



**Minority Media &
Telecom Council**

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March 13, 2014

Hon. Tom Wheeler
Hon. Mignon Clyburn
Hon. Ajit Pai
Hon. Jessica Rosenworcel
Hon. Michael O’Rielly
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Dear Mr. Chairman and Commissioners:

RE: Process Reform, GC Docket No. 14-25 and GC Docket No. 10-43

The Minority Media and Telecommunications Council (“MMTC”) respectfully submits these comments in response to the Commission’s *Public Notice* in the above-referenced proceeding.¹

By way of background, MMTC is a national not-for-profit organization dedicated to promoting and preserving equal opportunity and civil rights in the mass media, telecommunications, and broadband industries. MMTC is the leading advocate for minority participation in the communications industries. We seek to preserve and expand minority ownership and equal employment opportunity in these industries and to close the digital divide.

I. Introduction and Summary

MMTC commends the Commission for proactively pursuing changes to its rules that would allow the agency to “operate in the most effective, efficient, and transparent way possible.”² At the same time, MMTC urges the Commission to strongly consider all of the ramifications of any approaches proposed in the Staff Working Group Report that would stifle advocacy and artificially constrain the record upon which the Commission bases its decisions.

¹ See *FCC Seeks Public Comment on Report on Process Reform*, Public Notice, DA-14-199, GN Docket No. 14-25 (Feb. 14, 2014) (“*Process Reform Public Notice*”). This letter is also being filed as an *ex parte* presentation in GC Docket No. 10-43.

² FCC Staff Working Group, *Report on FCC Process Reform 3* (rel. Feb. 14, 2014) (attachment to *Process Reform Public Notice*) (“*Report on Process Reform*”).

Recommendation 5.44, entitled “Transparency as to Real Party in Interest,” is such a recommendation. Although this recommendation is honorably intended and might seem innocuous at first blush, its adoption would substantially reduce the quality, quantity, and diversity of advocacy before the agency. Notably, and as discussed below, it would reduce participation in Commission proceedings by at least three important groups: (1) small businesses, and minority business enterprises (MBEs) in particular, (2) whistleblowers, and (3) underrepresented interest holders, including minorities and the poor. Adopting this recommendation would therefore be contradictory to the Commission’s goals, and the agency should reject it.

At its core, Recommendation 5.44 (and the underlying rules that it urges the Commission to adopt) would establish, as a prerequisite to the right to petition the agency, a requirement to disclose all those persons whose financial or other support were necessary to facilitate such advocacy. This recommendation is plainly a solution in search of a problem. Nothing in the agency’s record in the underlying proceeding establishes a systemic problem with respect to the ability of the Commission, other parties, or the public to “evaluate the credibility of factual and policy arguments by knowing who is making them.” To the contrary, the record demonstrates the *dearth* of any such problem. Moreover, imposing such a requirement upon those seeking to petition the Commission would directly impede the noble goals of process reform, which include lessening the burdens on regulatees and enhancing public outreach. An “enhanced disclosure” requirement would discourage many of the parties to whom the right to petition the FCC is most critical – small businesses, whistleblowers, minorities, the poor, and other underserved and underrepresented groups – by making them less likely to speak out individually, or less likely to support organizations that play a critical role in the policy making process by speaking out on their behalf.

Adopting an enhanced disclosure requirement would also be an affront to the First Amendment rights to speech and association and the Fourteenth Amendment right to due process. It is well established that persons have a right to express their views anonymously, whether such views “pertain to political, economic, religious, or cultural matters.”³ Whatever interest the Commission may have in identifying “the real party-in-interest behind FCC filings,” it cannot outweigh the strong interest of persons to contribute to causes that they value and to associate in support of shared goals.

II. The Record Is Devoid Of Any Evidence Of A Problem That Requires Regulatory Intervention.

The Staff Working Group’s Report on Process Reform describes its purpose as seeking to “examine[] the agency’s internal operations with a critical eye, looking at what the [Commission] does well and what it can do better.”⁴ Accordingly, the Report adopted a two-step approach to process reform: (1) “identifying challenges affecting the efficiency and transparency

³ See, e.g., *NAACP v. Alabama*, 357 U.S. 449, 460 (1958).

