Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
FCC Process Reform	)	GN Docket No. 14-25
	)	

To: The Commission

COMMENTS OF THE MINORITY MEDIA TELECOMMUNICATIONS COUNCIL

David Honig, Esq.
President
Maurita Coley
Vice President and
Chief Operating Officer
Nicol Turner-Lee, Ph.D.
Vice President and
Chief Research & Policy Officer
Joycelyn James, Esq.
Senior Counsel
Jacqueline Clary, Esq.
Senior Counsel
Minority Media and Telecommunications Council
3636 16th Street NW, Suite B-366
Washington, D.C. 20010
(202) 332-0500
dhonig@crosslink.net

March 31, 2014

TABLE OF CONTENTS

Page

Summary and Introduction 1

I. Increasing the Speed and Transparency of FCC Decision-Making 4

A. The Commission should implement shot clocks for rulemakings, transactional review, petitions for reconsideration, and waiver requests, with streamlined review procedures and tight shot clocks for small transactions 4

B. Circulation of complete text of document before voting 5

C. Line-by-line Section 257 examination of all rules and policies, and submit to Congress a thorough and timely Section 257 Triennial Report 5

D. Inclusion of Minority Groups in Negotiated Rulemaking 6

II. Rework Essential Processes 6

A. Harness new technologies to improve internal and external processes 7

B. Improve public outreach efforts by establishing an Office of Public Counsel and assigning an Assistant for Public Outreach to each Commissioner 8

C. Accurate longitudinal data as the touchstone for policymaking 8

D. Active consultation with the Office of Communications Business Opportunities to reduce the likelihood of unintended negative consequences for diversity 9

E. Adopt a flexible license application fee schedule 10

III. Rethink the FCC's Policy and Rulemaking Processes 10

A. Inclusion of minority groups in negotiated rulemaking 11

B. Recharter Advisory Committee on Diversity for Communications in the Digital Age and consider and vote promptly on its recommendations 11

C. The Commission should formulate a mediation program for adjudications similar to the program used in the federal courts of appeals 12

D. Notice of Proposed Rulemaking (NPRM) should contain the specific wording of the contemplated rule or alternative versions, with Circulation of complete text of document before voting by the Commission 13

E. Perform a line-by-line Section 257 examination of all rules and policies, and submit to Congress a thorough and timely Section 257 Triennial Report 13

IV. Elements Critical to Success 14

V. Functional and Bureau/Office-Specific Recommendations 14

A. All enforcement functions, including EEO, should be consolidated within and handled by the Enforcement Bureau 14

B. Institute a certiorari process for applications for review to streamline the appeals process for bureau decisions 16

C. Strengthen Ex Parte Reporting Requirements 16

D. Use Section 403 non-adversarial fact-finding hearings with full discovery on matters critical to communications policy concerning impact of non-regulated stakeholders on FCC policies 16

E. Ethics and genuineness reviews of major mergers to verify bona fides of potential licensees 17

VI. Additional Recommendations the Commission Should Consider in its Final Report 18

Summary and Introduction

The Minority Media and Telecommunications Council ("MMTC") respectfully submits these comments on the Report on FCC Process Reform,[1] which contains over 150 proposals by the Federal Communications Commission ("FCC" or "Commission") that "would enable the Commission to work faster, smarter, more efficiently, more transparently, and more inclusively."[2] With only one notable exception,[3] MMTC concurs that the proposals made by the Commission are likely to increase efficiency as well as the scope of public participation in its processes. MMTC believes that FCC process reform will "enhance public confidence in the rulemaking process, improve its overall quality and add to the agency's credibility."[4] Agency process reform is necessary and long overdue.

Administrative delay and lack of inclusion keeps the agency from being as responsive to stakeholders as possible, particularly minority and women business entities ("MWBEs"). Inefficient processes at the Commission have also contributed to low prioritization, and even neglect, of issues that are integral to MWBE and entrepreneurial success, for example:

- The Commission finally relaxed the Commission's Section 310(b)(4) foreign ownership policy after nine years.[5]
- It took the Commission 23 years to implement the Advertising Nondiscrimination Rule. It took three more years for the Commission to assign a staff member to handle inquiries and enforcement of the rule.[6]

---

[1] See Report on FCC Process Reform, GN Docket No. 14-25 (rel. Feb. 14, 2014) ("Report").

[2] FCC Seeks Public Comment On Report On Process Reform, Public Notice, GN Docket No. 14-25 (rel. Feb. 14, 2014).

[3] See infra pp. 17-18 discussing FCC Proposal 5.44.

[4] See Letter to Chairman Michael Copps from David Honig, MMTC, regarding Structural and Procedural Reforms in FCC Operations (Jan 21, 2009) at 7 ("Copps Letter"), available at http://mmtconline.org/lp-pdf/MMTC_Letter_on_FCC_Processes_012109.pdf (last visited Mar. 27, 2013).

[5] See Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees, Declaratory Ruling, 28 FCC Rcd 16244 (rel. Nov. 14, 2013).

