

Minority Media and Telecommunications Council

3636 16th Street N.W., Suite B-366
Washington, D.C. 20010
Phone: 202-332-0500 Fax: 202-332-0503
www.mmtconline.org

September 24, 2013

Hon. Jessica Rosenworcel, Commissioner
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

**RE: Geographic Area Spectrum Licensing in the Incentive Auction,
Docket No. 12-268**

Dear Commissioner Rosenworcel:

As the Commission grapples with an effective and inclusive incentive auction design, the Commission should continue to exercise care in examining the impact – intended or unintended – that spectrum policies will have on diverse ownership and participation.¹ Specifically, the Commission should bear in mind that bundling assets could penalize minority and woman owned business entities (MWBEs), while disaggregating assets advances opportunity for MWBEs.²

The Spectrum Act requires the Commission to “consider assigning licenses that cover geographic areas of a variety of different sizes.”³ To this end, the Incentive Auction NPRM,⁴ addressed the pros and cons of various spectrum geographic area license sizes, including regional

¹ See e.g., 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) (encouraging the Commission to enable more spectrum to get to market quickly and to prioritize minority ownership and diverse participation throughout the incentive auction process). See also Reply Comments of the Minority Media and Telecommunications Council, The State of Mobile Wireless Competition, WT Docket No. 13-135 (July 25, 2013) (urging the Commission to collect MWBE data and factor MWBE participation into its calculation determining whether or not the wireless market is competitive).

² See Initial Comments of the Broadband Diversity Supporters (Corrected), A National Broadband Plan for Our Future, GN Docket No. 09-51 (July 5, 2009), p. 29 (BDS National Broadband Comments).

³ Middle Class Tax Relief and Job Creation Act of 2-12, Pub. L. No. 112-96, §6403(c)(3), 126 Stat. 156 (2012).

⁴ See Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions, NPRM, 27 FCC Rcd 12357 (Oct. 2, 2012) (Incentive Auction NPRM).

and major economic areas, medium sized economic areas, and small metropolitan and rural statistical areas.⁵ Raising concern over the ability to reclaim the necessary spectrum to accommodate licensing large, nationwide or regional geographic areas, the Commission also noted the complications with implementing licenses in smaller geographic areas.⁶ The Incentive Auction NPRM seemed strongly inclined towards adopting an Economic Area (EA) license as a “natural market unit for local or regional service areas.”⁷

While the Commission adequately addressed the issue of geographic area licensing in terms of reclaiming spectrum and a logistical auction design perspective, as you noted recently, the Commission also needs to analyze the impact on small and diverse carriers⁸ and, in particular, how aggregating spectrum assets into larger geographic areas may impede MWBE participation.⁹

⁵ See Incentive Auction NPRM at 12409 ¶¶144-150.

⁶ See Incentive Auction NPRM at 12410 ¶¶146-147.

⁷ Incentive Auction NPRM at 12411 ¶148. EAs are defined as “one or more economic nodes – metropolitan areas or similar areas that serve as centers of economic activity – and the surrounding counties that are economically related to the nodes...” *id.* (quoting Final Redefinition of the BEA Economic Areas, 60 Fed. Reg. 13,114 (Mar. 10, 1995)).

⁸ See Howard Buskirk, Rosenworcel Says Incentive Auction Rules Must Guarantee No Barrier Buys All Spectrum Licenses, Communications Daily (Sept. 5, 2013). “Rosenworcel said she’s still considering whether the spectrum should be sold in smaller Cellular Market Area (CMA) licenses or in just the larger Economic Area (EA) licenses. Some smaller carriers have said they will likely sit out the auction if the FCC offers just EA licenses. “I think it’s something that we’re going to have to take a look at,” she said. “I understand the simplicity of using Economic Areas.””

⁹ The impact of that bundling assets may have on small business opportunities has long been a concern of government and advocacy groups. See e.g., Contract Management, Impact of Strategy to Mitigate Effects of Contract Bundling on Small Business is Uncertain, U.S. General Accounting Office, Report to the Chairman and Ranking Minority Member, Committee on Small Business, House of Representatives (May 2004), available at <http://www.gao.gov/assets/250/242684.pdf> (last visited Sept. 17, 2013). See also Small Businesses, Limited Information Available on Contract Bundling’s Extent and Effects, United States General Accounting Office, Report to the Chairman, Committee on Small Business, U.S. Senate (March 2000), available at <http://www.gao.gov/assets/240/230178.pdf> (last visited Sept. 17, 2013); BDS National Broadband Comments at 29. A 2012 Government Accountability Report identified several barriers to government contracting as reported by government officials and advocacy groups, including lack of performance history, knowledge of the federal contracting process, contract bundling, access to officials, access to capital, and insufficiencies in monitoring subcontracting plans. See Government Contracting, Federal Efforts to Assist Small Minority Owned Businesses, United States Government Accountability Office Report to Congressional Requesters (Sept. 2012), available at <http://www.gao.gov/assets/650/648985.pdf> (last visited Sept. 17, 2013), p. 9. Advocacy groups in particular, as well as the Minority Business Development Agency, identified contract bundling as a significant potential barrier to contracting opportunities. See *id.* at p. 11 (“MBDA officials said that they believe that many

Hon. Jessica Rosenworcel

September 24, 2013

Page 3.

It is our recommendation that, despite the challenges that licensing small or non-uniform geographic areas may present, the Commission should use disaggregation to take advantage of the rare opportunity the incentive auction presents to advance competition and diverse participation throughout the wireless industry.

Sincerely,

David Honig

David Honig

President

cc: Hon. Mignon Clyburn
Hon. Ajit Pai
Ruth Milkman, Esq.

/dh

contracts are bundled unnecessarily and agreed that this practice limited minority-owned businesses' ability to compete for these contracts.") Agencies cited specific policies and programs the agencies had in place to mitigate contract bundling. "For example, HHS and DOD contracting officials noted that their offices had policies that prohibited contract bundling and added that small businesses could protect a contract that they believed was unjustifiably bundled. Further, officials from one HHS contracting office indicated that they worked with small business specialists to determine if contracts should be separated." Id.