about its failure to serve Latino citizens. To assure approval of the sale, Univision agreed to pay a \$24 million fine for its failure to provide children's programming, the largest such fine in the history of American television. The FCC, however, dismissed Rincon's accusations by insisting that the commission deferred to the editorial discretion of broadcasters when it comes to programming decisions. Whether Univision relied heavily on imported content, or whether, as Rincon suggested, its programming perpetuates a "racial caste system" was of no concern to the FCC, who insisted that the First Amendment protected Univision from commission scrutiny on programming decisions. Despite Univision's past failure to divest of stations that were in violation of the FCC's ownership restrictions, the FCC granted all the temporary waivers requested by the two companies (Federal Communications Commission, 2007).

While all the commissioners who issued separate statements on the decision applauded the fine, Democratic Commissioners Copps and Adelstein tempered their approval of the sale with words of caution. Both expressed skepticism over the FCC's will to enforce its own regulations. Perhaps most germane to this study, Copps and Adelstein questioned what the impact of the sale would be on the rights of Spanish-speaking audiences. While Adelstein hoped that this merger would "mark the beginning of an enhanced commitment by Univision's new management to better serve the public interest and needs of the Hispanic American community," Copps reminded that the FCC had never addressed the impact on Latinas/os of the tremendous concentration of power of massive conglomerates like Univision

(Adelstein, 2007; Copps, 2007). While sanctioning the sale, Copps and Adelstein also highlighted how the FCC, and the Spanish language broadcasting sector it had enabled, may be failing a significant part of the “public” that broadcasters are required by condition of their license to serve.

Such concerns were well-earned. Not only had the FCC since the 1980s embraced a “marketplace approach to broadcast regulation,” but Congress passed the 1996 Telecommunications Act which further diminished ownership restrictions, provided free spectrum to incumbent broadcasters to transition from analog to digital distribution, and mandated a television ratings system and insertion of V-chips in television sets to better serve the needs of parents and their young viewers. While the FCC and Congress removed regulations that had hampered the growth, consolidation, and conglomeration of media industries, deeming them unnecessary restrictions on the marketplace, they simultaneously embraced increased regulation over broadcasting content in the form of indecency restrictions. Regulators and legislators thus capably responded to the increasingly conservative political climate in the United States, and the attending libertarian concerns over an intrusive regulatory structure and social traditionalist concerns over moral decay, by embracing a somewhat internally contradictory approach to regulation that deemed the market the best arbiter of the public interest, except with regard to public morality. Accordingly, the Univision sale was reviewed against the backdrop, the enormous fine leveled and the approval of ownership waivers consistent with decades of broadcast regulation.

However, while media consolidation vastly accelerated in the English-language sector, the level of concentration in Spanish-language media has greatly out-dwarfed it. To some degree, the history of Spanish-language broadcasting in the United States has been a history of near-monopoly control, though it would only be since the deregulatory turn of the 1980s that such control has been sanctioned by the FCC. In 1961, Emilio Azcarraga, who had dominated Spanish-language radio programming in the United States since the 1930s, expanded into the U.S. television market when he bought two television stations and created SIN. Throughout the 1960s and 1970s, as SIN grew in the United States it operated as primarily an extension of Televisa, Azcarraga’s Mexican broadcast company. Importantly, SIN expanded geographically to include within its audience not only Mexican and Mexican-American audiences in the southwest, but the growing Puerto Rican and Cuban communities in the northeast and Florida respectively. Accordingly, SIN helped construct a conception of pan-national Latinidad, and imagined shared ethnicity and culture across these populations based on linguistic ties, and which allowed SIN to sell a large Latino audience to national advertisers (Rodriguez, 1999a, pp. 365–369). Spanish language was critical to the propelling of what America Rodriguez (1999a) has discussed as the “symbolic transformation of U.S. Latinos into ‘Hispanics’” (p. 371), a move with economic benefits for SIN, if not political and cultural consequences for the diverse Latino communities living in the United States. While by the early 1980s SIN reached over 90% of Latino households, it predominantly telecast imported programming from Mexico to its audience. Not only was there one primary source

of Spanish-language television for all Latinas/os, but it was one whose programming, given that it was imported to the States, would not speak to the political and cultural exigencies of its diverse American audience.

