

**Before the  
Federal Communications Commission  
Washington, D.C. 20544**

In the Matter of )  
 )  
Innovation in Broadcast Television Bands: )  
Allocations, Channel Sharing and Improvements ) ET Docket No. 10-235  
to VHF )

To the Commission

**COMMENTS OF THE MINORITY MEDIA  
AND TELECOMMUNICATIONS COUNCIL**

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## SUMMARY

The Minority Media and Telecommunications Council (MMTC) respectfully submits these comments in support of most of the Commission’s proposals in the Notice of Proposed Rulemaking (NPRM).<sup>1</sup> MMTC welcomes the Commission’s proposals to add new allocations for fixed and mobile services and to establish a framework to permit channel sharing.<sup>2</sup> Given the opportunity to use wireless to close the digital divide and the impact that minority owned businesses have on the economy, the Commission should focus its efforts on ensuring spectrum policies foster minority participation in the industry.

With the exception of channels 5 and 6, which should be evaluated to see which use would provide the greatest impact, the Commission should begin its reallocation efforts by unleashing new spectrum allocations to boost minority entrepreneurship. Specifically, the Commission should adopt the Advisory Committee for Diversity in the Digital Age (Diversity Committee) Recommendation to create an Overcoming Disadvantages Preference (ODP) for auction participants.

Further, when creating its channel sharing framework, the Commission should adopt a structure similar to that of condominium ownership. Monetizing the channel in this manner would provide station owners with greater access to capital, increase diversity, and conserve Commission resources. Low Power Television (LPTV) stations should be allowed to operate on shared channels and participate in any voluntary incentive auctions.

Finally, as the Commission forms its new policies, it should institute a longitudinal study without delay to track the impact these policies have on increasing diversity.

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<sup>1</sup> See Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, Notice of Proposed Rulemaking, 25 FCC Rcd 16498 (2010) (“Spectrum NPRM”).

<sup>2</sup> See id. at 16498 ¶2.

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The Minority Media and Telecommunications Council (MMTC) respectfully submits these comments in response to the Commission’s Notice of Proposed Rulemaking<sup>3</sup> to encourage the Commission to incorporate ongoing diversity studies into spectrum policies and to extend our support of the proposals to increase spectrum efficiency.

**I. THE COMMISSION SHOULD TAKE ALL STEPS NECESSARY TO ALLOCATE ADDITIONAL SPECTRUM FOR WIRELESS BROADBAND OFFERINGS.**

As demand for wireless broadband exponentially increases, the Commission has conservatively estimated that we will deplete our spectrum resources in the near future.<sup>4</sup>

Increasing spectrum for mobile broadband service has become a civil rights issue simply because

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<sup>3</sup> See Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, Notice of Proposed Rulemaking, 25 FCC Rcd 16498 (2010) (“Spectrum NPRM”).

<sup>4</sup> See FCC Staff Technical Paper, Mobile Broadband: The Benefits of Additional Spectrum, p. 18 (Oct. 2010) (“...mobile data demand will exceed available capacity by 2013, and will reach a nearly 300 MHz deficit by 2014.”)

broadband is the base of our increasingly digital society and wireless broadband has successfully set the foundation to bridge the digital divide.<sup>5</sup>

Our country, and the world generally, is rapidly becoming dependent upon broadband technology. In our digital society, citizens can participate in government proceedings through blog comments,<sup>6</sup> access online government services through websites,<sup>7</sup> and participate in their community through alerts or blogs.<sup>8</sup> Our ever-expanding digital economy provides opportunities for individuals to bank online<sup>9</sup> and gives entrepreneurs the ability to forgo the costs associated with brick and mortar businesses to provide consumers with goods and services at the click of a button.<sup>10</sup> Broadband provides the tools for success. Consumers of all backgrounds use broadband to enrich their lives. For example, a study by the Joint Center for Political and

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<sup>5</sup> Comments of the Civil Rights Organizations – NPB Public Notice #26: Spectrum Policy, In the Matter of A National Broadband Plan for Our Future, GN Docket No. 09-51 et al. (Dec. 22, 2009) (“CRO 2009 Spectrum Policy Comments”).

<sup>6</sup> See e.g., FCC Explains Relationship of Blogband to the Record in the National Broadband Plan Proceeding, Public Notice, GN Docket No. 09-51 (rel. Sept. 22, 2009) (including postings on <http://blog.broadband.gov> in the public record of the National Broadband Plan proceeding).

<sup>7</sup> See e.g., Get It Done Online, U.S. Government Online Services, available at <http://www.usa.gov/Citizen/Services.shtml> (last visited March 10, 2011).

<sup>8</sup> See Aaron Smith, Neighbors Online, Pew Internet & American Life Project (June 9, 2010), available at <http://www.pewinternet.org/~media/Files/Reports/2010/PIP-Neighbors-Online.pdf> (last visited March 11, 2011). The results illustrated that 22% of all adults subscribed to local text or email alerts while 11% read a community blog, 9% emailed their neighbors, 4% joined community groups on social networking websites, and 2% used Twitter to connect with neighbors. Id. at 2.

