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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act -)	
Competitive Bidding)	
Narrowband PCS)	

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PETITION FOR RULEMAKING

David J. Lieto ("Petitioner"), by his attorneys, hereby files this Petition for Rulemaking ("Petition") seeking amendment to Section 1.2110(b)(2) of the Commission's rules. In the Second Report and Order ("Second Order") in this Docket, released on April 20, 1994, the Commission issued general rules pertaining to the auction of radio spectrum, as required under the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"). As part of that rulemaking, the Commission issued rules giving preferential treatment to certain "designated entities" as mandated by Congress in the Budget Act. The newly adopted Section 1.2110 of the Commission's rules defines those people who qualify as designated entities under the Commission's auction framework. This Petition seeks to amend Section 1.2110(b)(2) to provide that disabled individuals are within the category of "minority group" and are thus entitled to the benefits associated with being a designated entity under the Commission's auction rules. Petitioner is a disabled individual who would benefit from the proposed amendment.

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I. THE BUDGET ACT.

The Budget Act amended the Communications Act of 1934 by adding Section 309(j). 47 U.S.C. 309(j). Section 309(j) granted the Commission the authority to use competitive bidding to issue a license or permit when mutually exclusive applications exist. 47 U.S.C. § 309(j)(1). To promote economic opportunity and to disseminate licenses among a wide variety of applicants, Congress mandated that the Commission promulgate competitive bidding regulations that, ". . . ensure that . . . businesses owned by members of minority groups . . . are given the opportunity to participate in the provision of spectrum-based services . . ." 47 U.S.C. § 309(j)(4)(D).

II. THE COMMISSION'S RULEMAKING IMPLEMENTING THE BUDGET ACT.

The Commission's Second Order in this Docket addressed the mandate contained in 47 U.S.C. § 309(j)(4)(D). It established benefits for designated entities, of which members of minority groups were included, such as bidding credits and tax certificates. See Second Order, ¶¶ 227-297. The Second Order also defined the term "minority groups" by relying on a Commission definition that had been established as early as 1978 and developed in relation to the Commission's Equal Employment Opportunity program in the broadcast service. See Second Order, ¶278, n.209.¹ Specifically, the Commission

¹ The Commission's current definition of "minority" is also found in the Communications Act at 47 U.S.C. § 309(i)(3)(C). However, that definition is specifically limited to preferences granted to minorities in lotteries for mass media licenses. Accordingly, no provision in the Communications Act limits the

defined a minority as a person of, ". . . Black, Hispanic Surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction." Id. Contrary to the Commission's assertion in the Second Order that there is, ". . . no reason to depart from [its] current definition of the term minority," the Commission should amend its definition of "minority groups" to include disabled Americans.

III. DISABLED AMERICANS FACE DISCRIMINATORY HURDLES THAT SHOULD ENTITLE THEM TO THE DESIGNATED ENTITY AUCTION BENEFITS CREATED BY THE COMMISSION.

A. Congressional findings support the inclusion of disabled Americans in the definition of minority group.

In 1990, Congress passed the Americans with Disabilities Act. Pub.L. 101-336, 104 Stat. 327. As part of that legislation, Congress made the following important findings:

- 1) Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious pervasive social problem;
- 2) Discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication,

Commission's ability to use a different definition of "minority" in other contexts.

- recreation, institutionalization, health services, voting, and access to public services;
- 3) Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs or other opportunities;
 - 4) Census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;
 - 5) Individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such

individuals to participate in, and contribute to, society;

- 6) The Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals;
- 7) The continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

42 U.S.C. § 12101(a).

In 1992, Congress made further findings:

- 1) Individuals with disabilities constitute one of the most disadvantaged groups in society;
- 2) Individuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services; and
- 3) The goals of the Nation properly include the goal

of providing individuals with disabilities with the tools necessary to -

- (A) make informed choices and decisions; and
- (B) achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency, for such individuals.

29 U.S.C. § 701(a).

The findings listed above correspond precisely with the concerns Congress expressed when providing the Commission with auction authority in the Budget Act. As part of the auction authority, Congress wanted to ensure economic opportunity for members of minority groups. Congress has found that disabled individuals are a discrete and insular minority for whom the Nation's goals include encouraging economic self-sufficiency. Given these Congressional findings, the Commission should include disabled Americans in its definition of minority groups.

- B. The difficulty obtaining capital supports including disabled Americans in the definition of minority groups.

The Disabled Businesspersons Association ("DBA") is a non-profit organization that provides consulting advice to disabled individuals trying to start their own business. Started in 1985, DBA's founder, Mr. Urban Miyares, has had extensive experience in addressing the barriers faced by

disabled entrepreneurs. One such hurdle is discrimination in lending practices. See Attachment A, Letter from Urban Miyares to Sean Beatty, September 7, 1994, p.2.

Lending practices are affected by the fact that many disabled individuals have little or no prior work experience. Disabled individuals also have higher capitalization costs directly attributable to their disabilities. The difficulty in foreclosing and evicting disabled individuals who have assets to pledge against loans also makes a potential lender less likely to loan funds. Attitudes in the general public regarding a disabled person's ability to run a competitive company further increase the already high barrier disabled individuals face when trying to secure funding for their businesses. Id.

Some movement is being made by Congress to address the difficulties disabled Americans face when trying to secure capital. Congressman Jim Ramstad introduced a bill, H.R. 794, which would open the Small Business Administration's Section 8(a) and 8(c) programs to Americans with disabilities. Although the bill has not made it out of committee, it is a further indication that disabled Americans need help accessing sources of capital.