In 1976, a minority shareholder challenged Televisa's control of SIN under a prohibition, enshrined in the 1934 Federal Communications Act, against foreign control of U.S. broadcasting stations. An FCC Administrative Law Judge in 1986 subsequently ordered the sale of the network and station group to U.S.-based interests (Rodriguez, 1999b, pp. 61–63). In 1987, the FCC approved the sale of SIN to Hallmark, the American greeting card company, though a number of Latino individuals and groups filed petitions with the FCC to protest and prevent the sale. Hallmark, according to the petitioners, had no affiliation with the Latino community yet was proposing to purchase the “main cultural voice of the Hispanic population in the United States” (Federal Communications Commission, 1987, p. 3963). Though Hallmark had committed to Spanish-language programming for the following 2 years, the petitioners feared that, should another format prove more profitable, the company may abandon it in the future. In addition, the petitioners argued a nexus between ownership and programming, and asserted that Hallmark, as the FCC summarized, had “no inherent need to serve that [Hispanic] community in the same manner that could be expected of a licensee of substantial Hispanic ownership” (Federal Communications Commission, 1987, p. 3963). Accordingly, they argued that SIN should be in the control of Hispanics out of a public interest obligation toward serving the needs of this community. In response, Hallmark argued that, as the FCC phrased it, “it is not the ethnic background of the licensee that will determine the format of these stations” but rather the “marketplace will be the best guarantee that Hallmark will continue to operate these stations in Spanish” (Federal Communications Commission, 1987, p. 3963). The FCC approved the sale, dismissing the petitioners concerns as speculative and affirming Hallmark, based on its application, as well suited to serve the public interest regardless of the ethnicity of its owners (Federal Communications Commission, 1987, p. 3964).

To sum up, prior to 1987, Spanish-language broadcasting in the United States was primarily controlled and programmed by Mexican corporations. When, in 1986, the ALJ ordered the sale of SIN to domestic owners, the FCC sanctioned the sale of the network and stations to a nonHispanic entity despite the interest of prospective Latino owners in the sale. Consistent with its “marketplace approach to regulation,” the FCC determined that the marketplace, rather than the ethno-racial background of the owners, would assure the communication needs of Spanish speaking audiences would be met.

In 1992, a similar process unfolded when Hallmark sought FCC approval to sell its stations to Perenchio Television, Inc., who would be the majority owner, and Televisa and Venevision, who would hold minority interests. A number of Latino civil rights organizations, along with rival Spanish-language television network Telemundo, filed petitions to deny the transfer (Federal Communications Commission, 1992). Though Jerry Perenchio was a U.S. citizen, Televisa and Venevision were both

foreign-controlled corporations (Televisa Mexican, Venevision Venezuelan). The petitioners argued that these foreign companies were to exert *de facto* control over Univision, thus violating the foreign ownership prohibition, and would reduce the diversity of sources available to Latino audiences. In addition, they argued that approval of the sale would violate the FCC's equal employment opportunity (EEO) rules, premised on the fear that the new owners of the network will reduce their U.S. staff, and raised minority ownership concerns about Hallmark's alleged negotiations with and misrepresentations to Joaquin Blaya, a Latino who had offered more for the stations than the Perenchio group (Federal Communications Commission, 1992, pp. 6673–6683; Rodriguez, 1999b, pp. 64–66). The FCC affirmed the sale, ruling that the petitioners had not raised compelling evidence to substantiate their concerns of foreign influence and that their other charges were not actionable in this arena. The arguably reasonable assertion that Latino owners could better program for Latino audiences failed to sway a commission that increasingly was comfortable severing any kind of connection between ownership and content.

