THE STATE OF SOCIAL JUSTICE IN MEDIA, TELECOM AND BROADBAND – 2010

David Honig
President and Executive Director
Minority Media and Telecommunications Council

Delivered at the MMTC 8th Annual Access to Capital and
Telecom Policy Conference, July 19, 2010, Washington, D.C.

This is the first in a series of presentations that we're going to open our conference with every year on the state of social justice in media, telecom and broadband.

First, let me try to define what social justice means. It's an amorphous term that means different things to different people. What it means to us is, "what is America is going to look like in 25 years when our children look back at what we've done? Will they feel that we've bequeathed them a legacy that will allow them to enjoy what the Constitution says the country is about? Or are they still going to have to fight the same struggles that we and those before us have been fighting for 400 years?"

We start with the premise – because it's true – that talent, enterprise, initiative, creativity, management skill and entrepreneurial ability are equally distributed throughout society. And since that's the case, we <u>should</u> see our most important and influential industries, media, telecom and broadband, which comprise one-sixth of our economy, looking just like America. But we don't. So why is that? It's not because of any innate differences in ability or initiative. Instead, it's because of market entry barriers, some of which have their antecedents generations back,

some of which are of more recent origin. And it's our job at MMTC to identify them, call them out, and try our best to fix them.

Now, how are we going to know when, in Dr. King's words, "we've been to the mountaintop" and have attained social justice? The answer is, put yourself in the shoes of an entrepreneur, because that's the hardest occupation in society – someone who works 15-20 hours a day to survive, to meet payroll, to help others survive and achieve. Will that person feel, in 25 years, that he or she has had every chance of succeeding with no barriers to entry, growth or opportunity, whether they be financial, regulatory, statutory or from any other source? And if the answer is, "yes, I've had every fair chance to make it on my own," then we've got a climate of social justice. So how do we get there?

First, let's take a look at a report card. How much ground have we lost in the past several years? You know often I'm asked, "what has MMTC achieved since it was founded in 1986?" And the answer I give is a little sobering. It's not the great gains that we've made, although there have been some of which we're really proud. When you turn on the television with your kids and can show them people of color and women anchoring and reporting the news, we had a lot to do that with that. When you see dozens of new minority radio owners getting FCC licenses over the past 15 years, we helped with that. Poor people got vouchers to convert to DTV – that was our proposal, and it worked out pretty well. We're proud of all of that and more.

But those victories are exceptions, unfortunately, because we've experienced a <u>net loss</u> on two of the three key indicators of social justice in our industries – diversity in employment and in ownership – and only slight progress on the third key indicator - closing the digital divide.

So what have we achieved? My answer is that in a parallel universe where MMTC didn't exist, we would have experienced much greater losses than we experienced in the universe we live in. We prevented a disaster from turning into a catastrophe. And how bad is the disaster?

Let's look at the last year in terms of what we've seen in terms of equal employment opportunity, which should be the simplest thing for the FCC to enforce. It's had this rule for broadcasters since 1969. We just had the first full year with no FCC decisions on equal employment opportunity. That's not because someone waved a wand and, surprise suprise, there's no discrimination anymore. We know <u>that</u> didn't happen because we've seen a purge in minority employment in English language, non-minority owned radio journalism. If you look at the RTNDA employment statistics and tease out Spanish-language and minority owned stations, there are about 0.4 of 1% minorities left in radio journalism. That level hasn't been seen since 1950. That's a purge, and it's like there's a tree falling in a forest where journalists apparently don't venture, because while we've pointed out repeatedly that "there's been this purge," almost no one's reported it. No one's investigated it. The FCC hasn't assigned it to an administrative law judge to find out what's gone so terribly wrong. On the other hand, FCC EEO enforcement over the past ten years has dropped to 1% of the level where it was

in the Kennard administration. We've found that the FCC in EEO cases, the few that it's brought in the past five years, actually missed its own statute of limitations six times. How in the world did that happen?

