

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

In the Matter of:)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52
)	

COMMENTS OF THE NATIONAL ORGANIZATIONS

David Honig
President and Executive Director
Joycelyn James
Cathy Hughes Fellow
Jacqueline Clary
John W. Jones Fellow
Minority Media and Telecommunications Council
3636 16th St. N.W., Suite B-366
Washington, D.C. 20010
(202) 332-7005
dhonig@crosslink.net

Counsel for the National Organizations

October 12, 2010

EXECUTIVE SUMMARY

The National Organizations fully embrace and share the FCC's goal of preserving the free and open Internet. The National Organizations have long supported the FCC's four existing open Internet principles, and we have endorsed a pro-consumer version of the FCC's first four proposed net neutrality rules along with the FCC's sixth proposed rule on transparency.

Throughout this proceeding, the National Organizations – along with numerous public interest groups and labor organizations – have expressed deep concern about the negative, unintended consequences that the Commission's proposed form of net neutrality could have on minority consumers and disadvantaged businesses. In particular, we urged the Commission to refrain from prohibiting pro-consumer voluntary agreements for the provision of specialized services, and we asked the FCC to proceed cautiously when considering whether to apply new rules to wireless broadband offerings. As the record already reflects, wireless services are quite different than wireline offerings because of the level of network management needed to maintain their proper functioning, among other reasons, and wireless has played a unique role in helping to narrow the digital divide and provide minorities with an on-ramp to the Internet.

We welcome the FCC's decision to seek additional comment on these important issues and urge the Commission to increase its focus on how net neutrality could impact minorities and disadvantaged businesses. The FCC has both a legal and moral duty to ensure that its proposed rules do not – in their very “neutrality” – lock into place and perpetuate the vast and current racial disparities in broadband access, adoption, and informed use.

The National Organizations agree with the Commission that a substantial amount of progress has been made over the past few months in narrowing disagreements and reaching consensus on key elements of a pro-consumer approach to preserving the free and open Internet. With respect to specialized services and paid prioritization, there has been a productive letter

exchange and discourse among public interest groups over the past few months. These exchanges have allowed parties to clarify their positions and show that there is greater agreement concerning the role of specialized services than may have appeared just a short time ago. Initially, some public interest groups took the extreme position that all forms of prioritization should be prohibited and that any prioritization would represent a departure from how the Internet operates. However, as the result of the letter exchange, these groups have constructively engaged the issues and have identified substantial common ground. It has become clear that all parties agree on the pro-consumer benefits of certain specialized services – including prioritization offerings – and that prohibiting these offerings would mark a dramatic departure from what has made the Internet so successful.

In the Public Notice, the FCC has asked for comment on whether it should limit broadband providers to a pre-determined set of specialized service offerings. We strongly urge the Commission not to pursue this proposal. At bottom, we have no idea what pro-consumer broadband offerings may emerge in the coming years and what types of specialized offerings they will require to function properly. By artificially limiting the provision of specialized offerings based on our knowledge about currently available technologies, the FCC would threaten innovation. And it could also prevent offerings that can help close the digital divide from ever reaching the marketplace. Moreover, we must ensure that any approach the FCC takes to broadband encourages and leaves ample room and flexibility for the types of incubation and incentive programs and progressive cost allocation measures that are the real keys to closing that last pernicious gap in the digital divide. We cannot afford to have the FCC limit the provision of these offerings or programs and thus perpetuate the divide between the digital haves and have-nots.

With respect to mobile wireless offerings, the National Organizations must again remind the Commission of the unique role these offerings have played in helping to narrow the digital divide and how, from a network management perspective, these offerings are very different from wireline offerings. We continue to urge the Commission to proceed cautiously as it considers applying new rules to wireless. We cannot afford to have the Commission jeopardize the minority wireless success story.

In an effort to provide a constructive and pro-consumer way forward, the National Organizations set forth, in the FCC's legal framework proceeding, a transparency/disclosure-based approach to preserving the free and open Internet. As the FCC has stated, "sunlight is the best disinfectant" and ensuring that consumers have accurate and transparent information about their broadband offerings will play a vital role in protecting consumers and maintaining a well-functioning broadband marketplace that encourages competition, innovation, low prices, and high-quality services. Because of the inherent "shaming culture" of the Internet, we do not need draconian enforcement mechanisms or rigid net neutrality rules to protect consumers. What we need is consumer-focused information about providers' network management practices. In the few cases of net neutrality violations over the past five years, each and every one was quickly corrected because of the transparent and interactive Internet culture, which forces broadband providers to serve the demands and wants of users or else suffer the penalties of lost subscribers. These pro-consumer forces are much stronger and can reach many more practices than any net neutrality rules could. Rather than pursuing the rigid forms of wireless net neutrality advocated by some groups, we urge the Commission to apply the National Organizations' transparency-based approach to preserving the free and open Internet.

In the end, the entire net neutrality debate is diverting attention and resources away from the real hurdles minorities and women are facing in the high tech sector. As we have repeatedly brought to the FCC's attention, there are thousands of instances of employment discrimination within Silicon Valley-based tech companies that, every day, are trampling on the rights of minorities and women. The FCC cannot continue to turn a blind eye to these discriminatory practices. Although some of our fellow public interest organizations advocate unnecessary – and potential harmful – broadband rules, this issue distracts attention from the course of action that will truly help minorities: namely, ensuring diversity among all Fortune 500 high tech companies and reforming their insular, anti-diversity cultures.

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	I
I. THERE IS BROAD-BASED SUPPORT FOR NOT PROHIBITING PRO- CONSUMER SPECIALIZED SERVICES.....	3
A. Imposing Artificial Limits On The Non-Discriminatory Provision Of Specialized Service Offerings Would Harm Minority Consumers And Disadvantaged Businesses.....	3
1. Banning Specialized Services Could Increase The Price Of Broadband For Minorities And Deter The Investments That Are Needed To Fully Bridge The Digital Divide.....	4
2. Eliminating Specialized Services Could Harm The Disadvantaged Businesses That Are Currently Benefiting From These Offerings	7
3. The Commission Should Preserve The Ability Of Broadband Providers To Offer Innovative Services and Programs That Will Help Close the Digital Divide	10
B. Recent Discussions Show That Industry And Public Interest Groups Agree On The Important and Pro-Consumer Roles Specialized Services Play In Helping Preserve The Free And Open Internet	13
II. THE FCC MUST PROCEED CAUTIOUSLY WHEN CONSIDERING RULES THAT WOULD APPLY TO WIRELESS BROADBAND OFFERINGS	15
A. The FCC Must Not Jeopardize The Minority Wireless Success Story	15
B. The FCC Should Apply The National Organizations’ Transparency-Based, Pro-Consumer Approach To Wireless Broadband Networks	17
III. THE FCC MUST FOCUS ITS EFFORTS ON THE CURRENT FORMS OF DISCRIMINATION THAT ARE HARMING THE INTERESTS OF MINORITIES AND WOMEN.....	21
IV. CONCLUSION	25

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

In the Matter of:)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52
)	

COMMENTS OF THE NATIONAL ORGANIZATIONS

The National Organizations, which are 24 highly respected civil rights, professional, service and elected officials organizations,¹ respectfully submit these comments in response to the Commission’s *Further Inquiry Into Two Under-Developed Issues In The Open Internet Proceeding*.² We approach the current Public Notice as we have every phase of this proceeding: focused on ensuring that the interests of minority and women consumers and disadvantaged businesses remain at the forefront of the Commission’s attention. The Commission must be mindful that any new rules or regulatory structures that emerge from this proceeding help to close the digital divide and spread the economic and social benefits of broadband adoption to minority communities. As we have in our previous filings,³ the National Organizations caution

¹ The National Organizations participating in this filing are listed in Attachment 1. These comments represent the views of each organization individually and are not intended to reflect the views of any organization’s officers, directors, advisors, or members.

