

Congress of the United States
Washington, DC 20515

September 8, 2014

955

The Honorable Thomas E. Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

We write to urge the Federal Communications Commission to use its mandate under section 257 of the Communications Act of 1934 to identify and eliminate market-entry barriers for small businesses and entrepreneurs. While the Commission has recently made progress in helping to facilitate diversity in ownership through the wireless spectrum auctions,¹ we feel strongly that the Commission can do more to facilitate diverse ownership in every area of media and telecommunications.

Diversity in media ownership and voices has long been a priority of Congress and the Federal Communications Commission.² Congress added section 257 to the Communications Act of 1934 with the intention of making it a national policy for the Commission to protect small businesses, particularly those owned by minorities and women, from the effects of consolidation in the media industry.³ This statute

¹ See, e.g., *Grain Management, LLC's Request for Clarification or Waiver of Section 1.2110(b)(3)(iv)(A) of the Commission's Rules*, WT Docket No. 05-211, GN Docket No. 12-268, GN Docket No. 13-185, Order, July 23, 2014 (granting a limited waiver of an FCC attribution rule for a minority-owned business and similarly situated entities).

² See, e.g., *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1042 (C.A.D.C. 2002) (“[T]he public interest” has historically embraced diversity.”); Roger C. Sherman, *Empowering Small Businesses*, OFFICIAL FCC BLOG (August 1, 2014), <http://www.fcc.gov/blog/empowering-small-businesses> (“Considering the significant challenges new entrants face in building wireless networks, we can and should provide smaller businesses—including enterprises owned by women and minorities—a better on-ramp into the wireless business.”).

³ See 47 U.S.C. § 257 (2014); David Honig & Moushumi Khan, *Successes and Failures of the 1996 Telecommunications Act: Section 257- Eliminating Market Entry Barriers: The Best New Hope for Diversity and Inclusion*, THE LEADERSHIP CONFERENCE (June 1, 2002), http://www.civilrights.org/publications/1996_telecommunications/section-257.html.

confers authority to study and promote a diversity of media voices through regulatory action.⁴ We encourage the Commission to keep in mind both the language and the spirit of this statutory mandate as it develops national communications policies, particularly in the context of new networks and programming.

In addition to the Commission's authority to study, identify, and eliminate barriers to the marketplace for minorities and women as part of its broader mission to promote entrepreneurship and other small businesses, the Commission may also promote diversity through the use of its broad regulatory authority, which includes information gathering, rulemaking, and merger review and enforcement. The Communications Act authorizes the Commission to negotiate and enforce restrictions and conditions on license transfers to promote the public interest in the context of mergers.⁵ Although the Commission's public-interest evaluation concerns the "broad aims of the Communications Act,"⁶ this analysis may also entail whether a transaction ensures "the widest possible diversity of information sources and services to the public."⁷ The Supreme Court has routinely observed that the Commission's public-interest mandate includes promoting diverse media ownership.⁸ We ask that the Commission uphold its important obligation to promote diversity through this broad authority.

⁴*Id.* § 257(a) ("The Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this chapter (other than this section), market-entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services."); *Comcast Corp. v. FCC*, 600 F.3d 642, 661 (D.C. Cir. 2010) (discussing 47 U.S.C. § 257).

⁵ *Id.* § 303(r) (authorizing the Commission to "prescribe such restrictions and conditions, not inconsistent with the law, as may be necessary to carry out the provisions" of the Communications Act); *id.* § 214(c) (the Commission may place "such terms and conditions as in its judgment the public convenience and necessity may require" through its merger-review authority).

⁶ Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations, 19 FCC Rcd 21522, 21544 ¶ 41 (2004).

⁷ § 521(4).

⁸ *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 795 (1978) (holding that the public-interest standard that guides the Communications Act of 1934 includes the "goal of achieving 'the widest possible dissemination of information from diverse and antagonistic sources.'"); *National Broadcasting Co. v. United States*, 319 U.S., 190, 217 (1943) ("The avowed aim of the Communications Act of 1934 was to secure the maximum benefits of radio to all the people of the United States.").

Section 257 also directs the FCC to release a Triennial Report on market-entry barriers for small businesses and entrepreneurs.⁹ The Commission continues to fall behind in its timely release of these reports.¹⁰ The media and telecommunications landscape is rapidly changing. The timely reporting of market-entry barriers is essential to the development of narrowly tailored policies that will facilitate the engagement of minority- and women-owned businesses, while benefitting the public interest.¹¹ Minorities and women continue to face unique market-entry barriers. Timely reports and current data would empower the Commission to eliminate these barriers through practical solutions for facilitating full participation.

