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November 3, 1994

Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Ex Parte Letter
Docket No. 93-253

Dear Chairman and Commissioners:

As the auctioning of Personal Communications Services ("PCS") licenses approaches, BET Holdings, Inc. ("BHI") remains concerned that the competitive bidding rules adopted by the Federal Communications Commission ("Commission") ensure that women and minorities are able to participate in the PCS auctions. In particular, it is imperative that the "Control Group," personal net worth and bidding credit rules be modified to ensure successful and long-term involvement of traditionally under-represented groups in the development of emerging technologies.

Under the current regulatory framework, pre-existing minority and women-owned enterprises are unduly restricted. The rules must also provide the flexibility required to permit designated entities to finance the substantial investments required for PCS participation. Accordingly, BHI recommends that the Commission adopt the proposals discussed below.

BIDDING CREDITS

As BHI has previously advised the Commission, any differentiation in treatment of minority and women owned enterprises creates serious legal issues that could result in substantial licensing delays. BHI sought reconsideration of the Commission's decision to discriminate among these designated entities by applying differing levels of bidding credits for

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"small" minority businesses and other minority businesses.^{1/} BHI highlighted both the perverse effect of disparate credits in denying access to capital to successful minority firms and the arbitrary results of imposing differential bidding credits on minority firms of different sizes. Differential bidding credits encourages investment in less experienced entities who may then be controlled by their investors, contrary to the goals the Budget Act and the Commission have for designated entities. Accordingly, BHI urges the Commission to adopt a uniform credit among all minority enterprises.^{2/}

CONTROL GROUP

The Commission's "entrepreneurs' block" eligibility rules require conformance with minimum equity and control thresholds by a Control Group of the PCS applicant.^{3/} As BHI has previously stated, the application of inflexible Control Group definitions will adversely affect the auction participation of otherwise qualified designated entities that cannot conform their pre-existing business arrangements to the precise terms of the rule.^{4/}

While new businesses may readily conform to the Control Group concept, the rule is problematic for an individual who holds his or her interest in a PCS application through an

1/ See Petition for Reconsideration and Clarification of BHI, filed August 22, 1994 at 2-9 and BHI Comments on Petitions for Reconsideration and Clarification, filed September 9, 1994 at 8-9.

2/ In the alternative the Commission should substantially narrow the bidding credit differential from 25% - 15% to 25% - 22.5%, respectively.

3/ Pursuant to Section 24.720(c) of the Commission's Rules, an entity is defined as minority or women-owned if:

- (1) women and/or minority principals control the applicant and own at least
 - (a) 25 percent of the equity; and
 - (b) 50.1% of the voting stock (in the case of corporations); and
- (2) no other investor owns more than 25 percent of the applicant's passive equity (including 15 percent of the voting stock for corporations).

4/ See BHI Petition for Reconsideration at 15-17; BHI Comments on Petitions for Reconsideration at 9-14.

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intervening corporation.^{5/} For instance, if an individual comprising the PCS applicant's Control Group owns a 50.1 percent voting interest in an intervening corporation that holds a 40 percent interest in a PCS applicant, the Control Group's "interest" in the PCS applicant would be calculated to be approximately 20 percent (20.04%), 5 percent short of the minimum required equity to participate in the bidding for the entrepreneurs' block licenses. Accordingly, an applicant would be disqualified from bidding, regardless of the fact that the individual comprising the Control Group of the applicant is otherwise a qualified designated entity and legally controls the applicant. In this instance, application of an ownership multiplier makes compliance with the 25% equity threshold by women and minority principals prohibitively difficult for pre-existing enterprises doing business prior to the promulgation of the PCS bidding rules.

BHI urges the Commission to revise its rules to exempt pre-existing companies from the disqualifying effect of the 25% of equity requirement when the Control Group of a PCS applicant is a minority individual or woman and its interest in the PCS applicant is held through an intervening, pre-existing corporation.^{6/} In its place, a 15 percent of equity minimum threshold should be established to make plain that Control Group individuals holding interests in a PCS applicant through an intervening corporation will be eligible to bid on entrepreneurs' block licenses if all other eligibility requirements such as control of the PCS applicant are satisfied.

Moreover, the benefits of this limited change will enhance significantly the opportunities for designated entity participation in the PCS auctions. Specifically, it will permit designated entities to obtain the capital necessary for PCS license procurement and system build-out. Reduction of the 25 percent equity threshold in these limited circumstances would permit limited, indirect, non-controlling non-designated entity investments in the PCS applicant, making it possible for

^{5/} An intervening corporation, in this instance, may be controlled by the designated entity individual and otherwise qualified under the rules, but it might not be a suitable entity for other reasons related to the entity's desire to create a new PCS subsidiary to raise additional capital. The Commission's rules nowhere recognize the designated entity's need to raise capital in this manner.

^{6/} BHI recommends that the exemption from the 25% equity rule be available in instances in which the intervening company existed as of December 31, 1993.

designated entities to make sizable equity contributions in the PCS enterprise.^{7/}

PERSONAL NET WORTH

Under the current rules, the gross revenues, total assets and personal net worth of each member of a PCS applicant's Control Group will be considered in determining whether the financial caps for bidding in the entrepreneurs' blocks are met.^{8/} In instances where a PCS applicant's Control Group consists of a single woman or a member of a minority group, or the individual holds his or her interest in a PCS applicant through an intervening corporation as described above, BHI urges that the Commission eliminate the personal net worth test. In any event, if personal net worth caps are maintained, the Commission must clarify that a minority individual's stock in his or her own company would not be counted towards the individual's personal net worth.

Modifying the rule balances the competing interests of (1) ensuring that relatively small minority and women-owned enterprises are encouraged to participate in the PCS auctions; and (2) ensuring that successful and knowledgeable individuals that are women or members of minority groups can apply their telecommunications experience to the emergence of new, innovative telecommunications markets.

CONCLUSION

Adoption of the recommendations discussed above will promote diversity in the assignment of PCS licenses. BHI, therefore, respectfully urges that the Commission to modify its rules in accordance with these recommendations. Adoption of these minor rule modifications will ensure successful

^{7/} Given the fact that designated entities have consistently been denied equivalent access to capital in the financial markets, it is appropriate for the Commission to design rules that facilitate the accumulation of capital for PCS participation.

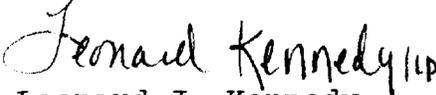
^{8/} See Fifth Report and Order, Competitive Bidding, PP Docket No. 93-253 at ¶ 115 (adopted and released August 15, 1994). To bid in the entrepreneurs' blocks, the applicant, including attributable investors and affiliates, must cumulatively have less than \$125 million in gross revenues and less than \$500 million in total assets. Moreover, no individual investor or affiliate may have \$100 million or more in personal net worth. See 47 C.F.R. § 24.709(a).

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participation of designated entities in the broadband PCS
competitive bidding process.

Respectfully submitted,

BET HOLDINGS, INC.


Leonard J. Kennedy

Its Attorney

cc: Dr. Robert M. Pepper
Mr. Donald H. Gips