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January 21, 2009

Hon. Barack Obama
President of the United States
1600 Pennsylvania Ave. N.W.
Washington, D.C. 20500

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Dear Mr. President:

RE: Executive Orders to Advance Minority Participation
in the Media and Telecommunications Industries

We are inspired by your plan to revive our nation's economy by making "the single new largest investment in our national infrastructure"¹ since President Roosevelt's New Deal programs of the 1930's. As the nation works toward the new economic revival, we must ensure that, unlike the programs of the 1930's, the nation's minority entrepreneurs and citizens are included as an integral component in the revitalization of our national economy.

To accomplish this goal, we encourage you to aggressively renew efforts to promote diversity in federal contracting, advertising, emergency services, and education. This requires swift movement to eradicate agency guidance and practices that have eliminated or imposed heightened requirements to maintaining diversity in federal programs. At your direction, federal departments and executive agencies should act decisively to restore enforcement and compliance with executive orders covering diversity and civil rights.

Nowhere is there a greater need for the judicious use of executive orders than to advance diversity and inclusion in our most powerful and influential industries – media and telecommunications. We draw encouragement from your intention to "encourage diversity in the ownership of broadcast media" and to "promote the

¹ President-Elect Obama, Weekly Radio Address, December 6, 2008, available at http://change.gov/newsroom/entry/the_key_parts_of_the_jobs_plan/ (last visited January 3, 2009).

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development of new media outlets for expression of diverse viewpoints.”² Being among those sharing this goal, this past summer we released the MMTC Road Map for Telecommunications Policy (July 2008), a copy of which is enclosed. It contains many of the proposals set out below.

Minority Business Enterprises’ Access to Federal Contracting

In 2000, President Clinton signed Executive Order 13170,³ which required the federal government to ensure nondiscrimination in federal procurement opportunities for businesses in the Small Disadvantaged Business Program (SDBs), businesses in the Section 8(a) Business Development program of the Small Business Administration, and Minority Business Enterprises (MBEs), and to take affirmative action to ensure inclusion of these businesses in federal contracting.⁴

The Executive Order detailed the procurement responsibilities of each executive department and agency by stating that “each department and agency shall...aggressively seek to ensure that 8(a)s, SDBs, and MBEs are aware of future prime contracting opportunities through wide dissemination of contract announcements...”⁵ Executive Order 13170 went on to require each federal department and agency to take all reasonable steps to ensure that prime contractors meet or exceed federal subcontracting goals and enforce subcontracting commitments required by the Small Business Act⁶ and other related laws.⁷

Executive Order 13170 specifically requires federal departments and agencies to ensure substantial 8(a), SDB, and MBE participation in procurement for and related to information technology, including procurement in the telecommunications industry.⁸

² Barack Obama: Connecting and Empowering All Americans Through Technology and Innovation, p. 3 (available at http://www.barackobama.com/pdf/issues/technology/Fact_Sheet_Innovation_and_Technology.pdf) (lasted visited January 8, 2009).

³ Increasing Opportunity and Access for Disadvantaged Businesses, Executive Order 13170, 65 Fed. Reg. 60825 (signed October 12, 2000).

⁴ Id. at 60827.

⁵ Id. at 60828.

⁶ 15 U.S.C. §637(d) (requiring that small businesses owned and controlled by socially and economically disadvantaged individuals and women, shall have the maximum practicable opportunity to participate in the performance of contracts let by any federal agency).

⁷ Executive Order 13170 at 60827.

⁸ Id. at 60829.

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With the United States ranking only 15th in the world in broadband adoption,⁹ you have pledged to expand Americans' access to broadband as part of a massive new public works program designed to generate jobs and improve the economy.¹⁰ As this program progresses, it is crucial to focus on zealous enforcement of Executive Order 13170 to ensure that minority businesses are extensively included as federal contractors and subcontractors in this broadband public works program. It is also crucial for the government to ensure that the vitality of minority businesses is revitalized along with the rest of the nation's economy.

I am enclosing legislative recommendations released today by the National Urban League and MMTC that cover the broadband portion of the economic stimulus package. Our recommendations are aimed at ensuring that minority entrepreneurs and contractors will be included in all stimulus initiatives. As your administration implements the stimulus package, close attention and maximum enforcement of Executive Order 13170 will be essential.

A shining example of how the inclusion of minority contractors can boost the economy is Atlanta Mayor Maynard Jackson's insistence on including minority contractors in the 1974 expansion of Atlanta's Hartsfield Airport into an international hub. By 1976, Mayor Jackson had prevailed in his plan of including minority contractors by getting commitments from corporations to engage in joint ventures with minority firms. His diligence boosted the percentage of contracts to minorities from less than 1% in 1973 to roughly 39% by 1978 and produced three times more general contractors than any other U.S. city.¹¹

In the telecommunications industry alone, tens of billions of dollars are spent annually on capital expenditures - particularly engineering, furnishings, installation and construction, programming, and operation services. Minority contractors are rarely full partners in providing procurement of these services.¹² To achieve your goal of taking "aggressive steps to jump-start job creation,"¹³ minority contractors should have the opportunity to participate

⁹ Explaining International Broadband Leadership, by Robert D. Atkinson, Daniel K. Correa, and Julie A. Hedlund, The Information Technology & Innovation Foundation (May 1, 2008) available at <http://www.itif.org/files/ExplainingBBLeadership.pdf> (last visited January 3, 2009).

