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February 11, 2016

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

RE: Notice of *Ex Parte* Communication In the Matters of GN Docket No. 12-268 Amendment of Parts 15, 73, and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by White Space Devices and Wireless Microphones; WT Docket No. 14-170 Updating Part I Competitive Bidding Rules Expanding the Economic and Innovation; GN Docket No. 12-268 Opportunities of Spectrum Through Incentive Auctions; WT Docket No. 05-211 Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures; WC Docket No. 11-42 Lifeline and Link Up Reform and Modernization; WC Docket No. 09-197 Telecommunications Carriers Eligible for Universal Service Support; WC Docket No. 10-90 (Connect America Fund); MB Docket No. 15-64 The Downloadable Security Technical Advisory Committee (DSTAC) Report

Dear Ms. Dortch:

This letter reports on a series of meetings held on February 8, 2016.¹ The first meeting was held with Commissioner Ajit Pai; Matthew Berry, Chief of Staff to Commissioner Pai; and Bernie Archbold, Legal Clerk. The second meeting held included Gigi Sohn, Counselor to the Chairman; Edward Smith, Senior Legal Advisor, Wireless Engineering and Technology, Consumer Affairs and Incentive Auction; Louisa Terrell, Advisor to the Chairman; Jessica Almond, Legal Advisor Media, Public Safety, and Enforcement; and Gabrielle Whitehall, Legal Intern. The third and final meeting was with Legal Advisors, Johanna Thomas, and Marc Paul from the Office of Commissioner Rosenworcel. Representatives from the Multicultural Media, Telecom and Internet Council ("MMTC") were Kim Keenan, President; Maurita Coley, Vice

¹ This *ex parte* is filed one day out of time owing to internal process issues. MMTC respectfully requests its consideration and acceptance.

President, Chief Operating Officer, Dr. Nicol Turner-Lee, Vice President and Chief Policy and Research Officer, and DeVan Hankerson, Research Director.

With respect to the Commission's "vacant channel" proposal, MMTC shared the *Ex Parte* letter recently filed on the issue.² MMTC shared in the meetings that low power television (LPTV) has proven itself as among the most successful means for achieving minority media ownership, and that the current "vacant channel" proposal would have a negative and disproportionately devastating impact on multicultural programming and broadcast station ownership by people of color. MMTC cautioned the Commission about moving forward on a proposal that displaces LPTV stations in favor of generating more unlicensed spectrum, in essence this gives unlicensed priority over these stations.

MMTC shared that many of the full power stations that are expected to surrender their spectrum in the Commission's incentive auction are among the few full power stations providing foreign language and diverse programming. If this occurs, LPTV may be the only source of programming left for many minority communities after the auction. Compounding the decrease in minority ownership, MMTC shared that the vacant channel proposal will leave many multilingual audiences without any options for news, information, and emergency programming in a language that they can understand.

MMTC also requested a status update on MMTC's Petition for Partial Reconsideration.³ In anticipation of the upcoming spectrum incentive auction, MMTC encouraged the Commission to act on the *four* potential incentives offered within the Petition:

1. Consideration of secondary market transactions as a factor in whether to give a carrier rule waivers relating to ownership, including the mergers and acquisitions ("M&As") context, and possibly attendant to the IP Transition.
2. Consideration of secondary market transactions as a factor in determining whether to report to Congress that the wireless marketplace is competitive.
3. Restoration and refinement of the Tax Certificate so that it would apply to secondary market transactions, enabling the seller to defer payment of the capital gains taxes on the sale upon reinvestment in comparable property.
4. Giving carriers that engage in secondary market transactions a bidding credit.⁴

It is MMTC's belief that the Commission could advance minority ownership of commercial wireless ownership for minority- and women-owned businesses by adopting all of these

² See MMTC Ex Parte regarding the Amendment of Parts 15, 73, and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by White Space Devices and Wireless Microphones; MB Docket No. 15-146, GN Docket No.12-268 (February 8, 2016).

³ See MMTC Petition for Partial Reconsideration; WT Docket No. 14-170 (Updating Part I Competitive Bidding Rules Expanding the Economic and Innovation) GN Docket No. 12-268 (Opportunities of Spectrum Through Incentive Auctions); WT Docket No. 05-211 (Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures) (February 8, 2015).

⁴ MMTC Part I PN Comments at 18-19 (fns. omitted). The National Urban League filed an ex parte letter in support of Proposal 4 – i.e., that a carrier that participates in secondary market transactions with designated entities could be provided a bidding credit for future auctions. See National Urban League Ex Parte Letter in Response to the Part I PN, WT Docket 14-170 et al. (filed July 9, 2015) at 2.

incentives. Moreover, given that many of these businesses will not have the access to capital to compete in the upcoming incentive auction, the secondary market offers tremendous opportunity to gain access to commercial spectrum, while increasing capital access and enhancing existing business models. The Petition for Partial Reconsideration also included a Declaration from Dr. Coleman Bazelon, one of the nation's leading wireless economists and an expert on secondary market transactions. In the document, Dr. Bazelon describes the criticality of secondary market transactions in enabling the FCC to administer a competitive and diverse wireless marketplace. Further, he explains why each of MMTC's four potential incentives for secondary market transactions would operate in practice to advance competition and diversity. Dr. Bazelon concludes that MMTC's four incentive proposals "provide potent tools for the FCC to encourage and incentivize minority participation in wireless transactions.