² See FCC, Public Notice, *Further Inquiry Into Two Under-Developed Issues In The Open Internet Proceeding*, DA 10-1667, GN Docket No. 09-191; WC Docket No. 07-52 (rel. Sept. 1, 2010) (the “Public Notice”).

³ *Preserving the Open Internet*, Comments of the National Organizations, GN Docket No. 09-191, WC Docket No. 07-52 (filed Jan. 14, 2010) (the “National Organizations Net Neutrality Comments”); *Preserving the Open Internet*, Reply Comments of the National Organizations, GN Docket No. 09-191, WC Docket No. 07-52 (filed April 26, 2010) (the “National Organizations Net Neutrality Reply Comments”); see also *Framework for Broadband Internet Services*,

the Commission that rigid net neutrality rules could have devastating effects on minorities by raising broadband prices, reducing broadband adoption, deterring investment, limiting job growth and economic opportunity, and, ultimately, consigning minorities to a permanent digital underclass.

The National Organizations have long supported the four open Internet principles of the Commission's 2005 *Internet Policy Statement* as an effective way to safeguard the open Internet while successfully balancing the interest of consumers, broadband Internet access providers, and providers of content, applications, and services.⁴ These principles are performing effectively, as the FCC has recognized.⁵ It is not surprising, then, that a national survey recently found that an overwhelming majority of Americans agree that the Internet is working well.⁶ The National Organizations have serious concerns about the negative unintended consequences that could arise if the Commission changes course and adopts a rigid form of net neutrality rules.

An open Internet is vital to democracy – and at the same time, a *diverse* Internet and bridging the digital divide must become top policy priorities. Thus, the FCC should not regulate broadband service in a manner that would prevent carriers from offering partnerships, mentoring, incubation, and price discounts to new entrants – particularly multicultural digital entrepreneurs

Comments of the National Organizations, GN Docket No. 10-127 (filed July 16, 2010) (the “National Organizations Legal Framework Comments”).

⁴ See National Organizations Net Neutrality Reply Comments at 2; see also *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14986, 14987–88 ¶4 (2005) (the “*Internet Policy Statement*”).

⁵ *Preserving the Open Internet; Broadband Industry Practices*, Notice of Proposed Rulemaking, 24 FCC Rcd 13064, 13100 ¶88 (2009) (“Net Neutrality NPRM”) (“We believe that the four Internet principles have performed effectively[.]”).

⁶ See Broadband For America, National Poll Finds More Than 75 Percent of Americans Agree the Internet is Working (Sept. 23, 2010) (available at <http://www.broadbandforamerica.com/press-releases/national-poll-finds-more-75-percent-americans-agree-internet-working> (last visited October 11, 2010)).

who are seeking to get a foothold online from which they can compete with entrenched companies.

Instead of expending additional energy and attention pursuing its controversial and potentially counterproductive nondiscrimination and reclassification proposals, the Commission should adopt the consumer-focused transparency framework put forth by the National Organizations in the “Third Way” proceeding.⁷ This proposal will protect consumers and small and disadvantaged businesses with respect to their entire online experience and will not jeopardize the interests of our constituents. This approach would also free the Commission’s resources to combat the more pressing racial discrimination and exclusionary hiring and promotion practices of certain Silicon Valley high tech companies.

I. THERE IS BROAD-BASED SUPPORT FOR NOT PROHIBITING PRO-CONSUMER SPECIALIZED SERVICES.

A. Imposing Artificial Limits On The Non-Discriminatory Provision Of Specialized Service Offerings Would Harm Minority Consumers And Disadvantaged Businesses.

In the Public Notice, the FCC asked for comment on whether it should limit broadband providers to a pre-determined set of specialized service offerings.⁸ The National Organizations strongly urge the Commission not to pursue this proposal. Arbitrarily proscribing the right of minority consumers and disadvantaged businesses to enter into innovative and pro-consumer business arrangements with their broadband providers would represent a marked departure from the climate of experimentation that has made the Internet so successful. It would harm the interests of our constituents in a number of significant ways and serve no legitimate public policy purpose.

⁷ See National Organizations Legal Framework Comments at 17-25.

⁸ Public Notice at 3.

1. Banning Specialized Services Could Increase The Price Of Broadband For Minorities And Deter The Investments That Are Needed To Fully Bridge The Digital Divide.

As the record in this proceeding shows, banning or limiting the availability of specialized services could significantly increase the price of broadband for minorities and deter the investments that are needed to fully bridge the digital divide.⁹ In the contemporary Internet ecosystem, there are multiple willing sources of cost recovery for the expenses associated with building out and maintaining our broadband networks. If Internet-based content, application, and service providers are willing to subsidize network expenses by entering into voluntary agreements with network providers, then the Commission should not prohibit those types of agreements.

As previously established, prohibiting these voluntary agreements would allow large Internet-based companies to avoid paying their fair share for the network enhancements and build-out costs associated with additional broadband deployment, which, in turn, would offload these costs onto consumers who would end up paying relatively higher prices for broadband.¹⁰ Moreover, the economic evidence shows that banning these types of agreements would deter the

⁹ See National Organizations Net Neutrality Comments at 14-17 (analyzing economic studies and explaining that the FCC's proposed fifth rule would significantly increase the price of broadband for consumers); National Organizations Net Neutrality Reply Comments at 5-6 (explaining that the FCC's proposed fifth rule would shift costs from large, Internet-based companies to end-user consumers); *see also* National Organizations Net Neutrality Comments at 19-23 (collecting authorities and discussing how the FCC's proposed fifth rule could impede the investments and deployment that are necessary to bridge the digital divide); National Organizations Net Neutrality Reply Comments 6-7 (discussing the negative impact the FCC's proposed fifth rule could have on investment and deployment).

