Congress of the United States
House of Representatives
Washington, D.C. 20515

August 1, 2014

792

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: FCC Merger Reviews: Congressional Black Caucus (CBC) Diversity Guidelines for Promoting Competition, Diversity, and Economic Opportunity for Minority and Women-owned Enterprises

Dear Chairman Wheeler,

As Members of the Congressional Black Caucus (CBC), we write to outline specific criteria by which the Federal Communications Commission (FCC) may determine whether a proposed merger serves the public interest through the promotion of competition, diversity, and the expansion of media ownership opportunities for women and minority-owned enterprises. According to the Supreme Court and the Commission's precedent, factors considered to be in the public interest include, "a deeply rooted preference for preserving and enhancing competition; promoting a diversity of license holdings, and generally managing the spectrum in the public interest."[1] Therefore, in recognition of the FCC's statutory mandate, we submit for your consideration guiding principles that should be incorporated into all applications for the transfer of FCC licenses. As we expressed repeatedly in the Commission's review of Comcast Corporation's merger with NBC Universal in 2010, in its review of proposed transactions involving the transfer or combination of FCC licenses, the Commission must ensure applications contain enforceable commitments that create opportunities for women and minorities in media ownership, management, programming, distribution, advertising, and procurement – including contracts for legal, accounting, and financial services.

The American economy has seen a troubling consolidation of ownership in many industries in recent years. This change has been particularly significant in the telecommunications and internet industries. In addition to the proposed merger between

[1] *FCC v. RCA Communications*, Inc., 346 US 86, 90 (1953)

Comcast NBC Universal and Time Warner Cable, the pending consolidation of AT&T and DirecTV, and the imminent announcement of Sprint's merger with T-Mobile, not only threatens media competition, but it could further diminish economic opportunities for women and minorities within an industry that has seen precipitous declines in diversity over the past several years. The FCC's lukewarm efforts to date concerning media diversity along with its willingness to further relax media ownership rules has ushered in a media landscape in which diverse ownership is near extinction.

In 2007, minorities owned just 3.2 percent of the U.S. television stations and 7 percent of the nation's full power radio stations. African American television station ownership dropped further from 12 stations in 2009 to 10 in 2011 – less than 1 percent of full-power television stations. According to the National Association of Black Owned Broadcasters (NABOB), the number of African-American owned television stations is now 4. As of 2012, women were majority owners of 934 broadcast stations, or approximately 7 percent of full-power commercial stations. Overall, minorities owned 2.2 percent of television stations in 2012, despite comprising more than 39% of the population. Ownership may also be affecting on-air media representation, as only 16% of broadcast Sunday news guests in 2013 were people of color. According to Media Matters, Comcast-owned stations held both the best and worst minority representation records for that year: NBC Sunday guests and panelists of color averaged at less than 20% of the total, while MSNBC boasted a considerable 45%.

In similar "mega-merger" transactions in recent years, companies have attempted to demonstrate their good corporate citizenship by identifying past philanthropic donations they have made to various charitable organizations and promising additional such donations. While we commend these companies for making such donations as good corporate stewards, such contributions should not supplant substantive plans to contract with minority and women-owned firms, recruit and retain qualified women and minority senior level executives, and appoint diverse candidates to boards of directors.

Prior experience with "mega-merger" proposals shows that even the most reasonable conditions and diversity pledges go unenforced when they are not incorporated to the merger application as addendums. The following principles and questions should be incorporated into all merger applications triggering a public interest FCC review, as enforceable and meaningful commitments to the affected communities:

Boards of Directors and Senior Management: The applicants should include within their application, in initial filings or by amendment, the companies' current diversity goals. Specifically, from junior staff to middle management to executive management, to the corporate boards, the applicants should outline the metrics in place to ensure the recruitment and retention of African Americans, women, and other underrepresented groups to executive-level management and boards of directors. The applicants should include a comprehensive outline for how it intends to integrate diversity and minority inclusion (with qualitative and quantitative goals and benchmarks) as a part of the corporate culture, including among executive leadership and top-level management.

