



1620 L Street N.W., Suite 250
Washington, D.C. 20036
Phone: 202-332-0500 Fax: 202-332-7511
www.mmtconline.org

To: Jeffrey Eisenach, Mark Jamison, and Roslyn Layton, Trump Telecom Transition Team
Hon. Ajit Pai and Hon. Michael O’Rielly, Commissioners, FCC

From: Multicultural Media, Telecom and Internet Council

Date: December 2, 2016

Re: Twelve Imperatives to Close the Digital Divide and Advance Multicultural Media and Telecom Ownership and Procurement in the First 100 Days of the New Administration

Background

For 30 years, the Multicultural Media, Telecom and Internet Council (“MMTC”) has been the nation’s leading voice for diversity and inclusion in the nation’s most influential industries, media and telecommunications. MMTC offers these 12 imperatives to the Trump Administration to address the persistent challenges in closing the digital divide, and advancing multicultural commercial ownership opportunities to create voices and participation in the telecommunications industry.

MMTC believes that the White House, Congress, the Federal Communications Commission (“FCC”), and other federal agencies should act on these 12 Imperatives for the benefit of all Americans. We request your thoughtful consideration of these Imperatives in the first 100 days of the new administration.

The Persistent State of Digital Inequity

Today, virtually all of the necessary elements of modern life must be performed online, including banking, applying for a job, scheduling a doctor’s appointment, and most notably, K-12 homework. Yet residential broadband adoption has actually declined from 70% in 2013 to 67% in 2015.¹ Thirteen percent of Americans are “smartphone-only,” which means they access the internet primarily through their smartphones.² African Americans and Latinos are the most likely to be on the wrong side of the digital divide: home broadband adoption among African Americans decreased from 62% in 2013 to 54% in 2015, and among Hispanics decreased from 56% in 2013 to 50% in 2015.³ Among

¹ See John B. Horrigan, *Home Broadband 2015*, Pew Research (December 21, 2015), available at <http://www.pewinternet.org/2015/12/21/home-broadband-2015/> (last visited July 8, 2016).

² *Id.*

³ See John B. Horrigan, *Home Broadband 2015: Home Broadband Adoption Modest Decline from 2013 to 2015*, Pew Research (December 21, 2015), available at <http://www.pewinternet.org/2015/12/21/1-home-broadband-adoption-modest-decline-from-2013-to-2015/> (last visited July 8, 2016).

households with incomes under \$20,000, home broadband adoption declined from 46% in 2013 to 41% in 2015,⁴ despite the steady growth in the number of “smartphone-reliant” adults. The African American community, in particular, saw an increase from 10% in 2013 to 19% in 2015, and the Hispanic community saw an increase from 16% in 2013 to 23% in 2015.⁵ Households with an income of under \$20,000 saw an increase from 13% in 2013 to 19% in 2015.⁶

Cost is a primary barrier to broadband use for non-internet users. Thirty three percent of these consumers do not have broadband at home as a result.⁷ An additional 10% cite the cost of buying a computer as the reason for not having broadband service.⁸ Although low-income households increasingly rely on the option of mobile broadband service,⁹ imposed data caps on service plans often place a roadblock on internet affordability for smartphone-reliant consumers.¹⁰

Without broadband access, these families face a major disadvantage to finding jobs, educational opportunities and healthcare.¹¹ This is also true for rural Americans. Ultimately, all Americans bear the enormous costs flowing from the inability to connect all American, particularly as more government and commercial services and applications are migrating online.

What’s at Stake: Ownership and Procurement Diversity Are at Dismal Levels in the U.S.

