Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Protecting and Promoting the Open Internet	)	GN Docket No. 14-28
	)	
Framework for Broadband Internet Service	)	GN Docket No. 10-27

REPLY COMMENTS OF THE NATIONAL MINORITY ORGANIZATIONS:

100 Black Men
A. Philip Randolph Institute
American Indians in Film and Television
Asian Pacific American Institute for Congressional Studies
Asian/Pacific Islander American Chamber of Commerce & Entrepreneurship
Black College Communication Association
Black Entertainment and Sports Lawyers Association
Blacks In Government
Communications Consumers United
Council of Korean Americans
Dialogue on Diversity
Federation of Southern Cooperatives
Hispanic Telecommunications and Technology Partnership
Innovation Generation
International Black Broadcasters Association
Japanese American Citizens League
Latinos in Information Sciences and Technology Association
Leadership Education for Asian Pacifics, Inc.
League of United Latin American Citizens
MANA - A Latina Organization
Minority Business Roundtable
Minority Media and Telecommunications Council
National Association of Black County Officials
National Association of Multicultural Digital Entrepreneurs
National Association of Neighborhoods
National Bankers Association
National Black Caucus of State Legislators
National Black College Alumni Hall of Fame Foundation, Inc.
National Black Farmers Association
National Black Religious Broadcasters

[additional organizations are set out on the following page]

National Coalition on Black Civic Participation
National Policy Alliance
National Congress of Black Women
National Hispanic Caucus of State Legislators
National Hispanic Foundation for the Arts
National Organization of Black County Officials
National Organization of Black Elected Legislative Women
National Puerto Rican Chamber of Commerce
National Puerto Rican Coalition
Organization of Chinese Americans
Rainbow PUSH Coalition
SER - Jobs for Progress
The Latino Coalition
Universal Impact
U.S. Black Chambers of Commerce, Inc.

David Honig
President
Jacqueline Clary
Senior Counsel and John W. Jones Fellow
Minority Media and Telecommunications Council
3636 16th St. N.W., Suite B-366
Washington, D.C. 20010
(202) 332-7005
david@davidhonig.org

Counsel for the National Minority Organizations

Of Counsel:

Nicol Turner-Lee, Ph.D., Vice President and Chief
Research and Policy Officer, Minority Media and
Telecommunications Council

September 15, 2014

TABLE OF CONTENTS

I. SUMMARY AND INTRODUCTION 2

II. SECTION 706 REMAINS THE BEST ROUTE FOR IMPLEMENTING STRONG, LEGALLY ENFORCEABLE, AND CONSUMER-FRIENDLY OPEN INTERNET RULES THAT UPHOLD NO BLOCKING AND NO PAID PRIORITIZATION 2

- **A. Open Internet Rules Grounded in Section 706 Would be Sufficiently Robust and Legally Enforceable to Achieve Core Goals for the Commission and for Communities of Color** 3
- **B. Section 706 Wou1d Assure Sufficient Stability in Maintaining an Open Internet Regime** 5
- **C. Open Internet Rules Based on Section 706 Would Also Provide the Commission With Ample Authority to Protect Digital Redlining** 7

III. RECLASSIFYING BROADBAND AS A TITLE II SERVICE WOULD INJECT UNNECESSARY UNCERTAINTY INTO THE BROADBAND ECOSYSTEM, ENDANGERING PROGRESS TOWARD IMPORTANT GOALS FOR COMMUNITIES OF COLOR 9

IV. THE COMMISSION SHOULD LOOK TO TITLE VII OF THE 1964 CIVIL RIGHTS ACT AS A MODEL FOR OPEN INTERNET ENFORCEMENT MECHANISMS 12

V. CONCLUSION 12

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Protecting and Promoting the Open Internet	)	GN Docket No. 14-28
	)	
Framework for Broadband Internet Service	)	GN Docket No. 10-27

REPLY COMMENTS OF THE NATIONAL MINORITY ORGANIZATIONS

The National Minority Organizations, a coalition of 45 highly respected national civil rights, social service, and professional organizations,[1] representing millions of members and constituents from across the country, respectfully submit these Reply Comments in the above referenced proceedings.[2] We reiterate our unwavering support for preserving an open Internet, and continue to urge the Commission to craft policies that will protect consumers and encourage universal broadband access, adoption and proficient use. Universal first-class digital citizenship would greatly benefit all Americans, especially people of color and other vulnerable populations that remain on the sidelines of the digital revolution.

