

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

In the Matter of)	
)	
Fostering Innovation and Investment in the Wireless Communications Market)	GN Docket No. 09-157
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51

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

The Minority Media and Telecommunications Council (“MMTC”)¹ respectfully submits the following Reply Comments in response to the Notice of Inquiry² soliciting comments to expand the Commission’s understanding of how to best encourage innovation and investment in the wireless industry.³

**The Commission Should Encourage Innovation in the Wireless Industry by
Removing Entry Barriers and Promoting Participation of DEs, MBEs and SDBs**

The most intuitive response to the Commission’s request for clarification on its role in wireless innovation and investment⁴ is that the Commission must encourage innovation by all. A greater possibility for innovation occurs when ideas come from a variety of perspectives; thus the Commission should seek to remove entry barriers and allow DE, MBE and SDB innovators an opportunity to create a more diverse wireless landscape that serves the needs of previously de-prioritized populations.

¹ MMTC is a nonprofit organization dedicated to promoting equal opportunity and civil rights in the mass media and telecommunications industry. These Comments reflect the institutional views of MMTC and are not intended to reflect the view of individual MMTC officers, directors, or advisors.

² Fostering Innovation and Investment in the Wireless Communications Market, GN Docket No. 09-157, A National Broadband Plan For Our Future, GN Docket No. 09-51, Notice of Inquiry (rel. August 27, 2009).

³ See id. at p. 2 ¶1.

⁴ See Notice at p. 4 ¶11.

The comparatively low cost of wireless startups presents a unique opportunity to increase participation of underrepresented Minority Business Entities (MBEs), Socially and Economically Disadvantaged Businesses (SDBs), and Designated Entities (DEs).⁵ However, certain barriers need to be eliminated to enable these entrepreneurs to participate fully in the wireless marketplace. These barriers include government procurement practices that require previous large project experience, excessive years-in business, bonding or bundling of contracts and the Commission's 2006 revisions of the DE rules.⁶

Participation from historically excluded entities is crucial to any conversation on how to spur creative innovation in the broadband arena. MBEs and SDBs are in a difficult position because they have the incentive, but not the capital, to serve unserved or underserved minority and low-income communities⁷ that the marketplace previously failed. These entrepreneurs, especially those that already have well established connections to the communities they seek to serve, are familiar with the nuances of these communities and know how to use these to produce innovative content and services.⁸

While the Commission implemented competitive auctions in hopes of “enhanc[ing] the likelihood that the spectrum will be put to its highest-value use”⁹ this process has failed with respect to DE participation. Certain provisions of the 2006 revision of the DE rules, such as the lease/resale restrictions and 10-year holding period virtually negate the value of bidding credits and make it more difficult for DEs to obtain spectrum and access to capital.¹⁰ The Commission

⁵ See Initial Comments of the Broadband Diversity Supporters, In the Matter of A National Broadband Plan for Our Future, GN Docket No. 09-51, p. 18 (June 8, 2009) (“BDS National Broadband Plan Comments”).

⁶ See BDS National Broadband Plan Comments at p. 31, 18-22.

⁷ See BDS National Broadband Plan Comments at p. 31.

⁸ See id.

⁹ See Notice of Inquiry at p. 6 ¶22.

¹⁰ See BDS National Broadband Plan Comments at pp. 18-22. See also Comments of the Broadband Opportunity Coalition et. al., In the Matters of Inquiry Concerning the Deployment of

should modify the DE rules to eliminate their impact as an entry barrier, and should implement the recommendations as set forth in BDS' previously filed Section 706 Comments.¹¹

The Commission Should Provide Opportunities for Innovation to Occur for Every American, Regardless of Demographic and Socioeconomic Status

It is impossible to predict the person, the time, or the place of the next transformative innovation in wireless broadband. The Commission should therefore continue to encourage investment in affordable and sustainable wireless and mobile wireless broadband services, and training to ensure that future generations of Americans, across every demographic, will have an opportunity to take full advantage of their entrepreneurial capabilities.

To achieve these objectives the Commission should (A) encourage innovation in mobile wireless broadband by focusing on demand and user innovation; and (B) favor business models that provide a flexible broadband pricing structure that accounts for broadband consumption.

A. The Commission Should Encourage Innovation in Mobile Wireless Broadband By Focusing on Demand and User Innovation

In the Notice of Inquiry, the Commission seeks comment on its role in facilitating innovation in mobile wireless applications and services.¹² The Commission should encourage continued innovation in mobile wireless broadband services by focusing on demand for these services because the members of demographic groups that lag behind in home broadband adoption¹³ lead with respect to mobile broadband adoption.¹⁴ Minority communities are much more likely to use wireless services via mobile devices than are white Americans:

Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 09-137, A National Broadband Plan for Our Future, GN Docket No. 09-51, p. 9-12 (Sept. 4, 2009) ("Section 706 Comments").

¹¹ See Section 706 Comments at pp. 11-12.

¹² See Notice of Inquiry at p. 20 ¶57.

¹³ See e.g. John Horrigan, Home Broadband Adoption 2009: Broadband adoption increases, but monthly prices do too, Pew Internet & American Life Project (June 2009). "Notably, African

The picture changes when including access on a handheld and with the broader measure of wireless use that includes laptops and other devices. For each measure, use among African Americans matches or exceeds that of white Americans. Two measures of engagement with the wireless online – accessing the internet on a handheld on the typical day or ever – shows that African Americans are *70% more likely* to do this than white Americans.¹⁵

The increase in mobile wireless adoption among minority groups is, in large part, due to the increasingly diverse array of wireless products and services for low-income consumers.¹⁶

These products and services targeting low-income consumers include “...options rang[ing] from pre-paid calling options, to heavily subsidized smartphone offerings, to unlimited mobile text, phone and data plans as low as \$40 a month.”¹⁷

Mobile and wireless broadband have the potential to begin closing the digital divide¹⁸ and with the increased base of individuals who understand and interact with broadband from a variety of backgrounds, the base of potential innovators will expand as well.

Two ways in which the Commission can focus on increasing innovation through demand are (1) extend universal service funds such as Lifeline/Linkup to wireless and mobile wireless

Americans experienced their second consecutive year of broadband adoption growth that was below average.” *Id.* at pp. 4, 18. Of those surveyed 14% of African Americans cited relevance as the reason for not having broadband or internet access, 27% cited availability, 21% cited price and 13% cited usability. *Id.* at p. 43.

¹⁴ See The Hispanic Institute & Mobile Future, Hispanic Broadband Access: Making the Most of the Mobile Connected Future, p. 8 (September 2009), citing John Horrigan, Wireless Internet Use, Pew Internet & American Life Project, p. 18 (July 2009) (“Pew 2009 Wireless Study”) (African Americans and Hispanic consumers are among the most avid users of mobile wireless broadband services, 58% and 53% respectively).

¹⁵ Pew 2009 Wireless Study, p. 33.

¹⁶ See The Hispanic Institute and Mobile Future, Hispanic Broadband Access: Making the Most of the Mobile Connected Future, p. 8 (September 2009).

¹⁷ *Id.*

¹⁸ See Pew 2009 Wireless Study, p. 33 (“When tethered and wireless access are considered together, the gaps in online engagement between whites and blacks largely dissipates. Nearly as many African Americans have cell phones or online access as whites, with a gap of only 4 percentage points. African Americans tend to be more oriented to use of the handheld device, while whites are more likely to engage in a wider range of online activities. Though African Americans have a slightly higher average for the total number of digital activities, the difference between whites and blacks is not statistically significant” (internal citations omitted)).

service for eligible rural, low-income and minority communities; and (2) encourage adoption programs that demonstrate the value of broadband in minority communities.

1. The Commission Should Extend Universal Service Fund Programs such as Lifeline/Linkup to Wireless and Mobile Wireless Service for Eligible Rural, Low Income and Minority Communities

The Lifeline/Linkup program, which is authorized by Section 254(b) of the Communications Act,¹⁹ provides eligible low-income consumers with discounts to obtain affordable telephone service through local providers. This program allows these low-income consumers to remain connected in emergencies, provides increased access to job opportunities, and reduces isolation from mainstream society. Extending Universal Service high-cost programs to wireless and mobile wireless would carry over these and other broadband applications along with the additional benefit of enabling isolated, low-income communities to experience broadband technology and, with time and training, use the technology to develop means to innovate and create products applicable to their particular needs. The Commission should extend high-cost universal service programs to wireless and mobile wireless technology to allow those who could not otherwise afford it, an opportunity to participate as consumers and innovators.

2. The Commission Should Encourage Adoption Programs that Demonstrate the Value of Wireless and Mobile Wireless Broadband in Minority Communities

To best incentivize innovation in the wireless industry, the Commission should seek to obtain the greatest base of wireless consumers. To do this, the Commission should stimulate demand and provide consumers with the training and knowledge they need to participate fully in the wireless universe as consumers and innovators. The Commission should therefore to increase awareness of the value of wireless and mobile wireless in minority communities, recognizing that not understanding the value of broadband or how to use it are significant factors

¹⁹ See 47 U.S.C. 254(b).

in non-adoption.²⁰ To achieve the maximum output for the industry and consumers, the Commission should proactively target non-adopting communities and, through OCBO and other outreach offices within the agency, teach consumers how to access and use the various broadband applications in education, healthcare, e-government, employment, economic development and entrepreneurship.