⁴ *Report on Process Reform* at 3.

of Commission operations”; and (2) “recommending ways to analyze and address those challenges.”⁵ Recommendation 5.44, however, merely pays lip service to this first step, providing a solution without first establishing the existence of a problem.

The “challenges” identified in Recommendation 5.44 are theoretical, at best. Notably, the Recommendation begins not by explaining the prevalence of non-disclosure or how it materially affects the regulatory process, but rather with the apt observation that “[i]n most cases a filer’s motives are apparent.” The Recommendation does not include any examples of circumstances in which a party’s failure to properly and fully identify itself has resulted in confusion or has otherwise distorted the Commission’s decision making. Instead, the Recommendation is premised on the hypothesis that “an organization purporting to represent consumer interests may actually represent industry, or may be influenced by industry contributions.” The Report makes no attempt to explain why such a theoretical risk, with no concrete examples, justifies regulatory reform. Nor could it, because the Administrative Procedure Act requires record evidence of a problem before an agency can lawfully impose new regulatory burdens.⁶

It is not surprising that the Staff Working Group was unable to provide a compelling justification for adopting a real party in interest requirement. The record in the underlying proceeding, despite *two specific requests* from the Commission for comment on the need for enhanced disclosure rules, also was limited to vague allegations and hypothetical concerns. If anything, the record in the underlying proceeding establishes that there is no problem. For example, despite the speculative concerns about ad-hoc committees that T-Mobile has recently raised in the rulemaking,⁷ key supporters of enhanced disclosure agreed that the lack of full disclosure was at most an occasional problem.⁸

To adopt new, burdensome regulations on such a thin record is no different from statehouses across the country adopting voter identification laws with virtually no evidence of any actual voter fraud. As has been widely reported, many states in recent years have rushed to enact laws that would require voters to provide specific forms of photo IDs at the polls – laws that disenfranchise the poor, minorities, and the elderly, all of whom are less likely to have photo IDs. Yet, despite the glowing rhetoric to the contrary, the federal panel tasked with researching the issue recognized that, among experts, “there is widespread but not unanimous agreement that there is little polling place fraud.”⁹ Just as with voter identification, the proposed enhanced

⁵ *Id.*

⁶ See, e.g., *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

⁷ See, e.g., Letter from Trey Hanbury, counsel for T-Mobile USA, Inc. to Diane Cornell, Special Counsel, Office of the Chairman, CG Docket No. 10-43 (Dec. 20, 2013) (“*T-Mobile Dec. 20 Ex Parte*”).

⁸ Remarks of Jeff Pearlman, Public Knowledge, at the FCC Workshop, Improving Disclosure of *Ex Parte* Contacts (Oct. 28, 2009) (transcript available in CG Dkt. No. 10-43, *Ex Parte* Workshop Transcript) (stating that non-disclosure is not “a huge problem”).

⁹ See Ian Urbina, *Panel Said to Alter Finding on Voter Fraud*, New York Times (Apr. 11, 2007).

disclosure regulations would disenfranchise underserved constituencies in the name of preventing a problem that simply does not exist and certainly is not supported by the record.

Even if the presence of a hypothetical problem could justify adoption of enhanced disclosure requirements that would affect all parties filing documents with the Commission – which it cannot – the theoretical risk described by the Staff Working Group is ephemeral. As a general matter, parties advocating before the Commission have every incentive to make their identities known so decision makers will afford more weight to their views. Indeed, a party that fails to adequately explain its interest in a proceeding risks damaging its credibility or leaving the agency’s staff at a loss as to why they should take the party’s arguments seriously. And in certain proceedings, failure to provide a sufficient explanation of a party’s interest can be fatal to its participation.¹⁰

Moreover, the notion that a party could deceive the Commission into accepting its argument by pretending that the argument is coming from someone else underestimates the high level of skill, experience and good judgment of the Commission’s line staff. These public servants, as well as the many stakeholders that routinely practice before the agency, are perfectly capable of distinguishing between good arguments and bad arguments, affording the appropriate weight to those arguments based on the credibility of the party making them. It is unfathomable that a shell organization with no obvious interest in communications policy would be able to fleece both the industry and the agency to influence decision making on behalf of some other party. Further, strong protections already exist to prevent against potential fraud in rulemaking advocacy. These include the existing requirement in the *ex parte* rules that those making oral presentations disclose the identities of all persons attending or involved in the presentation in an *ex parte* filing,¹¹ the prohibition on the submission of material statements that are incorrect or misleading,¹² and the strong community of interested individuals and groups that routinely police positions taken in agency proceedings. Given the lack of any legitimate “challenges affecting the efficiency and transparency of Commission operations,” there is simply no basis for further agency action on this issue.

