Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act	)	GN Docket No. 09-137

COMMENTS OF CIVIL RIGHTS ORGANIZATIONS –
NBP PUBLIC NOTICE # 26: SPECTRUM POLICY

The Asian American Justice Center, League of United Latin American Citizens, National Association for the Advancement of Colored People and National Council of La Raza (the "Civil Rights Organizations") respectfully submit these comments in response to the FCC's National Broadband Plan ("NBP") Public Notice # 26.[1] In the Public Notice, the Commission notes that "parties have expressed concern that the United States will not have spectrum sufficient to meet the demand for wireless broadband services in the near future and have urged the Commission to make available more spectrum for commercial uses," and the agency asks for comment on related questions.[2]

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[1] *See* Data Sought On Uses of Spectrum, NBP Public Notice # 26, GN Docket Nos. 09-47, 09-51, 09-137, DA 09-2518 (rel. Dec. 2, 2009) (the "Public Notice").

[2] *See* Public Notice at 1.

In response to this Public Notice – and as the Commission proceeds with the development of its NBP – the Civil Rights Organizations urge the Commission to remain mindful of the critical civil rights issues associated with the need to allocate additional spectrum for mobile wireless broadband offerings. As discussed below, it is well documented that a digital divide exists in this country and that it imposes significant costs on minorities, depriving them of the benefits of first class digital citizenship which other Americans take for granted and preventing them from fully engaging in today's society. However, mobile wireless offerings have played a unique role in helping to narrow the divide and to extend vital services to minorities. Notwithstanding wireless' important and significant successes, there is more work to be done. Additional spectrum is needed so that all Americans, including minorities, can enjoy Digital Equal Opportunity.[3] Therefore, the Civil Rights Organizations urge the Commission to take all steps necessary to allocate additional spectrum for wireless broadband offerings.

As the FCC has recognized on numerous occasions, both in this NBP proceeding and in others, broadband adoption varies significantly across demographic groups, and minority and other socially disadvantaged groups are left on the wrong side of the divide in disproportionate numbers.[4] Indeed, according to a recent study, African Americans, Hispanic Americans, and

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[3] 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." *NAACP Resolution to Advance Digital Equal Opportunity* (adopted unanimously by the NAACP National Board of Directors, December 17, 2009) (on file with counsel).

[4] *See, e.g.*, *Preserving the Open Internet*, GN Docket No. 09-191, WC Docket No. 07-52, FCC 09-93 at ¶82 (rel. Oct. 22, 2009) (the "*Net Neutrality NPRM*") (discussing the disparity in broadband adoption rates between African Americans and other minority groups on the one hand and the national average on the other); *see also* Broadband Task Force Delivers Status Report On Feb. 17 National Broadband Plan, FCC News Release (rel. Sept. 29, 2009) (stating that "large segments of the population have much lower penetration rates, and adoption varies across demographic groups"); *see also* Commission Open Meeting Presentation On The Status Of The Commission's Processes For Development Of A National Broadband Plan, at 82 (Sept. 29, 2009) (the "FCC Open Meeting Presentation") (providing data on broadband adoption levels across

lower income Americans, among others, trail the national average in broadband use at home by large margins.[5] According to this study, 63% of all adult Americans have adopted broadband at home, but only 46% of African Americans and a mere 40% of Hispanic Americans have adopted broadband at home.[6] Moreover, 88% of adults living in households with an income over $100,000 have broadband at home, but only 35% of adults living in households that earn less than $20,000 have broadband at home.[7] Recognizing the civil rights issues associated with the digital divide, Commissioner Clyburn recently stated that "[w]hile it can be said that most of the country is currently wired for some kind of broadband, a large percentage of Americans – and a disproportionate number of African Americans – have not adopted broadband in their homes."[8] These disparities are simply unacceptable.