<sup>9</sup> See e.g., Jon P. Gant et al., National Minority Broadband Adoption: Comparative Trends in Adoption, Acceptance and Use, Joint Center for Political and Economic Studies, p. 21 (Feb. 2010) (“Joint Center Study”) (64% of White Americans, 54% of African Americans, and 57% of Hispanic Americans have done online banking), available at [http://www.jointcenter.org/publications\\_recent\\_publications/media\\_and\\_technology/national\\_minority\\_broadband\\_adoption](http://www.jointcenter.org/publications_recent_publications/media_and_technology/national_minority_broadband_adoption) (follow link to “Download the file”) (last visited March 11, 2011).

<sup>10</sup> See e.g., Jim Jansen, 65% of Internet Users Have Paid for Online Content, Pew Internet & American Life Project (Dec. 30, 2010) (stating that the most cited purchases were music and software), available at [http://www.pewinternet.org/~media/Files/Reports/2010/PIP-Paying-for-Online-Content\\_final.pdf](http://www.pewinternet.org/~media/Files/Reports/2010/PIP-Paying-for-Online-Content_final.pdf) (last visited March 11, 2011).

Economic Studies recently 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>11</sup> However, 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>12</sup>

Despite these important uses of broadband, a digital divide still exists. The National Telecommunications and Information Administration and the Economics and Statistics Administration recently released a report illustrating that even when accounting for geographic and socio-economic factors, a home broadband adoption gap of 10 percentage points between White and Black homes, and 14 percentage points for White and Hispanic households remained.<sup>13</sup>

The Commission has a statutory obligation to close the digital divide,<sup>14</sup> and wireless broadband is the key to fulfilling this objective. The outlook is much brighter for minorities when looking specifically at wireless Internet figures. Sixty-four percent of African Americans and 63 percent of English-speaking Hispanic Americans have adopted wireless Internet, as

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<sup>11</sup> See Joint Center Study at 20-21.

<sup>12</sup> See *id.*

<sup>13</sup> See Economics and Statistics Administration & NTIA, Exploring the Digital Nation: Home Broadband Internet Adoption in the United States, pp.12-13 (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 March 10, 2011).

<sup>14</sup> See CRO 2009 Spectrum Policy Comments at 3 (stating, “[f]inding 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, but because the divide imposes untold costs on minorities and our country as a whole.”) See also 47 U.S.C. §1302(b) (“...the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”)

compared to 57 percent of White Americans.<sup>15</sup> Minorities are also adopting smartphones at a much higher rate than White Americans.<sup>16</sup>

With the Spectrum NPRM, the Commission proposes to increase spectrum efficiency through new allocations and channel sharing with the goal of unleashing spectrum for new services.<sup>17</sup> We generally support the Commission's proposals.<sup>18</sup> However, we request that the Commission modify slightly its proposals to increase their potentially positive impact for minority businesses and communities. First, the Commission should create an Advisory Committee to determine the best use of Channels 5 and 6 post-DTV transition.<sup>19</sup> Using these channels to house AM radio stations could greatly impact the future of minority participation by

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<sup>15</sup> See Aaron Smith, Mobile Access 2010, Pew Internet & American Life Project, pp. 8-9 (July 7, 2010) ("Pew Mobile Access 2010"), available at [http://www.pewinternet.org/~media/Files/Reports/2010/PIP\\_Mobile\\_Access\\_2010.pdf](http://www.pewinternet.org/~media/Files/Reports/2010/PIP_Mobile_Access_2010.pdf) (last visited March 10, 2011). Another recent Pew Study found that both Blacks and Hispanics trailed in Internet, home broadband, and cell phone use, but that African Americans, and, to a lesser extent, Hispanics were more likely than White Americans to use their phones to access the Internet. See Gretchen Livingston, Latinos and Digital Technology, 2010, p. 4-5, (Feb. 9, 2011), available at <http://pewhispanic.org/files/reports/134.pdf> (last visited March 10, 2011). Further, native-born Latinos and Bilingual or English-speaking Hispanics are more likely to be online, own a cell phone, and use the phone for non-voice applications. See *id.* at 7.

<sup>16</sup> See Don Kellogg, Among Mobile Phone Users, Hispanics, Asians are Most-Likely Smartphone Owners in the U.S., NielsenWire, available at <http://blog.nielsen.com/nielsenwire/?p=25901> (last visited March 10, 2011). "As of December 2010, nearly a third (31%) of all mobile consumers in the United States owned smartphones... But smartphone penetration is even higher among mobile users who are part of ethnic and racial minorities in the U.S. – namely Asian/Pacific Islanders (45%), Hispanics (45%) and African-Americans (33%), populations that also tend to skew younger. Meanwhile, only 27 percent of White mobile users reported owning a smartphone." *Id.*

<sup>17</sup> "Without additional spectrum, users of mobile services will be faced with congestion and degraded service, or much higher prices, or both." Spectrum NPRM 25 FCC Rcd at 16502 ¶11.