The FCC granted Univision further power when it approved in 2003 the sale of HBC to Univision, making it the undisputed leader in both Spanish-speaking radio and television. In 2003, HBC operated 60 radio stations around the nation, including several number-one stations. The merger would unite by far the largest Spanish-language radio network with the by far the largest Spanish-language television network. The scale of the merger sounded alarms, as did the potential political consequences of it. Perenchio had donated large sums to support Republican governor Pete Wilson, and Univision had been accused of presenting one-sided coverage in support of Miguel Estrada, a conservative judge nominated to serve on the U.S. Court of Appeals. HBC's major shareholder was Clear Channel, which also had substantial ties to conservative politicians and cultural figures. Univision furthermore had been accused of slanting its domestic news coverage to favor the Bush administration. Fearing the merger of the two entities would consolidate power for Republican interests, and provide them unprecedented access to Latino voters during the 2004 election cycle, over 20 legislators lobbied then-FCC chair Michael Powell to block the merger (Morales, 2003; Mulkern & Farrell, 2003, Radelat, 2003). However, the FCC majority saw no harm to the public interest goal of diversity in sanctioning the merger. The Republican commissioners who voted for the merger believed that it would "give Hispanic media a better opportunity to compete against media companies" (Powell, Abernathy, & Martin, 2003, p. 1) and expressed confidence that it would serve the public interest. Commissioner Adelstein summed up much of the opposition to the merger when he claimed that it "denies Spanish speakers their right to receive a diversity of perspectives over the nation's airwaves." He further insisted that the commission's obligation to "protect the right of every person in this country to a diverse array of broadcast media should have translated into Spanish" (Adelstein 2003, p. 1).

It would be this exceptionally horizontally integrated company that would be purchased by the Saban group in 2007. After the purchase, Joe Uva was installed as the CEO of Univision. Uva, who does not speak Spanish, previously had been

president of media agency OMD and had been in charge of marketing and sales for a number Turner Broadcasting channels for 17 years. Uva committed to translating the high ratings of Univision into higher advertising sales for the network. His job, as he initially saw it, was to demonstrate to advertisers how lucrative the Latino market could be for them (Learmonth, 2007; Nuevo director, 2007). Yet his appointment could not have quelled concerns that the new ownership would be similarly disinterested in the interest of Latino viewers who sought content more pertinent to their local communities.

In addition, despite the very public ill will between Televisa and Univision, the two companies would secure and enhance their relationship in the years following the sale to Saban. By January 2009, Univision and Televisa had settled its lawsuit over royalty payments, preserving the program license agreement between the two companies that had been threatened by the lawsuit (De La Fuente, 2009). In July 2009, a U.S. district court settled the other pending legal battle between the two companies, and ruled that Televisa could not distribute its Univision programming online in the United States (Young, 2009). In 2010, the relationship between Televisa and Univision deepened, as the former invested \$1.2 billion in the latter in exchange for a potential ownership stake of up to 40%. This deal also extended the programming agreement between the two companies, gave Univision Internet streaming rights for Televisa programming, and the rights to telecast some Mexican soccer matches in the United States (Stelter & De La Merced, 2010).

The FCC's decisions regarding Spanish-language broadcasting have been consonant with a broader neoliberal approach to media policy, in which the private sector increasingly has been entrusted with providing for the political and social interests of the citizenry. The FCC's repeatedly refused to respond meaningfully to complaints that the Spanish-language sector was too concentrated, was overreliant on imported programming, did not provide politically diverse perspectives to its audience, and would be better served by Latino owners. This was consistent with an agency that generally disavowed an interventionist role in assuring that the communication needs of citizens were met, save on the issue of children's welfare. Even so, the profound levels of concentration, coupled with the substantial accusations regarding the content on offer over Spanish-language stations, far outstrip accusations leveled at the English-language sector. Simply, the FCC especially has ignored how the Spanish-language media sector fails to meet the speech needs of Latina/o citizens.

This predicament, as the next section demonstrates, is intertwined with the history of minority media rights. In the 1960s and 1970s, during the height of Civil Rights activity in the United States, the FCC mapped an approach to minority media rights based on African American claims of grievance. Such an approach, we demonstrate, ill-prepared the FCC to acknowledge the significance of linguistic diversity to minority media rights or to conceive of Spanish-language broadcasting as crucial to the political and Civil Rights of Latina/o citizens. This earlier regulatory moment, coupled with the paradigm shift toward deregulation, created a discursive

field that enabled a Spanish-language broadcasting sector that greatly underserves the Latina/o population.

