



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 10, 2010

The Honorable Joe Baca
U.S. House of Representatives
2245 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Baca:

Thank you, again, for the opportunity to meet with the Congressional Hispanic Caucus. I am pleased to provide this additional information on the National Broadband Plan to the Caucus members and look forward to working with you on our shared goal of increasing opportunities for women and minorities.

Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Julius Genachowski". The signature is stylized with a large initial "J" and a long horizontal stroke.

Julius Genachowski

Enclosure

National Broadband Plan

In developing the National Broadband Plan, the FCC paid particular attention to understanding the challenges to broadband adoption facing minorities, and the patterns of information technology use that might be distinctive to minority groups. Each of the three workshops on adoption that the Commission held during the Plan's fact-gathering phase sought to understand the perspectives of minority communities. Additionally, the Commission devoted a day of workshops specifically to adoption issues pertaining to minorities. The FCC's national survey on broadband usage included a Spanish-language option to help ensure an appropriate sample of the Hispanic population. The FCC also commissioned qualitative research from the Social Science Research Council, which produced "Broadband Adoption in Low-Income Communities," a report that investigated adoption barriers for minority and low-income populations.

The Commission's research found that, to a greater extent than for non-adopting white Americans, cost is the main barrier to having broadband service at home for Hispanics and African Americans. To help alleviate cost pressures faced by Americans who have not adopted broadband, the Plan recommends:

- An expansion of the Lifeline/Link-up programs so that broadband service is eligible for subsidies that defray the cost of service.
- Consideration of the use of spectrum for a free or very low cost wireless broadband service. This proposal has particular relevance for African Americans and Hispanics, since these groups demonstrate higher than average Internet usage via handheld devices.
- Additional financial support for libraries and community centers so that they can enhance their capacity as broadband access points for those without broadband at home. African Americans and Hispanics demonstrate higher than average Internet usage at these locations.

Additionally, the Plan contains recommendations calling for:

- The creation of a National Digital Literacy Program, which will include (a) a Digital Literacy Corps that would recruit from – and serve in – local, low-adopting populations such as the Hispanic community, with foreign language skills that would allow for effective training in those communities, and (b) an Online Skills Portal that would aggregate content that aims to impart digital skills, and would do so in multiple languages, including Spanish.
- Careful assessment of broadband adoption programs and ongoing research to assess adoption progress across all population segments, minorities included.
- Our research indicated that 83% of African-Americans and 68% of Hispanics have used the Internet to find or apply for jobs. The increasing importance of the Internet for job search, application, and training prompted us to recommend a next generation online

platform to deliver virtual employment assistance programs that can be used anytime, anywhere, from a home computer or a public access point like a library.

- In the last 10 years, minority-owned businesses have accounted for more than half of the 2 million new businesses started in the United States, creating 4.7 million jobs. To ensure that we support America's entrepreneurs and small businesses with the broadband tools they need to reap productivity gains and reach new markets, the Plan recommends a suite of online and offline digital literacy and business application training programs.

Open Internet

When the Commission voted to issue a *Notice of Proposed Rulemaking* in late October, we launched a multi-month process with the goals of safeguarding the free and open Internet, providing greater predictability for the marketplace, and fostering continued innovation and investment to drive jobs and economic growth. The task of securing an open Internet deserves an open process. Accordingly, Commission staff are conducting a fact-based, transparent, and participatory process to develop rules based on a record that includes engineering and economic examinations. As part of this process, the Commission convened a group of technical advisory experts for ongoing input, and held a workshop in December on broadband network management. In addition, the Commission has held staff-level workshops on investment and innovation; on consumers and transparency; on approaches to maintaining an open internet; and on speech and civic participation, with a particular focus on the impact of Internet openness on minority voices. More information on the workshops we've held is available at www.openinternet.gov.

We are encouraged by signs of growing common ground among the many stakeholders we have heard from on key issues, including on the value of openness, the need for the FCC to provide greater clarity for the marketplace around these issues, the benefits of transparency by broadband providers, and the importance of ensuring continued Internet openness on incentives to innovate and deploy capital. The record also is making clear that an open Internet can coexist with broadband providers managing their networks and earning a return on investment, and that commonsense rules of the road can promote predictability, certainty, and a healthy market for innovation and job creation. We remain focused on developing the right policies to preserve the open Internet.

Title II Authority

As you may know, the recent D.C. Circuit opinion in *Comcast v. F.C.C.* cast serious doubt on the legal theory the Commission used for the past few years to support its vital role with respect to broadband Internet access. I have shared with my fellow Commissioners a draft Notice of Inquiry for their consideration at the Commission's June 17 Open Meeting. This Notice would initiate an agency proceeding to seek public comment on how the Commission should best address the challenge that *Comcast* has handed us. It would seek comment on all options, and invite any ideas for how the Commission should proceed, including: maintaining the current "information service" classification of services such as cable modem and DSL Internet access; classifying broadband Internet connectivity service as a "telecommunications

service” to which all the requirements of Title II of the Communications Act would apply; and a “third way” – similar to the highly successful approach that has been used for cell phone services since 1993 – under which the Commission would identify the Internet connectivity service that is offered as part of wired broadband Internet service as a telecommunications service and forbear from applying all provisions of Title II other than the small number that are needed to implement fundamental universal service, competition, and consumer protection policies.