- The Commission has yet to address proposals for media incubators and for minority impact statements in rulemakings that have been pending almost 25 years – since 1990.[7]
- The Katrina emergency broadcasting petition pending for eight hurricane seasons will be reviewed just this year.[8]
- Adarand studies took four years to come to fruition in 2000, and 13 years later the research to update the studies hasn't even begun.
- AM engineering proposals were addressed four years after MMTC filed to have them reviewed.[9]
- The 2010 media ownership quadrennial review has not concluded.

This sort of delay on important topics that impact competition, diversity and inclusion is not acceptable and MMTC is delighted that the Commission is reviewing its procedures.

In addition to these issues, MMTC has also presented a number of reform proposals to the Commission in the past several years, many of them addressing speed, transparency, and efficiency.[10] More recently, in collaboration with members of MMTC's New Telecom and Internet Policy Task Force, co-chaired by former Congressmen Cliff Stearns (R-FL) and Ed

---

[6] See Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5941 ¶49 (2008); see also FCC Enforcement Advisory, Non-Discrimination in Broadcast Advertising, 26 FCC Rcd 3875 (2011).

[7] The proposal was originally presented by the National Association of Black Owned Broadcasters in 1990. See Further Comments of the Diversity and Competition Supporters, 2010 Quadrennial Ownership Review, MB Docket No. 09-182 (Dec. 26, 2012) at 7-8, available at http://mmtconline.org/wp-content/uploads/2012/12/DCS-Minority-Ownership-Further-Cmnts-122612.pdf (last visited Mar. 28, 2014).

[8] See Comment Requested To Refresh The Record In EB Docket No. 04-296, Public Notice, 79 Fed. Reg. 17490 (rel. Mar. 11, 2014)

[9] See Revitalization of the AM Radio Service, Notice of Proposed Rulemaking, 28 FCC Rcd 15221 (rel. Oct. 31, 2013).

[10] See Letter to Diane Cornell, FCC, from David Honig, MMTC re: Request for Input on FCC Process Reform (Dec. 19, 2013) available at http://mmtconline.org/wp-content/uploads/2014/01/MMTC-FCC-Process-Reform-121913.pdf (last visited Mar. 27, 2013) ("Cornell Letter") citing Copps Letter at 6;see also Modernizing the Communications Act to Promote Diversity, Equal Opportunity, and Minority Ownership in the Media, Telecom, and Internet Industries, MMTC Recommendations on Modernization of the Telecommunications Act of 1996 (Feb. 11, 2014), available at http://mmtconline.org/wp-content/uploads/2014/02/MMTC-Submission-of-Comments_TelecomAct_2.4.14.pdf (last visited Mar. 27, 2014) ("MMTC Legislative Recommendations"); see also MMTC Notice of Ex Parte Communication, MB Docket No. 09-182, et al, (Aug. 11, 2011), and attachment "Seven Proposals on Broadcast Regulation" available at http://apps.fcc.gov/ecfs/document/view?id=7021702273 (last visited Mar. 27, 2014).

Towns (D-NY), proposals were submitted to the FCC focusing on the Commission's effectiveness and efficiency.[11]

MMTC has reviewed the proposals offered by the Commission and follows the five chapters of the Commission's Report to address how our previously submitted proposals align with the objectives of the Commission's recommendations for process reform, or could be tweaked to meet the agency's ultimate goal.

We also restate and incorporate by reference the following recommendations below that we believe should be reconsidered by the agency and implemented in the final Report.[12]

- Develop a "docket call" that provides commissioners with the opportunity to hear the merits of pending petitions, and provides the bureau chiefs with delegated authority to investigate prior to a vote.
- Many major decisions could be assigned to a specific commissioner (as was done routinely until 1980), whose responsibility would be to prepare and present the item and ensure that it moves through the agency to the 8th floor expeditiously.
- Allow any commissioner (or, perhaps, any three commissioners) to call up an item for a vote.
- Establish a new National Broadband Plan Advisory Committee that produces updates to the Plan at least every two years to keep pace with goals and objectives and disruptive technologies.
- The Commission should create the position of Public Engineer to demystify its work for consumers around basic engineering questions, and serve as a resource for commissioners who need to understand technical issues in rulemakings.
- Install a Chief Diversity Officer to ensure talent diversity and workplace inclusion in all bureaus and offices.
- Designate a Commissioner to take responsibility for inclusion and competitive opportunities for minority- and women-owned business enterprises ("MWBEs"), similar to the Defense Commissioner role.

[11] See generally Cornell Letter.

[12] See id. at 3-4.

I. Increasing the Speed and Transparency of FCC Decision-Making

Minority entrepreneurs are greatly impacted by administrative delays and regulatory uncertainties because time is critical when it involves access to capital. Delays may lead lenders and potential investors to withdraw from deals when the Commission cannot provide timely response to applications, petitions for waivers, or other relief. Further, all stakeholders should be able to know where the Commission is in the decision making process, particularly when an item has been fully briefed by interested parties. In this chapter, the following Commission Recommendations align with MMTC's previously submitted proposals to improve attention to issues affecting our constituents.

