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June 28, 2018

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RE: DHS Docket No. USCIS-2015-0006: Comments of the Multicultural Media, Telecom and Internet Council on the Proposed Rule Rescinding the International Entrepreneur Program

Dear Chief Deshommes:

The Multicultural Media, Telecom and Internet Council (“MMTC”) respectfully submits these comments in response to the Department of Homeland Security’s (“DHS”) Notice of Proposed Rulemaking, *Removal of International Entrepreneur Parole Program*, DHS Docket No. USCIS-2015-0006, 83 Fed. Reg. 24415 (May 29, 2018) (“NPRM”). The NPRM proposes to remove the DHS regulations pertaining to the International Entrepreneur Program (“IEP”), which granted parole to foreign entrepreneurs to work in the United States if they met certain criteria. MMTC opposes the proposed rescission of the IEP and believes the program should be allowed to continue.

While MMTC agrees with the majority of commenters that the IEP should be implemented because it is a good policy for the United States, MMTC also has specific concerns about the effect rescission would have on the media, telecom, broadband, and internet industries (collectively, the “communications industry”) that are at the heart of MMTC’s mission. MMTC believes that rescission of the IEP

would limit access to capital and innovation for minority-owned communications companies and stifle opportunities to expand the diversity of viewpoints in the communications industry.

Further, DHS' assertion that the "significant public benefit" criterion is too "complex" for an agency to implement is unavailing. *See* NPRM, 83 Fed. Reg. at 24418. For years, the FCC has demonstrated the ability to readily ascertain whether approving a broadcast license application for a non-U.S. entity would be in "the public interest." MMTC sees no reason why the "public benefit" determination would be more complicated.

Discussion

I. MMTC AGREES WITH THE MAJORITY OF COMMENTERS THAT IMPLEMENTATION OF THE IEP WOULD BENEFIT ALL INDUSTRIES, INCLUDING THE COMMUNICATIONS INDUSTRY.

MMTC agrees with the vast majority of comments from key stakeholders in various industries, including the technology industry, that allowing the IEP to be implemented would have a positive effect on all industries and that the rescission would be detrimental to innovation and job creation in the United States. For example, Dell explains that the IEP "will help to create new jobs and have a positive impact on the U.S. economy by attracting investment and generating revenue." Comments of Dell, DHS Docket No. USCIS-2015-0006 (filed Aug. 10, 2017) ("Dell Comments"). Dell explains that new businesses have created an average of 1.5 million jobs per year over the past thirty years and were better suited to deal with the negative effects of the Great Recession than larger, older companies. *See id.* Rescission of the IEP would prevent entrepreneurs from coming to the United States to start these new businesses and would prevent the economy, including the communications industry, from reaching its full potential.

Similarly, MMTC agrees with commenters who point out that rescinding the IEP would voluntarily cede the United States' status as a world leader in innovation and technology. *See, e.g.*, Comments of National Venture Capital Association ("NVCA"), DHS Docket No. USCIS 2015-0006 (filed Aug. 3, 2017) ("NVCA Comments"); Comments of University City Science Center, DHS Docket No. USCIS 2015-0006 (filed Aug. 10, 2017). As explained by other commenters, it is imperative that the United States stay at the forefront of

innovation, and rescinding the IEP would hinder the United States in that endeavor. *See* NVCA Comments, at 2.

II. RESCINDING THE IEP WOULD STIFLE INNOVATION IN THE UNITED STATES COMMUNICATIONS INDUSTRY.

While MMTC generally agrees with other commenters that the IEP would have positive effects on the United States' economy and ability to innovate, MMTC is especially concerned that rescission would lead to a stifling of innovation in the United States' communications industry. The communications industry relies on the innovation and creativity of entrepreneurs. Innovation and technological advancements in the communications sector can produce new market entrants with diverse viewpoints as well as improve access to internet and other communication technology for Americans held back by the digital divide.¹ As other commenters have pointed out, if the United States is not willing to accept foreign entrepreneurs, those entrepreneurs would go elsewhere and take their innovative energy with them. *See, e.g.,* NVCA Comments, at 2 and pp. 4-5 *infra*. Further, the United States risks hindering innovation in U.S.-based companies if other countries decide to respond to the United States' actions with their own protectionist measures. *See* pp. 5-6 *infra*.

