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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	PP Docket No. 93-253
Implementation of Section 309(j) of the Communications Act - Competitive Bidding	)	
and	)	
Amendment of the Commission's Rules to Establish New Narrowband Personal Communication Services	)	GEN Docket No. 90-314 ET Docket No. 92-100

TO THE COMMISSION

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REPLY COMMENTS OF THE MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL

The Minority Media and Telecommunications Council ("MMTC") respectfully submits these Reply Comments in response to the Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 94-219 (released August 17, 1994).

Historically, the introduction of new telecommunications services has been accompanied by the virtual exclusion of minorities from viable participation. This systematic denial of access has retarded the development of three generations of minorities. It has been the technological equivalent of distributing outdated textbooks to children. See Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

With the rapid development of technology, there has been much discussion of providing universal service. In a July 26, 1994 speech to the National Urban League, Chairman Hundt cited statistics on the deplorable state of minority media and telecommunications ownership, recognizing that minority participation carries the promise of rapid attainment of universal service.

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The Commission has been given a mandate to ensure that designated entities are given the "opportunity to participate in the provision of spectrum based services." 47 U.S.C. Section 309(j)(4)(D).

In light of the disappointing results of the last narrowband auction, MMTC offers recommendations for future auction proceedings. The recommendations proposed by MMTC are consistent with the constitutional standards in Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 569, 584 (1990) ("Metro"): they are essentially benign, they are congressionally mandated and they are substantially related to an important governmental interest. Industry-wide past and present discrimination, coupled with the need to promote viewpoint diversity, to promote economic opportunity for minorities, and to insure the equitable distribution of educational technology,[1/] all justify remedial action such as that approved in Fullilove v. Klutznick, 448 U.S. 448 (1980) ("Fullilove"); compare City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) (Congress, unlike states and cities, has clear authority to adopt programs designed to correct the effects of discrimination).[2/]

1/ For several decades until the 1980's, POTS and custom calling services typically were delivered to geographically distinct, segregated minority communities considerably later than such services were delivered to majority communities. These service initiation delays were generally not justified by economic considerations, but were often driven instead by race prejudice. These delays deprived members of minority groups of access to the levels of telecommunications capability generally available elsewhere. This had an especially harmful effect on minority children. They fell years behind their white counterparts in their exposure to state of the art telecommunications in the home, and consequently were disadvantaged in their adaptability to innovative technology when they entered the workforce.

2/ Although strict scrutiny does not apply, the Commission's regulatory regime for auctions and MMTC's additional proposals also would fulfill the requirements of strict scrutiny.

Minorities have been barred from ownership in the communications industry as a result of discriminatory barriers, in ways similar to the minority contractors in Fullilove. The Report of the FCC Small Business Advisory Committee Regarding General Docket 90-314 (September 15, 1993), 8 FCC Rcd 7820 (1993) documents these barriers. The Court in Metro acknowledged that Congress has recognized the barriers encountered by minorities in entering the broadcast industry.

MMTC applauds the Commission's recent adoption, on its own motion, of a 40% bidding credit and an installment payment plan for designated entities in the October 26 regional narrowband auctions. See Report No. DC-2655 (released September 22, 1994). It is also appropriate for the Commission to adopt additional minority ownership incentives.

1. Reservation of Spectrum Blocks

MMTC endorses the recommendation by Essence Communications, Inc. that "[t]he most logical means of diversifying ownership of the spectrum blocks is by reserving segments in which designated entities would compete primarily among themselves." See Post-Auction Comments and Recommendations of Essence Communications, Inc. at 5. As mandated by Congress, this approach would prevent excessive concentration of spectrum ownership and promote diversity of ownership among traditionally excluded groups such as minorities. See 47 U.S.C. §309(j)(3)(B). A similar approach was adopted by the Commission for its broadband PCS auctions.

2. "First Option" Procedure

An alternative to spectrum blocks is a "first option" procedure, initially articulated by the NAACP et al. in 1990 in the AM Expanded Band proceeding (briefed in NAACP v. FCC, D.C. Cir. No.

93-1433 (oral argument scheduled for October 14, 1994). Such a "First Option" procedure might establish a minimum bid for a limited number of spectrum bands for designated entities. The designated entities would be given the first opportunity to bid on these reserved bands. If the designated entities fail to meet the minimum bid, or fail to bid at all, then that spectrum would be open to all bidders. Precedent for this proposal may be found in the eligibility criteria procedure effectuated in Clear Channels, 78 FCC2d 1345, recon. denied, 83 FCC2d 216 (1980), aff'd sub nom. Loyola University v. FCC, 670 F.2d 1222 (D.C. Cir. 1982). This approach would ensure that spectrum space would be developed rapidly and efficiently.

3. Tax Incentives

MMTC recommends that the FCC's current tax certificate policy be expanded to include large telecommunications companies that invest in businesses owned by minorities. The expanded policy should provide tax benefits not only for resale but during the operation of the system. Furthermore, those designated entities which earn a profit should be considered tax exempt for a specific period, or receive a lowered tax rate.

4. Penalties for Fraud

MMTC is encouraged that the Commission is investigating unethical sham and front companies. Such abuses of the Commission's processes reduce opportunities for legitimate minority entrepreneurs, and risk tainting a worthwhile program intended to promote diversity and create economic opportunity for minorities and women. Unlike applicants for new broadcast facilities, auction applicants lack discovery rights to test the bonafides of sham competitors.

Thus, aggressive Commission oversight is essential. Any perpetrators of fraud should receive the strongest penalties permitted by law.

Respectfully submitted,

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