

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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Opportunities For Disadvantaged)	GN Docket Nos. 09-47, 09-51, 09-137
Businesses In The Age Of Broadband)	
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**REPLY COMMENTS OF THE MINORITY MEDIA AND
TELECOMMUNICATIONS COUNCIL IN RESPONSE TO NBP PN #9**

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Summary

The Minority Media and Telecommunications Council (“MMTC”)¹ respectfully submits the following Reply Comment in response to the Commission’s Public Notice Seeking Comments on Opportunities For Disadvantaged Businesses In The Age Of Broadband, National Broadband Plan Public Notice #9 (“Notice”).²

Despite the presumptive meritocracy created by the Internet, SDBs and MBEs continue to be underrepresented among successful technology and Internet companies. While the Internet has produced runaway successes, few of these companies are minority owned. This disparity is substantially attributable to low broadband adoption and digital literacy rates in neglected communities and poorly enforced, insufficiently tailored, and inconsistent regulations. The Commission should pursue these underlying issues as vigorously as it pursues broader policy goals.

Small businesses in unserved and underserved areas stand to benefit the most from including broadband technology in their business plans. No longer should the Commission seek to reach these businesses without establishing an active, ongoing dialogue with the community anchor institutions closest to them.

Implementing existing race-neutral frameworks to engage SDBs and MBEs is preferable than continuing on the current course of inaction. To the extent the Commission can adopt approaches taken by state and local governments, it should do so. The Commission should also

¹ These Reply Comments reflect the institutional views of MMTC and are not intended to represent the individual views of each of its officers, directors and members.

² See Comments Sought On Opportunities For Disadvantaged Businesses In The Age Of Broadband NBP Public Notice #9, GN Docket Nos. 09-47, 09-51, 09-137 (released September 28, 2009) (“Notice”).

seriously consider existing proposals for more thorough oversight of SDB and MBE engagement.

The Commission should work with local stakeholders to develop successful programs to support SDBs and MBEs. Several non-profit models, including business incubation programs, have been indispensable to the acceleration of many non-minority owned businesses. The Commission should seek to incentivize the development of these programs in unserved and underserved areas.

I. PLANS TO INCREASE THE NUMBER OF SDBS INCORPORATING BROADBAND INTO THEIR BUSINESS MODELS MUST ADDRESS ACCESS, AFFORDABILITY, DIGITAL LITERACY, AND CULTURAL FACTORS PREVENTING ADOPTION

The Commission seeks comment on obstacles that “prevent SDBs from taking advantage of broadband technology: (i) lack of available broadband; (ii) lack of affordable broadband or budgetary constraints; (iii) digital literacy concerns; or (iv) social/cultural considerations.”³ MMTC believes all of these factors are either known or likely to prevent ubiquitous SDB broadband adoption.

In its Comments submitted in response to the Commission’s Section 706 Inquiry,⁴ the Broadband Opportunity Coalition (“BBOC”) stated that “by no stretch of the imagination” is

³ See In the Matter of Comments Sought on Opportunities for Disadvantaged Businesses In the Age of Broadband, NBP Public Notice #9 FCC GN Docket Nos. 09-47, 09-51, 09-137 (released September 28, 2009)(“Notice”).

⁴ See Comments of the Broadband Opportunity Coalition, 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 and A National Broadband Plan for Our Future, GN Docket Nos. 09-137 and 09-51, filed September 3, 2009 (“BBOC 706 Comments”).

advanced broadband capability being deployed in a reasonable and timely fashion.⁵ As the Commission is aware, broadband mapping data is severely lacking. Therefore, BBOC submitted anecdotal examples demonstrating a lack of available broadband, including that of Weirwood, Virginia, a community that is not equipped with even the basic electrical outlets and wiring necessary to safely access the Internet via broadband.⁶ Communities like Weirwood represent an enormous untapped talent pool, far away from the suburbs often regarded as crucibles of enterprise and creativity.⁷

The disproportionately high cost of broadband is also a likely barrier to broadband adoption by SDBs. In its National Broadband Plan Comments, the Broadband Diversity Supporters (“BDS”) suggested that the Commission forego determining a precise economic “affordability” measure until it has developed a sufficient record of empirical data.⁸ However, the Commission should not make a final conclusion regarding accessibility until it has determined how affordability will play a role in the assessment.⁹

⁵ See *id.* at 6.

⁶ See *id.* at 7-8.

⁷ See, e.g. Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, “Preserving a Free and Open Internet: A Platform for Innovation, Opportunity, and Prosperity” at the Brookings Institution, September 21, 2009, available at <http://blog.openInternet.gov/?p=1> (last visited October 20, 2009) (stating, “Our work now is ... to make sure that, in the 21st century, the garage, the basement, and the dorm room remain places where innovators can not only dream but bring their dreams to life.”).

