

# ON THE PATH TO THE DIGITAL BELOVED COMMUNITY:

A Civil Rights Agenda for the Technological Age



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**ON THE PATH TO THE DIGITAL  
BELOVED COMMUNITY:  
A Civil Rights Agenda for the Technological Age**

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# TABLE OF CONTENTS

<b>Foreword</b> .....	iii
<b>I Introduction</b> .....	1
<b>II. The Evolution of the “Beloved Community” through Dr. King’s Vision</b> .....	3
A. How Media and Technology Were Used During the Civil Rights Movement to Work Toward Dr. King’s Vision.....	4
<b>III. A Vision of the Future: What is the Digital Beloved Community?</b> .....	6
A. Digital Beloved Community Means Genuine Digital Equal Opportunity: The Civil Rights Issue of the 21 <sup>st</sup> Century.....	7
<b>IV. A Roadmap to the Beloved Community: What Will It Take to Get Us There?</b> .....	10
A. Access and Deployment.....	10
1. In the Digital Beloved Community, Access to Broadband is a Fundamental Right.....	10
2. The Digital Beloved Community Will Support Efficient Use of Spectrum.....	12
a. Support Consumers through USF Reform to Connect Homes to Broadband.....	12
b. Deployment and Adoption of Broadband Service must be Equal Priorities.....	13
B. Affordability.....	15
1. Cost of Service: Fees and Taxes .....	15
a. Various Tiers of Service to Empower Consumers.....	15
b. Regressive Taxes and Other Fees that Hinder Adoption and Innovation.....	16
2. Cost of Equipment.....	17
3. The Racial Wealth Gap.....	18
a. American Public Policy Did Not Favor Wealth Building for Minorities or Immigrants of Color.....	19
b. Current Disparities in Wealth.....	19

- C. Culturally Relevant Content.....20
- D. Privacy and Security.....21
  - 1. Tracking Consumer Data.....21
- E. Informed Use and STEM Education Drive Adoption.....23
- F. Minority Entrepreneurship.....24
  - 1. Minority Entrepreneurs must be Supported to Ensure the Survival of Legacy Media to Minority Communities.....24
    - a. AM Migration to TV Channels 5 and 6.....25
    - b. Tax Certificate Policy to Incentivize Minorities to Remain in Business.....25
  - 2. Importance of Minority Tech Companies and Minority Content Providers.....26
    - a. Relevant Content Provides Incentive for Minority Communities to Adopt Broadband at Home.....27
- G. Funding Minority Entrepreneurship: Why Incubator Programs are a Vital Tool in Achieving the Digital Beloved Community.....28
  - 1. What are Incubator Programs, and Why are They Necessary?.....28
  - 2. The History of Incubator Programs.....29
  - 3. Minority Incubator Programs.....30
- H. Civil Rights Enforcement.....31
  - 1. Civil Rights Laws must be Adequately Enforced.....31
    - a. The FCC’s Equal Employment Opportunity Rules.....31
    - b. Procurement Transactions.....32
    - c. Advertising Nondiscrimination.....33
- V. **Conclusion**.....34

# FOREWORD

On January 1st, after 25 years, I relinquished my position as MMTC’s Board Chair, and the Board elected me to the position of Chair Emeritus. I leave my post in the capable hands of the Honorable Julia Johnson, former chair of the Florida Public Service Commission and a dedicated MMTC board member. Julia is well-equipped to lead MMTC to a level of service and professional excellence that I am confident will surpass our past quarter century. On this 25th Anniversary of MMTC’s existence, I celebrate with the entire MMTC community the victories that we have shared over these years and the challenges that continue to confront us.

This publication is a labor of love by MMTC President David Honig and the MMTC staff who set forth a retrospective and aspirational vision of what has been done and what can be done about technological equality. It examines the “digital divide” and “digital inequality” and focuses on a world of interrelatedness and digital justice. The concept of the “Beloved Community” is borrowed from a statement made by Rev. Dr. Martin Luther King, Jr., at a victory rally following the U.S. Supreme Court’s decision that desegregated Montgomery, Alabama’s public bus system. Rather than gloat after the victory, Dr. King used the platform to speak about his vision of reconciliation and integration, of love, justice, brotherhood, and peace. Dr. King’s Beloved Community is what America would look like AFTER the wounds of the Civil Rights Movement had been healed.

Similarly, in this publication, MMTC’s “digital Beloved Community” envisions what our country can look like AFTER the chasm of the digital divide has been bridged, when innovative individuals from culturally diverse backgrounds are able to share their ideas and finance their dreams to the ultimate benefit of the greater community. Like Dr. King’s dream, MMTC’s digital Beloved Community gains its strength from empowering every individual and thereby advancing the whole.

After more than 25 years on the media and telecom battlefield, I look forward to a future in which the divide has been bridged; a time in which all persons, regardless of age, income, disability, or ethnicity, mutually benefit from technological advancements that so many of us enjoy and take for granted. I believe that our country – indeed, our world – can thrive only when ALL people, senior citizens and persons with disabilities, low income citizens as well as citizens of means can fully participate in a healthy and robust digital ecosystem. I can say it no better than Dr. King:

[T]he end is reconciliation; the end is redemption; the end is the creation of the Beloved Community. It is this type of spirit and this type of love that can transform opponents into friends. It is this type of understanding goodwill that will transform the deep gloom of the old age into the exuberant gladness of the new age. It is this love which will bring about miracles in the hearts of men.

— Dr. Martin Luther King, Jr.

– Henry Rivera, Chair Emeritus, Minority Media & Telecommunications Council

# I.

## INTRODUCTION

These are interesting times for all joining the fight for digital equality. Technology has rapidly become the essential tool of modern times, carrying with it the promise of becoming the great equalizer, allowing all who embrace it the hope for a better tomorrow.

Digital citizenship – the fully actualized access to and responsible and effective use of digital technology – affords cultural, educational, and political opportunity. Digital citizenship is an essential right connected to the attainment of the American Dream. Unfortunately, the promise of digital citizenship remains unrealized for many Americans who lack broadband access.

Broadband access fuels technological advances and enables full digital citizenship, making broadband adoption a necessity. In an increasingly digital society, opportunities for non-adopters are limited, and citizens who cannot use broadband in an effective and efficient manner lag behind those who are proficient in the use of the technology. As a society, we cannot leave underserved citizens, many of whom are minorities and women, on the outskirts of the high tech corridor while others comfortably speed ahead.

### *What is the “Beloved Community?”*

The concept of the “Beloved Community” is the dream of one of America’s most iconic citizens, the Rev. Dr. Martin Luther King, Jr., visionary and leader of the American Civil Rights Movement. His “Beloved Community” envisioned America as a completely integrated society; a community of love and justice and brotherhood, and total interrelatedness.

Similarly, our “digital Beloved Community” envisions a future where everyone has the ability to participate in our digital ecosystem. It exhibits an economy that enables innovative individuals from culturally diverse backgrounds to benefit equally from the technological advancement and innovations they create. Like Dr. King’s dream, the digital Beloved Community gains its strength from empowering every individual and thereby advancing the whole.

### *How Will We Know When We Get There?*

In the new technology-based world in which we live, our digital Beloved Community would be one that connects each individual to vital services with the click of a mouse or the finger-swipe of a screen, and requires the

integration of talent and a diverse technological workforce in which people are reliant upon each other. Time, talents, and funding from every sector will be required to support the evolution of our digital society, and the digital Beloved Community will be lost to us without significant investments of public and private resources.

We must ensure that *every* citizen accesses, adopts, and understands how to use the technology to overcome the digital divide. We are at a crossroads – and a chasm – in our national economic development, and the actions of our public policy and corporate leaders will determine how history remembers our era. Future generations will examine our actions with awe if we are successful in creating and sustaining the digital Beloved Community.

### ***Where Do We Go From Here?***

This publication provides a critical exploration of the structure and impact of America’s digital ecosystem. Specifically, the publication examines where and how Americans fit within the emerging technology sector and how class, race, and stereotypes influence social and economic outcomes. The publication highlights certain truths within the telecommunications industry: Minorities and women hold a small entrepreneurial stake in the digital technology sector and are grossly underrepresented within America’s technological workforce. The underlying basis for this underrepresentation is the exclusion of minorities and women in telecommunications is a result of prior years of biased government policies and corporate practices; unfortunately, the present effects of some of these policies and practices continue to exclude minorities and women today.. As a result, the imprint of past discrimination leaves a deep scar on today’s digital sector and will continue to reverberate for years to come, unless we employ deliberate efforts to change the status quo.

We must act now, or we are destined to repeat old patterns of race- and gender-based discrimination. By examining past policies to promote entrepreneurship and equal employment, as well as new policies needed to create a culturally diverse climate, this publication provides the keys to actions that will benefit our entire society and bring about our digital Beloved Community.

## II.

# THE EVOLUTION OF THE “BELOVED COMMUNITY” THROUGH DR. KING’S VISION

“[T]he end is reconciliation; the end is redemption; the end is the creation of the Beloved Community. It is this type of spirit and this type of love that can transform opponents into friends. It is this type of understanding goodwill that will transform the deep gloom of the old age into the exuberant gladness of the new age. It is this love which will bring about miracles in the hearts of men.”

– Dr. Martin Luther King, Jr.<sup>1</sup>

In order to establish a more equitable society in the United States and throughout the world, we must create a social order based on a shared commitment to peace and justice. The Rev. Dr. Martin Luther King, Jr., established his concept of a Beloved Community based on a collective existence that eliminates violence, racism, poverty, and war. This idea of the Beloved Community is not an unrealistic view of a utopian world; rather, it is Dr. King’s belief in an attainable nonviolent, fully integrated state of society.

Although philosopher-theologian Josiah Royce first coined the concept of the Beloved Community, it was Dr. King who popularized the term and developed its deeper meaning.<sup>2</sup> Dr. King envisioned a society where brotherhood is elevated from concept to reality, a place where integration is synonymous with embracing our humanity rather than merely tolerating differences. To reach Dr. King’s Beloved Community, we must learn from past mistakes and embrace the opportunities of the future.

“Recognition of one’s indebtedness to past generations should inhibit the sense of self-sufficiency and promote awareness that personal growth cannot take place apart from meaningful relationships with other persons, that the ‘I’ cannot attain fulfillment without the ‘Thou.’” – Dr. Martin Luther King, Jr.<sup>3</sup>

Dr. King’s words illustrate that his Beloved Community will be obtained through love, reconciliation, and redemption. As we move toward a digital world, our Beloved Community must embrace these same principles to

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<sup>1</sup> See The King Center, The Beloved Community of Martin Luther King, Jr., (revealing that Dr. Martin Luther King, Jr., made this statement at a victory rally following the announcement of a favorable U.S. Supreme Court decision desegregating the seats on Montgomery, Alabama’s buses), available at <http://www.theking-center.org/history/the-king-philosophy/> (last visited Dec. 20, 2011).

<sup>2</sup> *Id.*

<sup>3</sup> Kenneth L. Smith & Ira G. Zepp, Jr., *Martin Luther King’s Vision of the Beloved Community*, in *THE CHRISTIAN CENTURY*, 361-63 (1974) available at <http://www.religion-online.org/showarticle.asp?title=1603> (last visited Jun. 10, 2011). Poignantly, Dr. King wrote in his final book: “[o]ur loyalties must transcend our race, our tribe, our class, and our nation . . .” *Id.*

create the 21<sup>st</sup> century version of Dr. King’s vision. Our Beloved Community must adhere to a vision that unites human experience while incorporating technology and access to the tools of scientific advancement. “We are tied together in the single garment of destiny, caught in an inescapable network of mutuality.”<sup>4</sup> Indebted to those who precede us, “each of us lives eternally in the red.”<sup>5</sup>

#### A. HOW MEDIA AND TECHNOLOGY WERE USED DURING THE CIVIL RIGHTS MOVEMENT TO WORK TOWARD DR. KING’S VISION

From the 1955 Montgomery bus boycotts to the 1964 Democratic National Convention in Atlantic City,<sup>6</sup> the use of mass media introduced the world to the nonviolent civil disobedience campaign of the Civil Rights Movement and captured the violent images of retaliatory Southern law enforcement. In the fight for equality, the Civil Rights Movement used television to expose brutal images of hatred in the face of civil disobedience, and in doing so, the Movement gained support for the campaign for justice. The unprecedented media coverage of notable civil rights cases, including the Emmett Till case,<sup>7</sup> the assassination of Medgar Evers,<sup>8</sup> and the landmark 1954 Supreme Court case *Brown v. Board of Education*,<sup>9</sup> increased membership in and support for civil rights organizations nationwide. Media coverage effectively sounded the alarm, alerting the world of the atrocities occurring in the U.S. and helping the Movement gain worldwide support.

Media’s effective influence over the outcome of the Civil Rights Movement can be partially attributed to the widespread adoption of the new technology of its day – television. Between 1950 and 1968, home television adoption jumped from 9% to 94.6%.<sup>10</sup> In generating greater awareness of social, political, technological, and cultural events, television became the new arbiter of public opinion and had far-reaching social consequences.

Unfortunately, Black citizens were rarely given use of the medium to broadcast their voice or to address the American public directly. The American public’s understanding of the Movement was formed through media sensationalism of events rather than from knowledge of the stories behind the struggle. Black churches and businesses were vital to filling this gap in the Civil Rights Movement. As civil rights workers organized mass boycotts and civil disobedience campaigns to end *de jure* segregation and White supremacists’ acts of terror in the South, Black churches spread information via phone trees.

The determination of those within the Movement in the face of repeated incidents of unprovoked violence against peaceful protests was too important for news programmers to ignore. This concept was not lost on the leaders of the Movement, who used mass media to educate and garner support for their cause. Mass media was able to expose the world to the most impactful moments of the Movement:

[A]mong the most enduring images telecast from this period were: 1955-shots of numerous boycotted buses driving down deserted Alabama streets; 1957-... segregationists squaring-off against black students escorted by a phalanx of Federal Troops in front of Ole Miss, the University of Mississippi; 1965-Dr. Martin Luther King, Jr., leads a mass of black protesters across a bridge in Selma, Alabama. Most memorable, perhaps, of all these dramatic video images is the 1963 attack on young civil rights protesters by the Birmingham, Alabama, police and their dogs, and the fire department’s decision to turn on fire hydrants to

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4 *Id.*

5 *Id.*

6 See “Montgomery Bus Boycott (1955-1956),” Martin Luther King, Jr. and the Global Civil Rights Movement, available at [http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc\\_montgomery\\_bus\\_boycott\\_1955\\_1956/](http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc_montgomery_bus_boycott_1955_1956/) (last visited Nov. 16, 2011). See also “1964 Democratic National Convention and Related Materials,” The History Channel, available at <http://www.history.com/videos/rfk-in-atlantic-city#rfk-in-atlantic-city> (last visited Nov. 16, 2011).

7 See “The Murder of Emmett Till,” American Experience, available at <http://www.pbs.org/wgbh/amex/till/> (last visited Nov. 16, 2011).

8 See “Medgar Evers Biography,” Biography.com, available at <http://www.biography.com/people/medgar-evers-9542324> (last visited Nov. 16, 2011).

9 See *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

10 See “Number of TV Households in America,” available at [http://www.tvhistory.tv/Annual\\_TV\\_Households\\_50-78.JPG](http://www.tvhistory.tv/Annual_TV_Households_50-78.JPG) (last visited Nov. 16, 2011).

disperse the young black demonstrators, most of whom were children. Television cameras captured the water's force pushing young, black protesters down flooding streets like rubbish during a street cleaning.<sup>11</sup>

Televised coverage of the Civil Rights Movement signaled a pivotal shift, awakening the nation's conscience through iconic moments like Dr. King's televised "I Have a Dream"<sup>12</sup> address at the 1963 March on Washington.<sup>13</sup> As a result of increased media coverage, in the mid-1960s Rev. Dr. Martin Luther King, Jr., emerged from the Southern Christian Leadership Conference<sup>14</sup> as the young, articulate, and compelling chief spokesman of the Movement. Increased television coverage provided Fanny Lou Hamer's powerful speech a national audience at the 1964 Democratic Convention, where she questioned, "Is this America?"<sup>15</sup> Though increased exposure of the struggle for social justice highlighted these inspiring moments, as well as the pain of oppressed minorities, it became clear that the Civil Rights Movement extended beyond the South. The Movement ultimately caused our country to question what it meant to be an American. By facilitating national awareness, the media defined the scope of the Movement and changed the electorate of our nation.

Today, as communications evolve into new technological platforms, we are once again facing the issue of how we will define our citizenry, for those who have broadband will be able to participate as first class citizens, and those who do not will be left behind.

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11 See "Civil Rights Movement and Television," The Museum of Broadcast Communications, *available at* <http://www.museum.tv/eotvsection.php?entrycode=civilrights> (last visited Nov. 16, 2011).

12 See "Martin Luther King, Jr., I Have a Dream Speech," American Rhetoric "Top 100 Speeches," *available at* <http://www.americanrhetoric.com/speeches/mlkihavedream.htm> (last visited Nov. 16, 2011).