¹⁰ The Obama-Biden Plan, available at http://change.gov/agenda/economy_agenda/ (last visited January 14, 2009).

¹¹ Derek T. Dingle, Maynard Jackson: creating a bully pulpit for black business; this bold politician used his city hall office to create black millionaires, Black Enterprise, May 2005.

¹² Recommendation on Procurement Issues, Emerging Technologies Subcommittee Recommendation to the Federal Communications Commission's Advisory Committee on Diversity for Communications in the Digital Age, June 10, 2008.

¹³ The Obama-Biden Plan, available at http://change.gov/agenda/economy_agenda/ (last visited January 14, 2009).

fully in the buildout of this country's broadband infrastructure. In this way, minority communities that traditionally have been the most adversely affected and marginalized during national economic recessions will be lifted up along with the rest of the nation toward economic recovery.

Strengthen Federal Advertising Diversity

Executive Order 13170 requires federal departments and agencies that use broadcast advertising to "take an aggressive role" to ensure that federal government advertising be placed on television and radio stations owned by minorities.¹⁴ Executive Order 13170 also requires federal agencies to pay fair market rates for such advertising. Unfortunately, the Bush administration was anything but "aggressive" in using minority media for federal advertising.

The Government Accountability Office (GAO) released a report in 2007 which found that in 2005, federal spending on advertising totaled over \$4 billion, making the federal government one of the top 50 advertisers in the nation.¹⁵ Over 90 percent of this spending from 2001 to 2005 was attributable to the Departments of Defense, Treasury, Health and Human Services, Interior, and the National Aeronautics and Space Administration.¹⁶

The GAO report also found that over the five-year period, the Department of Defense, which was the largest federal agency advertiser, accounted for more than 50 percent of these advertising-related obligations. Unfortunately, over the period of the study, DOD awarded on average less than two percent of its advertising dollars to minority-owned broadcasters.¹⁷

More focus and vigorous enforcement of the federal advertising provision of Executive Order 13170 is absolutely necessary. We encourage your administration to reissue Executive Order 13170 and develop specific targets, monitoring, and compliance provisions to ensure that the federal advertising goals of Executive Order 13170 are fully achieved.

¹⁴ 65 Fed. Reg. 60827, 60829 §4 (2000).

¹⁵ See Federal Advertising: Established Programs Were Largely Used to Address Executive Order Directive to Ensure Small and Minority-Owned Business Participation, GAO-07-877, Government Accountability Office (July 2007).

¹⁶ Id.

¹⁷ Id.

Require FEMA, NWS, and NOAA to Provide Multilingual Emergency Services

No one should die in an emergency because he or she doesn't speak English fluently. Therefore it is vital that your administration act rapidly to cure the previous administration's stunning failure to ensure that our system of emergency communications communicates both warnings and survival information in widely spoken languages other than English.

In August 2005, Hurricane Katrina disabled the only Spanish language full-service broadcast station in New Orleans, with devastating results. Over 100,000 Spanish speaking residents of the area were left with no print or broadcast communications (and almost no telephone service) for over a week when they needed access to information the most. This tragic event magnifies the urgent need for emergency information to be collected, verified and voiced (not just translated) into Spanish, Chinese, and other languages that are widely spoken in most communities.

In 2006, President Bush signed Executive Order 13407, which requires the "United States to have an effective, reliable, integrated, flexible, and comprehensive system to alert and warn the American people in situations of ...natural disaster, or other hazards to public safety and well-being (public alert and warning system)..."¹⁸ This Executive Order further requires the public alert and warning system to include "the capability to alert and warn all Americans, including those with disabilities and those without an understanding of the English language..."¹⁹

Unfortunately, none of the federal agencies (FEMA, NWS and NOAA) that are responsible for alerting the nation during times of emergency has implemented a system to transmit public alerts and warnings in any language other than English. The most critical need is at the NWS, which initiates approximately 85% of all Emergency Alert System (EAS) alerts. Currently, NWS provides no local weather warning in Spanish because it employs no Spanish speaking staff in the relevant office.

Emergency broadcast services are only as strong as the weakest link in the chain of warning and communications. To effectuate the reliable and effective public alert and warning system that is required in Executive Order 13407, your administration should require that each of the federal entities responsible for providing emergency warnings employ multilingual staff members and transmit warnings and substantive emergency information in all widely spoken languages.

¹⁸ Public Alert and Warning System, Executive Order 13407, 71 Fed. Reg. 36975 (signed June 26, 2006), amending Assignment of National Security and Emergency Preparedness Telecommunications Functions, Executive Order 12472, 49 Fed. Reg. 13471 (signed April 3, 1984).

¹⁹ Id.

