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April 27, 2016

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

RE: Review of the Emergency Alert System (EB Docket No. 04-296);
Recommendations of the Independent Panel Reviewing the Impact of Hurricane
Katrina on Communications Networks (EB Docket 06-119)

Dear Ms. Dortch:

This letter reports on meetings the Multicultural Media, Telecom and Internet Council (MMTC) held April 25, 2016, with: (1) Jessica Almond, Esq. Media, Public Safety, and Enforcement Legal Advisor to Chairman Tom Wheeler; (2) Commissioner Michael O’Rielly and his Chief of Staff and Media Legal Advisor Robin Colwell, Esq., and (3) Commissioner Ajit Pai and his Legal Advisor for Wireless, Public Safety, and International, Brendan Carr, Esq. Representing MMTC at the first meeting were MMTC Director of Communications Marcella Gadson and myself. Representing MMTC at meetings (2) and (3) were MMTC President and CEO Kim Keenan, Esq., Ms. Gadson, and myself.

At these meetings, we expressed concern regarding the Commission’s recent Order¹ essentially rejecting the Petition for Emergency Relief filed September 20, 2005 by MMTC, the Independent Spanish Broadcasters Association, and the Office of Communication of the United Church of Christ (the “Katrina Petition”).

The Katrina Petition and subsequent pleadings asked the Commission to ensure that before, during, and immediately after a catastrophic event such as a hurricane, individuals not proficient in English, who find themselves with no operational in-language radio station in the wake of the disaster, will have life-saving in-language information available within the regular programming of another, “designated hitter” station.

The caption of the Order referenced one of the dockets concerning the Emergency Alert System, but it omitted reference to the second docket, which relates to the advisory committee

¹ See Review of the Emergency Alert System, Order, EB Docket No. 04-296 (released March 30, 2016) (“Order”).

that examined emergency communications in the wake of Hurricane Katrina.² As we explained in our meetings, this omission may explain why the Order failed to mention several critical arguments and decisionally significant facts in the record:

- In 2011, the Commission’s Public Safety and Homeland Security Bureau asked MMTC to address the question of whether the Commission had jurisdiction to mandate a designated hitter system and whether such a system would infringe upon broadcasters’ First Amendment rights. MMTC responded by filing a Memorandum that showed that the Commission indeed has authority to mandate a designated hitter system under sections 303(r), 307, and 309 of the Communications Act.³ Further, MMTC demonstrated that there was no First Amendment impediment to such a system.⁴ None of this was mentioned in the Order, which found a lack of jurisdiction without addressing Sections 303(r), 307, or 309.
- MMTC showed that the costs of designated hitter service are virtually negligible, and that any costs could be offset by the contributions of other in-market broadcasters or by FCC waivers of regulatory or licensing fees.⁵ The Order failed to mention any of this.
- 57 national organizations, comprising virtually the entire civil rights movement, endorsed the Katrina Petition through several sign-on letters.⁶ The Order erroneously made it appear that MMTC was the only party favoring the relief in the Katrina Petition.

² See In the Matter of Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Notice of Proposed Rulemaking, EB Docket No. 06-119 (June 16, 2006).

³ See Minority Media and Telecommunications Council, FCC Jurisdiction to Adopt the Katrina Petition, EB Docket No. 04-296 (December 2, 2011).

⁴ See Reply Comments of the Minority Media and Telecommunications Council, Review of the Emergency Alert System, EB Docket No. 04-296 (June 12, 2014).

⁵ See, e.g., Letter to Marlene Dortch, Esq. from Kim Keenan, Esq, President and CEO, Multicultural Media, Telecom and Internet Council, EB Docket 04-296 and EB Docket No. 06-119 (January 21, 2016). The Order also ignored MMTC’s proposal that the Commission conserve resources by asking the Federal Emergency Management Agency (FEMA) “to ensure that broadcast professionals, particularly multilingual professionals communicating to at-risk populations, are treated as first responders and afforded priority in accessing transportation to and from radio stations that are providing emergency information to the public.” Id. As Commissioner O’Rielly pointed out in his partial dissent, the Commission failed to conduct a cost-benefit analysis to determine the costs associated with broadcast stations serving as designated hitters in times of emergency.

⁶ See, e.g., MMTC Partner Letter, EB Docket No. 04-296 and EB Docket No. 06-119 (August 26, 2015).

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- Finally, the Order made no reference to the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, or its findings, including the Panel's unanimous recommendation that the agency must mandate multilingual emergency alerts.⁷ The omission, from a rulemaking order, of the recommendation of a federal advisory committee appears to be unprecedented in the past two generations of FCC jurisprudence.

MMTC stated in each of its meetings that because the Order is so deeply flawed, it should be withdrawn as prematurely or improvidently released.

Sincerely,

David Honig

David Honig
President Emeritus and Senior Advisor

cc: Jessica Almond, Esq. Brendan Carr, Esq.
 Hon. Ajit Pai Robin Colwell, Esq.
 Hon. Michael O'Rielly

⁷ See Notice of Establishment of the Commission's Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, 71 Fed. Reg. 933 (2006).