In passing its rules regarding benefits to women and racially and ethnically owned businesses, the Commission considered access to capital as a justification for the designated entity benefits. Disabled individuals face the

same barriers as women and racial and ethnic minorities face when trying to secure capital. Accordingly, the Commission should extend its designated entity benefits to disabled Americans.

IV. PROPOSED RULE.

The Commission should amend Section 1.2110(b)(2) of its rules to read:

(2) **Businesses owned by members of minority groups and/or women.** A business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens have at least 50.1 percent equity ownership and 50.1 percent controlling interest in the applicant. For applicants that are limited partnerships, the general partner must be a minority and/or woman who is a U.S. citizen (or an entity 100 percent owned by minorities and/or women who are U.S. citizens) that owns at least 50.1 percent of the partnership equity. The interests of minorities and women are to be calculated on a fully-diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis. The term minority includes individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian, . . . Asian American, and individuals with disabilities. For purposes of this rule, "individuals with disabilities" shall mean a person who has a physical or mental impairment that substantially limits one or more of the major life activities of such person.

The definition of "individuals with disabilities" used in the proposed rule corresponds to the definition of "disability" contained in the Americans with Disabilities Act. 42 U.S.C. § 12102(2).

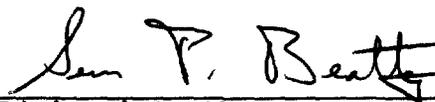
V. CONCLUSION.

Based on the foregoing, the Commission should initiate a rulemaking wherein it proposes an amendment to its rules that permits disabled Americans to participate in the preferences granted to designated entities under its auction rules. To ensure disabled Americans' eligibility for designated entity benefits in as many of the Commission's auctions as possible, Petitioner requests that the Commission take expedited action on this Petition for Rulemaking.

Respectfully submitted,

DAVID J. LIETO

By:



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September 21, 1994

ATTACHMENT A

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Disabled
Businesspersons
Association

September 7, 1994

Urban Miyares
President

Directors

Katherine Mann
Secretary

Fredric I Mann
Treasurer

JoAnn M Miyares

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Sean Beatty
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Dear Mr. Beatty:

Thank you for calling the DISABLED BUSINESSPERSONS ASSOCIATION and requesting information about our services and those we serve.

The DISABLED BUSINESSPERSONS ASSOCIATION (DBA), founded in 1985 as the national self-employment pilot-program for disabled veterans and incorporated in 1991 as a 501(c)(3) nonprofit public charity and education organization serving all enterprising persons with disabilities (veteran and non-veteran alike), helps entrepreneurs and professionals with disabilities maximize their potential in the business world, and encourages the participation and enhances the performance of the disabled in the workforce.

While there are many organizations that champion the needs and promote better understanding of people with disabilities, the DBA is the first to target the role of the disabled in business and is recognized as America's leading and most quoted authority in this field.

As the national and largest business organization for the enterprising disabled, the DBA is staffed by an outstanding group of dedicated, business-wise men and women, and advised by a Board of Directors drawn from virtually all areas of business activity--experienced small business owners, professionals, and corporate executives sensitive to and knowledgeable about the needs and unique challenges of the disabled.

Today, the DBA receives thousands of inquiries per year, provides free services to many, and assists hundreds of enterprising Americans with disabilities evaluate, start, and manage their own business operation.

Government, business, education, medical and rehabilitation professionals, nationwide, also contact the DBA for assistance and information.

please continue...

Programs

DISABLED
ENTREPRENEUR
PROGRAM

CHALLENGED
AMERICA™

Suite 207
9825 Black Mountain Road
San Diego California
92126-4564

619 586-1199
619 578-3558
619 578-0637 fax

Regarding your interest in identifying the unique challenges confronting a person with a disability in business, one of the major barriers is the discrimination in lending practices.

Depending upon the type of disability and how long the individual has had the disability, an individual, generally, has little or no prior work-experience, is poor and has few assets. Couple this with their higher cost in capitalizing a venture, directly due to the disability, and you have a potential borrower who doesn't meet acceptable lending-guidelines or conforms to industry norms for like ventures.

Additionally, many lenders shy away from borrowers with disabilities who pledge personal assets (i.e., home equity) as lenders are aware of the difficulty in foreclosing and evicting a (severely) disabled individual from their home--potentially endangering their life and well-being.

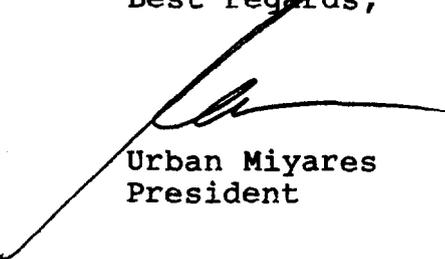
And, add the general attitude on "How competitive in business can a person with an (obvious) disability be?" and you have a discrimination situation that far exceeds those claimed by other ethnic and disadvantaged group.

The disabled borrower is often turned down on business loan applications with little recourse.

Also, disabled entrepreneurs pay more in taxes as they traditionally: hire more employees, purchase more costly equipment and fixtures (to accommodate the disability), pay higher business-property tax (directly related to the higher cost of equipment and fixtures), etc.

I hope this and the enclosed information helps you. Please do not hesitate to contact us if you have any questions or need additional information.

Best regards,



Urban Miyares
President