

rather than "attempting to justify race-based programs," we should "simply reactivate some of the provisions the Commission itself already has determined are effective at increasing participation," and that will give women and minorities "a fighting chance to compete."⁵³⁸ Some commenters suggest that the Commission encourage industry to establish partnerships with women or minority-owned companies, and to provide training programs, business opportunities, or mentoring programs to assist such groups in developing skills and becoming successful telecommunications entrepreneurs.⁵³⁹

219. Some parties recommend specific auction-related provisions.⁵⁴⁰ American Women in Radio and Television, Women of Wireless, Thompson PCS Systems and Williams contend that the FCC's licensing incentives for women and minority-owned businesses increased participation by those groups in FCC spectrum auctions.⁵⁴¹ After *Adarand*, however, based on consideration of the legal requirements imposed by that decision, the record at that time, the risk of protracted litigation, and its concomitant effect on investment decisions and potential delay in issuing licenses, the Commission suspended its Section 309(j)

⁵³⁸ Brown-Blackwell Comments at 9 (claiming that without distress sales, tax certificates and comparative hearings, "the broadcast ownership statistics are destined to look much as they did before the incentives were employed -- predominantly white male").

⁵³⁹ American Women in Radio and Television and Women of Wireless Comments at 41; B.K. McIntyre Comments at 5.

⁵⁴⁰ See, e.g., American Women in Radio and Television and Women of Wireless Comments at 41-42 (favoring financing incentives and relaxed attribution thresholds for women-owned businesses in spectrum auctions); Thompson PCS Systems Comments at 4 (arguing that the FCC should not modify provisions for designated entities); Williams Testimony at 5 (stating that the FCC must preclude strategic alliances between large companies before auctions commence and expand its financing policy to include provision of capital needed by small businesses); Integrated Communications Group Comments at 2 (suggesting that the FCC develop incentives to motivate PCS licensees to sell spectrum or partition licenses with first priority given to minorities, women, and very small businesses). See also American Women in Radio and Television and Women of Wireless Comments at 41 (recommending that broadcast spectrum (digital or analog) should be licensed through a process other than comparative hearings).

⁵⁴¹ American Women in Radio and Television and Women of Wireless Comments at 3-6; PCS Systems Comments at 1-2 & 4; Williams Testimony at 3 & 5.

preference provisions for women and minorities.⁵⁴² Some parties argue that the FCC should reinstate its pre-*Adarand* PCS incentive policies for women and minorities,⁵⁴³ while others raise Section 309(j) issues.⁵⁴⁴

220. Many parties urge the FCC to conduct a study of the participation of women and minorities in the telecommunications industry and market entry barriers.⁵⁴⁵ American

⁵⁴² *C Block Sixth Report and Order*, 11 FCC Rcd at 136-137.

⁵⁴³ Thompson PCS Systems Comments at 2; Williams Testimony at 5. In addition, several commenters claim that some auction applicants lost investors when the Commission amended its rules to comply with *Adarand* because investors were unwilling to enter partnerships subject to potential litigation. Kansas Star Comments at 1-3; American Women in Radio and Television and Women of Wireless Comments at 6-8; PCS Alliance Comments at 1; Thompson PCS Comments at 1.

⁵⁴⁴ *See, e.g.*, Small Business in Telecommunications Reply Comments at 11 (claiming that the FCC has ignored its Section 309(j) mandate regarding small businesses and rural telcos); Hispanic Chamber Comments at 1 (alleging that the FCC has not provided sufficient opportunities for Hispanics, other minorities and women in implementing its Section 309(j) authority); Williams Testimony at 7 (stating that FCC must advise the administration, Congress and the Supreme Court on policies and legal procedures to implement its Section 309(j) mandate).

⁵⁴⁵ *See, e.g.*, Kansas Star Comments at 3; National Association of Black Owned Broadcasters Reply Comments at 1; B.K. McIntyre Comments at 2, 5-6; American Women in Radio and Television and Women in Wireless Comments at 11-14 (noting that it first requested that the FCC conduct such a study in 1991 and has done so continuously since); Letter from Shelley Spencer, Director, American Women in Radio and Television to William Caton, Secretary, FCC (November 20, 1996) (American Women in Radio and Television *Ex Parte* Filing) (submitting October 1996 report by the National Foundation of Women Business Owners on financing for women business owners); MMTTC Supplemental Request at 1-3 (expressing regret that a disparity study regarding minority ownership in broadcast has not yet begun). *Cf.* Brown-Blackwell Comments at 8-9 (contending that "record evidence" of discrimination is "not always available" and asking how studies can be more convincing "than the Commission's own recognition that participation in the marketplace is greater by minorities and women when incentives are in place than when they are not").