Congress adopted the Telecommunications Act of 1996 to provide communication businesses with the opportunity to compete in “any market against any other.”¹² Yet, since the 1996 Act, diverse ownership in the media, telecom and internet spaces has stalled at very low levels. Hispanic or Latino ownership made up 2.9% of the number of full-power television stations in 2013, and African American ownership made up 0.6% of these stations.¹³ In 2016, African Americans own 10 full power television stations; a single individual owns seven of these 10 stations, and he does not operate them.¹⁴ Minority ownership in the wireless, wireline, cable, and online media spaces stand at virtually zero.¹⁵ Multicultural ownership is important because ownership determines the diversity of viewpoints, stories, and issue analysis that is available to the American people.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See John B. Horrigan, *Home Broadband 2015*, Pew Research (December 21, 2015), available at <http://www.pewinternet.org/2015/12/21/home-broadband-2015/> (last visited July 8, 2016).

⁸ *Id.*

⁹ See *Understanding and Appreciating Zero-Rating: The Use and Impact of Free Data in the Mobile Broadband Sector*, MMTTC (May 2016), available at http://mmtconline.org/WhitePapers/MMTC_Zero_Rating_Impact_on_Consumers_May2016.pdf (last visited July 8, 2016).

¹⁰ See John B. Horrigan, *Home Broadband 2015*, Pew Research (December 21, 2015), available at <http://www.pewinternet.org/2015/12/21/home-broadband-2015/> (last visited July 8, 2016).

¹¹ *Id.*

¹² See *Telecommunications Act of 1996*, FCC (June 20, 2013), available at <https://www.fcc.gov/general/telecommunications-act-1996> (last visited July 8, 2016).

¹³ See Federal Communications Commission Media Bureau, *Report on Ownership of Commercial Broadcast Stations* (June 27, 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-14-924A1.pdf (last visited July 8, 2016).

¹⁴ See Nancy Vogt, *African American News Media: Fact Sheet*, Pew Research (June 15, 2016), available at <http://www.journalism.org/2016/06/15/african-american-media-fact-sheet/#broadcast> (last visited July 8, 2016);

information gathered by MMTTC Media and Telecom Brokers.

¹⁵ Information gathered by MMTTC Media and Telecom Brokers.

In 1969, broadcasting became the first federally regulated industry required to have equal employment opportunity programs.¹⁶ Yet since 2000, and after three decades of steady growth, employment of people of color in broadcasting has stagnated. The FCC no longer tracks employment of these groups, and FCC EEO enforcement is negligible. Despite comprising a third of the population, people of color comprise only 22% of the television news force and (while not FCC-regulated) only 13% of the daily newspaper workforce.¹⁷ Equal procurement opportunity regulations have been in effect for the cable and satellite industries since 1992, but the FCC has yet to extend these rules across all communications platforms. Equal employment opportunity and procurement in all communications industries are important because the pathways to ownership and influence begin with a job and with opportunities to supply goods and services. Further, AM radio, the platform of entry and greatest opportunity for minority broadcasters, is threatened with extinction, and the FCC has no plan to rescue the band or those whose livelihoods depend on it.

Twelve Imperatives for the New Administration

1. Appoint and support FCC leadership that integrates diversity and inclusion into the regulatory rulemaking and public engagement processes.

As the independent agency with oversight of the nation's regulated media and telecommunications industries, the FCC has an imperative to be both diverse and inclusive in its rulemaking, public engagement process, and staff. The FCC must also identify strategies for enabling and empowering historically disadvantaged communities and consumers to have access to high-speed broadband assets, training, and ownership opportunities that ensure inclusion. To meet these goals, the new administration should:

- Choose leaders that are representative in gender, race, and ethnic diversity, and sensitive to the needs of all consumers.
- Reinstate the Advisory Committee for Diversity in the Digital Age on January 21, 2017. Historically, the Diversity Committee has been comprised of leaders whose primary goals are to enhance diversity and inclusion in FCC rulemakings and policy proceedings, and advise Commission leadership on the potential impact of FCC rulemakings and policy proceedings on historically disadvantaged populations. Working with the agency leadership beginning in 2004, the Diversity Committee was the agency's core sounding board on critical issues related to minority ownership, procurement, employment, and consumer broadband adoption. The Diversity Committee has not been re-chartered since 2013, and the FCC should re-charter it immediately.
- Charge the FCC, in the first 100 days, with creating a measurable plan that expands staff diversity in key positions (e.g., bureau chiefs) and establish a new position of Chief Diversity Officer at the agency to ensure organizational accountability.
- Strengthen and position the Office of Communications Business Opportunities (OBCO) to manage the FCC's Diversity Committee and serve as the primary resource to agency staff and external stakeholders in the development of

¹⁶See *Nondiscrimination in the Employment Practices of Broadcast Licensees*, 18 FCC 2d 240 (1969).

¹⁷ See Michael Barthel, *In the News Industry, Diversity is lowest at Smaller Outlets*, Pew Research (August 4, 2015), available at <http://www.pewresearch.org/fact-tank/2015/08/04/in-the-news-industry-diversity-is-lowest-at-smaller-outlets/> (last visited July 8, 2016).

regulations and policies that are inclusive of people of color and other marginalized populations, including but not limited to rural populations.

2. Preserve the FCC’s Lifeline program and improve it to enhance marketplace competition and increase the number of eligible program participants.

The FCC’s Lifeline program was established in 1985, during the Reagan Administration, to help low-income households gain access to a “lifeline” of communication and emergency services through their home telephones.¹⁸ In 2016 the FCC extended the program to broadband and adopted extensive measures to ensure eligibility rule compliance.¹⁹ The program is deeply underfunded; 67% of qualified households still are not enrolled.²⁰ Going forward, the new administration should ensure that:

- Lifeline is funded at a level sufficient to meet the need of consumers.
- A national verifier system is developed by the Universal Service Administrative Company (USAC) to make it easier to identify eligible recipients and help them retain the benefit for the duration of their need.
- The Lifeline marketplace is competitive, offering to consumers a variety of carrier choices access to high-speed broadband services.
- The transition from wireline to mobile voice services is well-planned in order to protect consumers from “communications deserts,” or the lack of access to any affordable telephone service.

3. Maintain free data programs that can preserve the affordability of mobile services, especially for economically vulnerable populations who are extremely sensitive to data costs.

Free data in the mobile broadband space is still evolving to the benefit of consumers. Mobile operators are continually adjusting each of their programs in an effort to expand offerings, attract more partners, and cater to new consumer demands. Access to free data can also help economically disadvantaged or more budget-conscious consumers address barriers to digital adoption by reducing the cost of mobile services.²¹ As mobile broadband becomes an indispensable tool for people of color and other historically disadvantaged populations, free data can deliver additional benefits to these communities, especially in the areas of government services, health care, and other educational content. Going forward, the FCC should:

¹⁸ See FCC, *Lifeline Program for Low-Income Consumers*, FCC (June 20, 2016), available at <https://www.fcc.gov/general/lifeline-program-low-income-consumers> (last visited July 8, 2016).

¹⁹ See Federal Communications Commission, *Lifeline Program for Low-Income Consumers* (June 20, 2016), available at <https://www.fcc.gov/general/lifeline-program-low-income-consumers> (last visited July 8, 2016).

²⁰ See Universal Service Administrative Company (USAC), *Lifeline Statistics* (2015), available at <http://www.usac.org/li/about/process-overview/program-stats.aspx> (see Eligible Lifeline Population Statistics; last visited July 5, 2016).

²¹ See *Understanding and Appreciating Zero-Rating: The Use and Impact of Free Data in the Mobile Broadband Sector*, MMTc (May 2016), available at http://mmtconline.org/WhitePapers/MMTC_Zero_Rating_Impact_on_Consumers_May2016.pdf (last visited July 8, 2016).

- Maintain permissions under the agency’s Section 706 authority to govern free data programs on a case-by-case basis to allow for innovation, marketplace competition, and a pathway to digital equality.
- Support free data offerings that advance the public interest, and encourage the use of government services where offsetting the cost of data can result in improvements in quality of life for individuals and their communities.

4. Provide for multilingual emergency information in all radio markets.

For eleven years, MMTC and dozens of social justice partners have advocated for the development and dissemination of broadcast multilingual emergency information to protect human life before, during and in the wake of natural or man-made disasters. The FCC has refused to take the essential step of granting MMTC’s “Katrina Petition,” notwithstanding the lessons drawn from the communications isolation experienced by Spanish and Vietnamese-speaking persons in New Orleans during Hurricane Katrina.²² Thus, in October 2016, MMTC and the League of United Latin American Citizens (LULAC) asked the D.C. Circuit of the U.S. Court of Appeals to require the FCC to grant the Katrina Petition. Once the court rules, the FCC should act expeditiously to make mandatory, multilingual emergency information available in all radio markets.

5. Ban geographic redlining in broadband deployment to ensure ubiquitous access for all communities.

Geographic redlining of high speed broadband is the denial of service to entire neighborhoods based on the income, socio-economic condition, or race of their residents. Some high-speed fiber companies refuse to run fiber into economically disadvantaged neighborhoods, which precludes access to high-speed internet service by the people who need it most.²³ As high-speed broadband becomes a factor in securing an improved quality of life, today’s redlining of high-speed broadband will lock in and institutionalize social divides with an impact that would be difficult to reverse. Municipal authorities have shown that they do not possess the leverage to proscribe electronic redlining. Consequently it requires federal intervention. The White House and FCC must step in immediately and prohibit this dangerous and immoral practice. For its part, the first step the FCC should take is to convene an evidentiary hearing under Section 403 of the Communications Act to ascertain all the facts and provide a report to the commissioners with specific recommended actions.

6. Engage the multi-stakeholder process to enhance consumer privacy and counter “applications redlining” in the online marketplace.

Applications redlining (“app redlining”) is the use of consumer data to facilitate race or other illegal discrimination in consumer services through predictive analytics based on skewed algorithms. Apps on social media platforms collect data through the users’ interactions online and use this data to develop data on demographics, including race and socioeconomic status. The data can then be used to bar access to credit and employment, as well as public accommodations, ride-sharing, and even

²² See, *Letter to Marlene Dortch from Kim M. Keenan*, EB Docket 04-296 and EB Docket 06-119, filed January 21, 2016, available at <https://ecfsapi.fcc.gov/file/60001409805.pdf> (last visited November 1, 2016).

²³ See, e.g., David Crow, *Google in Kansas City: A tale of two-speed America*, September 4, 2015, available at <http://www.ft.com/intl/cms/s/0/7e18b044-51c3-11e5-8642-453585f2cfcd.html#axzz3ladRlebQ> (last visited July 6, 2016).

short-term housing.²⁴ App redlining facilitates new forms of discrimination that were not contemplated at the time civil rights legislation such as the Civil Rights Act of 1964 and the Equal Credit Act of 1974 were adopted.²⁵

To accomplish this, the White House's Office of Science and Technology Policy (OSTP), the Department of Commerce's National Telecommunications Information Administration (NTIA), the Federal Trade Commission (FTC), the FCC, and the Justice Department should convene a joint working group on "Disparities Online," comprised of privacy experts, industry, government agencies, social justice, consumer and civil rights organizations, to develop a set of recommendations on the growing prevalence of apps redlining and the impact on consumers, especially those that are most vulnerable to online predatory practices.

7. Work with State Public Utility Commissions (PUCs) and the FCC to ban predatory intrastate and interstate telephone rates charged to prisoners and their families.

Telephone call rates charged to prisoners and their families continue to be a "tax on pain"²⁶ as a result of exorbitant, and mostly unnecessary rates and surcharges.²⁷ Although the FCC adopted reforms to reduce inmate calling rates, these reforms are being challenged by state prison systems that continue to levy historic exorbitant and largely gratuitous surcharges on calling rates. These rates are far beyond the cost of service or any security issues. Research has demonstrated that the lack of contact between inmates and their communities facilitates recidivism. The individuals who suffer the most are the families of the prisoners who are often already under insurmountable financial strain.²⁸ The new administration should join with public interest and civil rights advocates seeking an aggressive FCC and state PUC crackdown on these rates. In this way the administration can help reduce recidivism rates and enhance family integration of those who are incarcerated and are ultimately released.

