

February 22, 2011

Hon. Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Dear Chairman Genachowski:

RE: The FCC's Civil Rights Record, Overdue Section 257 Triennial Report to Congress, and 2011 Budget

Just over a year ago – on February 16, 2010 - 23 national organizations (generally including those signing below) wrote to ask why the FCC had made such slow progress on minority entrepreneurship and equal employment issues. We stated:

“[In] Section 257 of the Communications Act, Congress requires the Commission to submit triennial reports ‘identifying and eliminating...market entry barriers for entrepreneurs and other small businesses....’ The Commission submitted the required reports for 1997, 2000, 2003, and (several months late) 2006, but the Commission has not yet submitted its 2009 Report....

“Minority television ownership has decreased by 50% since 1999. Minority radio ownership has declined by 9% just within the last three years. Minority wireless and cable system ownership levels are near zero. Finally, minority radio journalism employment has plummeted to less than 1%, a level not seen since 1950.

“It is therefore unfortunate that, in 2009, the Commission failed to vote on any of the dozens of pending proposals to advance minority ownership and participation in the industries the Commission regulates, including proposals endorsed by the Advisory Committee on Diversity for Communications in the Digital Age (<http://www.fcc.gov/DiversityFAC/>). The following examples illustrate the Commission’s shortcomings in areas of concern to us. The FCC has failed:

- To adopt any of the two dozen proposed noncontroversial initiatives that would give minority businesses an opportunity to acquire FCC-licensed assets.
- To restore minimal enforcement of the broadcast Equal Employment Opportunity (EEO) Rule, and to assign a compliance officer to the 2007 Advertising Nondiscrimination Rule which, if it were enforced, could restore to minority broadcasters the approximately \$200 million every year that they forego because of racial discrimination by advertisers....

- For the fifth straight year since Hurricane Katrina – to act on the Spanish Radio Association/United Church of Christ/MMTC petition to provide for the multilingual broadcasts of emergency information. The September 8, 2009 “FCC Preparedness for Major Public Emergencies” Report did not even mention this critical issue.
- To support the only remaining federal initiative aimed at promoting minority and women media and telecom ownership – the Telecommunications Development Fund. Nowhere in the Commission’s 2009 legislative recommendations was support for this vital initiative mentioned. In fact, on January 28, the Administration – without consulting with diversity advocates – proposed a budget that would eliminate the Fund entirely. The budget narrative suggested that a proposed loan program and, even more implausibly, the USF are adequate substitutes for this equity fund for new entrants.”

We did not think it possible that a year later, the status of civil rights at the FCC would get even worse, but it has:

- The Commission still has not submitted its Section 257 Report to Congress. It is now 14 months overdue.
- In March 2010, with minority radio, television and cable channel ownership spiraling toward zero, you directed the Office of Communications Business Opportunities (OCBO) to review the 72 minority ownership and EEO proposals before the agency – some of which were pending for more than ten years. In the succeeding 11 months, only one of those 72 proposals has been acted upon, and that proposal was rejected. Even more surprisingly, at the March 3, 2011 agenda meeting, the Commission proposes to adopt an item that implicitly rejects some of the 72 proposals by making it even more difficult for radio owners with inferior technical facilities (a condition affecting most minority broadcasters) to survive by moving their transmitters closer to their competitors’ in-market stations. *See proposed Second Report and Order in Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52.
- The Commission issued no EEO decisions at all for one and a half years. It has not responded to an urgent request by MMTC to restore meaningful auditing and enforcement, nor has it taken steps to restart EEO data collection, nor has it inquired why English language minority radio journalism employment has essentially gone to zero. The level of EEO enforcement is lower than at any time since the EEO Rule was adopted in 1969.

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- Despite repeated requests, the Commission has failed even to designate a staff person as a compliance officer for the 2007 advertising nondiscrimination rule, the non-enforcement of which costs minority broadcasters \$200 million annually.
- The Katrina Multilingual Emergency Broadcasting Petition still sits without action, although 140 other EAS policy matters have been addressed separately.

This brings us to the Telecom Development Fund – which (as it was in 2010) is proposed in the 2011 President’s Budget to be zeroed out. The proposed substitutes are small business credit and loan programs unlikely to be adopted by Congress, the Universal Service Fund (which of course does not provide equity for minority entrepreneurs), and wireless buildout funds – an apparent reference to BTOP. BTOP was, in fact, the third largest SDB-qualified pool in history. Yet (albeit not the FCC’s fault) only one of the 233 BTOP grants went to a minority business enterprise (MBE).

Last week, the FCC produced its Budget, which contained two unpleasant surprises:

First, while the Commission did follow through on its pledge to underwrite the new Adarand studies we have been seeking for ten years, the funding level was half of the need and the description of the item in the budget limits the grant to broadcast-related research only – excluding telecom and, in particular, telecom auctions. This proposal is far narrower than the Diversity Committee’s unanimous 2009 recommendation. The budget narrative states that “[t]he requested funds are the same as previous expenditures for diversity studies conducted” but that is incorrect: the only such previous expenditure was for the 2000 Adarand studies, which included telecom and which cost \$2,000,000 in 1999 dollars. With this budget item, the Commission appears to be writing off forever the possibility of ensuring that minorities and women will be significant licensees of wireless spectrum.

Second, the only two FCC offices with substantive responsibilities whose funding was cut in the 2011 Budget were the two offices focusing on minority issues: the Office of Workplace Diversity (cut 8%) and the Office of Communications Business Opportunities (OCBO - cut 12%). These offices are already vastly underfunded relative to need. The Workplace Diversity Office should be focused on why there are almost no minority SES or high GS employees on the 8th floor or in some of the Bureaus (including even the Media Bureau). And OCBO, with its current low staffing, has been unable to get a single minority ownership proposal on the agenda for a Commission vote in a year.

We respectfully request an opportunity to meet with you to discuss the issues raised in this letter. With less than two years remaining in the President’s term, there’s not a lot of time left to reverse the tailspin in which minority businesses, entrepreneurs, employees and executives in media and telecom find themselves.

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Sincerely,

American Indians in Film and Television
Black College Communication Association
Black Leadership Forum
Hispanic Association of Colleges and Universities
Latinos in Science and Technology Association
Lawyers' Committee for Civil Rights Under Law
Minority Media and Telecommunications Council
NAACP
National Association of Black County Officials
National Association of Black Elected Legislative Women
National Association of Black Owned Broadcasters
National Association of Black Telecommunications Professionals
National Association of Latino Independent Producers
National Association of Neighborhoods
National Black Chamber of Commerce
National Coalition on Black Civic Participation – Black Women's Roundtable
National Conference of Black Mayors
National Conference of Puerto Rican Women
National Indian Telecommunications Institute
National Newspaper Publishers Association
Native American Journalists Association
Native American Public Telecommunications
Rainbow PUSH Coalition

cc: Senator Robert Menendez
Congressman G.K. Butterfield
Congressman Charlie Gonzalez
Congresswoman Doris O. Matsui
Congressman Bobby L. Rush
Congressman Edolphus Towns
Hon. Michael J. Copps, Commissioner, FCC
Hon. Robert McDowell, Commissioner, FCC
Hon. Mignon Clyburn, Commissioner, FCC
Hon. Meredith Attwell Baker, Commissioner, FCC

ccs to FCC Dockets:

MB 07-294 (Broadcast Diversity)
EB 06-119 (Hurricane Katrina Independent Panel)
WT 05-211 (Designated Entities)
EB 04-296 (Emergency Alert System)
MM 98-204 (Broadcast EEO)
RM-11565 (MMTC Radio Rescue Petition)

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