A. The Commission should implement shot clocks for rulemakings, transactional review, petitions for reconsideration, and waiver requests, with streamlined review procedures and tight shot clocks for small transactions[13]

The FCC Report suggests that the Commission establish set times in which the agency will come to a decision on rulemakings, transactions, and petitions. This would include action by the Commission or by designated authority within the Bureau. We agree that relevant timelines should be established to "ensure compliance, and [be] shared with all internal stakeholders to ensure expectations will be met, and senior management can ensure proper prioritization."[14] No decision, opposed or unopposed, should be delayed unless there is a public interest benefit.[15] Senior staff should establish a procedure to monitor the decision making

---

[13] See Copps Letter at 6; see also Cornell Letter at 3.

[14] See Rec. 1.1 - Efficient Intake Analysis and Relevant Timelines, at 6. "Based upon this intake analysis, timelines should be created for an item (or the item could be classified within a category of items and assigned a timeline in that context). Timelines should be tracked by management to ensure compliance, and shared with all internal stakeholders to ensure expectations will be met, and senior management can ensure proper prioritization."

[15] See Rec. 1.2 - Review Transaction Shot-Clock Procedures at 7. "Unopposed transactions could have a shorter timeframe for review, while recognizing that some public interest determinations/reviews take significant time whether or not the transaction is opposed."

process, clearly identify staff responsibilities, and regularly report on the status of the item.[16] The public should also have access to information on petitions and open dockets, and those that are not active should be closed to relieve administrative backlog.[17]

B. Circulation of complete text of document before voting[18]

MMTC agrees that transparency regarding items on circulation will enhance public confidence in the rulemaking process. As such, the Commission should only vote on nearly complete texts.[19] If substantive edits are made while after an initial vote, a second vote should be allowed.

C. Line-by-line Section 257 examination of all rules and policies, and submit to Congress a thorough and timely Section 257 Triennial Report[20]

MMTC applauds the Commission for updating its procedural goals, particularly in its assessment of market entry barriers under Section 257 of the Communications Act. Section 257 mandates that the Commission identify and eliminate market entry barriers in its rules and report to Congress its progress in revising those rules.[21] In recent years, the Commission has done a poor job of analyzing its rules under Section 257 in a timely manner. When completed, the Section 257 report has devolved into a laundry list of the Commission's routine activities, not a

---

[16] See Rec. 1.3 - Ensure Accountability for Timely Decision-making, at 8. "Bureau and Office Chiefs should monitor compliance with timelines within their Bureaus and Offices, and they should report quarterly on compliance with agreed timelines…Organizational units should be regularly tasked with making recommendations on ways to improve the Commission's speed of disposal, including adopting new IT tools and/or allocating additional staff resources."

[17] See Rec. 1.4 - Make Information on All Petitions and Open Dockets Publicly Available and Searchable, at 8. The list should be reviewed periodically to determine which, if any, dormant dockets should be closed." See also 1.20 - Enhance Tracking of Incoming and Backlogged Items to Allow Greater Accountability. "Speed of disposal timeframes tailored to the type of matter or procedure addressed (*e.g.*, routine license versus complicated rulemaking) should be set to ensure timely processing."

[18] Copps Letter at 7.

[19] Rec. 1.5 - Make Status Information on Circulation Items Publicly Available at 9. "Transparency to the public would be enhanced if this circulation list also included information on which Commissioners have voted on a particular matter."

[20] Copps Letter at 4.

[21] See 47 U.S.C. §257.

critical review of its rules to determine what regulations should be modified to foster entrepreneurship on the part of minorities and women.[22] Further, the Commission has not filed a timely report to Congress in over ten years.[23] Timely review of procedural goals related to Section 257 analysis would aid practitioners and the public in identifying where the Commission rules and policies further or hinder its public interest goals.[24]

D. Inclusion of Minority Groups in Negotiated Rulemaking[25]

Commission policies would be advanced by feedback from minority groups. Seemingly innocuous language of a rule may have a negative impact on stakeholders who are not included in rulemaking discussions. These stakeholders often include minority and multi-lingual entrepreneurs and consumers. Deliberate efforts on the part of the Commission to include these groups in multilateral discussions in negotiated rulemakings, could "facilitate the agency's understanding of the differences between the parties[,]"[26] and assist with developing consensus.

II. Rework Essential Processes

Accessible and transparent data is a necessary and important part of notice and comment rulemaking. Automating data collection and access will help stakeholders with ease of access to

---

[22] Note, though some suggest the Commission's obligation under Section 257 lies only within part (c) of the statute, this part refers back to parts (a) and (b), directing that "the Commission *shall* seek to promote the policies" favoring diversity and competition. See 47 U.S.C. §257(b).

[23] The 2006 Section 257 Report was not delivered to Congress until December of 2007. See Section 257 Triennial Report to Congress, Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses, 22 FCC Rcd 21132 (2007). The 2009 Report was not delivered until 2011. See Section 257 Triennial Report to Congress Identifying and Eliminating Market Entry Barriers For Entrepreneurs and Other Small Businesses, 26 FCC Rcd 2909 (2011).

[24] Rec. 1.23 - Review and Update Commission's Procedural Rules at 17. "The FCC staff should review the FCC's procedural rules to determine if there are any updates that would assist practitioners and the Commission in quickly and efficiently resolving business, within the guidelines of the Administrative Procedure Act and other procedural laws."