In addition, parties to some Section 309(j) proceedings have recommended that the FCC commence a study to further examine the participation of women and minorities in

Women in Radio and Television asserts that the results of a new October 1996 report by the National Foundation of Women Business Owners, which shows some improvement for financing of women businesses in general "demonstrate the continued need for a study of women-owned companies in communications . . . to determine whether the dramatic growth of women-owned businesses in general is mirrored in the communications industry."⁵⁴⁶ For example, B.K. McIntyre states that she is an African American woman with ten years experience as a state public utility regulator and over twenty years of management experience, yet claims that she has had difficulty obtaining sufficient capital to become an active provider of other communications services or to participate in spectrum auction. She asserts that other minorities and women with comparable expertise experience similar impediments. B.K. McIntyre acknowledges that to prove whether this fact is related to race or gender is difficult, but claims that a study and comparison of minorities and women to their majority counterparts "may offer further evidence of the subtle barriers that exist to creating the level of wealth and expertise that is necessary to fully participate in the communications industry."⁵⁴⁷ Two parties assert that, as the licensing agency, the FCC, more than any other agency or independent organization, has the data required to complete

telecommunications. *See, e.g., Competitive Bidding Sixth Report and Order*, 11 FCC Rcd at 137 n.6 (citing Allied Communications Group, Inc. Comments, which recommended comprehensive formal study; Minority Business Enterprise Comments, which suggested disparity study; General Wireless Comments, which identified hearings, studies or other methods to develop a supplemental record; Chase Telecommunications Comments, which recommended examination of how past discrimination denies minorities access to capital).

⁵⁴⁶ American Women in Radio and Television Ex Parte Filing at 1. National Association of Black Owned Broadcasters claims that the results of a study by the United States Department of Commerce, National Telecommunications and Information Administration, provide additional evidence of the need for governmental action to promote minority business opportunities in the telecommunications industry. National Association of Black Owned Broadcasters Reply Comments at 9-10 (citing U.S. Department of Commerce, National Telecommunications and Information Administration, Office of Policy Analysis and Development study, *Capital Formation and Investment in Minority Business Enterprises in the Telecommunications Industry* (Apr. 1995), and specific findings, including: Banks provide White borrowers with \$1.83 in debt for each dollar of equity capital they invest in their businesses, but provide African American borrowers only \$1.16 for each dollar of equity capital invested; and that African Americans own only 193 (1.7%) of the total commercial broadcast stations in the United States).

⁵⁴⁷ B.K. McIntyre Comments at 2.

an academically rigorous review of women ownership of communications companies.⁵⁴⁸ They also recommend that the FCC amend the Annual Ownership Report Form 323 and require all licensed communications companies to submit a current Form 323 as soon as possible.⁵⁴⁹

C. *Ongoing Commission Evaluation*

221. There is a long history of recognition by this agency, as well as by courts, Congress, and the public, that minorities and women have experienced serious obstacles in attempting to participate in the telecommunications industry and that their greater participation would enhance the public interest.⁵⁵⁰ Since the late 1960's, the Commission has addressed women and minority access to employment and ownership opportunities in the

⁵⁴⁸ American Women in Radio and Television and Women of Wireless Comments at 11. American Women in Radio and Television and Women of Wireless propose that the study include: (1) definition of the communications industry; (2) historical growth of the communications industry in relation to the growth of industry generally; (3) historical employment growth by gender in the communications industry versus industry as a whole; (4) historical employment growth of women in the communications industry (by review of licensing by the FCC and survey of current licensees) versus industry as a whole; (5) detailed analysis of the communications industry with special emphasis on the role of women in the industry using historical data and other contemporary factors; (6) general requirements for entry into the industry, i.e., capital requirements, ownership experience, technical or sales experience; (7) analysis of the participation by women-owned companies in spectrum auctions, including the number of applicants, amount of upfront payments submitted, round-by-round bidding activity (when did women leave the auction or win licenses), licenses acquired and downpayments submitted; (8) barriers to capital and other institutional factors that negatively affect women's participation in the industry, e.g., financing terms, equity investments, capital intensive nature of the industry, discrimination against women); (9) empirical study on the nexus between women's ownership of mass media facilities and content diversity (e.g., news, editorial content) and diversity of workforce (hiring and advancement), communications access and products targeted towards women. American Women in Radio and Television and Women of Wireless Comments at 12.

⁵⁴⁹ *Id.* at 13. The parties state that although the Form change would require approval from the Office of Management and Budget (OMB), OMB could do so on an expedited basis under 5 C.F.R. § 1320.18. *Id.*

⁵⁵⁰ See *Market Entry Barriers Notice of Inquiry*, 11 FCC Rcd at 6293-6298 (describes various findings and initiatives regarding women and minorities).

telecommunications area. Almost thirty years ago, in 1969, the Commission first established equal employment opportunity (EEO) policies. In 1973, in *TV 9, Inc. v. FCC*,⁵⁵¹ the United States Court of Appeals for the District of Columbia Circuit noted the low rate of minority ownership of radio and television stations and stated that minority ownership and participation in station management is in the public interest.⁵⁵² Thereafter, we instituted various FCC broadcast ownership preference policies for women and minorities,⁵⁵³ and the Supreme Court subsequently upheld our minority ownership policies.⁵⁵⁴ In 1982, Congress observed that "the effects of past inequities stemming from racial and ethnic discrimination have resulted in a severe underrepresentation of minorities in the media of mass communications" and enacted Section 309(i)(3)(A) of the Communications Act, authorizing the Commission to provide minority preferences in awarding spectrum licenses by lottery.⁵⁵⁵ More recently, in 1993, Congress reached beyond broadcast services to wireless spectrum-

⁵⁵¹ 495 F.2d 929 (D.C. Cir. 1973), *cert. denied*, 418 U.S. 986 (1974) (rejecting view that mutually exclusive applicants for broadcast construction permits should not receive comparative credit for minority ownership).

