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Federal Communications Commission
Office of the Secretary

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From: Matt Wood [mwood@mediaaccess.org]
Sent: Monday, March 08, 2010 8:45 PM
To: Julius Genachowski; Michael Copps; Robert McDowell; Mignon Clyburn; Meredith.Attwell.Baker@fcc.gov
Subject: Public interest groups' letter regarding diversity issues
Attachments: Public Interest Section 257 Letter - March 8 2010.pdf

Dear Chairman Genachowski and Commissioners Copps, McDowell, Clyburn, and Baker:

Attached for your reference please find a copy of a letter, addressed to Chairman Genachowski and filed this evening in three Commission dockets, regarding the Commission's promotion of media, telecommunications, and broadband opportunities for all.

Nineteen civil rights and media reform organizations and advocates, which are listed at the end of this message and in the attached document, signed this letter commending the Commission's ongoing efforts to promote diversity. The letter respectfully suggests, however, that the Commission should move ahead with its triennial Section 257 inquiry, its collection of media ownership data on Form 323, and other measures designed to fulfill statutory mandates favoring a diversity of media voices as well as entrepreneurs' ownership of telecommunications and information services.

We filed the letter in the Commission's National Broadband Plan (09-51), Future of Media (10-25), and Broadcast Diversity (07-294) dockets. Please do not hesitate to contact me if you have any questions regarding this submission.

Best regards,
Matt Wood

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Media Access Project
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Organizations and individuals signing the letter:
Afro-Netizen
Alliance for Community Media
Benton Foundation
Prof. Angela J. Campbell, Georgetown Law
The Center for Media Justice
Center for Rural Strategies
Free Press
Main Street Project
Media Access Project
Media Alliance
Mountain Area Information Network
National Alliance for Media Arts & Culture
National Association of Hispanic Journalists
National Federation of Community Broadcasters
Public Knowledge
Reclaim the Media
Texas Media Empowerment Project
United Church of Christ, Office of Communication, Inc.
U.S. Public Interest Research Group

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List A B C D E

March 8, 2010

Hon. Julius Genachowski
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte* Submission
GN Docket No. 09-51 (National Broadband Plan)
GN Docket No. 10-25 (Future of Media)
MB Docket No. 07-294 (Broadcast Diversity)

Dear Chairman Genachowski:

The undersigned organizations have long fought for increased diversity in the media and communications landscape, including the increased representation of people of color and women, so that the composition of our public discourse, news, entertainment, and communications infrastructure might truly reflect our nation's rich cultural fabric.

Today, we renew our call for the Commission to continue making increased diversity a top priority, in fulfillment of your statutory mandate to "promote the policies and purposes" of the Communications Act that "favor[ ] diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity."[1]

As you know, Congress requires a review every three years of the Commission's efforts to promote opportunities for "the provision and ownership of telecommunications services and information services" by entrepreneurs and other small businesses.[2] Section 257 instructs the Commission not only to report on any "market entry barriers for [such] entrepreneurs and other small businesses" but also to ***eliminate*** such barriers.[3] The Commission's emphasis in such endeavors must include enhancing representation in media and telecommunications for typically marginalized communities and under-represented populations. Thus, Section 257 must be read in conjunction and in harmony with the Commission's obligation to promote the dissemination of licenses to "businesses owned by members of minority groups and women."[4]

Twenty-three civil rights and media reform organizations recently wrote you to express concern that communities of color still face numerous barriers to entry of precisely the kind that Section 257 directs the Commission identify and address.[5] These barriers to

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1 47 U.S.C. § 257(b).

2 *Id.* § 257(a).

3 *Id.* § 257(a), (c).

4 *Id.* § 309(j)(3)(B); *see also* Section 257 Report to Congress, *Report*, 15 FCC Rcd 15376, ¶ 55 (2000).

5 *See* Letter from Asian American Justice Center *et al.* to Hon. Julius Genachowski, GN Docket No. 09-51 (filed Feb. 16, 2010).

diversity have of late only grown larger, due to a variety a factors including economic recession, industry practices and public policies that have ignored or even widened the digital divide, and increased concentration in media and telecommunications ownership. We note at the outset that, according to the Commission's website, you have circulated an item to the full Commission to begin the mandatory triennial Section 257 inquiry.[6] A full two months later, this critical item remains pending. We call upon all of the Commissioners to focus on the pending Section 257 item, and urge your continued leadership in quickly facilitating a vote on this item.

You have championed initiatives to spur availability of broadband and adoption in communities of color and Native American communities. As always, the undersigned applaud the Commission for its ongoing efforts to bring attention to and then resolve such issues. We join our friends and colleagues at Native Public Media and the National Congress of American Indians in lauding the Commission's decision to establish a new "Tribal Priority" in the broadcast licensing process that should result in new Tribally owned radio stations. Similarly, you announced last week new Commission efforts made part of the National Broadband Plan to increase broadband adoption in Tribal communities, and indicated that the plan will recommend considering expansion of the Tribal licensing priority policy to fixed and mobile wireless licenses.[7]

These kinds of decisions fulfill the goals of Section 257 and other provisions in the Act by promoting diversity, localism, access, adoption, new entry, and the public interest. We also congratulate the Commission for appointing Mark Lloyd as Associate General Counsel and Chief Diversity Officer, and encourage you to rely on his immense talent, experience, and expertise in these matters. Nevertheless, we are compelled to note that much work remains – both in implementing the National Broadband Plan and in an array of Commission proceedings – to continue promoting equal opportunities for ***all*** Americans, including people of color and other historically under-served communities.

