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July 11, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

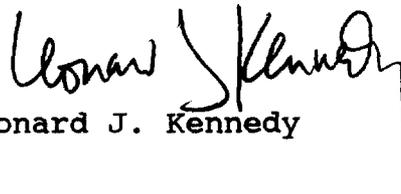
Re: **ERRATUM**
PP Docket No. 93-253 ✓
GN Docket No. 90-314
GN Docket No. 93-252

Dear Mr. Caton:

On July 7, 1995, BET Holdings, Inc. ("BHI") filed comments in the above referenced dockets in response to a Further Notice of Proposed Rulemaking issued by the Federal Communications Commission (the "Commission") on June 23, 1995. The following pages are submitted to correct inaccurate section references made in the July 7 pleading. The corrections executed by this filing are minor and have no substantive effect. Accordingly, BHI requests that the attached pages 7, 18 and 23 be substituted for the original pages previously submitted for Commission consideration. Nine copies of the corrected pages are filed herewith.

Should any questions arise regarding this erratum, please do not hesitate to contact the undersigned.

Respectfully submitted,



Leonard J. Kennedy

Encl.

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Commission fashion its rules to disseminate licenses among a wide variety of applicants and to ensure that minorities are not in any way excluded from the auction process.

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III. The Commission Cannot Summarily Eliminate Minority-Owned Business Exception to the Affiliation Rules Because Doing So Would Result in the Exclusion of Particularly Qualified Minorities From Participation in PCS.

As demonstrated below,^{13/} the Commission has an obligation to review its current preference rules under the strict scrutiny standard and retain them if they comply with that standard. However, even if the Commission were to decide to modify its rules notwithstanding their constitutionality, the proposal in the Further Notice to eliminate the minority-owned business exception to the affiliation rules must be rejected. Elimination of this exception would result in the total exclusion of a number of particularly qualified minority enterprises from any participation in the C Block auction. The A and B Block auction has already taken place; if they are not permitted to participate in the C Block auction, these minority companies will be precluded from meaningful participation in PCS, in contravention of Congress's mandate that the Commission ensure that minority-owned businesses "are not in any way excluded from the competitive bidding process."^{14/}

^{13/} See infra at Section VI.

^{14/} H.R. Rep. No. 111 at 255.

prohibited from participating in the C Block auction. Consistent with the Commission's policy objectives, this rule would aggregate and attribute the revenues and assets of affiliates of members of the control group of a C Block applicant only if the affiliates themselves are large.^{29/}

In another available approach, the alternative described above in which the revenues and assets of affiliates of minorities in PCS applicant's control group would be excluded only if the average revenues of the affiliates over the past two years fall below the entrepreneur block revenue cap could be modified to make it applicable to all members of a PCS applicant control group regardless of race.^{30/} Again, this option has the benefit of: (i) aggregating the revenues and assets of affiliates only when the affiliates are "large," (ii) preserving a modified version of the affiliation exception which will allow the otherwise excluded minority applicants to participate in the C Block auction and (iii) providing for the limited growth of small companies that may only recently have become successful (to the extent their current revenues exceed \$125 million).

These modified versions of the exception to the affiliation rules would promote the participation of minorities in the PCS auctions in the absence of race-based preferences.

^{29/} Like the prior proposal in Section IV. A., above, the rule would continue to exclude the revenues and assets of affiliates, regardless of the basis of the affiliation.

^{30/} The \$500 million total assets requirement would remain unchanged.

revoke wholesale the few preferences for minority-owned businesses it has adopted, thereby interfering with the ability of minority-owned businesses to participate in the PCS auctions. As the Memorandum points out, an agency is particularly compelled to undertake a reasoned review of its affirmative action programs where, as here, an Act of Congress expressly mandates "the use of racial ... criteria as a basis for decisionmaking." Appendix to DOJ Memorandum at 35. Failing to conduct the thorough review of the rules urged by the DOJ Memorandum would be a dereliction of the Commission's duty to carry out the mandates of Congress. BHI is confident that such an evaluation, as demonstrated in Section VI of these comments, will compel the conclusion that the existing rules pass constitutional muster.

B. Any Interest in Holding the Auction Immediately Does Not Support a Decision to Rescind the Rules Prior to Their Review Under the DOJ Memorandum.

Throughout the Further Notice, the Commission emphasizes its goal of initiating the C Block auctions in the near term. The Commission repeatedly states that its proposals will avoid delay in assigning entrepreneur block licenses and thereby will constitute the best means of providing opportunities for the participation of minorities in the competitive bidding process.^{39/} The Commission readily concedes that the purpose for the expedited rulemaking and its decision to eliminate the

^{39/} See, e.g., Further Notice at ¶ 11.