⁸ See Initial Comments of the Broadband Diversity Supporters (Corrected), In the Matter of a National Broadband Plan for Our Future, GN Docket 09-51, filed July 5, 2009 (“BDS’s NBP Comments”) at 9 (citing MMTC, A Proposal for National Field Hearings, GN Docket 09-51, submitted June 7, 2009 (“MMTC National Hearing Proposal”)).

⁹ See *id.* (stating that “Individuals cannot be said to have meaningful access to services they cannot afford, and the Commission’s definition and determination of the meaning of “access to broadband capability.”).

Digital literacy is as important for SDBs as it is for students. Digital illiteracy causes SDBs to miss opportunities for using broadband to improve their operations, marketing, sales, and distribution channels and it impedes their employees' ability to compete against larger, more digital-savvy competitors. Accordingly, BDS and others have recommended that the Commission promote and fund digital literacy programs in unserved and underserved areas.¹⁰ The Commission should ensure its digital literacy outreach efforts include SDBs.

The Commission should also be sensitive to the impact its policies will have on communities of color and should avoid making wholesale changes to its policies before adequately considering the effects these new policies may have on these communities. The potential risk of acting prematurely, however well-intentioned, with broad-based policies, was made evident recently when the Commission applied a Sunshine ethics waiver to favor those posting comments to the FCC broadband blog, over those who file comments via ordinary channels.¹¹ In allowing the waiver exception, the Commission overlooked individuals who do not have access to broadband.¹² Similarly, before implementing other well-intentioned rules, the Commission should always consider their potential distributive impact before assuming that a

¹⁰ See e.g. MMTC Roadmap for Telecommunications Policy (July, 2008) (“MMTC Roadmap”) at 10 available at <http://www.mmtconline.org/filemanager/fileview/165/> (last visited October 21, 2009) (stating that Internet literacy in public schools is a legislative priority.). See also BBOC's NBP Comments at iii, 6-7 (stating that improving digital literacy must be the Commission's first priority in developing the National Broadband Plan).

¹¹ See Revised Sunshine Notice, FCC To Hold Open Commission Meeting Thursday, October 22, 2009 (released Oct. 16, 2009) (“Revised Sunshine Notice”) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294028A1.pdf). The parties submitting this comments filed a motion for the Commission to mitigate any harm done and include traditional methods of ex parte communications. See Emergency Motion to Correct or Amend the Revised Sunshine Notice, In the Matter of Preserving the Open Internet Broadband Industry Practices, WC Docket No. 07-52, filed October 19, 2009 (“Sunshine Motion”).

¹² See id.

mass-market fix will reach areas where it is most needed. BBOC and others have recommended that the Commission consult with local organizations on an ongoing basis to avoid such unintended consequences.¹³

II. GOVERNMENT AGENCIES SHOULD WORK CLOSELY WITH LOCAL ORGANIZATIONS TO DEVELOP MARKET AND COMMUNITY-SPECIFIC SOLUTIONS

Local organizations have an important role to play in ensuring that Commission policies remain relevant to the communities they serve. The nonprofits and community organizations to be engaged would include “local and national nonprofit organizations that are engaged with the communities in which they operate,”¹⁴ Historically Black Colleges and Universities (“HBCUs”), Hispanic Serving Institutions (“HSIs”), Native American Serving Institutions (“NASIs”), Asian American Serving Institutions (“AASIs”), and similar learning institutions positioned to contribute intellectual capital to SDBs. Just as digital marketing is hyper-targeted, so should the Commission’s policies reflect input from each community.

III. THE COMMISSION SHOULD USE SPECIFIC TACTICS THAT INCENTIVIZE SDB UTILIZATION IN THE BROADBAND CONSTRUCTION PROCESS

A. The Commission Should Enter Into Memoranda of Understanding With Prime Contractors to Secure Their Best Efforts to Engage SDBs

On July 19, 2009, MMTC submitted to the National Telecommunications and Information Administration (NTIA) and the Rural Utilities Service (RUS) a list of thirteen, race-

¹³ See BDS’s NBP Comments at 24-25 (stating that the Commission should “work with existing, well-respected national and community institutions and creative new entrants to amplify their outreach ...” and that the National Broadband Plan should “feature substantial involvement of locally-based MBEs, SDBs and nonprofit organizations with demonstrated commitment, ability and experience to meet the needs in applicable communities.”).

¹⁴ See BDS NBP Comments at 25-26.

neutral proposals to enhance SDB and MBE participation in the broadband stimulus.¹⁵ The foundations for these proposals were two frameworks for Memoranda of Understanding (“MOUs”) with prime contractors, developed and implemented by the Public Service Commission of Maryland and the California Public Utilities Commission.