For instance, the Commission should act promptly to set a new filing date for the revised ownership Form 323. Since 1998, the Commission has required broadcast licensees to report race, ethnic origin, and gender data on Form 323 to (1) allow the Commission to determine accurately the state of minority and female ownership, (2) determine the need for measures designed to promote ownership by minorities and women, and (3) gauge the success of any such measures adopted by the Commission.[8] Many of the undersigned

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[6] *See* FCC Items on Circulation, http://www.fcc.gov/fcc-bin/circ_items.cgi (last visited March 8, 2010) (noting January 8, 2010, circulation date for "Section 257 Triennial Report to Congress Identifying and Eliminating Market Entry Barriers and Other Small Businesses").

[7] *See* "Chairman Genachowski Highlights Strategy for Increasing Broadband Access in Indian Country," *Release* (Mar. 2, 2010), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296644A1.pdf; Prepared Remarks of FCC Chairman Julius Genachowski to the National Congress of American Indians, Mar. 2, 2010, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296645A1.pdf.

[8] 1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules & Processes; Policies & Rules Regarding Minority & Female Ownership of Mass Media Facilities, *Report & Order*, 13 FCC Rcd 23056 (1998).

organizations, as well as others, have pointed out deficiencies in the Commission's information-gathering on these topics. For example, in detailed studies and comments filed in 2006 and 2007,[9] signatories to this letter demonstrated that the Commission collected data in a way that it made it unusable for its intended purposes. Thus, in May 2009, after soliciting extensive public comment, the Commission revised Form 323 to obtain more accurate data on minority and female ownership and set November 1, 2009, as the filing date for the revised form.[10] The Commission subsequently extended the filing deadline several times while it responded to petitions for reconsideration and comments filed at the OMB, and set a new deadline of January 11, 2010. Then, after a meeting with industry representatives who complained about technical difficulties with the electronic filing, the Commission suspended the filing date indefinitely.[11]

Given the Commission's commitment to make decisions that are "fact-based and data driven" the Commission should take immediate steps to address any remaining technical problems and set a new filing date for Form 323.

Other issues in both the media and broadband sectors are likewise most worthy of the Commission's renewed attention. Such attention and action must include explicit recognition that the decisions made in these proceedings will have a direct impact on communities of color and others who still face obstacles to participation. The Commission will soon launch its 2010 quadrennial media ownership review – hopefully, to be informed by the new data that collection of Form 323 will yield. We call on the Commission to address in that review and its Future of Media proceeding the structural barriers that historically and presently hinder people of color and women from owning broadcast stations, and echo the demand for increased inclusion of representatives from such communities in Commission workshops on these issues.

We also urge the Commission to examine closely the impact that the proposed Comcast-NBC joint venture would have on diversity of media voices and ownership opportunities. The proposed combination could make barriers to entry even higher for people of color and women seeking to own broadcast or cable outlets, or those who supply video programming and online content for such outlets, by allowing the creation of an even larger and more powerful, vertically integrated media gatekeeper.

Within the context of the National Broadband Plan, we agree that the Commission must focus explicitly on proposals to increase adoption and close intractable digital divides. To accomplish these aims, the Commission must increase competition in the broadband

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[9] *See, e.g.*, "Out of The Picture 2007: Minority & Female TV Station Ownership in the United States," http://www.freepress.net/files/otp2007.pdf; Comments of Office of Communication of the United Church of Christ, Inc. ("UCC"), the National Organization for Women Foundation ("NOW"), Media Alliance, Common Cause, and the Benton Foundation, MB Docket No. 06-121, at 11 (filed Oct. 1, 2007).

[10] Promoting Diversification of Ownership In the Broadcasting Services, *Report and Order & Fourth Notice of Proposed Rulemaking*, 24 FCC Rcd 5896, ¶ 12 (2009).

[11] Promoting Diversification of Ownership In the Broadcasting Services, MB Docket No. 07-294 *et al.*, *Order*, DA 09-2618, ¶ 1 (rel. Dec. 23, 2009).

market, and also must transform the Universal Service Fund to provide explicit support for broadband deployment and adoption through changes to the High Cost, E-Rate, and Lifeline/Link-up mechanisms.

Finally, we ask that the Commission move forward on the National Hispanic Media Coalition's petition of inquiry requesting study of the growing presence of hate speech on our public airwaves and the impact of such discourse on our society.

All of these issues are of paramount importance and must not be set aside while the Commission focuses on other tasks. We would welcome an opportunity to continue this discussion with each of the Commissioners and Commission staff, and look forward to fostering a dialogue in which the undersigned groups and our allies in the civil rights community can be assured that issues affecting people of color and women will receive the Commission's focused attention. It is critical to our national interests for the Commission to address, expressly and head-on, the readily apparent lack of diversity throughout our media and communication systems.

Respectfully submitted,

Afro-Netizen
Alliance for Community Media
Benton Foundation
Prof. Angela J. Campbell, Georgetown Law
The Center for Media Justice
Center for Rural Strategies
Free Press
Main Street Project
Media Access Project
Media Alliance
Mountain Area Information Network
National Alliance for Media Arts & Culture
National Association of Hispanic Journalists
National Federation of Community Broadcasters
Public Knowledge
Reclaim the Media
Texas Media Empowerment Project
United Church of Christ,
Office of Communication, Inc.
U.S. Public Interest Research Group

/s/ Matthew F. Wood

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cc: Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker