

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 14-50
	)	
	)	
	)	
2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No 09-182
	)	
	)	
	)	
Promoting Diversification of Ownership In the Broadcasting Services	)	MB Docket 07-94
	)	
	)	
Rules and Policies Concerning Attribution of Joint Sales Agreements In Local Television Markets	)	MB Docket No. 04-256
	)	
	)	
	)	

**COMMENTS OF THE WASHINGTON TECHNOLOGY PROJECT**

The Washington Technology Project (WTP) submits these comments in response to the Commission’s Further Notice of Proposed Rulemaking and Report and Order seeking comment on the FCC’s 2014 and 2010 Quadrennial reviews.<sup>1</sup> In addition to considering the substantive

---

<sup>1</sup> *In the Matter of 2014 Quadrennial Regulatory Review — Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; 2010 Quadrennial Regulatory Review — Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 14-50, 09-182, Further Notice of Proposed Rulemaking and Report and Order, FCC 14-28 (rel. April 15, 2014)(FNPRM).

aspects of the quadrennial reviews, the Commission should initiate a comprehensive review of the processes and work culture *at the Commission itself* that led to a four-year delay of the Congressionally-mandated 2010 Quadrennial review.

Specifically, WTP respectfully asks the Commission to complete an internal investigation to determine why the Commission's resources were allocated, between 2010 and the release of the FNPRM on April 15, 2014, in a way that precluded it from completing the 2010 Quadrennial review on time. In that regard, given the integral role of the media ownership rules to promoting media ownership diversity, WTP urges the Commission to conduct a thorough assessment of whether and to what extent any lack of racial, ethnic and gender diversity among Commission employees in advisory and senior roles (GS 12-15) may have affected the priority level assigned to the 2010 Quadrennial review, and why Office of Personnel Management (OPM) data evince discriminatory hiring patterns at the Commission, particularly with respect to black males.

## **I. The National Broadband Plan**

For five years, the Commission has worked extremely diligently to implement the goals of the Congressionally-mandated<sup>2</sup> National Broadband Plan ("Plan").<sup>3</sup> The Plan proceeding<sup>4</sup> resulted in a 360-page plan containing over 200 recommendations to be completed by 2020.

The Commission's progress implementing Plan objectives *generally applicable* to consumers has been commendable. Among its many accomplishments since the Plan was

---

<sup>2</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), §6001(k).

<sup>3</sup> FEDERAL COMMUNICATIONS COMMISSION, NATIONAL BROADBAND PLAN (2010), <http://www.broadband.gov/download-plan/>. See also Randy Clark, Public Notices, Broadband.gov (Oct. 1, 2009), <http://blog.broadband.gov/?entryId=10872>. (The Commission hosted 38 workshops and issued 30 public notices during the National Broadband proceeding.)

<sup>4</sup> *In the Matter of A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, 244 FCC Rcd 4342 (2009).

released to the public on March 16, 2010, the Commission revamped the Universal Service Fund and Intercarrier Compensation programs,<sup>5</sup> launched a proceeding to make similar updates to E-Rate subsidies for broadband in schools,<sup>6</sup> and is making strides toward implementing a wireless incentive auction which, by mid-2015,<sup>7</sup> is expected to incentivize television broadcasters to release their spectrum in order to accommodate wireless services.<sup>8</sup> While these efforts may reduce broadband access and adoption gaps, as well as help ensure quality wireless service for all consumers, they have not come without preventing other important initiatives from being implemented, such as the 2010 Quadrennial review.

## **II. Historic Discrimination by the Commission Itself**

If falling short of its obligation to complete the 2010 Quadrennial review were an isolated incident, one might argue the Commission should be entitled to a pass on account of the difficult National Broadband Plan agenda. However, that is not the case at all. Throughout its history, the Commission has repeatedly and systematically delayed, thwarted and marginalized diversity and inclusion issues.<sup>9</sup> Most recently, in addition to delaying the 2010 Quadrennial proceeding by four years, the Commission has failed to provide a meaningful response to the National Hispanic

---

<sup>5</sup> *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support*, WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, Report and Order and Further Notice of Proposed Rulemaking, 76 FR 73829 (2011).

<sup>6</sup> *In the Matter of Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 78 FR 51597 (2013).

<sup>7</sup> Tom Wheeler, The Path to a Successful Incentive Auction, Official FCC Blog, (Dec. 6, 2013) <http://www.fcc.gov/blog/path-successful-incentive-auction-0>.

<sup>8</sup> *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No.12-268, 77 FR 69933 (2012).

<sup>9</sup> See generally, JUAN GONZALEZ AND JOSEPH TORRES, NEWS FOR ALL THE PEOPLE (2011).

Media Coalition’s 2009 petition to conduct a study of the effects of hate speech on hate crimes;<sup>10</sup> nine years after Hurricane Katrina, it has ignored proposals advanced by the Minority Media and Telecommunications Council (MMTC) to reform Emergency Alert System (EAS) rules to ensure non-English speakers are able to understand broadcast emergency alerts in times of emergency;<sup>11</sup> and it has patronized its own Advisory Committee for the Digital Age, deferring to few, if any, of its recommendations. Indeed, the FCC-hosted webpage for the Advisory Committee for Diversity in the Digital Age has gone “dark”, with no updates having been made in nearly a year, or since July 1, 2013.<sup>12</sup>

The Commission suggests in the FNPRM that the four-year delay of the 2010 Quadrennial proceeding can be attributed to the fact that the 2010 proceeding “generated a high level of interest and participation, creating an extensive record that continues to attract significant and substantive input well after the formal comment periods have expired.”<sup>13</sup> However, this is not dissimilar from the National Broadband Plan proceeding, which was completed on time.