### **Separate and not equal: Minority media policies and Spanish-language broadcasting**

Importantly, Spanish-language broadcast regulation historically has operated outside of FCC policies to address minority media rights. The FCC, much like the Federal Radio Commission (FRC) before it, for decades had prioritized “general interest” stations in making licensing decisions. This preference privileged commercial stations, especially those affiliated with national networks; perceiving that such stations were financially motivated to seek the broadest possible audience for its programming, the commission reasoned that they would provide content of interest to the widest possible audience. Other kinds of stations—those owned by or serving religious organizations, educational institutions, immigrant populations, labor unions, and so on—were sidelined and marginalized in this schema ([Engelman, 1996](#); [McChesney, 1995](#)). When, beginning in the 1940s, the FCC fostered diversity via ownership regulations, it prioritized increasing the number of entities licensed to broadcast, but paid no heed to fostering ethno-racial diversity on the air. This approach would change in the 1960s and especially the 1970s, as the FCC, spurred by federal court decisions, addressed the political ferment of the era by adopting regulations specifically to address the multiracial composition of the nation.

Specifically, in the 1960s and 1970s, the FCC developed a regulatory framework to address minority media rights. This approach relied primarily on structural regulations—EEO rules, and on minority ownership enhancements—to bring more people of color into positions of power within the broadcasting industry. Importantly, this framework took shape in response to the campaign for African American Civil Rights of the period, and to the exposure of broadcasters’ complicity in perpetuating the second-class status of African American citizens. While African American struggles over media regulation would provide a model for other Civil Rights fights, they also would structure and arguably delimit how the commission and the courts constructed minority media rights. Absent from the moral and juridical arguments used in these battles were notions of language as a critical component of minority media rights.

Though media reform campaigns were a consistent and important, if often overlooked, component of African American Civil Rights activism, two events heavily influenced the formation of the FCC’s minority media enhancements, the license challenge against WLBT-TV in Jackson, Miss., and the 1968 release of the National Advisory Commission on Civil Disorders, or Kerner Commission Report. WLBT-TV, an NBC affiliate and one of two VHF television stations in Jackson, had a prolonged and shameful history of discriminatory programming practices, alternately ignoring Jackson’s African American community (which constituted 45% of its population) and limiting its coverage of the Civil Rights movement to racist

harangues by white segregationists. Reverend Everett Parker, working in Jackson on behalf of the United Church of Christ, worked with Civil Rights leaders in the community to file a petition to deny WLBT's license renewal in 1965. Though the FCC initially dismissed it on the grounds that the petitioners lacked standing, the U.S. Court of Appeals for the District of Columbia overturned the decision and provided what would prove to be a critical decision for media activists by expanding who had standing, or the right to be heard, in FCC administrative decisions, to responsible and representative members of the broadcast public (Classen, 2004). The WLBT case furthermore greatly informed the adoption of the FCC's EEO rules, which forbade discrimination and required affirmative steps to employ staffs reflective of the diversity of the community (Federal Communications Commission, 1968, p. 770).

In addition, the Kerner Report informed both the creation of the FCC's EEO policies and its minority ownership rules. The Kerner Commission, tasked with compiling a report on the urban race rebellions of the 1960s, had indicted the role of the media in the profound racial inequality of the nation. According to the report, not only had newscasts distributed misinformation about the riots themselves, but the inherent racial biases of broadcasters had perpetuated and propelled the denigrated status of African Americans in American life. As the commission considered its EEO rules, it cited the Kerner Commission's entreaty, acknowledging that though it could not intervene in the editorial decisions of licensees, this public interest need could be met by equal employment requirements (Federal Communications Commission, 1968, p. 775). And when, in 1978, the FCC adopted its minority ownership enhancements, it began its policy statement with reference to the Kerner Report (Federal Communications Commission, 1978, p. 979).

