



**Minority Media &
Telecom Council**

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October 30, 2014

Marlene Dortch, Esq., Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: Notice of *Ex Parte* Communication, GN Docket No. 14-28 (Open Internet); GN Docket No. 09-191 (Preserving the Open Internet); WC Docket No. 07-52 (Broadband Industry Practices); DA 14-1365 (Tell City Waiver Decision); Docket No. 06-2943 (Designated Entity); WT Docket No. 05-211 (Designated Entity); AU Docket No. 06-30 (Designated Entity); WC Docket No. 13-184 (E-rate); WC Docket No. 12-375 (Inmate Calling Services)

Dear Ms. Dortch:

This letter reports on six meetings held on October 28, 2014 and October 29, 2014 at the Federal Communications Commission.

On October 28, 2014, three meetings were held. The first meeting was with the following representatives of FCC Chairman Wheeler's office: Ruth Milkman, Chief of Staff, Gigi B. Sohn, Special Counsel for External Affairs, and Maria Kirby, Legal Advisor for Media, Consumer, and Government Affairs, and Enforcement. The second meeting was with Jonathan Sallet, General Counsel, Marilyn Sonn, Deputy Associate General Counsel and Deputy Chief, and P. Michele Ellison, Deputy General Counsel. The third meeting was with Commissioner Mignon Clyburn and members of her staff, Adonis E. Hoffman, Chief of Staff and Senior Legal Advisor, Rebekah Goodheart, Wireline Legal Advisor, and Louis Peraertz, Wireless, Public Safety and International Legal Advisor (by phone). MMTC attendees included: Kim Keenan, President and CEO, David Honig, President Emeritus and General Counsel, Maurita Coley, Vice President and Chief Operating Officer, Dr. Nicol Turner-Lee, Vice President and Chief Research & Policy Officer, and Maria Lesinski, Law Clerk.

The last three meetings were held on October 29, 2014. The next meeting was with Chairman Wheeler and members of his staff including Gigi Sohn, Special Counsel for External Affairs, Renee Gregory, Legal Advisor for Engineering and Technology,

Wireless, and Incentive Auction, Maria Kirby, Legal Advisor for Media, Consumer, and Government Affairs, and Enforcement, and Regina Black, Intern. MMTC also met with Commissioner Michael O'Rielly and Erin McGrath, Legal Advisor for Wireless, International and Public Safety. Kim Keenan, President and CEO, David Honig, President Emeritus and General Counsel, Maurita Coley, Vice President and Chief Operating Officer, Dr. Nicol Turner-Lee, Vice President and Chief Research & Policy Officer, Jacqueline Clary, Senior Counsel and Assistant Policy Director and Charlyn Stanberry, Cathy Hughes Fellow, represented MMTC at both meetings. There was also a follow-up meeting about the 310(b)(4) and Tell City matters and the open Internet between David Honig and Adonis Hoffman.

With respect to the Open Internet proceeding, MMTC continues to support Section 706 as a rational regulatory framework with strong improvements to the consumer complaint process as explained in the National Minority Organizations' Comments.¹ Specifically, MMTC urged the Commission to model enforcement of open Internet violations after the consumer-friendly complaint process established by Title VII of the 1964 Civil Rights Act. Instead of relying on an overly formal complaint process, such as that authorized for Title II services in Section 208,² an enforcement program derived from Title VII of the Civil Rights Act would allow a complainant to provide the Commission's Enforcement Bureau staff with enough information to make out a *prima facie* case of specific or systemic harm. This would allow the Commission to conduct an initial screening; and, if the Commission's staff issues a non-precedential finding of probable cause, the agency could institute expedited enforcement or mediation.³ This proposed model of enforcement would provide consumers and regulators with an efficient, affordable, and expedited means of investigating alleged rule violations and other claims against service providers.⁴ Implementing the Title VII model could also provide consumers with timely and cost-effective complaint resolution. MMTC provided a detailed Memorandum (also attached to this letter) of how the Title VII model could work within the Commission.

MMTC applauded the recent release of the Notice of Proposed Rulemaking on Competitive Bidding, to reinvigorate the Designated Entity (DE) Rules.⁵ We highlighted

¹ See Comments of the National Minority Organizations, GN Docket Nos. 14-28, 10-127 (July 18, 2014) at p. 13.

² See 47 U.S.C. §208 (Section 208 directs complainants to submit a petition to the Commission, the Commission then forwards the complaint to the common carrier for response, the Commission may then open an investigation).

³ See Comments of the National Minority Organizations at 14.

⁴ Comments of the National Minority Organizations at 12-14 (July 18, 2014).

⁵ See *In the Matter of Updating Part I Competitive Bidding Rules*, Notice of Proposed Rulemaking, RM-11395, (2014) available at <http://www.fcc.gov/document/competitive-bidding-nprm> (last visited October 22, 2014). See also *MMTC Expresses Strong Support For FCC Actions to Reduce Market Entry Barriers That Impede Designated Entity Participation in Spectrum Auctions*, Press Release, (2014), available at <http://mmtconline.org/wp->

the need for the FCC to increase ownership opportunities for DEs and our hope that the proceeding will reveal opportunities for both leasing and wholesaling especially for new entrant DEs that seek to engage the program and build sustainable access to capital.⁶ MMTC supports the repeal of the Attributable Material Relationship Rule (AMR) and review the post-auction holding period to ensure meaningful DE participation and investment. MMTC looks forward to participating in the comment process and anticipates that the Commission will complete this proceeding efficiently to ensure that DEs have time to finalize their business plans and raise the necessary capital for participation, as mandated by Congress, prior to the incentive auction. On the point of minority spectrum ownership, MMTC also urged the Commission to encourage more secondary market transactions as a public interest priority, especially among larger carriers and provide small, disadvantaged businesses the opportunity to access more capital as a complement to the DE program.

