



**Minority Media &
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June 27, 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 a June 26, 2014 meeting with Commissioner Ajit Pai and Brendan Carr, Legal Advisor to Commissioner Pai on Wireless, Public Safety, and International issues. 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 discussed the upcoming 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 and extend any waiver to all DEs or, at the very least, review on a case by case basis,⁴ increase bidding credits (which is the only remaining DE-specific incentive adopted under Section 309(j)),⁵ 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.

MMTC acknowledged concerns regarding the potential fraud and abuse of the DE program, or any government program, and noted that while only bona-fide DEs should be the beneficiaries of this program, the Commission should not allow the fear of 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 also contributed to the inability of new entrant and minority or women-

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 We urged the Commission to look at how the AMR rule impacts DEs in the modern marketplace. A DE should be able to retain its DE status when entering into leasing, wholesaling, and resale agreements for more than 25% of its spectrum capacity to one entity. This rule is a major impediment to implementation of viable and flexible business plans, especially for new entrants, and it unreasonably restricts capital that is generated by leasing, wholesaling, or reselling, an industry standard practice.

⁵ We urged the Commission to increase bidding credits to at least 40% at the highest level (and raise the lower tiers incrementally in proportion to the current bidding credit levels under 47 C.F.R. 1.2110(f)(2)) to offset the harms caused by the 2006 DE Rules (two which were ruled unlawful and vacated by the Third Circuit). Since 2006, nothing has been more detrimental to DEs than the 2006 DE Rules and the unstable regulatory environment those rules continue to create for DEs and DE investors. Increasing bidding credits, even to the third-tier 35% threshold will help qualified DEs participate in the auctions.

owned DEs to stay in business long term.⁶ Moreover, there are legitimate business reasons in which DEs have exited the industry.

Significantly, the White Paper illustrates that DEs can raise capital and be viable wireless businesses when the playing field is more equitable, there is regulatory certainty, and the regulatory environment promotes investment and innovation. Our priority objective is to help the Commission achieve a more level playing field so that, regardless of who wins at auction, more DEs can participate in the program and gain access to opportunities to enter the industry.

Respectfully submitted,

Jacqueline Clary

Jacqueline Clary
Senior Counsel and John W. Jones Fellow

⁶ See generally MMTC White Paper.