[25] Copps Letter at 6; Cornell Letter at 4.

[26] Rec. 1.24 - Encourage Outside Parties to Submit Proposed Text for FCC Documents Where Appropriate, at 18 stating "This would allow the parties to a proceeding to very succinctly and specifically propose the relief they are seeking from the agency, and would facilitate the agency's understanding of the differences between the parties."

Commission information. As stated in the Report, "[s]ignificant time and resources could be saved if more of these licensing processes could be automated."[27] However, submissions from informed stakeholders could result in comments that are more focused and helpful in aiding the Commission in decision-making. As such, data on diverse participation should be included in ongoing data collection efforts. The following Commission Recommendations align with MMTC's goals and/or previously submitted proposals to improve data collection and diversity objectives.

A. Harness new technologies to improve internal and external processes.

While MMTC has not previously gone on record regarding the use of new technology, such as electronic licensing and communication with licensees, we do believe that upgraded technology systems will promote a streamlined data process,[28] easing administrative delay and allowing for better access to Notices and other publically available data.[29] This could be particularly helpful in handling potential rules violations and public complaints.[30] For example, a unified system within the Commission could assist with timely enforcement actions, diminishing the possibility that a licensee would escape penalties for breaking the rules because the agency missed the statute of limitations to levy a forfeiture. This would aid EEO

---

[27] See Report at 21.

[28] Rec. 2.6 - Communications With Licensees at 21, "Where possible, licensing Bureaus should move to an electronic system for communicating with licensees. To the extent permitted by Federal records retention requirements, staff should eliminate paper copies of licenses and correspondence… and copies of electronic communications should be routinely included in the electronic database, searchable by the public." See also 2.8-Electronic License Processing, at 22, "The FCC should consider investing in electronic filing systems for licensing processes that are still done by paper."

[29] Rec. 2.7 - Communications with the Public at 21, "The FCC should consider revising Section 0.445 of the Commission's rules to expressly provide for Public Notices and other communications to be released electronically through publication on the web."

[30] Rec. 2.22 - Improve Tracking and Analysis of Complaint Data for Internal Commission Use at 29. "Updated database capabilities would enable CGB and other Bureaus to improve their use of complaint data internally to inform the Commission's policymaking and enforcement processes. A significant step in this direction would be to process complaints, inquiries, and other inputs within a single system and make the resulting data accessible to staff."

enforcement by applying regulations uniformly across every technology platform, including broadcasting, cable, satellite, wireless and wireline. [31]

B. Improve public outreach efforts by establishing an Office of Public Counsel and assigning an Assistant for Public Outreach to each Commissioner

In considering "additional ways to streamline/improve the existing Public Notice process[,]"[32] the agency should consider creating a permanent position for public outreach. Public outreach staff would go beyond legislative and other agencies, and focus on enhancing communications with consumer, civil rights, minority, women, rural, and other underserved constituencies.

C. Accurate longitudinal data as the touchstone for policymaking[33]

MMTC is pleased to see that the Commission seeks to collect and release data that will be "more useful to consumers, industry, and other stakeholders."[34] Making this part of standard Commission procedures will reduce the likelihood that the Commission's data collection practices will come under scrutiny as they had within the past decade. There has been general agreement among the Commission's minority ownership researchers and independent observers that the Commission's minority and women ownership database could be substantially improved.[35] Data, including minority ownership and participation data, should be reported

---

[31] Copps Letter at 3.

[32] Rec. 2.7- Communications With the Public at 21, ""The FCC should also consider whether there are additional ways to streamline/improve the existing Public Notice process."

[33] Copps Letter at 5.

[34] Rec. 2.23 - Make Data More Accessible and Transparent to the Public at 29, "With the new database capabilities, CGB would be able to revamp the quarterly reports to make them more useful to consumers, industry, and other stakeholders, such as, for example, using a greater number of plain-language categories."

[35] See Initial Comments of the Diversity and Competition Supporters in Response to Second Further NPRM, MB Docket No. 06-121, et al (Oct. 1, 2007) at 31 (discussing need for improved minority ownership data made available to the public).

annually because of the impact rule changes would have on the relationships among Commission licensees, lenders and investors.

MMTC agrees that the "Commission may need to seek and obtain newly relevant information necessary to carry out its statutory and regulatory responsibilities."[36] As such, the Commission's minority and women ownership census ought to be expanded to include a questionnaire administered to minority and women owners, providing timely feedback on the impact of Commission rules and policies on their access to capital, spectrum and opportunity to serve the public interest. Sophisticated data gathering would also allow the Commission to ascertain the macroeconomic impact of new regulations.