---

<sup>10</sup> NAT’L HISPANIC MEDIA COALITION, LETTER OF EX PARTE (filed May 9, 2014)(discussing its still-outstanding “[p]etition for Inquiry into the prevalence of hate speech in the media and the relationship between hate speech and hate crimes”.)(*citing* NAT’L HISPANIC MEDIA COALITION, PETITION FOR INQUIRY ON HATE SPEECH IN MEDIA (filed Jan. 29, 2009).

<sup>11</sup> *See* MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL, LETTER OF EX PARTE (filed May 28, 2014)(*citing* INDEPENDENT SPANISH BROADCASTERS ASSOCIATION ET AL., PETITION FOR IMMEDIATE RELIEF, EB DOCKET NO. 04-296 (SEP. 20, 2005).

<sup>12</sup> *See* FEDERAL COMMUNICATIONS COMMISSION, ADVISORY COMMITTEE FOR DIVERSITY IN THE DIGITAL AGE WEBPAGE *available at* <http://www.fcc.gov/encyclopedia/advisory-committee-diversity-digital-age> (last visited June 7, 2014).

<sup>13</sup> FNPRM at ¶1.

### III. Racial, Ethnic and Gender Discrimination in the Commission's Own Employment Practices

WTP respectfully seeks answers to the following questions: 1) Was the Commission's apparent lack of interest in completing the Congressionally-mandated 2010 Quadrennial review a result of a lack of racial, ethnic and gender diversity at the Commission itself; and, 2) If there were more racial, ethnic and gender diversity at the Commission, would the Commission have been less likely to make the tentative conclusion in the FNPRM that the evidence on record is not "direct and substantial enough" to make "the connection between minority ownership and viewpoint diversity" in a way that would satisfy *Adarand* strict scrutiny?<sup>14</sup>

According to OPM, the Commission's white employees comprised an overwhelming 79.4% of new Commission hires in 2012—the most recent data available.<sup>15</sup> Whites also comprise 87.8% of Senior Executive Service (SES) employees, and 77.9% of employees at the GS-15 level.<sup>16</sup> Asian/Pacific Islanders comprised 9.5% of the Commission's new hires in 2012, 2.4% of the Commission's SES employees and 7.5% of its employees at the GS-15 level.<sup>17</sup> Blacks made up just 6.3% of new hires at the Commission in 2012, and just 7.3% of SES employees, yet blacks comprised 12.6% of employees at the GS-15 level.<sup>18</sup> Hispanics comprised just 3.2% of new hires at the Commission in 2012, and made up 2.4% of SES employees and

---

<sup>14</sup> See *FNPRM* ¶ 289; See also *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

<sup>15</sup> U.S. OFFICE OF PERSONNEL MANAGEMENT, *DIVERSITY & INCLUSION FEDERAL WORKFORCE AT A GLANCE* (2012) available at <http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/federal-workforce-at-a-glance/> (last visited June 8, 2014).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

1.5% of employees at the GS-15 level. There are a total of 3 American Indian/Alaskan Natives working at the FCC, according to the 2012 OPM data — none of them are SES employees and they comprise .4% of Commission employees at the GS-15 level.<sup>19</sup>

OPM’s FCC data also reveal significant, two-digit gaps favoring men over women — the largest of which is between white men and white women (16%) — working at the Commission, except when it comes to blacks, where the disparity overwhelmingly favors black women. Fifty-eight percent of White Commission employees are men, compared to 42% for women.<sup>20</sup> Asian/Pacific Islander Commission employees are comprised of 57% men and 43% women.<sup>21</sup> Hispanic Commission employees are made up of 56% men and 44% women.<sup>22</sup> American Indian/Alaskan Native Commission employees are 50% male and 50% female, according to OPM.<sup>23</sup>

Yet, just 26% of the Commission’s black employees are men.<sup>24</sup>

## **CONCLUSION**

The Washington, D.C. Metropolitan Area is one of the most racially and ethnically diverse in the nation. However, that diversity is not even remotely reflected in the Commission’s own employment statistics. Accordingly, neither the 2010 nor 2014 Quadrennial review will be

---

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

able to move forward in a meaningful way unless the Commission considers the extent to which it is itself a discriminating entity.

The public deserves a complete explanation regarding how the Commission's own racial, ethnic and gender disparities affected the priority level assigned to the 2010 Quadrennial proceeding; what its rationale is for apparently attempting to pit members of some gender and racial groups against each other; how and whether employment disparities at the Commission biased its own assertions and Constitutional analysis, with respect to media ownership diversity in the FNPRM; why it believes its employment practices do not unlawfully discriminate against women and racial and ethnic minorities, particularly black males; and why it believes its own diversity and inclusion standards set an appropriate tone for the industries it regulates.

Respectfully Submitted,

*/s/ Joseph S. Miller*

Joseph S. Miller  
President and CEO  
Washington Technology Project LLC  
4410 Brookfield Corporate Drive #220782  
Chantilly, VA 20153  
jmiller@washingtech.com  
(703) 259-8447  
**www.washingtech.com**

June 9, 2014