If you look at the statistics on minority ownership of radio, bracketing Free Press' 2007 study and our 2009 study, it dropped by 9% in just two years. Of the top five Hispanic-owned and controlled radio companies in 2007, four of them are either bankrupt or nearly bankrupt today. The Spanish Broadcasters Association has actually ceased to exist. And although the National Association of Black Owned Broadcasters (NABOB) is in good health, many of the leading members of NABOB are atrophying, dying or going under as well.

One success story that we could point to is that in 2007 the FCC voted 5-0 to create the Advertising Non-discrimination Rule banning "no urban dictates" and "no Spanish dictates" - that is, instructions from advertisers to their agencies saying don't advertise on Black and Spanish radio. Of course the reason for these instructions is that some advertisers don't want what they consider to be too many African Americans and Latinos in their stores. That's against the law now – it took NABOB and MMTC 24 years to get it onto the books. Yet here we are, three years later, and the FCC has yet to heed our repeated requests to designate a staff person as a compliance officer to persuade the industry to obey this rule - the first civil rights regulation adopted anywhere in the federal government since 1977. The first federal civil rights rule ever adopted with no opposition! And right now, potentially the most far reaching civil rights rule the FCC has on its books; a

rule whose non-enforcement costs minority broadcasters every year about $200 million in revenue that they earn, but never collect.

We have a cable procurement rule. Did anyone know that since 1993, cable companies have been required to reach out to minority suppliers for procurement? You ever heard of a case being brought under that rule? Don't feel bad if you haven't, because the FCC hasn't brought any.

Now we often get asked about the minority ownership initiatives, the ones that were created over the years, like the Tax Certificate Policy, the Distress Sale Policy, and the Telecom Development Fund. Everything's gone except the Fund, and in its budget in January, the Administration announced that it was going to zero out the Fund too.

What about the designated entity rules? These were rule adopted by the Commission in the 1990s to foster minority ownership in the wireless industry. In 2006, the Commission changed those rules to virtually eviscerate them. In wireless Auction 73 last year – beachfront spectrum - $19 billion worth of licenses were sold. Minorities acquired $5 million worth, which is less than three one-hundredths of one percent of the total value of those licenses, and that's public property.

Now of course the FCC is supposed to report to Congress every three years on what it's done to lift market entry barriers – that's in Section 257 of the Communications Act. So if you look at the December 2009 FCC Triennial Report

to Congress – well, I'm kidding, because there has been no such report, the Commission never complied with the requirement in the statute that it submit a report. Maybe the Commission will submit it late with an explanation.

And finally, look at the digital divide – a term created by Larry Irving when he was the Director of NTIA. And what is this divide? It really is a bellwether of what the disparities will be, what the markers of second-class citizenship are going to be in the Digital Age, which is supplanting very quickly – at Internet speed – the Industrial Age. According to the Pew Internet and American Life Project, 76% of White Americans connect to the Internet, but only 70% of Black Americans and 64% of Hispanics do.

Now, that means that we could very quickly wake up and discover that this enormously powerful tool – high-speed, affordable, accessible broadband – that we thought was going to be the great equalizer, is in fact going to be overlaid on a society already fraught with systemic and structural inequalities, and lock in these inequalities in the Digital Age as well. That's a formula for disaster in terms of our competitiveness, our economic growth, and, more than that, our moral fiber as a nation. What do we stand for if even in the Digital Age, after the passage of the great civil rights laws of the 1960s and the enforcement of those laws, even after the election of Barack Obama as President of the United States, we find these disparities persisting into the Digital Age? How is that happening? Why are we losing this ground?

One reason is the drumbeat of hysteria about race coming from predictable right wing sources. And that certainly is a factor that makes it seemingly uncomfortable for policymakers to address the racial component of social justice issues. Who can ignore – for example - the racial wealth gap that Pew still puts at about 14:1 – which is not a good sign for minority entrepreneurs looking to raise seed money from friends and family?

But I think there is an even greater danger, and that is the negligence of people of good will who ought to know better.

I'm reminded of a letter Dr. Martin Luther King Jr. wrote from a Birmingham jail on April 16, 1963. He said:

> "I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizens Counselor or the Ku Klux Klanner, but the white moderate who prefers the negative peace, which is the absence of tension, to a positive peace, which is the presence of justice...who paternalistically believes he can set the timetable for another man's freedom...who lives by a mythical concept of time and who constantly advises the Negro to wait for a more convenient season. Shallow understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will. Lukewarm acceptance is much more bewildering than outright rejection."