8. Engage the FCC and the Department of Labor to address employment discrimination in all communications industries and, especially, the dismal EEO record of the high tech industry.

The practice of predominantly word-of-mouth recruitment from a homogeneous workplace is inherently discriminatory,²⁹ and such discrimination disqualifies an applicant from holding an FCC

²⁴ See generally Federal Trade Commission, *Big Data: A Tool for Inclusion or Exclusion* (2016), available at <https://www.ftc.gov/system/files/documents/reports/big-data-tool-inclusion-or-exclusion-understanding-issues/160106big-data-rpt.pdf> (last visited July 8, 2016).

²⁵ See Aaron Belzer and Nancy Leong, *Can Civil-Rights Law Stop Racial Discrimination on Airbnb*, Washington Post (May 2, 2016), available at <https://www.washingtonpost.com/news/monkey-cage/wp/2016/05/01/can-civil-rights-law-stop-racial-discrimination-on-airbnb/> (last visited July 6, 2016).

²⁶ See, "Transcript: MMTTC President and CEO Kim Keenan's State of Broadband and Social Justice Address," (February 13, 2015), available at <http://broadbandandsocialjustice.org/2015/02/transcript-mmmtc-president-and-ceo-kim-keenans-state-of-broadband-and-social-justice-address/> (last visited November 1, 2016).

²⁷ See, Civil Rights Coalition, Letter to the Honorable Tom Wheeler, WC Docket No. 12-375, filed October 15, 2015, available at http://www.mmtconline.org/wp-content/uploads/2015/10/MMTC-Civil-Rights-Inmate-Calling-Services-Letter_10.16.15.pdf (last visited November 1, 2016).

²⁸ See Federal Communications Commission, *Fact Sheet: Ensuring Just, Reasonable, and Fair Rates for Inmate Calling Services*, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-335571A1.pdf (last visited July 7, 2016).

²⁹ See, e.g., *Jacor Broadcasting Corp.*, 12 FCC Rcd 7934, 7939 ¶14 (1997) and *Walton Broadcasting, Inc.*, 78 FCC2d 857, 875, *recon. denied*, 83 FCC2d 440 (1980).

license.³⁰ Unfortunately, the FCC's broadcast and cable EEO audits only examine recruitment; they do not consider the homogeneity of the workplace from which word-of-mouth recruitment occurs. This grave deficiency in regulatory practice disables the FCC from rooting out discriminators. The new administration should correct this regulatory deficiency and, beyond that, engage in a thorough review of the employment of under-represented groups in the industries that now comprise more than one-sixth of the nation's economy. We recommend that the new administration:

- Restore FCC EEO enforcement premised on identifying regulatees that recruit primarily by word of mouth from homogeneous workplaces.
- Open an investigation led by the Department of Labor on the hiring and retention practices employed by high tech companies, including but not limited to those that have publicly acknowledged their dismal employment trends while doing little to correct these trends.
- Direct the Department of Labor to gather and report annual employment data in high tech industries, and further direct each federal agency and department to determine how to ensure that in its purchasing of goods and services, it is not using taxpayers' dollars to underwrite the exclusion of diverse suppliers' from employment pipelines.³¹

9. Extend FCC equal procurement opportunity enforcement to all regulatory platforms, and engage the General Accounting Office to ensure that federal agencies and departments consider diversity in procurement when choosing suppliers.

