Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of		
	)	
Request of the Minority Media and	)	
Telecommunications Council for Waiver,	)	WT Docket No. ______
Extension or Modification of the June 2013	)	
Interim Benchmarks for Certain Lower 700	)	
MHz A and B Block Licenses	)	

REQUEST FOR WAIVER, EXTENSION OR MODIFICATION OF THE JUNE 2013 INTERIM BENCHMARKS FOR CERTAIN LOWER 700 MHZ A AND B BLOCK LICENSES

EXPEDITED TREATMENT REQUESTED

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REQUEST FOR WAIVER, EXTENSION OR MODIFICATION OF THE JUNE 2013 INTERIM BENCHMARKS DEADLINE FOR CERTAIN LOWER 700 MHZ A AND B BLOCK LICENSES[1]

Pursuant to Section 1.925(b)(3) of the Commission's Rules[2] and its *Strategic Plan*[3], the Minority Media and Telecommunications Council ("MMTC")[4] hereby requests that for certain

[1] We agree with the conclusion of the Rural Cellular Association (which has been renamed the Competitive Carriers Association) ("CCA") that the June 2013 interim benchmarks should be extended or waived, but based upon different grounds than those asserted by CCA. *See* Request of RCA-The Competitive Carriers Association for Extension of the Buildout Deadlines for Lower 700 MHz A Block Licensees (July 27, 2012) ("CCA Extension Request"). In particular, the Commission may grant the relief requested herein and also requested by CCA without having to expend the litigation time necessary to reach the merits of CCA's argument going to the complex issue of interoperability. *See id.* at 2-4, 5-14 (which discusses interoperability).

[2] 47 C.F.R. §§1.925(b)(3); 1.946(e)(1).

[3] *See* Federal Communications Commission, *Strategic Plan of the FCC*, available at http://www.fcc.gov/encyclopedia/strategic-plan-fcc (last visited Sept. 6, 2012) ("*FCC Strategic Plan*").

[4] MMTC is a nonprofit organization founded in 1986, dedicated to promoting racial diversity and equal opportunity in mass media, telecommunications, and broadband industries. MMTC promotes FCC rules and private sector initiatives aimed at increasing opportunities for minorities to own media and telecommunications facilities and promoting a diversity of viewpoints in the media. In addition, MMTC represents civil rights and other organizations interested in media and telecom diversity in proceedings before the FCC and in the federal courts. This Request reflects

Lower 700 MHz A and B Block licenses, the Commission waive or extend the interim benchmarks that require license holders to provide signal coverage and offer service over 35% of the geographic area of their licenses by June 13, 2013.[5] Further, to facilitate diverse ownership, including ownership by entities focused on underserved multi-ethnic and multi-lingual urban markets, MMTC requests that the Commission allow the 35% benchmark to be met by a showing of signal coverage to 35% of the population covered by a license, or 35% of its geographic area.

Expedition is respectfully requested. The process through which Verizon Wireless (VZW) is selling extensive spectrum holdings subject to the 35% benchmark is underway, and the relief requested herein is vital to facilitate opportunities for MWBEs to purchase some of these assets.

INTRODUCTION AND SUMMARY

In 2007, the Commission issued the *700 MHz Second Report and Order*, which defines the rules governing the wireless licenses in the 700 MHz Band.[6] The Order established both interim and end-of-license-term benchmarks for the geographic buildout of spectrum blocks in the 700 MHz Band, including the Lower 700 MHz A and B Blocks. The interim benchmarks require Lower 700 MHz A and B Block licensees to provide signal coverage and offer service to at least

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the institutional views of MMTC and is not intended to reflect the views of each MMTC officer, director or advisor.

[5] The June 2013 interim benchmarks are set forth in the *Service Rules for the 698-746, 747-762 and 777-792 MHz Band*, Second Report and Order, 22 FCC Rcd 15289 (2007) ("*700 MHz Second Report and Order*"), and in 47 C.F.R. §27.14(g). *See also 700 MHz Construction And Reporting Requirements*, Public Notice, DA 11-1981 (Dec. 6, 2011) ("*Reporting Requirements Public Notice*"); *Reporting Requirements Public Notice*, 26 FCC Rcd. 16442, *citing* 47 C.F.R §§27.14(g)(1), (h)(1).