III. A “Real Party In Interest” Disclosure Requirement Would Stifle Participation By Interest Holders Critical To The Commission’s Decision-Making Process.

However facially appealing a “real party in interest requirement” might seem, the Commission must consider the real and detrimental effects that such mandatory disclosure would have on parties that provide critical and irreplaceable voices in the Commission’s processes for

¹⁰ For example, to establish standing to file a petition to deny, an entity must establish standing as a “party in interest,” setting forth “specific allegations of fact” in declarations to support its standing. 47 U.S.C. §309(d)(1). No entity can meet this test without providing an explanation of its interest in the proceeding that would be sufficient to allow the FCC to evaluate the credibility of the arguments contained in the petition.

¹¹ 47 C.F.R. §1.1206(b)(1).

¹² *Id.* §1.17.

developing policy. Consistent with the Commission's dedication to competition, diversity, and localism and the need to ensure that its rules and policies protect consumers and the public-at-large, it is critical that the agency establish a robust record that incorporates the views of all interest holders. This includes not only the most influential or those most likely to benefit from a particular proposal, but also the often less-powerful groups that may have differing views or stand to suffer harm. Mandatory disclosure, however, would impede the Commission's efforts to ensure broad participation by forcing parties to weigh the potential repercussions of taking positions in FCC proceedings that could damage their essential relationships (*i.e.*, relationships with suppliers, corporate customers, or the general public) against the potential value of participating. The effect would be an absence of – or at the very least a significant reduction in – dissenting or contrarian voices in agency proceedings. In particular, MMTC submits that a real party in interest disclosure requirement would reduce participation in Commission proceedings by at least three important groups: (1) small businesses, (2) whistleblowers, and (3) underrepresented interest holders, including minorities and the poor.

Small businesses play a central role in the Commission's efforts to promote competition, and the Commission repeatedly has recognized the importance of developing communications policies that allow small businesses to thrive.¹³ Despite the agency's interest in protecting the needs of small businesses, however, it is often difficult for small businesses to candidly contribute to the FCC's dialogue. Small businesses frequently are dependent on much larger businesses for their survival: whether it is a CLEC, a reseller, or a rural wireless provider that relies on its relationships with larger providers to achieve network effects through interconnection and roaming agreements, a small cable provider that depends on large programmers for content, or a small broadcaster that depends on large MVPDs for carriage and distribution.

The essence of MMTC's work is our advocacy of opportunities for minority business enterprises (MBEs) so that they are able to thrive and serve their communities. Like all small businesses, MBEs are often dependent upon delicate supplier relationships with much larger businesses who have the ability to determine their success or failure in the marketplace. When small businesses become involved in difficult negotiations over an issue with regulatory implications or find their interests in a rulemaking proceeding at odds with entities that serve as their lifeline, speaking out publicly could place their very existence in jeopardy. As a result, it is essential to the quality and diversity of advocacy before the Commission that these entities frequently contribute their voices

¹³ See, e.g., *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122 (2013) (“Small or regional providers serving rural areas drive economic growth in these rural areas, directly, by investing in their networks and creating jobs, and indirectly, by enabling the growth of other small businesses”); *Revision of Part 15 of the Commission's Rules Regarding Operation in the 57-64 GHz Band*, Report and Order, 28 FCC Rcd 12517 (2013) (acknowledging the FCC objective of “lowering costs for small business owners accessing broadband services”); *Service Rules for Advanced Wireless Services H Block*, Report and Order, 28 FCC Rcd 9483 (2013) (recognizing congressional mandate to promote “economic opportunity and competition . . . by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”)

to FCC proceedings through like-minded professional or nonprofit associations, which can raise important policy issues without placing individual members at risk of blacklisting. If these associations had to disclose their general membership, or even members who contributed to a particular form of advocacy or at a particular monetary or percentage level, the degree of dialogue would suffer a dramatic decline, as many small businesses would conclude that the risks are not worth enduring. The result for the Commission would be an incomplete record and uninformed policy-making, both of which directly contradict the goals of process reform.