Finding ways to close the digital divide is one of the Commission's highest priorities, not just because it has a statutory obligation to do so,[9] but because the divide imposes untold costs on

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various demographic groups) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293742A1.pdf) (last visited December 16, 2009); FCC Identifies Critical Gaps In Path To Future Universal Broadband, FCC News Release (rel. Nov. 18, 2009) (identifying critical gaps in broadband adoption, which "[i]ncreases the cost of digital exclusion to society").

5 *See* Pew Internet & American Life Project, Home Broadband Adoption (June 2009) (the "Pew Home Broadband Adoption Report") (available at http://www.pewinternet.org/Reports/2009/10-Home-Broadband-Adoption-2009.aspx) (last visited December 16, 2009); *see also* FCC Open Meeting Presentation, at 82.

6 FCC Open Meeting Presentation, at 82 (citing the Pew Home Broadband Adoption Report and including both English and Spanish speaking Hispanics).

7 Pew Home Broadband Adoption Report, at 14.

8 Prepared Remarks of FCC Commissioner Mignon Clyburn, *Broadband Adoption: Traveling The Consumer's Last Mile*, The Joint Center For Political And Economic Studies, at 2 (Sept. 21, 2009) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293575A1.pdf) (last visited December 16, 2009) ("Clyburn Adoption Remarks").

9 Both "Congress and the Commission have emphasized the national goals of achieving ubiquitous deployment of, and increased use of, broadband." *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*,

minorities and our country as a whole. The Commission has already acknowledged that the "[t]he disparity among broadband adoption rates . . . impacts efforts to promote employment, education, healthcare, and consumer welfare."[10] To be sure, the cost of digital exclusion is high: it is more difficult to get a job without access to online job postings and the ability to submit applications online;[11] students without broadband connections lack access to the same level of information as their connected peers;[12] it is becoming increasingly more difficult for the public to gather news and information about current events without broadband access;[13] finding medical information without access to online health resources limits patients' knowledge, choices, and care;[14] and consumers without broadband access end up paying more for goods and services than those who shop online.[15] In short, "[t]he bottom line is this: We are rapidly becoming a world in which the Internet will be the only way that people can accomplish their most essential tasks and apply for critical services," thus, broadband "can be the great equalizer" of our time if all Americans are afforded Digital Equal Opportunity.[16]

While the digital divide remains a serious civil rights issue because of its disproportionate impact on minorities, there has been at least one positive development: wireless broadband

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Notice of Inquiry, GN Docket 09-137, FCC 09-65 (¶12) (rel. Aug. 7, 2009) (the "*Sixth Section 706 NOI*"). Indeed, in the FCC's recently released *Net Neutrality NPRM*, the agency stated that "[t]his Commission has a *statutory responsibility* to preserve and promote advanced communications networks that are accessible to all Americans and that serve national purposes." *Net Neutrality NPRM*, at ¶5 (emphasis added); *see also* 47 U.S.C. §1302(a) (stating that the Commission "*shall* encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" (emphasis added)).

10 *Net Neutrality NPRM*, at ¶82; *see also* FCC Open Meeting Presentation, at 83 (discussing the costs of digital exclusion).

11 *Id.* (citing statistics).

12 *Id*.

13 *Id*.

14 *Id.*

15 *Id.*

16 *See* Clyburn Adoption Remarks, at 4.

offerings have played an increasingly significant and unique role in helping to narrow the digital divide. As discussed below, studies conclusively show that when mobile wireless broadband offerings are considered, the adoption divide between minorities and all other consumers shrinks by significant margins.