D. Active consultation with the Office of Communications Business Opportunities to reduce the likelihood of unintended negative consequences for diversity[37]

The FCC Office of Communications Business Opportunities ("OCBO") is the "principal advisor to the Chairman and the Commissioners on issues, rulemakings, and policies affecting small, women, and minority-owned communications businesses."[38] However, OCBO is seldom involved in policymaking at the front-end of the process. We agree with the Commission's proposal that OCBO should be "engaged in the policy considerations of proposed and adopted rules." [39] The Commission should fully fund and staff OCBO, and ensure that it is actively

---

[36] Rec. 2.28 - Focus Information Collected to Comply With the PRA, at 32, "…the Commission may need to seek and obtain newly relevant information necessary to carry out its statutory and regulatory responsibilities…striving to ensure that all new regulations are narrowly tailored to realize a legitimate public interest goal and that the benefits of each information collection outweigh any cost burden."

[37] Copps Letter at 2, 8; Cornell Letter at 4.

[38] Office of Communications Business Opportunities, About the Office, available at http://www.fcc.gov/office-communications-business-opportunities (last visited Mar. 26, 2014).

[39] Rec. 2.29 - Consult OCBO Earlier in the RFA Compliance Process, at 32-33, "This process would work more efficiently if staff drafting IRFA and FRFA sections consulted with OCBO earlier in the drafting process. This will not only ensure that a circulated item is properly vetted by OCBO early in the process, but it will also ensure that the Commission's small entity and RFA experts are engaged in the policy considerations of proposed and adopted rules."

consulted on the diversity impact of every major rulemaking or merger case prior to proposing final rules or settlement actions, allowing for circulated items to be properly vetted.

E. Adopt a flexible license application fee schedule

Access to capital continues to be a challenge for potential MWBE licensees. In response to a Congressional inquiry on the modernization of the 1996 Act, MMTC recommended that, in an effort to "improve opportunities for MWBE ownership and participation," Congress should consider developing flexible fee schedules that allow more flexibility for MWBEs and are less arbitrary in nature or application.[40] Similarly, we agree with the Commission's recommendation that it should use its authority to make application fees more consistent and equitable.[41]

III. Rethink the FCC's Policy and Rulemaking Processes

The Commission "seek[s] faster action and more predictability in the agency's rulemaking process" so that it may "focus and resolve the issues in controversy in its policymaking processes."[42] MMTC believes that in order to achieve this goal, the Commission's policy and rulemaking processes need to be more inclusive of minorities and other stakeholders. This allows for issues that impact minority entrepreneurs to be clearly set out before the Commission in rulemakings, allowing the agency to appropriately consider whether proposed rules are in the public interest. The following Commission Recommendations align with MMTC's previously submitted proposals to improve efficiency in FCC rulemaking and policymaking processes.

---

[40] MMTC Letter to Congress at 5-6.

[41] Rec. 2.12 - Explore Making the Application Fee Structure More Consistent at 23, "The FCC should explore updating its application fee structure to make it more consistent and equitable. Currently, application fees vary on a service-by-service basis, and in some cases services that are very similar are assessed different levels of fees for historical reasons… Application fees are based on a specific request for Commission action and are thus distinct from annual regulatory fees."

[42] Report, Chap. 3 at 36.

A. Inclusion of minority groups in negotiated rulemaking[43]

The Commission should implement a multi-stakeholder mediation program with "representation from a wide diversity of economic and social interests, including government, industry, civil society and consumers, depending on the focus of the group."[44] This will help narrow the issues in major rulemakings, including negotiated rulemaking,[45] allowing the Commission and stakeholders to use time efficiently and arrive at a decision in less time than without such negotiations. We agree that Commission "staff should monitor the work of these groups to see if they can help inform FCC policymaking," and consult with these multi-stakeholder groups on a regular basis to stay informed of their issues.[46]

B. Recharter Advisory Committee on Diversity for Communications in the Digital Age[47] and consider and vote promptly on its recommendations[48]

For over a decade, the Advisory Committee on Diversity for Communications in the Digital Age ("Diversity Committee") has produced a comprehensive body of recommendations, many of which the Commission has not addressed. The Diversity Committee includes a number of seasoned experts in communications, with a solid understanding of how minority inclusion, or

---

[43] Copps Letter at 6; Cornell Letter at 4.

[44] Rec. 3.1 - Consider Expanding Use of Multi-Stakeholder Mechanisms, at 36, "… a number of multi-stakeholder groups have formed to try and help inform policy…multi-stakeholder groups would typically have representation from a wide diversity of economic and social interests, including government, industry, civil society and consumers, depending on the focus of the group."

[45] Rec. 3.3 - Consider Whether a "Negotiated Rulemaking" Process Could be Useful to Narrow Issues and Develop Proposed Rules for Commission Consideration at 39, "For certain proceedings, negotiated rulemaking may enhance the effectiveness of the rulemaking process and reduce the burden on Commission resources by encouraging stakeholders to negotiate consensus-based solutions that the Commission can easily implement."

[46] Rec. 3.1.1 - Identify Independent Multi-Stakeholder Bodies With Relevance to the Commission's Work at 37, "No one has yet catalogued all of the multi-stakeholder bodies that could be relevant to the FCC's activities. The FCC staff should identify those multi-stakeholder organizations that are engaged in activities that are relevant to the Commission's work. In doing so, staff should consult with experts inside and outside of the agency... staff should monitor the work of these groups to see if they can help inform FCC policymaking."

[47] Copps Letter at 3.