⁵⁵² *Id.* at 937 n.28.

⁵⁵³ *See, e.g., Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979, 983 (1978) (adopting minority distress sales and tax certificate policies); *Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, Memorandum Opinion and Order, 100 FCC 2d 74, 94 (1985) (adopting minority multiple ownership rules). *See also Policies and Rules Regarding Minority and Female Ownership NPRM*, 10 FCC Rcd at 2789-2790 (stating that "women and minorities face economic disadvantages when they attempt to enter the mass media industry" and seeking comment on whether women and minorities encounter greater cost of capital and other types of disadvantages in acquiring mass media facilities).

⁵⁵⁴ *Metro Broadcasting Inc. v. FCC*, 497 U.S. 547 (1990).

⁵⁵⁵ H.R. Conf. Rep. No. 97-765, 97th Cong., 2d Sess. 43 (1982). *See also* 47 C.F.R. § 1.1622 (codification of rules regarding minority preferences in mass media lottery proceedings). In addition, in the 1984 Cable Act, Congress affirmed the Commission's equal employment opportunity rules for cable and stated that a "strong EEO policy is necessary to assure that there are sufficient numbers of minorities and women with professional and management level experience" who will be able to take advantage of ownership opportunities. H.R. Rep. No. 934, 98th Cong., 2d Sess. 4723 (1984). In 1988, Congress enjoined the Commission from narrowing or eliminating our broadcast ownership policies. *Continuing Appropriations Act for Fiscal Year 1988*, Pub. L. 100-202, 101 Stat. 1329-31.

based services and enacted Section 309(j), which requires the Commission to adopt competitive bidding procedures that promote economic opportunity to a wide variety of applicants, including minorities and women.⁵⁵⁶ In implementing Section 309(j), the Commission designed rules to assist small, rural, women, and minority-owned businesses "to overcome barriers that have impeded these groups' participation in the telecommunications arena, including barriers related to access to capital."⁵⁵⁷ Although the specific auction rules we adopted for businesses owned by women and minorities were held in abeyance after *Adarand*,⁵⁵⁸ since then, we have continued to request comment on the effect of *Adarand* on our policies and to seek evidence of discrimination against women or minorities in telecommunications services.⁵⁵⁹ Later, in enacting Section 257 of the 1996 Act, one member of Congress noted that women and minorities are "extremely under represented" in the telecommunications industry.⁵⁶⁰

222. Thus, our Section 257 mandate continues a succession of measures over several decades to enhance opportunities for women and minorities. The goal in this aspect of the Section 257 proceeding is to identify the specific obstacles that women and minorities face and to determine whether they are of the nature that will satisfy heightened judicial scrutiny. As a federal government agency, our ability to adopt race or gender based incentives is limited by constitutional requirements.⁵⁶¹ Under *Adarand*, any governmental classification based on race must satisfy strict scrutiny: it must be narrowly tailored to

⁵⁵⁶ 47 U.S.C. § 309(j).

⁵⁵⁷ *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2388 (1994).

⁵⁵⁸ *Competitive Bidding Sixth Report and Order*, 11 FCC Rcd 136.

⁵⁵⁹ See, e.g., *Amendment of Part 20 and Part 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Radio Service Spectrum Cap*, Notice of Proposed Rulemaking, 11 FCC Rcd 15052 (1996) (*Competitive Bidding D, E & F Notice*); *D, E & F Block Competitive Bidding Report and Order*, 11 FCC Rcd 7824.

⁵⁶⁰ 142 Cong. Rec. H1141 at H1176-77 (daily ed. Feb. 1, 1996) (statement of Rep. Cardiss Collins).

⁵⁶¹ In addition to considering legal constraints, we also desire to maximize the utility of any incentives by minimizing litigation risks.

further compelling governmental interests.⁵⁶² Remedying discrimination against a particular racial group in a specific field has been recognized as a compelling government interest.⁵⁶³ Thus, for us to adopt race-based incentives, there must be an appropriate record of discrimination against minorities in telecommunications. After we released the *Market Entry Barriers Notice of Inquiry*, the Supreme Court clarified the applicable constitutional standard for classifications regarding gender. In *United States v. Commonwealth of Virginia*, the Court affirmed and applied its pre-existing standard for reviewing gender classifications -- intermediate scrutiny -- to hold that a state male-only military college violated the Equal Protection Clause.⁵⁶⁴ Under intermediate scrutiny, a government's justification for gender-based classifications must be "exceedingly persuasive" and specifically, the government must show at least that the classification serves important governmental objectives and is substantially related to those objectives.⁵⁶⁵

223. The record in this proceeding, including comments on the *Market Entry*

⁵⁶² In *Adarand*, 115 S.Ct. at 2113, the Supreme Court held that the federal government's use of race-based criteria for decisionmaking must satisfy the requirements of strict scrutiny. For a full discussion of the constitutional standards, see *Market Entry Barriers Notice of Inquiry*, 11 FCC Rcd at 6309-6315.