¹⁰ National Organizations Net Neutrality Reply Comments at 5-6.

investment that are needed to increase the availability of next-generation, high-speed broadband networks.¹¹ All of this would perpetuate or widen the digital divide.¹²

If the Commission prohibits content, application, and service providers from entering into voluntary arrangements with broadband providers for the paid provision of enhanced or prioritized services, this will remove one potential source of funding for additional network deployment. In addition, many analysts agree that allowing specialized services will result in a significant decrease in the retail price of broadband for ordinary end-user consumers.¹³ For example, one study suggests that end-users could save as much as \$5 to \$10 per month as a result of network costs being subsidized through specialized services agreements.¹⁴ This could lead to a total savings of \$3 to \$6 billion per year, and would result in tens of millions of additional homes taking broadband service, particularly minorities and low-income groups.¹⁵

It would be impossible to exaggerate how important increased broadband adoption is for empowering minorities and for creating jobs and growing the economy, which are top priorities in these economic times. The recent recession has had a particularly devastating impact on

¹¹ National Organizations Net Neutrality Reply Comments at 6-7 (collecting economic studies); *see also* National Organizations Net Neutrality Comments at 19-23 (same).

¹² *See, e.g.,* FCC, *Connecting America: The National Broadband Plan* (rel. March 17, 2010) (“National Broadband Plan”) at Chapters 8 & 9 (discussing the importance of affordability and increased deployment of broadband offerings to closing the digital divide).

¹³ *See, e.g.,* National Organizations Net Neutrality Comments at 14-17 (collecting authorities); *see also* National Organizations Net Neutrality Reply Comments at 5-6 (same).

¹⁴ *See* Hance Haney, “Network Neutrality Regulation Would Impose Consumer Welfare Losses” in *The Consequences of Net Neutrality* 49 (Nov. 19, 2009) (available at <http://www.theamericanconsumer.org/wp-content/uploads/2009/11/final-consequences-of-net-neutrality.pdf> (last visited October 11, 2010)) (citing Gregory Sidak, “A Consumer-Welfare Approach to Network Neutrality Regulation of the Internet,” *Journal of Competition Law and Economics*, Vol. 2, No. 3 at 464-66 (September 2006) (available at <http://jcle.oxfordjournals.org/cgi/content/abstract/2/3/349> (last visited October 10, 2010))).

¹⁵ *Id.*; *see also* National Organizations Net Neutrality Comments at 14-17; *see also* National Organizations Net Neutrality Reply Comments at 5-6.

minorities, as evidenced by the large number of minorities unable to find a job. Recent figures released by the Bureau of Labor Statistics show that although unemployment for white Americans is at 8.7 percent, the number for minorities is much higher, with African Americans at 16.3 percent and Hispanic Americans at 12 percent.¹⁶ The National Organizations are especially concerned that the Commission take no actions that would even further diminish the high tech employment outlook for minorities and women.

Broadband policy done right has the potential to be a powerful force for positive change.¹⁷ As Chairman Genachowski recently remarked, “[m]ultiple studies tell us the same thing – even modest increases in broadband adoption can yield hundreds of thousands of new jobs.”¹⁸ Indeed, it is a central principle of the Commission’s National Broadband Plan that access to broadband will be increasingly significant to everything from education and energy use to employment, healthcare, and self-governance. As that report put it, “[u]ntil recently, not having broadband was an inconvenience. Now, broadband is essential to opportunity and citizenship.”¹⁹

But the consequences of getting this wrong are steep. A recently released study shows that the FCC’s proposed net neutrality rules, which include the proposed prohibition on specialized services at issue here, could result in a loss of 300,000 jobs and that broadband

¹⁶ See U.S. Bureau of Labor Statistics, “Employment Situation Summary” (Sept. 3, 2010) (available at <http://www.bls.gov/news.release/empst.nr0.htm> (last visited October 11, 2010)).

¹⁷ See National Organizations Legal Framework Comments at 8-12 (discussing studies that address the potential impact the FCC’s net neutrality rule could have on creating jobs and growing the economy).

¹⁸ Prepared Remarks of FCC Chairman Julius Genachowski at 1, Minority Media and Telecom Council Access to Capital and Telecommunications Conference (July 20, 2010) (available at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0720/DOC-299976A1.pdf (last visited October 11, 2010)).

¹⁹ See National Broadband Plan at 5.

investment would drop by 10 percent, costing the industry \$36 billion over five years, plus an additional \$100 billion in losses to related fields.²⁰ Thus, the Commission should not ban or limit voluntary agreements for specialized services because doing so could raise the price of broadband and deter the investments that are needed to ensure ubiquitous availability of advanced broadband offerings.

2. Eliminating Specialized Services Could Harm The Disadvantaged Businesses That Are Currently Benefiting From These Offerings.

Specialized services are also important because of the competitive and economic opportunities they provide for minority and disadvantaged businesses. Minority and women owned business enterprises (“MWBES”) and socially and economically disadvantaged businesses (“SDBs”) are currently benefiting from the availability of specialized services, which enable them to obtain high-quality broadband services that satisfy their communications needs. Restricting these agreements, which have not been shown to have any harmful effects, would not only change how broadband offerings are provided but would hurt these disadvantaged businesses while serving no legitimate public policy purpose.²¹

When businesses sign up for Internet access today, they often enter into voluntary agreements for the provision of enhanced quality of service (“QoS”) or other specialized services. These agreements guarantee the businesses that they will have the broadband capacity

²⁰ See T. Randolph Beard, Ph.D., George S. Ford, Ph.D., Hyeongwoo Kim, Ph.D., Jobs, Jobs, Jobs: Communications Policy And Employment Effects In The Information Sector, Phoenix Center Policy Bulletin No. 25 (Oct. 2010) (available at <http://www.phoenix-center.org/PolicyBulletin/PCPB25Final.pdf> (last visited October 11, 2010)).

²¹ See Letter from David Honig, President and Executive Director, Minority Media and Telecommunications Council, to the Honorable Julius Genachowski, Chairman, and the Honorable Michael J. Copps, Robert M. McDowell, Meredith Attwell Baker, and Mignon Clyburn, Commissioners, FCC, GN Docket No. 09-191, WC Docket No. 07-52 (filed July 28, 2010) (the “July 28, 2010 MMTTC Letter”); see also National Organizations Net Neutrality Reply Comments at 5-11.

and speed necessary for the proper functioning of important business applications, such as Voice over Internet Protocol (“VoIP”) or IP-based video conferencing. An improperly crafted limitation on specialized services could jeopardize even these clearly beneficial services. However, the availability of specialized services is even more important to small, women owned, and minority-run Internet content, application, and service providers.

As discussed in the July 28, 2010 MMTC Letter, incumbent Internet-based companies, such as Amazon, eBay, and Google, have invested substantial resources into developing private network infrastructures that allow them to effectively self-provision prioritization of their own content, applications, and services. Because of the huge capital investments they have made into content delivery networks (“CDNs”), servers, and other infrastructure, these companies are able to deliver their products to end-users with a guaranteed level of speed, reliability, and prioritization that cannot be obtained through the best-efforts Internet.