The minority ownership enhancements emerged, in part, out of a recognition that the moral and political imperatives articulated by the Kerner Report had not been satisfied by policy initiatives like the EEO rules (Federal Communications Commission, 1978, pp. 979–980). Though the policies had had a positive impact, the FCC noted that “we are compelled to observe that the views of racial minorities continue to be inadequately represented in the broadcast media” (Federal Communications Commission, 1978, p. 980). In addition, in a 1973 case, the U.S. Court of Appeals for the District of Columbia had instructed the FCC that the public interest goal of diversity would be enhanced with the racial diversity of broadcast station ownership and that, accordingly, the commission should take the race of broadcast license applicants into consideration when allocating licenses. Indeed, the *TV9* (1973) case drew attention to the nexus between race and *media ownership*, and to the paucity of people of color who owned broadcasting stations. When the FCC adopted its minority ownership enhancements in 1978, minorities owned less than one percent of the nation's 8500 broadcast stations. As the commission stated, “This situation is detrimental not only to the minority audience but to all of the viewing and listening public. Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the nonminority audience” (Federal Communications Commission, 1978, pp. 980–981).

In adopting these ownership policies, the FCC defined minorities as those of “Black, Hispanic-Surnamed, American Eskimo, Aleut, American Indian, and Asiatic American extraction.” Though, in other words, it was the struggle for African American media rights that informed and propelled the adoption of the policies, as evident by the opening of the statement of policy with reference to the Kerner Report, the minority ownership enhancements were to benefit, and were to address the speech rights of, these other communities defined in ethno-racial, not ethno-linguistic ways. In so doing, as the FCC tried to address the overwhelming dominance of white broadcast station owners, it simultaneously flattened distinctions within and across communities of color, both with respect to their experience of racial discrimination and with regard to their speech needs within a broadcast media environment.

Specifically, the justification for and goals of these policies implicitly tethered the public interest goal of diversity to English language broadcasting. If a primary purpose of the rules was to broaden the perspectives and viewpoints on offer to the entire broadcast audience, then accordingly the kind of programming that they were to promote would need to be, by necessity, in a language comprehensible to the majority audience. To be sure, such a perspective was consonant with the definition of the “public interest” than had been operative in since the 1920s. Similarly, and perhaps paradoxically, the minority ownership enhancements were to diversify the airwaves, but to do so to meet the twin and presumed compatible goals of addressing the needs of minority and majority audiences simultaneously. And while it was and continues to be undoubtedly important that publics be exposed to myriad perspectives, especially those of ethno-racial groups who long had been objects of, but not shapers of, media discourses, such an approach to broadcast diversity casts out linguistic diversity from a notion of public interest modeled after racial, not ethno-linguistic, difference. Such would be the fate of Spanish-language broadcasting, which instead has occupied an ambiguous location in regulatory frameworks. Often excised from considerations of the public interest, Spanish-language broadcasting was first defined in relationship to international regulatory frameworks and only during the Civil Rights era became a national issue linked to the rights of minorities.

### **Entertainment or public sphere: The dual career of Spanish-language media**

As Dolores Inés Casillas (2006) has shown, early Spanish-language broadcasting has two histories that speak to the ambiguous role Spanish has played in the United States. Since the 1920s, Spanish was one of the main foreign languages that Anglo Americans were interested in learning because it signaled the discerning taste for adventure of the leisure class. Yet, when related to U.S. Latina/o populations, Spanish was and continues to be a highly racialized language that connotes a cultural deficit, not profit. This duality has been part of regulatory frameworks, which have either treated Spanish-language as media defined within international frameworks or has devalued its national political worth.

Early radio regularly broadcast languages other than English, and Spanish was one of the most popular of these non-English broadcasts. Often within programming showcasing Latin America, these 1920s and 1930s broadcasts were multilingual, with Spanish, and often Portuguese, translated into English for a mostly Anglo listenership interested in learning and hearing programming in different languages (Casillas, 2006, 24). This programming was linked to the first wave of Latin American music in the United States, which included a fascination with Argentinean tango and, later, bolero, rumba, Ranchera and Tejano music. Tango had arrived via London and Paris during the early 1920s to an America already fascinated with Latin-coded Rudolph Valentino, a big fan of Tango and a frequent visitor to El Garrón, the tango Mecca in Paris (Goertzen & Azzi, 1999, pp. 68–69). By the late 1920s and since, popular Latin American music was common fare first in radio and later in sound film. During the “big band” era, band-leaders like the Dorsey brothers, Glenn Miller, Artie Shaw always included Latin American hits like “Green Eyes” (“Ojos Verdes”) and “Maria Elena” (Schroeder, 1978, p. 127). By the time Carmen Miranda and Desi Arnaz are the big acts in films, recording, and club music, the United States had sedimented itself as one of the big markets for Latin American music from Mexico, Cuba, Argentina, Brazil, and Puerto Rico.