As stated, the media industry still suffers from an extreme lack of diversity, especially in broadcast ownership. There are less than fifty full power TV stations owned by people of color and every year the list grows smaller.¹² Diversity in ownership is crucial in enhancing competition and benefitting consumers.¹³ As Commissioner Clyburn noted in the last Triennial Report, promoting diversity through section 257 “should not be an afterthought as we develop our national communications policies.”¹⁴

The Commission is encouraged to seriously consider innovative proposals submitted by minority-owned entities.¹⁵ These businesses have the potential to

⁹ § 257(c).

¹⁰ See generally Section 257 Triennial Report to Congress, Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses, 26 FCC Rcd 2911, 2912 (2009) (noting that the 2009 Report was released in 2011).

¹¹ STAFF OF S. COMM. ON THE SMALL BUSINESS AND ENTREPRENEURSHIP, 113TH CONG, REP. ON 21ST CENTURY BARRIERS TO WOMEN’S ENTREPRENEURSHIP: MAJORITY REPORT OF THE U.S. SENATE COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP 3 (Comm. Print 2014).

¹² U.S. FED. COMM. COMM’N, DA 12-1667, REPORT ON OWNERSHIP OF COMMERCIAL BROADCAST STATIONS (2012), https://apps.fcc.gov/edocs_public/attachmatch/DA-12-1667A1.pdf.

¹³ See e.g., *Promoting Diversification of Ownership In the Broadcasting Services*, MB Docket No. 07-294, Report and Order and Third FNPRM, 23 FCC Rcd 5922, 5925 (2007) (recognizing that diverse ownership promotes competition).

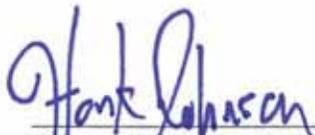
¹⁴FCC, *supra* note 11, at 2970.

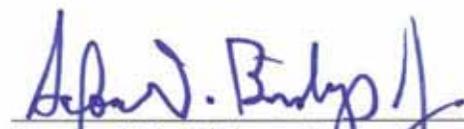
¹⁵ U.S. Representatives Bobby Rush, Corrine Brown, Gwen Moore, and Frederica Wilson recently urged the Commission to support small, minority-owned businesses that have the potential to “make an immediate impact by providing African American communities with a clearer voice; promote the greater engagement of African Americans in the nation’s economic, political, and social debates; create a platform for Black newsmakers to reach their audiences and constituents; create well-paying jobs for a diverse mix of employment candidates; and rebut the

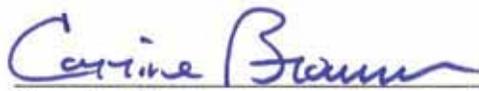
provide Americans with intelligent programming and content that is informative, educational, inspirational, empowering, and catered to minority interests.

We hope the FCC will take our concerns seriously and continue to move in the right direction by promoting diversity in media.

Sincerely,


Henry C. "Hank" Johnson, Jr.
Member of Congress

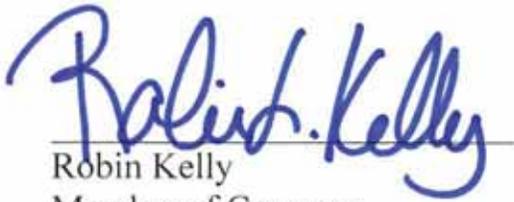

Sanford D. Bishop, Jr.
Member of Congress


Corrine Brown
Member of Congress


G. K. Butterfield
Member of Congress

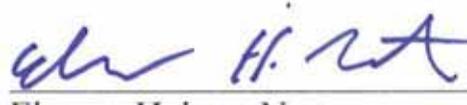

John Conyers
Member of Congress


Chaka Fattah
Member of Congress


Robin Kelly
Member of Congress


Barbara Lee
Member of Congress

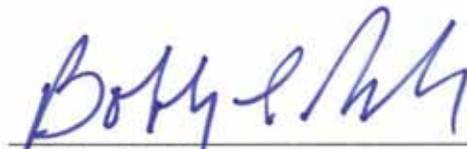

Gwen Moore
Member of Congress


Eleanor Holmes Norton
Member of Congress


Donald Payne
Member of Congress


Charles Rangel
Member of Congress


Cedric Richmond
Member of Congress


Bobby Rush
Member of Congress


Maxine Waters
Member of Congress



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

October 14, 2014

The Honorable Donald Payne
U.S. House of Representatives
103 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Payne:

Thank you for your letter regarding Section 257 of the Communications Act and the Commission's mandate to identify and eliminate market-entry barriers for small businesses and entrepreneurs. I appreciate hearing your views.