---

[1] These Reply Comments represent the views of each organization institutionally and are not intended to reflect the views of the organizations' respective officers, directors, advisors, or members. Additional organizations signing on since the Comments were submitted are the Black College Communication Association, Black Entertainment and Sports Lawyers Association and the League of United Latin American Citizens.

[2] *Protecting and Promoting the Open Internet*, Notice of Proposed Rulemaking, GN Docket No. 14-28, FCC 14-61 (rel. May 15, 2014) ("NPRM"); *Wireline Competition Bureau Seeks to Refresh the Record in the 2010 Proceeding on Title II and Other Potential Legal Frameworks for Broadband Internet Access*, Public Notice, DA 14-748 (rel. May 30, 2014), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0530/DA-14-748A1.pdf (last visited Sept. 14, 2014).

I. SUMMARY AND INTRODUCTION

The issue before the Commission is not whether but *how* the agency should act to preserve the open Internet. The National Minority Organizations continue to support an open Internet protected under the Commission's Section 706 regulatory authority coupled with a consumer-friendly complaint process modeled after Title VII of the 1964 Civil Rights Act. This approach to Internet regulation will continue to protect the openness American consumers expect from the Internet while not impeding parallel efforts aimed at closing the digital divide in broadband access, adoption and proficiency.[3] As the Commission moves forward, the rules that emerge from this proceeding should seek not only to preserve openness for current users – they must also ensure that the Internet remains accessible and open for future users and for those on the other side of the digital divide.

II. SECTION 706 REMAINS THE BEST ROUTE FOR IMPLEMENTING STRONG, LEGALLY ENFORCEABLE, AND CONSUMER-FRIENDLY OPEN INTERNET RULES THAT UPHOLD NO BLOCKING AND NO PAID PRIORITIZATION

Based on the historic development of the Commission's broadband policies, our review of the record, and in light of our initial Comments, we maintain that Section 706 is the most *viable* route available for adopting new rules in a manner that will generate the least friction for parallel policy initiatives, while still upholding the principles of no-blocking, no paid prioritization, and heightened transparency. Section 706 has garnered broad support among organizations representing a diverse range of historically marginalized communities including an expansive array of firms, nonprofits, consumer and labor organizations, and scholars.[4] Their

---

[3] *See generally* Comments of the National Minority Organizations, GN Docket No. 14-28 (July 18, 2014) ("Comments of the National Minority Organizations").

[4] *See, e.g.*, Comments of the Chicagoland Black Chamber of Commerce (July 17, 2014); Comments of the National Black Chamber of Commerce, National Gay & Lesbian Chamber of Commerce, U.S. Hispanic Chamber of Commerce, and U.S. Pan Asian American Chamber of Commerce (July 18, 2014); Comments of the Black Women's Roundtable (July 18, 2014); Florida State Hispanic Chamber of Commerce (July 14, 2014); Asian Americans Advancing Justice (July15, 2014); Comments of Communications Workers of America and National

constituents, like ours, have and will continue to benefit in profound ways from broadband Internet and the array of tools and services that it enables. According to CWA and the NAACP, Section 706 will help to "ensure that there is sufficient future investment and job creation to propel not only economic opportunity, but a permanent bridging of the digital divide."[5]

Based on these and other comments in the record, including those submitted by the National Minority Organizations, there are at least three indisputable benefits associated with using Section 706 as the basis for open Internet rules. These are discussed in turn below.

A. Open Internet Rules Grounded in Section 706 Would be Sufficiently Robust and Legally Enforceable to Achieve Core Goals for the Commission and Communities of Color

A Section 706 open Internet framework would be sufficiently robust to achieve the Commission's core goals – transparency, no blocking, no slow and fast lanes due to a strong presumption against paid prioritization, allowing for business model experimentation that is commercially reasonable,[6] and preventing wrongdoing in an *ex post* manner. As we stated in our initial Comments, "by using its Section 706 authority, the Commission can adopt rules and bring enforcement actions that will ensure the right of people of color and all American consumers to an open Internet."[7] Numerous additional commenters advocating on behalf of historically disadvantaged communities have also embraced this conclusion.[8]

Association for the Advancement of Colored People (July 15, 2014); Comments of League of United Latin American Citizens, National Action Network, National Association for the Advancement of Colored People, the National Coalition on Black Civic Participation, and the National Urban League (July 18, 2014).