[48] Id. at 4.

lack thereof, impacts FCC-regulated industries. Unfortunately, in recent years the Commission has not developed many of the proposals the Committee brings before the agency. Instead, the Commission consults the Diversity Committee when it seeks its input on specific issues, limiting the scope of concerns related to opportunity and inclusion that the experts could bring forth.

We agree that the Commission should consult with Advisory Committee staff on the focus of the committee's work, allowing them to "submit proposed text for FCC documents in appropriate circumstances."[49] When the current charter expires in December, the Commission should re-charter the Diversity Committee for a further two-year term. Its charter should be revised to specify that the Committee reports to the full Commission (rather than only to the Chairman) and that it may examine any issues it regards as falling within its mission (rather than only those issues the Chairman authorizes it to examine).

C. The Commission should formulate a mediation program for adjudications similar to the program used in the federal courts of appeals.[50]

Among the recommendations MMTC made to the Commission in December, multi-stakeholder mediation is one we are pleased the Commission will consider. We agree that mediation "could narrow the issues in major proceedings and contribute to their timely resolution."[51]

---

[49] Rec. 3.2 - Refine Focus of Current Advisory Committees to Enhance the Relevance of Their Work, at 38, "First, Commission staff should consult with members of current FCC advisory committees on how to focus the work of the committees and make their output more relevant to the agency's work… the Commission should consider whether to encourage advisory committees to submit proposed text for FCC documents in appropriate circumstances."

[50] Cornell Letter at 3.

[51] Rec. 3.4 - Consider Additional Mediation and/or Other Dispute Resolution Techniques to Narrow Issues in Controversy and Find Solutions at 39, "The agency could consider expanding a mediation program for other adjudications and rulemakings, similar to the program used in the U.S. Court of Appeals for the D.C. Circuit. Staffed by volunteers such as retired judges or commissioners, academics, and senior attorneys from a variety of disciplines, the mediation process could narrow the issues in major proceedings and contribute to their timely resolution."

D. Notice of Proposed Rulemaking (NPRM) should contain the specific wording of the contemplated rule or alternative versions, with Circulation of complete text of document before voting by the Commission[52]

As discussed supra,[53] transparency regarding proposed rules on circulation will enhance public confidence in the rulemaking process. Just a few years ago, the Commission created an uproar when it released an order changing ownership rules without the public having any clear idea of the alternatives the agency was considering at the time.[54] To avoid this, proposed rules should be included in NPRMs whenever possible.[55]

E. Perform a line-by-line Section 257 examination of all rules and policies, and submit to Congress a thorough and timely Section 257 Triennial Report[56]

As discussed supra,[57] Section 257 of the Communications Act mandates that the Commission identify and eliminate market entry barriers in its rules and report to Congress its progress in revising those rules.[58] The agency's review process falls short of providing a critical review of its rules to determine what regulations should be modified to foster entrepreneurship on the part of minorities and women.[59] This review should be conducted in a meaningful manner, so that staff may use it "as a tool to identify and eliminate outdated regulation."[60]

---

[52] Copps Letter at 7, Cornell Letter at 3.

[53] See Circulation of complete text of document before voting supra p. 5.

[54] See Prometheus Radio Project v. FCC, 652 F.3d 431, 450 (3rd Cir. 2011) (where the court admonished the Commission because it "did not solicit comment on the overall framework under consideration, how potential factors might operate together, or how the new approach might affect the FCC's other ownership rules.").

[55] Rec. 3.8 - Include Proposed Rules in NPRMs Whenever Possible, and Draft Proposed and Final Rules Early in the Process of Developing Decisional Documents at 41, "As with NPRMs that include proposed rule text, staff drafting documents such as Reports and Orders that adopt rules should also focus on rule text before or at least early in the process of drafting those documents."

[56] Copps Letter at 4.

[57] See Section 257 discussion supra pp. 5-6.

[58] See 47 U.S.C. §257.

[59] See 47 U.S.C. §257(b)-(c).

[60] Rec. 3.15 - Commit to Review Rules Periodically at 44, "Staff should also endeavor to make reviews required by statute as meaningful as possible by using them as a tool to identify and eliminate outdated regulation."

IV. Elements Critical to Success

MMTC agrees that the Commission "must ensure that its internal management practices are as agile and efficient as they can be in order for it to be responsive to the changing sectors, stakeholder needs, and opportunities of the 21st century."[61] Improving data collection is integral to this process. The collection and use of accurate longitudinal data[62] aligns with the Commission's goal of being responsive to the needs of stakeholders for useful data.

As discussed supra,[63] accessible, transparent data is a necessary and important part of notice and comment rulemaking. This includes data collected by the Commission that can and should be shared with the public. The Commission should seek to use technology to make accurate and efficient data collection a standard part of Commission procedures.[64]

V. Functional and Bureau/Office-Specific Recommendations

The bulk of work done before the Commission is delegated to the Bureaus and their specialized staff. However, internal processes should be improved to allow this staff to act more effectively and efficiently to ensure more timely decisions. MMTC applauds the Commission for considering proposals in this area and offers others to that would aid the decision-making process.

