

Minority Media and Telecommunications Council

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May 7, 2010

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

RE: GN Docket 09-191 (Preserving the Open Internet)

Dear Ms. Dortch:

This reports on telephone calls I had Thursday, March 6, 2010 with Commissioner Mignon Clyburn, Commissioner Michael Capps, Enforcement Bureau Chief Michele Ellison and OCBO Director Thomas Reed, and today with Ms. Ellison. I made these points (on one or more of the calls) regarding Network Neutrality:

1. The potential reclassification of broadband transmission as a Title II service (the “Third Way” proposal) was announced in a statement that did not mention or refer to minorities, women, MBEs, WBEs, SDBs, new entrants or disadvantaged businesses. Thus it appears that the issues raised in this docket by the National Organizations (price flexibility and new entrant incubation being prohibited under draft Net Neutrality Principle 5) would not be addressed through forbearance if broadband transmission were reclassified under Title II - thereby imposing new barriers to entry on minority digital entrepreneurs and inhibiting broadband adoption.
2. The key MBE/WBE protection, 47 U.S.C. §257 (1996) is among those selected for forbearance. This apparently marks the first occasion since 1964 when senior federal officials proposed forbearance from enforcement of a federal civil rights law.¹
3. Title II services are exempt from FTC consumer protection regulation, thus denying consumers an effective means to combat redlining and related forms of racial discrimination. By the mid-1990s, with the help of state PUC officials including then-South Carolina PSC Chair Mignon Clyburn as well as several women and minorities who served with distinction as senior state-level telecom officials, civil rights organizations were successful in ending nearly all telecom redlining. However, broadband is a new service, and we should be concerned about the failure of leading Internet content providers and edge companies even to release their EEO statistics. With the Title II reclassification proposal, the Commission appears to have abandoned its earlier willingness to consider extending civil rights regulations to content providers.
4. Lender and investor uncertainty stemming from potentially years of litigation over Title II reclassification could make it profoundly difficult for MBEs and new entrants to secure financing. MBEs, especially, continue to experience great difficulty securing access to capital in the broadband space.

Respectfully submitted,

David Honig

David Honig
President and Executive Director
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¹ The Commission’s 2009 Section 257(c) Triennial Report (due December 31, 2009) has not yet been released.