[5] *See* Comments of Communications Workers of America and National Association for the Advancement of Colored People, at 2 (July 15, 2014).

[6] *See generally* NPRM.

[7] Comments of the National Minority Organizations, at 11 (July 18, 2014). We have offered an amendment to the Commission's Section 706 approach – a mechanism modeled after Title VII of the 1964 Civil Rights Act to facilitate consumer input and expedite the handling of complaints. *See* Comments of the National Minority Organizations, at 12-14 (July 18, 2014), and §IV *infra.*

[8] *See, e.g.*, Comments of CWA and NAACP, at 21 (July 15, 2014); Comments of the National Black Chamber of Commerce, National Gay & Lesbian Chamber of Commerce, U.S. Hispanic

The U.S. Court of Appeals for the D.C. Circuit recently delineated the Commission's clear authority to regulate broadband under Section 706, so long as it does so in a manner that doesn't contravene other express statutory mandates by treating broadband as a *de facto* common carrier.[9] Accordingly, the Commission could develop rules that would protect against the establishment of slow lanes, while also assuring sufficient latitude to explore business arrangements that are "commercially reasonable." This approach would yield many new opportunities for people of color, especially entrepreneurs and small businesses, both of which would greatly benefit from such current and future relationships with broadband service providers. The Commission recently signaled that encouraging diversity and inclusion in these competitive and evolving industries are of great interest to assure sufficient inclusivity in FCC policymaking and activities in the marketplace.[10] To ensure that open Internet rules allow for these kinds of exploratory collaborations, we believe that the Commission should ground its

---

Chamber of Commerce, and U.S. Pan Asian American Chamber of Commerce, at 2-3 (July 18, 2014); Comments of the Black Women's Roundtable, at 1-2 (July 18, 2014).

[9] *See Verizon v. FCC*, 740 F.3d 623, 650 (2014). D.C. Circuit opinions from 2010 and 2012, as well as *Verizon*, have provided all stakeholders – the Commission, service providers, other innovators, and consumers – with a detailed schematic for what a legally enforceable open Internet regime might look like. *See Comcast v. FCC*, 600 F.3d 642 (D.C. Cir. 2010) and *Cellco Partnership v. FCC*, 700 F. 3d 534 (D.C. Cir. 2012). Accordingly, service providers and others in this sector have had ample notice regarding the contours of a framework built around Section 706 and allowing for business model experimentation that is deemed to be "commercially reasonable." *See Cellco Partnership v. FCC*, 700 F. 3d at 548 ("And the 'commercially reasonable' standard, at least as defined by the Commission, ensures providers more freedom from agency intervention than the "just and reasonable" standard applicable to common carriers.")

[10] *See* John Eggerton, *Chairman Wheeler Proposes Changes to Designated Entity Rules,* Broadcasting & Cable (Aug. 1, 2014), available at http://broadcastingcable.com/news/washington/chairman-wheeler-proposes-changes-designated-entity-rules/132885 (last visited Sept. 14, 2014) (detailing proposed changes circulated on the 8th floor in a draft Notice of Proposed Rulemaking).

framework in Section 706, a provision that allows for such flexibility,[11] while providing a sufficient baseline to protect against consumer harm.

B. Section 706 Wou1d Assure Sufficient Stability in Maintaining an Open Internet Regime

Of the possible paths forward, Section 706 represents the one most likely to preserve the current stability in the regulatory framework for broadband services. In particular, invoking this provision of the Telecommunications Act will maintain a critical baseline level of regulatory certainty by preserving the current, bipartisan approach to regulating broadband communications successfully developed under the Kennard, Powell, Martin and Genachowski chairmanships.[12]

There is ample data to demonstrate that the current approach has incentivized sustained and very high levels of much-needed private sector investment in deploying advanced broadband infrastructure – wired and wireless alike – throughout the United States.[13] Such investment levels have persisted for more than a decade and have remained at a consistently high level even during

---

[11] In the NPRM, the Commission noted that it had tentatively concluded that the unique network characteristics of mobile broadband would support a slightly different application of the open Internet rules than would apply for wired networks. NPRM, ¶62. This echoed conclusions reached by the Commission after a rigorous analysis during its 2010 open Internet rulemaking, wherein the Commission noted that certain "operational constraints" created "challenges in applying a broader set of [open Internet] rules to mobile [broadband services]." *Preserving the Open Internet*, Report and Order, 25 FCC Rcd 17905, 17957 (2010). The National Minority Organizations agree with the Commission's analysis and generally support its proposed approach for developing and implementing open Internet rules that reflect the unique technological characteristics and market structure of mobile broadband. We will amplify on this issue in subsequent filings in these dockets.

