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July 27, 2010

The Honorable John Rockefeller  
Senate Committee on Commerce, Science and Transportation  
253 Russell Senate Office Building  
Washington, DC 20510

The Honorable Kay Bailey Hutchison  
Senate Committee on Commerce, Science and Transportation  
253 Russell Senate Office Building  
Washington, DC 20510

The Honorable Henry Waxman  
House Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Joe Barton  
House Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen Rockefeller and Waxman, Ranking Members Hutchison and Barton:

Please accept this letter voicing opposition to the Federal Communications Commission (“FCC”) regarding its “third way” proposal for reclassifying broadband Internet access as a common carrier telecommunications service.

We agree with the FCC on where a carefully constructed and narrowly tailored policy can guide the broadband market in the United States – towards ubiquitously available and affordable connections for even the most destitute and geographically remote of non-adopters, robust adoption among under-adopting minority groups, and effective utilization by minority and women owned business enterprises (“MWBES”) and socially and economically disadvantaged businesses (“SDBs”). *However, we disagree strongly with the FCC’s proposed means for achieving these goals.* As discussed at length in the accompanying Comments on broadband reclassification submitted by

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MMTC on behalf of eight highly respected parties including itself (the “National Organizations”),<sup>1</sup> we strongly caution the FCC against pursuing its “third way” lest it hobble critical efforts aimed at bolstering broadband availability, affordability, and adoption among minorities and disadvantaged businesses. Alternatively, we contend that the FCC possesses ample authority under the existing regulatory regime to realize all of the laudable goals for broadband outlined in the Commission’s first-rate National Broadband Plan.

By pursuing a “third way” for broadband, the FCC risks halting the positive momentum toward further empowering minority users, MWBEs, and SDBs via broadband. Indeed, the National Organizations’ Comments highlight several negative impacts that will likely result if the FCC implements its “third way” proposals. These include:

- *Price Increases.* The national organizations are concerned that the price of broadband for consumers could increase by over 16% as a result of subjecting broadband to a number of common carrier regulatory charges and fees that will ultimately be borne by end-users. Increasing the price of broadband will thwart the Commission’s efforts to achieve one of its core goals for broadband – increased adoption among demographic groups that have cited the affordability of broadband as a primary barrier to home adoption. This is of particular import to minority and low-income consumers, many of whom would be disproportionately impacted by an increase in the cost of broadband because these groups are more sensitive to price changes than are others. Several recent studies have found that affordability is one of the greatest impediments to minority broadband adoption,<sup>2</sup> thus, broadband reclassification would sharply conflict with Congress’ and the White House’s goals of closing the digital divide.

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<sup>1</sup> These organizations are the Hispanic Technology and Telecommunications Partnership, Latinos in Information Sciences and Technology Association, MANA – A National Latina Organization, Minority Media and Telecommunications Council, National Association of Black County Officials, National Conference of Black Mayors, National Conference of Puerto Rican Women, and National Puerto Rican Coalition, Inc.

<sup>2</sup> See, e.g., Federal Communications Commission, *Connecting America: The National Broadband Plan*, Ch. 9 (March 2010) (discussing the connection between income and broadband adoption); Robert Shapiro and Kevin Hassett, *A New Analysis of Broadband Adoption Rates By Minority Households*, at pp. 10-11, 17 (June 2010) (noting that “extensive research...has found that price is the single largest determinant of broadband subscription” and that “lower income households are particularly sensitive to higher broadband prices.” The authors concluded that “a disproportionate share of African American and Hispanic households...[is] more sensitive to such price increases than higher-income households.”)

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- *Decreased Investment Across the Broadband Environment.* Implementation of the FCC's proposed policies would also likely have negative impacts on investment decisions across the entire broadband ecosystem. Less investment at the network level will not only deprive minority consumers and innovators of more advanced connections, it will also chill investment at the edge of the network. In a marketplace defined by regulatory uncertainty, investors will seek to back only proven firms in order to decrease their risk exposure. Thus, new firms will operate at more of a disadvantage as investment dollars will be even scarcer in a heavily regulated market. This dynamic would disproportionately impact MWBEs and SDBs, the vast majority of which already have difficulty accessing adequate capital to launch and maintain new online enterprises.
- *Less Consumer Protection from Dominant Online Firms.* The FCC's proposed policies also fail to provide adequate protections for consumers and small businesses from harms caused by large online content and application providers. In particular, the "third way" would prohibit the offering of services tailored to small businesses and minority entrepreneurs, and would prevent the Federal Trade Commission from protecting online consumers.

The FCC's proposed "third way" policy fails to imbue confidence that the Commission is serious about tackling endemic problems in the minority community. The FCC's failure to protect civil rights in other realms adds to our concerns – for example, the FCC has all but shut down EEO enforcement, having failed to issue a single EEO enforcement order for more than a year; it has not assigned a compliance officer to enforce the advertising nondiscrimination rule for two years; it has failed for five years to provide for multilingual broadcasting as part of its EAS emergency broadcasting system, and it is nearly seven months late in submitting Congress its triennial market entry barriers (Section 257) report.

Thus, we encourage you to ask the FCC to refocus its efforts on civil rights protections, hold its net neutrality and reclassification proposals in abeyance, and defer to Congress for additional guidance on broadband reclassification. FCC deference to Congress on reclassification has been endorsed by bipartisan majorities in both houses of Congress and by a number of other stakeholders across the broadband ecosystem. Deferring to Congress would assure that the marketplace is afforded sufficient regulatory certainty going forward. Such certainty is necessary at this critical moment in the evolution of the broadband market. Certainty drives investment at the core of networks and at its edges. Certainty also encourages investors to take more risks and back fledgling firms, a dynamic that has become central to the success of the broadband ecosystem and to enabling MWBEs and SDBs to compete effectively.

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Sincerely,

A handwritten signature in black ink, appearing to read "David Honig". The signature is fluid and cursive, with a prominent loop at the end.

David Honig  
President and Executive Director

Attachment

/dh