

Congress of the United States
Washington, DC 20515

September 8, 2014

The Honorable Thomas E. Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

We write to urge the Federal Communications Commission to use its mandate under section 257 of the Communications Act of 1934 to identify and eliminate market-entry barriers for small businesses and entrepreneurs. While the Commission has recently made progress in helping to facilitate diversity in ownership through the wireless spectrum auctions,¹ we feel strongly that the Commission can do more to facilitate diverse ownership in every area of media and telecommunications.

Diversity in media ownership and voices has long been a priority of Congress and the Federal Communications Commission.² Congress added section 257 to the Communications Act of 1934 with the intention of making it a national policy for the Commission to protect small businesses, particularly those owned by minorities and women, from the effects of consolidation in the media industry.³ This statute

¹ See, e.g., *Grain Management, LLC's Request for Clarification or Waiver of Section 1.2110(b)(3)(iv)(A) of the Commission's Rules*, WT Docket No. 05-211, GN Docket No. 12-268, GN Docket No. 13-185, Order, July 23, 2014 (granting a limited waiver of an FCC attribution rule for a minority-owned business and similarly situated entities).

² See, e.g., *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1042 (C.A.D.C. 2002) (“[T]he public interest” has historically embraced diversity.”); Roger C. Sherman, *Empowering Small Businesses*, OFFICIAL FCC BLOG (August 1, 2014), <http://www.fcc.gov/blog/empowering-small-businesses> (“Considering the significant challenges new entrants face in building wireless networks, we can and should provide smaller businesses—including enterprises owned by women and minorities—a better on-ramp into the wireless business.”).

³ See 47 U.S.C. § 257 (2014); David Honig & Moushumi Khan, *Successes and Failures of the 1996 Telecommunications Act: Section 257- Eliminating Market Entry Barriers: The Best New Hope for Diversity and Inclusion*, THE LEADERSHIP CONFERENCE (June 1, 2002), http://www.civilrights.org/publications/1996_telecommunications/section-257.html.

confers authority to study and promote a diversity of media voices through regulatory action.⁴ We encourage the Commission to keep in mind both the language and the spirit of this statutory mandate as it develops national communications policies, particularly in the context of new networks and programming.

In addition to the Commission's authority to study, identify, and eliminate barriers to the marketplace for minorities and women as part of its broader mission to promote entrepreneurship and other small businesses, the Commission may also promote diversity through the use of its broad regulatory authority, which includes information gathering, rulemaking, and merger review and enforcement. The Communications Act authorizes the Commission to negotiate and enforce restrictions and conditions on license transfers to promote the public interest in the context of mergers.⁵ Although the Commission's public-interest evaluation concerns the "broad aims of the Communications Act,"⁶ this analysis may also entail whether a transaction ensures "the widest possible diversity of information sources and services to the public."⁷ The Supreme Court has routinely observed that the Commission's public-interest mandate includes promoting diverse media ownership.⁸ We ask that the Commission uphold its important obligation to promote diversity through this broad authority.

⁴ *Id.* § 257(a) ("The Commission shall complete a proceeding for the purpose of identifying and eliminating, by regulations pursuant to its authority under this chapter (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."); *Comcast Corp. v. FCC*, 600 F.3d 642, 661 (D.C. Cir. 2010) (discussing 47 U.S.C. § 257).

⁵ *Id.* § 303(r) (authorizing the Commission to "prescribe such restrictions and conditions, not inconsistent with the law, as may be necessary to carry out the provisions" of the Communications Act); *id.* § 214(c) (the Commission may place "such terms and conditions as in its judgment the public convenience and necessity may require" through its merger-review authority).

⁶ *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations*, 19 FCC Red 21522, 21544 ¶ 41 (2004).

⁷ § 521(4).

⁸ *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 795 (1978) (holding that the public-interest standard that guides the Communications Act of 1934 includes the "goal of achieving 'the widest possible dissemination of information from diverse and antagonistic sources.'"); *National Broadcasting Co. v. United States*, 319 U.S. 190, 217 (1943) ("The avowed aim of the Communications Act of 1934 was to secure the maximum benefits of radio to all the people of the United States.").

