

New Technologies Subcommittee Recommendations to the
Federal Communications Commission's
Advisory Committee on Diversity for Communications in the Digital Age

June 10, 2004

Recommendations on Spectrum and Access to Capital

Be it resolved that the Advisory Committee on Diversity for Communications in the Digital Age recommends that the Federal Communications Commission consider the proposals listed below as a means to promote participation by minorities in emerging technology sectors of the communications industry.

Recommendations that require Congressional legislation or FCC rule changes

Recommendations for Increasing Access to Capital

- Reinststate and expand the minority tax certificate
- Create a small and minority communications loan guarantee program administered by the Small Business Administration
- Create an entity that would purchase loans made to minority and small business communications companies in the secondary market.
- Allow private lenders to take a security interest in FCC licenses.
- Expand the type and amount of funds available to small communications businesses through the TDF.

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Recommendations that require Congressional legislation or FCC rule changes

Recommendations for Facilitating Minority Access to Communications Properties, Opportunities and Investment

- Provide a transferable credit or voucher to any winner in an FCC spectrum auction that certifies that it will use its spectrum license or licenses to provide service to an underserved market.
- Provide a transferable credit or voucher to any winner in an FCC spectrum license auction that makes a satisfactory showing that it has entered into a transaction with a socially and economically disadvantaged business.
- Provide for expedited FCC review of license assignment, transfer-of-control and de facto transfer leasing applications where the applications contain a certification that notice of intent to sell or lease spectrum under the license was disseminated in a manner that allowed notice to be provided to minorities.
- Forbear from application of the requirement that the FCC pre-approve individual telecommunications common carrier license assignment and transfer-of-control applications where (i) such applications do not raise public interest or competition issues and (ii) such applications would result in minority ownership of 25 percent or greater.
- Require license assignment or transfer-of-control applications that must be pre-approved by the FCC to contain a diversity impact statement.

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Recommendations that require Congressional legislation or FCC rule changes

Recommendations for Reducing Regulatory Barriers to the Deployment of Unlicensed Services and Technologies

- Increase the amount of spectrum that is set aside for unlicensed use.
- Create a “fast-track” equipment certification process that establishes criteria for expedited review of equipment certification requests.
- Increase the maximum initial term of FCC experimental licenses from 5 to 7 years.
- Expand the maximum term of special temporary authority (“STA”) authorizations to 1 year.

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Recommendations that require Congressional legislation or FCC rule changes

Recommendations for Facilitating Access to Opportunities Requiring Licensed Spectrum

- Increase the bidding credits available to qualifying “small” and “very small” business in FCC spectrum auctions to 25 percent and 50 percent respectfully.
- Identify spectrum auctions whereby the licenses assigned cover small geographic areas such as metropolitan statistical areas (“MSAs”) and rural service areas (“RSAs”).
- Forbear from requiring FCC pre-approval of spectrum lease agreements that transfer de facto control of telecommunications common carrier spectrum licenses and do not raise public interest concerns.

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Recommendations that can be effected by the FCC without either a congressional enactment or the resolution of a notice and comment rulemaking proceeding

- Expand the working relationship between the FCC and SBA, as well as the FCC and other government agencies (e.g., NTIA, Department of Commerce) in an effort to increase awareness of emerging technology opportunities for minority-owned businesses.
- Sponsor an annual FCC/SBA conference on minority/small businesses and emerging technologies such as wireless, VoIP, broadband, etc.
- Establish an FCC database and/or work with outside groups to establish an information clearinghouse of updated license sales, spectrum leasing, and other communications-related opportunities.

FCC DIVERSITY TASK FORCE

Preliminary Emerging Technology Subcommittee Recommendations

The purpose of the recommendations contained herein is to promote the participation by minorities in emerging technology sectors of the communications industry. The Emerging Technology subcommittee is particularly focused on promoting access to opportunities with respect to spectrum-based technologies and emerging technologies and services such as broadband services, applications and equipment. The recommendations are divided into those that require congressional legislation or FCC rule changes, and those that can be effected by the FCC without either a congressional enactment or the resolution of a notice and comment rulemaking proceeding at the FCC. Some of the recommendations contained herein may overlap with recommendations developed by other subcommittees of the FCC's Diversity Task Force.

