



National
Urban League



ASIAN AMERICANS
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JUSTICE
AAJC



MMTC
Multicultural Media, Telecom and Internet Council



March 21, 2016

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

RE: *Expanding Consumer's Video Navigation Choices*, MB Docket No. 16-42; *Commercial Availability of Navigation Devices*, CS Docket No. 97-80; *Promoting the Availability of Diverse and Independent Sources of Video Programming*, MB Docket No. 16-41

Dear Chairman Wheeler:

As national leaders of civil rights organizations committed to the social and economic empowerment of communities color, we write to express our continued support for greater diversity and inclusion on and in our nation's shared media platforms. The expansion of minority and women created content and viewpoints has always been an important goal for the civil rights community. We have long understood the powerful role the media and Hollywood play in the democratic process, as well as in shaping perceptions about who we are as individuals, communities and as a nation.

It is for this reason that we write in regard to your February 18th Notice of Proposed Rulemaking and Memorandum Opinion and Order, *Expanding Consumers' Video Navigation Choices* aka the Proposal to "Unlock the Set Top Box." After convening multiple meetings and briefings to hear both sides in this important debate, we believe that an analysis regarding this proposal's impact on diversity and inclusion must move to the center of the Commission's actions.

In the 21st Century, diversity and inclusion is not only consistent with the promotion of the public interest; it is consistent with the promotion of the business interest and must be a top-priority. Advancing diversity and inclusion in the television ecosystem will not only help underserved communities gain access to new content and viewpoints, but also allow minority and independent programmers the opportunity to increase their customer base. However, the record lacks necessary data on this critical issue. The obligation to assess and address the lack of minority ownership and participation in this ecosystem statutorily falls on the regulatory agency—the Commission—not on affected communities that have traditionally been denied access to the marketplace.

Historically, civil rights organizations have been opposed to an *a la carte* television ecosystem, driven by consumer choice, because of the financial impossibility for minority and independent programmers to sustain new content if few people are watching. Indeed, recent advancements in minority owned networks have come through Memorandums of Understanding (MOUs) that have become conditions of Commission approved mergers.¹ For instance, an MOU during the Comcast/NBCUniversal merger created four networks: Revolt, Aspire, BabyFirst Americas and El Rey.

The Commission should not compromise these MOU gains. Therefore, we request that the Commission hit the “pause” button on this proceeding to conduct a disparity study. The Commission must ensure that the proposal to “unlock the set top box” will truly promote diversity and inclusion, especially since it will empower emerging platforms from a tech industry that has shown very little to no commitment and progress in effecting diversity and inclusion in their own industry. After years of resisting disclosure, many tech giants released their employment diversity numbers for the first time in 2014, which highlighted an astonishing lack of inclusion. Most worrisome is that despite that disclosure and many acknowledgments of their failings, follow-up disclosures in 2015 did not show any improvement. In fact, some companies reported a decrease in diversity.

At a time when media ownership by women and people of color remain at low levels, we believe that such a disparity study is more important than ever—especially since the Commission set aside its Critical Information Needs (CIN) studies in 2014—to determine how best to increase participation by our communities. This disparity study should assess whether unlocking the set top box would be fundamentally different from previously proposed *a la carte* television ecosystems.

Questions and issues that this study should carefully examine include:

- Will unlocking the set top box serve the goal of increasing media, content and ownership diversity compared to the current system?
- Could unlocking the box result in less diversity and fewer successful minority programmers and content producers? If so, what is the projected data on the

¹ Over the past several years, some civil rights organizations representing the Black, Latino and Asian communities, have negotiated MOUs that would become merger conditions. These MOUs have created corporate wide diversity programs and other measures related to recruitment, development & retention of diverse talent and programming. See Memorandum and Order In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees MB Docket No 10-56 (pgs. 78-81) (available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-4A1.pdf). Recently, some civil rights groups signed an MOU with Charter Communications, which will become a part of Charter’s merger conditions if the Commission approves their transaction with Time Warner.

extent/size of the disparity that would result? If not, what is the projected data on the extent/size of diversity gains?

- What type of new opportunities and/or harms will unlocking the set top box create for minority programmers and content producers?
- What are the costs and/or savings associated for minority programmers and content producers?

We note that this list of questions is not exhaustive. The Commission should look to the input you will receive from the current Notice of Inquiry (NOI) *Promoting the Availability of Diverse and Independent Sources of Video Programming* to ensure that a disparity study will analyze all of the principal challenges faced by minority and independent programmers in gaining carriage on traditional and emerging distribution platforms.

Once this disparity study is completed, we then ask that you extend the initial comment period on your proposed regulations to 90 days, so that we may convene a cross-section of engineering, programming, economic and cultural experts to assess the data. An abbreviated comment cycle will not allow us to connect with our communities and offer a full analysis of the new data.

We look forward to continued discussions on this topic. As always, we thank you for your continued desire to advance diversity and inclusion in the current and emerging video and television platforms.

Sincerely,

[REDACTED]
President and Chief Executive Officer
National Urban League

[REDACTED]
Priscilla Ouchida
Executive Director
Japanese American Citizens League

[REDACTED]
Kim Keenan
President
Multicultural Media, Telecom and Internet
Council

[REDACTED]
Ivree Mouda
President & Executive Director
Asian American Justice Center

[REDACTED]
Brent Wilkes
National Executive Director
League of United Latin American Citizens

[REDACTED]
Hilary O. Shelton
Director, Washington Bureau &
Senior VP for Policy and Advocacy
NAACP



Rev. Al Sharpton
Founder & President
National Action Network



Leslie Moe-Kaiser
National President
OCA – Asian Pacific American Advocates



Melanie Campbell
President & CEO
National Coalition on Black Civic Participation



Rev. Jesse L. Jackson, Sr.
Founder & President
Rainbow PUSH Coalition

cc:
The Honorable Mignon Clyburn, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
The Honorable Ajit Pai, Commissioner
The Honorable Michael O’Rielly, Commissioner
Congressional Tri-Caucus members