[12] *See* Comments of the National Minority Organizations, at 5 (July 18, 2014) (detailing the genesis and evolution of this bipartisan approach).

[13] *See, e.g.*, David Honig, Esq. and Nicol Turner Lee, Ph.D., *Refocusing Broadband Policy: The New Opportunity Agenda for People of Color*, at 7-16, MMTC (Nov. 21, 2013) ("MMTC Broadband White Paper"), available at http://mmtconline.org/wp-content/uploads/2013/11/Refocusing-Broadband-Policy-112113.pdf (last visited Sept. 14, 2014) In the instant proceedings, numerous commenters have cited to additional data and analysis on this point. *See, e.g., Ex parte* of Christopher S. Yoo (June 10, 2014) (submitting to the FCC a copy of a report titled *U.S. v. European Broadband Deployment: What do the Data Say?*, which includes such data).

the worst economic downturn since the Great Depression, a substantial feat that some have described as "astonishing."[14]

Further, these investments have been deployed wisely to create jobs and foster equal opportunity. As CWA and NAACP have observed, broadband service providers have not only invested far more in their services than other firms in the ecosystem, they have also supported a far greater number of high-paying jobs.[15] And unlike other firms in this sector, especially edge-provider companies, broadband service providers have been known to foster a diverse workforce and procurement systems, which have proved to be valuable sources of jobs for communities of color for many years.[16] As emphasized by LULAC, the National Urban League *et al.*, "[a]ny framework should encourage inclusion and investment – not impede it – and we will not support any framework *ab initio* that would promote ill-defined interests."[17]

Taken together, this kind of interplay between consumer demand, regulation and investment supports the need for stability in the current, historically successful open Internet

---

[14] *See* Diana G. Carew and Dr. Michael Mandel, *Infrastructure Investment and Economic Growth: Surveying New Post-Crisis Evidence*, at 2, Progressive Policy Institute (March 2014), available at http://www.progressivepolicy.org/wp-content/uploads/2014/03/2014.03-Carew_Mandel_Infrastructure-Investment-and-Economic-Growth_Surveying-New-Post-Crisis-Evidence.pdf (last visited Sept. 14, 2014).

[15] *See* Comments of CWA and NAACP, at 7-12 (July 15, 2014). *See also* Diana Carew and Dr. Michael Mandel, U.S. Investment Heroes of 2014: Investing at Home and in a Connected World, Progressive Policy Institute Report (Sept. 2014), available at http://www.progressivepolicy.org/wp-content/uploads/2014/09/2014.09-Carew_Mandel_US-Investment-Heroes-of-2014_Investing-at-Home-in-a-Connected-World.pdf (last visited Sep. 15, 2014). AT&T, Verizon Communications, and Comcast are each in the top ten for estimated U.S. capital expenditures. Google, Apple, and Amazon trail in the top 25. "Overall, the top 25 list contains four telecom and cable companies, with a total of $46 billion in domestic capital spending. The next highest category in terms of investment is energy production and refining, with six companies accounting for a total of $40 billion in domestic capital spending. The third largest category is Internet and technology companies, containing five companies totaling $22.7 billion, led by Intel, Google, and Apple." *Id*. at 4.

[16] *Id.* at 12 (providing very stark statistics on African American and Hispanic employment by wireline and wireless providers vs. the major edge companies).