⁵⁶³ *Metro Broadcasting*, 497 U.S. at 612 (O'Connor, J. dissenting); *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 491-500 (1989). In its procurement reform proposals, which cover contracts for the entire federal government, including the Department of Defense, the Department of Justice found that "there is today a compelling interest to take remedial action in federal procurement." *DOJ Procurement Reform Proposals*, 61 FR 26042, 26050. Noting that its collection of evidence of discrimination is on-going, DOJ found that "evidence indicates that racially discriminatory barriers hamper the ability of minority-owned businesses to compete with other firms on an equal footing in our nation's contracting markets." *Id.* DOJ explained that its finding was based on: (1) Congressional hearings and reports relating to the effect of discrimination on minority opportunities; (2) studies documenting the effects of racial discrimination on the procurement opportunities at the state and local level; and (3) works by social scientists, economists, and other academic researchers regarding the manner in which various forms of discrimination restrict business opportunities for minorities. *Id.* at 26050-26051.

⁵⁶⁴ *United States v. Virginia*, 116 S.Ct. 2264, 2274-2276 (citing *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 136-137 & n.6 (1994) and *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982)).

⁵⁶⁵ *Id.*

Barriers Notice of Inquiry and the testimony at the *Market Entry Barriers Forum*, supplemented by the record in various other proceedings, strongly indicates that minorities and women have experienced tremendous obstacles in participating in the telecommunications industry. To satisfy our statutory obligations under both Section 257 and Section 309(j), we are commencing a comprehensive study to further examine the role of small businesses and businesses owned by minorities or women in the telecommunications industry and the impact of our policies on access to the industry for such businesses. In addition to furthering the requirements of Section 257, the study will assist us in fulfilling our Section 309(j) mandates and in determining whether there are constitutionally-sound bases for adopting licensing incentives for women or minorities.

224. As to Section 257, the study will provide data and information to help us identify and eliminate market entry barriers for small businesses in the telecommunications market as the statute requires. In addition, the study will assist the Commission in reporting to Congress on our implementation of Section 257, as the statute also requires.⁵⁶⁶ As to Section 309(j), the study will be useful in comparing the effectiveness of auction and non-auction methodologies, and in assessing entry of new companies into the market, prompt delivery of service to rural areas, and the participation and success of small businesses and businesses owned by minorities or women in the competitive bidding process,⁵⁶⁷ as well as reporting to Congress on the auction process as required.⁵⁶⁸

225. The study will be conducted by an external contractor. It will focus on two types of communications services, the oldest and the newest -- broadcast and wireless.⁵⁶⁹ Specifically, the study will develop a profile of applicants and participants in broadcast licensing and the licensing of certain wireless services, both by auction and other previously

⁵⁶⁶ 47 U.S.C. § 257(c). Section 257(c) requires the Commission to report to Congress every three years following completion of the proceeding on regulations that have been issued to eliminate barriers and any statutory barriers that the Commission recommends be eliminated.

⁵⁶⁷ See 47 U.S.C. § 309(j)(12)(D)(ii)-(iv).

⁵⁶⁸ See 47 U.S.C. § 309(j)(12)(D)(iv)-(E).

⁵⁶⁹ An analysis of broadcast licensing also will assist the Commission's analysis of auction participation. Many auction participants and investors are broadcast licensees. For example, the study will examine the impact of incumbency and the regulatory structure the FCC established for the licensing of broadcast spectrum on auction bidding.

used methods.⁵⁷⁰ It will analyze participation rates of small businesses, minority-owned businesses, women-owned businesses, and the difference between participants and potential participants. The study will identify and evaluate the effect of any market entry barriers and other impediments on participation and attainment of licenses, the impact of incumbency in the telecommunications industry, the effect of previous FCC licensing proceedings, the effect of the presence, absence and removal of race and gender-based provisions, and the effect of past employment or management experience in the communications industry on auction participation and success.

V. *CONCLUSION*

226. This *Report*, we believe, demonstrates our implementation of Section 257. As described above, the Commission has taken numerous steps to eliminate regulatory and other impediments to entry for small businesses in the telecommunications market and will continue to do so.

VI. *ORDERING CLAUSES*

227. The motion of Blab Television to accept late-filed comments in this proceeding is GRANTED.

228. The motion of National Association of Black Owned Broadcasters to accept late-filed comments in this proceeding is GRANTED.

⁵⁷⁰ For example, the study will analyze licensing of PCS, Specialized Mobile Radio, cellular, and paging services.