To compete effectively with these incumbents, MWBEs and SDBs need access to prioritization and other special services that will allow them to deliver content, applications, and services to end users at a speed and quality comparable with that of much larger companies. As the Communications Workers of America (“CWA”) stated in this proceeding, “[a]bsent the ability to purchase content delivery network services and QoS offerings from a broadband Internet access provider, new, small-entrant content, applications, or service providers could not enter and compete against large content, application, or service providers.”²² Although some parties have attempted to distinguish CDNs and other “geographic prioritization” techniques on the one hand, from router-based packet prioritization on the other, the National Organizations

²² See *Preserving the Free and Open Internet*, Comments of the Communications Workers of America at 16, GN Docket No. 09-191, WC Docket No. 07-52 (filed Jan. 14, 2010) (the “Communications Workers of America Net Neutrality Comments”).

maintain that MWBEs and SDBs should have the option of entering into voluntary agreements for any QoS or other prioritization capabilities that are available to them and will help them succeed.²³ The digital divide is so wide that the Commission should not foreclose any potential opportunity to close it.

Moreover, we are particularly concerned with the cascading effect that a prohibition on specialized services might have on the ability of MWBEs and SDBs to obtain financing. As the National Organizations have previously shown, these entities have the incentives, though not the capital, to serve untapped minority and low-income markets, and they have expertise in understanding and producing the culturally specific service options and content that can drive broadband adoption and use.²⁴ Commissioner McDowell has also observed that “[t]here is widespread agreement that access to capital is the biggest hurdle facing small business enterprises including minorities and women who hope to enter and thrive in the communications arena.”²⁵ It will only become more difficult for MWBEs and SDBs to secure the financing necessary to launch and maintain their businesses if the FCC bans specialized service offerings because, among other things, of the years of uncertainty that would be associated with a legal challenge to the FCC’s prohibition.

²³ See Letter from David Honig, President and Executive Director, Minority Media and Telecommunications Council, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 09-191, WC Docket No. 07-52 (filed Aug. 2, 2010) (“Aug. 2, 2010 MMTC Letter”).

²⁴ National Organizations Legal Framework Comments at 10-11; *see also* National Organizations Net Neutrality Comments at 9; *see also A National Broadband Plan for Our Future*, GN Docket No. 09-51, Initial Comments Of The Broadband Diversity Supporters, at 31 (June 8, 2009).

²⁵ FCC Commissioner Robert McDowell, Speech at the National Broadband Plan Workshop, “Capitalization Strategies For Small And Disadvantaged Businesses” (Nov. 12, 2009); *see also* National Organizations Net Neutrality Comments at 9.

Consequently, limiting voluntary prioritization agreements could prevent new and innovative offerings that can help close the digital divide and achieve other important social goals from ever reaching the market. For example, a recent study by the Joint Center for Political and Economic Studies identified lack of interest as being among the main self-identified reasons why minorities do not use the Internet.²⁶ However, some MWBEs and SDBs are currently experimenting with a variety of online offerings, such as IP-based video, that are designed to appeal to a minority audience and thus can help spur broadband adoption and use among these communities.²⁷ This is just one example of an innovative service being offered by minority businesses that may help bridge the digital divide, and it is likely that the future will yield even more opportunities.²⁸ Put simply, the digital divide is so wide that FCC regulations should embrace every available tool to close it, and the Commission should not artificially limit the business models that can succeed in extending the benefits of first class digital citizenship to all Americans.

3. The Commission Should Preserve The Ability Of Broadband Providers To Offer Innovative Services and Programs That Will Help Close the Digital Divide.

The Commission must ensure that any policy it pursues leaves ample room and flexibility for the types of incubation and incentive programs and progressive cost allocation mechanisms

²⁶ See Jon P. Gant, *et al.*, Joint Center for Political and Economic Studies, *National Minority Broadband Adoption: Comparative Trends in Adoption, Acceptance and Use* 28-30 (Feb. 2010) (available at http://www.jointcenter.org/index.php/content/download/2991/18931/file/MTI_BROADBAND_REPORT_WEB.pdf (last visited October 11, 2010)) (“Joint Center Broadband Adoption Study”).

²⁷ July 28, 2010 MMTC Letter at 3-4.

²⁸ Prioritization and other specialized services are also likely to be essential to other applications that will be of great benefit to minority communities and other Americans, such as telemedicine and distance education.

that are the real keys to closing that last pernicious gap in the digital divide. To the extent that broadband providers are willing to innovate in terms of services, costs, and partnerships in a way that might stimulate additional broadband adoption and use, these activities must be encouraged. We cannot afford to have the Commission limit the provision of these offerings or programs and thus perpetuate the divide between the digital haves and have-nots.

Innovative service offerings and funding sources will be required if broadband network operators are going to develop their networks sufficiently to meet the anticipated surge in demand without raising prices for minority consumers so much as to widen the digital divide. Owing to the deep and persistent racial wealth gap and to deep racial disparities in income and unemployment status, research shows that minorities are particularly sensitive to increases in the retail prices of broadband services, and that such price increases can be enough to dramatically slow the rate of broadband adoption among minorities.²⁹ As such, one way to keep minority broadband adoption figures on a track towards closing the digital divide is for broadband providers to explore ways to equitably recover the majority of network deployment costs to the heaviest users.³⁰ Thus, the Commission must take care to preserve the ability of broadband providers to experiment with tiered pricing and other sorts of voluntary arrangements, mentoring, and incubation programs.

Rather than trying to limit the sorts of specialized services offered and voluntary agreements struck by broadband providers, the Commission should be seeking ways to create incentives for broadband providers to use these tools to promote broadband adoption by

²⁹ See Robert Shapiro and Kevin Hassett, A New Analysis of Broadband Adoption Rates by Minority Households (June 2010) (available at http://www.gcbpp.org/files/Academic_Papers/Shapiro%20file/New_Analysis_of_Broadband_Adoption_Shapiro_Hassett.pdf (last visited October 11, 2010)).

³⁰ *Id.* at 13-17.

minorities and enhance opportunities for minority and women owned businesses online. For example, in the National Organizations Net Neutrality Reply Comments, the commenters proposed a *New Entrant Digital Entrepreneur Incentive Program*, partly modeled on the Community Reinvestment Act, which would incentivize partnerships between Internet access providers and new entrant content, application, and service providers.³¹ Under this proposal, the Commission could consider making relaxed network management obligations the default paradigm if premised on a broadband provider's record of activity to incubate new digital entrepreneurship. In this way, broadband service providers would be able to retain the operational flexibility they require, and the Commission would be assured that its important pro-consumer and pro-competition goals were being served.

In the end, the availability of specialized services presents many important opportunities to close the digital divide, and they are helping minority-owned businesses to compete on a level playing field with established incumbents. In light of the demonstrated consumer and competitive benefits of specialized services, it is clear that the Commission should take no action to limit the sorts of voluntary agreements into which broadband providers may enter. Thus, as long as these services are made available to all consumers and businesses regardless of their race, color, religion, national origin, sex, or socio-economic status, the FCC should continue to allow broadband providers to offer enhanced or prioritized services without artificial regulatory impediments.