Rescinding the IEP would restrict the communications industry from access to important technological advances. The communications industry is constantly shifting and growing as technology advances. The ability to spread messages or communicate in new or more efficient ways drives the communications industry forward. As the FCC noted, the "most potent sources of innovation often arise not from incumbents but from new entrants." *In the Matter of Promoting Diversification of Ownership in the Broadcasting Services*, 73 Fed. Reg. 28361, 28362 (May 16, 2008) ("*FCC 2008 Diversification Order*"). Foreign entrepreneurs have proven to be especially "potent sources of innovation." According to one study, immigrants have started more than half of America's startup companies valued at \$1 billion dollars or more and represent a sizable portion of management or product development at those companies. *See* Stuart Anderson, National Foundation of American Policy, IMMIGRANTS AND BILLION DOLLAR STARTUPS 1 (Mar. 2016), available at <http://nfap.com/wp->

¹ The digital divide refers to the gap between people who have access to broadband services and know how to use the internet and those who do not have such access or knowledge.

content/uploads/2016/03/Immigrants-and-Billion-Dollar-Startups.NFAP-Policy-Brief.March2016.pdf (“*NFAP Policy Brief*”). Expanding the pool of competitors in media markets to include businesses run by foreign entrepreneurs, including many minorities, “should bring new competitive strategies and approaches” in the communications industry that will benefit the consumers in those markets. *See FCC 2008 Diversification Order*, at 28362.²

As commenters have noted, if the United States is not welcoming of foreign entrepreneurs, those entrepreneurs will go to other countries, taking important technological advancements and capital investment with them. *See NVCA Comments*, at 2; *Comments of Business Forward*, DHS Docket No. USCIS 2015-0006 (filed Aug. 9, 2017) (“*Business Forward Comments*”). Other countries, such as the UK, France, Singapore and Canada, have dedicated entrepreneur visas to attract these innovators. Other commenters have noted that significant competition among countries has already begun chipping away at the United States’ position as the top destination for foreign nationals to begin their startups. Twenty years ago, U.S.-based startups received more than 90% of global venture investment; however, that number had fallen to 54% as of 2016. *See Business Forward Comments*, at 1. Additionally, at least half of the ten largest venture investments over the last five years happened outside of the United States. *See id.* MMTC is concerned that without the IEP, this trend will continue and the best and brightest foreign entrepreneurs will decide to go elsewhere.

MMTC, along with other commenters, is particularly worried about the effect the rescission of the IEP would have on the technology industry. The technology industry, and the United States’ place as the global leader in technology innovation, is integral to the communications industry. MMTC recognizes that technological innovations in the communications industry can help bridge the digital divide that leaves minorities and the less affluent without equal access to the internet or other communication technology as well as help disseminate more diverse viewpoints. As other commenters have noted, the world is “on the cusp of incredible advancements” in a number of exciting technology-related fields. *NVCA Comments*, at 2. These advancements can potentially aid in MMTC’s goal of improving access to communications technology among

² One recent example is AppDynamics, founded by Indian-born Jyoti Bansal, which works with HBO to ensure smooth streaming for HBO’s online viewers. *NFAP Policy Brief* at 16.

minorities and the less affluent and increasing diversity in communications. Although the modern media landscape is global in nature, MMTC believes that DHS can help the United States stay at the forefront of technological innovation by maintaining the IEP.

Additionally, MMTC worries about the effect that rescission of the IEP would have on U.S.-based communications companies if other countries decide to act in kind and enact their own protectionist policies. As MMTC noted during its advocacy for relaxing restrictions on foreign owned broadcast licenses, the “U.S. often leads by example in the international community.” MMTC Comments, at 5. Then, MMTC was hopeful that loosening restrictions on foreign ownership of broadcast licenses would lead other countries to act in kind, creating a virtuous cycle of reciprocity which would “enhance the free flow of capital internationally and also help down break down trade barriers between nations.” *Id.* Here, MMTC is concerned that rescission of the IEP could lead to tit-for-tat retaliation, with other countries deciding to enact their own protectionist policies.