<sup>18</sup> See Hon. Julius Genachowski, "The Clock is Ticking: Remarks on Broadband," March 16, 2010, pp. 7-9 (describing why the spectrum crunch is genuine and the nation need not await a formal spectrum inventory to begin voluntary incentive auctions for DTV spectrum. We generally agree with the Chairman's remarks.

<sup>19</sup> See *infra* at Section II pp. 6-8.

providing an opportunity to strengthen the holdings of those using legacy technology, thereby better positioning them to navigate the inevitable and eventual expansion into the broadband space.<sup>20</sup> Second, new spectrum allocations should be expressly designed to foster greater minority participation in the wireless industry, as minority business enterprises (MBEs) are vital to our economic growth.<sup>21</sup> Third, the Commission should permit channel sharing arrangements under an ownership model that permits subchannel programmers to have nearly all of the attributes of ownership – thus facilitating the access to capital that comes only with ownership and not leasing arrangements.<sup>22</sup> Low-Power Television Stations (LPTV) should be included in the Commission’s channel sharing plans – about 20% of them are minority owned<sup>23</sup> and their ability to monetize their license assets is vital to their ability to reinvest and reestablish themselves in the digital space.<sup>24</sup> Finally, as a matter of sound policy, the Commission should promptly institute a longitudinal study as to how the Commission’s changing spectrum policies impact diversity.<sup>25</sup>

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<sup>20</sup> See id.

<sup>21</sup> See infra at Section III pp. 9-13.

<sup>22</sup> See infra at Section IV pp. 14-18.

<sup>23</sup> See Comments of the LPTV Entrepreneurs, Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03-185 p. 2 note 11 (December 17, 2010) (“LPTV Comments”) (“Most recent estimates for minority LPTV ownership range from 20% to 45%, but these estimates lack reliability because there is no recognized industry group to collect this data...”).

<sup>24</sup> See infra at Section IV pp. 14-18.

<sup>25</sup> See infra at pp. 13, 18.



## **II. THE COMMISSION SHOULD FORM AN AM TRANSITION FEDERAL ADVISORY COMMITTEE TO DETERMINE THE BEST USE OF CHANNELS 5 AND 6 POST-DTV TRANSITION.**

An AM Transition Federal Advisory Committee should bring together all stakeholders to determine the best use of TV Channels 5 and 6, work through the technical specifications of the best use, and provide a detailed strategy for implementation.<sup>26</sup>

In 2007, Mullaney Engineering, Inc. submitted a proposal to reallocate TV Channels 5 and 6 to FM broadcasting.<sup>27</sup> Since this time, MMTC and the Broadcast Maximization Committee have endorsed and refined this proposal to encourage the Commission to use Channels 5 and 6 to save AM radio, expand noncommercial educational (NCE) service, and relocate much of the LPFM service.<sup>28</sup> Just as the Commission has recognized the important public interest function of over-the-air television,<sup>29</sup> so too should the Commission recognize that AM radio, NCE, and LPFM are important to promoting diversity and localism. The majority of minority-owned stations are housed in AM facilities.<sup>30</sup> Further, many AM, NCE, and LPFM stations provide diverse and local programming for underserved audiences.<sup>31</sup>

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<sup>26</sup> See MMTC Radio Rescue Petition for Rulemaking, Review of Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism, RM-11565, p. 7-9 (July 19, 2009) (“Radio Rescue Petition”).

<sup>27</sup> See Mullaney Engineering, Inc. Petition for Reconsideration and/or Comment, MM Docket No. 87-268 (Oct. 26, 2007).

<sup>28</sup> See Radio Rescue Petition at 7-8. See also Comments of the Broadcast Maximization Committee, MB Docket No. 07-294 (July 30, 2008) (“BMC Comments”). Specifically, BMC proposed that the Commission “(1) relocate the LPFM service to a portion of this spectrum band; (2) expand the NCE service into the adjacent portion of this band; and (3) provide for the conversion and migration of all AM stations into the remaining portion of the band over an extended period of time and with digital transmissions only.” *Id.*

<sup>29</sup> See Spectrum NPRM 25 FCC Rcd at 16498 ¶1, 16501 ¶8.

<sup>30</sup> See BMC Comments at 8. See also Radio Rescue Petition at 9. “The vast majority of minority-owned stations are on the AM band, and these stations tend to have inferior facilities... In 2001, 5.9% of AM stations were minority owned; a minority owned station was 43% more

In early 2011, Congress and President Obama reaffirmed the viability of LPFM stations by passing and signing into law the Local Community Radio Act, which eases minimum distance requirements for third-adjacent channels and, upon receiving a waiver, second-adjacent channels as well.<sup>32</sup> It also requires the Commission to ensure availability of LPFM and FM translator and booster station licenses based on community needs.<sup>33</sup> Chairman Genachowski commented on the bill's passage, stating that "[l]ow-power FM stations are small, but they make a giant contribution to local community programming."<sup>34</sup>

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likely to be an AM station than was a non-minority owned station. Only 3.9% of the low-band (540 kHz to 800 kHz) stations were minority owned; minorities were 36% less likely than non-minorities to own these desirable facilities. Further, 33.9% of minority owned AM stations operated between 1410-1600 kHz, and minorities were 19% more likely than non-minorities to own these generally less desirable high band facilities." *Id.* at note 12 (citing the Comments of the Minority Media and Telecommunications Council and the Independent Spanish Broadcasters Association in Response to the Report on Broadcast Localism and Notice of Proposed Rule Making, MB Docket No. 04-233 (April 28, 2008), p. 3).

<sup>31</sup> See BMC Comments at 6-8. "Most news/talk, foreign language and other local and diverse program formats are found in the AM service." *Id.* at 8. Further, in mid-2009, of the 7.24% of minority controlled commercial AM/FM stations that broadcast content, nearly 75 percent of them aired minority-oriented programming. See Catherine J.K. Sandoval *et al.*, *Minority Commercial Radio Ownership in 2009: FCC Licensing and Consolidation Policies, Entry Windows, and the Nexus Between Ownership, Diversity and Service in the Public Interest*, p. 4, 20. See also Brian Stelter, *Low-Power FM Radio to Gain Space on the Dial*, *The New York Times* (Jan. 24, 2011), available at [http://www.nytimes.com/2011/01/25/arts/25radio.html?\\_r=1&adxnnl=1&hpw=&adxnnlx=1295932799-S9i6sDN+sITP7SBrvBX7Xg](http://www.nytimes.com/2011/01/25/arts/25radio.html?_r=1&adxnnl=1&hpw=&adxnnlx=1295932799-S9i6sDN+sITP7SBrvBX7Xg) (last visited Jan. 26, 2011) (explaining how an Opelousas, Louisiana LPFM station, KOCZ "has become an unlikely lifeline in this town of 22,000, helping promote local artists and church events in ways that commercial stations either cannot or will not.")

<sup>32</sup> See Local Community Radio Act, Pub. L. No. 111-371, 124 Stat. 4072, §5(3) (2011) (stating that "FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations").

<sup>33</sup> See *id.*

<sup>34</sup> FCC Chairman Julius Genachowski Commends Passage of Local Community Radio Act, *FCC News Release* (Jan. 5, 2011).

However, as noted by Communications Daily, there are many practical problems attendant to implementing the Act.<sup>35</sup> A migration of AM and LPFM stations to Channels 5/6 could help solve implementation problems while conserving judicial, legislative, and Commission resources by eliminating the Commission's need to deal with second-adjacent interference protections.<sup>36</sup>

Examining the future of Channels 5/6 to potentially save AM radio and expand LPFM and NCE service is a crucial step to achieving the Commission's diversity and localism goals. As Commissioner Copps has stated, "[i]n this day of way-too-much media consolidation, stifling program homogenization, and the decimation of local news, new voices are critically important to sustaining America's civic dialogue and citizen engagement."<sup>37</sup> To efficiently weigh competing uses, the Commission should immediately convene an AM Transition Federal Advisory Committee, to delve into the details of the best uses of TV Channels 5 and 6 to promote Commission diversity goals and provide a detailed implementation strategy.

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<sup>35</sup> See Jonathan Make, LPFM, Translators Read Local Community Radio Act Differently, Communications Daily, pp. 8-9 (Jan. 11, 2011) (quoting Harry Cole of Fletcher Heald & Hildreth, discussing how the Act impacts a 2003 translator auction and whether to allow LPFM stations to submit construction permits prior to Auction No. 83 to immediately obtain translator stations in the auction). According to John Garziglia of Womble Carlyle Sandridge & Rice, a translator, could "help struggling AM station[s].... serve its entire coverage area so it doesn't 'fail'...." Id.

<sup>36</sup> See Radio Rescue Petition at 9-10. See also BMC Comments at 6.

<sup>37</sup> Statement of Commissioner Michael J. Copps Lauding the Signing of the Local Community Radio Act, FCC News Release (Jan. 5, 2011).

### **III. THE COMMISSION’S PROPOSAL TO ADD NEW ALLOCATIONS FOR FIXED AND MOBILE SERVICES IN THE U/V BANDS SHOULD BE DESIGNED TO ENCOURAGE GREATER PARTICIPATION OF MINORITY AND DISADVANTAGED BUSINESSES.**

We support the Commission’s proposal to add new allocations for fixed and mobile wireless services in the U/V Bands to be co-primary with the existing broadcast allocation in those bands.<sup>38</sup> However, the Commission should encourage greater participation of disadvantaged businesses and incorporate an ongoing diversity analysis to increase and encourage minority participation across the regulated industries.

Making new spectrum available for mobile wireless would help to facilitate entrepreneurship by SDB/MBE new entrants who are underrepresented in the wireless industry.<sup>39</sup> To truly spur innovation, we cannot continue to have barriers to entry. If more spectrum is made available, minority-owned wireless companies could have an opportunity to enter the U/V Bands and thrive.