APPENDIX A

Parties Filing Comments

Abacus Television (Abacus Television)

Sandra Abalos, filing jointly with Patsy Bakunin, Joan Frentz, Whitney Johns, Jaymie McMullin, Vivian Shimoyama, Carolyn Stephens, Sandy Adams, Janet Harris-Lange, Carol Johnson, Bren Norris, Barbara Solomon, Terry Neese (Abalos et al.)

American Mobile Telecommunications Association, Inc. (American Mobile Telecommunications Association)

American Women in Radio and Television, Inc. and Women of Wireless (American Women in Radio and Television and Women of Wireless)

America's Carriers Telecommunication Association

Association of Directory Publishers

AT&T Corp. (AT&T)

Big Sky Teleconferencing, Ltd./SaMComm, Inc. (Big Sky Teleconferencing)

Broadcast Data Corp. filing jointly with Chicago MDS Co., DCT Communications, Inc., Indianapolis MDS Co., Lakeland BDC-MMDS Co., Milwaukee MDS Co., Minneapolis MDS Co., Multipoint Information Systems, Inc., Orlando BDC-MMDS, Co., Phoenix MDS, Co., and Private Networks, Inc. (Broadcast Data Corp. et al.)

Faye Brown-Blackwell (Brown-Blackwell)

Cable Telecommunications Association

Celltech Information Systems, Inc. (Celltech)

Center for Training and Careers

Gwendolyn A. Christopher (Moore Broadcasting)

Columbia Communications Corp. (Columbia Communications)

Community Broadcasters Association

Competitive Telecommunications Association (CompTel)

Independent Telephone and Telecommunications Alliance

Integrated Communications Group Corporation (Integrated Communications Group)

Integration Communications International, Inc. filing jointly with Digital and Wireless Television, L.L.C. and Golden Bear Communications, Inc. (Integration Communications International et al.)

Kansas Star Communications (Kansas Star)

Henry Mayfield

B.K. McIntyre & Associates, Inc. (B.K. McIntyre)

Metricom, Inc. (Metricom)

Mike McCarroll (McCarroll)

M.L.T. Productions

Mobile Communications Holdings, Inc. (Mobile Communications Holdings)

National Association of Women Business Owners

National Association of Women Business Owners -- Greater Detroit Chapter

National Black Caucus of State Legislators -- Telecommunications & Energy Committee
(National Black Caucus of State Legislators)

National Black Chamber of Commerce

National Cable Television Association, Inc. (National Cable Television Association)
National Paging and Personal Communications Association
National Telephone Cooperative Association
National Wireless Resellers Association
National Women's Law Center
Nevadacom
NextWave Telecom, Inc. (NextWave)
Optel, Inc. (OpTel)
Orion Network Systems, Inc. (Orion)
PCS Alliance Group, Inc. (PCS Alliance)
Romar Communications, Inc. (Romar)
Rural Telecommunications Group
Small Business in Telecommunications
Small Cable Business Association
Southwest Missouri Cable TV, Inc. (Southwest Missouri Cable)
Telecommunications Resellers Association
TelQuest Ventures, L.L.C. (TelQuest)
TRA Communications Consultants, Inc. and J. Rodger Skinner, Jr.
(TRA Communications Consultants)
Thompson PCS Systems, Inc. (Thompson PCS)
United Church of Christ Office of Communications/Minority Media
Telecommunications Council (United Church of Christ and Minority Media
Telecommunications Council)
United States Hispanic Chamber of Commerce (Hispanic Chamber)
United States Small Business Administration, Chief Counsel for Advocacy (Small Business
Administration)
Voice-Tel, Inc. (Voice-Tel)
Watson Cable Co. (Watson Cable)
Wireless Cable Association International, Inc. (Wireless Cable Association International)
Working Assets Funding Service, Inc. (Working Assets Funding)
Yellow Pages Publishers Association (Yellow Pages Publishers)

Parties Filing Reply Comments

AT&T
L/Q Licensee, Inc. (L/Q Licensee)
Motorola Satellite Communications
National Association of Black Owned Broadcasters
National Cable Television Association
Optel
Pacific Bell
Press Broadcasting Company
Small Business in Telecommunications
Small Cable Business Association

Tele-Communications, Inc.
United States Telephone Association

Panelists at Public Forum (September 24, 1996)

David W. Zesiger
Assistant Chief Counsel
Office of Advocacy, U.S. Small Business Administration
(Zesiger Testimony)

LaVern D. James
Telecommunications Policy Analyst
National Telecommunications and Information Administration
U.S. Department of Commerce
(James Testimony)

Sherwin Grossman
President
Sherjan Broadcasting Co., Inc.
(Grossman Testimony)

Matthew M. Polka
Vice President & General Counsel
Star Cable Associates
(Polka Testimony)

Kathryn L. Haycock
President & CEO
Call-America
(Haycock Testimony)

Lonnie Pederson
President & Manager
Telephone Service Company
(Pederson Testimony)

Cliff Arellano
CPI Communications Products, Inc.
(Arellano Testimony)

Alan R. Shark
President & CEO
American Mobile Telecommunications Association
(Shark Testimony)