We recommend the Commission follow the lead of Maryland and California and enter into nationwide MOUs with prime contractors stating that these contractors would make best efforts to engage MBEs and SDBs, as evidenced by certain benchmarks, in exchange for incentives provided by the Commission.¹⁶ For example, in exchange for meeting certain benchmarks, prime contractors would be entitled to waive the reporting requirement under the MOU. MOUs, while flexible and negotiable, would promote a collaborative environment under which prime contractors and the Commission would work in partnership toward the common goal of ensuring disadvantaged businesses are given a fair opportunity to participate in the broadband construction. Specifically, we recommend that the Commission begin immediately to develop an MOU containing the following proposals and components:

1. Set Goals not Quotas and Do Not Penalize for Failure to Meet Goals
2. Require Prime Contractors to Develop Internal Procedures and Policies to Ensure Maximum Participation by SDBs and MBEs
3. Require Annual Review/Report from Prime Contractors on SDB and MBE Utilization and Procurement Practices
4. Reporting Requirements for Any Modifications to MBE Program
5. Establish Certification Requirements for Participating SDBs and MBEs

¹⁵ See Best Practices for Engaging Minority Business Entities, In the Matter of Joint National Telecommunications and Information Administration-Rural Utilities Service Request for Information Docket No. 090309298-9299-01, filed July 19, 2009 (“MBE Best Practices Memo”).

¹⁶ See id.

6. Include SDBs and MBEs in a Centralized Database/Clearinghouse
7. Delineate Specific Implementation Tactics
8. Requirement for Annual Report
9. Requirement for Annual Plan
10. Opportunity to Review and Report; Public Hearings
11. Prime Contractors Voluntarily Enter Into MOU
12. MOU not a Waiver of a Right to Sue
13. Termination: Either Party May Terminate Upon Filing of Written Notice.¹⁷

An MOU system is an effective, non-adversarial system that may be implemented without the need to “reinvent the wheel.” The Commission should adopt this MOU framework as part of its mandate to encourage diversity in the media and telecommunications industries.

B. The Commission Should Develop a Case Worker System to Educate Businesses Interested In Using Broadband and the Internet to Remain Competitive

The Commission should also hire caseworkers to educate businesses interested in using broadband to improve profits and remain competitive. We agree with BDS’ assertion in its NBP Comments that “applicants will need sophisticated help identifying their needs and applying to the appropriate mix of entities for assistance.”¹⁸ Therefore, we too recommend a caseworker system to help educate and assist SDBs. Using technology, such as a multifunctional applications management system, the Commission would be well equipped to respond appropriately to the unique needs of each potential contractor.

¹⁷ See *id.* at 18.

¹⁸ See BDS NBP Comments at 22.

IV. THE COMMISSION SHOULD RECOGNIZE A POTENTIAL FOR INNOVATION FROM ALL CORNERS OF THE COUNTRY AND SUPPORT PUBLIC/PRIVATE TECHNOLOGY INCUBATION PROGRAMS THAT STIMULATE ECONOMIC DEVELOPMENT IN NEGLECTED AREAS

As the BBOC suggested in its Section 706 Comments,¹⁹ a full economic recovery is dependent upon citizens from every corner of the country contributing to a “Gross Innovation Product” (“GIP”).²⁰ Traditionally, innovation is thought of as coming primarily from suburban communities and from communities with close ties to technology hubs such as Palo Alto and Cambridge. However, if the federal government is to stimulate real and sustained economic growth, the potential for ingenuity must be recognized as coming not just from a select few, but from everyone with the gumption and drive to make the world a better place through technology. As such, the Commission’s SDB provisions should envision public/private business incubator programs, in unserved and underserved areas, that model existing, successful business incubation programs, such as the YCombinator in Mountain View, California and DreamIt Ventures in Philadelphia, Pennsylvania.²¹

Conclusion

The National Broadband Plan is a once-in-a-lifetime opportunity to ensure a variety of democratizing innovations are made permanent. Part of keeping the Internet democratic is enabling all citizens and businesses, including SDBs and MBEs, to participate, whether by

¹⁹ See BBOC 706 Comments at 4 (stating, “If, by 2042, the majority of Americans are unable to contribute to such a GIP, the American economy may once again find itself operating poorly. Thus, the Commission should work to remove barriers to adoption with the same alacrity with which it promotes network neutrality for those who already have access to the most innovative technology available.”).

²⁰ See id.

²¹ See Emily Maltby, Need Funding? Better Get Creative, Wall Street Journal (October 15, 2009) (discussing business incubators as a potential financing source for small businesses).

incorporating broadband technologies into existing, brick-and-mortar businesses, or engaging in the broader process of innovation and creativity.

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