New spectrum allocations would also enable increased entrepreneurship in the minority community. With the lower costs associated with starting an online business than a brick and

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<sup>38</sup> See Spectrum NPRM, 25 FCC Rcd at 16498 ¶2, 16503 ¶14, 16504 ¶¶16-17. The FCC “...request(s) comment on proposed plan for adding new allocations to the U/V Bands (with certain exceptions to facilitate repurposing of portions in a later action) and invites suggestions for alternative approaches.” Id. at ¶17.

<sup>39</sup> See CRO Spectrum Policy Comments 2009 at 9. See also Initial Comments of the Broadband Diversity Supporters, National Broadband Plan for Our Future, GN Docket No. 09-51 (July 5, 2009), pp. 19-22 (discussing some of the regulatory barriers, that until recently, have grossly hindered participation by Designated Entities). See also Lucy Warren, National Broadband Plan a ‘Fantastic Step,’ MMTTC Told, Communications Daily (Jan. 24, 2011) (quoting Kelley Dunne, CEO of One Economy, “The cost of wireless broadband like 4G is ‘anywhere from one-tenth to one-twentieth of the cost of deploying traditional wireline services,’ making it easier for companies to share costs and reducing the ‘at risk capital for providing coverage to lower income areas...”).

mortar business,<sup>40</sup> wireless' proven ability to bridge the digital divide,<sup>41</sup> and minority communities' interest in digital entrepreneurship,<sup>42</sup> unleashing more spectrum for wireless broadband would likely spur growth in minority businesses.<sup>43</sup>

Increasing minority entrepreneurship is an important facet of our country's economic growth. Small businesses are vitally important to our economy, generating nearly two-thirds of new jobs since the mid-1990s.<sup>44</sup> Minorities and women are entering the market at a greater rate than before.<sup>45</sup> There are now twice as many self-employed Hispanic Americans than there were

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<sup>40</sup> See e.g. Scott Gerber, Ditch Your Bad Financial Habits, *Entrepreneur*, available at <http://www.entrepreneur.com/startingabusiness/youngentrepreneurscolumnistscottgerber/article205726.html> (last visited Jan. 31, 2011). Columnist reports on conversation with Ramit Sethi, NY Times bestselling author of *I Will Teach You To Be Rich*, regarding misconceptions about starting a businesses. Sethi said, "We think we have to be rich to start investing in our business. Not true, especially today when you can start a website, launch a product and begin marketing for under \$100." *Id.*

<sup>41</sup> See *supra* at pp. 3-4.

<sup>42</sup> See Joint Center Report at 21 (28 percent of African Americans and 18 percent of Hispanic Americans use the Internet to "look for ideas about starting an online business," compared to 14 percent of White Americans).

<sup>43</sup> As Chairman Genachowski has stated, "[b]roadband enables businesses to start and grow, and jobs to be created, anywhere in America, from the biggest urban city to the smallest rural town. Broadband opens new markets, allowing businesses – of any size – to reach customers in the next neighborhood, the next city, the next state, and even overseas...." See Prepared Remarks of Chairman Julius Genachowski, *Our Innovation Infrastructure: Opportunities and Challenges*, NARUC Annual Meeting (Nov. 15, 2010), available at [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2010/db1115/DOC-302802A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1115/DOC-302802A1.pdf) (last visited Jan. 31, 2011).

<sup>44</sup> See Small Business Administration, Office of Advocacy FAQs ("Small firms...[h]ave generated 64 percent of net new jobs over the past 15 years"), available at <http://www.sba.gov/advocacy/7495> (follow link to "How important are small businesses to the U.S. economy") (last visited Feb. 2, 2011). See also The Small Business Economy, SBA Report to the President, p. 26-31 (2010) ("The Small Business Economy"), available at [http://www.sba.gov/sites/default/files/sb\\_econ2010.pdf](http://www.sba.gov/sites/default/files/sb_econ2010.pdf) (last visited March 11, 2011).

<sup>45</sup> See The Small Business Economy at 29.

in 2000<sup>46</sup> and Census Bureau statistics illustrate that rate of minority-owned business growth is more than double the national rate.<sup>47</sup> Further, in terms of job creation, while minority owned startups were more likely than other businesses to close, minority-owned business expansion generates higher rates of job creation than other businesses.<sup>48</sup>

There are obvious benefits that job creation, including that of minority businesses, has for our economy, such as increasing the employment rate. Beyond that, there are other significant benefits to using newly unleashed spectrum to boost minority entrepreneurship. For example, by providing access to opportunities gained through increased spectrum coupled with incubator programs, such as Startup America,<sup>49</sup> expanding minority owned businesses can provide training to their employees to help the nation overcome an emerging skills divide<sup>50</sup> in ways that

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<sup>46</sup> See *id.* (“The number of self-employed Hispanics more than doubled from 2000 to 2008 and their share of the self-employed population rose from 5.6 to 10.2 percent. Immigrant entrepreneurship also makes up a larger proportion of those who start their own business.”)