[17] Comments of League of United Latin American Citizens, National Action Network, National Association for the Advancement of Colored People, the National Coalition on Black Civic Participation, and the National Urban League, at 2 (July 18, 2014).

framework governing this rapidly growing and evolving marketplace. The benefits reaped by communities of color from this interplay – among them, increased broadband access, opportunities to become entrepreneurs, and a vibrant mobile ecosystem that meets their unique demands for connectivity – similarly support the need for a frictionless transition.[18]

C. Open Internet Rules Based on Section 706 Would Also Provide the Commission With Ample Authority to Protect Against Digital Redlining

The third major benefit of Section 706 is that it provides ample authority for the Commission to police and punish digital redlining.[19] Such exclusionary practices – which occur when service providers choose not to build networks in communities with high percentages of minority or low-income households, have long plagued the communications sector.[20] With broadband adoption rates already lagging in communities of color and among low-income consumers, such practices, if allowed to continue, would negate the gains in investment and

---

[18] *See generally id. See also* Comments of the National Minority Organizations, at 6-8 (July 18, 2014).

[19] The Commission's authority is clear from the plain language of the statute. *See* 47 U.S.C. §1302(a) ("The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to *all Americans* … by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment" and §1302(b) ("The Commission shall ... annually … initiate a notice of inquiry concerning the availability of advanced telecommunications capability to *all Americans* … In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market" (emphasis supplied).

[20] *See*, e.g., *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Reply Comments of MMTC *et al.*, MB Docket No. 05-311 (March 28, 2006), available at http://mmtconline.org/lppdf/MMTCRedliningReply101A8B.pdf (last visited Sept. 14, 2014) (MMTC, along with dozens of other national civil rights and minority advocacy organizations, calling for protections against redlining communities of color).

deployment made under an open Internet framework grounded in Section 706.[21] This authority could also foster more robust competition in under-served communities – a key goal of the Commission.[22] But as the Commission has noted on several occasions in recent months, Section 706(b) empowers it to "take immediate action" if and when it identifies this type of barrier to universal broadband deployment.[23]

These policy tools will be essential when investigating emerging deployment practices that may constitute redlining. Some momentum has built around alternative deployment models that are driven by aggregate neighborhood wealth, which means that networks are only deployed to areas that demonstrate a minimum level of immediate demand for the service.[24] There is evidence that this paradigm is already widening, rather than closing, the digital divide at the local level in communities of color and low-income households.[25] Indeed, as super-fast broadband becomes a necessity, neighborhoods without this service will find themselves unable to attract investment, jobs and opportunity, leaving their residents with permanent, structural second-class digital citizenship. Fortunately, should the Commission elect to exercise its authority under

---

[21] *See, e.g.*, MMTC Broadband White Paper, at 7-10 (providing additional discussion and data).

[22] *See* Prepared Remarks of FCC Chairman Tom Wheeler, "The Facts and Future of Broadband Competition," 1776 Headquarters, Washington, DC (Sept. 4, 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-329161A1.docx (last visited Sept. 14, 2014) (setting out the benefits of fast broadband competition for all Americans).

[23] *See, e.g., In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Tenth Broadband Progress Report Notice of Inquiry, at ¶1, GN Docket 14-126 (rel. Aug. 5, 2014) (citing 47 U.S.C. §1302(b)).

[24] *See, e.g.*, Alistair Barr, *Google Fiber is Fast, but is it Fair?*, Wall St. Journal (Aug. 22, 2014), available at http://online.wsj.com/articles/google-fuels-internet-access-plus-debate-1408731700 (last visited Sept. 14, 2014).

[25] *See, e.g., id.;* Jim Redden, *Will Google Fiber Further Portland's Digital Divide?*, KOIN.com (April 29, 2014), available at http://koin.com/2014/04/29/will-google-fiber-further-portlands-digital-divide/ (last visited Sept. 14, 2014) (noting concerns about possible digital redlining resulting from Google's deployment model in Kansas City, MO, and Portland, OR).

Section 706 for the purpose of implementing open Internet rules, it would also have ample authority to protect against exclusionary practices like digital redlining, thereby upholding core notions of social justice for all consumers.