13 See "The March on Washington," National Public Radio, *available at* <http://www.npr.org/news/specials/march40th/> (last visited Nov. 16, 2011).

14 See "Southern Christian Leadership Conference," *available at* <http://sclcnational.org/> (last visited Nov. 16, 2011).

15 See "Fannie Lou Hamer, Testimony Before the Credentials Committee, Democratic National Convention," American Radio Works "Say it Plain: A Century of Great American Speeches," *available at* <http://americanradioworks.publicradio.org/features/sayitplain/flhamer.html> (last visited Nov. 16, 2011).

# III.

## A VISION OF THE FUTURE: WHAT IS THE DIGITAL BELOVED COMMUNITY?

“...[A]ll life is interrelated. The agony of the poor enriches the rich. We are inevitably our brother’s keeper because we are our brother’s brother. Whatever affects one directly affects all indirectly.” – Dr. Martin Luther King, Jr.<sup>16</sup>

Dr. King often preached that he believed that it was God’s intention that everyone should have the physical and spiritual necessities of life. In Dr. King’s view, an economic system that withheld the necessities of life from the masses while heaping luxuries on the few was condemnable. Dr. King fought to bridge the gap between abject poverty and gratuitous wealth, and in our digital society, we must continue the fight to bridge the digital divide between the technology haves and have-nots.

The denial of rights to anyone potentially violates the rights of all. In this new technological world, the denial of first class digital rights to those who are unserved and underserved impedes the rights of all Americans to enjoy the full benefit of an informed democracy and ultimately weakens the entire social fabric of our nation. We all have a duty to ourselves, our heirs, and “our brothers” to ensure that America’s technological shortcomings do not keep us from realizing the digital Beloved Community where everyone has access to affordable broadband and possesses the knowledge and skills necessary to effectively use the technology.

In the latter part of his life, Dr. King advocated a variety of economic programs, including job creation by the government and a guaranteed minimum wage. To bridge the digital divide, we should seek increased support and funding for minority technology entrepreneurs and content providers, as well as reduced (or subsidized) payment options attractive to low-income customers; we must not only build out, but we must build *up* – build up knowledge about adoption of technology and how to effectively use the Internet.

The Internet has emerged as the most ubiquitous and powerful tool of mass communications. Without unnecessary restrictions, the Internet has the potential to do what no other communications service has been able to do before – to close the digital divide, based on race, income, wealth, geography, education, and age.<sup>17</sup> As discussed further in this publication, the digital divide is well-documented in the U.S., and it imposes significant costs

<sup>16</sup> MARTIN LUTHER KING, JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY?* 181 (Harper & Row Publishers 1967).

<sup>17</sup> Remarks by Larry Irving, Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, U.S. Department of Commerce at the National Press Club, (July 8, 1999), available at <http://www.ntia.doc.gov/ntiahome/ftn99/irving.htm> (last visited May 2, 2011).

on minorities, depriving them of the benefits of first class digital citizenship and preventing them from full engagement in the 21<sup>st</sup> century society. We are rapidly becoming a world where the Internet will be the only way that people can accomplish their most essential tasks or access critical governmental and nongovernmental services. Thus, broadband can ensure equality only if all Americans are afforded digital equal opportunity.

## **A. DIGITAL BELOVED COMMUNITY MEANS GENUINE DIGITAL EQUAL OPPORTUNITY: THE CIVIL RIGHTS ISSUE OF THE 21<sup>ST</sup> CENTURY**

“Digital equal opportunity” is the principle that no person should experience “a disparate impact from lack of access to, or productive use of, high-speed Internet access because of membership in a group identified by geography, social-economic status, race or ethnicity, tribal status, language, age, or physical or mental ability.”<sup>18</sup> Digital equal opportunity allows for everyone to have access to the services and technologies that facilitate engagement in the digital Beloved Community. It closes the digital divide that continues to plague minority and low-income communities, as it has since the 1990s.<sup>19</sup> The integration of broadband technology, digital devices, and broadband-based applications into daily life is essential to achieving first class citizenship in the digital age.

In 2009, the NAACP announced the principle of “network equality,”<sup>20</sup> predicting that those who have yet to adopt broadband will suffer the disparate impact of being “relegated to lives of separate and unequal status as compared to those with access to advanced communication technologies.”<sup>21</sup> To avoid these outcomes, the NAACP declared that the government must ensure everyone has access to advanced communications technologies, “particularly [those] who are ordinarily not afforded the opportunity to take advantage of these essential tools of digital citizenship.”<sup>22</sup> The NAACP National Board of Directors unanimously adopted the Resolution to Advance Digital Equal Opportunity, stating “that universal broadband adoption is the key to 1<sup>st</sup> class citizenship in the digital age.”<sup>23</sup>

In an effort to address the pressing issues of the unserved and underserved, the 2009 American Recovery and Reinvestment Act (“ARRA”) provided the NTIA and the U.S. Department of Agriculture’s Rural Utilities Service with \$7.2 billion to expand broadband service access in the United States. The ARRA provided \$4.7 billion to the NTIA to establish the Broadband Technology Opportunities Program and the Broadband Initiatives Program, both dedicated to increasing broadband access and adoption by providing broadband training and support to schools, libraries, healthcare providers, and other organizations; improving broadband access to public safety agencies; and stimulating demand for broadband.<sup>24</sup> The ARRA further provided funding to the NTIA to develop and maintain a publicly available, comprehensive nationwide online map and inventory of national broadband service capability.

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18 NAACP Resolution to Advance Digital Equal Opportunity, adopted unanimously by the NAACP National Board of Directors (Oct. 17, 2009).

19 The digital divide is traditionally defined by a lack of access to computers, networks, and traditional telephone services. During the Clinton Administration, at the request of then Vice President Gore, the Commerce Department’s National Telecommunications and Information Administration (“NTIA”) analyzed telephone and computer penetration rates across the United States to determine who was, and who was not yet, connected. The Clinton Administration, like the Obama Administration a decade later, made it a fundamental goal to connect all Americans to the digital information infrastructure. NTIA first held a conference in February 1998 focused on “Connecting All Americans,” which addressed the digital divide. The data presented at the conference and in NTIA’s related report highlighted the digital divide by pointing out, for example, that although there was a significant overall growth in computer ownership and usage, the growth had occurred to a greater extent within some income levels, demographic groups, and geographic areas. See *Exploring the Digital Nation: Home Broadband Internet Adoption in the United States*, Economics and Statistics Administration and the National Telecommunications and Information Administration, U.S. Department of Commerce (November 2010), available at [http://www.ntia.doc.gov/files/ntia/publications/esa\\_ntia\\_us\\_broadband\\_adoption\\_report\\_11082010\\_1.pdf](http://www.ntia.doc.gov/files/ntia/publications/esa_ntia_us_broadband_adoption_report_11082010_1.pdf) (last visited Dec. 23, 2011). Notably, there was a widening gap between those at upper and lower income levels, and even though every racial group reportedly owned more computers than they did in 1994, African Americans and Hispanics lagged even further behind Whites in their levels of computer ownership and online access by 1997. *Id.* Significantly, since 1994, the digital divide between racial groups in computer ownership had increased at almost all income levels, including at incomes above \$75,000, where some might have expected computer-ownership rates to converge. *Id.*

20 See NAACP Resolution to Advance Digital Equal Opportunity, p. 1 (adopted unanimously by the NAACP National Board of Directors, Oct. 17, 2009) available at <http://communicationsconsumersunited.com/wp-content/uploads/2011/10/NAACP-Digital-Equal-Opp-Resolution-101209.pdf> (last visited Jan. 23, 2012).

21 *Id.*

22 *Id.*

23 *Id.*

24 See Broadband USA, available at <http://www.broadbandusa.gov/> (last visited Dec. 23, 2011).

In addition to the other policies enacted by the federal government, the Federal Communications Commission’s (“FCC” or “Commission”) use of rules to protect the freedom and limitless potential of the Internet to foster entrepreneurship and investment, particularly in unserved and underserved communities, remains a beneficial means of closing the divide.<sup>25</sup> While the network management rules prohibit network operators from interfering with Web traffic to American homes, if misapplied, they could unintentionally delay full participation of minorities as digital consumers and producers, and impede the paramount objective of closing the digital divide.

Policymakers should work for an open, diverse internet, but they should not regulate broadband in a manner that would prevent carriers from offering partnerships, mentoring, incubation, and price discounts to new entrants – particularly multicultural digital entrepreneurs seeking to gain a foothold in the digital market, where they will have an opportunity to compete with well-established companies. The rules should protect consumers and small, disadvantaged businesses with respect to their entire online experience and without jeopardizing their interests.

Nearly all stakeholders agree that the Internet should remain open and that providers should be more transparent with consumers regarding their network practices, performance, and services. The need for an open Internet is clearly drawn from civil rights history, which teaches that access to the mass media is vital where injustice has compromised the advancement of communities, resulting in second-class citizenship.<sup>26</sup> It follows that lawmakers should prohibit Internet service providers (“ISPs”) from blocking lawful content, devices, or applications, acts that inhibit free and open speech. Fortunately, our digital society provides the framework for deterring bad behavior through the shaming culture of the Internet, which is effective in preventing abuses even when – as is presently the case – no Open Internet regulations are in effect.<sup>27</sup>

Minority entrepreneurs and civil rights organizations have expressed concern that a narrow reading of the FCC’s rules regarding network management and specialized services could impede diversity in two respects. First, on both sides of the Internet’s market, these rules could shift costs for broadband deployment from heavy users to light users. In other words, costs for low and medium income consumers would increase, resulting in declining adoption rates. Fewer of the 100 million people who have yet to adopt broadband at home would be willing to get the service if the costs increased.<sup>28</sup> Second, these rules could unintentionally prevent small, minority owned businesses, which provide much of the culturally relevant content necessary to spur minority adoption, from competing effectively with established Internet-based companies through the use of enhanced services.

When regulating broadband – where adoption correlates with socioeconomic factors, and “neutral” seldom equates to “equal” – any attempt to obtain neutral practices may actually lock in preexisting systemic disparities.

The Commission must ensure that this does not occur.<sup>29</sup> Civil rights organizations contend that as the nation transitions from an industrial to a digital economy, policymakers should focus on how to avoid a repetition of the

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25 See *Preserving the Open Internet, Report and Order*, 25 FCC Rcd 17905 (2010) (“*Open Internet Order*”).

26 See *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994, 1006 (D.C. Cir. 1966).

27 Such behavior led to the 2010 decision in *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010). In 2007, Internet users discovered that Comcast was secretly interfering with its customers’ lawful use of BitTorrent and other peer-to-peer applications. After first denying that the practice existed, Comcast eventually agreed to end it after user outrage. In 2008, the FCC issued an order finding Comcast in violation of federal Internet policy as stated in various provisions of the Communications Act and prior Commission decisions. On April 6, 2010, the U.S. Court of Appeals for the District of Columbia unanimously ruled against the FCC’s sanction of Comcast for denying bandwidth to BitTorrent users in 2007, stating that the FCC’s 2008 order lacked “sufficient statutory basis,” because it failed to identify “any express statutory delegation of authority” for putting an end to Comcast’s undisclosed interference with its own customers’ communications. Nonetheless, in the court of public opinion, Comcast lost their fight due to user disapproval of its actions. See Jack Mann, FCC’s General Counsel on Comcast Decision: “We Are Assessing the Implications,” ExecutiveGov.com (Apr. 8, 2010) available at <http://www.executivegov.com/2010/04/fccs-general-counsel-on-comcast-decision-we-are-assessing-the-implications/> (last visited Jan. 23, 2012).

28 See National Telecommunications and Information Administration, *Exploring the Digital Nation: Home Broadband Internet Adoption in the United States*, (Nov. 2010), available at [http://www.ntia.doc.gov/reports/2010/ESA\\_NTIA\\_US\\_Broadband\\_Adoption\\_Report\\_11082010.pdf](http://www.ntia.doc.gov/reports/2010/ESA_NTIA_US_Broadband_Adoption_Report_11082010.pdf) (last visited April 25, 2011). This study used information from the U.S. Census Bureau, Current Population Survey (CPS), and CPS School Enrollment and Internet Use Supplement, October 2009, and ESA calculations.

29 The Commission used the phrase “[e]quitable’ does not mean ‘equal’” in its Universal Service Report and Order to describe the relationship between interstate and intrastate carriers’ ability to recover from their customers, but the idea holds true of all inequalities, especially in the telecommunications realm. See *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776 at 9204 (1997).

second class treatment of minorities that accompanied the nation's transition from an agricultural to an industrial economy in the 1930s through 1950s. Our national priorities must include provisions for an inclusive digital future, and under those terms, the current state of minority broadband adoption cannot be ignored.

***Increased Broadband Adoption is Good for the Economy  
Because it Increases Jobs***

It is clear that closing the digital divide and educating all Americans on how to effectively use and access broadband is important to the Commission. Effective broadband policy has the potential to influence positive social change. As FCC Chairman Julius Genachowski remarked in 2010, “Multiple studies tell us the same thing – even modest increases in broadband adoption can yield hundreds of thousands of new jobs.”<sup>30</sup>

It is a central principle of the Commission's National Broadband Plan that access to broadband is increasingly significant to everything from education and energy use to employment, healthcare, and self-governance. As the Plan put it, “Until recently, not having broadband was an inconvenience. Now, broadband is essential to opportunity and citizenship.”<sup>31</sup>

Clearly, in order to achieve a digital Beloved Community, we must start to work toward reversing the wrongs of the past, so that all can have first class citizenship in their futures.

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30 Julius Genachowski, Chairman, Fed. Comm. Comm'n, Prepared remarks at the Minority Media and Telecom Council Access to Capital and Telecommunications Conference 1 (Jul. 20, 2010) available at [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2010/db0720/DOC-299976A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0720/DOC-299976A1.pdf) (last visited Jan. 23, 2012).

31 See *Connecting America: The National Broadband Plan* at 5 (rel. Mar. 17, 2010), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf> (“National Broadband Plan”) (last visited Jan. 23, 2012).

# IV.

## A ROADMAP TO THE DIGITAL BELOVED COMMUNITY: WHAT WILL IT TAKE TO GET US THERE?

### A. ACCESS AND DEPLOYMENT

#### 1. In the Digital Beloved Community, Access to Broadband is a Fundamental Right

In the digital Beloved Community, access to broadband will be a fundamental right, available to anyone who desires to make use of the technology.<sup>32</sup> The world has begun to appreciate the necessity of broadband access. Article 19 of the *United Nations Declaration of Human Rights* holds that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”<sup>33</sup> In 2011, a report from the UN Human Rights Council suggested that “the full guarantee of the right to freedom of expression must be the norm, and any limitation considered as an exception, and that this principle should never be reversed.”<sup>34</sup> In late 2011, the UN officially declared access to broadband to be a human right.<sup>35</sup>

To make this declaration in the United States, Congress will have to determine, and the Supreme Court confirm, that broadband access is a fundamental right in the digital Beloved Community. The Supreme Court’s analysis determining whether a fundamental right exists is based upon consideration of whether the asserted right: is important,<sup>36</sup> is implicit in the concept of ordered liberty<sup>37</sup> or implicitly guaranteed by the Constitution,<sup>38</sup>

<sup>32</sup> Fundamental rights include those rights specifically enumerated and protected by the Bill of Rights. *See Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). For example, the First Amendment prohibition against laws “respecting the establishment of religion” or that abridge “the freedom of speech, or of the press” are considered fundamental. *See* U.S. CONST. amend. I.

<sup>33</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), Article 19, U.N. Doc. A/810 at 71 (1948).

<sup>34</sup> Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, U.N. Human Rights Council, 17th Sess., Agenda Item 3, at 19, U.N. Doc. A/HRC/17/27 (2011).

<sup>35</sup> *See* Randal Lane, *The United Nations Says Broadband Is Basic Human Right*, *Forbes* (Nov. 15, 2011), available at <http://www.forbes.com/sites/randall-lane/2011/11/15/the-united-nations-says-broadband-is-basic-human-right/> (last visited Jan. 23, 2012).

<sup>36</sup> *See* Robert C. Farrell, *An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*, 26 *St. Louis U. Pub. L. Rev.* 203, 216-17 (2007) (citing *Skinner v. Oklahoma*, 316 U.S. 535 (1942)).

<sup>37</sup> *See Id.* at 222 (citing *Palko v. Connecticut*, 302 U.S. 319 (1937)).

<sup>38</sup> *See Id.* at 224 (citing *San Antonio Independent Sch. Dist. v. Rodriguez*, 411, U.S. 1, 35). “Specifically, [appellees] insist that education is itself a fundamental personal right because it is essential to the effective exercise of First Amendment freedoms and to intelligent utilization of the right to vote.” *Id.* at fn. 153.

is deeply rooted in the nation's history and tradition;<sup>39</sup> needs protection from government action that shocks the conscience;<sup>40</sup> is necessarily implied from the structure of government<sup>41</sup> or from the structure of the Constitution;<sup>42</sup> provides necessary access to governmental processes;<sup>43</sup> or has been previously identified as such by Supreme Court precedents.<sup>44</sup> In the past, such rights have included the right to marry,<sup>45</sup> the right to have children,<sup>46</sup> the right to direct the education and upbringing of one's children,<sup>47</sup> the right to marital privacy,<sup>48</sup> the right to use contraception,<sup>49</sup> the right to bodily integrity,<sup>50</sup> and the right to have an abortion.<sup>51</sup> A number of legislative bodies in technologically developed foreign nations consider broadband to be a fundamental right, while other nations continue to weigh the issue.<sup>52</sup> As a world superpower, the United States should be leading this discussion to ensure digital equality for all.