Whistleblowers are another group with a substantial and irreplaceable role in the regulatory process. The Commission long has recognized the need to adopt rules that encourage persons “who may have knowledge about possible waste, fraud, and abuse and who might otherwise be subject to reprisal as a result of good faith disclosures” to come forward.¹⁴ To that end, the National Broadband Plan recognized that “[t]he right to speak anonymously without fear of government reprisal is protected by a number of laws, including federal whistleblower laws and the First Amendment.¹⁵ By definition, however, such whistleblower protections contradict a “real party in interest” disclosure requirement by allowing certain parties to lodge complaints without disclosing their underlying identities or interests. Although such whistleblower protections may be subject to abuse (such as by a disgruntled former employee or a competitor), the Commission, Congress, and the federal courts have determined that, on balance, the benefits of anonymity outweigh the risk that requiring whistleblowers to disclose their identities would chill dissent and protect the waste and abuse that whistleblowers frequently want to disclose at great personal risk.

An enhanced disclosure requirement also would disproportionately suppress the voices of underrepresented groups, such as minorities and the poor, in FCC proceedings. The individuals and entities with the greatest economic stake in Commission regulations – large corporations and the wealthy – are unlikely to be deterred by enhanced disclosure requirements, as they already are likely to self-fund their advocacy. But, given that the median wealth of white households is approximately 20 times that of African American and Hispanic households,¹⁶ people of color generally are less able to self-finance advocacy before a regulatory body. A handful of nonprofit civil rights organizations conduct FCC-focused advocacy programs, but many of their donors would be discouraged from providing charitable support if, by doing so, they would become the subject of a new wave of regulatory oversight. Enhanced disclosure rules would cripple minority advocacy by inhibiting donations to civil rights organizations from individuals, organizations, and corporations that believe passionately in the cause, but for a variety of reasons do not want

¹⁴ See *Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, Section 105, Relay Services for Deaf-Blind Individuals*, Report and Order, 26 FCC Rcd 5640 ¶¶119-20 (2011); *Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, 25 FCC Rcd 6012 ¶50 (2010).

¹⁵ *Connecting America: The National Broadband Plan* 54 (2010).

¹⁶ See Rakesh Kochhar, Richard Fry and Paul Taylor, *Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics*, Pew Research Social and Demographic Trends (July 26, 2011).

their contributions publicly disclosed.¹⁷ As a result, the diversity of voices in Commission proceedings would be substantially diminished.

Indeed, the Commission itself recently recognized the benefits of permitting anonymous communications in what might be the most important proceeding under consideration by the Commission: the broadcast incentive auction. There, the agency twice has modified its *ex parte* rules to make it easier for parties to advocate before the agency without having to disclose the “real parties in interest.” First, the Media Bureau, in a desire to “encourage those broadcasters interested in auction participation to raise issues of specific concern to them regarding the incentive auction process so that we may develop a robust record to assist us in devising auction-related rules,” announced that broadcasters may file comments in the incentive auction proceeding without disclosing their identity “so long as they have an attorney of record.” Then, the Media Bureau went a step further, permitting broadcasters to participate in *ex parte* meetings with FCC staff about the incentive auction “without disclosing their identities.”¹⁸ In support of this exception, the Bureau reasoned that “broadcasters may have legitimate reasons for not wanting to disclose their potential interest in reverse auction participation” and, therefore, “that allowing anonymity in this limited circumstance will encourage broadcasters to engage in frank discussions with Commission staff, promoting informed participation in the reverse auction and a more robust Commission decision-making process.”¹⁹ These changes do not shield the Commission’s actions from public view; rather, they allow stakeholders to participate who otherwise would be deterred by disclosure requirements. To be clear, MMTC is not suggesting the Commission cut back on existing disclosure requirements across-the-board as it has with respect to the incentive auction proceeding. Rather, MMTC simply points out that the Commission’s recognition in that proceeding regarding the sensitivities and potential chilling effect associated with public disclosure requirements cannot be squared with the recommendation to impose greater disclosure burdens on communications with the agency.