As you know, Chairmen Rockefeller, Waxman, Kerry, and Boucher have announced they will start a process to develop proposals to update the Communications Act. I welcome that process, and any new ideas that others may propose to address this issue, and the Commission stands ready to serve as a resource to Congress as it considers legislative changes in this area.

Outreach

In our efforts to ensure that Latino organizations nationwide are aware of the opportunities in broadband, the Commission’s Office of Communications Business Opportunities (OCBO), which assists small and diverse entrepreneurs in the telecommunications industry, has reached out to Hispanic organizations such as the National Association of Hispanic Community Asset Builders (NALCAB) to advise them on broadband funding opportunities like the Broadband Initiative Project (BIP) and the Broadband Technology Opportunities Program (BTOP). BIP funds are available through the Rural Utilities Service of the Department of Agriculture, and BTOP is administered by the National Telecommunications Information Agency (NTIA). Following these outreach efforts, NALCAB has a broadband proposal before NTIA (the Latino Microentrepreneur Tech Net project) that has been placed on the pending status list for further consideration.¹ If granted, that proposal would provide 3.7 million dollars for a computer lab and business training programs for Latino entrepreneurs.

OCBO has outlined an ambitious outreach program targeting Hispanic entrepreneurs and organizations that are focused on opportunities in the telecommunications industry. OCBO representatives attended the US Hispanic Chamber of Commerce Convention (USHCC) in Denver, Colorado, last fall, and presently are engaged with USHCC’s Vice President for Government Relations on ways that the Commission can work more effectively with the Chamber.

OCBO also has ongoing outreach with the Hispanic Technology and Telecommunications Partnership (HTTP) – a coalition of national Hispanic organizations working to increase awareness of the impact of technology and telecommunications policy on the Hispanic community generally. OCBO endeavors to ensure that HTTP is aware of important

¹ The Latino Microentrepreneur Tech Net is a collaborative project led by the Mission Economic Development Agency (MEDA) of San Francisco and NALCAB of San Antonio, Texas. LMTN will establish Public Computer Centers and a standardized bilingual training curriculum for Latino entrepreneurs at 17 locations nationwide, including Arizona, Colorado, Indiana, Kansas, Maryland, Minnesota, Missouri, New Mexico, Pennsylvania, and Texas. LMTN will equip 17 centers at 11 economic development institutions with public computer centers hosting a total of 300 workstations, standardized bilingual English-Spanish training curriculum for entrepreneurs, and the tools and resources to equip Latino microentrepreneurs with skills to establish and grow their businesses. If funded, this collaboration is projected to create 2,100 jobs.

FCC policy matters affecting the Hispanic community, and encourages their feedback and participation on these issues.

Examples of past outreach efforts include extensive work with Hispanic groups during the DTV transition. The Hispanic Information and Telecommunications Network (HITN) was awarded a contract from the FCC to help the Hispanic community nationwide to procure and install converter boxes and to partner with local community organizations to establish walk-in help centers in the 20 U.S. TV markets with the highest Hispanic population. The DTV.gov website, all publications and streaming audio and video releases are, and were, available in Spanish as well as English. The FCC gave over 81 media interviews in English and/or Spanish to Hispanic media outlets such as Univision, Telemundo, Bloomberg Noticias, and numerous local Hispanic media outlets throughout the continental U.S. and Puerto Rico.

Univision was one of the FCC's partners, helping to increase awareness in Spanish-speaking communities. We had over 35 media interviews at their affiliates located throughout the country. In addition, we participated in or provided materials to the over 30 Univision DTV Town Halls. Univision held over 160 "Digital Squadron Missions" where Univision representatives went into consumer homes and assisted in hooking up converter boxes. The FCC also conducted extensive outreach throughout Puerto Rico, including a visit from then-Commissioner Adelstein in December 2008.