I recently had the honor of testifying before you and the House Small Business Committee to discuss how the Commission is responding to the needs of small businesses. Your letter is timely in that it helps to continue this important conversation and focus particularly on what the Commission is doing to promote a diversity of ownership in the media and telecommunications industries. The Commission has taken several actions in this area.

One of the first votes I took as Chairman was to approve a Declaratory Ruling to clarify the Commission's policies and procedures for reviewing broadcast transactions involving foreign ownership and investment. The hope is that this will unleash new capital to help existing broadcasters and potential new entrants serve the needs and interests of their communities.

We also are reviewing diversity issues as part of our Quadrennial Review of the media ownership rules. While this review is underway, we are enforcing our existing local ownership rules to close loopholes by adopting new attribution rules for the use of joint sales agreements (JSAs) for television stations. These new rules, adopted in March of this year, will protect our viewpoint diversity and competition goals. We have already seen this decision bear fruit. In August 2014, six television stations spun off from the June 2014 Gray Television transaction will soon be owned by minority- and women-owned broadcast entities.

As you note, the Commission also has before it several communications industry merger proposals. We currently are seeking comment on the various proposals and encourage all interested parties to participate. We will review the proposals under our public interest standard of review and carefully consider all of the issues that are presented in the record.

Our efforts are not limited to the media industry. In August, I circulated a Notice of Proposed Rulemaking to update our competitive bidding rules to recognize the challenges new entrants face in the wireless industry. We have also established market-based reserve spectrum in our upcoming Incentive Auction to promote more opportunities for bidders to compete better in the auction. Additionally, we have established smaller geographic license areas in both the

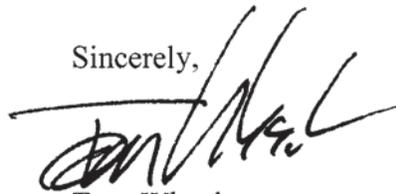
Incentive Auction and November's AWS-3 auction to enhance the ability of small businesses to participate and win wireless licenses.

Working to remove some of these regulatory barriers is just one part of our efforts. The Commission's Office of Communications Business Opportunities (OCBO) takes an active role to help empower small business owners by conducting workshops and connecting entrepreneurs with financial experts. OCBO also holds an annual conference on capitalization strategies for small and diverse media and communications businesses. These activities have shown real benefits. For example, the National Association of Latino Community Asset Builders made connections at one of OCBO's events that ultimately led to \$3.7 million in federal funds through the Broadband Technology Opportunity Program. OCBO continues to fulfill the FCC's mission and is currently planning a Minority Business Tech Conference, which we hope to host in early 2015. This conference will highlight successful minority entrepreneurs in the tech arena and examine a number of topics relevant to market entry, such as: (1) Entity Formation and Incubation; (2) Early Stage Investment; (3) and Opportunities in Wireless and Unlicensed Spectrum.

I recognize the concern you raise regarding timely reports and current data. Since becoming Chairman, I have made it a priority to review and improve FCC processes, including our efforts to meet our statutory reporting obligations. We are actively working on the most recent Section 257 triennial review, and we anticipate delivering it to Congress in the near term.

Thank you again for raising your concerns. Please be assured that we take our responsibilities in this area very seriously, and I appreciate hearing your views on these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Wheeler', written over a horizontal line.

Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

October 14, 2014

The Honorable Charles Rangel
U.S. House of Representatives
2354 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Rangel:

Thank you for your letter regarding Section 257 of the Communications Act and the Commission's mandate to identify and eliminate market-entry barriers for small businesses and entrepreneurs. I appreciate hearing your views.

I recently had the honor of testifying before the House Small Business Committee to discuss how the Commission is responding to the needs of small businesses. Your letter is timely in that it helps to continue this important conversation and focus particularly on what the Commission is doing to promote a diversity of ownership in the media and telecommunications industries. The Commission has taken several actions in this area.