In the digital Beloved Community, broadband will be the primary means citizens use to exercise many fundamental rights, such as the right to vote. In our near future, access to broadband will be the only means of accessing government services and enabling us to exercise other rights that are deeply rooted in American tradition. For example, several states are incorporating broadband into voter registration processes.<sup>53</sup> The U.S. Election Assistance Committee ("EAC") reports that almost 29% of voters registered to vote by email.<sup>54</sup> In Arizona, voters submitted a significant number of voter registration applications online.<sup>55</sup> This trend toward online voter registration is likely to continue. Indeed, the EAC has encouraged states "to use technology to ease the workload on their election offices..."<sup>56</sup>

The UN recognizes access to government information and services as a basic human rights principle,<sup>57</sup> and these services are making the transition online, strengthening the foundation for our digital Beloved Community. This transition supports the argument that broadband is becoming a fundamental right. For citizens with broadband access, [www.usa.gov](http://www.usa.gov) provides a convenient portal for government services.<sup>58</sup> From this website, users can ac-

39 See *Id.* at 226 (citing *Moore v. City of East Cleveland*, 431 U.S. 494, 503, n.10 (1977)).

40 See *Id.* at 236 (citing *County of Sacramento v. Lewis*, 523 U.S. 833 (1998)).

41 See *Id.* at 239 (citing *Saenz v. Roe*, 526 U.S. 489 (1999)).

42 See *Id.* at 240 (citing *Griswold v. Connecticut*, 381 U.S. 479 (1965)).

43 See *Id.* at 242 (citing *Reynolds v. Sims*, 377 U.S. 533 (1964)).

44 See *Id.* at 245 (citing *Roe v. Wade*, 410 U.S. 113, 152 (1973) (stating, "[W]ithout citation to any general theory of implied fundamental rights, it went on to cite 'a line of decisions ... going back perhaps as far as [1891]' in which 'the Court has recognized that a certain right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution.'")).

45 See *Loving v. Virginia*, 388 U.S. 1 (1967).

46 See *Skinner*, 316 U.S. 535 (1942).

47 See *Meyer v. Nebraska*, 262 U.S. 390 (1923); see also *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

48 See *Griswold v. Connecticut*, 381 U.S. 479 (1965).

49 See *id.*; see also *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

50 See *Rochin v. California*, 342 U.S. 165 (1952).

51 See *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).

52 See Don Reisinger, Finland Makes 1Mb Broadband Access a Legal Right, *CNET* (Oct. 14, 2009), available at [http://news.cnet.com/8301-17939\\_109-10374831-2.html](http://news.cnet.com/8301-17939_109-10374831-2.html) (last visited Jan. 23, 2012); see also Muhammad Ayish, "Universal Internet Access is the New Human Rights Issue," *The National* (Mar. 19, 2010), available at <http://www.thenational.ae/news/universal-internet-access-is-the-new-human-rights-issue> (last visited Nov. 25, 2011) (noting that Estonia, France, Finland, and Greece have recognized Internet access as a human right). France has also weighed in on freedom of expression over the Internet. See Act Furthering the Diffusion and Protection of Creation on the Internet, Cons. Const. 2009-580 DC, at para. 15 (Jun. 10, 2009), available at [http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank\\_mm/anglais/2009\\_580dc.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/2009_580dc.pdf) (last visited Nov. 25, 2011) ("Freedom of expression and communication are all the more precious since they are one of the cornerstones of a democratic society and one of the guarantees of respect for other rights and freedoms. Any restrictions placed on the exercising of such freedom must necessarily be adapted and proportionate to the purpose it is sought to achieve."). Brazil has also explored the idea of making broadband access a "social right." See Stacey Higginbotham, Lawmaker in Brazil Aims to Make Broadband Access a Right, *GigaOM* (Mar. 8, 2011) available at <http://gigaom.com/broadband/lawmaker-in-brazil-aims-to-make-broadband-access-a-right/> (last visited Nov. 25, 2011).

53 See Comments of the Lawyers' Committee for Civil Rights Under Law in Response to NBP Public Notice #20, In the Matters of International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act *et al.*, GN Docket Nos. 09-47, 09-51, 09-137 (Dec. 10, 2009), p. 2-3.

54 See U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2007-2008: A Report to the 111th Congress*, p. 6 (Jun. 30, 2009) ("EAC Report").

55 See EAC Report at 6.

56 See *id.*

57 See The Universal Declaration of Human Rights: A Living Document, available at <http://www.un.org/events/humanrights/udhr60/declaration.shtml> (explaining the history and importance of the Universal Declaration of Human Rights as being "...the first universal statement on the basic principles of inalienable human rights and a common standard of achievement for all people and all nations...") (last visited Jan. 23, 2012). See Article 21(2) of the U.N. Universal Declaration of Human Rights (General Assembly, Dec. 10, 1948) ("Everyone has the right of equal access to public service in his country"). See also Article 25 of the U.N. International Covenant on Civil and Political Rights, General Assembly Resolution (entered into force Mar. 23, 1976; for the United States Sep. 8, 1992).

58 See "Get It Done Online!," <http://www.usa.gov/Citizen/Services.shtml> (last visited Nov. 27, 2011).

cess state-specific information about driver’s license renewal, motor vehicle services,<sup>59</sup> unemployment benefits,<sup>60</sup> social security benefits,<sup>61</sup> and other government information and services.<sup>62</sup> Further, the unemployment benefits website specifically notes that “[m]any states require you to file for unemployment benefits on the Web. Some provide toll-free numbers or other ways to obtain assistance in filing.”<sup>63</sup>

The ubiquity of online services makes broadband critical to private life as well. Broadband plays an increasingly important role in a person’s ability to find and secure employment, as most employers require job applicants to apply for employment online<sup>64</sup> or, at the very least, to submit resumes, cover letters, and other hiring materials via email.

## 2. The Digital Beloved Community Will Support Efficient Use of Spectrum

In the digital Beloved Community, government and industry will work together to support efficient use of limited spectrum. The National Broadband Plan recognizes the existence of a spectrum shortage for all wireless services and recommends identifying 500 MHz of additional spectrum for wireless broadband by 2020.<sup>65</sup> In April 2010, FCC Chairman Genachowski addressed this very critical issue, warning of unsustainable demands for spectrum.<sup>66</sup> The Chairman explained that lack of action would result in higher prices in response to a spike in demand for wireless service and apps, discouraging wireless use by consumers and slowing investment and innovation in wireless broadband technology.<sup>67</sup>

The spectrum crunch is causing service providers to institute data caps to balance the rising demand for, and limited supply of, spectrum. More wireless carriers are abandoning unlimited data plans and offering tiered service to manage demand.<sup>68</sup> Some carriers currently throttle or limit data use by high-volume users.<sup>69</sup> The cost of disproportionate use stifles demand, and when coupled with the racial wealth gap described below, it endangers adoption of mobile technology and hinders the manifestation of the digital Beloved Community.

### a. Support Consumers through USF Reform to Connect Homes to Broadband

In the digital Beloved Community, society will prioritize universal broadband access in the home. Today, as we examine ways to encourage universal broadband adoption, we must consider modifying the Universal Service Fund (“USF”) as a support mechanism for broadband service, not only for deployment of service, but to promote adoption and informed use. The concept of universal service is as old as the Commission itself, as its mandate is to make communications services available “to all the people of the United States...at reasonable charges.”<sup>70</sup>

59 *Id.* (follow “Drivers’ License and Vehicle Registration” hyperlink).

60 *Id.* (follow “Locators – Find In-Person Services Near You” hyperlink; then follow “Employment and Career Service Locator” hyperlink; then follow “Unemployment Benefits” hyperlink).

61 *Id.* (follow “Social Security Online – Estimate benefits, apply, check status, request reports...” hyperlink).

62 *Id.*

63 *Id.* (follow “Locators – Find In-Person Services Near You” hyperlink; then follow “Employment and Career Service Locator” hyperlink; then follow “Unemployment Benefits” hyperlink).

64 See Yves Lermusi, *Don’t Miss The Next Strategic Turn*, Ere.net (Nov. 17, 2005), available at <http://www.ere.net/2005/11/17/dont-miss-the-next-strategic-turn/> (last visited Dec. 30, 2011) (“In 2000, 27 percent of the Fortune 500 directed all candidates wishing to respond to job positions posted to the corporate Careers website through a purely online response mechanism. In 2005, 77 percent of the Fortune 500 do not give jobseekers the option of responding offline to job positions posted to the corporate Careers website.”).

65 *National Broadband Plan* at 10, 84-93.

66 See Remarks of Chairman Julius Genachowski, National Association of Broadcasters Show at 2-5 (Apr. 13, 2010), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-297469A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-297469A1.pdf) (last visited Nov. 30, 2011).

67 See *id.*

68 See Ina Fried, *As Unlimited Data Plans Go Away, Consumers Struggle to Make Sense of Their Data Use*, ALLTHINGSD (Jun. 29, 2011), available at <http://allthingsd.com/20110629/as-unlimited-data-plans-go-away-consumers-struggle-to-make-sense-of-their-data-use/?mod=googlenews> (last visited Jan. 23, 2012) (noting that Verizon Wireless would stop offering unlimited data plans in July 2011, while AT&T wireless eliminated such options in 2010).

69 See Amy Lee, *Verizon To End Unlimited Data Plans By July 7*, HUFFINGTON POST (Jul. 5, 2011), available at [http://www.huffingtonpost.com/2011/07/05/verizon-unlimited-data-plan-july-7\\_n\\_890613.html?ref=fb&src=sp](http://www.huffingtonpost.com/2011/07/05/verizon-unlimited-data-plan-july-7_n_890613.html?ref=fb&src=sp) (last visited Jan. 23, 2012).

70 47 U.S.C. §151. Sec. 151 established the FCC in 1934. See Pub. L. No. 73-416, 48 Stat. 1064 (1934). It was amended by the Telecommunications Act of 1996 to include additional nondiscriminatory language stating “without discrimination on the basis of race, color, religion, national origin, or sex...” See Pub. L. No. 104-104, 110 Stat. 56 (1996).

The 1996 Telecommunications Act expanded the role of universal service and USF to include rural health care providers, schools, and libraries, in addition to supporting low-income consumers and assisting carriers with offsetting the high costs of serving areas that were not profitable, making service more affordable for customers in these areas.<sup>71</sup>

However, USF is not being distributed in the most effective or efficient manner for telecommunications services. In 2009, the Universal Service Administrative Company (“USAC”) found that only 33% of low-income households participated in the Lifeline/Link Up program, a program that ensures affordable voice service at home.<sup>72</sup> Participation in the program varies from state to state, with only five states having more than a 50% participation rate – Alaska, California, Montana, Oklahoma, and Virginia.<sup>73</sup>

The National Broadband Plan proposed changes in the USF, putting access to broadband on equal footing with broadband adoption.<sup>74</sup> These changes would allow for affordable broadband and voice service. One proposed change included migrating funds allocated for high-cost services to a new program called the Connect America Fund.<sup>75</sup> The National Broadband Plan also proposed allowing Lifeline/Link Up funds to be used for broadband.<sup>76</sup>

Concerns about waste, fraud, and abuse persist in some areas of the USF. For example, the FCC released an Order in June 2011 making it clear that low-income consumers eligible for voice service through the Lifeline/Link Up program were only eligible for one line per household.<sup>77</sup> Evidence suggested that some consumers, knowingly or unknowingly, had more than one Lifeline service, through wireless and wireline service.<sup>78</sup> Despite this concern about deliberate – or inadvertent – abuse of the one line per household requirement, it is important that Lifeline is expanded to address the needs of our increasingly mobile society.

## **b. Deployment and Adoption of Broadband Service must be Equal Priorities**

In the digital Beloved Community, broadband access will be truly ubiquitous. Americans who reside on Tribal lands and in U.S. territories will exercise first class digital citizenship, no longer suffering with broadband service resembling those in Third World countries.<sup>79</sup> As stated in the Communications Act, consumers residing in insular areas should have access to telecommunications and information services that are reasonably comparable to that of urban areas.<sup>80</sup> In the digital Beloved Community, resources to support deployment in insular areas such as Puerto Rico, where broadband service is abysmally low, will be disbursed efficiently.<sup>81</sup>

While over 90% of the country has access to broadband, only 68% of the nation has adopted broadband at home.<sup>82</sup> Adoption rates for Blacks, Hispanics, and low-income households are significantly lower than the nationwide average.<sup>83</sup> Without full digital inclusion, these communities remain uninformed on issues regarding education,

71 See Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §254).

72 See *In the Matter of Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd 2770, 2779 ¶25 (2011).

73 See *id.* at 2780, Chart 2 “2009 Lifeline Participation By State.”

74 See *National Broadband Plan* at 133-190.

75 See generally *id.* at 133-152. The Commission adopted portions of this proposal in November 2011. See *Connect America Fund Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, *et al.* (rel. Nov. 18, 2011), 76 Fed.Reg. 76623 (Dec. 8, 2011).

76 See generally *National Broadband Plan*, at 165-190.

77 See *Lifeline and Link Up Modernization and Reform, Report and Order*, 26 FCC Rcd. 9022, 9026 ¶7 (2011).

78 See *id.* at 9023 ¶2 (citing *USAC Independent Auditor’s Report*, Audit No. LI2009BE006 (Dec. 3, 2010)).

79 See, e.g. Reply Comments of Puerto Rico Telephone Company, WC Docket No. 10-90 (Sep. 6, 2011) at 3-4 (discussing challenges of providing broadband service in states territories such as Hawaii, Virgin Islands, and Pacific Island territories where topography and climate increase cost of deployment); see also Ex Parte Letter to Chairman Julius Genachowski from David Honig, President, MMTC, Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (Sep. 12, 2010) (discussing challenges to providing broadband service in Puerto Rico and the Commission’s failure to take action to provide any remedy).

80 See 47 U.S.C. §254(b)(3).

81 This has not proven to be the case in areas like Puerto Rico, where FCC data indicates that almost 3.9 million are without broadband service. See *Section 706 Seventh Report & Order*, 26 FCC Rcd 8008, 8052 (May 20, 2011). The most recent available NTIA data indicates that up to 26 million Americans are unserved by broadband and the population of Puerto Rico comprises more than one sixth of Americans without broadband service. *Id.* at 8009.

82 See *Digital Nation: Expanding Internet Usage*, U.S. Department of Commerce, National Telecommunications and Information Administration (Feb. 2011) at 7 (“NTIA Internet Usage Study”).

83 See *id.* at 11. The adoption rates for African American and for Hispanic homes are approximately 50% and 55% respectively. *Id.*

employment, health care, and civic engagement. To ensure that all communities have a voice in the digital age, we must advocate for USF Reform with a stronger emphasis on funds for adoption efforts.

Available nationwide data illustrates a relatively small gap in deployment, amounting to 5-10% of the population,<sup>84</sup> but a considerably larger gap in adoption at 32% of the population.<sup>85</sup> While 3G wireless networks cover 98% of the nation's population,<sup>86</sup> the household adoption rate for all Americans is only at 68%.<sup>87</sup>

Broadband adoption rates are significantly lower for low-income families, the elderly, minority groups, and disabled communities. According to the NTIA, adoption rates for homes earning less than \$15,000 are at 32%, and 42% for those making between \$15,000 and \$25,000.<sup>88</sup> Roughly 50% of African American homes and 55% of Hispanic homes do not use broadband.<sup>89</sup> Pew's data shows that only 31% of those over age 65 have broadband at home,<sup>90</sup> and the NTIA reports that only 38% of homes headed by a disabled person have broadband at home.<sup>91</sup> Cost, not availability, is the primary reason for not adopting the Internet among all groups combined,<sup>92</sup> and, according to the NTIA, lack of interest, cost, and lack of a computer all outrank availability as reasons for not adopting home broadband for all income brackets.<sup>93</sup>

### ***Shift USF Funds to Stimulate Broadband Adoption***

The data shows, and experts agree, that at this time, there is a greater need to shift USF funds to programs that stimulate effective and informed use of broadband.<sup>94</sup> In making these changes, the digital Beloved Community will ensure that those currently on the wrong side of the digital divide will become true participants in the digital community. To achieve this goal, current broadband pilot programs that incentivize the use of broadband for school, employment, or healthcare are preferable to simple subsidies for use.<sup>95</sup> Such programs encourage adoption through purposeful use of broadband technology.

Broadband pilot programs should address multiple facets of adoption barriers, including digital literacy and relevance.<sup>96</sup> They provide incentives for non-adopters to change their behavior.<sup>97</sup> In the digital Beloved Community, these programs would be phased out over time as non-adopters realize the value in broadband and become more willing to pay for the service. The market will meet the demand and develop a comfortable price point for most users, and subsidies will be available for very low-income homes that could not otherwise afford broadband access.<sup>98</sup>

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84 See Section 706 Seventh Report & Order, 26 FCC Rcd at 8090 (based on speeds of 3 Mbps/768 kbps).