III. RECLASSIFYING BROADBAND AS A TITLE II SERVICE WOULD INJECT UNNECESSARY UNCERTAINTY INTO THE BROADBAND ECOSYSTEM, ENDANGERING PROGRESS TOWARD IMPORTANT GOALS FOR COMMUNITIES OF COLOR

The National Minority Organizations believe that reclassifying all forms of broadband Internet access services as "telecommunications services" subject to public utility-like common carrier regulation under Title II of the Communications Act is inadvisable at this time given the prodigious work that needs to be completed to close the digital divide.[26] As we discussed at length in our initial Comments, electing to use Title II to implement open Internet rules would likely prove disadvantageous to consumers in to the broadband ecosystem.[27] The primary downside of using Title II in this context would be its negative impact on investment in broadband networks, which in turn would undermine broadband adoption by communities of color and "investment in local infrastructure and jobs."[28] That this perspective on the disadvantages associated with Title II has received support from a diverse array of groups representing the interests of a range of disadvantaged communities is notable and should inform any efforts by the Commission to adopt open Internet rules.[29]

---

[26] *See* Comments of League of United Latin American Citizens, National Action Network, National Association for the Advancement of Colored People, the National Coalition on Black Civic Participation, and the National Urban League (July 18, 2014).

[27] Comments of the National Minority Organizations, at 8-11 (July 18, 2014).

[28] *Id.* at 8.

[29] *See, e.g.,* Comments of the Chicagoland Black Chamber of Commerce, at 1 (July 17, 2014) ("Simply put, Title II regulations would not allow, we believe, for further needed development and technological evolution of the nation's broadband networks and services."); Comments of the National Black Chamber of Commerce, National Gay & Lesbian Chamber of Commerce, U.S. Hispanic Chamber of Commerce, and U.S. Pan Asian American Chamber of Commerce, at 2 (July 18, 2014) ("Forcing the Internet into a Title II classification can only make it more difficult for individuals to make the highest and best use of this important tool. Notwithstanding

Skepticism about the benefits of reclassification and worries about the substantial harms that would be wrought on communities of color should the Commission head down that path revolve primarily around the likelihood that applying Title II common carrier regulations to the broadband ecosystem would chill investment, slow innovation, and undermine progress toward more robust broadband connectivity in key communities. As we noted in our initial Comments, and as many others have noted in comments in these proceedings, the process of reclassification would necessitate a separate lengthy rulemaking that would yield an order that would in all probably be immediately challenged in court by many different parties and on many different legal bases.[30] At the same time, the Commission would engage in similarly lengthy and complex forbearance proceedings, undertakings that, as history teaches, are typically fraught with intrigue, likely to end up in court, and unable to be relied upon by investors due to a current commission's inability to bind future commissions to forbearance mandates. Together, these various efforts could potentially stall the growth of the ecosystem and impact those communities where access to broadband is needed to achieve first-class, digital citizenship.

As mentioned, some measure of regulatory certainty is essential to sustaining the long-term commitments of resources that undergird broadband network deployment. Further, embracing Title II would clash, in important ways, with the ethos of innovation and disruption that permeates the broadband ecosystem. In other words, it would eliminate incentives to "think

---

intentions and promises, many of our members have a healthy skepticism when it comes to being treated equally. We have learned to worry about the law of unintended consequences - when an idea or program of the government turns out to cause far more problems than they solve"); Comments of the Black Women's Roundtable, at 2 (July 18, 2014) ("A Title II regulatory structure would impede broadband access and adoption for Black women and our families in unserved and underserved communities by stifling the growth and innovation of the Internet. Black women and our families in vulnerable unserved and underserved communities cannot afford to bear the costs or become the victims of any unintended consequences that a Title II regulatory structure would impose on the availability and affordability of Internet technology and broadband services.")

[30] Comments of the National Minority Organizations, at 9-10 (July 18, 2014).

outside the box" because doing so would trigger strict application of the menu of regulations that are included in Title II.[31]

Finally, the media and telecommunications industries combined generate about one-sixth of the wealth in the U.S. economy, and broadband is now an essential component to improving quality of life for vulnerable populations and generating economic value for small businesses, especially those that are owned by minorities and women. Any possible disturbance that is spurring broadband adoption and access for these populations could have a particularly devastating impact because, as the recent recession and past downturns have demonstrated in stark detail, the consequences of negative economic shocks big and small tend to be felt much more profoundly in communities that are already reeling. This has certainly been the case for African Americans and Hispanics in the U.S. over the last few years: according to the Urban Institute, between 2007 and 2010, "Hispanic families saw their wealth cut by over 40 percent, and black families saw their wealth fall by 31 percent….[b]y comparison, the wealth of white families fell by 11 percent."[32]

For these reasons, the National Minority Organizations respectfully call on the Commission to keep the goals of broadband adoption, innovation and availability top of mind, recognize that these goals could be impaired by invoking Title II, and instead opt for open Internet rules based on Section 706.