Diversity in Media and Broadcasting

The Commission fosters diversity in broadcasting by, among other things, promoting broadcast station ownership by women and minorities, including members of the Hispanic community. In this regard, in 2008, the Commission adopted measures to increase participation in broadcasting by "eligible entities", including minority and women-owned businesses. In addition to addressing barriers to participation, such as access to capital, the Commission allowed eligible entities that acquire expiring broadcast construction permits additional time to construct facilities; relaxed certain attribution rules to permit higher investment limits in eligible entities; expanded beneficiaries of the distress sale policy to include all eligible entities; and granted priority for entities seeking a duopoly in a TV market if they finance or incubate an eligible entity. The Commission also adopted a rule that bars discrimination on the basis of race or gender in broadcast transactions, and established a zero tolerance policy for ownership fraud, which could impede both the Commission's efforts to assess or increase media ownership diversity. In addition, the Commission has requested comment on other measures to promote diverse ownership of broadcast facilities, including alternatives that would target more narrowly the class of entities to which benefits are extended to make these measures more effective in promoting diversity. Finally, the Commission has established an Advisory Committee on Diversity for Communications in the Digital Age to develop recommendations regarding policies and practices that will help to enhance the participation of minorities and women in broadcast and other media. Commission staff currently is reviewing the Committee's recommendations.

Like you, I am concerned about how advertising revenue affects the financial health of minority-owned media outlets. Although the Commission does not have jurisdiction to regulate the advertising market directly, the Commission has adopted a rule requiring that all broadcasters

certify in their license renewal applications that their advertising sales contracts contain nondiscrimination clauses. This rule is intended to eliminate the imposition of “no urban/no Spanish” dictates used by some advertisers to avoid advertising on urban-formatted or Spanish-language media outlets.

The Commission also has issued a *Notice of Inquiry* to evaluate concerns that Arbitron’s devices for measuring ratings, Portable People Meters (PPMs), undercount minority viewers and listeners. Undercounting minority audiences could reduce the amount of advertising revenue received, erode the station’s financial viability, and undermine the Commission’s important diversity goals. Last fall, the Commission’s Media Bureau hosted a roundtable discussion with interested parties on this topic, and the Commission is monitoring developments in this area closely.

Regarding emergency broadcast alerts, Part 11 of the FCC’s rules expressly provides that certain alert-related announcements may be made in the primary language of the broadcaster or other service provider. In addition, the Commission continues to encourage alert participants to conduct effective outreach to persons whose language is not English. Limitations in current alert system technology inhibit the ability to provide simultaneous multilingual transmissions by broadcasters and others. In collaboration with FEMA, the Commission is aggressively promoting the development and implementation of Next Generation alerting systems which will enhance the ability to provide simultaneous, multilingual alerts to non-English speaking Americans.

Comcast/NBCU Merger:

In order to obtain Commission approval of a transaction such as the proposed Comcast/NBCU joint venture, the applicants must demonstrate that, on balance, the transaction will serve the public interest, convenience and necessity pursuant to Section 310(d) of the Communications Act. In making such a determination, through a review of the record before us, we examine the transaction’s potential impact on the Commission’s regulatory objectives, including diversity, and weigh any public interest harms arising from the proposed transaction against any potential benefits.

In its application, Comcast, GE and NBCU propose certain commitments to mitigate any potential public interest harms from their proposed transaction, and urge that the Commission incorporate those commitments into an Order approving the transaction as conditions that are legally binding upon the parties. Enhancing the opportunities of independent producers to secure distribution of their programming is an important objective of the Commission’s regulations, as contemplated by Section 616 of the Communications Act and our program carriage rules. Among the parties’ commitments is that, once Comcast has completed its company-wide digital migration, it would add two independently-owned and operated channels to its digital line-up each year for three years.

As required by Section 628 of the Communications Act, our program access rules are designed to ensure that a vertically integrated cable television system operator, such as Comcast, cannot discriminate against other multichannel video programming distributors (MVPDs) in its

distribution of the programming of the cable operator's affiliated programmers. In this regard, the parties commit to apply "key components" of the current program access rules to negotiations with MVPDs for retransmission rights to the signals of the television stations owned by NBCU, including those of NBC and Telemundo, and to apply the program access rules to the high definition feeds of any network whose standard definition feed is subject to the rules, for as long as the current rules remain in place.

The Commission staff will study the record carefully in the proceeding to determine whether the imposition of any conditions, incorporating the parties' commitments or otherwise, would be appropriate. Whether the proposed transaction will increase the incentive and ability of the Comcast-NBCU combined entity to engage in discriminatory program access practices is one of the issues that we will study as a part of the analysis of the record before us. We welcome comments from any party for this proceeding, and appreciate any opportunity to gain insight from Members of the Congressional Hispanic Caucus.

Diversity Within the FCC:

The Commission's executive workforce is over 40% female and 16% minority. Of the executive level positions within the Commission, we have one individual who has self-identified as Hispanic. The Commission is committed to hiring the highest caliber of leaders and experts into our senior level positions. To facilitate this commitment, the Commission advertises positions through a competitive process enabling the widest range of potential candidates the ability to receive consideration. Candidates are evaluated using the Executive Core Competencies developed by the Office of Personnel Management. Although we have not specifically targeted recruitment to Hispanics, we would welcome Members of the Congressional Hispanic Caucus informing its constituents and Hispanic organizations about employment opportunities at the Commission.