Divestitures and Spinoffs: If applicants are required or independently seek divestiture of assets and other properties as a condition of the transaction's approval, applicants should ensure those divestiture plans include ownership opportunities for smaller, minority and women-owned firms. For example, in Comcast-TWC transaction, and the upcoming AT&T-DirecTV and Sprint-T-Mobile transactions, the applicants should detail how the proposed transactions will create minority ownership opportunities in the sale of cable television and wireless cellular systems.

Financial Services: The applicants should include within their application and among their public interest conditions how they intend to establish and/or expand contracting and consulting opportunities for minority asset managers, broker-dealers, pension fund consultants, public finance professionals, investment bankers, securities/bond counselors, commercial bank underwriters, institutional investors, pension and endowment plan sponsors and other minority professionals in the financial services industry. Even before the initial filing of any application with the FCC, the applicants should also include minority and women-owned firms in underwriting activities.

Legal Services: The applicants should include within their application how they will extend to minority and women-owned law firms and firms with proven track records of developing and retaining minority and women associates and partners opportunities to act as outside counsel for litigation and regulatory matters and corporate transactions.

Real Estate: The applicants should include within their application how they will include minority and women owned real estate professionals in matters involving the acquisition and disposition of company real estate in the form of land, buildings, real estate improvements, lease of space for company purposes, subordination agreements related to financed real estate and other real estate matters.

In addition to the areas listed above, the applicants should also commit to transparency in how it intends to meet its commitments and the Commission must hold them accountable. The results of these commitments must be shared with the organizations and companies that have the knowledge and expertise in the areas in which the commitments are made. It is our sincere hope that the FCC will take the necessary and appropriate amount of time to consider the record of public participation in each of the current and upcoming proceedings pending before the Commission.

Sincerely,

Marcia L. Fudge

Maxine Waters

Yvette D. Clarke

Barbara Lee

Chaka Fattah

Corrine Brown

Eddie Bernice Johnson

Joyce Beatty

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Tony Cárdenas
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Danny K. Davis

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Rubén Hinojosa

Lucille Roybal-Allard

Ed Pastor

[illegible]
CA-46

Wm. Lacy Clay

[illegible]

Michael M. Harden

Bobby L. [illegible]

Eleanor H. [illegible]

[illegible]

[illegible]

[illegible]

Robin L. Kelley

Betty McCollum

Charles B. Rangel

[illegible]

Judy Chu

Keith Ellison

Denny Heck

Terri Sewell

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 11, 2014

The Honorable Marcia Fudge
U.S. House of Representatives
2344 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Fudge:

Thank you for your letter recommending guiding principles for the Commission to apply in considering whether a proposed merger serves the public interest. Please know that, with respect to the specific proceedings you have referenced, your letter has been entered into the record and will be given careful consideration. Additionally, I assure you that our merger review proceedings will be open and transparent with ample opportunity for the public to voice their views and concerns.

I understand your concern that an apparent recent trend of consolidation in the American media ownership landscape is troubling, and I agree that the statistics regarding minority- and/or women-owned broadcast stations reveal numbers that are far too low. Outside of the context of specific merger proceedings, we have taken some concrete actions to help create more opportunities for small businesses and new entrants, including minority and women-owned businesses.

First, as you know, the Commission has recently updated its rules to attribute certain television Joint Service Agreements (JSAs). The prevalence of these JSAs, and the potential circumvention of our local TV ownership rules, particularly when combined with financial entanglements and other sharing agreements, is troubling. The unwinding of some of these agreements could unlock more opportunities for truly independent television station owners in smaller- and medium-sized markets. Second, we clarified our rules regarding foreign investment in broadcast stations, an action that could improve access to capital for minority- and women-owned businesses. Third, the Commission has proposed to reinstate a number of rules to assist eligible entities and small businesses in the context of the broadcast ownership rules. Lastly, I recently circulated a *Competitive Bidding Notice of Proposed Rulemaking* that proposes specific rule changes to enhance the ability of small and growing businesses to participate in spectrum auctions.

While we hope these actions will help reverse the decline of diversity in the industry, our work at the Commission in achieving this goal is far from complete. I look forward to continuing to find ways to more effectively promote and protect diversity moving forward.