³¹ See National Organizations Net Neutrality Reply Comments at 16-18.

B. Recent Discussions Show That Industry And Public Interest Groups Agree On The Important and Pro-Consumer Roles Specialized Services Play In Helping Preserve The Free And Open Internet.

Over the past few months, industry and public interest groups have engaged in a productive discussion about the role of specialized services and their place in helping to preserve the free and open Internet.³² These exchanges have allowed parties the opportunity to clarify their positions, and they show that there is greater agreement about specialized services than may have appeared just a short time ago. The letters show that there is now a broad consensus in favor of allowing end-users to continue to enter into voluntary agreements for the provision of consumer-driven specialized offerings.

At the beginning of this productive exchange, it appeared that some groups held the view that all forms of prioritization – whether undertaken at the behest of end-user consumers or otherwise – were anti-consumer and that any prioritization would represent a departure from how the Internet operates.³³ Therefore, these groups urged the FCC to ban specialized services. In response, MMTC pointed out – as the National Organizations have here – that prioritization and

³² See Letter from Aparna Sridhar, Policy Counsel, Free Press to Marlene H. Dortch, Secretary, FCC at 1, GN Docket No. 09-191, WC Docket No. 07-52 (July 21, 2010) (the “July 21, 2010 Free Press Letter”); Letter from Corie Wright, Policy Counsel, Free Press to Marlene H. Dortch, Secretary, FCC at 1, GN Docket No. 09-191, WC Docket No. 07-52 (July 22, 2010) (the “July 22, 2010 Free Press Letter”); July 28, 2010 MMTC Letter; Letter from S. Derek Turner, Research Director, Free Press to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-191, WC Docket No. 07-52 (July 28, 2010) (the “July 28, 2010 Free Press Letter”); Aug. 2, 2010 MMTC Letter; Letter from Robert W. Quinn Jr., to Marlene Dortch, Secretary, FCC, GN Docket Nos. 09-191, 10-127 (Aug. 30, 2010); Letter from Josh King, *et al.*, Open Technology Initiative, New America Foundation, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09-191, 10-127 (Sept. 1, 2010) (“September 1, 2010 New America Foundation Letter”); Letter from Alissa Cooper, *et al.*, Center for Democracy and Technology, to Marlene Dortch, Secretary, FCC, GN Docket Nos. 09-191, 10-127 (Sept. 8, 2010); Letter from Robert W. Quinn Jr., to Marlene Dortch, Secretary, FCC, GN Docket Nos. 09-191, 10-127 (Sept. 15, 2010).

³³ See July 21, 2010 Free Press Letter at 1 (stating that “paid prioritization fundamentally harms consumers, and that if the Commission were contemplating a rule that did not prohibit paid prioritization, such a rule would not adequately preserve the free and open Internet”); *see also* July 22 Free Press Letter.

other specialized offerings have long played a key role in the Internet’s success story, and MMTC identified various ways that voluntary agreements are benefitting disadvantaged businesses.³⁴ Thus, MMTC urged the Commission to recognize the important, pro-consumer role voluntary agreements are playing to help preserve the free and open Internet.³⁵

In light of MMTC’s letter, public interest groups were able to clarify their positions and have made clear that they do not take the view that all forms of prioritization are anti-consumer or that all forms of prioritization should be prohibited.³⁶ Rather, they have agreed with MMTC that voluntary agreements entered into by end-users and broadband providers have been part of the Internet’s success story and that allowing end-users to continue to determine prioritization levels (*e.g.*, through QoS agreements) is in the public interest.³⁷

Thus, there is now a broad-based consensus that banning agreements for the provision of certain specialized services would represent a marked departure from how the Internet operates and would not serve the interests of consumers. As such, the Commission should reject any

³⁴ July 28, 2010 MMTC Letter at 2-3.

³⁵ *Id.* at 4.

³⁶ *See* July 28, 2010 Free Press Letter; *see also* September 1, 2010 New America Foundation Letter.

³⁷ *See* July 28, 2010 Free Press Letter. While the consensus on this point is clear, some public interest groups are now drawing a distinction between “user-driven prioritization” (which they acknowledge is acceptable) and prioritization driven by content, application, and service providers (which they contend should be prohibited), but this distinction does not hold up in the real world and is not recognized by the Commission’s proposed nondiscrimination rule. As indicated above, the many small and disadvantaged businesses that have been entering into specialized agreements are not just end-users of broadband services – they are also providers of content, applications, and services – and they depend on their right to enter into specialized services to ensure that they can offer their content, applications, and services to consumers. Indeed, in the Net Neutrality NPRM, the Commission decided *not* to propose a “specific definition of ‘content, application, or service provider’ because any user of the Internet can be such a provider.” Net Neutrality NPRM, 24 FCC Rcd at 13103 ¶99. Thus, any “end-user” can also be a content, application, and service provider, so there would be no principled way of limiting the provision of specialized services to a certain set of “end-users.”

future assertions to the effect that “paid prioritization fundamentally harms consumers” and should continue to afford broadband service providers and their customers the flexibility required to craft agreements that fit their needs.

II. THE FCC MUST PROCEED CAUTIOUSLY WHEN CONSIDERING RULES THAT WOULD APPLY TO WIRELESS BROADBAND OFFERINGS.

A. The FCC Must Not Jeopardize The Minority Wireless Success Story.

The National Organizations appreciate the FCC’s decision to seek additional comment on the best way to preserve the free and open Internet on wireless broadband networks.³⁸ As explained in detail in the National Organizations Net Neutrality Comments, wireless broadband offerings have played a unique role in helping to narrow the digital divide, and it is vital that the Commission avoid taking any steps that could jeopardize this success story for minorities.³⁹

Numerous studies show that, unlike other broadband technologies, minority use of wireless broadband devices outpaces that of white Americans. According to the Pew Internet & American Life Project, while 33 percent of white Americans access the Internet over their cell phones, 46 percent of African Americans and 51 percent of English-speaking Hispanic Americans do so.⁴⁰ The Joint Center for Political and Economic Studies reports similar statistics, finding that 50 percent of African Americans and 42 percent of Hispanic Americans access the Internet over cell phones, compared with 30 percent of white Americans.⁴¹ The significance of these statistics is highlighted by the fact that due to financial and other considerations, minority

³⁸ Public Notice at 4-6.

³⁹ See National Organizations Net Neutrality Comments at 9-12, 14.

⁴⁰ See Aaron Smitch, Pew Internet & American Life Project, *Mobile Access 2010* 16 (July 7, 2010) (available at http://www.pewinternet.org/~media/Files/Reports/2010/PIP_Mobile_Access_2010.pdf (last visited October 11, 2010)).