85 See NTIA Internet Usage Study at 7.

86 See *National Broadband Plan* at 146.

87 See NTIA Internet Usage Study at 7.

88 *Id.* at 8.

89 *Id.* at 11.

90 See Aaron Smith, Home Broadband 2010, Pew Research Center's Internet & American Life Project (Aug. 11, 2010) at 7, available at <http://pewinternet.org/~media/Files/Reports/2010/Home%20broadband%202010.pdf> (last visited Jan. 23, 2012) ("Pew Home Broadband 2010").

91 See Exploring The Digital Nation: Home Broadband Internet Adoption In The United States, U.S. Dept. of Commerce (Nov. 2010) at 31 ("Commerce Home Broadband Study").

92 See NTIA Internet Usage Study at 20.

93 *Id.*

94 See Blair Levin, *My Mistake; Our Opportunity*, Speech to the Joint Center for Political and Economic Studies at 9 (delivered Mar. 2, 2011) available at <http://www.knightcomm.org/wp-content/uploads/2011/03/delivery-joint-center-final.pdf> (last visited Oct. 6, 2011) ("Levin JCPS Speech").

95 *Id.* at 7.

96 See Comments of One Economy Corporation, Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42 (filed Apr. 2011) at 19 ("OE Lifeline/Link Up Comments").

97 See Levin JCPS Speech at 4-6.

98 See OE Lifeline/Link Up Comments at 26. "We do not believe in lifetime LLLU subsidies. Within one to two years after low-income citizens first consume broadband, the perceived value of broadband goes up to these citizens; our studies and others have clearly demonstrated this. As that perceived value increases, so does the willingness to pay. Subsidies could decrease to persons from low-income communities over time (besides the very poor who will simply not be able to afford broadband), in order to maximize the efficiency and reach of USF while also providing these citizens the vital opportunity to enter the economic marketplace as consumers. The government should serve as a stimulant, encouraging this initial provision by ISPs and consumption by low-income consumers and easing the path toward adoption with subsidies and partnership creation; it should not replace the marketplace." *Id.*

The digital Beloved Community will fully embrace mobile technology, allowing people to connect at home and away. As a relatively inexpensive means of accessing broadband, wireless technologies could lead to full digital inclusion and bridge the digital divide.<sup>99</sup> According to Pew, in 2011, 83% of Americans owned a cell phone of some kind, and 44% used them to access the Internet.<sup>100</sup> As more families use multiple mobile devices to keep in touch with one another at school and at work, there is an increasing need for a Lifeline/Link Up program that allows for a subsidy based not only on income, but also on family size.

Lifeline/Link Up participation is abysmal.<sup>101</sup> As it works to revise the programs, the FCC should focus on increasing participation to extend voice and broadband service to low-income individuals regardless of how many people are living in a home. This follows the approach of the U.S. Department of Housing and Urban Development and local public housing authorities, which award housing vouchers based upon income and family size.<sup>102</sup>

## **B. AFFORDABILITY**

### **1. Cost of Service: Fees and Taxes**

#### **a. Various Tiers of Service to Empower Consumers**

Protecting consumer choice in the selection of services and equipment is an extremely important component in achieving the digital Beloved Community. This is especially true for elderly, low-income, and fixed income consumers who will benefit from flexible service and device options because they are more sensitive to changes in price than other consumers.

Some suggest that the FCC require wireless carriers to provide Internet service plans that would not limit users' access to unlimited data.<sup>103</sup> They argue that providers offering low-cost service with minimal Internet access are doing a disservice to the communities to whom they market. These communities consist mainly of minority and low-income consumers who faced redlining in telecommunications for decades and could greatly benefit from Internet access today.<sup>104</sup> Alternatively, those who advocate for unlimited mobile Internet access believe there should be one standard of Internet service that is not tiered, allowing all to have full access to all mobile broadband services.<sup>105</sup>

At first glance, the idea of equal service offerings for all sounds appealing. The ability for everyone to access the information when they need it, at home or on the go, is an important aspect to achieving the digital Beloved Community. However, such an argument ignores two very important realities we face today.

First, with the looming broadband spectrum crunch, mandating a one-size-fits-all plan would severely compromise quality of service for all consumers, whether they use their mobile device for voice or data/Internet as a primary use. Currently, mobile networks simply cannot handle a large number of high-volume users.

Second, consumers will not pay for what they do not want or need, as discussed below. Some consumers prefer voice-only mobile service and do not want to access the Internet via their cell phones,<sup>106</sup> while others cannot

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99 See Comments of the Minority Media and Telecommunications Council, Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42 at 3 (filed Apr. 21, 2011) (“MMTC Lifeline/Link Up Comments”). “Full deployment and adoption of mobile and other cost efficient/cost effective technologies is the only way we will ever be successful in reaching the unserved and low income families with broadband.” *Id.*

100 Aaron Smith, Americans and Their Cell Phones, Pew Internet & American Life Project (Aug. 15, 2011) at 5 (“Pew Mobile Study Aug. 2011”).

101 See *In the Matter of Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd 2770, 2779 ¶25 (2011) (noting that “only 33percent of low income households participated in the Lifeline program.”).

102 See Housing Choice Vouchers Fact Sheet, U.S. Dept. of Housing & Urban Development, available at [http://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8) (last visited Oct. 5, 2011).

103 See Malkia A. Cyril, *In Defense of Sub-Standard Cell Phone Service: Big Media Gets Rescued. Again*, HUFFINGTON POST, Feb. 8, 2011, [http://www.huffingtonpost.com/malkia-a-cyрил/in-defense-of-substandard\\_b\\_820028.html](http://www.huffingtonpost.com/malkia-a-cyрил/in-defense-of-substandard_b_820028.html) (last visited Jan. 23, 2012).

104 *Id.*

105 *Id.*

106 See Jon P. Gant et al., National Minority Broadband Adoption: Comparative Trends in Adoption, Acceptance and Use, Joint Center for Political and Economic Studies at 36, available at [http://www.jointcenter.org/sites/default/files/upload/research/files/MTI\\_BROADBAND\\_REPORT\\_WEB.pdf](http://www.jointcenter.org/sites/default/files/upload/research/files/MTI_BROADBAND_REPORT_WEB.pdf) (last visited Jan. 19, 2012) (“Joint Center Minority Broadband Report”).

afford services that include Internet, email, streaming music, and video on their smartphones.<sup>107</sup> Forcing these consumers to pay higher costs will only operate to subsidize use by high volume consumers, those who stream video several times throughout the day via their mobile phone.

The digital Beloved Community will not appear overnight; instead it will come about as the result of incremental, progressive steps. The appropriate solution at this time is for carriers to provide tiered service offerings, which ensure that mobile service is reliable and provides economical options for all consumers, preserving consumer choice. Currently, most mobile carriers provide tiers of service that clearly define what services consumers will receive, including voice, data, and multimedia services (e.g., music, video, etc.).

Mobile carriers should also provide customer terms, conditions, and any limits to service in a manner that is transparent and easy to understand. As discussed throughout this section, affordability and relevance are significant factors that influence broadband adoption, regardless of the device used to connect to the Internet. Providing consumers with a variety of options to connect to the level of Internet service they need, at home or away, empowers them to make better choices for individuals and families.

### **b. Regressive Taxes and Other Fees that Hinder Adoption and Innovation**

The cost of service is cited as one of the top reasons why Americans, particularly minorities, are not adopting broadband. To achieve the digital Beloved Community, we must ensure that taxes and fees are not so high as to impede the value of broadband service, especially for mobile broadband. Currently, five states have broadband taxes that amount to at least 20% of a consumer's phone bill.<sup>108</sup> The average consumer pays 16.3% in wireless taxes and fees, as compared to 7.4% for sales tax on goods and services.<sup>109</sup>

As it stands, wireless service (voice, broadband, and data) and goods (apps, music, games, etc.) are subject to a different tax structure than goods purchased in physical markets. Taxes on digital goods can be assessed more than once, because the wireless tax system does not make adjustments for commerce in the 21<sup>st</sup> century.

The Pew Mobile Data Report shows that 58% of all Americans have engaged in mobile data and communications activities (beyond voice calls), and 32% of Americans do so on a daily basis.<sup>110</sup> Of those engaged in mobile activities, 52% do so away from home or work,<sup>111</sup> possibly subjecting them to taxes not associated with the jurisdiction of their billing address. Taxes are not always levied at the location of final consumption, which may vary for mobile users, but elsewhere along the stream of commerce. For example, a user could be taxed to download a ringtone and taxed again on the data service she used to download the ringtone. Therefore, what would have been a transaction assessed at one rate in the brick and mortar world could end up being assessed at a higher rate in digital space.<sup>112</sup>

Communications technology is the centerpiece to the 21<sup>st</sup> century digital economy, which relies on the movement of information.<sup>113</sup> This movement cannot sustain the incremental tax burden levied upon it in recent years, where wireless tax rates have increased at three times the rate of taxes on goods and services. Telecommunications taxes remain structured for a 20<sup>th</sup> century economy, where taxes acted as a method to regulate one large entity. Continuing this approach to telecommunications taxation will hinder adoption efforts and the overall economic recovery. First, taxes limit personal income because they drive up the cost of service, reducing disposable income for other products, and reducing consumer demand overall. Second, these taxes reduce capital for investment to upgrading networks and limit available capital for new hires.

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107 *Id.* at 36.

108 See Scott Mackey, *A Growing Burden: Taxes and Fees On Wireless Service*, Tax Analysts Special Report (2011) at 475 (on file with authors). Nebraska and Washington have the highest rates at 23% or more. *Id.*

109 *Id.* at 476.

110 Kristen Purcell, et. al., *How Mobile Devices Are Changing Community Information Environments*, Pew Project for Excellence in Journalism (Mar. 14, 2011) at 2.

111 *Id.* at 3.

112 See Statement of Harley Duncan, National Governors Assn. 2011 Winter Meeting (Feb. 27, 2011) video available at [http://www.nga.org/cms/home/news-room/audio--video/page\\_2011/col2-content/main-content-list/2011-winter-meeting-audio-and-vi.html;jsessionid=5C7275EE313C1C1CE762BEC3FA42B2E6](http://www.nga.org/cms/home/news-room/audio--video/page_2011/col2-content/main-content-list/2011-winter-meeting-audio-and-vi.html;jsessionid=5C7275EE313C1C1CE762BEC3FA42B2E6) then follow link to "video" for Sun., Feb. 27, Thomas G. Doe and Harley T. Duncan ("Duncan NGA Speech") (last visited Jan. 23, 2011).

113 *Id.*

Though an important consumer issue, taxation of mobile goods is also important as state and local governments seek to balance budgets in a time of economic downturn. Virginia found a streamlined method of taxation that ultimately resulted in local governments receiving more revenue than they did previously under separate tax systems for wireless services and other goods and services.<sup>114</sup> As a result of the change, local governments received nearly \$200 million more in revenue than under the previous law.<sup>115</sup>

One proposed solution to the issue of multiple tax structures is the creation of a national framework for taxation of mobile goods. Such a plan draws skepticism from those who desire that state and local officials retain an unfettered right to tax and thus generate revenue. However, a national framework would assist consumers clearly identifying which jurisdiction has the right to tax goods and services, precluding multiple taxes on a single transaction. National organizations representing minority legislators have endorsed federal efforts to place a moratorium on state and local wireless taxes until legislators find an equitable solution to the multiple tax structures.<sup>116</sup>

## 2. Cost of Equipment

In the digital Beloved Community, equipment will be affordable and accessible. The cost of equipment or devices people use to connect to the Internet is important because, as Pew reports, 21% of people stay offline because of price.<sup>117</sup> NTIA's 2010 broadband adoption report cited lack of a computer among the top three reasons why people have not adopted broadband at home.<sup>118</sup> Without the right device or connection speed, consumers will not be able to realize the full benefits of broadband services such as the ability to engage in distance learning, search and apply for jobs online, or receive health care via telemedicine.

According to the Joint Center for Political and Economic Studies ("Joint Center"), laptop computers are the overall preferred method of going online.<sup>119</sup> 53% of those surveyed preferred laptops, with desktops and cell phones at 33% and 6%, respectively, a far distant second and third place in the device race to connect to the Internet.<sup>120</sup> However, other studies by Pew show that, preferences aside, 44% of adults access the Internet via their phone.<sup>121</sup> Of the three options, laptop computers tend to be the most expensive, depending on the processing speed, memory, and pre-loaded software. Desktops are more economical but lack the mobility of a laptop. Cell phones have the greatest value and mobility, but are not as functional for some activities, such as searching for employment.

The Joint Center has also reported that nine out of ten low-income African Americans use the Internet for job searches.<sup>122</sup> For families making less than \$20,000 annually, 92% of African Americans and 63% of Hispanics go online for job searches, as compared to only 54% of Whites. African Americans and Hispanics with less income and education are also more likely than other minority subgroups to use the Internet to get information on and apply for public benefits. Users cannot easily accomplish these functions via cell phone, which makes computers a necessity.

Those with higher income and more education are more likely to be able to afford devices that enable a consumer to take full advantage of broadband technology. According to the Joint Center, minority, middle-aged, high-income, and college-educated users are the fastest groups to adopt broadband technology. 90% of all Internet users

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114 See Scott Mackey, *A Revenue Analysis of Virginia Communications Tax Reform*, Tax Analysts Special Report (Apr. 25, 2011) at 249, 251-52 (on file with MMTC). In Virginia, collection of taxes for all telecommunications services, regardless of delivery (cable, satellite, wireline, wireless) was centralized at the state level. All services are now taxed at the same rate as sales and use taxes.

115 See *id.*

116 The National Black Caucus of State Legislators ("NBCSL") and the National Hispanic Caucus of State Legislators ("NHCSL") support federal efforts to aid in reform of state taxation of wireless goods and services. See Seeing Beyond: Sustainable Progress in Economic Recovery, National Black Caucus of State Legislators 2010 Ratified Resolutions, TST-10-28, Promoting Fairness in the Taxation of Wireless Service (Dec. 4, 2009) at 75, available at <http://www.nbcsl.org/public-policy/resolutions/item/112-telecommunication-science--technology-resolution-tst-10-28.html> (last visited Jan. 23, 2012); NHCSL 2009 Ratified Resolutions (Nov. 21, 2009) at 2009-06, available at <http://www.nhcsl.org/nhcsl-2009-ratified.pdf> (last visited Jan. 23, 2012).

117 See Pew Home Broadband 2010 at 11.

118 See Commerce Home Broadband Study at 17.

119 JCPS Minority Broadband Report 2010 at 37.

120 *Id.*

121 Pew Mobile Study Aug. 2011 at 5.

122 *Id.* at 2.

go online primarily at home, but African Americans and Hispanics are also likely to visit other homes, libraries, or community institutions to go online.<sup>123</sup>

Among those who use a laptop to access the Internet, 82% have Wi-Fi, a short-range wireless Internet connection often associated with a nearby wireless router or local wireless “hot spot.”<sup>124</sup> 39% have wireless broadband, a long-range wireless connection provided by an air card attached to the laptop.<sup>125</sup> Less than half of African Americans and Hispanics access the Internet via wireless broadband.<sup>126</sup> Half of African Americans and 42% of Hispanics accessed the Internet via their cell phone.<sup>127</sup> These numbers rise to 56% for African Americans and 51% for Hispanics when surveying cell phone owners only. This is significantly higher than the rate for Whites with cell phones, 39% of whom access the Internet via cell phone.<sup>128</sup>

According to a December 2010 Nielsen survey, of those with cell phones, 31% owned smartphones, or cell phones with app-based and Web-enabled operating systems.<sup>129</sup> While only 27% of White mobile users owned a smartphone, 45% of both Asian/Pacific Islander and Hispanic, and 33% of African-American mobile users, reported owning a smartphone.<sup>130</sup> Despite increased use of smartphones, some mobile phone users do not use their phones for broadband access. The Joint Center found that 55% of Hispanics show a lack of interest in using their cell phone to browse the Internet,<sup>131</sup> while 53% of African Americans decline mobile Internet because of the high cost of service.<sup>132</sup>

We must ensure that costs associated with broadband service and the devices we use to connect to broadband remain reasonable. This is especially true for African Americans and Hispanics, who over index in lower-cost cell phone use, but may benefit the most from home access to the health care, employment, and education opportunities the Internet has to offer, services not easily obtained on mobile phones, even smartphones. Convenient and affordable access to mobile devices such as tablet computers or netbooks could prove to be the bridge needed for low-cost mobility and functional use. In the digital Beloved Community, mobile carriers should consider discounts on these devices for users, similar to the deep discounts most currently offer for voice service, providing a free or deeply discounted device in exchange for a long- or short-term service agreement.

