



**Minority Media &
Telecom Council**

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June 26, 2014

Marlene Dortch, Esq., Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: Notice of *Ex Parte* Communication, WT Docket No. 05-211 (Modernization of Competitive Bidding Rules); WT Docket No. 13-135 (Wireless Competition); GN Docket No. 13-185 (Amending Commercial Operation Rules in 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands); GN Docket No. 12-268 (Incentive Auction); GN Docket No. 09-51 (National Broadband Plan); GN Docket No. 09-191 (Preserving the Open Internet); WC Docket No. 07-52 (Broadband Industry Practices)

Dear Ms. Dortch:

This letter reports on two meetings held on June 25, 2014. The first of which was with Renee Gregory, Legal Advisor for Engineering and Technology, Wireless, and Incentive Auction issues for Chairman Wheeler. The second meeting was with Erin McGrath, Legal Advisor for Wireless, Public Safety, and International issues for Commissioner O’Rielly. S. Jenell Trigg, MMTC Advisory Board Member and Member of Lerman Senter, PLLC, and Dr. Nicol Turner-Lee, Vice President and Chief Research & Policy Officer, MMTC and Jacqueline Clary, Senior Counsel and John W. Jones Fellow, MMTC, represented MMTC at both meetings.

MMTC requested a status update on the forthcoming proceeding to review the Commission’s Designated Entity (DE) rules.¹ MMTC emphasized that it is critically important that this proceeding be completed as expeditiously as possible so that DEs have adequate time to develop business plans and raise capital for the upcoming spectrum incentive auction.² DEs need as much lead time as possible to overcome the market entry barriers inherent in this industry.

¹ See e.g. Estimated Timeline of Key Events Leading Up to FCC’s Broadcast Incentive Auction (updated June 25, 2014), available at http://wireless.fcc.gov/incentiveauctions/learn-program/Incentive_Auction_Timeline.pdf (last visited June 26, 2014).

² 47 U.S.C. § 309(j)(3)(E).

Consistent with MMTC’s White Paper on DE participation,³ we urged the Commission to eliminate the Attributable Material Relationship Rule, increase bidding credits (which is the only remaining DE-specific incentive adopted under Section 309(j)), and prioritize diversity and inclusion in secondary markets. We also urged the Commission to use the DE proceeding as a vehicle to examine how today’s market realities are different from the marketplace in 1994 when the rules were created.

DE rules that are written as a “one-size fits all” approach often translate into a “one-size fits none” reality. There are various types of DEs, each with different access to capital issues, strategic plans and objectives. To have an effective DE program, the rules must be written to maximize flexibility – the ability for DEs to adapt to market conditions and new technology – and be designed to increase access to capital by encouraging investment and innovation, create regulatory stability and certainty, and reduce market entry barriers to participation.

In response to concerns raised about the potential of fraud or abuse of the DE program, MMTC stated that while only bona-fide DEs should be the beneficiaries of this program, the Commission should not allow the fear of program fraud or abuse to overshadow the program’s potential to create opportunities for increased diversity and competition. We also reiterated that the Commission has existing rules such as a random audit provision at its disposal to examine and help prevent improper relationships. However, the Commission should also recognize that factors other than fraud or abuse have impacted the ability of DEs, especially new entrant DEs, to acquire and retain licenses. Such factors, including regulatory uncertainty, a toxic regulatory environment, protracted litigation and delays in the grant of licenses, and other regulatory actions have contributed to the inability of new entrant and minority or women-owned DEs to stay in business long term.⁴ Moreover, there are legitimate business reasons in which DEs have exited the industry. MMTC urges the Commission as part of the DE proceeding to also raise questions about additional measures that can help DEs grow and stay in business longer.

Respectfully submitted,

Jacqueline Clary

Jacqueline Clary
Senior Counsel and John W. Jones Fellow

³ See S. Jenell Trigg and Jeneba Jalloh Ghatt, *Digital Déjà Vu: A Road Map for Promoting Minority Ownership in the Wireless Industry* (Feb. 25, 2014) (“MMTC White Paper”). See also Letter to Chairman Wheeler and Commissioners, Modernization of Competitive Bidding, WT Docket No. 05-211 et al. (March 7, 2014) (a coalition of 20 civil rights and public interest organizations and individuals in support of the recommendations put forth in the MMTC White Paper) (Joint Letter of Support).

⁴ See generally MMTC White Paper.