⁴¹ See Joint Center Broadband Adoption Study at 36.

households are more likely than others to have only a single, wireless on-ramp to the Internet.⁴² Because of this heavy reliance on mobile access to the Internet, any rule changes that threaten the reliability or cost of wireless broadband networks are likely to have a disproportionate effect on minority households. Consequently, the Commission must take great care in regulating this sector.

As the record also makes clear, wireless broadband networks are very different from wireline networks, and wireless providers need even greater network management flexibility.⁴³ Numerous parties have submitted comments in response to the Commission's Net Neutrality NPRM explaining the technological, economic, and spectrum constraints that are unique to wireless broadband networks,⁴⁴ and there is no need for the National Organizations to reiterate those points here. It suffices to say that due to the limited capacity of wireless networks and the dynamic nature of wireless use, wireless network operators must constantly monitor and manage traffic on their networks in real time to address congestion and ensure service quality. Wireless broadband networks are also especially sensitive to a disruption or impairment in service resulting from heavy users or bandwidth intensive applications.⁴⁵ And due to the increasing technological capability and concomitant popularity of mobile broadband devices, network traffic is in the midst of a dramatic upsurge. Because of their increased reliance on wireless broadband, minorities are more likely than other groups to be affected if the Commission adopts

⁴² See National Organizations Net Neutrality Comments at 18.

⁴³ See National Organizations Net Neutrality Comments at 18; *see also* Communications Workers of America Net Neutrality Comments at 25 (explaining that “[w]ireless broadband services differ significantly from wireline broadband services in several respects” and “face spectrum capacity constraints and signal strength, interference and variability issues that wireline services do not.”).

⁴⁴ See, e.g., Communications Workers of America Net Neutrality Comments at 25-26.

⁴⁵ See National Organizations Net Neutrality Comments at 18.

rules that impede a wireless broadband provider's ability to manage network congestion or address other issues that negatively affect a consumer's wireless Internet experience.⁴⁶ Thus, the National Organizations strongly support proposals that provide wireless network operators with the resources and flexibility to take all reasonable steps to keep the networks running quickly, reliably, and efficiently.

In light of the dramatic increases in wireless network usage that are already occurring, the Commission should be focused on finding ways to promote wireless broadband deployment and reliability. The National Broadband Plan's goal of identifying 500 MHz of additional spectrum for wireless broadband is one such effort that, if realized, will have a tremendous beneficial effect for minority broadband users.⁴⁷ The National Organizations strongly support this proposal as a more sensible method for ensuring that minorities have sufficient access to broadband services in the future than the application of rigid net neutrality rules.

B. The FCC Should Apply The National Organizations' Transparency-Based, Pro-Consumer Approach To Wireless Broadband Networks.

Given the unique role wireless broadband networks have played in helping to narrow the digital divide, the National Organizations have urged the Commission to proceed cautiously and ensure that any action it takes does not undermine the minority wireless success story. In an effort to build consensus and develop a pro-consumer way forward that will at once preserve the free and open Internet and avoid the unintended and negative consequences that could flow from a rigid form of net neutrality, the National Organizations put forth an enforceable, pro-consumer,

⁴⁶ See National Organizations Net Neutrality Comments at 18.

⁴⁷ See National Broadband Plan at 84; *see also* Comments of Civil Rights Organizations, GN Docket Nos. 09-47, 09-51, 09-137 (filed Dec. 22, 2009) (discussing the importance of wireless broadband to minorities and highlighting the need for additional spectrum for wireless broadband).

transparency-based approach to net neutrality in the FCC’s legal framework proceeding.⁴⁸ We remain convinced that this approach would both be legally sound and would provide ample protection for both consumers and businesses in all aspects of their online experience.

In the National Organizations Legal Framework Comments, we explained that the Commission can use its existing legal authority to preserve the free and open Internet by adopting an enforceable, pro-consumer broadband disclosure obligation.⁴⁹ Under this approach – which is modeled after the FCC’s proposed transparency rule – the FCC could require broadband providers to disclose their network management and other practices that may reasonably affect the ability of customers “to use the devices, send or receive the content, use the services, run the applications, and enjoy the competitive offerings of their choice.”⁵⁰

As the Commission has stated, “sunlight is the best disinfectant”⁵¹ and ensuring that consumers have accurate and transparent information about their broadband offerings will play a vital role in protecting consumers and maintaining a well-functioning broadband marketplace that encourages competition, innovation, low prices, and high-quality services. The comments submitted in this proceeding demonstrate that there is universal agreement on this point.

As explained more fully in our Legal Framework comments, there are two ways in which the FCC could adopt this disclosure obligation. First, the FCC can exercise its ancillary authority pursuant to Sections 201(b) and 623(b) of the Act.⁵² Together, these provisions require

⁴⁸ See National Organizations Legal Framework Comments at 16-25.

⁴⁹ *Id.*

⁵⁰ National Organizations Legal Framework Comments at 19 (quoting Net Neutrality NPRM at 24 FCC Rcd at 13109 ¶121).

⁵¹ See Net Neutrality NPRM, 24 FCC Rcd at 13108 ¶118 (citing Louis D. Brandeis, *OTHER PEOPLE’S MONEY AND HOW THE BANKERS USE IT* 92 (1914)).

⁵² See 47 U.S.C. §§201(b), 543(b); see also National Organizations Legal Framework Comments at 20-23.

the FCC to ensure that the rates charged by traditional telephone and cable providers are reasonable. One way the Commission carries out its statutory responsibility to ensure reasonable rates is to rely on sufficient competition in the markets for voice and video services.

Increasingly, this competition is coming from providers of “over-the-top” voice and video offerings. Unless consumers know whether their broadband provider will allow them to use these over-the-top services, then the competition offered by these services will be undermined. This will limit the ability of these services to impose competitive pressure on the price of traditional voice and video offerings and thus affect the FCC’s ability to carry out its statutorily mandated responsibility of ensuring reasonable rates for those traditional offerings. Therefore, the FCC has authority to require broadband providers to include – in their terms of service agreements with customers – adequate disclosure about their network management and other practices that may reasonably affect their customers’ online experience.

Second, and as noted in the *Comcast* decision,⁵³ Section 257 of the Act also provides the FCC with a statutory predicate for imposing the disclosure obligation discussed above.⁵⁴ Section 257(c) contains an express statutory directive that requires the Commission to submit a report to Congress every three years on the barriers to entry faced by entrepreneurs and other small businesses in the provision and ownership of both telecommunications services *and* information services.⁵⁵ In its opinion, the D.C. Circuit expressly identified disclosure requirements as one obligation that would be reasonably ancillary to the FCC’s Section 257(c).⁵⁶

⁵³ See *Comcast v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).

⁵⁴ See 47 U.S.C. §257; see also National Organizations Legal Framework Comments at 23-25.