And what are the symptoms of this lukewarm acceptance? Dismissiveness, discomfort and thoughtlessness are the symptoms, and I want to talk about all three of them. What happens when you come to work, and you're a policymaker, maybe you're the head of an FCC bureau, maybe you're an FCC Commissioner? You show up to work and there are six piles on your desk. There's intercarrier comp, there's spectrum, there's emergency broadcasting, there's indecency, there's civil rights, and there's a huge pile of everything else you had to do yesterday. So what do you do? You dig into the sixth pile - everything you had to do yesterday - and then it's noon, it's time for lunch. And what comes next? You might get halfway through intercarrier comp, and it's time to go home. And you come to work the next day, and there are those same six piles and you dig into them in the same order. Now repeat this 365 times, and you've never dug into the pile on civil rights. Not once. It's not that you don't believe in civil rights, it's just that civil rights is not your priority – it's not in the pile that's labeled "everything you should have done yesterday." <u>But it should be at the top of that pile</u>.

Now why isn't it there? Because of the second symptom called discomfort. One question I often get asked by FCC staffers goes like this: "David, you have this long wish list of 72 things MMTC wants. (That's the actual number of proposals from MMTC and the FCC's Advisory Committee on Diversity that are pending, are viable, and that haven't been voted on.) Why can't you just take three items of low-hanging fruit and we'll do those? We'll do the other 69 things later."

Here's my answer to this: first, once the FCC does three things, the day when it

will do the other 69 things will never come, because civil rights is still not going to be at the top of its pile. So we can't let the FCC check the civil rights box and say, "well, that uncomfortable task is done!" and then move on to other things.

Doing three things is not how an agency treats a serious issue. When the Commission in 2009 released its Emergency Broadcasting Report, its preface proudly said that the Report contained 140 specific steps that the Commission should take to preserve life and limb in an emergency. One-hundred-and-forty. Not three. And what was amazing was that multi-lingual broadcasting service, making sure that when there's an emergency, people who speak Spanish or Chinese can hear the information that can save their lives, that wasn't among the 140.

But when it comes to civil rights, the magic number always seems to be three. That's the number you propose when you haven't yet gotten your mind around the concept that civil rights is something that needs to be addressed comprehensively, aggressively, and above all, yesterday.

And the third synptom is thoughtlessness. The people running the FCC now are very bright. They're sincere. They're idealistic. They're not racists. They're well meaning, but often they have blinders. What their blinders cause them to miss is the law of unintended consequences.

I want to give you three examples of that right now. There is an issue out there now on the Hill called Performance Royalty. This is an awful bill sponsored by a

Member of Congress who I dearly love, John Conyers, who's been a mentor to me for forty years and, except for this bill, is never wrong. His bill would have radio stations pay royalties to performers. Now, that sounds innocuous until you look at the fine print. Small broadcasters wouldn't pay much right away, but if they get big, they'll pay an amount so large that they can never turn a profit. Of course the bill will guarantee that they'll never get big, because who wants to invest in a business that can't ever pay a dividend? The real possibility that this bill could become law is cutting off access to capital for minority broadcasters at the knees. We've estimated, and the National Association of Media Brokers agrees, that this legislation would throw about a third of minority broadcasters into bankruptcy, the ones that aren't already there. The law of unintended consequences. A well-meaning bill to help struggling artists, who do need help, but it would throw out one of the greatest bulwarks of democracy, which is minority radio, which has helped such a diverse group of mayors and city council members and state legislators over the years. And made possible the political transformation of the Southern and Southwestern United States. The greatest ally minorities seeking justice have is minority radio, and without it, where would the nation be? Where would democracy be?

