

PROPOSAL FOR STAFF WORKSHOP AND FIELD HEARING ON NETWORK NEUTRALITY AND THE DIGITAL DIVIDE

Submitted on behalf of:

**Asian American Justice Center
Hispanic Technology and Telecommunications Partnership
League of United Latin American Citizens
National Black Caucus of State Legislators
National Conference of Black Mayors
National Organization of Black County Officials
National Organization of Black Elected Legislative Women
Women in Municipal Government**

January 4, 2010

Purpose of the Staff Workshop and Field Hearing

At these events, the Commission would examine whether each of the six proposed network neutrality rules would help advance and accelerate, or hinder and delay, the closing of each of these four aspects of the digital divide: (a) investment in and deployment of broadband to minorities and un-served or underserved communities; (b) broadband adoption by minorities and low-income consumers; (c) informed and literate use of broadband by minorities and low-income consumers; and (d) minority entrepreneurs' participation in the broadband economy.

Questions to be Addressed in the Field Hearing and Staff Workshop

Entities Covered By Network Neutrality Rules

1. In the NPRM, the Commission proposed that network neutrality rules would only apply to providers of broadband Internet access service. However, the Commission also asked for comment on whether it should apply the proposed rules more broadly. A key question is whether entities other than broadband Internet access service providers (including search engine providers, content providers, service providers, or application providers) engage in practices that negatively impact minorities and low-income consumers with respect to their use of, or access to, the Internet. If so, should network neutrality rules apply to these entities? Would the Commission have the legal authority to apply network neutrality regulations to these entities?

Minorities' And Low-Income Consumers' Use Of Broadband

2. Do minorities and low-income consumers have unique needs with respect to broadband Internet access service? Is there evidence that minorities and low-income consumers rely more heavily on one particular broadband platform or another, such as wireless or wireline

platforms? Do members of minority groups use broadband differently than members of other groups? For example, do minorities and low-income consumers use broadband to access different content, applications, or services than other groups? If so, could the availability of these services or applications be improved or jeopardized by the proposed network neutrality rules? Are there studies or data addressing these issues?

Closing The Digital Divide – Research, Program Design, Monitoring and Implementation

3. Historians have documented how the government’s adoption of several facially neutral, idealistic social policies generated benefits for all Americans while, unintentionally, leaving in place or widening pre-existing social divides defined by race and income. Examples include the TVA, Medicare and Social Security. Scholars have also documented how even some social programs specifically intended to close social divides have, as applied, failed to do so either because of insufficient enforcement or second-order effects. Examples include school desegregation decrees and the Commission’s own minority broadcast ownership, wireless designated entity and EEO regulations. What can be learned from these experiences and how can that knowledge be applied to the design and implementation of potential network neutrality regulations?

4. Before adopting any network neutrality rules, should the Commission conduct additional research to ensure that any such rules do not—even unintentionally—widen the digital divide or push farther into the future the day when the divide is closed? Regardless of whether the Commission adopts or declines to adopt network neutrality rules, are there ways the Commission can monitor the effect this decision would have on closing the digital divide? Does the Commission have a legal obligation to conduct these studies or analyses?

5. In the network neutrality context, is there a tension between the concept of neutrality and the concept of affirmative action to prevent racial discrimination, remedy the effects of past racial discrimination, promote competition, promote ownership and content diversity, and to bridge the digital divide? If so, how could that tension be minimized?

6. If, after rules are adopted, it appears that they have widened the digital divide or failed to close it, what steps should the Commission be prepared to take and how difficult would it be for the Commission to take those steps? Which implementation structure is preferable: one grounded on case-by-case adjudications, on waivers, or on rule revisions or re-interpretations? What specific resources are available to ensure that the Commission conducts the necessary longitudinal research, monitoring, enforcement and, potentially, further rulemaking?

Closing The Digital Divide—Investment, Adoption, Availability, Pricing

7. Are there studies or reliable data establishing whether or not network neutrality rules would affect the affordability or quality of broadband offerings for minorities and low-income consumers?

8. How would the proposed network neutrality rules affect (if at all) a broadband provider’s pricing practices with respect to minority consumers? Would broadband be more affordable or less affordable for minorities and low-income consumers if broadband Internet access

service providers could offer value added services or enter into commercial agreements that provide additional revenue streams beyond those provided by end users?

9. Would network neutrality rules advance or deter the ability of content providers of all kinds to develop and disseminate new information relevant to minorities and low-income consumers that could help spur broadband adoption?