When advocating for allowing more foreign ownership of broadcast licensing, FCC Commissioner Michael O’Rielly noted that opening up foreign capital would benefit diverse voices that have traditionally struggled in the communications market. *See Hon. Michael O’Rielly, Affirmatively Expand Permissible Foreign Ownership, FCC BLOG (March 3, 2015).* Commissioner O’Rielly also noted that the United States’ unwillingness to allow more foreign investment was used as an excuse by other countries to retain barriers that harm U.S. companies. *See id.* Commissioner O’Rielly argued that if we want to “build natural partners for greater U.S. communications industry growth” and “allow international diversification” of the communications industry, we need to be “willing to remove any perception” that the United States is not open to foreign investment. *Id.* The need for international partners to allow for growth in the communications industry is as necessary as ever. Similar to how the “perception” of not being open to foreign investment led to other countries enacting harmful trade barriers, MMTC fears that rescission of the IEP would lead to the perception that the United States is not open to foreign entrepreneurs or capital. Reciprocal protectionist policies would

prevent the United States communications industry's growth as well as prevent international diversification of the industry.³

Because rescission of the IEP would stifle important technological advances in the communications industry and harm the United States' position as the global leader in communications, MMTC would urge DHS to keep the IEP in place.

III. IMPLEMENTATION OF THE IEP WOULD FOSTER DIVERSITY OF VIEWPOINTS IN THE COMMUNICATIONS INDUSTRY.

Another reason MMTC believes DHS should not follow through on the proposed rescission of the IEP is the potential loss of an avenue to widen access to a diversity of viewpoints in the communications sector.

While regulation of the communications sector is generally the province of the FCC, fostering diversity of viewpoints in the United States is a broad governmental goal that should be embraced by all agencies. MMTC raised similar concerns when advocating for the government to amend its rules on foreign ownership policies for broadcast licensees under 47 U.S.C. § 310(b)(4). Similar to its arguments for expanding the ability of foreign entities to obtain broadcast licenses, MMTC believes that the IEP would facilitate growth in minority viewpoints in all aspects of communications, and that the IEP's rescission would discourage those voices.

“It has long been a basic tenet of national communications policy that the widest dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.” *FCC 2008 Diversification Order*, at 28362. Further, the U.S. government has recognized the importance of “broadening participation in the broadcast industry” which will “strengthen the diverse and robust marketplace of ideas that is essential to our democracy.” *Id.* The Supreme Court has also recognized that “enhancing broadcast diversity is, at the very least, an important governmental objective,” and that “[s]afeguarding the public’s right to receive a diversity of views and information” is an important governmental function. *See Metro Broad., Inc. v. FCC*,

³ While unrelated to the IEP, the recent tariffs imposed by the EU show that other countries do adopt reciprocal protectionist policies in reaction to the United States' policies. *See* Philip Blenkinsop, *EU to impose duties on U.S. imports Friday after Trump Tariffs*, REUTERS (June 30, 2018), available at <https://www.reuters.com/article/us-usa-trade-eu/eu-to-impose-duties-on-us-imports-friday-after-trump-tariffs-idUSKBN1JG1AY>. Further, the tariffs the EU chose to impose show that other countries enact protectionist policies specifically targeted to harm certain industries. *See id.* (noting that the tariffs target industries in Republican states to put pressure on President Trump). The United States communications and media companies are a key export that could be targeted in reciprocal protectionist policies as a result of the rescission of the IEP.

497 U.S. 547, 567 (1990), *overruled in part on other grounds in Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995).

MMTC could not agree more strongly that enhancing viewpoint diversity in the communications industry is an important governmental goal and believes that it should be embraced by all agencies of the government, not just the FCC. However, minority-owned businesses continue to be substantially underrepresented in the broadcast industry. *See* Comments of MMTC, GN Docket No. 15-236 (Dec. 21, 2015) (“MMTC Comments”); *see also* Latoya Livingston, *Foreign Ownership in U.S. Media and Telecommunications Companies and Why the FCC is Reluctant to Allow it to Happen*, BROADBAND AND SOCIAL JUSTICE (Dec. 30, 2010) (noting an MMTC study that showed that minority ownership is at approximately 7.24% in commercial radio and 3.15% in television). As MMTC noted when advocating for expanding foreign ownership of broadcast licenses, one of the major difficulties for minority broadcasters, as well as women and small businesses, is access to capital. *See* MMTC Comments, at 2. Similarly, the National Association of Broadcasters (“NAB”) explained that “access to capital is a leading – if not the leading – barrier to business ownership for women and minorities, in broadcasting and small business.” *See* Comments of NAB, GN Docket No. 15-236, 4 (filed Dec. 21, 2015). As other commenters have pointed out, the IEP would represent a “key shot of entrepreneurial energy” into the United States which would result in more capital for minority business owners, who would then have the means to contribute their viewpoints through various communications media. *See* NVCA Comments, at 1. Similar to how MMTC previously argued that “diversity would be better served by enabling a broader marketplace for international programming,” here, diversity would be better served by opening the marketplace to highly motivated, successful foreign entrepreneurs who can contribute their unique viewpoints to the national dialogue and enable minorities in the U.S. to do the same. *See* Reply Comments of MMTC, GN Docket No. 15-236, 3 (Jan. 20, 2016).