Michael C. Small
Deputy Associate Attorney General
U.S. Department of Justice
(Small Testimony)

Gloria Borland
Chairman & CEO
Gloria Borland Hawaii PCS
(Borland Testimony)

Kofi A. Ofori
Counsel
Office of Communication, United Church of Christ
(Ofori Testimony)

Bonnie Erbe
Chief Executive Officer
Peresphone Productions, Inc.
(Erbe Testimony)

Benjamin Perez
Managing Partner and Senior Consultant
Abacus Communications Company
(Perez Testimony)

James L. Winston
Executive Director
National Association of Black-Owned Broadcasters
(Winston Testimony)

Gregg E. Johnson
President
BIA Capital Corporation
(Johnson Testimony)

Gerald Gorman
Managing Director
Donaldson, Lufkin & Jenrette
(Gorman Testimony)

Anthony L. Williams
President
Broadcast Capital Fund, Inc.
(Williams Testimony)

William E. Barker
President
GE Capital Communications Services, Inc.,
Unit of General Electric Capital Corporation
(Barker Testimony)

Jeffrey B. Cullers
President & Group Account Manager
Vince Cullers Advertising Inc.
(Cullers Testimony)

APPENDIX B

1. On February 13, 1996, the Wireless Telecommunications Bureau held a public forum to discuss FCC Telecommunications Act of 1996 Implementation Schedule, Public Notice (February 12, 1996).
2. On February 23, 1996, the Common Carrier Bureau held a public forum to discuss FCC Telecommunications Act of 1996 Implementation Schedule, Public Notice (February 20, 1996).
3. On February 27, 1996, the Cable Services Bureau held a public forum to discuss FCC Telecommunications Act of 1996 Implementation Schedule, Public Notice (February 23, 1996).
4. On March 6, 1996, the Office of Engineering and Technology presented tutorial on Smart Antennas, Public Notice (February 27, 1996).
5. On March 11, 1996, the Office of Communications Business Opportunities hosted the Auction 1996 Conference, a one-day seminar to discuss emerging technologies, spectrum licensing and auctions proposed for 1996. Officials from the Commission's Office of Engineering and Technology, as well as the Wireless Telecommunications Bureau, and industry representatives shared their views on technological developments and market opportunities.
6. On March 13, 1996, the Cable Services Bureau staff participated in Federal Communications Bar Association cable practice committee luncheon to discuss FCC implementation of the Telecommunications Act of 1996.
7. On March 13, 1996, Cable Services Bureau conducted public briefing to discuss Open Video Systems.
8. On March 15, 1996, the Office of General Counsel held a public forum to discuss legal issues relating to Sections 251 and 252 of the Telecommunications Act of 1996, Public Notice (March 11, 1996).
9. On March 19, 1996, the Assistant Bureau Chief for Information was the key note speaker at the Minority Telecommunications Business Round Table Information Forum at Howard University. The CIB representative addressed PCS auctions, including how to participate in the auction process, how the process applies to small businesses, and what to expect from CIB after starting a business. Approximately 170 people attended the event.

10. On March 24, 1996, the Director of the Office of Communications Business Opportunities was a panelist at the CTIA Wireless '96 Conference in Dallas, Texas.
11. On April 11, 1996, the Director of the Office of Communications Business Opportunities was a panelist at America's Carrier Telecommunications Association (ACTA), which discussed the "1996 Telecommunications Reform Act and Expansion Capital," Phoenix, Arizona.
12. On April 12, 1996, the Initial Meeting of the Federal-State Joint Board on Universal Service was held, Public Notice 96-564 (CC Docket No. 96-45) (April 10, 1996).
13. On April 23, 1996, the Wireless Telecommunications Bureau held consumer outreach forum to discuss consumer issues raised by the Telecommunications Act of 1996.
14. On May 16, 1996, the Office of Legislative and Intergovernmental Affairs conducted round table discussion with representatives of local and state government representatives to facilitate their participation in proceedings under the Telecommunications Act of 1996.
15. On May 20, 1996, the Office of Public Affairs held economics forum to discuss on interconnection with top economists and FCC Chief Economist.
16. On May 31, 1996, the FCC held public forum, "Learn Your NOI's: FCC Open Forum on How to Participate in the FCC Process," News Release (May 2, 1996).
17. On June 5, 1996, the Federal-State Joint Board on Universal Service convened an open meeting, Public Notice 96-886 (June 3, 1996).
18. On June 19, 1996, the Federal-State Joint Board on Universal Service convened an open meeting, Public Notice 96-926 (June 12, 1996).
19. On June 24, 1996, the Office of Public Affairs conducted an open forum on how to find FCC information on the Internet, News Release (June 13, 1996).
20. On June 25, 1996, the Director of the Office of Communications Business Opportunities was a speaker at the NPPCA Conference in Chicago, Illinois and discussed the D, E, & F Block Rules and Market Entry Barriers Notice of Inquiry.
21. On July 9, 1996, the Common Carrier Bureau and the Office of General Counsel held a public forum to discuss the implementation of Section 271 of the Telecommunications Act of 1996, Public Notice 96-1032 (June 26, 1996).
22. On July 17, 1996, the FCC held economic speaker series featuring Dr. Jeffrey Mackie-Mason, "Layering and Vertical Integration: Applications to Telecom