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Your administration should also propose that Congress appropriate sufficient funds to enable broadcasters to rapidly implement a comprehensive multilingual emergency broadcast plan. An example of such a plan, developed by the Independent Spanish Broadcasters Association (ISBA), the Office of Communication of the United Church of Christ, Inc. (UCC) and MMTC is provided in the MMTC Road Map For Telecommunications Policy.²⁰

Ensure That Broadband Stimulus Funds Reach Postsecondary Educational Institutions Historically and Predominately Serving Minority Students

Today the National Urban League and MMTC released “A Broadband Stimulus Plan to Benefit All Americans,” which I am enclosing. Among our recommendations was funding for broadband infrastructure installation and maintenance training of minority unemployed and underemployed workers who live in broadband-deprived urban and rural areas. We recommended that Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions (HSIs) and Native American Serving Institutions (NASIs) be foremost among the entities eligible to implement this initiative. Since these educational institutions are already receiving assistance pursuant to Presidential executive orders, you may be able to effectuate much of our proposal without the need for legislation. Here is the background on the relevant executive orders:

In 2001, President Bush signed Executive Order 13230, which established the President’s Advisory Commission on Educational Excellence for Hispanic Americans.²¹ In 2007, President Bush signed Executive Order 13446,²² which required the continuation of the President’s Board of Advisors on Historically Black Colleges and Universities,²³ and the President’s Board on Tribal Colleges and Universities.²⁴ All three of these advisory panels are established within the Department of Education.

²⁰ MMTC Road Map for Telecommunications Policy (July 21, 2008), pp. 13-14. The “Universal Emergency Broadcasting” proposal would require broadcasters in each radio market to adopt a system under which predetermined “designated hitter” stations would broadcast emergency alerts and emergency information in the widely spoken languages of the community if, during an emergency, no full-service broadcast station in those languages is on the air.

²¹ President’s Advisory Commission on Educational Excellence for Hispanic Americans, Executive Order 13230, 66 Fed. Reg. 52841 (signed October 12, 2001) (“Executive Order 13230”).

²² Continuance of Certain Federal Advisory Committees and Amendments to and Revocation of Other Executive Orders, Executive Order 13446, 72 Fed. Reg. 56175 (signed September 28, 2007).

²³ See President’s Board of Advisors on Historically Black Colleges and Universities, Executive Order 13256, 67 Fed. Reg. 6823 (signed February 12, 2002) (“Executive Order 13256”).

²⁴ See Tribal Colleges and Universities, Executive Order 13270, 67 Fed. Reg. 45288 (signed July 3, 2002) (“Executive Order 13270”).

These panels are charged with the responsibilities of reporting and advising the President on how their respective constituencies have or can effectively maximize the use of federal education programs and initiatives. The Executive Orders also call for executive departments or agencies to increase the capacity of these minority groups to compete effectively for federal grants, contracts, or cooperative agreements²⁵ and to provide information on their participation in federal education programs.²⁶

The Department of Education's Institutional Development and Undergraduate Education Service (IDUES) administers the Aid for Institutional Development programs (commonly referred to as the Title III programs). Title III programs support improvements in educational quality, management, and financial stability at qualifying postsecondary institutions. Funding for these programs is focused on institutions that enroll large proportions of minority and financially disadvantaged students with low per-student expenditures.²⁷ The programs provide financial assistance to help institutions solve problems that threaten their ability to survive, to improve their management and fiscal operations, and to build endowments.²⁸

From its inception in the 1970s, one of the primary missions of the Title III programs has been to support the nation's Historically Black Colleges and Universities.²⁹ Funds for journalism and mass communication programs at HBCUs are derived primarily from Title III.³⁰

The Title III programs have been expanded to support American Indian Tribally Controlled Colleges and Universities, and Alaska Native and Native Hawaiian Serving Institutions. The Title III programs also include the Minority Science and Engineering Improvement Program. Title V, the Developing Hispanic-Serving Institutions Program, has been included as a program to strengthen institutions serving Hispanic and other low-income students.³¹

²⁵ See Executive Order 13256 and Executive Order 13270.

²⁶ See Executive Order 13230.

²⁷ U.S. Department of Education, Office of Postsecondary Education website, available at <http://www.ed.gov/about/offices/list/ope/idues/index.html> (last visited January 3, 2009).

²⁸ Id.

²⁹ Id.

³⁰ Phillip Jeter, Journalism and Mass Communications Education at HBCUs: History and Current Issues, Education, Vol. 123 Number 1 (Fall 2002), available at http://findarticles.com/p/articles/mi_qa3673/is_ai_n28956860 (last visited January 3, 2009).

³¹ U.S. Department of Education, Office of Postsecondary Education website, <http://www.ed.gov/about/offices/list/ope/idues/index.html> (last visited January 3, 2009).

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HBCUs, HSIs and NASIs are well equipped to assist the administration in implementing all of its economic stimulus initiatives, especially the broadband portion. We would be deeply appreciative of any consideration that could be given to the inclusion of these institutions in the economic stimulus package.

We would be pleased to assist your staff in reviewing the executive orders discussed here and considering the desirability of applying them to promote diversity and inclusion in the media and telecommunications industries.

Sincerely,

David Honig

David Honig
Executive Director

Enclosures