Because the IEP helps facilitate an influx of individuals who represent minority viewpoints and who would have access to capital, the IEP represents an opportunity to enhance diversity of viewpoints in our national media. MMTC urges DHS not to hinder this important goal by rescinding the IEP.

III. THE PUBLIC BENEFIT ANALYSIS IS NOT TOO “COMPLEX” OR TOO “CHALLENGING” FOR DHS, AS EVIDENCED BY THE PUBLIC INTEREST REVIEW PROCESS CONDUCTED BY THE FCC UNDER 47 U.S.C. § 310(b)(4).

DHS asserts that the public benefit review under the IEP is too “complex” and “challenging” for it to handle in light of limited agency resources. *See* NPRM, 83 Fed. Reg. at 24418. However, the FCC has shown the ability to conduct “public interest” reviews of foreign entities seeking broadcast licenses under 47 U.S.C. § 310(b)(4) without finding it to be unduly burdensome. Additionally, DHS could choose to streamline the process for conducting these reviews instead of rescinding the entire program.

DHS claims that one of the reasons for rescission of the IEP is that the public benefit reviews it would have to conduct are too “complex” and “challenging.” *Id.* DHS points to the factors it has to consider, such as: “substantial ownership”; “potential for rapid growth and job creation”; whether the applicant is well-positioned to assist with the growth and success of the business; whether the start-up received lawfully derived capital; and whether an investor is “qualified.” *Id.* However, the FCC has been able to complete “public interest” reviews for foreign entities seeking broadcast licenses that require consideration of a number of factors without finding the review too “complex” or “challenging.” The FCC considers applicants for foreign ownership of broadcast licenses on a “fact-specific, case-by-case basis” that requires the Commission to balance a number of issues related to national security, law enforcement, foreign policy, and trade policy. *See In the Matter of Corvex Master Fund LP*, MB Docket No. 16-253 (Feb. 14, 2017). If DHS is having difficulty with certain criteria, it could follow the FCC’s example and seek input from other Executive Agencies while still maintaining ultimate discretion on any determination. *See id.* (explaining that the FCC affords “appropriate deference to the expertise” of other Executive Branch agencies when conducting a public interest review).

DHS could also follow the FCC’s example and streamline certain procedures developed for review. For example, in 2016 the FCC reformed the methodology for determining foreign ownership of a publically held company to streamline the review process. *See Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, Report and Order*, 81 Fed. Reg. 86586 (Dec. 1, 2016). Recognizing the value and potential in

allowing foreign ownership of broadcast licenses, the FCC has improved its procedures instead of abandoning the entire policy. MMTC would urge DHS to similarly work to improve the approval process instead of completely abandoning the IEP.

In sum, the IEP presents a significant and much-needed opportunity for the United States to embrace foreign entrepreneurs and the innovation and economic benefits they provide. While the IEP can have positive effects on the entire industry, MMTC is most encouraged about the prospect for access to technology that can potentially bridge the digital divide, the continued success of the United States communications industry, and the expansion of diversity of viewpoints in communications through the influx of successful foreign entrepreneurs. The procedural issues DHS sees in the IEP can be readily addressed without abandoning the entire program. MMTC strongly encourages DHS to abandon its plan to rescind the IEP. Proceeding with the plan would have very harmful public consequences with no discernible public benefit – and certainly no benefit that outweighs the harm that rescission would cause.

Respectfully submitted,

Multicultural Media, Telecom and Internet Council⁴

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