I. Recommendations That Require Legislation or Rule Changes

A. Recommendations for Increasing Access to Capital

Communications and information technology businesses are generally capital-intensive. Minority and women-owned businesses tend to have more difficulty accessing the capital than majority-owned firms. Therefore, barriers to accessing capital exist that make it more difficult for promising minority and women-owned businesses to execute business plans involving the provision of communications technology and services. The following recommendations are designed to address this need in the context of the emerging technology sector.

- Reinststate and expand the minority tax certificate, which would allow sellers of FCC licenses to minorities to defer the payment of capital gains. In order to be effective at promoting opportunities in emerging technologies, the tax certificate should not be limited to broadcast or cable properties, but should apply to all communications-related assets.
- Create a small and minority communications loan guarantee program administered by the Small Business Administration that would provide a U.S. government guarantee of loans made to small and minority-owned communications companies.
- Create an entity (like Fannie Mae) that would purchase loans made to minority and small business communications companies in the secondary market.
- Allow private lenders to take a security interest in FCC licenses.
- Expand the type and amount of funds available to small communications businesses through the TDF.

B. Recommendations for Facilitating Minority Access to Communications Properties, Opportunities and Investments

Even when minority businesses have access to capital, they are often less informed than their non-minority counterparts regarding opportunities that might be available to acquire communications assets in the secondary market or otherwise partner with large and/or non-minority communications companies. The following set of recommendations aim to provide an incentive for large or non-minority businesses to seek out minority-owned businesses when they desire to sell communications assets, transact business or joint-venture on communications-related projects.

- Provide a transferable credit or voucher to any winner in an FCC spectrum auction (regardless of size) that certifies that it will use its spectrum license or licenses to provide service to an underserved market. Underserved markets could be designated based on geography (e.g., such as with HUD-designated empowerment zones) or some other method of grouping or designation (e.g., by income level, education level, ect.) The transferable credit or voucher would be in addition to any other credits or vouchers (e.g., spectrum auction small and very small business bidding credits, tribal lands bidding credits) that might be available. The goals to be achieved by the credit or voucher would be to close the gap in service between non-underserved and underserved markets. The Commission's rules would specify how a credit or voucher recipient would satisfy the requirements for serving an underserved market and how the amount of credit or voucher would be calculated. In defining how the requirements for serving an underserved market would be satisfied, the Commission should consider establishing benchmarks that take into account or reference the level of service provided in non-underserved markets. The credit or voucher could be used to pay obligations owed by the recipient to the U.S. Treasury arising out of FCC-regulated activity. Such activity could include (but would not be limited to) spectrum auction bid obligations, FCC filing fees, forfeitures and other FCC-related obligations.
- Provide a transferable credit or voucher to any winner in an FCC spectrum license auction (regardless of size) that makes a satisfactory showing that it has entered into an agreement or transaction with a socially disadvantaged business for the provision of services relating to the spectrum license winner's offering of services to the public. The FCC would define a broad category of services and arrangements covered by the credit or voucher. Such services and arrangements could include (but would not be limited to) leasing, resale, agency, distribution, market consulting, engineering consulting, sales, network deployment, applications or content development or other similar services or arrangements relating to the FCC spectrum licensee's provision of products and services the public. The credit or voucher could be used to pay obligations owed by the recipient to the U.S. Treasury arising out of FCC-regulated activity. Such activity could include (but would not be limited to) spectrum auction bid obligations, FCC filing fees, forfeitures and other FCC-related obligations.

- Provide for expedited FCC review of license assignment, transfer-of-control and de facto transfer leasing applications where the applications contain a certification that notice of intent to sell or lease spectrum under the license was disseminated in a manner that allowed notice to be provided to minorities.
- Forbear from application of the requirement contained in section 310(d) of the Communications Act that the FCC pre-approve individual telecommunications common carrier license assignment and transfer-of-control applications where (i) such applications do not raise public interest or competition issues and (ii) such applications would result in minority ownership of 25 percent or greater. The FCC has sought comment on whether to forbear from application of the pre-approval requirement under certain circumstances in the Further Notice of Proposed Rulemaking in the WT Docket No. 00-230, the FCC's Secondary Markets Proceeding ("Secondary Markets Further Notice").
- Require license assignment or transfer-of-control applications that must be pre-approved by the FCC to contain a diversity impact statement. Such statement would outline how such transaction would enhance diversity of ownership or viewpoint.