Adopted as a result of the 1992 Cable Act, the FCC's MVPD (multichannel video programming distributor) Procurement Rule instituted mandatory reporting requirements.³² Over the years, most of the nation's cable and satellite companies have developed comprehensive and effective minority procurement programs that have enriched and diversified their industries and their broad ecosystems that include employment, innovation and governance. The time has come to extend the MVPD Procurement Rule to all communications technologies, including FCC-regulated industries, and high tech Title I information services that the FCC does not directly regulate.³³ Recently, the FCC refused to take up this proposal even in the face of a court remand directing the FCC to consider the proposal at least insofar as it applied to broadcasting.³⁴

³⁰ See, e.g., *Beaumont Branch of the NAACP v. FCC*, 854 F.2d 501 (D.C. Cir. 1988).

³¹ See, e.g., *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961).

³² 47 U.S.C. §554(d)(2)(E) (FCC must develop rules to ensure that an MVPD shall "encourage minority and female entrepreneurs to conduct business with all parts of its operation"). The rules are found at 47 C.F.R. §76.75(e).

³³ See MMTC Letter to Chairman Tom Wheeler, 2014 Quadrennial Review, MB Docket No. 14-50 *et al.*, filed June 24, 2016, available at <http://www.mmtconline.org/wp-content/uploads/2016/06/MMTC-Five-Proposals-062416.pdf> (last visited July 6, 2016), p. 6 ("Extension of the highly successful MVPD procurement rule to all regulatees - and a request for compliance by Title I services backed up by a referral to the GAO - would be the single most powerful step the Wheeler Commission could take to establish its civil rights legacy for years to come."). See also, in an letter without precedent in the history of the FCC, four former FCC chairs declared that "[o]n the national stage, the extension of equal procurement opportunity to industry constituting one-sixth of the economy would be an enormous civil rights achievement[.] in Letter of Hon. Reed Hundt, Hon. William Kennard, Hon. Michael Copps and Hon. Julius Genachowski to Hon. Tom Wheeler, MB Docket 14-50 *et al.* (filed Aug. 5, 2016), available at <https://www.fcc.gov/ecfs/filing/1080581619752/document/108058161975273d2> (last visited Aug. 28, 2016).

³⁴ See 2014 Quad Order at 142-43 ¶1330.

As a purchaser of a large volume of goods and services, the federal government has the ability to leverage superior procurement programs among its vendors. Most Title I information services are very large government contractors, and they tend to have poor diversity records.³⁵

Thus, to expand minority procurement opportunities, the new administration should:

- Charge the FCC with extending the MVPD Procurement Rule across all regulated industries within its regulatory jurisdiction, and calling for voluntary compliance from Title I services.
- Direct the General Accounting Office (GAO) to report on high tech services' procurement practices so that each federal agency and department can determine how to ensure that in its purchasing of goods and services, it is not using taxpayers' dollars to underwrite exclusion of diverse suppliers' from procurement pipelines.³⁶

10. Encourage the FCC to adopt an Overcoming Disadvantages Preference (“ODP”) that would define eligible entities for competitive authorizations and thereby increase ownership diversity.

The FCC's current definition of eligible entity - “small business” - is so dilute that it is ineffectual as a mechanism for reducing the deep racial disparities in media and telecom asset holdings. The Overcoming Disadvantages Preference (“ODP”) is a race-neutral designation, developed in 2010 by the FCC's (former) Advisory Committee on Diversity, that would enhance the pool of qualified applicants for FCC authorizations such as discounts in spectrum auctions.³⁷ In contrast to the “small business” definition, the ODP could be awarded to applicants based on the extraordinary individual efforts they have devoted to overcoming any of several very serious disadvantages such as physical handicaps, structural poverty and race discrimination.³⁸ This designation could offer policymakers a race-neutral solution to affirmative action that is based on individual achievement and initiative.³⁹

11. Incentivize Secondary Market Transactions in commercial wireless spectrum by using tax incentives, auction bidding credits and other measures.

As the current administration has supported more robust spectrum policy, ownership of commercial wireless spectrum by minority- and women-owned business enterprises (“MWBs”) is close to non-existent. MWBs' lack of access to capital make it increasingly difficult for these businesses to gain access to commercial spectrum, limiting any and all opportunities for sustainable business ventures.