In these meetings, MMTC also updated the Commission on its advocacy around Lifeline reform. Without question, MMTC believes that the Commission should offer high-speed broadband as an eligible service as part of program reform. MMTC continues to partner with numerous civil rights and social justice organizations, and supports reforms offered by both the FCC Chairman and other Commissioners. MMTC also reiterated our support of coordinated enrollment and verification of Lifeline with the SNAP program. MMTC also recommended that the Commission create a national verifier, through either state agencies or the Universal Service Administrative Company ("USAC"), to work directly with the SNAP program to facilitate program eligibility, enrollment and de-enrollment. MMTC urged the Commission to get rid of ETCs to increase marketplace competition in the Lifeline program that would ensure that eligible consumers receive the product of choice. MMTC shared in the meetings that we will soon release a paper exploring costs, and the impact of reform on the program's reach and budget.

MMTC also discussed the Chairman's set top box proposal.⁵ MMTC noted that the Commission's technical advisory committee (DSTAC) did not reach consensus on the future of video devices. We urged the Commission to engage in more due diligence to understand the unintended consequences of this proposal on diverse and independent programmers, as well as how these changes affect consumer privacy protections.

On the Chairman's set top proposal, MMTC urged the Commission to address the harms imposed on consumers and diverse and independent programmers if manufacturers of these devices are given permission to ignore content licensing and financial agreements, and downplay consumer protections. MMTC also shared that the Commission should not be favoring companies, particularly companies with dismal diversity and inclusion track records. The current proposal transforms the television industry-- an environment place where diverse and independent programmers of all sizes have successful business models that have supported and grown their networks, we believe these businesses would be undermined.⁶ MMTC shared with

⁵ See FCC Chairman Proposal To Unlock The Set-Top Box: Creating Choice and Innovation, DOC-337449 (released January 27, 2016) ("Proposal").

⁶ See Letter to Tom Wheeler, Chairman, Federal Communications Commission, from members of the Congressional Black Caucus, regarding "AllVID," filed December 1, 2015, *available at* <http://futureoftv.com/wp-content/uploads/2016/01/Letter-from-CBC-to-Chairman-Wheeler-on-AllVid.pdf> (last visited February 10, 2016); Alfred Liggins, "Protecting Consumer Choice, Not Special Interests, In Video" THE TENNESSEAN, December 3, 2015, *available at* <http://www.tennessean.com/story/opinion/contributors/2015/12/03/protecting-consumer-choice-not-special-interests-video/76744898/> ("Alfred Liggins Op-Ed") (last visited February 10, 2016); Letter to Marlene

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the Commission that for decades diverse programmers have worked hard to gain carriage on TV platforms, and under the Chairman's proposal, they could become obsolete.

On the set top issue, MMTC also cautioned the Commission against adopting proposals that would allow tech companies to disaggregate the programming in pay TV services, repackage and rebrand it as their own, which in essence ignores the agreements these programmers have negotiated with their distributors in the pay TV space. MMTC also cautioned the Commission against promoting policies that apply different rules to video providers and violate consumer privacy protections, particularly if certain companies, such as Google, that engage in video distribution are able to gather and monetize consumer data. Moreover, MMTC cautioned against the proposal as it would bring about businesses models that disproportionately reduce the advertising revenue used by existing programmers and new content creators to develop, market and distribute quality programming.

Finally, MMTC asked questions about the forthcoming Notice of Inquiry (NOI) on diverse and independent programming. MMTC encouraged the Commission to avoid picking "winners" and "losers" and to do so by asking broad based questions that enhance the record on the issue. MMTC suggested that the Commission focus the NOI on the ecosystem to understand more about how the entire ecology (i.e, the pay TV market, the FCC, the consumer, and the video streaming companies) work together to foster or debilitate diverse and independent programming. MMTC encouraged the Commission to be neutral in the NOI to gather information that would determine substantive opportunities and challenges. In short, MMTC requested that the Commission work to generate a balanced NOI that will help paint a full picture of the current state of diverse and independent programming.

Respectfully submitted,

Kim Keenan

President and CEO

Dortch, Secretary, Federal Communications Commission, from Michael Schwimmer, CEO of Fuse Media, Inc., filed January 21, 2016, *available at* <http://apps.fcc.gov/ecfs/document/view?id=60001409844> ("FUSE Letter") (last visited February 10, 2016).