

Minority Media and Telecommunications Council

3636 16th Street N.W. Suite B-366
Washington, D.C. 20010
Phone: 202-332-0500 Fax: 202-332-0503
www.mmtconline.org

May 7, 2009

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

Dear Ms. Dortch:

RE: Notice of *Ex Parte* Communication:

- GN Docket No. 09-29 (Rural Broadband Policy)
- GN Docket No. 09-40 (ARRA Consultation)
- GN Docket No. 09-51 (National Broadband Plan)

On behalf of the Broadband Diversity Supporters (“BDS”), this reports on meetings Jacqueline Clarey (MMTC Law Clerk), Marita Coley (MMTC Board Member), David Goodfriend (MMTC Board Member, participated in meeting (1) only), Timothy McNeill (Director, National Conference of Black Mayors), Joseph Miller (MMTC Earle K. Moore Fellow), Joycelyn Tate (MMTC Director of Telecommunications Policy), and I had on May 6, 2009 with: (1) Acting Chairman Michael Copps, Rick Chesson, LA, Jamila Bess Johnson, LA, Jennifer Schneider, LA; and (2) Shana Barehand and Emmitt Carlton of the Consumer and Governmental Affairs Bureau, David Goldman and Charles Mathias of the Wireless Telecommunications Bureau, and Claude Aiken, William Dever, Ian Dillner, William Kehoe, Jonathan Reel, Julie Veach, and Matthew Warner of the Wireline Competition Bureau.

During these meetings, we made the points:

1. **RUS Should Prioritize MBE and SDB Participation in the BTOP.** Congress directed NTIA to accord small and disadvantaged business (SDB) applicant’s priority in the awarding of BTOP grants. Oddly, these same SDB provisions do not apply to RUS. Nevertheless, the Department of Agriculture has authority under Executive Order 13170 to adopt 8(a) procedures and considerations similar to the NTIA’s SDB participation requirements. RUS should apply these 8(a) considerations to ensure that the explicit legislative intent to include substantial participation of MBEs and SDBs in the BTOP program is top priority. The Recovery Act also directs RUS to treat SDB status with the same level of importance as the other statutory criteria (i.e. at least one grant per State, the merits of the application in providing broadband access.)

2. **NTIA Should Adopt an Efficient Self-Certification Requirement to Determine SDB Status in Order to Avoid Creating a New Market Entry Barrier.** NTIA's adoption of an efficient self-certification process for SDBs help to avoid a market entry barrier for SDBs. A self-certification process is vital in enabling meaningful SDB participation by allowing existing and to-be-formed SDBs to promptly apply for grants. Time is of the essence for the BTOP application and awards process, thus, recognizing the limited financial and other resources of SDBs, they must not be slowed down, relative to non-SDBs, with burdensome certification requirements. (Comments submitted in this proceeding by the Small Business Administration also support self-certification.)
3. **NTIA and RUS Should Adopt the FCC's Size Standard for Designated Entities to Determining SDB Status.** In determining the size standard of an SDB, NTIA and RUS should adopt the size standard established in the 1990's by the FCC to identify designated entities rather than utilizing a default size standard. The FCC used a sized standard of \$40 million to determine the status of a company as a designated entity. While, based on current economic indicators, the FCC's standard may need adjustment; it is a measurably adequate standard for the NTIA to adopt. The NTIA's adoption of the FCC's size standard would also avoid the delay of determining an alternative size standard via a lengthy rulemaking process.
4. **NTIA Should Prioritize Service and Grant Funding to Low-Income/Minority Populations Across Unserved/Underserved and Urban/Rural Areas Alike.** As the definitions for "unserved" and "underserved" are being established, NTIA should give priority to certain constituents that have traditionally been structurally unserved or underserved by the market due to low-income, unemployment, race, and language. This resulting class of unserved and underserved populations cut across geographic boundaries, whether rural or urban. Broadband adoption can break this perpetual chain of structural poverty and exclusion by providing services to these communities that have historically been denied and neglected. For this reason, NTIA should provide explicit priority to these low-income and disproportionately minority populations in unserved and underserved areas, which are situated in both urban and rural locations.
5. **Role of the States.** States should be encouraged to provide their input with respect to identifying and prioritizing local projects for BTOP funding. However, NTIA and RUS should ensure that states do not impose applicant certifications that are more cumbersome than that of NTIA and RUS. Overly burdensome state procurement requirements such excessive bonding and insurance, previous large contract experience, and number of years in business serve as market entry barriers for small and minority-owned businesses and frustrate the purpose envision by the Recovery Act of priority consideration for SDBs. For this reason, NTIA should require states to adhere to federal regulations when reviewing certification of applicants. Additionally, The National Conference of Black Mayors wants to eliminate state governors' layering of burdensome requirements that limit local municipalities' access to BTOP funding.