³⁵ See, e.g., Rebecca O. Bagley, Why We Need More Minority High-Tech Entrepreneurs, *Forbes*, November 1, 2013, available at <http://www.forbes.com/sites/rebeccabagley/2013/11/01/why-we-need-more-minority-tech-entrepreneurs/#55ff08255dc0> (last visited July 10, 2016) (reporting that only 4% of high tech businesses are minority owned).

³⁶ See, e.g., *Burton v. Wilmington Parking Authority*, *supra*.

³⁷ See Federal Communications Commission, *Diversity Federal Advisory Committee Meeting* (October 14, 2010), available at <https://transition.fcc.gov/DiversityFAC/meeting101410.html> (last visited July 8, 2016).

³⁸ See MMTC Comments, Overcoming Disadvantages Preference, GN Docket 10-244 (filed February 7, 2011), available at <http://mmtconline.org/lp-pdf/MMTC%20ODP%20Comments%20020711.pdf> (last visited July 6, 2016).

³⁹ ODP was rejected in *2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Second Report and Order, MB Docket No. 14-50 *et al.*, FCC 16-107 (rel. Aug. 25, 2016) (“2014 Quad Order”) at 130-31 ¶1306. Unfortunately the Commission did not have an opportunity to consider, in this decision, a revised and expanded ODP proposal submitted by MMTC on August 10, 2016. Ironically, without notice, on August 10, 2016, the Commission voted on the Second Report and Order.

The new administration can offer support to enhance *secondary market transactions*, a vehicle that can lower capital barriers to entry for MWBEs when acquiring commercial spectrum assets. In a secondary market transaction, a large telecom company sells broadcast spectrum it does not need to other telecom companies, including minority and small businesses as well as new entrants.⁴⁰ These transactions promote a competitive and diverse wireless marketplace. Incentivizing these transactions, rather than tightly regulating them, would create the most direct path toward including small businesses in the telecom industry.

The new administration, in partnership with the FCC and the Small Business Administration, could develop this marketplace for telecom providers by adopting incentives that include:

- The restoration of the tax certificate policy, which from 1978 to 1995 enabled sellers of broadcast stations to minorities to defer capital gains on the sale;⁴¹
- The creation of an auction bidding credit for companies that sell assets to eligible entities;⁴²
- The inclusion of secondary market transactions in M&A analysis;⁴³ and
- Consideration of secondary market transactions to minority and women-owned companies in the Commission's annual wireless competition reports to Congress.⁴⁴

These incentives would benefit minority and women-owned telecom companies while providing all consumers with a more innovative, diverse and affordable product base.

12. Create a "Glide Path" for the Short-Term Survival and Long-Term Humane Decommissioning of the AM Band in a Manner that Preserves Minority Ownership.

Commission policy should facilitate the preservation of AM radio's program services when the AM band disappears. It should seek to ensure that AM broadcasters receive fair compensation for the loss of their assets as well as assistance in transitioning their programming to other platforms. For that purpose, MMTC has formed the MMTC AM Glide Path Taskforce.

AM Radio was once the dominant form of broadcasting in the United States. It provided millions of listeners with access to news and entertainment. AM has been the entry communications technology for entrepreneurs of color; even today, approximately 60% of all minority owned radio stations are AM facilities. The great majority of multilingual radio service today is found on the AM band.

⁴⁰ See *Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets, Policy Statement*, 15 FCC Rcd 24,178 ¶12 (2000).

⁴¹ See MMTC Petition for Partial Reconsideration, Updating Part I Competitive Bidding Rules, WT Docket 14-170 *et al.* (filed October 19, 2014), available at <http://www.mmtconline.org/wp-content/uploads/2015/10/MMTC-Secondary-Markets-Recon-101915.pdf> (last visited July 6, 2016).