### 3. The Racial Wealth Gap

For the digital Beloved Community to become a reality, society must address the racial wealth gap, which affects how consumers make decisions related to broadband service and equipment. Personal wealth is measured by what a person owns, including the value of savings, cars, homes, businesses, retirement funds, college funds, stocks, bonds, investments, and other high-value items,<sup>133</sup> minus what they owe.<sup>134</sup> Despite advances in educational and employment opportunities, the racial wealth gap has increased by \$75,000 per household, from \$20,000 to \$95,000, in the past 23 years.<sup>135</sup> The racial wealth gap signifies “opportunity denied and assure[s] racial inequality for the next generation.”<sup>136</sup>

123 *Id.* at 27.

124 *Id.* at 37.

125 *Id.*

126 *Id.*

127 *Id.* at 35.

128 Pew Mobile Study Aug. 2011 at 7.

129 See Don Kellogg, *Among Mobile Phone Users, Hispanics, Asians are Most-Likely Smartphone Owners in the U.S.*, Nielsenwire (Feb. 1, 2011), available at <http://blog.nielsen.com/nielsenwire/consumer/among-mobile-phone-users-hispanics-asians-are-most-likely-smartphone-owners-in-the-u-s/> (last visited Jan. 23, 2012).

130 *Id.*

131 JCPS Minority Broadband Report 2010 at 36.

132 *Id.*

133 See Laying the Foundation for National Prosperity: The Imperative of Closing the Racial Wealth Gap, Insight Center for Community Economic Development (Mar. 2009) at 2, available at [http://www.insightcced.org/uploads/publications/wd/Laying\\_Foundation\\_Exec\\_Summ.pdf](http://www.insightcced.org/uploads/publications/wd/Laying_Foundation_Exec_Summ.pdf) (last visited Jan. 23, 2012) (“Insight Wealth Gap Study”).

134 See Thomas Shapiro, et al., *The Racial Wealth Gap Increases Fourfold*, Institute on Assets and Social Policy, Heller School for Social Policy and Management, Brandeis University (May 2010) at 1, available at <http://iasp.brandeis.edu/pdfs/Racial-Wealth-Gap-Brief.pdf> (last visited Jan. 23, 2012) (“Brandeis Wealth Gap Study”).

135 Brandeis Wealth Gap Study at 1.

136 *Id.*

**a. Public Policy Did Not Favor Wealth Building for Minorities or Immigrants of Color**

Our nation's wealth gap is a result of historic inequities in public policy.<sup>137</sup> Throughout U.S. history, policies for building wealth favored Whites at the expense of other races, such as removing Native Americans from land, then parceling it for White settlers; refusing to protect minorities' property rights; and refusing to extend the GI bill to minorities.<sup>138</sup> Slavery created wealth for all involved in property or chattel trades, including bankers and insurance companies. Laws such as the 1924 Alien Land Act kept Asians from owning land or forming corporations, and the 1942 Japanese internment forced Japanese to sell assets at an extreme loss.<sup>139</sup> These actions and others generated wealth and created a stable middle class for Whites at the expense of minorities. Even programs designed to assist impoverished Americans initially favored those of European descent.<sup>140</sup>

**b. Current Disparities in Wealth**

While high-achieving minorities earn more today than they did 30 years ago, it is important to understand that income equality does not equal wealth equality.<sup>141</sup> Despite advances in earnings, a large gap between White and African American high-income households not only persists, but has worsened over the past three decades. In 1984, this gap equaled the cost of two to three years of college tuition for one child. By 2007, that gap increased to four years of college for two children, plus the cost of medical school.<sup>142</sup>

In 2009, the median wealth of White households was 20 times that of Black households and 18 times that of Hispanic households, resulting in a racial wealth gap of over \$100,000.<sup>143</sup> Black and Hispanic households had just \$5,677 and \$6,325 in wealth, respectively, while White households had \$113,149.<sup>144</sup> Approximately one-third of Black and Hispanic homes and about one-fifth of Asian homes had zero or negative net worth in 2009, compared to 15% of White homes.<sup>145</sup> The result is a lack of disposable income to pay for reliable broadband service at home, impeding adoption efforts that will aid in realizing the digital Beloved Community.

Disparities in wealth lead to disparities in debt. In many minority families, elders who had low paying jobs in the prime of their lives do not receive Social Security benefits sufficient to sustain themselves, and thus must then rely upon their adult children to support them, which reduces wealth for the next generation.<sup>146</sup> This is wealth that could be put toward savings and investments. Without accumulated wealth, minorities tend to rely upon credit more than Whites, resulting in disparities in debt-to-asset ratios. Whites carry less debt, at 15 cents on the dollar, whereas African Americans and Hispanics carry debt of 23 and 24 cents on the dollar, respectively.<sup>147</sup> Even when working to attain higher income through education, African American and Hispanic students find that their student loan debt is unmanageable, with monthly payments of over 8% of their income.<sup>148</sup>

Continuous monitoring of the wealth of our communities will be necessary to implement sound policies to achieve the Beloved Community. A study by the Federal Reserve Board noted that in 2007, median household net worth was \$170,400 for Whites, \$21,000 for Hispanics, and \$17,100 for African Americans.<sup>149</sup> Unfortunately, this study had no Native Americans and too few Asian participants to calculate reliable medians for those demographics.<sup>150</sup> Without better data, our nation will not be able to establish better policies to serve all communities.

Generally, the median income for Asian households is high due to concentration in geographic locations such

137 Insight Wealth Gap Study at 1.

138 *Id.* at 5-6.

139 *Id.* at 7-9.

140 Many of these programs were administered by local authorities who set their own benefits rules. *Id.* at 27. Social Security started in 1935, but was limited to traditional commerce and industry until 1950, leaving out agriculture and domestic work, where many African Americans and Hispanics were employed, for an entire generation. *Id.*

141 Brandeis Wealth Gap Study at 2.

142 *Id.* at 1.

143 Paul Taylor, et al., *Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics*, Pew Research Center (Jul. 26, 2011) at 13, available at [http://pewsocialtrends.org/files/2011/07/SDT-Wealth-Report\\_7-26-11\\_FINAL.pdf](http://pewsocialtrends.org/files/2011/07/SDT-Wealth-Report_7-26-11_FINAL.pdf) (last visited Jan. 23, 2012).

144 *Id.* at 13-14. While Asian households fared better, their net worth fell by 54% to \$78,066 between 2005 and 2009, most likely due to a growing immigrant population. *Id.*

145 *Id.* at 16.

146 Insight Wealth Gap Study at 14.

147 *Id.* at 18.

148 *Id.*

149 *Id.* at 2.

150 *Id.*

as California, Hawaii, and New York – all states with a higher than average cost of living. When looking at the income per capita for Asian households, however, the median income is still lower than White median income.<sup>151</sup> Today, Native Americans have only one-third of the land they held in 1891, and government action or neglect stripped most of their rights to resources on those lands.<sup>152</sup> We must address these high disparities for the digital Beloved Community to become a reality.

### C. CULTURALLY RELEVANT CONTENT

In the digital Beloved Community, people will desire broadband access because of personally relevant online content. One of the primary reasons many minorities are not using the Internet in a more dynamic manner is because of the perceived lack of relevance to their lives.<sup>153</sup>

According to a Pew survey, 44% of Blacks and 44% of Hispanics said they do not use the Internet because they do not need it or are uninterested.<sup>154</sup> Among African Americans who do not use the Internet, however, the most likely reasons to go online included staying in touch with family and friends (56%), getting information for or applying for public benefits (45%), staying in touch with doctors and other health care providers (44%), and keeping up with the news (41%). Among the Hispanic population of non-Internet users, the most likely reasons to go online included staying in touch with family and friends (47%), keeping up with the news (36%), staying in touch with doctors and other health care providers (35%), and getting information or applying for public benefits (34%).<sup>155</sup>

Understanding what motivates minorities to access the Internet can be very helpful in increasing minority adoption rates. A study conducted by Professor Ellen Wartella of Northwestern University found that minority youth are especially avid adopters of new media.<sup>156</sup> This study found that Black and Hispanic children spend about three hours per day using their cell phones, iPods, and other mobile devices to watch TV and videos, play games, and listen to music, as compared with White children who spend about 1.5 hours per day on such activities.<sup>157</sup>

We can use these motivating factors to focus our efforts on educating minorities on the ways in which the Internet can help them achieve their goals and begin to create a culture of use. Perhaps more importantly, the increased minority use of the Internet presumably will spur more organizations to place culturally specific material on the Web and educate people on how they can readily adopt the Internet into their everyday lives. Minorities, and particularly minority youth, can use the Internet to tap into information that will help them develop their own cultural consciousness.<sup>158</sup> As non-adopting minorities discover that online access connects them to their homes, communities, and loved ones and allows them to take part in the broader community, adoption rates will increase.

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151 *Id.* at 9.

152 *Id.* at 11.

153 Joint Center Minority Broadband Report at 31.

154 *Id.* at 33.

155 *Id.*

156 Wendy Leopold, Study: Stark Differences in Media Use Between Minority, White Youth, available at <http://www.northwestern.edu/newscenter/stories/2011/06/media-usa-youth-wartella.html> (last visited Jan. 23, 2012).

157 *Id.*

158 See Rona Fredrick, *Culturally Responsive Uses of Computer Technology: A Portrait of Three Teachers Working in Urban Schools*, Electronic Journal for Instructional Technology, Vol. 7, at 16 (2008), available at <http://ejite.isu.edu/Volume7/Fredrick.pdf> (last visited Jan. 23, 2012).

## D. PRIVACY AND SECURITY

According to the FCC, nearly 100 million Americans do not use broadband, and many non-users have cited privacy as a significant concern.<sup>159</sup> In the digital Beloved Community, privacy issues will have been resolved by voluntary consumer education and transparent privacy practices on the part of broadband and content providers.

According to the Consumer Reports National Research Center, 82% of consumers are concerned about their credit card numbers being stolen online, while 72% are concerned that their online behaviors are being tracked and profiled by companies.<sup>160</sup> Further, a 2010 FCC study found that 39% of broadband Internet users and 57% of non-users strongly agree that it is too easy for their personal information to be stolen online.<sup>161</sup>

African Americans tend to be even more concerned about their online privacy than their White counterparts, a trend that has not changed much in the last decade.<sup>162</sup> Online, African Americans are less likely to participate in riskier specialized activities like auctions, choosing instead to stick with more time-tested and familiar Internet uses such as online banking, making travel arrangements, or trading stocks.<sup>163</sup> A 2010 Joint Center study found that a majority of African American, Hispanic American, and White American Internet users go online to purchase products, view government websites, and bank online.<sup>164</sup> The Joint Center also noted that African Americans and Hispanic Americans are more likely than White Americans to go online to search for ideas for potential online businesses and information on jobs, religion, and government programs.<sup>165</sup>

Although 68% of consumers have provided personal information in order to access a website, 53% are uncomfortable with Internet companies using their email content or browsing history to send relevant ads, and 54% are uncomfortable with third parties collecting information about their online behavior.<sup>166</sup> Data further shows that almost half (49%) of Hispanic Internet users, as compared to 44% of White users and 59% of African Americans users, are not confident that their online activities will remain private and will not be used without permission.<sup>167</sup>

### 1. Tracking Consumer Data

Many Americans, minorities in particular, are unaware of how they are being tracked online. A Consumer Reports poll revealed that 93% of Americans think Internet companies should always ask for permission before using personal information, and 72% want the right to opt out when companies track their online behavior.<sup>168</sup>

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<sup>159</sup> Joint Center: *Increased Consumer Education and Choice Needed to Address Privacy Concerns for New Internet Users, Forum Participants Say*, Joint Center for Political and Economic Studies (Jul. 27, 2011), available at <http://www.jointcenter.org/sites/default/files/MTI%20Press%20Release%20-%20Privacy%20Forum%20-%20207-27-11.pdf> (last visited Nov. 3, 2011).

<sup>160</sup> Consumer Reports Internet Privacy Poll, Consumer Reports National Research Center at 3 (Sep. 2008), available at <http://www.ftc.gov/bcp/workshops/privacyroundtables/Kelsey.pdf> (last visited Nov. 28, 2011) (“Internet Privacy Poll”).

<sup>161</sup> See John B. Horrigan, *Broadband Adoption and Use in America: OBI Working Paper Series No. 1*, Federal Communications Commission at 4, 6 (Feb. 2010), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-296442A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf) (last visited Dec. 5, 2011).

<sup>162</sup> See M. Christopher Gibbons, M.D., M.P.H., et al., *Impact of Consumer Health Informatics Applications*, Agency for Healthcare Research and Quality, U.S. Dept. of Health & Human Services (Oct. 2009) at 99, available at <http://www.ncbi.nlm.nih.gov/books/NBK32638/pdf/TOC.pdf> (last visited Jan. 2, 2011) (“Consumer Health Informatics”); see also African-Americans and Online Privacy, American-Americans and the Internet, Pew Online Life Report at 14 (Oct. 22, 2000), available at [http://www.pewinternet.org/~media/Files/Reports/2000/PIP\\_African\\_Americans\\_Report.pdf.pdf](http://www.pewinternet.org/~media/Files/Reports/2000/PIP_African_Americans_Report.pdf.pdf) (last visited Nov. 28, 2011) (“African-Americans and Online Privacy”) (“A survey of people’s attitudes towards trust and privacy by the Pew Internet Project found that only 17% of all African-Americans (Internet users and nonusers alike) believe that most people can be trusted, compared to 34% of whites who say that. On the flip side, 79% of blacks say that one cannot be too careful in dealing with other people, compared to 59% of whites who agree. At the same time, 72% of black Americans are very concerned about businesses and other people obtaining their personal information. Fifty-seven percent of whites are similarly worried.”).

<sup>163</sup> Consumer Health Informatics at 99.

<sup>164</sup> Joint Center Minority Broadband Report at 20-21 (64% of White Americans, 54% of African Americans, and 57% of Hispanic Americans have done online banking).

<sup>165</sup> *Id.*

<sup>166</sup> Internet Privacy Poll at 3.

<sup>167</sup> Hispanics and the Internet, Pew Internet & American Life Project at 17-19 (July 25, 2001) available at [http://www.pewinternet.org/~media/Files/Reports/2001/PIP\\_Hispanics\\_Online\\_Report.pdf.pdf](http://www.pewinternet.org/~media/Files/Reports/2001/PIP_Hispanics_Online_Report.pdf.pdf) (last visited Nov. 28, 2011) (“Pew Hispanics and the Internet”). One possible explanation for Hispanics’ willingness to participate in “trusting” activities online despite their privacy concerns is that Hispanics, like most Internet users, do not know how they are tracked online. *Id.* For example, only 36% of Hispanic users said they knew that a cookie is what websites use to track online. *Id.*

<sup>168</sup> Internet Privacy Poll at 3. About 60% of consumers in the Internet Privacy Poll felt it was very likely online businesses were collecting non-personally identifiable information such as geographic location or type of operating system, while only 46% felt it was very likely that websites were tracking personally identifiable information such as name, date of birth, telephone number, or email address. *Id.* at 4.

Currently, businesses are able to profile online users through behavioral targeting, using data about a consumer to provide customized services for that consumer.<sup>169</sup> Chiefly, behavioral advertising generated by behavioral targeting is at the center of the debate over privacy. One component of behavioral targeting is cookie-based behavioral advertising, which relies on cookies to track consumers across numerous sites.<sup>170</sup> Although the Federal Trade Commission requires companies to give accurate descriptions of the collection and use of consumer information in their privacy policies,<sup>171</sup> other components consist of spyware<sup>172</sup> and deep-packet inspections.<sup>173</sup>

Privacy and data collection practices in the digital age also raise many concerns, particularly as they relate to law enforcement and warrantless searches and seizures.<sup>174</sup> Private data is stored in a number of locations, including personal email stored on remote servers, location tracking capabilities on cell phones, cloud computing, and social networking, heightening the need for consumer awareness as to what online information law enforcement can readily acquire.<sup>175</sup> For example, the Joint Center recently held a forum on the impact of privacy concerns for minorities that touched on the use of digital information as evidence in criminal proceedings.<sup>176</sup>

Technology has developed so rapidly that many of the laws that were once put in place to preserve privacy and prevent unreasonable government intrusion have become outdated. While privacy bill proposals are currently making their way through Congress,<sup>177</sup> citizens still have to take the initiative to protect their own information. By controlling privacy settings on their computers<sup>178</sup> and actually reading the privacy policies of online companies visited, the general public can better protect themselves against online threats.

No matter how consumer information is tracked, the most important key to online safety is for consumers to be aware and companies to be forthright. This transparency allows consumers to make better decisions and gain trust in the concept that using the Internet is safe. Consumers must understand what data is being or has been tracked, and they should be allowed to learn how the information is used or sold to third parties. Ultimately, it must be up to the consumer to give permission to do the tracking or selling of their personal information.

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169 See Dustin D. Berger, Balancing Consumer Privacy With Behavioral Targeting, 27 *Santa Clara Computer & High Tech. L.J.* 3, 6 (2011) (describing the practice and technology of behavioral targeting in its various forms and the benefits and harms to consumers); see also Cookies: Leaving a Trail on the Web, OnGuardOnline.Gov, available at [http://onguardonline.gov/articles/0042-cookies-leaving-trail-web#Flash Cookies](http://onguardonline.gov/articles/0042-cookies-leaving-trail-web#Flash%20Cookies) (last visited Nov. 28, 2011) (“OnGuardOnline.gov is the federal government’s website to help [consumers] be safe, secure and responsible online.”).