According to one study, "African Americans are the most active users of the mobile internet – and their use of it is also growing the fastest. This means the digital divide between African Americans and white Americans diminishes when mobile use is taken into account."[17] The statistics from this study show that while only 33% of white Americans have used a mobile device to go online, 58% of African Americans have.[18] Similarly, while only 19% of all Americans use mobile devices to access the Internet on an average day, 29% of African Americans do.[19] Moreover, compared with 2007, when 12% of African Americans used the Internet on their mobile device on the average day, African Americans' use of mobile devices to access the Internet is up 141%.[20] While wireless adoption does not completely alleviate the divide in intensity of usage, African Americans' relatively high level of Internet usage on mobile devices helps offset their lower levels of access to more traditional Internet onramps, such as desktop computers, laptops, and home broadband connections.[21] Indeed, "[t]o an extent notably greater than that for whites, wireless access for African Americans serves as a substitute for a missing onramp to the internet – the home broadband connection."[22] Commenting on this

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17 Pew Internet & American Life Project, *Wireless Internet Use*, at 4 (2009) (the "Pew Wireless Internet Report") (available at http://pewinternet.org/Reports/2009/12-Wireless-Internet-Use.aspx?r=1) (last visited December 16, 2009).

18 *Id,* at 18.

19 *Id. at* 4.

20 *Id.*

21 *Id.*

22 *Id.* at 35.

wireless success story, Commissioner Clyburn has remarked that "[w]ireless adoption – the use of handheld, mobile devices among African Americans is off the charts."[23]

Studies also show that mobile wireless is even more important for narrowing the digital divide for Hispanic Americans. Again, while only 33% of white Americans have used a handheld device to access the Internet, 53% of Hispanic Americans have.[24] Moreover, "English-speaking Hispanics are ardent users of wireless access . . . [and] [o]verall, English-speaking Hispanics are the heaviest users of wireless onramps to the internet."[25] "In fact, mobile broadband access has become a key resource to help many Hispanics succeed and thrive in today's economy. From improving health care to increasing educational opportunities and access to government resources, wireless devices, services and applications offer Hispanics a new route to take full advantage of many life-enhancing resources."[26]

The statistics also show that lower-income consumers rely more heavily on wireless offerings. A recent study shows that while 16% of higher income adults live in households with only wireless telephones, some 30.9% of adults living in poverty and 23.8% of adults living near poverty live in wireless-only households.[27] Moreover, another recent report showed that iPhone

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[23] Prepared Remarks Of FCC Commissioner Mignon Clyburn, "Broadband Adoption: Traveling The Consumer's Last Mile," The Joint Center For Political And Economic Studies at 3 (Sept. 21, 2009) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293575A1.pdf) (last visited December 16, 2009).

[24] Pew Wireless Internet Report at 35; *see also* The Hispanic Institute & Mobile Future, *Hispanic Broadband Access: Making The Most Of The Mobile, Connected Future*, at 8 (Sept. 15, 2009) (the "Hispanic Mobile Broadband Report") (available at http://mobfut.3cdn.net/4d6ef851f05e9666d0_xzm6bv939.pdf) (last visited December 16, 2009).

[25] Pew Wireless Internet Report at 35.

[26] Hispanic Mobile Broadband Report at 4.

[27] Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey* (July-December 2008) (available at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200905.htm) (last visited December 16, 2009).

sales rose 48% among those earning between $25,000 and $50,000 in the third quarter of 2009 – three times the growth rate among those earning more than $100,000 per year.[28] These data indicate that "lower-income mobile subscribers are increasingly turning to their mobile devices to access the Internet, email and their music collections."[29]

One of the reasons why mobile wireless services have played such an important role in helping to narrow the digital divide is that mobile wireless technology inherently favors cross-income and cross-demographic deployment. Generally speaking, mobile wireless deployment has gone from high-density areas to rural areas. In terms of technologies that cross the digital divide, this mode of deployment favors minority and lower-income users, who tend to be disproportionately represented in the urban core.

While it is important to acknowledge the unique and vital role mobile wireless offerings have played recently in helping to close the divide, more work needs to be done. As noted above, the digital divide remains unacceptably wide and if the Commission does not meet its NBP goal of "ensur[ing] that all people of the United States have access to broadband,"[30] then, in the words of Commissioner Clyburn, "we risk turning our digital divide into a digital canyon."[31]

Given wireless' matchless and proven track record of helping to narrow the divide, the Commission should take all necessary steps to allocate additional spectrum for mobile uses for

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[28] comScore, *In Tough Economy, Lower Income Mobile Consumers Turn to iPhone As Internet & Entertainment Device* (Oct. 27, 2008) (available at http://www.comscore.com/Press_Events/Press_Releases/2008/10/Lower_Income_Mobile_Consumers_use_Iphone/(language)/eng-US) (last visited December 16, 2009).