IV. Enhanced Disclosure Rules Would Infringe Upon Constitutionally Protected Rights.

By implementing disclosure requirements that have been used time and again in an attempt to stifle dissident voices, the FCC would also infringe upon long-established freedoms of speech, association, and liberty. The Supreme Court directly rejected such compelled disclosure in the landmark case *NAACP v. Alabama*, and that decision compels rejection of the staff’s

¹⁷ A reminder of what can befall a person who contributes to a “controversial” civil rights cause can be found in the Senate’s rejection, last week, of an extraordinarily qualified candidate to head the Civil Rights Division of the Justice Department. The candidate, Debo Adegbile, had helped write a brief seeking a new trial for a person who had been convicted of killing a police officer. See Wesley Lowery and Ed O’Keefe, *Senate Democrats Help Block Nominee for Civil Rights Post*, Washington Post (March 5, 2014).

¹⁸ See *Media Bureau Modifies Incentive Auction Ex Parte Requirements*, Public Notice, DA 14-268, GN Docket No. 12-168 (MB Feb. 28, 2014).

¹⁹ *Id.*

recommendation here.²⁰ The case originated with a 1956 lawsuit brought by the Attorney General of Alabama to prevent the NAACP from conducting further activities in Alabama because of its refusal to register with the state. The state then moved to require the NAACP to produce a large number of papers and records, including the names and addresses of each of the NAACP's Alabama members, under the guise of preparing for a hearing on the NAACP's motion to dismiss (although Alabama's real intention almost certainly was to facilitate public and private oppression of the NAACP).

The Supreme Court reversed Alabama state court decisions supporting the state's right to demand the NAACP's membership list, finding that "the effect of compelled disclosure of the membership lists will be to abridge the rights of [the NAACP's] rank-and-file members to engage in lawful association in support of their common beliefs."²¹ The Court recognized that "the freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech" and that "the abridgement of such rights, even though unintended, may inevitably follow from varied forms of governmental action."²² "It is hardly a novel perception," wrote Justice Harlan for a unanimous Court, "that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved."²³ As such, the Supreme Court applied strict scrutiny to the state's actions, finding that Alabama failed to demonstrate "a compelling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists is likely to have."²⁴

Courts have extended the principles first announced in *NAACP v. Alabama* to protect such varied practices as the right to make political expenditures,²⁵ the right to protect against disclosure of the largest donor to a private religious and educational institution²⁶ and, abhorrent as it is, even the practice of members of the American Knights of the Ku Klux Klan wearing masks at public gatherings to protect their anonymity.²⁷ In affirming these practices, the courts

²⁰ 357 U.S. 449 (1958).

²¹ *Id.* at 459.

²² *Id.* at 460.

²³ *Id.* at 462.

²⁴ *Id.* at 466.

²⁵ See *Buckley v. Valeo*, 424 U.S. 1 (1976).

²⁶ See *Tree of Life Christian Schools v. City of Upper Arlington*, No. 2:11-cv-00009 (S.D. Oh. Mar. 12, 2012).

²⁷ See *Church of the Am. Knights of the Ku Klux Klan v. Kerik*, 232 F. Supp. 2d 205 (S.D.N.Y. 2002).

did not pass judgment on the views being espoused, but rather on the underlying rights being infringed.

Nearly 50 years after *NAACP v. Alabama*, the Supreme Court's concerns are just as valid. The right of civil rights organizations to keep their membership lists private is a celebrated right that allows all civil rights organizations to protect their donors, be they celebrities, businesspersons, or others with a strong incentive to keep a low political profile.²⁸ Any rule compelling disclosure of the members of these and other organizations or those contributing to a specific cause would directly and unlawfully infringe on the constitutional rights of those members to free speech, association, and liberty. Even if the rulemaking record here contained evidence of a problem sufficient to satisfy the Administrative Procedure Act – which it does not – that record is certainly inadequate to establish a compelling government interest in disclosure as would be required to satisfy constitutional review. In addition, the proposed disclosure obligations are not narrowly tailored to advancing the agency's interest; they would apply across-the-board to all forms of FCC advocacy and, in some cases, require far more information than reasonably necessary to permit the agency to meet its asserted objectives.

