

Resolution Adopted by the FCC's Diversity Advisory Committee

Regarding Designated Entity Investment Rules

September 22, 2009

WHEREAS, the Commission's Designated Entity ("DE") rules were developed to satisfy the Commission's obligations under Section 309(j) of the Communications Act to avoid the excessive concentration of licenses and provide small businesses and businesses owned by members of minority groups and women (collectively, "DEs") with the meaningful opportunity to participate in the provision of spectrum-based services;

WHEREAS, the often times capital-intensive nature of the communications businesses and the difficulties experienced by the DEs in accessing capital and experience make it virtually impossible for DEs to secure valuable spectrum licenses when bidding against well-capitalized incumbents and to compete in the market;

WHEREAS, the Commission's DE rules have consistently been designed to ensure that DEs who participate in competitive bidding have sufficient capital and flexibility to structure their businesses to be able to compete at auction, fulfill their payment obligations, and ultimately provide service to the public;

WHEREAS, in 2006 the Commission implemented two DE rule changes (doubling to ten years, from five years, the period of time that DEs must hold licenses; and prohibiting DEs from wholesale-leasing more than fifty percent of their capacity, or twenty-five percent of their capacity to any single entity) that produced substantial unforeseen effects on national spectrum allocation ("2006 Rule Changes");

WHEREAS, prior to the 2006 rule changes, DEs won approximately fifty percent of all auctioned licenses (\$23 billion of the total \$45 billion) and after 2006 won only three percent of such licenses (\$1 billion of the total \$33 billion);

WHEREAS, this Advisory Committee adopted a resolution on April 25, 2006 opposing the 2006 Rule Changes; and

WHEREAS, closed auctions, in which DEs bid against one another as opposed to all auction participants, accounted for seventy-seven percent of all DE licenses;

Therefore, be it

RESOLVED that the Advisory Committee on Diversity for Communications in the Digital Age strongly urges the Commission to (1) commence a rulemaking to reverse the 2006 Rule Changes; and (2) consult the Advisory Committee prior to all auctions regarding whether overriding public policy goals or other factors warrant limiting the scope of closed licenses and whether such limitation should be balanced by an increase in bid credits.