As noted in MMTC's application for review of the Media Bureau's denial of the Tell City FM translator relocation waiver request,⁷ MMTC urged the Commission to view the Tell City waiver request as addressing an important agency policy decision for AM broadcasters; especially the minority owners, who disproportionately hold AM licenses and need urgent relief.⁸ Presently, about two-thirds of minority-owned radio stations are AM stations.⁹ Thus, these regulations are detrimental to minority broadcasters, who

content/uploads/2014/10/MMTC-DE-NPRM-Statement-101014.pdf (last visited October 22, 2014).

⁶ See Section 309(j). *See also Council Tree Communications, Inc. v. FCC*, 619 F.3d 235 (3d Cir. 2010) (subsequent history omitted) (The court vacated two of the three rule changes upon finding "serious" violations of notice and comment obligations under the Administrative Procedure Act). *See also* White Paper at 12-16.

⁷ *In Re: Matter of WAY Media, Inc. W218CR, Central City, KY For a Minor Change*, Application For Review (October, 2014).

⁸ In 2011, the last year for which the FCC released data, of the 559 broadcast stations (AM/FM/TV) held by minorities, 409, or almost 73 percent, of them were AM stations. *See Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report on Ownership of Commercial Broadcast Stations*, 27 FCC Rcd 13814, 13824 (rel. Nov.14, 2012). Minority ownership in AM radio is far higher than in any other FCC-licensed technology. Further, minority owned AM stations tend to have inferior technical facilities (higher frequencies, daytime-only authorizations, complex directional patterns, lower wattages, geographic separation from the central city) and thus especially need FM translators in order to survive and compete.

⁹ RE: AM Revitalization Request Waiver Joint Request of Hancock Communications, Inc., the licensee of WTCJ (AM), Tell City, Indiana, and WAY Media, Inc., FCC File Number: BPFT- 20121116ALE (2013) *available at* <http://mmtconline.org/wp-content/uploads/2013/02/MMTC.TellCity.021213.pdf> (last visited October 28, 2014).

typically own AM stations with inferior technical parameters (high frequencies, complex antenna patterns, daytimers.. MMTC believes that by making it easier for AM stations to move underutilized distant FM translators closer to them, more broadcasters would be able to re-broadcast their AM signals and thus increase accessibility for AM listeners in their respective areas while furthering the Commission's diversity goals. By granting the Tell City waiver, the Commission can help revitalize AM radio, further community interests, and reduce destructive and inhibitive regulatory barriers in the communications industry.

MMTC expressed concerns about the extremely low levels of people in color employed in the high tech industries.¹⁰ To study and provide recommendations on how to overcome the dearth of employment diversity in high tech, MMTC reiterated its recommendation that the Commission assign its Advisory Committee for Diversity in the Digital Age ("Diversity Committee") the task of researching the employment patterns and practices that result in a homogeneous technology sector. This task is well within the scope of the Diversity Committee's Charter.¹¹ While the FCC may lack the jurisdictional authority to require high tech companies to change their workforce diversity statistics, MMTC feels that the Commission's congressional obligation as the liaison among these corporations, consumers and the broad marketplace make this issue a compelling fit. MMTC also recommended that the Commission share this data with other federal agencies, including the Department of Labor, to facilitate a strategy for increasing employment diversity and inclusion in these burgeoning industries.

Finally, MMTC inquired about the status of the FCC's Diversity Committee whose mission is to advise the Commission regarding policies and practices that will enhance diversity in the telecommunications and related industries.¹² MMTC expressed concern that the Diversity Committee has not been re-chartered; it was last rechartered on March 11, 2013.¹³ MMTC supports the existence of the Diversity Committee as a strong community voice, made up of subject matter experts, which facilitates a high level

¹⁰ *RE: Diversity and EEO in the Tech Sector*, (September 16, 2014) available at <http://mmtconline.org/wp-content/uploads/2014/09/MMTC-Tech-EEO-Ltr-091614.pdf> (last visited October 23, 2014).

¹¹ *See* Federal Communications Commission, Charter of the FCC's Advisory Committee on Diversity for Communications in the Digital Age (2011), *available at* <http://transition.fcc.gov/DiversityFAC/docs/charter-2011.pdf> (last visited Oct. 24, 2014) ("The Committee's mission is to provide recommendations to the FCC regarding policies and practices that will further enhance diverse participation in the telecommunications and *related* industries." (*emphasis added*)).

¹² *Diversity Committee Meeting*, (October, 2012) available at <http://www.fcc.gov/events/diversity-committee-meeting-1> (last visited October 22, 2014).

¹³ *Appointment of Members to the Re-Chartered FCC Diversity Committee*, Public Notice, (March, 2013), available at <http://www.fcc.gov/document/appointments-members-re-chartered-fcc-diversity-committee> (last visited October 22, 2014).

conversation on diversity.

Finally, MMTC reiterated its support of the FCC's E-rate program and urged the Commission to ensure that low-income, disproportionately minority schools and libraries are a program priority. We also confirmed our support of the prison phone call rulemaking and our intention to continue to monitor the upcoming NPRM and, in the meeting with Commissioner Clyburn, recounted an example of an intrastate local Securus call to a jail which cost about \$14 per minute for approximately four minutes.

Respectfully submitted,

Kim Keenan

Kim Keenan
President

Attachments:

Comments of the National Minority Organizations
Reply Comments of the National Minority Organizations
Title VII Enforcement Proposal Memo
MMTC Tech EEO Letter
USA Today Supplemental EEO Article