⁵⁵ See 47 U.S.C. §257. Section 257(c) states that “[e]very 3 years following the completion of the proceeding required by subsection (a), the Commission shall review and report to Congress on—(1) any regulations prescribed to eliminate barriers within its jurisdiction that are identified under subsection (a) and that can be prescribed consistent with the public interest,

Thus, the FCC could rely on Sections 201(b) and 623(b) or on Section 257 (or a combination of them) to adopt a pro-consumer broadband disclosure obligation. And, because this open Internet obligation would be incorporated into the broadband provider's terms of service agreement, it would create an enforceable obligation. If a broadband provider were to block or degrade applications in violation of the provisions of its terms of service, the interests of the consumer would be protected because the consumer could commence an action against the provider for breaching its terms of service agreement.⁵⁷

The inherent "shaming culture" of the Internet, which does not tolerate online abuses and focuses consumer attention upon them, will also provide a powerful market and legal incentive for providers to act in the consumer's best interest. As the Commission recognized in the Net Neutrality NPRM, many parties have argued that a "firestorm of controversy . . . would erupt if a major network owner embarked on a systematic campaign of censorship on its network."⁵⁸ Indeed, the validity of this argument has already been demonstrated. In the few cases of net neutrality violations over the past five years, the violations were quickly corrected because of the transparent and interactive Internet culture, which forces broadband providers to serve the

convenience, and necessity; and (2) the statutory barriers identified under subsection (a) that the Commission recommends be eliminated, consistent with the public interest, convenience, and necessity." 47 U.S.C. §257(c). In turn, Section 257(a) states that "Within 15 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act (other than this section), market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services."

⁵⁶ *Comcast*, 600 F.3d at 659. "For example," the court stated, "the Commission might impose disclosure requirements on regulated entities in order to gather data needed for" the FCC to carry out its responsibilities under Section 257. *Id.*

⁵⁷ National Organizations Legal Framework Comments at 24-25.

⁵⁸ Net Neutrality NPRM, 24 FCC Rcd at 13097 ¶78 (citation omitted).

demands and wants of users or else suffer the penalty of lost subscribers. These pro-consumer forces are much stronger and can reach many more practices than any FCC net neutrality rules could.

Given the legitimate concerns about applying net neutrality rules to wireless and the existing differences of opinion between stakeholders, we believe that the National Organizations' transparency-based approach can provide the basis for reaching a consensus on how to preserve the free and open Internet, particularly on wireless broadband networks. Neither draconian enforcement mechanisms nor rigid net neutrality rules are needed to protect consumers. Instead, clear and accurate consumer-focused information will be sufficient to "protect and empower consumers[,] . . . maximize the efficient operation of relevant markets[,]” and “maintain[] a well-functioning marketplace that encourages competition, innovation, low prices, and high-quality services.”⁵⁹

III. THE FCC MUST FOCUS ITS EFFORTS ON THE CURRENT FORMS OF DISCRIMINATION THAT ARE HARMING THE INTERESTS OF MINORITIES AND WOMEN.

The entire net neutrality debate is diverting attention and vital resources away from much more pressing consumer protection and discrimination issues for which federal intervention is badly needed. Numerous individuals from all sectors of the industry have recently concluded that the net neutrality and broadband reclassification debates have been dominating the Commission's attention. They have stated that this is one reason that the Commission has not made more progress towards achieving the National Broadband Plan goals.⁶⁰ In addition to

⁵⁹ *Id.* at 13108 ¶118.

⁶⁰ *See, e.g.*, Harold Feld, *Genachowski's Fast Fading Star — And How He Can Still Salvage His Term As Chairman*, Wetmachine.com (Aug. 3, 2010) (available at <http://tales-of-the-sausage-factory.wetmachine.com/content/genachowskis-fast-fading-star-and-how-he-can-still-salvage-his-term-as-chairman> (last visited October 11, 2010)); Howard Buskirk & Jonathan

refocusing itself on other important aspects of its broadband policy, the Commission should also take action on the many significant challenges faced by minorities and women that have previously been raised by the National Organizations.

For example, as the National Organizations have brought to the FCC's attention,⁶¹ there are thousands of instances of employment discrimination within Silicon Valley-based tech companies that, every day, are trampling on the rights of minorities and women. It is well documented that Silicon Valley firms have worked hard to hide data about the race and gender of their workforce and that the "unique diversity of Silicon Valley is not reflected in the region's tech workplaces—and the disparity is only growing worse."⁶² Data obtained by the San Jose Mercury News revealed troubling trends about the dwindling numbers of minorities employed by

Make, *Genachowski Moving Slower than Expected on NBP Recommendations*, 30 COMMUNICATIONS DAILY 1 (Sept. 1, 2010); Amy Schatz, *FCC Chief Concedes Slow Pace*, THE WALL STREET JOURNAL (Sept. 28, 2010) (available at <http://online.wsj.com/article/SB10001424052748703694204575518321625294434.html> (last visited October 11, 2010)).

⁶¹ See National Organizations Legal Framework Comments at 13 & n. 52; see also Comments of the Minority Media and Telecommunications Council at 4-5, GN Docket No. 10-25 (May 7, 2010) (discussing reports about the unacceptable minority hiring practices of certain Silicon Valley firms); David Honig, *Honig: FCC Chief's Proposal Disregards What Congress and America Want*, Roll Call (June 15, 2010) (available at <http://www.rollcall.com/news/47347-1.html> (last visited October 11, 2010)) (discussing the problem of minorities and women being shut out of employment opportunities in Silicon-Valley based firms).

⁶² Mike Swift, *Blacks, Latinos And Women Lose Ground At Silicon Valley Tech Companies*, SAN JOSE MERCURY NEWS (Feb. 13, 2010), available at http://www.mercurynews.com/top-stories/ci_14383730 (last visited October 11, 2010)) ("Mercury News I"); see also Mike Swift, *Five Silicon Valley Companies Fought Release Of Employment Data, And Won*, SAN JOSE MERCURY NEWS (Feb. 14, 2010) (available at http://www.mercurynews.com/search/ci_14382477 (last visited October 11, 2010)) ("[T]he Labor Department accepted arguments filed by lawyers for Google, Apple, Yahoo, Oracle and Applied Materials that release of the information would cause commercial harm.") ("Mercury News II"); see also Owen Thomas, *Google, Don't Be Hypocritical*, NBCBayArea.com (Feb. 15, 2010) (available at <http://www.nbcbayarea.com/news/tech/Google-Dont-Be-Hypocritical-84405122.html> (last visited October 11, 2010)) ("Google has fought to hide data about the race and gender makeup of its workforce.").

premier digital economy companies. The San Jose Mercury News reported that U.S. Department of Labor data “shows that while the collective work force of 10 of [Silicon Valley’s] largest companies grew by 16 percent from 1999 to 2005, an already small population of black workers dropped by 16 percent, while the number of Hispanic workers declined by 11 percent. By 2005, only about 2,200 of the 30,000 Silicon Valley-based workers at those 10 companies were black or Hispanic. . . . In addition, among the roughly 5,900 managers at those companies in 2005, about 300 were either black or Hispanic — a 20 percent dip from five years earlier.”⁶³ Such marked and sustained decreases in minority employment indicate that a systemic problem exists in our high tech industries.