170 See Kandi Parsons & Jamie Hine, *All Cookies Are Not Created Equal*, OnGuardOnline.Gov (Nov. 8, 2011), available at <http://onguardonline.gov/blog/all-cookies-are-not-created-equal> (last visited Nov. 28, 2011).

171 See *id.* But see, Lesley Fair, The FTC’s Settlement with Facebook: Where Facebook Went Wrong, OnGuardOnline.gov (Nov. 29, 2011), available at <http://onguardonline.gov/blog/ftc%E2%80%99s-settlement-facebook-where-facebook-went-wrong> (last visited Dec. 2, 2011) (proving that even though the laws are in place to protect consumers, companies still use information in ways contrary to what they informed consumers that it would be used). Many criminals, however, pose an international threat and have caused widespread damage and violations on a global scale to both consumers and businesses. See Operation Ghost Click International Cyber Ring That Infected Millions of Computers Dismantled, Federal Bureau of Investigation (Nov. 9, 2011), available at [http://www.fbi.gov/news/stories/2011/november/malware\\_110911/malware\\_110911](http://www.fbi.gov/news/stories/2011/november/malware_110911/malware_110911) (last visited Dec. 5, 2011) (“Six Estonian nationals have been arrested and charged with running a sophisticated Internet fraud ring that infected millions of computers worldwide with a virus and enabled the thieves to manipulate the multi-billion-dollar Internet advertising industry. Users of infected machines were unaware that their computers had been compromised—or that the malicious software rendered their machines vulnerable to a host of other viruses.”).

172 Spyware allows companies to view a consumer’s “entire stream of Internet traffic – all data that the consumer’s computer sends and receives.” See Berger, 27 *Santa Clara Computer & High Tech. L.J.* at 4.

173 Deep-packet inspections occur where “consumer Internet Service Providers [ISPs] install powerful hardware devices [on a consumer’s computer] that examine all of the Internet traffic going to or originating from consumers’ computers.... ISPs could sell this information to marketers to create additional revenue.” *Id.* at 5.

174 J. Beckwith Burr, The Electronic Communications Privacy Act of 1986: Principles for Reform, Wilmer Hale (n.d.), p. 5-6, available at [http://www.digitaldueprocess.org/files/DDP\\_Burr\\_Memo.pdf](http://www.digitaldueprocess.org/files/DDP_Burr_Memo.pdf) (last visited Dec. 5, 2011).

175 See About the Issues, Digital Due Process: Modernizing Surveillance Laws for the Internet Age, <http://digitaldueprocess.org/index.cfm?objectid=37940370-2551-11DF-8E02000C296BA163> available at (last visited Dec. 5, 2011) (advocating for the reform of the Electronic Communications Privacy Act to afford Americans more protection for law enforcement online information surveillance).

176 See The New Digital Profile: Managing Privacy in an Evolving, Mobile Internet - Part Two, Joint Center for Political and Economic Studies (Oct. 3, 2011), available at <http://www.jointcenter.org/newsroom/multimedia-room/video/the-new-digital-profile-managing-privacy-in-an-evolving-mobile-inte-0> (last visited Dec. 5, 2011).

177 Julia Angwin, Proposed Bill Would Put Curbs on Data Gathering, Wall Street Journal (Mar. 10, 2011), available at <http://online.wsj.com/article/SB10001424052748704629104576190911145462284.html#U402006102977VCD> (last visited Dec. 5, 2011) (“Sens. John McCain and John Kerry are circulating proposed legislation to create an ‘online privacy bill of rights,’ ... to curb the Internet-tracking industry.”).

178 See OnGuardOnline.gov, *supra* n. 171; see also Network Advertising Initiative (NAI), available at <http://networkadvertising.org/> (last visited Dec. 5, 2011) (allowing online users to “opt-out” of targeted advertising delivered by NAI member advertising networks). See also Jennifer Valentino-Devries, How to Avoid the Prying Eyes: The Internet is rife with surveillance technology, but you can cover some of your tracks, Wall Street Journal (Jul. 30, 2010), available at [http://online.wsj.com/article/SB10001424052748703467304575383203092034876.html?mod=WSJ\\_0\\_0\\_WZ\\_Tmpl\\_Reno\\_RIGHTTopCarousel\\_1](http://online.wsj.com/article/SB10001424052748703467304575383203092034876.html?mod=WSJ_0_0_WZ_Tmpl_Reno_RIGHTTopCarousel_1) (last visited Dec. 5, 2011).

## E. INFORMED USE AND STEM EDUCATION DRIVE ADOPTION

The norms and practices of Internet culture play a major role in shaping online participation.<sup>179</sup> Citizens of the digital Beloved Community will be proficient in using the Internet to meet their needs. They will not only know how to access content, but know how to create and share content, encouraging others to become digitally engaged.

### *Informed Use*

Unfortunately, many newcomers to the Internet, particularly minorities, are behind in learning how to participate in generating and sharing content, using social networking sites, and finding those resources tailored to their particular interests.<sup>180</sup> As a result, the nation needs to place more emphasis on digital literacy – providing training on effective, efficient, and safe ways to use the Internet.

Starting digital literacy training programs for minorities does not have to be a difficult task. Much of the training can, and should, be done at many of the locations where minorities are already accessing the Internet, including schools, libraries, and community centers. A significant percentage of African Americans and Hispanics, 51% and 43%, respectively, reported using their public library to access the Internet.<sup>181</sup> Further, 42% of African Americans and 35% of Hispanics are likely to access the Internet at local schools.<sup>182</sup> Twenty percent of both African Americans and Hispanics reported to be active users of community centers for public access, including technology and general purpose centers that provide free Internet services.<sup>183</sup>

Gaining an understanding of where people are accessing the Internet makes it much easier to coordinate education and training programs for minorities and newcomers on how to safely and effectively use the Internet. The types of institutions minorities already rely upon for Internet access provide a unique entry point to such training because the facilities are familiar to minorities and serve as a source of help and information. Schools can also be of enormous help in training minority youth and encouraging more technology-related career choices.

### *STEM Education*

Only about a third of bachelor's degrees earned in the United States are in a Science, Technology, Engineering, and Mathematics (STEM) field, compared with approximately 53% in China and 63% in Japan.<sup>184</sup> Programs like those offered by the STEM Education Coalition work to support related curricula for teachers and students at the U. S. Department of Education, the National Science Foundation, and other agencies that offer STEM-related programs.<sup>185</sup>

Women and most minorities are underrepresented in STEM fields. As the President's Council on Science and Technology noted in its September 2010 report, underrepresentation by African Americans, Hispanics, Native Americans, and women “denies the Nation the full benefit of their talents and denies science and engineering the rich diversity of perspectives and inspiration that drive those fields.”<sup>186</sup> The best way to address this problem is to enhance K-12 STEM education and require digital literacy training prior to high school graduation.<sup>187</sup>

By institutionalizing programs designed to expose, educate, and develop a culture of Internet use within the school system, we can better prepare the next generation as they progress within our digital society. Such programs will not only prepare students for society by providing the skills to use technology and the Internet as part of their daily lives, but they will undoubtedly improve the academic performance of these students.<sup>188</sup>

179 Joint Center Minority Broadband Report at 11.

180 *Id.*

181 *Id.* at 27.

182 *Id.*

183 *Id.*

184 See President's Council of Advisors on Science and Tech., Rep. to the President - Prepare and Inspire: K-12 Educ. in Science, Tech., Eng'g, and Math (STEM) for America's Future, p. 2 (2010) available at <http://www.whitehouse.gov/sites/default/files/microsites/ostp/pcast-stemed-report.pdf> (last visited Jan. 23, 2012) (“President's Council STEM Report”) (citing National Science Board, *Science and Engineering Indicators: 2010*. Arlington, VA: National Science Foundation, available at <http://www.nsf.gov/statistics/seind10/start.htm> (last visited Jan. 23, 2012)).

185 See The Science, Technology, Engineering, and Mathematics (STEM) Education Coalition, available at <http://www.stemedcoalition.org/> (last visited Dec. 9, 2011).

186 President's Council STEM Report at 3.

187 See, e.g., Dorrissa Griffin, Kristal High, Minorities and High Tech Employment, Minority Media and Telecom Council at 14-15 (Jul. 2011).

188 See Testimony of Dr. Nicol Turner-Lee, Senior Vice President of One Economy Corporation, Before the Subcommittee on Communications, Technology and

## F. MINORITY ENTREPRENEURSHIP

Creating a climate that promotes entrepreneurship is also essential to realizing the digital Beloved Community. The spirit of entrepreneurship has helped build minority media entities that are able to facilitate meaningful dialogue and provide non-stereotypical representations of people of color. Visible minority entrepreneurs diversify public perception of minority groups by countering negative stereotypes of those groups.

Active investment in minority media ownership can bring together key stakeholders in fostering entrepreneurial ventures in our nation's cities to create broad-based economic growth and employment. Each minority community in America has a unique character, a vast array of passionate people and diverse resources dedicated to starting companies and driving economic growth. With the help of partnerships, policymakers, and non-profits, America can make sure that spirit lives on and is encouraged, supported, and celebrated.

### 1. Minority Entrepreneurs must be Supported to Ensure the Survival of Legacy Media to Minority Communities

Before the advent of the Internet, traditional “legacy” media was the driving force behind society's entertainment and cultural development. Traditional means of communication, such as radio, television, cable, and newspapers remain essential to the evolution of society and the communities it cultivates – minority communities in particular. Currently, 96.7% of American households own television sets,<sup>189</sup> compared to just 66% of adult Americans that have a broadband Internet connection at home.<sup>190</sup> The nearly 31% gap proves that Americans still heavily rely on traditional media as a form of entertainment and a significant source for staying informed on current events and other important matters.

While 66% of all Americans have a home broadband *connection*, only 56% of African Americans and 66% of Hispanics report home broadband *adoption*.<sup>191</sup> For these groups, the preservation and ownership of legacy media carries major importance. Until broadband adoption rates reach that of traditional media, it is important that legacy media remains relevant – not simply in its current form, but it must transform into something that meets the modern needs of all Americans. If policymakers and technology evolutionists ignore and continue to under-appreciate the impact of legacy media, choosing to focus only on evolving Internet fueled technologies, minority communities will become further detached from the foundation of American society.

From 1827, when John B. Russwurm and Samuel E. Cornish published *Freedom's Journal*, the first Black newspaper,<sup>192</sup> to 1980, when Robert Johnson founded *Black Entertainment Television*, the first African American owned and operated national television network,<sup>193</sup> traditional media has always been an influential platform for preserving African American and minority civil rights. Legacy media remains relevant, and minorities must maintain an effective forum to broadcast their interests and voice their concerns in a media industry in which they overwhelmingly lack an ownership stake.<sup>194</sup>

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the Internet at 3-4 (Apr. 2, 2009), available at [http://democrats.energycommerce.house.gov/Press\\_111/20090402/testimony\\_turnerlee.pdf](http://democrats.energycommerce.house.gov/Press_111/20090402/testimony_turnerlee.pdf) (last visited Jan. 23, 2012); see also, Rona Fredrick, *Culturally Responsive Uses of Computer Technology: A Portrait of Three Teachers Working in Urban Schools*, *Electronic Journal for Instructional Technology*, Vol. 7, at 17-18 (2008), available at <http://ejite.isu.edu/Volume7/Frederick.pdf> (last visited Jan. 23, 2012).

189 See Brian Stelter, *Ownership of T.V. Sets Drop in U.S.*, N.Y. Times (May 3, 2011) at B1, available at <http://www.nytimes.com/2011/05/03/business/media/03television.html> (last visited Jan. 23, 2012).

190 See Pew Home Broadband 2010 at 2.

191 See *id.* at 7.

192 See “Editors- Samuel E. Cornish and John B. Russwurm,” available at [http://www.pbs.org/blackpress/news\\_bios/newbios/nwsppr/freedom/freedom.html](http://www.pbs.org/blackpress/news_bios/newbios/nwsppr/freedom/freedom.html) (last visited Jan. 22, 2012).

193 See “Black Entertainment Television,” available at <http://www.museum.tv/eotvsection.php?entrycode=blackenterta> (last visited Jan. 22, 2012).

194 Howard University, *Milestones in African American Journalism/Media History*, <http://www.huarchivesnet.howard.edu/0002huarnet/moments1.htm> (last visited Jan. 23, 2012).

### **a. AM Migration to TV Channels 5 and 6**

The radio industry is gradually disappearing and is in great need of revitalization. For decades, AM service has fallen behind its FM counterpart in terms of receiving upgrade investments. The majority of minority owned stations are found on the AM band, making it essential that prospective restoration efforts preserve minority participation across public airwaves. The FCC should create a feasible plan that promotes diversity in radio and also gives AM minority broadcasters the opportunity to serve the kinds of audiences that the FM band serves. The migration of AM service to the remaining portion of Channels 5 and 6 (the spectrum between 76 and 88 MHz) can help accomplish this task. This plan will ensure women and minority broadcasters possess an equal opportunity to communicate through radio airwaves with less signal interference.

In a proposal submitted to the Commission, the Broadcast Maximization Committee detailed a thorough plan to use Channels 5 and 6 for a migration of AM stations.<sup>195</sup> The group revealed a plan to convert all AM stations to operate in the Channels 5 and 6 digital mode and provide spectrum for the migration over an extended period of time.<sup>196</sup> The prospective switch would help minority broadcasters and radio entrepreneurs convince financial institutions to invest in AM service.<sup>197</sup> Once this type of plan is implemented, AM stations will immediately become more competitive and self-sustaining.

However, due to the complexity of the plan and the potential to unintentionally adversely transform AM radio, the plan should be administered by a group of sophisticated professionals.<sup>198</sup> The Minority Media and Telecommunications Council has suggested forming The Advisory Committee on AM Transmission to bring this concept into fruition.<sup>199</sup> According to MMTC, the committee “would bring together representatives of noncommercial and commercial interests, full and low power interests, AM/FM and TV broadcasters, translator supporters and HD radio advocates to make suggestions on how to best achieve the exodus of AM radio to the 5/6 band.”<sup>200</sup> This is a promising idea, and such a move has little room for mistake. Mishandling former AM stations and neglecting broadcasting stations currently on Channels 5 and 6 could adversely affect the entire broadcasting industry.

Nevertheless, given the opportunities this transition will create, the Commission should move forward with the migration. The move will solve many of the problems AM radio is currently facing. As a result, minorities and women will continue to impact their own communities in positive ways through mass media, thereby supporting the overall public interest of society and helping usher in the digital Beloved Community.

### **b. Tax Certificate Policy to Incentivize Minorities to Remain in Business**

Our country often provides positive incentives – economic, legal, or institutional in nature – designed to encourage beneficial activities that promote the public interest. Such incentives need to motivate both public and private institutions to change an established, well-ingrained, adverse behavior to a new, constructive one. Many minority owned media companies were founded and operated with the help of positive government incentives. To encourage diversity in the media industry, the FCC successfully used a minority tax certificate policy as a market-based incentive that deferred capital gains to encourage the owners of broadcast and cable entities to sell to minorities.<sup>201</sup> The policy also issued tax certificates to investors who provided capital to minority-controlled startup companies.<sup>202</sup> Unfortunately, Congress repealed the policy in 1995 over concern that the program was a “tax break for millionaires” as well as an unfair race-based preference.<sup>203</sup>

195 See Comments of the Broadcast Maximization Committee, *Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket 07-294 (filed on July 30, 2008) available at <http://www.ccbroadcasters.com/TV%20Channel%205-6%20Radio%20Proposal.pdf> (last visited Jan. 23, 2012).

196 *Id.* at 2.

197 *Id.* at 9.

198 See MMTC Radio Rescue Petition for Rulemaking, MB Docket No. 09-52 (Jul. 19, 2009) at 8 available at <http://mmtconline.org/lp-pdf/MMTC-Radio-Rescue-Petition-071909-REV.pdf> (last visited Jan. 23, 2012).

199 *Id.* at 9.

200 *Id.*

201 Erwin Krasnow, Lisa Fowlkes, The FCC’s Minority Tax Certificate Policy: A Proposal for Life After Death, 51 *Fed. Comm. L.J.* 665, 667 (1999).

202 *Id.*

203 *Id.* at 671-72 (quoting Senator Bob Dole).

In its seventeen-year existence – from 1978 to 1995 – media ownership among minorities increased dramatically. The policy produced 364 tax certificates and 200 media transactions totaling more than \$1 billion in value, which represented about two-thirds of all minority-owned stations.<sup>204</sup> When the policy was initially created, according to an article by Michael Berg, “minorities owned about 40 of 8,500 broadcast stations.”<sup>205</sup> Throughout its existence, the policy increased the number of minority owned stations to 333 – 290 radio stations and 43 television stations.<sup>206</sup> Since its repeal, minority ownership has dropped 14%.<sup>207</sup>

### *Access to Capital Barriers*

Today, minority entrepreneurs continually struggle to establish ownership within the telecommunications and media industries. The main culprit behind this negative phenomenon is minorities’ inability to gain access to capital. Such circumstances suggest policymakers should attempt to reestablish the Commission’s minority tax certificate policy. Without such an incentive for companies to invest in minority media, minority ownership will not thrive.