Section 257 also directs the FCC to release a Triennial Report on market-entry barriers for small businesses and entrepreneurs.⁹ The Commission continues to fall behind in its timely release of these reports.¹⁰ The media and telecommunications landscape is rapidly changing. The timely reporting of market-entry barriers is essential to the development of narrowly tailored policies that will facilitate the engagement of minority- and women-owned businesses, while benefitting the public interest.¹¹ Minorities and women continue to face unique market-entry barriers. Timely reports and current data would empower the Commission to eliminate these barriers through practical solutions for facilitating full participation.

As stated, the media industry still suffers from an extreme lack of diversity, especially in broadcast ownership. There are less than fifty full power TV stations owned by people of color and every year the list grows smaller.¹² Diversity in ownership is crucial in enhancing competition and benefitting consumers.¹³ As Commissioner Clyburn noted in the last Triennial Report, promoting diversity through section 257 “should not be an afterthought as we develop our national communications policies.”¹⁴

The Commission is encouraged to seriously consider innovative proposals submitted by minority-owned entities.¹⁵ These businesses have the potential to

⁹ § 257(c).

¹⁰ See generally Section 257 Triennial Report to Congress, Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses, 26 FCC Red 2911, 2912 (2009) (noting that the 2009 Report was released in 2011).

¹¹ STAFF OF S. COMM. ON THE SMALL BUSINESS AND ENTREPRENEURSHIP, 113TH CONG. REP. ON 21ST CENTURY BARRIERS TO WOMEN'S ENTREPRENEURSHIP: MAJORITY REPORT OF THE U.S. SENATE COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP 3 (Comm. Print 2014).

¹² U.S. FED. COMM. COMM'N, DA 12-1667, REPORT ON OWNERSHIP OF COMMERCIAL BROADCAST STATIONS (2012), https://apps.fcc.gov/edocs_public/attachmatch/DA-12-1667A1.pdf.

¹³ See e.g., *Promoting Diversification of Ownership In the Broadcasting Services*, MB Docket No. 07-294, Report and Order and Third FNPRM, 23 FCC Red 5922, 5925 (2007) (recognizing that diverse ownership promotes competition).

¹⁴ FCC, *supra* note 11, at 2970.

¹⁵ U.S. Representatives Bobby Rush, Corrine Brown, Gwen Moore, and Frederica Wilson recently urged the Commission to support small, minority-owned businesses that have the potential to “make an immediate impact by providing African American communities with a clearer voice; promote the greater engagement of African Americans in the nation's economic, political, and social debates; create a platform for Black newsmakers to reach their audiences and constituents; create well-paying jobs for a diverse mix of employment candidates; and rebut the

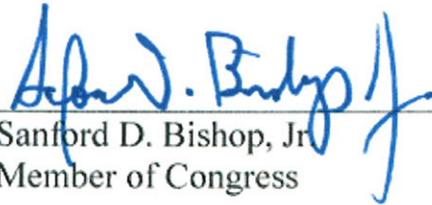
provide Americans with intelligent programming and content that is informative, educational, inspirational, empowering, and catered to minority interests.

We hope the FCC will take our concerns seriously and continue to move in the right direction by promoting diversity in media.

Sincerely,



Henry C. "Hank" Johnson, Jr.
Member of Congress



Sanford D. Bishop, Jr.
Member of Congress



Corrine Brown
Member of Congress



G. K. Butterfield
Member of Congress



John Conyers
Member of Congress



Chaka Fattah
Member of Congress



Robin Kelly
Member of Congress



Barbara Lee
Member of Congress



Gwen Moore
Member of Congress



Eleanor Holmes Norton
Member of Congress



Donald Payne
Member of Congress



Charles Rangel
Member of Congress



Cedric Richmond
Member of Congress



Bobby Rush
Member of Congress



Maxine Waters
Member of Congress