In conjunction with increasing the demand for mobile wireless broadband services and devices, the Commission should also encourage user innovation in mobile wireless broadband through open networks for wireless devices. On an average day, 42% of mobile wireless users access non-voice data applications via their mobile devices.²¹ Minority mobile consumers including African Americans and English-speaking Hispanics are the most frequent users of these applications.²² To foster technological innovation and allow this the diverse mobile wireless user-base to create through experiments, the Commission should encourage open networks for wireless devices.²³

²⁰ See n. 13 *supra*.

²¹ See John Horrigan, Seeding The Cloud: What Mobile Access Means for Usage Patterns and Online Content, Pew Internet & American Life Project, p. 1 (March 2008).

²² See *id.*

²³ Some companies are already embracing this idea of technological innovation through open networks and devices. See Jeffrey Bartash, Google's Wireless Strategy Starts to Take Root, The Wall Street Journal (Oct. 9, 2009), available at <http://online.wsj.com/article/BT-CO-20091009-712596.html> (last visited Oct. 9, 2009) ("Android allows any software developer to create applications – games, music, business tools – that can work on an Android phone no matter which carrier sells it"). See also Terrence O'Brien, Verizon Reveals More Open Access Details, Switched (March 21, 2008), available at <http://www.switched.com/2008/03/21/verizon-reveals-more-open-access-details/> (last visited Oct. 9, 2009) ("All retailers and handset makers will have to do is get their devices certified by Verizon... There will be no limitations on the phones or software that can be run...").

B. The Commission Should Favor Business Models that Provide a Flexible Broadband Pricing Structure that Accounts for Broadband Consumption

Due to the ever-increasing amount of content and applications online, the demand for bandwidth is quickly rising as well.²⁴ Currently, the most prevalent pricing model for broadband services provides unlimited use for a flat monthly fee.²⁵ The flaws in this regressive model are becoming more noticeable as the demand for bandwidth increases; this demand in turn will require significant investment in the network, the cost of which will be passed along to broadband consumers.²⁶ Since we already have data showing that low income Americans are reluctant to subscribe to broadband service because it is not affordable for them, the issue becomes, “should this group be asked to subsidize high-bandwidth consumers under a pricing model that charges everyone the same fee....”²⁷ Since the effect of flat rate pricing is to delay the closing of the digital divide, the answer to this question should unequivocally be a resounding no.²⁸

²⁴ See Kevin A. Hassett and Robert Shapiro, Toward Universal Broadband: Flexible Broadband Pricing and the Digital Divide, The Georgetown Center for Business and Public Policy, pp. 5-6 (August 2009).

²⁵ See id. at p. 5 (“The predominant model of broadband pricing today and throughout the past decade has entailed payment of a flat monthly fee that allows unlimited usage. The fee may vary depending on the speed of the connection, but there is no limit on the amount of time a user may spend on line or the amount of bandwidth capacity he or she may consume. This model worked well during the early days of internet, because web access consisted mostly of static, text-based sites that did not require large amounts of bandwidth. The cost of providing service to each subscriber could be calculated by network operators with relative certainty, which in turn enabled operators to set consumer prices at levels that covered their cost of operations and so enabled more Americans to sign up for service.”)

²⁶ See id. at p. 6.

²⁷ See id. at p. 7.

²⁸ See id. (“The link between prices and broadband adoption suggests that higher prices for all consumers will slow the drive to universal broadband and expand the gap that now separates white from African-American and the less affluent from wealthier citizens”). Our simulations suggest that spreading the costs equally among all consumers – the minority ...[of consumers who] use large amounts of bandwidth and the majority who use very little – will significantly slow the rate of adoption at the lower end of the income scale and extend the life of the digital divide.” Id. at p. 12.

Practices that fail to close the digital divide will reduce opportunities for innovation. The Commission should therefore favor business practices that provide flexible broadband pricing models that account for consumers' consumption patterns.

Respectfully submitted,

David Honig

David Honig
President and Executive Director
Minority Media and
Telecommunications Council
3636 16th Street NW
Suite B-366
Washington, D.C. 20010
(202) 332-0500
dhonig@crosslink.net

Of Counsel:

Joycelyn Tate
Director of Telecommunications Policy

November 5, 2009