<sup>47</sup> See Census Bureau Reports Minority Business Ownership Increasing at More Than Twice the National Rate, Census Bureau News Release (July 13, 2010), available at [http://www.census.gov/newsroom/releases/archives/economic\\_census/cb10-107.html](http://www.census.gov/newsroom/releases/archives/economic_census/cb10-107.html) (last visited Jan. 31, 2011).

<sup>48</sup> See The Small Business Economy at 31. “Minority-owned establishments were more likely to close than businesses owned by their nonminority (White) counter-parts. At the same time, the rates of job creation due to the expansion of minority-owned establishments were consistently higher than those of businesses owned by Caucasians. The four-year rate of employment expansion drops drastically as enterprise receipts size increases. Small enterprises (with less than \$50,000 in receipts in 2002) had higher rates of job creation because of expansion in 2002-2006. This was especially true for minority-owned enterprises.” *Id.*

<sup>49</sup> See Startup America Webpage, available at <http://www.whitehouse.gov/issues/startup-america> (last visited Feb. 3, 2011).

<sup>50</sup> See Michael A. Fletcher, Why does Fresno have thousands of job openings – and high unemployment?, *The Washington Post* (Feb. 2, 2011), available at [http://www.washingtonpost.com/wp-dyn/content/article/2011/02/01/AR2011020106092.html?wpisrc=nl\\_pmheadline](http://www.washingtonpost.com/wp-dyn/content/article/2011/02/01/AR2011020106092.html?wpisrc=nl_pmheadline) (last visited Feb. 3, 2011).

misadministration and structural discrimination prevented in the development of traditional communications platforms.<sup>51</sup>

In his 2011 State of the Union Address, President Obama stressed the importance of innovation to achieving the promise of our future.<sup>52</sup> Increased spectrum for broadband is a crucial component of our success, and increasing spectrum for wireless “... isn’t just about faster Internet and fewer dropped calls. It’s about connecting every part of America to the digital age.”<sup>53</sup> We need to seize every opportunity to ensure that minorities are factored into this transformation.

To achieve greater diversity, the Commission should institute the Recommendation of the Commission’s Advisory Committee for Diversity in the Digital Age (the Diversity Committee) to create an Overcoming Disadvantages Preference (ODP) for auction participants, and the Commission should incorporate an ongoing diversity analysis to ensure its policies are effectively achieving greater minority participation.

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<sup>51</sup> See generally Comments of the Minority Media and Telecommunications Council, MM Docket Nos. 01-317, 00-244, pp. 71-104 (March 21, 2002). “Today’s absurdly low level of minority ownership is the fault of (1) the Commission’s assistance to segregated state university systems as they excluded minorities from broadcast education; (2) the Commission’s licensing and relicensing of open segregationists and employment discriminators; [(3)] the Commission’s use of absurdly stringent financial qualifications requirements, as well as broadcast experience and past broadcast record as licensing criteria, even though discrimination had excluded minorities from broadcasting and from access to broadcast capital; (4) the Commission’s failure to ensure minorities’ access to radio allotments with adequate technical attributes, and (5) the Commission’s failure to prevent employment discrimination.” *Id.* at 72-73. “As the only body that controlled access to the spectrum, the Commission’s arbitrary actions depriving minorities of access to the spectrum stigmatized minorities and created a disability that is difficult to repair.” *Id.* at 75.

<sup>52</sup> See President Barack Obama, State of the Union Address (Jan. 26, 2011).

<sup>53</sup> See *id.*

Prior to auctioning off additional spectrum allocations, the Commission should adopt the Diversity Committee's recommendation to establish an ODP standard.<sup>54</sup> An ODP standard would provide the Commission with a race and gender-neutral means of increasing the participation of disadvantaged persons who have demonstrated the grit and perseverance necessary for long-term success and a predilection to serve the public interest.<sup>55</sup>

Finally, as the Commission begins to reform its spectrum policy, it should begin a longitudinal study on the impact these new allocations, channel-sharing arrangements, and any other initiatives have on minorities and women. The study should track each of the key factors necessary for an evaluation of the extent and vibrancy of policies designed to promote ownership diversity: available allocations; competition for them at each stage of the auction process; success of owners in securing financing and building out the assets; sale prices and asset values. For owners, the study should examine minority and women owned entrepreneurs and describe in quantitative and qualitative terms their barriers to entry and growth, including access to debt, equity and the skill sets and resources necessary to participate in channel-sharing and other arrangements. Using this data set, the Commission should strive to ensure that the history of structural discrimination in traditional forms of communication platforms is not carried over to emerging industries.

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<sup>54</sup> See Media and Wireless Telecommunications Bureaus Seek Comment on Recommendation of the Advisory Committee on Diversity for Communications in the Digital Age for a New Auction Preference for Overcoming Disadvantage, Public Notice, GN Docket No. 10-244, DA 10-2259, 75 Fed. Reg. 81274 (Dec. 27, 2010) (citing Recommendation on Preference for Overcoming Disadvantage, FCC Advisory Committee on diversity for Communications in the Digital Age (Oct. 14, 2010), available at <http://www.fcc.gov/DiversityFAC/recommendations.html> (last visited Feb. 8, 2011)).