V. Newly Proposed Disclosure Requirements Suffer From The Same Affliction As Earlier Proposals.

The record in the underlying proceeding already demonstrates that many of the proposed “solutions” are inappropriate for the FCC context and would arbitrarily draw lines between permissible and impermissible advocacy.²⁹ Indeed, the underlying record establishes that the disclosure requirements proposed by the Commission and by commenters do not even have a “substantial relation” to the governmental interest to be served and are otherwise flawed.³⁰ Now, more than two-and-a-half years after the comment period in the underlying proceeding closed, T-Mobile has interjected itself into the debate with new proposals that suffer from the same if not greater flaws than those originally proposed. The Commission must reject these proposals as excessive, arbitrary and capricious, and constitutionally suspect.

²⁸ As a career civil rights lawyer of a certain age, the undersigned is aware of several instances in which celebrities gave (and still give) generously and anonymously to mainstream civil rights organizations such as the NAACP and the SCLC. It's sad but true that many celebrities cannot donate transparently to a civil rights or minority organization without risking the alienation of some of their fan base. Indeed, the SCLC's campaigns for integration and voting rights in the 1950s and 1960s would not have been possible without the anonymous contributions of compassionate celebrities, some of whose films would not have been shown in southern states had the stars' contributions to the SCLC been disclosed.

²⁹ For example, as the U.S. Chamber of Commerce explained, modeling FCC disclosure rules after the Federal Rules of Appellate Procedure would be fruitless and address problems that are irrelevant to FCC proceedings. *See* Comments of the U.S. Chamber of Commerce, GC Dkt. No. 10-43, at 9-12 (filed June 16, 2011).

³⁰ *See id.* at 8-12.

For example, T-Mobile proposes requiring disclosure of any contributions to a filer that are “earmarked to support broadly defined advocacy activities” or that exceed “\$150,000 or 10% of that organization’s budget,” provided that such contributions need not be disclosed if they are beneath a “*de minimis* exception for contributions below \$10,000.”³¹ Thus, T-Mobile would require disclosure of a \$10,001 contribution to an organization with an annual budget of \$100,000, but not a contribution of \$9,999 to that same organization or a contribution of \$149,000 to an organization with an annual budget of \$1.4 million. T-Mobile proposes a further exception for monetary or in-kind donations that are made at generally solicited levels to support an event. So while a contribution of \$1 million generally would be reportable, a \$1 million “sponsorship” of a fundraising gala would not. Neither of these proposals makes any sense, and the exceptions only increase their arbitrary nature. Public Knowledge’s recent support for T-Mobile’s proposal “provided that the disclosure thresholds are high enough to protect the privacy of most individual donors” is equally unworkable.³² There is no reasonable basis to distinguish individual donors from corporate or organizational donors – all have the same interest in influencing communications policy. Required disclosures for coalitions or associations, suppliers of telecommunications products, and members of a filer’s Boards of Directors are equally discriminatory and burdensome, and none should be required.

T-Mobile’s proposed “process for requesting confidentiality,” meanwhile, would be unlikely to prevent the chilling effect that enhanced disclosure will have on Commission advocacy. Unless the criteria for confidentiality are well defined and mechanically enforced, many potential donors are unlikely to risk the potential disclosure of their participation. At the same time, any rules that are flexible enough to satisfy donor concerns almost certainly would swallow the rule. And a confidentiality process is likely to increase the administrative burdens borne by FCC staff who are already stretched too thin, particularly if parties to proceedings can contest requests for confidentiality or seek release of information under FOIA despite a party’s confidential designation. Rather than seeking to salvage a flawed rule with what is in essence a waiver policy, the better course would be for the Commission to avoid adopting rules that seek to address a non-existent problem by arbitrarily drawing lines without any rational basis and threaten the exercise of constitutionally protected rights.

Conclusion

The right to speak and associate anonymously protects important policy goals and constitutional values and is of special value to the robust participation before the FCC of small businesses, whistleblowers, and the underserved, particularly minority groups. Absent a compelling interest, which the record cannot support, the Commission cannot lawfully impose enhanced disclosure requirements. Accordingly, the Commission should reject Recommendation 5.44.

³¹ *T-Mobile Ex Parte* at 3-4.

³² See Letter from John Bergmayer, Staff Attorney, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, GC Docket No. 10-43 (Mar. 11, 2014).

Hon. Tom Wheeler and Commissioners

March 13, 2014

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Sincerely,

A handwritten signature in black ink, appearing to read "David Honig". The signature is written in a cursive style with a large initial "D" and "H".

David Honig
President

/dh