[6] *700 MHz Second Report and Order* ¶1. *See also Reporting Requirements Public Notice*, 26 FCC Rcd. at 16442 clarifying the June 2013 interim benchmarks.

35% of the geographic area covered by their licenses by June 13, 2013[7], and the longer term benchmarks require licensees to build out at least 70 percent of the geographic area covered by their licenses by the end of the license term."[8]

If a permit holder fails to meet the interim benchmarks, then the term of their licenses will ***automatically*** be reduced by two years, and the permit holder "may be subject to enforcement action, including forfeitures."[9] The Commission acknowledges that it adopted "stringent performance requirements," including reserving the right to impose a reduction in the size of the licenses area, to ensure that the licensees "'put this spectrum to use throughout the course of their license terms and serve the majority of users in their license areas.'"[10]

Verizon Wireless plans to sell an extensive array of 700 MHz A and B Block licenses that it currently owns ("the Licenses"). In the announcement of its intent to sell the Licenses, VZW specifically identified "minority-owned and female-owned businesses" ("WMBEs") among the potential purchasers it would seek to engage.[11]

The Licenses are among those subject to the June 2013 interim benchmarks. However, the infrastructure needed to operate under the Licenses has yet to be built. Thus, by the time purchases of the Licenses are negotiated with VZW, and the Commission approves the transactions, WMBEs and other purchasers of the Licenses will have only a few months to

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[7] June 13, 2013 is within four years of the end of the DTV transition.

[8] *700 MHz Second Report and Order* ¶157. *See also* 47 C.F.R. §27.14(g).

[9] *Reporting Requirements Public Notice* at 3.

[10] *Id. quoting 700 MHz Second Report and Order*, 22 FCC Rcd at 15348 ¶154.

[11] *See* April 18, 2012 News Release *Verizon Wireless to Conduct Spectrum License Sale*, available at http://news.verizonwireless.com/news/2012/04/pr2012-04-18f.html (last visited Sept. 7, 2012); May 21, 2012 News Release, *Loop Capital Named Co-Advisor for Verizon Wireless Spectrum Sale Process,* available at http://news.verizonwireless.com/news/2012/05/pr2012-05-21.html (last visited Sept. 7, 2012). MMTC is assisting VZW in recruiting diverse potential buyers.

comply with the June 2013 buildout requirements that the Commission set almost five years ago. Moreover, the looming deadlines are negatively impacting the ability of new entrants, WMBEs and other small businesses to secure financing to purchase the Licenses and to meet the buildout requirements, and causing them to incur higher financing costs than would otherwise be required.

These adverse financial and operational impacts of the short time frame for complying with the interim benchmarks justify an extension, waiver or modification of the 2013 geographic area buildout requirements on several grounds, including that: (1) adhering to the "stringent"[12] benchmarks found in Section 27.14(g) would be "inequitable, unduly burdensome or contrary to the public interest;"[13] and (2) it would facilitate the Commission's goal of furthering efficient deployment and use of spectrum.

The grant of an extension, waiver or modification of the June 2013 interim benchmarks would also be consistent with Commission precedent, including its decision to extend the deadline for broadcast deployments in the 2008 *Broadcast Diversity Order*.[14]

If the Commission fails to grant a waiver, extension, or modification of the interim benchmarks, the exacerbated difficulty that many WMBEs, small businesses and new entrants will experience accessing capital to make the purchase and to complete the buildout requirements within the requisite timeframe will prevent them from pursuing the opportunity presented by VZW's impending sale of its Licenses. As a result, there will be less diversification

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[12] *Reporting Requirements Public Notice* at 3.

[13] 47 C.F.R. §1.925(b)(3)(ii).

[14] *Promoting Diversification of Ownership In the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 5922, 5929 ¶13 (2008) ("*Broadcast Diversity Order*").

in the market, and less efficient and less effective deployment of the spectrum represented by the Licenses, all of which is contrary to the public interest.

DISCUSSION

I. WAIVING, EXTENDING OR MODIFYING THE JUNE 2013 INTERIM BENCHMARKS DEADLINE WILL FACILITATE WMBES, SMALL BUSINESSES AND NEW ENTRANTS IN ATTRACTING FINANCING.