These problems are by no means limited to Silicon Valley. In fact, research demonstrates that there are severe disparities in minority employment in broadcast companies, and that these inequities are growing over time. Minorities comprise 35 percent of the population,⁶⁴ yet own only 7.24 percent of commercial radio stations⁶⁵ and minorities and women respectively own only 3.15 and 5.87 percent of commercial full-power television stations.⁶⁶ Beyond the ownership numbers, annual data compiled by the Radio and Television Digital News Association (“RTDNA”) demonstrates that in 2009 the percentage of minorities in both radio and television

⁶³ Mercury News II.

⁶⁴ See Conor Dougherty, U.S. Nears Racial Milestone, *THE WALL STREET JOURNAL* (June 11, 2010) (available at <http://online.wsj.com/article/SB10001424052748704312104575298512006681060.html> (last visited October 11, 2010)).

⁶⁵ See Catherine Sandoval, Allen Hammond, and David Honig, *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*, at 8 (2009) (available at <http://law.scu.edu/faculty/file/Minority%20Commercial%20Radio%20Broadcasters%20Sandoval%20MMTC%202009%20final%20.pdf> (last visited October 11, 2010)).

⁶⁶ See S. Derek Turner and Mark Cooper, *Out of the Picture 2007: Minority & Female TV Station Ownership in the United States*, Free Press, at 2 (Oct. 2007) (available at <https://www.freepress.net/files/otp2007.pdf> (last visited October 11, 2010)).

fell for the third straight year.⁶⁷ Indeed, RTDNA reports that this has been a long running pattern in the media: “In the last 20 years, the minority population in the U.S. has risen 9.4 percent; but the minority workforce in TV news is up 2.4 percent, and the minority workforce in radio is actually half what it was two decades ago.”⁶⁸

When compared to the handful of alleged net neutrality violations, the widespread evidence of discriminatory employment trends in the high tech and media industries make it clear where our federal resources should be placed. Under the Communications Act, the Commission is charged with regulating “communication by wire and radio so as to make available, so far as possible, to all the people of the United States, *without discrimination on the basis of race, color, religion, national origin, or sex.*”⁶⁹ Yet, as MMTC has previously pointed out, the Commission’s EEO enforcement program is a mere shadow of its former self.⁷⁰ Indeed, when comparing FCC EEO actions in the time period from 2004-2007 with similar actions between 1994 and 1997, we see that the size of the Commission’s EEO docket is down 96 percent (from 251 cases from 1994-1997 to 10 cases from 2004-2007), and the total forfeiture

⁶⁷ See Bob Papper, RTDNA, *Number of Minority Journalists Down in 2009; Story Mixed for Female Journalists* (Sept. 22, 2010) (the “RTDNA/Hofstra University Annual Survey”) (available at http://www.rtdna.org/media/women_minorities_survey_final.pdf (last visited October 11, 2010)).

⁶⁸ *Id.* at 1.

⁶⁹ 47 U.S.C. §151 (2006) (emphasis added to identify language added as part of the 1996 Telecommunications Act, *see* Pub. L. No. 104-104, 110 Stat. 56 (1996); *see also* Telecommunications Act of 1996, Conference Report on S. 652 at 143).

⁷⁰ See Letter from David Honig, President and Executive Director, Minority Media and Telecommunications Council, to the Honorable Julius Genachowski, Chairman, Federal Communications Commission, MB Docket 98-204 (June 29, 2010); *see also* Comments of the Minority Media and Telecommunications Council at 8-10, MB Docket No. 98-204 (May 22, 2008) (the “MMTC Employment Data Comments”).

amounts imposed annually have also decreased 96 percent (from \$312,250 in 1994-1997 to \$12,125 in 2004-2007).⁷¹

The Commission cannot continue to turn a blind eye to these and other discriminatory practices that are not being self-corrected and cry out for federal action.⁷² Although some of our fellow public interest organizations advocate unnecessary – and potential harmful – broadband rules, this issue distracts attention from the course of action that will truly help minorities: ensuring that the FCC fulfills its Congressionally mandated responsibilities to ensure that all Americans are treated equally and without discrimination based on race, color, religion, national origin or sex.

IV. CONCLUSION

For the reasons discussed above, the National Organizations respectfully request that the Commission remain mindful that any new rules or regulatory structures that emerge from this proceeding should help to close the digital divide and spread the economic and social benefits of broadband adoption to minority communities. Specifically, the Commission should recognize the substantial benefits that pro-consumer specialized agreements offer minority consumers and disadvantaged businesses. Furthermore, because of the importance of wireless broadband

⁷¹ MMTC Employment Data Comments at 8; *see* Minority Media and Telecommunications Council, MMTC Road Map For Telecommunications Policy 22-23 (July 21, 2008) (discussing the causes of minority underrepresentation in television and radio) (available at <http://mmtconline.org/lp-pdf/MMTC-Road-Map-for-TCM-Policy.pdf> (last visited October 11, 2010)).

⁷² In a February 16, 2010 letter to Chairman Genachowski, 23 civil rights organizations – including many of the National Organizations – identified several pending petitions, applications, and other proceedings related to diversity in the media and telecommunications industries on which the Commission has failed to act. As indicated therein, each of these initiatives warrants the Commission’s prompt attention. *See* Letter from David Honig, on behalf of the Asian American Justice Center *et al.*, to the Honorable Julius Genachowski, Chairman, Federal Communications Commission, GN Docket No. 09-51 (Feb. 16, 2010).

services to minority communities, the Commission should take care to preserve the flexibility of wireless broadband network operators that is essential to the viability of these services.

Respectfully submitted,

David Honig
President and Executive Director
Joycelyn James
Cathy Hughes Fellow
Jacqueline Clary
John W. Jones Fellow
Minority Media and Telecommunications
Council
3636 16th St. N.W., Suite B-366
Washington, D.C. 20010
(202) 332-7005
dhonig@crosslink.net
Counsel for the National Organizations

October 12, 2010

ATTACHMENT 1

NATIONAL ORGANIZATIONS

Asian Pacific American Institute for Congressional Studies
Black College Communications Association
Dialogue on Diversity
Hispanic Technology and Telecommunications Partnership
International Black Broadcasters Association
Japanese American Citizens League
Latinos in Information Sciences and Technology Association
Leadership Education for Asian Pacifics
League of United Latin American Citizens
MANA – A National Latina Organization
Minority Media and Telecommunications Council
National Association for the Advancement of Colored People
National Association of Multicultural Digital Entrepreneurs
National Black Caucus of State Legislators
National Black Chamber of Commerce
National Caucus of Black Mayors
National Conference of Puerto Rican Women
National Hispanic Caucus of State Legislators
National Medical Association
National Organization of Black Elected Legislative Women
National Puerto Rican Chamber of Commerce
National Puerto Rican Coalition
Organization of Chinese Americans
U.S. Hispanic Chamber of Commerce