Another example of the law of unintended consequences is the media ownership rules. Certainly many broadcasters have failed to recognize that consolidation has, in fact, diminished minority broadcast ownership. Thanks to the TV duopoly rule, half of the full power TV stations owned by minorities in 1999 are no longer minority owned today. On the other hand, suppose a broadcaster could get a local ownership rule waived if it brings a new voice into the market by incubation

or financing. Wouldn't that make sense? How long should it take the FCC to grant a win-win proposal like that? The answer is 20 years and counting. NABOB and MMTC made that proposal in 1990, and the FCC – unanimously – put it out for comment in 1992. It is now in its sixth docket, and the Commission still hasn't voted on it yet. We're all getting old waiting for this unopposed minority ownership incentive to become law.

And finally, something that's a big elephant in the room, what is called net neutrality. We've endorsed five of the six elements of the FCC's proposals, but we have serious problems - as should the FCC - with the agency's proposed restrictions on network management. As it's written – and we'll hear more about this at this conference – an ISP couldn't incubate new entrants, and couldn't offer them price discounts to help them get a toehold in the market. In effect, the FCC would ban affirmative action in broadband entrepreneurship. Why progressives would support that is a mystery to me.   And further, it's regressive in cost allocation, like Steve Forbes' flat tax. The heavy users of bandwidth – the people with six servers in their basement – would pay the same rate as families with kids doing their homework at a time when 2% of users occupy more than 40% of the wireless spectrum.   Why would we allow huge content users to ride on the network and not pay their fair share of building it out and maintaining it? Why should those costs fall on lower and middle-income ratepayers, many of whom can't afford it? Why would we increase the cost of broadband, slow down adoption, slow down deployment, and lose hundreds of thousands of jobs? These are enormous unintended consequences, and they're entitled to respectful consideration by the Commission.

Now let me close by looking back at history so we can understand what's at stake here. There's a wonderful book written in 2005 by Ira Katznelson, *When Affirmative Action Was White*, and it discusses the last time that America went through the transformation that we're going through today in our transition from an industrial into a digital society. That was in the 1930s when America was in its transition from an agricultural to an industrial society. A sea change. And a change for which people of color were not protected, nor were they prepared. What we saw in the transition to the Industrial Age was that rates of poverty, income disparities, incarceration rates, school drop out rates, family instability - those social indicators doubled for African Americans and Latinos during a period when minorities should have had the greatest opportunity to make up the ground they'd lost in the Agricultural Age.

What went wrong? It was because the rules and policies were written in a way that – deliberately or not – tended to work to the disadvantage of people of color. For Social Security, the age that you're eligible was put at 65 at a time when African American life expectancy was 52. And those excluded from Social Security benefits were people who worked on farms – agricultural workers – and maids and janitors. These were jobs that two-thirds of African Americans worked in. They couldn't get Social Security. They paid in, but they couldn't get money out. It happened because people of goodwill <u>weren't paying attention</u>.

And now we have a very real risk that in 2042, when the nation's going to be majority-minority, we'll wake up and say "oh my goodness, what did we do in

2010, when we were transitioning from an industrial to a digital society, to cause people of color to still be second class citizens? Why weren't we paying attention?"

What can we do for social justice in broadband right now? MMTC is doing two things:

First, we're building institutions. You'll be hearing this evening about our effort to bring together the nation's multicultural digital entrepreneurs into a fighting force for justice for their cause. And you'll hear tomorrow about the MMTC blog. We're going to be developing our own platform to get the word out about broadband from a social justice and civil rights perspective. You'll also hear about our group of radio and television stations – all of them donated to us by broadcasters that support the civil rights cause – and how we're using them to transition broadcast managers into broadcast owners.

Second, we're helping focus attention on where our national priorities should be: in the case of broadband, that's universal access, adoption and informed use. This morning we'll hear about the National Broadband Plan, which is magnificent. We didn't think it would turn out so well because remember, we were big critics of the Plan up to its publication. But the National Broadband Plan is the Commission's most monumental achievement in broadband policy. We'll be putting together a coalition that will support the Plan and make sure that the recommendations in this wonderful 360-page document will become law.

Thanks so much for being here. I hope that next year when I deliver the State of Social Justice in Media, Telecom and Broadband, I'll have more good news to report. The way we're going to have more good news to report is if all of us roll up our sleeves, organize, organize, organize, and make some noise!