<sup>55</sup> See generally Comments of the Minority Media and Telecommunications Council, GN Docket No. 10-244 (Feb. 7, 2011).



#### IV. THE COMMISSION SHOULD PERMIT CHANNEL SHARING UNDER A “CONDOMINIUM OWNERSHIP” STRUCTURE TO PROMOTE DIVERSITY.

We agree with the Commission<sup>56</sup> that voluntary channel-sharing arrangements or subchannel services, such as mobile broadcast,<sup>57</sup> would be beneficial to small and minority businesses. DTV subchannels allow businesses to increase audience share and provide consumers with increasingly diverse content by streaming programming online.<sup>58</sup> The Commission suggests limiting the channel sharing provision to television stations that have pending applications filed at the Commission.<sup>59</sup> This limitation may be unnecessary because the channel sharing proposal is voluntary,<sup>60</sup> which means some stations will inevitably decline to participate, and subchannels present a valuable opportunity for entry by minority entrepreneurs.<sup>61</sup>

One significant barrier for small and minority owned business participation in the communications industries continues to be access to capital.<sup>62</sup> To avoid this obstacle,

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<sup>56</sup> See Spectrum NPRM 25 FCC Rcd at 16505 ¶18.

<sup>57</sup> See id. at ¶20.

<sup>58</sup> See Comments of the Diversity and Competition Supporters, 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182, p. 20-21 (July 12, 2010) (“2010 Media Ownership Comments”).

<sup>59</sup> The Commission proposes to “limit channel sharing to television stations with existing applications, construction permits or licenses as of the date of adoption of this Notice...[the] dual intentions in proposing this channel option are to provide 1) a means for stations that may need to be more economically efficient in their operations to share transmission resources and 2) a path for stations to make their spectrum available for new broadband services and continue to operate a broadcast television service.” Spectrum NPRM 25 FCC Rcd at 16506 ¶22.

<sup>60</sup> See Spectrum NPRM 25 FCC Rcd at 16505 ¶18.

<sup>61</sup> See 2010 Media Ownership Comments at 21 (citing to discussion on pages 14-16). See also supra Section III at pp. 9-13.

<sup>62</sup> See e.g. GAO Report on Media Ownership: Economic Factors Influence the Number of Media Outlets in Local Markets, While Ownership by Minorities and Women Appears Limited and Is Difficult to Assess, GAO-08-383, p. 21-26 (March 2008).

particularly for leased facilities, the Commission should install a sub-channel ownership structure that would allow broadcasters to sell sub-channels to diverse businesses and minority entrepreneurs.<sup>63</sup> Specifically, instead of continuing “as much of [the] existing policy framework for allocating, licensing, and operating television stations as possible [in which] each station will continue to be licensed and operated separately,”<sup>64</sup> the Commission should design a program that resembles a condominium framework. By creating a relationship analogous to the relationship between a condominium building-owner and unit owner, the parameters of the agreement preserves the rights and obligations of the licensee.<sup>65</sup> As stated in previous comments,

[t]he DTV subchannel or HD channel licensee would control its channel’s content, while its engineering would continue to be handled by the DTV or FM station licensee for a fee. In this paradigm, the DTV subchannel or HD channel licensee’s control of its channel’s programming is analogous to a residential condominium owner’s enjoyment of his unit, while the DTV subchannel or HD channel’s engineering is analogous to the condominium building owner’s management of the building’s common areas.<sup>66</sup>

This model would conserve Commission resources and foster diversity by allowing interested parties to bypass the auction process by essentially monetizing the channel.<sup>67</sup> One

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<sup>63</sup> See 2010 Media Ownership Comments p. 20-22. See also Advisory Committee on Diversity, Recommendation on Leasing or Ownership of FM or DTV Subchannels Under the Share-Time Rule (Sept. 27, 2007) (“Share-Time Recommendation”), available at <http://www.fcc.gov/DiversityFAC/meeting092707.html> (follow link to “Subcommittee Proposals”) (last visited March 11, 2011).

<sup>64</sup> See Spectrum NPRM 25 FCC Rcd at 16505 ¶21 (each station would also “have its own call sign and be separately subject to all of the Commission’s obligation, rules and policies.”)

<sup>65</sup> See Initial Comments of the Diversity and Competition Supporters Response to the Second Further Notice of Proposed Rulemaking, 2006 Quadrennial Regulatory Review, MB Docket No. 06-121 et al., pp. 41-47 (Oct. 1, 2007) (“2007 DCS Media Ownership Comments”) (setting forth a detailed blueprint for the structure of this channel-sharing proposal).

<sup>66</sup> Id. at 43.