The welcoming of Spanish-language broadcasting was greatly influenced by international political and economic concerns. Following the declaration by U.S. president James Monroe in 1823 that European powers should not interfere with the Americas, political and economic U.S. hegemonies have sought to secure that Latin American nations remain economic and political allies of the United States. With this in mind, a coalition of U.S. and Latin American political and economic leaders formed in 1902 the Commercial Bureau of the American Republics. In 1910 the organization changed its name to Pan-American Union and would eventually become the General Secretariat of the Organization of American States (OAS). In 1927, the Federal Radio Commission (FRC) granted the organization two “short-wave transmissions for the specific purpose of beaming Washington-based radio programs to radio signals in Latin America (and vice versa)” (Casillas, 2006, p. 26). Later, in 1929, the FRC assigned five shortwave radio frequencies to the United States Navy Department, but instead producing their own programming, the Navy allowed the Pan American Union to use them (LeRoy, 1938, p. 728). By 1936, President Roosevelt (an advocate of Good Neighbor Policies) frequently spoke on these Pan-American radio shows. As Catherine Benamou (2007) notes, these solidarities would facilitate U.S. economic, political, scientific, and military influence in the region. These radio ventures, which also included major broadcasters as NBC’s “Blue” network and CBS, helped constitute Spanish as a political international language, foreign yet allied. By late 1930s and during the 1940s, cultural exchange was a political war imperative carried on in part through the Office of the Coordinator of Inter-American Affairs (OCIAA), Nelson Rockefeller, who used this agency for counterpropaganda in Latin America. The OCIAA was also responsible for securing the cooperation of U.S. radio manufacturers to send affordable radio sets to Latin America (Casillas, 2006, p. 27).

Simultaneously, since the early 1920s Latinas/os in the Southwest had begun producing Spanish language radio programming. As Casillas (2006, p. 39) writes: "Physically present within the 'real' public sphere, yet imagined as largely foreign within the landscape of radio," Latinas/os of Mexican origin constructed shows that mixed entertainment with community service. América Rodríguez (1999a) has documented that while there were no Spanish-language radio stations owned by Latinas/os at this time, Spanish-language programming targeting these ethnic communities was broadcast on commercial stations, frequently consigned to the hours of the broadcasting day deemed unprofitable. Perceived by station owners as filler programming consumed by audiences of little economic value to them, Spanish-language media producers had tremendous freedom in shaping their programming and in injecting public affairs content and political advocacy in their content.

These early radio efforts were commodified political performances that gave cultural solidity to long-time Spanish-speaking citizens of the region and newly arrived immigrant populations. Their origins roughly coincided with the rise of anti-Latino nativism in the 1920s. This nativism was exacerbated by the economic conditions of the Depression era, a period of systematic deportations and misuse of immigration law to reshape the economic present of border-states. As Lisa Flores (2003) has noted, these deportations were nothing less than labor purges that majoritarian political and nativist communities rationalized with fantastic claims of the negative effects of immigrant labor in the Southwest. In 1930, President Hoover went as far as declaring that Mexicans were one of the main causes of the economic depression (Casillas, 2006, p. 43; Flores, 2003, p. 363). Opposing this hateful environment, commercially organized Spanish-language radio became one of the few public spaces where Latin American immigrants and Latino citizens could experience belonging and a sense of limited but meaningful political power and franchise.

Despite the tremendous import of Spanish-language media to its audiences, this conflicted history would come to bear on how the FCC would regulate Spanish-language broadcasting. Rather than understand it as critical to the performance of a Latina/o public sphere, the FCC relegated Spanish-language broadcasting to an "entertainment format," analogous to country music or "golden oldies" stations (Federal Communications Commission, 1976, pp. 875–876). This decision aped the duality of Spanish's role within United States, celebrated when attached to "exotic" or foreign cultures, yet debased in regards to the speech rights for persons living within its national borders. In addition, this regulatory definition separated out considerations of Spanish-language media from the broader category of minority media that the FCC, albeit briefly, had sought to propel.

