

Minority Media and Telecommunications Council

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May 20, 2013

Chairwoman Mignon Clyburn
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairwoman Clyburn:

RE: MWBE Participation Data, WT Docket No. 13-135

The Minority Media and Telecommunications Council (“MMTC”) respectfully submits this follow up letter¹ to urge the Commission to issue a Supplement to the Public Notice seeking comment on the Seventeenth Mobile Wireless Competition Report,² indicating its intention to collect minority and women owned business enterprises (MWBE) data to help determine the extent and vitality of competition in the mobile industry. MWBE data would enable the Commission to take proactive steps to monitor and potentially improve its policies designed to increase competition in the mobile wireless industry.

¹ See MMTC Letter to Ruth Milkman, Wireless Telecommunications Bureau, WT Docket No. 11-186 and Subsequent Dockets (May 10, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7022311914> (last visited May 20, 2013) (urging the wireless bureau to include MWBE data in the next competition report) (“MMTC WTB Letter”). See also MMTC *Ex Parte* Letter, MB Docket No. 09-182 et al., p. 2 (April 5, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7022140174> (last visited May 20, 2013) (explaining that issues concerning data on MWBE contracting and procurement were left out of the request for information in the Public Notice for the Sixteenth Report and should not be left out of the next study. The letter explains that MWBE data should be included in the next study to determine whether it is a factor driving mobile competition).

² See Wireless Telecommunication Seeks Comment on the State of Mobile Wireless Competition, Public Notice, WT Docket No. 13-135 (rel. May 17, 2013) (“Public Notice”). See also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services, 2013 FCC LEXIS 1137 (rel. March 21, 2013) (“Sixteenth Report”).

Unfortunately, the Commission's Public Notice fails to include even a footnote on this issue.

The Commission is required by law to protect the public interest by implementing spectrum assignments consistent with its objective to regulate communications without discrimination³ and to “promot[e] economic opportunity and competition... by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women...”⁴ Further, the Commission is required by law to annually review and report on whether the mobile market is competitive.⁵ In analyzing the competitiveness of the market, the Commission is directed to consider the number of competitors, whether there is effective competition, whether there is a dominant competitor, and whether any additional providers would increase competition.⁶ MWBEs should be factored into this equation to efficiently gauge the level of industry competition, especially given that wireless is providing a unique access point for people of color.⁷ MWBEs provide an important input of inherent entrepreneurial and innovative capabilities; if the market is restricting the deployment of these valuable assets, the industry becomes inherently inefficient and uncompetitive.⁸ Finally, it is simply good policy to be aware of the trends in the regulated industries.⁹

³ See 47 U.S.C. §309(j)(3) (“... the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in section 1 of this Act 47 U.S.C. §151]...”). See also 47 U.S.C. §151 (The FCC was created “[f]or the purpose of regulating interstate and foreign commerce in communications by wire and radio so as to make available, so far as possible, to all people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid efficient, nationwide, and world-wide wire and radio communication service....”)

⁴ See 47 U.S.C. §309(j)(3)(B).

⁵ See 47 U.S.C. §332(c)(1)(C).

⁶ See *id.*

⁷ See Initial Comments of the Incentive Auction Advocates, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Docket NO. 12-268 (Jan. 25, 2013).

⁸ See, e.g. Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, 21 FCC Rcd 4753, 4756 ¶9 (2006) (describing the DE program by stating that “the Commission's primary method of promoting the participation of designated entities in competitive bidding has been to award bidding credits -- percentage discounts on winning bid amounts -- to small business applicants.”) Former Commissioner Michael Copps stated that “in this age when telecommunications companies seem only to grow larger and larger, it is important to have programs that encourage competition from smaller entrepreneurs. This is exactly what the Designated Entity (DE) program is all about and it is why we must do everything we can to make this program perform as intended.” *Id.* at 4808. See also Council Tree Communications Inc. v. FCC, 619 F.3d 235, 248-258 (3d Cir. 2010) (vacating two DE rule modifications – the 50% impermissible material relationship rule and the 10-year unjust enrichment rule -- because of “serious” deficiencies in

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MMTC looks forward to your leadership to advance competition, diversity, and equal opportunity in each FCC-regulated industry. We are committed to working with the Commission to achieve these goals.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Honig", is placed over a light pink rectangular background.

David Honig

President

the Commission's notice and comment process. While these rule modifications were in effect, the aggregate dollar value of licenses won by DEs in two highly significant Auctions, #66 and #73, dropped from an average of 70% in previous auctions to 4% and 2.6%, respectively).

⁹ See, e.g. Prometheus Radio Project v. FCC, 652 F.3d 431 (3d Cir. 2011) (expressing its frustration with the lack of progress on its diversity initiatives the court vacated the arbitrary and capricious definition of eligible entities and retained jurisdiction over the remanded initiatives that relied on the definition). “At a minimum, in adopting or modifying its rules the FCC must ‘*examine the relevant data*’ and articulate a satisfactory explanation for its action....” Id. at 469 (emphasis added and internal citations omitted).