<sup>67</sup> See Share-Time Recommendation at p. 2.

immediate benefit of monetizing a subchannel is ownership diversity.<sup>68</sup> Additional benefits include access to capital for new entrants and minority and women owned businesses that seek to participate in channel sharing arrangements and, by doing so, increase the value of the assets, and increase competition.<sup>69</sup>

The Commission also seeks comment on “whether the Commission should consider any prospective loss of television service when determining whether to permit stations to make modifications to their transmission facilities necessary to achieve channel sharing.”<sup>70</sup> The Commission should continue its current policy of considering loss of service on a case-by-case basis.<sup>71</sup> However, beyond the traditional factors the Commission weighs regarding the extent of loss, alternative services, and the creation of new service,<sup>72</sup> the Commission should also consider whether the loss represents that market’s only source of local news and information. If not, the Commission should weigh the loss of service against the Commission’s obligation to close the digital divide and the benefit of freeing up spectrum for new wireless service.<sup>73</sup>

LPTV, Class A, and translator stations should also be allowed to operate on shared channels.<sup>74</sup> Further, the Commission should consider allowing LPTV broadcasters to use

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<sup>68</sup> See Initial Comments of the Diversity and Competition Supporters in Response to the Third Further Notice of Proposed Rulemaking, MB Docket No. 07-294, p. 14 (July 30, 2008) (also citing benefits including the acceptance rate accelerating DTV/HD receivers and lead to a justification to relax radio ownership rules).

<sup>69</sup> See id.

<sup>70</sup> Spectrum NPRM 25 FCC Rcd at 16507 ¶25 (The concern is, “[s]uch changes could result in a loss of television service to some persons presently able to receive over-the-air signal from on or more of the stations, and could also result in gains to television service.”)

<sup>71</sup> See id. at ¶26.

<sup>72</sup> See id. at ¶¶26-28.

<sup>73</sup> See supra at pp. 3-4.

<sup>74</sup> See Spectrum NPRM 25 FCC Rcd at 16511 ¶40.

spectrum for broadband service and give them the opportunity to participate in any voluntary incentive auctions.

As explained in previous filings, LPTV was created to provide an entry point for new broadcasters, diverse programming, and to promote minority ownership.<sup>75</sup> However, since its inception, lack of must carry status and deficiencies in the DTV converter box process have severely limited the goals of LPTV.<sup>76</sup> Allowing LPTV owners the flexibility to use their spectrum for the dual purpose of providing wireless broadband and traditional broadcast service would promote competition in the communities that LPTV stations serve.<sup>77</sup> LPTV owners are ready to prove to the Commission that can use their spectrum to efficiently serve their audience with broadcast and mobile broadband.<sup>78</sup> Further, as recommended by the Commission's Technical Paper analyzing the options for broadcast spectrum, LPTV owners should be included in voluntary incentive auctions.<sup>79</sup>

Channel sharing presents many opportunities to increase diversity. As such, the Commission should incorporate its diversity goals into its spectrum reallocation and channel-sharing plans by incentivizing stations to grant assignments, or even limiting initial assignments,

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<sup>75</sup> See LPTV Comments at p. 2.

<sup>76</sup> See id. at 3.

<sup>77</sup> See id. at 4.

<sup>78</sup> See Josh Wein, Seeking Spectrum Flexibility, LPTV Advocates Take Their Media Bureau Beef Public, Communications Daily, p. 4 (Jan. 14, 2011) (explaining an open letter written by LPTV advocates seeking an experimental license to test a technology that would allow them to provide both television and broadband services). The Commission denied this request, claiming that the company was proposing a developmental license rather than an experimental license and therefore must be accompanied by a rulemaking petition. See Josh Wein, Media Bureau Dismisses Experimental License Request to Test Broadband on LPTV Spectrum, Communications Daily, p.12 (Feb. 11, 2011).

<sup>79</sup> See LPTV Comments at 4-5 (citing Spectrum Analysis: Options for Broadcast Spectrum, OBI Technical Paper No. 3 (June 2010), p. 4).

to persons who satisfy the ODP standard.<sup>80</sup> Further, to track the impact that channel sharing has on minorities and women to increase the effectiveness of its policies the Commission should institute a longitudinal diversity study without delay.<sup>81</sup>

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<sup>80</sup> See 2007 DCS Media Ownership Comments at 43. “To afford minorities and women a headstart in accessing this spectrum, DCS proposes that the Commission initially limit the assignment of a DTV subchannel or HD channel to SDBs. As a further incentive to promote minority and women ownership, a broadcaster that assigns to an SDB or a DTV subchannel or HD channel at a fraction of fair market value could be permitted to assign a second DTV subchannel or HD channel at fair market value.” Id. See also supra at p. 13.

<sup>81</sup> See supra at p. 13.

## CONCLUSION

The Commission can take many steps in spectrum reform to build a bridge across the digital divide. By constantly seeking to promote diversity in the communications industries, the Commission can overcome the present effects of the structural discrimination prevalent in the legacy communications systems. Diversity benefits all Americans because it promotes innovation and efficiency – it ensures that the managerial, technical and entrepreneurial potential of all Americans will find expression in the marketplace. Thus we respectfully urge the Commission to adopt spectrum policies that will enable all Americans to participate in the digital economy.

Respectfully submitted,

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