A. All enforcement functions, including EEO, should be consolidated within and handled by the Enforcement Bureau[65]

The Commission suggests that the Enforcement Bureau "make information on the statutory framework applicable to enforcement referrals more widely available to other Bureaus

---

[61] See Report, Chap. 4 at 45.

[62] Copps Letter at 5.

[63] See Harness new technologies, supra pp. 8-9.

[64] Rec. 4.24 - Improve FCC Data Collection, at 59, "The FCC has many data collections today, and can use IT to collect and manage data more efficiently."

[65] Copps Letter at 3, 7; Cornell Letter at 3.

and Offices so that violations are timely referred."[66] MMTC believes enforcement functions would be improved if they were consolidated, across all platforms, in the Enforcement Bureau.

The Commission should create a new Civil Rights Branch of the Enforcement Bureau that would encompass the Media Bureau's Equal Employment Opportunity ("EEO") staff and compliance officers for transactional and advertising nondiscrimination enforcement. In the spirit of platform neutrality, this new branch should apply civil rights regulations uniformly across every technology platform, including broadcasting, cable, satellite, wireless and wireline. MMTC further supports the recommendation that the Commission propose that statute of limitations on enforcement action be extended from one year to two years.[67] The Enforcement Bureau should also "evaluate whether there are other legislative changes that would enhance the Commission's enforcement powers."[68]

---

[66] Rec. 5.4 - Reevaluate Case Selection Criteria to Maximize Enforcement Impact at 64, "It would also be useful for EB to make information on the statutory framework applicable to enforcement referrals more widely available to other Bureaus and Offices so that violations are timely referred. EB should also identify ways to further standardize and streamline the referral process, and Bureaus and Offices should consider and coordinate on the enforcement implications of a matter as early as possible, given the applicable one-year statute of limitations." Note that this provision applies only to forfeitures. There is no statute of limitations in the Act to revoke or deny a license.

[67] Rec. 5.45 - Evaluate Whether Legislative Changes to Enhance the Commission's Enforcement Powers Are Needed, at 80, "The Commission should consider whether to recommend to Congress that it amend the statute of limitations to at least two years, which could begin to run on the date the FCC knew or should have known of the violation…EB also should evaluate whether there are other legislative changes that would enhance the Commission's enforcement powers."

[68] Rec. 5.45 - Evaluate Whether Legislative Changes to Enhance the Commission's Enforcement Powers Are Needed, at 80, "The Commission should consider whether to recommend to Congress that it amend the statute of limitations to at least two years, which could begin to run on the date the FCC knew or should have known of the violation…EB also should evaluate whether there are other legislative changes that would enhance the Commission's enforcement powers."

B. Institute a certiorari process for applications for review to streamline the appeals process for bureau decisions

MMTC believes that administrative delay and backlog could be reduced by a certiorari review process, determined by OGC, which would review and streamline "the amount of detail and discussion required in decisions on appeal…."[69]

C. Strengthen *Ex Parte* Reporting Requirements[70]

The Commission's *ex parte* rules are designed to encourage fairness and transparency. Unfortunately, some parties are unclear on the limits to their discretion in communicating with the Commission and fail to follow the *ex parte* guidelines established in 2011.[71] MMTC agrees that the Bureaus and Offices should work with OGC to address noncompliant *ex parte* filings in a timely manner.[72]

D. Use Section 403 non-adversarial fact-finding hearings with full discovery on matters critical to communications policy concerning impact of non-regulated stakeholders on FCC policies[73]

The Commission proposed to allow the Enforcement Bureau to issue subpoenas for non-hearing related testimony, without prior review of OGC, when collecting such information would afford the Commission access to data that will be helpful in carrying out the agency's duty to

---

[69] Rec. 5.15- Expedite Media Bureau Licensing Processes at 68, "Overall, where appropriate, the amount of detail and discussion required in decisions on appeal should be reviewed and streamlined, as discussed elsewhere in this report (See Chapter 1, Part C, the Tackle Backlogs Section)."

[70] Copps Letter at 6.

[71] See Amendment of the Commission's Ex Parte Rules and Other Procedural Rules, 26 FCC Rcd 4517 (2011) (mandating new disclosure requirements for all oral ex parte presentations).

[72] Rec. 5.20 - Establish Procedures to Better Detect and Address Noncompliant *Ex Parte* Filings in a Timely Manner at 69-70, "… Bureaus and Offices are in the best position to detect and flag for OGC action noncompliant *ex parte* filings…OGC should provide written guidance to staff on the *ex parte* requirements…explore the feasibility of working directly with Bureaus and Offices to perform periodic spot checks to determine whether recently filed *ex partes* are in compliance with our rules."

[73] Copps Letter at 4.

regulate in the public interest.[74] Section 403 of the Communications Act grants the Commission similar authority to inquire as to any matter related to the enforcement of its rules.[75] Section 403 investigations allow the Commission to learn about relationships between FCC licensees and non-licensees when the agency or the public raises concerns that the actions of a non-regulated stakeholder may have an adverse effect on Commission licensees, goals, and policies.