---

[31] *See, e.g.,* Mike Montgomery, *How the FCC Can Save Net Neutrality and Still Ruin the Internet*, Huffington Post (Aug. 15, 2014), available at http://www.huffingtonpost.com/mike-montgomery/how-the-fcc-can-save-net-_b_5680464.html (last visited Sept. 14, 2014).

[32] *See* Signe-Mary McKernan *et al.*, *Less than Equal: Racial Disparities in Wealth Accumulation*, at 2, Urban Institute (April 2013), available at http://www.urban.org/UploadedPDF/412802-Less-Than-Equal-Racial-Disparities-in-Wealth-Accumulation.pdf (last visited Sept. 14, 2014).

IV. THE COMMISSION SHOULD LOOK TO TITLE VII OF THE 1964 CIVIL RIGHTS ACT AS A MODEL FOR OPEN INTERNET ENFORCEMENT MECHANISMS

The Commission's Internet enforcement mechanism should be modified to resemble the process embodied in Title VII of the 1964 Civil Rights Act to provide for robust, fair, and expeditious processing and action on consumer complaints. The National Minority Organizations respectfully urge the Commission to consider the enforcement model, described in our initial Comments, that is based on a similar mechanism detailed in Title VII of the 1964 Civil Rights Act, governing equal employment opportunity.

Instead of relying on a more formal complaint process under Section 208,[33] the Title VII model would allow a complainant to provide the Commission with enough information to make out a *prima facie* case of specific or systemic harm, allowing the Commission to conduct an initial screening and, if the Commission's staff issues a non-precedential finding of probable cause, the agency may institute expedited enforcement or mediation.[34] This model would provide consumers with an efficient, affordable and expedited means of pursuing alleged rule violations and other claims against service providers.[35] The National Minority Organizations collectively have enormous experience with Civil Rights Act Title VII EEO enforcement, and they remain at the ready to assist the Commission in crafting and implementing a consumer-friendly enforcement mechanism.[36]

V. CONCLUSION

Nearly 50 years ago, in June 1965, President Lyndon Johnson launched the War on Poverty with a stirring commencement address at Howard University. In his address, President

---

[33] *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).

[34] *See* Comments of the National Minority Organizations, at 14.

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

[36] *Id.* at 14.

Johnson made a forceful argument for leveraging the power of government not just to end racial discrimination but to assure genuine equal opportunity for all. "It is not enough," he said, "just to open the gates of opportunity. All our citizens must have the ability to walk through those gates."[37] Although much has changed in the ensuing decades, much has remained the same: communities of color still face profound obstacles in their march toward economic and social equality. Fortunately, new technologies like the Internet and new tools like powerful handheld devices are enabling significant progress forward in these and other historically disadvantaged communities.[38] Digital technologies represent perhaps the most level playing field imaginable for users of every kind. But the many benefits that these technologies might be able to generate are not automatic. Broadband must be adopted; devices must be purchased; digital literacy skills must be developed. For these reasons, the sentiment of President Johnson's remarks should guide the Commission's work on open Internet rules. New rules should protect consumers, incentivize innovation, investment and entrepreneurship, and close the digital divide. Accordingly, the National Minority Organizations urge the Commission to rely on Section 706 when developing open Internet rules.

---

[37] *See* President Lyndon B. Johnson, *Commencement Address at Howard University: "To Fulfill These Rights,"* June 4, 1965, available at http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650604.asp (last visited Sept. 14, 2014).

[38] *See generally* Joycelyn James *et al.*, *On the Path to the Digital Beloved Community: A Civil Rights Agenda for the Technological Age*, MMTC (Jan. 2012), available at http://library.mmtconline.org/BELOVEDBOOK.pdf (last visited Sept. 14, 2014).

Respectfully submitted,

By: _____

David Honig
President
Jacqueline Clary
Senior Counsel and John W. Jones Fellow
Minority Media and Telecommunications Council
3636 16th St. N.W., Suite B-366
Washington, D.C. 20010
(202) 332-7005
david@davidhonig.org

Counsel for the National Minority Organizations

Of Counsel:

Nicol Turner-Lee, Ph.D., Vice President and Chief
Research and Policy Officer, Minority Media and
Telecommunications Council

September 15, 2014