C. Recommendations for Reducing Regulatory Barriers to the Deployment of Unlicensed Services and Technologies

The FCC's Part 15 (unlicensed) rules have been extremely successful in facilitating the development of a wide variety of innovative low-power electronic devices. Devices such as garage door openers, baby monitors, cordless phones, RFID tags, vehicular radar and countless other devices that operate over spectrum and do not require extensive interference protection have been developed pursuant to the FCC's Part 15 rules without the need for an FCC spectrum license and the related expense (e.g., legal, consulting, lobbying) and delay associated with securing such a license. The following recommendations are intended to increase the opportunity for new entrants, including minorities, to develop communications services and products without having to secure FCC spectrum licenses.

- Increase the amount of spectrum that is set aside for unlicensed use (e.g., adopt the proposal contained in the FCC's recent 3650-3700 MHz NPRM and make such spectrum available for unlicensed use) and increase the power levels at which users can operate on an unlicensed, non-harmful interference basis in all frequency bands not subject to section 15.205 ("restricted bands") of the FCC's rules.
- Create a "fast-track" equipment certification process that establishes criteria for expedited review of equipment certification requests.

The FCC offers parties the ability to operate on spectrum on an experimental basis through its Experimental Licensing program. The following recommendation is intended to make that program more useful to businesses that need significant lead time to attract investment capital.

- Increase the maximum initial term of FCC experimental licenses from 5 to 7 years.
- Expand the maximum term of special temporary authority (“STA”) authorizations to 1 year.

D. Recommendations for Facilitating Access to Opportunities Requiring Licensed Spectrum

Although Part 15 and the special temporary authorizations offered by the FCC make it possible in some instances for businesses to offer spectrum-based services to the public without securing an FCC license, most consumer-based services require the higher power and interference protection afforded by an FCC spectrum license. Because, pursuant to section 309(j) of the Communications Act, a significant amount of the FCC’s most valuable spectrum is assigned via auction, access-to-capital barriers often make it difficult for minority-owned businesses to acquire spectrum licenses in these auctions. The following recommendations are intended to increase the chances that minority-owned businesses, the majority of which are “small” or “very small,” are able to secure some of the more valuable spectrum licenses used to deliver wide-area consumer services.

- Increase the bidding credits available to qualifying “small” and “very small” business in FCC spectrum auctions to 25 percent and 50 percent respectively.
- Identify spectrum auctions whereby the licenses assigned cover small geographic areas such as metropolitan statistical areas (“MSAs”) and rural service areas (“RSAs”). Minority-owned businesses are more likely to be successful at acquiring spectrum licenses in such situations than when the licenses cover large geographic areas.

Recent changes in the FCC’s spectrum leasing rules for certain wireless services make it possible for service providers to take advantage of the higher power levels and interference protection afforded spectrum licenses without actually becoming spectrum licensees. The following recommendation is intended to make the FCC’s spectrum leasing rules more useful to minority-owned businesses that do not desire to acquire spectrum licenses.

- Forbear from requiring FCC pre-approval of spectrum lease agreements that transfer de facto control of telecommunications common carrier spectrum licenses and do not raise public interest concerns. The FCC has sought comment on whether to take this action in its Secondary Markets Further Notice proceeding.

II. Recommendations That Do Not Require Legislation or Rule Changes

- Expand the working relationship between the FCC and SBA, as well as the FCC and other government agencies (e.g., NTIA, Department of Commerce) in an effort to

increase awareness of emerging technology opportunities for minority-owned businesses. In particular, explore ways to generate interest among, and educate minority-owned businesses regarding, opportunities to acquire and lease spectrum by hosting informational workshops or conferences aimed at minority businesses. Consider expanding TDF's role in minority-owned outreach and educational programs.

- Sponsor an annual FCC/SBA conference on minority/small businesses and emerging technologies such as wireless, VoIP, broadband, etc. Use the conference to highlight the potential for partnerships between large and small businesses, including resale, agency, distributor, engineering and site management, and other similar relationships.
- Establish an FCC database and/or work with outside groups to establish an information clearinghouse of updated license sales, spectrum leasing, and other communications-related opportunities. Such a database should contain (i) information regarding the uses allowed for particular spectrum, (ii) the licensees of that spectrum and related contact information, if applicable, and (iii) information regarding the person to contact regarding potential sale or the spectrum.