- Microsoft,"
News Release (July 8, 1996).
23. On July 12, 1996, the Assistant Bureau Chief for Information served as a panel member at "Operation Open Road," a small business information forum at George Washington University sponsored by the Capital Commitment Group Women's Business Development sector.
 24. On July 23, 1996, the FCC held a public forum to discuss Antitrust and Economics Issues involved in Bell Operating Company InterLATA Entry, News Release (July 15, 1996).
 25. On August 6, 1996, a representative from the Office of Communications Business Opportunities served as a panelist at the National Black Chamber of Commerce in Chicago, Illinois.
 26. On August 27, 1996, the FCC held Brown Bag briefing on Fee Filing Procedures, News Release (August 19, 1996).
 27. On August 27, 1996, the Director of the Office of Communications Business Opportunities served as a panelist at the Telegresso '96 Conference in Rio De Janeiro, Brazil and discussed, "Preparing for PCS: How it will re-shape Telecommunications."
 28. On September 4, 1996, the FCC held economic speaker series featuring, Dr. Steven Wildman, "Media Competition," News Release (August 29, 1996).
 29. On September 9, 1996, the Director of the Office of Communications Business Opportunities served as a panelist at America's Carriers Telecommunications Association (ACTA) in Hilton Head, South Carolina.
 30. On September 12, 1996, the Common Carrier Bureau held public forum to discuss access charge reform and universal service issues raised by the Telecommunications Act of 1996, Public Notice 96-1504 (September 9, 1996).
 31. On September 12, 1996, the Director of the Office of Communications Business Opportunities served as a panelist at the First Latin Communications Conference in New York City, New York.
 32. On September 13, 1996, the Federal-State Joint Board on Universal Service convened an open meeting, Public Notice 96-1432, (August 27, 1996); Public Notice 96-1505 (September 9, 1996).
 33. On September 17, 1996, the Common Carrier Bureau and Office of General Counsel held a public forum to discuss enforcement issues raised by the Telecommunications

Act of 1996, Public Notice 96-1503 (September 9, 1996).

34. On September 22, 1996, the Assistant Bureau Chief for Information served as a panelist on "Get On Line," a discussion on how to start a small business in the telecommunications industry sponsored by U.S. Department of Commerce, Minority Business Development Agency.
35. On September 23, 1996, a representative from the Office of Communications Business Opportunities served as a speaker at CATA in Atlanta, Georgia.
36. On September 24, 1996, the Office of General Counsel and Office of Communications Business Opportunities held public forum on small business market entry barriers, Public Notice (September 5, 1996).
37. On September 25, 1996, the Deputy Director of the Office of Communications Business Opportunities served as a speaker at the Commercialization of Defense Technology Conference in Austin, Texas and discussed opportunities for small businesses.
38. On October 2, 1996, the Office of General Counsel held public forum/brown bag lunch to discuss key issues stemming from implementation of Section 103 of the Telecommunications Act of 1996, Public Notice 96-1581 (September 19, 1996).
39. On October 7, 1996, the Deputy Director of the Office of Communications Business Opportunities served as a speaker at the Competitive Telecommunications Association (COMPTEL) convention in Ft. Lauderdale, Florida.
40. On October 8, 1996, the Director of the Office of Communications Business Opportunities served as a speaker at the Minority Ownership Conference in Los Angeles, California.
41. On October 17, 1996, the Federal-State Joint Board held open meeting, Public Notice 96-1679 (October 10, 1996).
42. On October 22, 1996, the Office of Public Affairs conducted open forum on how to find FCC information online on the Internet.
43. On November 1, 1996, the Mass Media Bureau and the Office of Engineering and Technology convened public forum on the Economics of Mandated Standards for Digital Television, News Release (October 25, 1996).

44. On November 1, 1996, the Mass Media Bureau and the Office of Engineering and Technology convened a public forum on the economics of mandated standards for digital television, News Release (October 25, 1996).
45. On November 7, 1996, the Assistant Bureau Chief for Information served as keynote speaker for the Small Business in Telecommunication Association's Annual convention in Dallas, Texas and discussed how the FCC and CIB can assist small businesses.
46. On November 7, 1996, the Federal-State Joint Board held an open meeting (CC Docket 96-45).
47. On November 12, 1996, the Office of Engineering and Technology conducted a tutorial, "Progress in Optical Communications," Public Notice (September 27, 1996).
48. On November 19, 1996, the Office of Engineering and Technology and Computer Based Systems Incorporated held an open forum on Electronic Data Exchange, Public Notice (November 8, 1996).
49. On December 6, 1996, the FCC held economic speakers series featuring, Dr. Michael Salinger, "Leveling the Playing Field of Local Competition," News Release (November 27, 1996).
50. On December 16, 1996, the Cable Services Bureau, Common Carrier Bureau, Wireless Bureau and the Office of General Counsel held a public forum on issues concerning the use and management of public rights-of-ways, Public Notice (November 26, 1996).
51. Office of General Counsel released a Public Notice requesting nominations for membership on the Local and State Government Advisory Committee, Public Notice, (January 13, 1997).
52. On January 14 and 15, 1997, staff of the Federal-State Joint Board on Universal Service conducted workshops relating to the selection of a proxy cost model for determining the cost of providing the service supported by the universal service support mechanism, Public Notice (December 12, 1996; January 9, 1997; January 15, 1997).
53. On January 23, 1997, the Wireless Telecommunications Bureau held a forum on financing issues affecting the wireless industry.