6. **NTIA and RUS Should Not Give Priority to Bundled Service Proposals Because It Create Market Entry Barriers for SDBs.** NTIA and RUS should not give priority to multi-purpose applicants that proposals that address several purposes or serve several populations identified in the Recovery Act. Assigning such priorities would have the effect of creating market entry barriers to SDB and MBE applicants by encouraging “bundling” of projects, thus favoring very large applicants over SDBs. President Obama has made clear that his administration is working to unbundled services to promote competition and give all businesses a chance to compete to provide government services.
7. **NTIA’s \$250 Million for Broadband Adoption Programs Should be Consider a Floor, Not a Ceiling and the Programs Should be Prioritized.** The \$250 million in funds allocated for broadband adoption should be considered a floor, not a ceiling, for broadband adoption efforts. Priority for these funds should be geared toward programs that stimulate broadband adoption and literacy in low-income, minority, and multicultural communities. NTIA and RUS should actively seek the participation of MBEs, SDBs, and other organizations that have demonstrated a commitment and ability, to support local community-based projects that are culturally and linguistically competent to provide products and services to low-income, minority, and multicultural communities.
8. **Broadband Mapping Should be Granular and Include Social Metrics.** NTIA should require broadband maps to be granular (down to the street level), multifunctional, and layered to include social metrics such as poverty status, employment status, income, race and language. Mapping that includes critical granularity and social metrics are vital in order to address the needs of low-income and minority communities, ascertain the technical progress for each social metric, and ensure that broadband deployment is being distributed equitably. We are assured that Connected Nation, if allowed to participate, can provide the thorough mapping data required. For the purposes of BTOP, Connected Nation has assured its willingness to submit its mapping data for validation by third-party verification to ensure that the data is not skewed, while simultaneously maintaining proprietary confidentiality. (See Connected Nation’s comments filed in this proceeding.)
9. **Plans for the FCC Nationwide Hearings on National Broadband Policy.** (meeting (1) only): MMTC is drafting a proposal to be submitted to FCC concerning holding hearing nationwide on the national broadband plan. MMTC is looking to have the FCC hold these hearings in areas where the demographics for low broadband adoption are greater. Currently, MMTC has identified 12 areas across the country to hold these hearings, including: Washington, GA; Charleston, SC, Anacostia, D.C, Eastern Shore, VA, Memphis, TN, San Juan, Puerto Rico. The meetings are tentatively slated to begin in June 2009. The FCC Diversity Committee, the Conference of Black Mayors, and Tim Reid (actor, producer, ad director) have agreed to assist on this project.
10. **FCC 75th Birthday Celebration.** (meeting (1) only): MMTC proposed assist in organizing a celebration/program in recognition of the FCC’s 75th anniversary on June 19, 2009.

Marlene Dortch, Esq.

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11. **Sustainability.** (meeting (2) only): Once broadband service is deployed, consistent upgrades, providing relevant content and language, and affordability of services should be maintained in order to sustain quality service to minority and low-income populations. One way that this can be achieved is by allocating a portion of the universal service funds for Lifeline/Linkup to subsidize eligible broadband consumers.

12. **NTIA Should Provide SDBs Flexibility in Project Completion Requirements.** (meeting (2) only): SDBs should be given an exemption from the requirement to complete broadband projects in two years because SDBs are oftentimes hindered from the timely start of projects due to the disparities and discrimination they experience when trying to obtain financial lending and credit, which hinder SDBs ability to obtain the up-front capital needed to start and complete projects on time.

13. **Tax Incentives.** (meeting (2) only): A tax certificate program, similar to the FCC's former minority tax certificate policy, should be given to those companies that are in jeopardy of losing a BTOP award due to program violations if the company will sell the business to an SDB or MBE for less than the market value.

We strongly urged NTIA and RUS to adhere to the mandates of Congress in the administration of the BTOP by giving top priority to low-income and minority populations, which have traditionally been excluded from broadband service. We also stress to both agencies the importance of providing opportunities for maximum participation of SDB and MBE applicants and carriers that propose to serve traditionally unserved and underserved communities.

Sincerely,

David Honig

David Honig
Executive Director