E. Ethics and genuineness reviews of major mergers to verify bona fides of potential licensees[76]

MMTC has long supported transparency as to the real party in interest. We have long stood against sham applications and licensees where the facts behind the structural ownership of an entity were questionable.[77] In the Report, however, the Commission confuses this legitimate structural ownership issue with one regarding the financial motives of the entity filing a pleading with the agency.[78]

As stated in our recent letters on this proposed rule change, though such a requirement is appealing on the face of the proposed rule, there are detrimental effects this disclosure

---

[74] Rec. 5.43 - Propose Rule and Procedure Changes to Facilitate More Streamlined Review of Routine Subpoenas, or Eliminate the Requirement for OGC Review of Routine Subpoenas at 79, "EB is required to obtain approval from OGC before issuing a non-hearing-related subpoena for testimony and documents deemed relevant to an investigation. Except where subpoenas raise new or novel issues or raise significant policy concerns, EB should be empowered to issue them without prior OGC review."

[75] See 47 U.S.C. §403; see also 47 C.F.R. §1.1 ("The Commission may on its own motion or petition of any interested party hold such proceedings as it may deem necessary from time to time in connection with the investigation of any matter which it has power to investigate under the law, or for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations.")

[76] Copps Letter at 8.

[77] Id.

[78] Rec. 5.44 - Transparency as to Real Party in Interest at 79, "Disclosure of the real party-in-interest behind FCC filings would help the agency, other parties, and the public evaluate the credibility of factual and policy arguments by knowing who is making them. It would also increase public confidence in our decision-making process by making clear that the Commission is aware of the source of the arguments before it."

requirement,[79] which may be appropriate for a judicial setting, but not for a federal agency such as the Commission.[80] By forcing these organizations to disclose their donors as a condition precedent to being allowed to participate in Commission proceedings, the Commission would interfere with well-established freedoms of speech, association, and liberty.[81] In the Commission setting, the proposed disclosure rules will merely impede participation in FCC proceedings with little to no corresponding benefit, and therefore should be rejected.

VI. Additional Recommendations the Commission Should Consider in its Final Report

In our previous letters to the Commission, we stressed that MMTC's recommendations are intended to improve the openness, transparency, timeliness and diversity of the Commission, while providing organizations working on behalf of the underserved with a more defined procedural framework that will help advance minority inclusion and civil rights enforcement. Listed below, we restate additional reform actions for the Commission's consideration.

- Develop a "docket call" that provides commissioners with the opportunity to hear the merits of pending petitions, and provides the bureau chiefs with delegated authority to investigate prior to a vote.
- Many major decisions could be assigned to a specific commissioner (as was done routinely until 1980), whose responsibility would be to prepare and present the item and ensure that it moves through the agency to the 8th floor expeditiously.
- Allow any commissioner (or, perhaps, any three commissioners) to call up an item for a vote.

---

[79] Letter From David Honig, President, MMTC, to the Commission Re Process Reform, GC Docket No. 14-25 and GC Docket No. 10-43 (Mar. 13, 2014). A number of organizations agree that this recommendation would have "a chilling impact on civil rights groups, non-profit organizations and others that protect and promote less-powerful viewpoints." See Letter From Hispanic Technology and Telecommunications Partnership, League of United Latin American Citizens, MMTC, NAACP, National Association of Multicultural Digital Entrepreneurs, National Action Network (NAN), National Urban League, Rainbow PUSH Coalition, to the Commission, GC Docket No. 14-25 (Mar. 31, 2014) at 2.

[80] Letter From David Honig, President, MMTC, to the Commission Re Process Reform, GC Docket No. 14-25 and GC Docket No. 10-43 (Mar. 26, 2014).

[81] See NAACP v. Alabama, 357 U.S. 449, 462 (1958); see, e.g., Buckley v. Valeo, 424 U.S. 1 (1976); Tree of Life Christian Schools v. City of Upper Arlington, No. 2:11-cv-00009 (S.D. Oh. Mar. 12, 2012); Church of the Am. Knights of the Ku Klux Klan v. Kerik, 232 F. Supp. 2d 205 (S.D.N.Y. 2002).

- Establish a new National Broadband Plan Advisory Committee that produces updates to the Plan at least every two years to keep pace with goals and objectives and disruptive technologies.
- The Commission should create the position of Public Engineer to demystify its work for consumers around basic engineering questions, and serve as a resource for commissioners who need to understand technical issues in rulemakings.
- Install a Chief Diversity Officer to ensure talent diversity and workplace inclusion in all bureaus and offices.
- Designate a Commissioner to take responsibility for inclusion and competitive opportunities for minority- and women-owned business enterprises ("MWBEs"), similar to the Defense Commissioner role.

Respectfully submitted,

David Honig

David Honig, Esq.
President
Maurita Coley
Vice President and
Chief Operating Officer
Nicol Turner-Lee, Ph.D.
Vice President and
Chief Research & Policy Officer
Joycelyn James, Esq.
Senior Counsel
Jacqueline Clary, Esq.
Senior Counsel

Minority Media and
Telecommunications Council
3636 16th Street NW, Suite B-366
Washington, D.C. 20010
(202) 332-0500
dhonig@crosslink.net

March 31, 2014