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**National Civil Rights and Public Interest Groups Ask
FCC to Immediately Fix Wireless Auction Rules
Meant to Help Small Businesses Compete with Large Companies**

Washington, DC, April 2 –Leaders from ten prominent civil rights, women and minority interest organizations have been making the rounds meeting with FCC Commissioners asking them to reverse 2006 rule changes that, since adopted, have virtually eliminated the ability of small and minority businesses to compete against large wireless companies for valuable spectrum at FCC auctions. The groups are concerned about two aspects of the FCC auction rules designed to give small businesses with limited assets and revenue, (called designated entities or Des) a reasonable chance to bid for and win spectrum at auctions where they have to compete with large wireless companies. Before the changes, DEs were able to raise capital, secure spectrum at a discount and operate successful wireless companies. However, in 2006, without warning or opportunity for public comment, the FCC changed the rules shortly before it auctioned off prime and valuable spectrum in the Advanced Wireless Service auction (Auction 66). Between 1996 and 2005, DEs' average successful participation rate in comparable wireless auctions was over 70% compared to only 4% in Auction 66 and 2.6% in Auction 73 (a subsequent auction). After these changes, of the \$19 billion of licenses sold in Auction 73 last year, minorities acquired just \$5 million, or less than 1 % of the total value of those licenses.

The agency made two changes in 2006. First, it increased the time DEs must hold the licenses (or face having to repay the government the value of the discount) from five years to ten. Second, it required DEs to provide retail wireless service with at least half of the spectrum won at auction. The problem with these "fixes" is that they had the effect of sabotaging the very small businesses the DE rules aim to help. Investors, who has been were comfortable investing in the DEs, found 10 years to be too long to commit funds without a reasonable exit option. The lease restriction foreclosed the only viable means small businesses can compete in a field where 90% of the wireless market is controlled by the top four wireless companies. A startup usually can offer service at first only by leasing or wholesaling a substantial part of their winning spectrum. Competition by a startup in the *retail* wireless marketplace is virtually impossible. The FCC said when it adopted the changes that it was seeking to curb perceived abuse to the DE discount, however, it cited no evidence of fraud when it made those changes.

Last June, this public interest coalition, joined with six small wireless businesses that complained the rule change curtailed their chances to compete, and filed an Amicus Curiae Brief with the U.S. Court of Appeals for The Third Circuit. Their brief supported a challenge to the rule changes made by Council Tree Communications, Inc., Bethel Native Corporation and the Minority Media and Telecommunications Council.

In the meetings, held separately with Acting FCC Chairman Michael Copps and Commissioners Jonathan Adelstein and Robert McDowell, the coalition asked the Commission to immediately repeal the changes going forward, a course that would reflect the new Administration's emphasis on diversity and competition.

During a meeting with Chairman Copps on Tuesday, Kimberly Marcus, Executive Director of the Public Policy Institute for the Rainbow PUSH Coalition, relayed the concern of her organization and its founder and president, the Reverend Jesse L. Jackson, Sr. “We are worried that the absence of small, minority and women winners in Auctions 66 and 73 demonstrates a real problem with the current rules,” Marcus said. “New entrants need to be able to compete effectively against incumbent companies in this consolidated industry and these rules unreasonably and discriminately handicap DEs.”

Cheryl Leanza, Managing Director of The United Church of Christ, Office of Communication, who was also present in the meeting with Chairman Copps, said “We recognize the Commission’s real need to prevent abuse, but we are concerned that the new rules seem to have eliminated DEs from the auction winners circle.”

Inez Gonzalez, Vice President for Media Policy for the National Hispanic Media Coalition, who also attended the meeting, said that her group joined the coalition to make sure that Latino businesses are given a fair chance to raise capital. “If the consequence of the rules is that Latino and other minority businesses can’t do that, it only makes sense that they are rescinded,” Gonzalez said.

Jeneba Ghatt, counsel for the Amici organizations, also represented Georgetown University Law Center’s Institute for Public Representation at the meeting, said she agreed that the rule change and its consequences has amounted to what one of the meeting participants called a case of “the remedy killing the patient.”

Angela Ciccolo, Interim General Counsel for the National Association for the Advancement of Colored People, who attended the meeting with Commissioner McDowell, asked the Commissioner to consider the negative consequence of the rules on the NAACP’s constituencies that use advanced wireless technologies to receive news, information, entertainment and participate in the political process – in essence the new broadcast medium. “It would only make sense to immediately reverse this damaging trend and to delete those two changes from the books as soon as possible,” Ciccolo said. “The NAACP is very concerned that minorities and women-owned businesses, most of which qualify as DEs, not continue to be burdened by the rules, especially given the need to prepare for upcoming auctions.”

National Organization for Women President, Kim Gandy, emphasized to Commissioner Adelstein that NOW was particularly concerned that during Auction 73, women-owned businesses won zero licenses. “If the Commission is going to advance President Obama’s interest in removing artificial barriers to access for opportunities to traditionally disadvantaged businesses, including minorities and women, the FCC would have to act now and act fast to reverse those rule changes.”

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