Some policymakers, however, have been active in trying to reinstate the minority tax certificate incentive. Senator Robert Menendez of New Jersey has supported diversity in the media and telecommunications sectors by introducing new legislation to restore the tax certificate policy.<sup>208</sup> The legislation aims to “foster ownership of telecommunications and media by socially disadvantaged businesses, and to disseminate spectrum licenses among a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women.”<sup>209</sup>

The FCC has also supported the reinstatement of a tax certificate policy.<sup>210</sup> If reinstated, the tax certificate policy will create new opportunities for minority entrepreneurs, create more jobs for minorities,<sup>211</sup> and diversify America’s media outlets. It will also enable minority communities to speak for themselves and, as a result, will enhance competition by allowing them to showcase their business acumen and entrepreneurial attributes.

## **2. Importance of Minority Tech Companies and Minority Content Providers**

To achieve the digital Beloved Community, people must be able to access content that will keep them engaged. A diverse selection of tech companies and media content providers can provide outstanding service to every community in our society. Most media professionals are intuitively aware that listeners and viewers are more attracted to media programming tailored to their own cultural interests.

A June 2011 study by Joel Waldfogel of the Carlson School and Department of Economics at the University of Minnesota proves this to be the case.<sup>212</sup> Waldfogel’s study successfully illustrates a link between minority radio ownership and programming to minority radio listening.<sup>213</sup> The goal of the study was to “assess recent evidence on the relationship between ownership structure and the provision of radio programming to minority (African-American and Hispanic) audiences.”<sup>214</sup>

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204 See Michael D. Berg, Time to Revive Minority Tax Certificates, TV Newscheck (Aug. 6, 2010), available at <http://www.tvnewscheck.com/article/2010/08/06/44283/time-to-revive-minority-tax-certificates> (last visited Dec. 23, 2011).

205 *Id.*

206 *Id.*

207 *Id.*

208 S.3446, 111th Cong. §1 (2008).

209 *Id.*

210 See Section 257 Triennial Report to Congress Identifying and Eliminating Market Entry Barriers For Entrepreneurs and Other Small Businesses, 26 FCC Rcd 2909, 2965-66 ¶155 (2011).

211 See The Small Business Economy, A Report to the President (2010) at 31 (stating the “rates of job creation due to the expansion of minority-owned establishments [was] consistently higher than those of businesses owned by Caucasians.”), available at [http://www.sba.gov/sites/default/files/sb\\_econ2010.pdf](http://www.sba.gov/sites/default/files/sb_econ2010.pdf) (last visited Jan. 18, 2012).

212 See Joel Waldfogel, Radio Station Ownership Structure and the Provision of Programming to Minority Audiences: Evidence from 2005-2009 (Jun. 6, 2011) available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0615/DOC-307480A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0615/DOC-307480A1.pdf) (last visited Jan. 23, 2011).

213 See *id.*

214 *Id.* at 1. The study focused on the following three questions: 1) How does minority radio ownership affect the availability of minority-targeted programming? 2) How does ownership structure affect the availability of minority-targeted programming? 3) How does minority ownership and ownership structure affect radio listening? *Id.* at 3.

Using empirical data, Waldfogel carefully identified patterns of causal relationships through a variety of techniques. For instance, he discovered that “the disproportionate tendency for minority-owned stations to broadcast in formats that appeal to minority listeners provides suggestive evidence that minority ownership is beneficial to minority audiences.”<sup>215</sup>

However, Waldfogel acknowledged that this particular causal link “does not, by itself, indicate that the presence of minority-owned stations raises the availability of minority targeted programming, since non-minority-owned stations are also active in the provision of minority targeted programming.”<sup>216</sup> Nonetheless, the link is significant. The simple fact that the few minority-owned radio stations that exist tailor their programming to minority listeners shows that an increase in minority ownership can also increase radio audiences (regardless of race), and as a result, increase radio revenue.

The report also suggested that programming tailored to specific cultural interests attract listeners affiliated with those cultures. To illustrate this, the report provided a table that showed a single “Urban” format attracts 51.2% of Black listening – while attracting less than 5% of non-Black listening.<sup>217</sup> Two more formats – Religion and Contemporary Hit Radio – combine for 71% of Black listening.<sup>218</sup> Moreover, with the addition of “Jazz” and “Adult Contemporary,” these five formats collectively account for 84% of Black listening.<sup>219</sup> When compared with non-Black listening, these five formats collectively only attract a third of those listeners.<sup>220</sup>

Overall, Waldfogel’s study shows that media content providers should consider their audience before tailoring programming. Acknowledging cultural and social influences can reinvigorate fading media industries, such as the radio industry, providing them with a new niche of listeners and/or viewers. Nonetheless, programming and content tailored to minority interests remain a problem within the current media sector. It is therefore imperative to increase minority ownership. As the study shows, minority ownership tends to attract minority involvement. And if any group of individuals can tailor to minority interests, it is the minority community itself.

**a. Relevant Content Provides Incentive for Minority Communities to Adopt Broadband at Home**

In the current technological era, broadband technologies provide opportunities to improve many aspects of our lives and present some households with privileges not enjoyed by the rest of America. As discussed in the Section IV(C) *supra*, relevant content is a major incentive for minority households to become engaged in the digital sector. For many minorities, a simple lack of interest in the Internet prevents them from adopting home broadband service.

A recent Joint Center study shows that, among non-Internet users, African Americans are more likely than any other race to find their disengagement to be the result of disinterest.<sup>221</sup> Since these individuals cannot relate to the content offered online, they have isolated themselves from the benefits of essential broadband-fueled technology and content. Broadband adoption is far too important to the advancement of minority communities for something as simple as content to be a deterring factor.

***Job-related Content Drives Minority Broadband Adoption***

Currently, access to employment opportunities seems to be a driving force behind minority adoption. The Joint Center study revealed that 78% of African Americans and 64% of Hispanics use the Internet to search for information on jobs, compared to just 48% of Whites.<sup>222</sup> This suggests that Internet content and computer

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215 *Id.* at 10.

216 *Id.*

217 *Id.* at 8.

218 *Id.*

219 *Id.*

220 *Id.*

221 Joint Center Minority Broadband Report at 30 (showing that 44% of African Americans lack interest in adopting the Internet, followed by 42% for Whites and 41% for Hispanics).

222 *Id.* at 20.

applications providing employment services or advice may lead to increased African American and Hispanic broadband adoption. And as more companies' employment information moves online, minority citizens must adapt in order to actively compete in the nation's competitive job market.

Moreover, at 28%, African American Internet users are more likely than White and Hispanic users to search online for entrepreneurial ideas.<sup>223</sup> Logically, online blogs, magazines, and online applications that present minorities with helpful entrepreneurial advice will eventually attract new users. This suggests that online resources that acknowledge minorities' skills and interests draw minority online users – ultimately encouraging broadband adoption. While the Internet houses an array of content that fits almost every citizen's interests, it appears that some of the disinterest in broadband may stem from a deep unawareness about the value of broadband and its relevance to non-adopters.

## **G. FUNDING MINORITY ENTREPRENEURSHIP: WHY INCUBATOR PROGRAMS ARE A VITAL TOOL IN ACHIEVING THE DIGITAL BELOVED COMMUNITY**

In the digital Beloved Community, our business leaders will reflect our nation's demographics and closely reflect the landscape we see in America. We live at an almost uniquely rare turning point in history, witnessing a fundamental change that has happened only once before: Just over a century ago, the nation transitioned from an agricultural to an industrial society, and it is now transitioning from an industrial to a digital one. During the current shift, we have an unprecedented opportunity to shape the future for minority entrepreneurship.

Although we are sitting on a pinnacle of change, we must continue to fight the systemic inequalities that still exist. As discussed in Section IV(B)3, disparities in wealth and debt that trickle down across generations give many minorities an inherent disadvantage as they have fewer resources with which to take on entrepreneurial risks and ventures. Fortunately, modern society has brought with it incubator programs that are designed to help entrepreneurs harness knowledge and capital from experienced entrepreneurs, companies, and organizations.

### **1. What are Incubator Programs, and Why are They Necessary?**

Since the first incubator program was created in the 1950s, thousands more have cropped up. Business incubators typically provide startups with low-cost office space and advice from experienced professionals.<sup>224</sup> The National Business Incubation Association (“NBIA”) defines business incubation as “a business support process that accelerates the successful development of start-up and fledgling companies by providing entrepreneurs with an array of targeted resources and services.”<sup>225</sup>

Media incubators are similar to other business incubators, but focus only on entrepreneurs that deal specifically with media or work in the digital space.<sup>226</sup> Accelerators are media incubator programs that put entrepreneurs through a boot camp-like process where they live and work together in an intensive program that focuses on starting and expanding their businesses.<sup>227</sup> Most incubators provide seed money to budding entrepreneurs (accelerators generally provide \$25,000 for a 6% ownership stake)<sup>228</sup> or arrange interviews with venture capitalists and other potential investors.<sup>229</sup>

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223 *Id.*

224 See Lauren Hatch, Betting on Incubators to Create Jobs, *Business Week* (Aug. 12, 2010), available at [http://www.businessweek.com/magazine/content/10\\_34/b4192020505301.htm](http://www.businessweek.com/magazine/content/10_34/b4192020505301.htm) (last visited Dec. 28, 2011).

225 See *What is Business Incubation?*, National Business Incubation Association, available at [http://www.nbia.org/resource\\_library/what\\_is/index.php](http://www.nbia.org/resource_library/what_is/index.php) (last visited Dec. 28, 2011).

226 See, e.g., TechStars, available at <http://www.techstars.com/program/faqs/> (last visited Dec. 28, 2011).

227 See, e.g., NewME Accelerator Program, available at <http://www.newmeaccelerator.com/program/> (last visited Dec. 28, 2011). See also TechStars, available at <http://www.techstars.com/program/> (last visited Dec. 28, 2011).

228 See John Tozzi, Startup Boot Camps Seek Army of Entrepreneurs, *Business Week* (Mar. 29, 2011), available at [http://www.businessweek.com/smallbiz/content/mar2011/sb20110329\\_239744.htm](http://www.businessweek.com/smallbiz/content/mar2011/sb20110329_239744.htm) (last visited Jan. 23, 2012).

229 See NewME Accelerator Program, *supra* n. 224.

The digital age has brought with it unprecedented entrepreneurial opportunities, from the dot-com bubble of the 1990s to the race to create the most popular (and profitable) smartphone applications today. Due to the current economy, however, levels of available capital have significantly decreased. This means that all entrepreneurs – and minority entrepreneurs in particular – face increased competition for a limited supply of capital resources.

A study by the Minority Business Development Agency of the U.S. Department of Commerce analyzes racial disparities in business ownership and the effect these disparities have on minority entrepreneurs’ ability to cultivate financial capital.<sup>230</sup> The study reports that “half of all Hispanic families have less than \$7,950 in wealth and half of all African American families have less than \$5,446. Wealth levels among whites are 11 to 16 times higher.”<sup>231</sup>

The racial wealth gap makes it extremely difficult for minority entrepreneurs to successfully finance their businesses. Usually, entrepreneurs’ wealth “can be directly invested into the business, used as collateral to obtain business loans or used to acquire other businesses,” according to the study.<sup>232</sup> Most investors or venture capital firms require strong financial backing from the entrepreneur as incentive before further investment. Nevertheless, with partnerships between private corporations, non-profit organizations, and the government, aspiring minority media entrepreneurs can overcome the barrier of accessing financial capital.

## 2. The History of Incubator Programs

The first incubator program, the Batavia Industrial Center (“BIC”), was founded in 1959 in Batavia, New York.<sup>233</sup> The BIC developed the original business incubator model, which focused on providing a space for tenants to build their businesses while assisting them with shared services and consultation.<sup>234</sup> By the 1980s, the model had been replicated many times over with business incubators providing a wealth of opportunities for aspiring entrepreneurs.<sup>235</sup>

The market for business incubators retracted with the dot-com bubble burst at the turn of the 21st century, but our transition to a digital society led to more opportunities for tech-related startups and gave rise to a whole new breed of incubators. According to the NBIA, incubators have reached a record high, with 1,200 incubators nurturing over 40,000 startups nationwide.<sup>236</sup> Although naysayers have expressed doubt about the effectiveness of incubators, in actuality the NBIA has reported that 87% of incubated ventures survive for five or more years, compared with only 44% of non-incubated ventures surviving past that point.<sup>237</sup>

According to Business Week, “Policymakers are increasingly turning to business incubators, which aid startups, in hopes of spurring local job creation.”<sup>238</sup> To this end, the Startup America Partnership was officially launched at the White House in early 2011.<sup>239</sup> This initiative also created the TechStars Network, a network of independently owned and operated regional organizations that operate technology-oriented start-up accelerator programs with models similar to the TechStars accelerator.<sup>240</sup> While the TechStars Network has over 30 members worldwide, including programs in South America and Asia, none in America are specifically minority-focused, and very few have any minorities as mentors within the program at all. In fact, there are very few minority-focused incubator programs in existence.

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230 See Robert W. Fairlie, Ph. D. & Alicia M. Robb, Ph.D., *Disparities in Capital Access between Minority and Non-Minority Owned Businesses: The Troubling Reality of Capital Limitations Faced by MBEs*, U.S. Dept. of Commerce, Minority Bus. Dev. Agency, Jan. 2010, at 17 available at <http://www.mbda.gov/sites/default/files/DisparitiesinCapitalAccessReport.pdf> (last visited Jan. 18, 2012).

231 *Id.*

232 *Id.*

233 See Batavia Industrial Center, available at [http://www.bic4biz.com/our\\_approach.html](http://www.bic4biz.com/our_approach.html) (last visited Dec. 28, 2011).

234 See *id.*

235 See Hatch, *Betting on Incubators to Create Jobs*, *supra* n. 224.

236 See *id.*

237 See *id.*

238 See *id.*

239 See Startup America Partnership, available at <http://www.startupamericapartnership.org/about/faqs> (last visited Dec. 28, 2011).

240 See TechStars, available at <http://www.techstars.com/network/> (last visited Dec. 28, 2011).

### 3. Minority Incubator Programs

The first minority-focused accelerator program was the New Media (“NewMe”) Accelerator, launched in the summer of 2011. NewMe describes itself as “a residential technology start-up accelerator/incubator for businesses that are led by under-represented minorities in the technology industry.”<sup>241</sup> Twice each year, NewMe immerses eight to ten minority start-up founders in its intensive 12-week training program that includes one-on-one mentorship from successful industry leaders. The program culminates in a demo day during which entrepreneurs pitch their products to venture capitalists and other investors.<sup>242</sup>

2011 also marked the launch of the Minority Entrepreneur Accelerator Program (“MEAP”) through a partnership with venture capitalist Comcast Interactive Capital and accelerator DreamIt Ventures. The program, a product of the Comcast-NBCU merger, was created with a \$20 million fund<sup>243</sup> specifically to expand opportunities for minority entrepreneurs.<sup>244</sup> To qualify for the program, all applicants’ companies must be at least 50% owned by members of their founding entrepreneur team who are African American, Asian American, Latino American, or Native American.<sup>245</sup> MEAP grants the most promising applicants a stipend between \$10,000 and \$25,000 and provides “valuable service and counsel from top service providers, and priceless guidance from [m]entors, advisors and other participants at no charge to the team/company.”<sup>246</sup>

Although incubators are increasingly focusing on technology-oriented companies, there are minority-focused business incubators. In 2010, the Minority Media and Telecommunications Council created MMTC Broadcasting, LLC, through the MMTC-Clear Channel Diversity Initiative.<sup>247</sup> The project, created after Clear Channel donated six AM-radio stations to MMTC, allows the organization to work with potential minority and women radio owners who can run and operate an MMTC-owned station under a local marketing agreement (“LMA”), then purchase the station at a price significantly below market value within three to five years.<sup>248</sup> Through this initiative and its brokerage, MMTC also helps buyers construct business plans, identify properties, submit offers for the purchase of assets, and find incubation and LMA arrangements with other owners.<sup>249</sup>

The FCC is taking notice of the importance of incubators in furthering entrepreneurship. In December 2011, the Commission released a Notice of Proposed Rulemaking that specifically called for advice on increasing minority ownership.<sup>250</sup> In it, the Commission noted previous suggestions made by several organizations, including an Incubator Plan proposed by MMTC and supported by 29 other national organizations. Under the plan, if a radio broadcaster incubates a new voice, such as a minority or woman owner, in its own or in a larger market, the broadcaster would be permitted to acquire an additional station above the existing local ownership caps or AM/FM subcaps.<sup>251</sup> If the FCC adopts this plan, and others like it that have been proposed by dozens of organizations, the nation will make significant progress toward universal first class digital citizenship.