[29] *Id.*

[30] *See* American Recovery and Reinvestment Act of 2009, §6001(k)(2), Pub. L. No. 111-5, 123 Stat. 115 (2009); *see also supra* note 9 (discussing the FCC's statutory obligations to promote ubiquitous access to broadband).

[31] Prepared Remarks Of FCC Commissioner Mignon Clyburn, *Broadband Adoption: Traveling The Consumer's Last Mile*, The Joint Center For Political And Economic Studies, at 2 (Sept. 21, 2009) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293575A1.pdf) (last visited December 16, 2009).

two primary reasons. First, if additional spectrum is not allocated we run the risk of widening the digital divide or, at a minimum, locking in existing (yet unacceptable) disparities. The record in this proceeding clearly shows that demand for wireless services is increasing at a rapid clip.[32] If demand for wireless services were to outpace available spectrum, as some predict,[33] this would have a disproportionate impact on minorities because, as established above, minorities rely much more heavily on wireless offerings than other groups. Thus, the costs of an inadequate allocation of wireless spectrum will be borne primarily by African Americans, Hispanic Americans, and other minorities and would threaten to widen the divide or push further into the future the day when the divide is closed.

Second, allocating additional spectrum for wireless will help narrow the digital divide. As discussed above, the availability of wireless offerings has played a key role in helping to shrink the digital divide. The evidence shows that minorities adopt mobile offerings at a much faster rate than other groups. Therefore, allocating additional spectrum to wireless, which would result in an increase in the deployment and availability of wireless offerings, will in turn help accelerate the trend of wireless offerings serving as a bridge across the digital divide.

In the end, allocating additional spectrum to wireless uses will help address a critical civil rights issue and ensure that the Commission fulfills its statutory obligation to encourage the deployment of broadband to all Americans.[34] The Civil Rights Organizations therefore

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[32] *See, e.g.*, Comments of the Consumer Electronics Association, GN Docket Nos. 09-47, 09-51 & 09-137, at 1-3 (filed Oct. 23, 2009) (stating that "we face a looming spectrum crisis" and that "[u]rgent action is required now in order to keep up with spiraling consumer demand").

[33] *See, e.g.*, Public Notice at 1 (noting that "[p]arties have expressed concern that the United States will not have spectrum to meet the demands for wireless mobile broadband services").

[34] *See supra* notes 9 and 30 (discussing the FCC's statutory obligations to promote ubiquitous access to broadband).

respectfully urge the Commission to take all necessary steps to make more spectrum available for wireless uses.[35]

Finally, we must emphasize that the Commission should not lose sight of its obligation under Section 257 of the Communications Act to reduce market entry barriers for disadvantaged businesses. In its Framework for a National Broadband Plan,[36] the Commission failed to specifically address the role that SDBs and MBEs should play in participating in a broadband-driven economy. However, the allocation of additional spectrum to wireless is also important for facilitating entrepreneurship by SDB and MBE new entrants. SDBs and MBEs continue to be underrepresented amongst wireless providers. Allocating spectrum for wireless usage is a race-neutral approach that could promote engagement by SDBs and MBEs.

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[35] The Civil Rights Organizations are studying carefully the key issue of where spectrum, allocable to commercial wireless, can be found. They plan to address this subject in a subsequent filing.

[36] *See* Options for a National Broadband Plan, Taskforce Provides Framework for Final Phase in Development of the Plan (released December 16, 2009) ("Framework for a National Broadband Plan") available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295256A1.pdf (last visited December 17, 2009).