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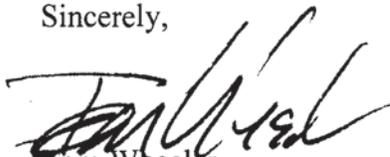
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Sincerely,



Tom Wheeler



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FEDERAL COMMUNICATIONS COMMISSION
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October 14, 2014

The Honorable Cedric Richmond
U.S. House of Representatives
240 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Richmond:

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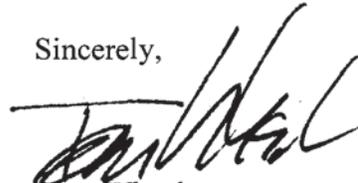
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U.S. House of Representatives
2268 Rayburn House Office Building
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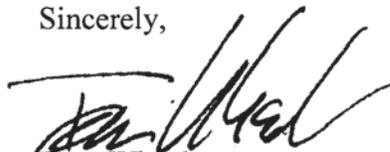
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Tom Wheeler



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October 14, 2014

The Honorable Maxine Waters
U.S. House of Representatives
2221 Rayburn House Office Building
Washington, D.C. 20515

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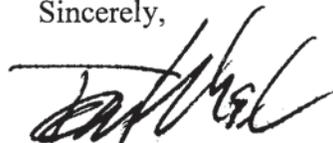
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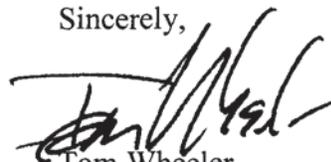
Incentive Auction and November's AWS-3 auction to enhance the ability of small businesses to participate and win wireless licenses.

Working to remove some of these regulatory barriers is just one part of our efforts. The Commission's Office of Communications Business Opportunities (OCBO) takes an active role to help empower small business owners by conducting workshops and connecting entrepreneurs with financial experts. OCBO also holds an annual conference on capitalization strategies for small and diverse media and communications businesses. These activities have shown real benefits. For example, the National Association of Latino Community Asset Builders made connections at one of OCBO's events that ultimately led to \$3.7 million in federal funds through the Broadband Technology Opportunity Program. OCBO continues to fulfill the FCC's mission and is currently planning a Minority Business Tech Conference, which we hope to host in early 2015. This conference will highlight successful minority entrepreneurs in the tech arena and examine a number of topics relevant to market entry, such as: (1) Entity Formation and Incubation; (2) Early Stage Investment; (3) and Opportunities in Wireless and Unlicensed Spectrum.

I recognize the concern you raise regarding timely reports and current data. Since becoming Chairman, I have made it a priority to review and improve FCC processes, including our efforts to meet our statutory reporting obligations. We are actively working on the most recent Section 257 triennial review, and we anticipate delivering it to Congress in the near term.

Thank you again for raising your concerns. Please be assured that we take our responsibilities in this area very seriously, and I appreciate hearing your views on these important issues.

Sincerely,



Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

October 14, 2014

The Honorable Sanford Bishop
U.S. House of Representatives
2429 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Bishop:

Thank you for your letter regarding Section 257 of the Communications Act and the Commission's mandate to identify and eliminate market-entry barriers for small businesses and entrepreneurs. I appreciate hearing your views.

I recently had the honor of testifying before the House Small Business Committee to discuss how the Commission is responding to the needs of small businesses. Your letter is timely in that it helps to continue this important conversation and focus particularly on what the Commission is doing to promote a diversity of ownership in the media and telecommunications industries. The Commission has taken several actions in this area.

One of the first votes I took as Chairman was to approve a Declaratory Ruling to clarify the Commission's policies and procedures for reviewing broadcast transactions involving foreign ownership and investment. The hope is that this will unleash new capital to help existing broadcasters and potential new entrants serve the needs and interests of their communities.

We also are reviewing diversity issues as part of our Quadrennial Review of the media ownership rules. While this review is underway, we are enforcing our existing local ownership rules to close loopholes by adopting new attribution rules for the use of joint sales agreements (JSAs) for television stations. These new rules, adopted in March of this year, will protect our viewpoint diversity and competition goals. We have already seen this decision bear fruit. In August 2014, six television stations spun off from the June 2014 Gray Television transaction will soon be owned by minority- and women-owned broadcast entities.

As you note, the Commission also has before it several communications industry merger proposals. We currently are seeking comment on the various proposals and encourage all interested parties to participate. We will review the proposals under our public interest standard of review and carefully consider all of the issues that are presented in the record.

Our efforts are not limited to the media industry. In August, I circulated a Notice of Proposed Rulemaking to update our competitive bidding rules to recognize the challenges new entrants face in the wireless industry. We have also established market-based reserve spectrum in our upcoming Incentive Auction to promote more opportunities for bidders to compete better in the auction. Additionally, we have established smaller geographic license areas in both the