As we transition to a digital society, and ultimately to a digital Beloved Community, it is vital that we nurture minority entrepreneurs. A racially segregated society during the Industrial Revolution, in addition to race-based application of rules and regulations in the 20th century, created a nation in which minorities are regarded as second class citizens with far fewer opportunities than their White counterparts. With the creation of a new industry, and

241 See NewME Accelerator Program, *supra* n 227.

242 See *id.*

243 See Comcast Interactive Capital and DreamIt Now Accepting Applications from Minority-Led Startups for Entrepreneur Accelerator Program, *Business Wire*, available at <http://www.businesswire.com/news/home/20110519005265/en/Comcast-Interactive-Capital-DreamIt-Accepting-Applications-Minority-Led> (last visited Dec. 28, 2011).

244 See Comcast Minority Entrepreneur Accelerator Program, available at <http://dreamitventures.com/about/Comcast-MEAP.php> (last visited Dec. 28, 2011).

245 See *id.*

246 See *id.*

247 See Kristal High, “From Advocate To Incubator: Minority Media And Telecom Council’s New Diversity Initiative,” *Politic365.com* (Jul. 26, 2010) available at <http://politic365.com/2010/07/26/from-advocacy-to-incubator-mmtes-new-diversity-initiative/> (last visited Jan. 23, 2011).

248 See “MEDIA OWNERSHIP by women and minorities!” MMTC, available at [http://mmtcconline.org/?page\\_id=666](http://mmtcconline.org/?page_id=666) (last visited Jan. 23, 2011).

249 See *id.*

250 See 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, Notice of Proposed Rulemaking, MB Docket No. 09-182 (rel. Dec. 22, 2011) at ¶169.

251 See *id.* at ¶92.

indeed a new society, we have more opportunities than ever to become more inclusive. While the relative lack of minority-focused incubator programs is disheartening, programs like MEAP and the NewMe Accelerator bring hope. As we continue along this transition, we must ensure minorities have a place in the digital society, lest we repeat the mistakes of the past and impede this nation from reaching its potential as a digital Beloved Community.

## H. CIVIL RIGHTS ENFORCEMENT

### 1. Civil Rights Laws must be Adequately Enforced

#### a. The FCC's Equal Employment Opportunity Rules

The FCC adopted its Equal Employment Opportunity (“EEO”) Rules in 1969 because it found that it had “a responsibility to implement the important national policy against discrimination on the basis of race, color, religion, or national origin.”<sup>252</sup> The most important principle established during the first generation of EEO enforcement was that generating job referrals primarily by word of mouth from members of a station’s homogeneous (and historically White) staff is inherently discriminatory.<sup>253</sup> However, the effectiveness of the current EEO program has been questioned.<sup>254</sup>

The FCC currently limits enforcement to *recruitment* of employees and not the number of minority employees hired.<sup>255</sup> The Commission currently audits only approximately 5% of licensees.<sup>256</sup> Enforcement staff, attempting to follow the letter of the law, bring forfeitures upon even the most diverse broadcasters.<sup>257</sup> However, nothing prevents the Commission from increasing its already-modest enforcement levels to compensate for the narrowed scope of permissible EEO rules (which currently are limited to recruitment efforts, leaving the current EEO program a shell of its former self).

Evidence shows that the FCC EEO auditing process is ineffective at discovering and prosecuting EEO violations. In some cases, the Commission has not been able to prosecute EEO violations because a the statute of limitations had expired.<sup>258</sup> Further, a 2009 MMTC study of twenty randomly selected, racially diverse radio markets found

252 See *Petition For Rulemaking To Require Broadcast Licensees To Show Nondiscrimination In Their Employment Practices*, 18 F.C.C.2d 240, 244 ¶8 (1969) (“1969 EEO Rules”) (the “essential purpose for every station would be to assure equal opportunity in every aspect of station employment practice, including training, hiring, promotion, pay scales, and work assignments”); see also *Implementation of Commission’s Equal Employment Opportunity Rules*, 9 FCC Rcd 6276, 6314 ¶79 (1994) (“1994 EEO Rules”) (highlighting the “Commission’s primary focus in determining EEO compliance is on an individual licensee’s overall effort to ‘establish, maintain, and carry out a positive and continuing program of specific practices designed to ensure equal opportunity in every aspect of station employment policy and practices.’”) (emphasis added); see also *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies*, 16 FCC Rcd 22843, 22846 ¶9 (2001) (“2001 EEO Rules”) (citing *MD/DC/DE Broadcasters Ass’n v. FCC*, 236 F.3d 13, 18 (D.C. Cir. 2001) (“the Commission [has] made clear ‘that its primary and assertedly sufficient goal in issuing the EEO rule was to prevent invidious discrimination.’”)).

253 See, e.g., *Jacor Broadcasting Corp.*, 12 FCC Rcd 7934, 7939 ¶14 (1997). The Commission was “troubled that a significant number of the station’s hires, for which recruitment efforts were made, resulted from staff or client referrals.” *Id.* The Commission has observed that “insular recruitment and hiring” practices do not result in a diverse workforce. See *Review of the Commission’s Broadcast Equal Employment Opportunity Rules and Policies*, 15 FCC Rcd 2329, at 2331 ¶3 (2000).

254 The EEO rules were challenged on equal protection grounds in 1998 and again in 2001, eliminating the FCC’s ability to look at the number of minority applicants hired to determine if a station was in compliance with the rules. See *Lutheran Church/Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998) (eliminating the Commission’s recruitment and outreach portions of the 1969 Rules). The Commission later adopted new recruitment and outreach rules. See *Review of the Commission’s Broadcast Equal Employment Opportunity Rules and Policies*, 15 FCC Rcd 2329 (2000). The new rules were challenged and again struck down. See *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13 (D.C. Cir. 2001), *petition for rehearing and rehearing en banc denied*, 253 F.3d 732 (D.C. Cir. 2001), *cert. denied sub nom. MMTC v. FCC*, 534 U.S. 1113 (2002). However, these decisions did not require the Commission to diminish its enforcement of permissible EEO rules.

255 The EEO rules adopted after *MD/DC/DE Broadcasters Association* are in effect today. See *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies, Second R&O and Third NPRM*, 17 FCC Rcd 24018, 24042 ¶67 (2002) (“The purpose of our rules is to ensure equal opportunity and nondiscrimination for all prospective applicants, not to achieve the proportional representation of particular groups.”).

256 See *FCC Continues EEO Audits, Public Notice*, DA 11-1890 (rel. Nov. 16, 2011) at 1. This applies to broadcasters and multi-channel video programming distributors. *Id.*

257 See *Puerto Rico Public Broadcasting*, 23 FCC Rcd 18418 (Dec. 30, 2008), *Urban Radio*, 23 FCC Rcd 18453 (Dec. 30, 2008), *Lieberman Television of Dallas License Corp.*, 22 FCC Rcd 2032 (Feb. 9, 2007), and *Emmis Television License, LLC*, 20 FCC Rcd 13860 (Aug. 26, 2005; erratum Sep. 21, 2005). The licensees in the first three of these cases were minority controlled, and the licensee in *Emmis* operated, in Hawaii, possibly the most racially diverse television stations in the nation.

258 From 2007 to 2008, four of 16 cases went unprosecuted because the Commission did not act in a timely manner. See *Cumulus Licensing LLC*, 23 FCC Rcd 4471 (Mar. 25, 2008) (admonished because the EEO violations “...occurred during the prior license term and the stations’ renewal applications have since been granted...”); *Entravision Holdings*, 23 FCC Rcd 4477 (Mar. 25, 2008) (to the same effect); *Seehafer Broadcasting Corp.*, 23 FCC Rcd 3504 (Mar. 6, 2008) (to the same effect), *Roser Communications Network, Inc.*, 23 FCC Rcd 3507 (Mar. 6, 2008) (to the same effect). The Commission had already renewed their licenses of the stations that violated the EEO rules. *RCN Corporation*, 22 FCC Rcd 11182 (Jun. 22, 2007) (admonished because EEO violations “occurred more than 12 months ago”); *Time Warner Cable*, 22 FCC Rcd 4547 (Mar. 7, 2007), *modified*, 22 FCC Rcd 6707 (April 3, 2007) (“But for the expiration of the one-year statute of limitations...[the Media Bureau] would propose a forfeiture against Time Warner for its violations...”). Two more cases went unprosecuted because the Commission missed its own statute of limitations. See *RCN Corporation*, 22 FCC Rcd 11182 (June 22, 2007) (admonished because EEO violations “occurred more than 12 months ago”); see also *Time Warner Cable*, 22 FCC Rcd 4547 (Mar. 7, 2007), *modified*, 22 FCC Rcd 6707 (Apr. 3, 2007) (“But for the expiration of the one-year statute of limitations...[the Media Bureau] would propose a forfeiture against Time Warner for its violations...”).

that 40 out of 141 reporting units (28.4%) did not use any minority-targeted sources for outreach – including, e.g., seven of the fourteen reporting licensees in Riverside-San Bernardino (population 52.2% African American and Hispanic).<sup>259</sup> Despite the data revealed during random audits, over the course of five years, the FCC – identified only 24 licensees in the nation that supposedly were not compliant.<sup>260</sup>

### *Expansion of FCC EEO Enforcement*

The current FCC EEO enforcement program is out of step with the spirit of the purpose of the rule – to increase opportunities for minorities and women in FCC-regulated fields.<sup>261</sup> To realize the digital Beloved Community, every entity must play its part. If the government cannot act to police those who would take advantage of the privilege of using spectrum, which is owned by the people, women and minority participation will continue to decline.

As suggested by the Commission’s Advisory Committee on Diversity for Communications in the Digital Age (“Diversity Committee”), EEO efforts should be expanded to include retention and promotion practices.<sup>262</sup> The Commission should also extend the EEO rules to all platforms of service. By getting minorities and women employed in media and telecommunications, they can gain the skills necessary to one day be on top, owning and managing a broadcast, telecom, or other digital business.

#### **b. Procurement Transactions**

Discrimination in communications exists not only in advertising and employment, but in procurement as well. As the Diversity Committee stated in June 2008, “[t]ens of billions of dollars are spent annually by cable, wireless and [wireline] carriers on capital expenditures – particularly engineering, furnishings, installation and construction, as well as programming and operating services. Disadvantaged businesses, including minority owned businesses, rarely are full partners in procurement.”<sup>263</sup> Currently, discrimination is prohibited in cable procurement,<sup>264</sup> but not in other sectors of the communications industry.

Cable operators must recruit “a pool of qualified entrepreneurs from sources such as employee referrals, community groups, contractors, associations, and other sources likely to be representative of minority and female interests.”<sup>265</sup> A corresponding rule for wireless, wireline, or broadcast licensees, as well as for new or digital technology companies, would do much to promote minority ownership participation in media and telecommunications.

Encouraging ownership and employment diversity in communications procurement opens doors for ownership and employment in FCC-regulated fields, allowing minorities and women to gain the knowledge and experience necessary to one day run a successful communications business. As suggested by the Diversity Committee, the FCC should extend its cable procurement requirement to “other FCC-regulated industries, including broadcasting, wireline, wireless and satellite.”<sup>266</sup>

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259 See MMTc Request for Three Month Suspension of the Broadcast EEO Rule at 3 (June 29, 2010), available at <http://mmtconline.org/lp-pdf/MMTC%20EEO%20SuspensionReq%20062910.pdf> (last visited Dec. 22, 2010).

260 *Id.*

261 See supra n. 252 discussing 1969 EEO Rules, 18 F.C.C.2d at 244 ¶8; see also 1994 EEO Rules, 9 FCC Rcd at 6314 ¶79; see also 2001 EEO Rules, 16 FCC Rcd at 22846 ¶9.

262 See Resolution on Equal Employment Opportunity Forum, FCC Advisory Committee on Diversity for Communications in the Digital Age (Dec. 3, 2009), available at <http://transition.fcc.gov/DiversityFAC/meeting120309.html> (last visited Jan. 23, 2012), follow link to Media Issues Subcommittee, Equal Employment Opportunity Task Force (last visited Jan. 23, 2012).

263 See Recommendation on Procurement Issues, Emerging Technologies Subcommittee, FCC Advisory Committee on Diversity for Communications in the Digital Age (adopted Jun. 10, 2008), available at <http://transition.fcc.gov/DiversityFAC/061008/procurement-061008.pdf> (last visited Jan. 23, 2012) (“Diversity Committee Procurement Recommendation”).

264 See 47 C.F.R. §76.75(e).

265 See 47 C.F.R. §76.75(e)(1).

266 See Diversity Committee Procurement Recommendation, supra n. 263.

### c. Advertising Nondiscrimination

We cannot achieve the digital Beloved Community while racially discriminatory practices dominate any sector of commerce, particularly advertising. “No urban/no Spanish” dictates, or NUDs and NSDs, have existed for decades. NUDs and NSDs are directives from advertisers not to purchase commercial time on urban or Spanish-language stations, often based on racist stereotypes and misperceptions of minority communities. These dictates distort the marketplace by driving down the advertising rates of minority-owned and/or -programmed stations that are often the top-rated in their market. MMTC estimates that minority entrepreneurs lose an estimated \$200 million a year from NUDs/NSDs.<sup>267</sup>

In 1999, a study sponsored by the FCC documented the experiences of broadcast sales executives from urban and Spanish stations around the country, discussing in detail these discriminatory advertising practices.<sup>268</sup> In 2007, the Commission unanimously voted to ban stations from engaging in these practices by requiring broadcasters to certify that their advertising sales contracts contain nondiscrimination clauses.<sup>269</sup> The Commission began enforcing the rule in March 2011, with Chairman Genachowski affirming that “discrimination simply has no place in broadcasting.”<sup>270</sup>

MMTC estimates that minority-owned, urban, and Spanish language stations will receive a 5-10% increase in revenue upon proper enforcement of the rule.<sup>271</sup> Such rules should be extended across all communications platforms. To achieve the digital Beloved Community, broadcasters and other entrepreneurs who serve minority communities must have the resources to distribute relevant content in the form of news, information, or entertainment over the air and online.

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267 See MMTC Petition for Rulemaking to Expand the Commission’s Broadcast Advertising Nondiscrimination Rule to Cable, Satellite and Telecommunications Services at 4 (filed Feb. 16, 2009) (“MMTC NUD/NSD Expansion Petition”). This amount includes an estimate of revenues generated from broadcast, cable, and satellite channels and multi-channel video programming services.

268 See Kofi Ofori, *When Being Number One Is Not Enough: The Impact of Advertising Practices On Minority-Owned And Minority-Formatted Broadcast Stations*, Civil Rights Forum on Communications Policy (1999), available at [http://transition.fcc.gov/Bureaus/Mass\\_Media/Informal/ad-study/](http://transition.fcc.gov/Bureaus/Mass_Media/Informal/ad-study/) then follow the links to sections of the study (last visited Jan. 23, 2012).

269 See *Promoting Diversification of Ownership In the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 5922, 5941-42 ¶¶49-50 (2008).

270 See FCC Enforcement Bureau Releases Advisory On Requirement For Broadcasters To Certify That Advertising Contracts Are Non-Discriminatory, News Release (Mar. 22, 2011).

271 See Letter from David Honig, Executive Director, MMTC, to Hon. Kevin Martin, FCC re: Nondiscrimination in Advertising Sales Contracts, MB Docket No. 07-294 (Jul. 15, 2008).

# V.

## CONCLUSION

Technology is revolutionizing society as we know it. It is replacing traditional classroom tools and transforming the way we learn. It connects rural residents seeking fundamental medical attention to urban hospitals. It allows jobless Americans to search for employment from the convenience of their own homes. It gives us an entirely new model of what “equality” truly means. The digital sector is the new platform for upward mobility, and we cannot allow it to be reserved for some segments of society to the detriment of others.

The digital Beloved Community must replace one lacking equal opportunity. It must create a society where every resident has the opportunity to embrace the digital experience. This is not merely a pipe dream; it is achievable and within reach. Dr. King’s assertion that we are living in an “inescapable network of mutuality” is indeed true. An integrated network of diverse individuals can lead to a technological world that satisfies every fundamental need.

Unfortunately, we have yet to accomplish this “Beloved Community.” Many Americans still lack capable broadband service. Racial minorities and women remain underrepresented within America’s technological workforce and also lack ownership stake within its media industry. Our current digital infrastructure excludes minorities and is overflowing with barriers to access, thereby creating an expansive digital divide.

We can solve this problem. We can achieve complete digital citizenship with clear action from both public and private sectors. The government must propose legislation and policies to promote minority entrepreneurship and diversify the nation’s technological workforce. Reinstating incentives like the Federal Communications Commission’s former tax certificate program would not simply increase minority ownership, but could also create a workforce that advances a diverse range of content.

In conjunction with the private sector and non-profit organizations, the FCC must also assure that universal broadband service is deployed and innovative consumer education programs that develop digital literacy and encourage broadband adoption are created. Likewise, the Commission must maintain a Universal Service Fund that not only addresses the unserved, but equally promotes the interests of underserved communities.

These are a few ways to make America more competitive, more productive, and more peaceful. An economic agenda and political stance that advances diversity within the digital sector affirms the ultimate goal inherent in the pursuit of the digital Beloved Community. This is a call to action. We must begin to act now, if we will rectify the ills of the past, in order to attain digital equality in the near future.

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