The characterization of Spanish-language broadcasting as an entertainment form happened in the 1970s, alongside but not enmeshed with the FCC's decisions regarding minority media rights. As the commission grappled with how to promote diversity of viewpoints on the air, imagined to be disseminated primarily through news and public affairs programming, it simultaneously had to decide whether

the promotion of diversity in entertainment formats was within the scope of its regulatory powers. A series of appellate court decisions had decided that, under certain circumstances, the commission could not rely solely on marketplace mechanisms to assure that the diverse needs of the public, within the realm of entertainment formats, would be satisfied. In 1976, the FCC issued a policy statement on this topic, affirming its commitment not to regulate or intervene with format diversity. In 1981, the Supreme Court affirmed the FCC's decision (Glasser, 1984). Though, as Amy Jo Coffee and Amy Kristin Sanders (2010) argue, the FCC on occasion departed from its designation of Spanish-language broadcasting as an entertainment format, it was as an entertainment format that the commission officially recognized Spanish-language media. Spanish-language media was implicitly seen as only as vital to the First Amendment needs of the polity as, say, progressive rock or top 40 music. In addition, while *who* owns a broadcasting station was considered important to the diversity of English language media in its role as a public sphere, the market was presumed to be sufficient to assure the diversity of "entertainment," the background accordingly of Spanish-language broadcasters irrelevant to considerations of the service they provide.

In the 1980s and into the 1990s, a number of concurrent shifts happened that would further diminish the speech rights of Spanish-speaking Latino audiences within the realm of broadcasting policy. The FCC's minority ownership policies came under attack from the neoliberal turn at the FCC and from a culture wars backlash against identity politics and affirmative action policies, one that had purchase in the federal courts. The courts, in dismantling minority media programs, reinforced the FCC's "marketplace approach to regulation," and determined that the competition within the media market, rather than regulations targeting ownership, would yield diverse programming to meet the needs of broadcast audiences.

Concurrently, the fate of Spanish-language broadcasting was being considered apart from these battles over minority ownership enhancements, yet would be informed by analogous reasoning. The profoundly consolidated Spanish-language broadcasting sector controlled by non-Latina/o interests would be the result, the current configuration of Univision its logical outcome.

## Conclusion

Broadcasting policy has been a site where the composition of the civic body is mapped as well as where political rights are distributed, including fundamental speech rights. Briefly, the FCC addressed its policies to minority media rights. Yet, not only were these policies dismantled by the deregulatory push of the 1980s onwards, but from their inception they failed to consider linguistic diversity as an essential component of minority media rights in the United States. This history of broadcasting policy, coupled with the complex history of Spanish-language media in the United States, is the backdrop to the ongoing violation of Latino speech rights.

As the burgeoning media reform movement signals, led by organizations like Free Press and Consumer Federation of America, the FCC's embrace of a neoliberal policy agenda, in which consumerism is conflated with citizenship and private sector practices imagined to fulfill public interest goals, has elicited a citizen backlash. Asserting that high levels of consolidation, coupled with a virtual abandonment of public interest requirements, has yielded a mediacape inhospitable to a functioning democracy, this movement has advocated for a more robust and interventionist regulatory apparatus to serve the needs of the public, not the coffers of corporations. We share this viewpoint.

While in no way diminishing the concerns of media activists over the English-language media sector, this article demonstrates the even more profound political crisis surrounding the Spanish-language broadcasting sector in the United States. Latinas/os' speech rights are intensely compromised in a media environment defined by excessive levels of concentration and control by corporations with tepid-at-best ties to the Latina/o community. The FCC's treatment of the Spanish-language sector not only enabled this predicament, but consistently dismissed Spanish speakers as participants in the public sphere and the political life of the nation. The crisis of Spanish-language media is also the crisis of a regulatory apparatus tethered to a monolingualism that does violence to the multicultural and multiethnic diversity of the nation.

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