10. Would network neutrality rules help or hurt minorities' efforts to launch or maintain Internet-related enterprises, such as online content, application, or service offerings? Would prohibiting broadband providers from charging content, application, or service providers for enhanced or prioritized access to subscribers have a tendency to benefit or harm minority entrepreneurs and end users?

Managing The Network

11. In the NPRM, the Commission stated that congestion in the network and managing this congestion is a major issue in the network neutrality debate. The Commission is thus considering whether to allow broadband providers to control network congestion by, among other things, temporarily limiting the bandwidth available to certain users or limiting usage. Is there evidence establishing how either of these practices would affect minorities and low-income consumers—would one form of network management or another be better or worse for minority and low-income consumers?

12. If the Commission prohibited broadband providers from deciding how to manage congestion by determining that only certain practices were acceptable, would this have a negative impact on the broadband experience of minorities and low-income consumers in particular? Or is the opposite true – *i.e.*, would minorities and low-income consumers be harmed if the Commission allowed broadband providers to decide how to manage congestion in their networks?

13. Would network neutrality rules increase or decrease the ability of minorities and low-income consumers to access vital broadband services that may require higher priority on the Internet, such as medical care, home security, and educational or job opportunities? Are there studies or reliable data addressing network neutrality's potential impact in this regard?

Legal Authority / Framework

14. What legal authority and applicable legal framework should guide any Commission decision directed at closing the digital divide or increasing broadband adoption by members of minority and low-income communities?

Potential Witnesses

1. **Jonathan Adelstein**, Administrator, Rural Utilities Service, USDA
2. **Sylvia Aguilera**, Executive Director, HTTP
3. **Danny Bakewell, Sr.**, Chair, National Newspaper Publishers Association
4. **Geoffrey Blackwell**, Chair, Telecom Committee, NCAI
5. **Kathy Brown**, Senior Vice President, Verizon

6. **Donna Byrd**, Publisher, The Root
7. **Matthew Carter**, Chair Emeritus, Florida PSC
8. **Aneesh Chopra**, U.S. Chief Technology Officer and Director for Technology, White House Office of Science and Technology Policy
9. **Barbara Ciara**, President, UNITY: Journalists of Color
10. **Jim Cicconi**, Senior Vice President, AT&T
11. **Maurita Coley**, Executive Director, BBOC; Vice Chair, MMTC
12. **Jannette Dates**, Dean, School of Communications, Howard University
13. **Ari Fitzgerald**, Partner, Hogan & Hartson; Secretary, MMTC
14. **Allen Hammond**, Professor, Santa Clara University School of Law
15. **David Honig**, President and Executive Director, MMTC
16. **Heather Hudson**, Mayor, Greenville, Mississippi
17. **Rev. Jesse L. Jackson, Sr.**, Founder, President and CEO, Rainbow PUSH Coalition
18. **Fernando Laguarda**, Vice President, Time Warner Cable
19. **Alfred Liggins**, President and CEO, Radio One
20. **Jane Mago**, General Counsel, NAB
21. **Kyle McSlarrow**, President, National Cable and Telecommunications Association
22. **Bryan Monroe**, Former Editor, Ebony
23. **Marc Morial**, President, National Urban League; Chair, BBOC
24. **John Muleta**, CEO, M2Z Networks
25. **Janet Murguia**, President, National Council of La Raza
26. **Karen Narasaki**, Executive Director, Asian American Justice Center
27. **Eli Noam**, Professor of Economics and Finance, Columbia Business School
28. **Ava Parker**, President, Linking Solutions, Inc.
29. **Michael Powell**, Chairman and CEO, The MK Powell Group
30. **Andrew Schwartzman**, President and CEO, Media Access Project
31. **Robert Shapiro**, Director, Georgetown Center for Business and Public Policy
32. **Hilary Shelton**, Director, Washington Bureau, NAACP
33. **Calvin Smyre**, President, National Black Caucus of State Legislators
34. **Robert Steele**, President, National Association of Black County Officials
35. **Larry Strickling**, Director, NTIA
36. **Gloria Tristani**, Partner, Spiegel & McDiarmid; former Commissioner, FCC
37. **Nicol Turner-Lee**, Vice President and Director of the Media and Technology Institute, Joint Center for Political and Economic Studies
38. **Joseph Waz**, Senior Vice President, Comcast
39. **Brent Wilkes**, Executive Director, LULAC
40. **Harry Wingo**, Counsel, Google Inc.
41. **Navarrow Wright**, President, Maximum Leverage Solutions

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