⁴² *Id.*

⁴³ *Id.* Recent media and telecom mergers present a prime opportunity for minority- and women-owned entrepreneurs to bid on spinoff assets. The local and national ownership rules limit the size of television station platforms nationally and the size of radio and television station platforms locally. See 47 C.F.R. §73.3555. Many large broadcast mergers cannot be completed without divestitures in order to comply with these rules. The FCC should encourage the voluntary placement of these divestitures with minority- and women-owned companies, and work closely with sellers to expedite application processing in order to facilitate these asset transfers.

⁴⁴ *Id.*

The FCC has enacted a series of modest engineering reforms: opening FM translator windows for AM stations, repealing the “ratchet rule,” and decreasing the community coverage requirement for AM stations lacking the capital and infrastructure to abide by the community coverage rule.⁴⁵

Despite these rule reforms, the fast-moving pace of technological development leaves AM stations, in the long term, constantly trying to catch up with their FM and new media counterparts. Compounding the technological advances hindering AM stations is a lack of capital flowing into AM. AM listenership is on a steep decline, and AM radio stations are feeling the brunt of it. Realistically, AM may disappear in 30 years or less.

Models for this relief can be found in the eminent domain policies of most states,⁴⁶ as well as federal government programs aimed at transitioning tobacco farmers to other crops,⁴⁷ and transitioning coal mining to other energy sources.⁴⁸

Thus, it is time to start thinking about a future without AM radio. Should that happen, many AM station owners will need assistance transitioning to other platforms such as FM subchannels and online stations. We should consider the desirability of regulatory relief that may include some ownership structure rule relaxation for the limited purpose of ensuring that station sellers will find buyers, and compensation or tax incentives for turning in an AM license. As a first step, we encourage the Commission to work with the MMTC AM Glide Path Taskforce to identify potential uses of the low-band spectrum now assigned to AM, such as maritime mobile, aeronautical fixed, and aeronautical mobile, as well as exploring new potential classes of users such as drones, driverless vehicles, rural irrigation, and the Internet of Things (IOT). Ultimately, these new users can be cobbled together into a market for AM spectrum that can enable AM owners to find buyers and leapfrog into newer platforms that can support their programming.

Imperative Solutions for Digital Inclusion

The new administration is in a position to make regulatory decisions that, by facilitating inclusion, will foster more competition and participation in the media, telecom, and technology industries. This competition is good for business, good for consumers, and good for the nation’s economy. The 12 Imperatives outlined above will help undo years of structural disparity in opportunities for minorities and women to participate in the nation’s most influential industries. The Imperatives will provide opportunities for new entrepreneurs to participate, spur competition and innovation, and stimulate our nation’s economy.

⁴⁵ See *Revitalization of the AM Radio Service, First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry*, MB Docket No. 13-249, 30 FCC Rcd 12145 (2015).

⁴⁶ See, e.g., Nathan Koppel, *There Goes the Neighborhood: A Fight Over Defining ‘Blight’* (April 30, 2009), available at <http://www.wsj.com/articles/SB124105581784671561> (last visited August 2, 2016).

⁴⁷ See Nathan Bomey, *Thousands of Farmers Stopped Growing Tobacco after Deregulation Payouts* (September 2, 2015), available at <http://www.usatoday.com/story/money/2015/09/02/thousands-farmers-stopped-growing-tobacco-after-deregulation-payouts/32115163/> (last visited July 31, 2016).

⁴⁸ See *Investing in Coal Communities, Workers, and Technology: The Power+ Plan*, available at https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/fact_sheets/Investing%20in%20Coal%20Communities.pdf (last visited July 29, 2016).

The Multicultural Media, Telecom and Internet Council welcomes a dialogue on these Imperatives and looks forward to working with the new administration to ensure equal access to technology and opportunities for entrepreneurship for all Americans.⁴⁹

⁴⁹ MMTC acknowledges and appreciates the assistance of these former MMTC staff members and associates in the preparation of this Memorandum: Vice President and COO Maurita Coley, Vice President for Research and Policy Dr. Nicol Turner-Lee, and Earle K. Moore Fellows Meagan Sunn and Stephanie Martin-Thom.