I appreciate this opportunity to respond to your thoughtful comments.

Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 11, 2014

The Honorable Karen Bass
U.S. House of Representatives
408 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Bass:

Thank you for your letter recommending guiding principles for the Commission to apply in considering whether a proposed merger serves the public interest. Please know that, with respect to the specific proceedings you have referenced, your letter has been entered into the record and will be given careful consideration. Additionally, I assure you that our merger review proceedings will be open and transparent with ample opportunity for the public to voice their views and concerns.

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Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 11, 2014

The Honorable Joyce Beatty
U.S. House of Representatives
417 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Beatty:

Thank you for your letter recommending guiding principles for the Commission to apply in considering whether a proposed merger serves the public interest. Please know that, with respect to the specific proceedings you have referenced, your letter has been entered into the record and will be given careful consideration. Additionally, I assure you that our merger review proceedings will be open and transparent with ample opportunity for the public to voice their views and concerns.

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Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 11, 2014

The Honorable Sanford Bishop
U.S. House of Representatives
2429 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Bishop:

Thank you for your letter recommending guiding principles for the Commission to apply in considering whether a proposed merger serves the public interest. Please know that, with respect to the specific proceedings you have referenced, your letter has been entered into the record and will be given careful consideration. Additionally, I assure you that our merger review proceedings will be open and transparent with ample opportunity for the public to voice their views and concerns.

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I appreciate this opportunity to respond to your thoughtful comments.

Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 11, 2014

The Honorable Corrine Brown
U.S. House of Representatives
2111 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Brown:

Thank you for your letter recommending guiding principles for the Commission to apply in considering whether a proposed merger serves the public interest. Please know that, with respect to the specific proceedings you have referenced, your letter has been entered into the record and will be given careful consideration. Additionally, I assure you that our merger review proceedings will be open and transparent with ample opportunity for the public to voice their views and concerns.

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I appreciate this opportunity to respond to your thoughtful comments.

Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 11, 2014

The Honorable G.K. Butterfield
U.S. House of Representatives
2305 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Butterfield:

Thank you for your letter recommending guiding principles for the Commission to apply in considering whether a proposed merger serves the public interest. Please know that, with respect to the specific proceedings you have referenced, your letter has been entered into the record and will be given careful consideration. Additionally, I assure you that our merger review proceedings will be open and transparent with ample opportunity for the public to voice their views and concerns.

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Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 11, 2014

The Honorable Tony Cárdenas
U.S. House of Representatives
1508 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Cárdenas:

Thank you for your letter recommending guiding principles for the Commission to apply in considering whether a proposed merger serves the public interest. Please know that, with respect to the specific proceedings you have referenced, your letter has been entered into the record and will be given careful consideration. Additionally, I assure you that our merger review proceedings will be open and transparent with ample opportunity for the public to voice their views and concerns.

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Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 11, 2014

The Honorable Andre Carson
U.S. House of Representatives
2453 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Carson:

Thank you for your letter recommending guiding principles for the Commission to apply in considering whether a proposed merger serves the public interest. Please know that, with respect to the specific proceedings you have referenced, your letter has been entered into the record and will be given careful consideration. Additionally, I assure you that our merger review proceedings will be open and transparent with ample opportunity for the public to voice their views and concerns.

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Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 11, 2014

The Honorable Donna Christensen
U.S. House of Representatives
1510 Longworth House Office Building
Washington, D.C. 20515

Dear Congresswoman Christensen:

Thank you for your letter recommending guiding principles for the Commission to apply in considering whether a proposed merger serves the public interest. Please know that, with respect to the specific proceedings you have referenced, your letter has been entered into the record and will be given careful consideration. Additionally, I assure you that our merger review proceedings will be open and transparent with ample opportunity for the public to voice their views and concerns.

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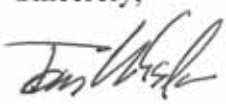

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

August 11, 2014

The Honorable Judy Chu
U.S. House of Representatives
1520 Longworth House Office Building
Washington, D.C. 20515

Dear Congresswoman Chu:

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Tom Wheeler