54. The FCC released a Public Notice identifying frequently asked questions on Universal Service and the Snowe-Rockefeller Amendment, Public Notice (February 3, 1997)
55. On February 10, 1997, the Wireless Telecommunications Bureau, Office of General Counsel, Compliance and Information Bureau and the Office of Engineering and Technology co-hosted a Public Forum on zoning and land use issues as they relate to siting of antenna facilities for providing wireless services, Public Notice (January 21, 1997; February 6, 1997).
56. On February 10, 1997, the Assistant Bureau Chief for Information, Compliance and Information Bureau, participated in the "Small Business Alliance Conference" at the U.S. Chamber of Commerce, which was cosponsored by the National Telecommunications and Information Administration, "Networking the Spectrum, Contracts for Connection."
57. On February 19, 1997, the Office of Communications Business Opportunities, together with the Wireless Telecommunications Bureau held a one-day seminar to discuss spectrum licensing and auctions proposed for 1997. Industry representatives FCC officials, entrepreneurs and financial experts shared their views on technological developments and market opportunities.
58. On February 27, 1997, the Wireless Telecommunications Bureau held a small business financing forum focusing on issues associated with small wireless business.
59. Office of General Counsel released a Public Notice announcing the appointment of 13 members to the Local and State Government Advisory Committee, Public Notice (February 28, 1997).
60. On March 1, 1997, the Assistant Bureau Chief for Management, Compliance and Information Bureau participated in the National Small Business Development Council for Women's Organization of Resource Training (ORT), which discussed, "Access to the Internet of Business Opportunities," Washington D.C.
61. On March 10, 1997, the Assistant Bureau Chief for Management, Compliance and Information Bureau participated in the National Paging Association, which discussed, "The FCC, a New Information Resource," Highlighting the National Call Center and the new CIB, Washington D.C.
62. On March 20-21, 1997, the Deputy Director of the Office of Communications Business Opportunities served as a panel member at "Telecommunications 1997: Diversity, Economic Empowerment and Opportunities" Conference at Fayetteville State University. The OCBO representative discussed business opportunities for minorities.

63. On May 15, 1997, the Office of Communications Business Opportunities, together with Bowie State University will co-sponsor a one-day conference to discuss universal service and access reform.
64. On June 24, 1997, the Enforcement Division of the Common Carrier Bureau will sponsor a public forum to discuss Local Exchange Carrier billing issues.

May 8, 1997

SEPARATE STATEMENT OF
COMMISSIONER RACHELLE B. CHONG

Re: Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses: GN Docket 96-113, Report

In our Report today, we reaffirm our commitment to identifying and removing impediments experienced by women or minorities in the telecommunications market. In addition, we announce that we plan to conduct a comprehensive study of the participation of women and minority-owned businesses in the telecommunications market. Such a study is necessitated by the Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, in which the Court held that the federal government's use of race-based criteria for decision-making must satisfy the requirements of strict scrutiny.¹

Although I am pleased to see that we are once again pledging to proceed with this *Adarand* study, I am concerned about the length of time that it has taken to get the study underway. In July 1995, when we eliminated our race and gender-based bidding preference for the PCS C Block auctions, we said that we were considering the means that we should take to develop a supplemental record that would support the use of race or gender based preferences.² Since then, we have stated in a number of decisions that we were working to develop this record.³

In this Report, we have committed to complete the auction related portion of this study in time for our September 1997 section 309(j) report on auctions to Congress and to release the study findings later this year. I urge my colleagues to join with me in making efforts to get this important study underway and completed without further delay.

¹ 115 S. Ct. 2097. As we recognized in the Notice in this proceeding, because a federal minority program has not been subject to strict scrutiny pursuant to *Adarand*, judicial guidance regarding the strict scrutiny standard thus far is limited to the decision in *Richmond v. J.A. Croson Co.*, in which a state program was evaluated under strict scrutiny. 488 U.S. 469 (1989). Under *Croson* remedial relief is permitted on the basis of "evidence of a pattern of individual discriminatory acts . . . supported by appropriate statistical proof." 488 U.S. at 499.

² *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Sixth Report and Order*, 11 FCC Rcd 136, 137 (1995).

³ See, e.g., *Amendment of Parts 20 and 24 of the Commissions Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Cap, Report and Order*, 11 FCC Rcd 7824, 7834 (1996).