In order to purchase the Licenses, WMBEs, small businesses and new entrants will require outside financing. The timeframe that companies have to fulfill regulatory requirements is one of the factors that both equity and debt financing sources are considering in determining whether to invest capital in WMBEs, small businesses and new entrants seeking to purchase the Licenses. The fact that only a few months remain in which to comply with the June 2013 interim benchmarks that were established five (5) years ago is likely to be a deterrent for financing sources to invest capital in WMBEs, smaller businesses and new entrants that do not otherwise have the capacity to meet the requirements within such a limited time period.

It is widely acknowledged that access to capital is a major obstacle for WMBEs and other small businesses to enter and successfully compete in the capital-intensive telecommunications industry.[15] The Commission is among the authorities that recognize that access to capital is a barrier to the "participation of minorities and women" in the "telecommunications arena." *See Notice of Proposed Rulemaking For a New Preference Program In Competitive Bidding*

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[15] *See Remarks of Commissioner Robert McDowell, Federal Communications Commission Office of Communications Business Opportunities Capitalization Strategies Workshop for Small, Women and Minority-Owned Businesses*, 2009 FCC LEXIS 6690 (2009), stating that there is "widespread agreement that access to capital is the biggest hurdle facing entrepreneurs, including minorities and women, who hope to enter and thrive in the communications arena."

Process.[16] The short timeframe remaining to comply with the June 2013 interim benchmarks is exacerbating the challenges that WMBEs, new entrants and smaller companies already face in accessing capital. The impact of missing the June 2013 deadline is that the ten-year license will revert to eight years. *Reporting Requirements Public Notice* at 3. Sources of financing are less likely to assist short-term license holders, and lenders are likely to impose more stringent terms on the financing they do provide for such license holders. That, in turn, would further impede the license holders' ability to meet subsequent deadlines, leading to a spiral of slower buildout and, consequently, reduced competition and reduced diversity of ownership.

Thus, to advance the Commission's goal of promoting competition and diversity of ownership, the Commission should grant waivers, extensions or modifications of the June 2013 interim benchmarks deadline. This relief would assist WMBEs, small businesses and new entrants in competing to acquire spectrum assets.

II. GRANTING A WAIVER, EXTENSION OR MODIFICATION OF THE JUNE 2013 INTERIM BENCHMARKS DEADLINE IS CONSISTENT WITH THE COMMISSION'S RULES AND GOALS OF EFFICIENT DEPLOYMENT AND USE OF SPECTRUM.

Section 1.925(b)(3)(ii) of the Commission's Rules permits limited waivers of deployment benchmarks if factual circumstances render application of the Commission's Rules "inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."[17] The circumstances before the Commission here meet its standard for waiver of deployment benchmarks.

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[16] *See Recommendation of the Advisory Committee on Diversity for Communications In The Digital Age For A New Auction Preference For Overcoming Disadvantage*, GN Docket No. 10-244, 25 FCC Rcd 16854, 16855-16857 ¶¶1-7 (2010).

[17] 47 C.F.R. §1.925(b)(3)(ii).

Deployment of the spectrum associated with the Licenses will require a substantial amount of capital and other resources to build the necessary infrastructure. For purchasers of the Licenses to comply with the June 2013 buildout requirements within only a few months will require even more resources. The short timeframe is particularly burdensome for new entrants, WMBEs and smaller businesses that will be required to expend considerably more effort and resources (proportionate to the size of the entity) than larger, better capitalized and established businesses. The unduly burdensome nature of having only a few months to comply with the June 2013 interim benchmarks makes it less likely that new entrants, WMBEs and smaller businesses will pursue this opportunity to acquire spectrum and diversify the market. Thus, adhering to the June 2013 interim benchmarks, which the Commission itself has characterized as "stringent,"[18] would be "inequitable, unduly burdensome or contrary to the public interest."

Furthermore, granting a waiver, extension or modification of the June 2013 interim benchmarks would be consistent with the Commission's goal of efficient deployment and use of spectrum. In its strategic plan, the Commission has identified efficient and effective use of non-federal spectrum domestically and internationally as one of its core goals.[19] Strict enforcement of the interim benchmarks will likely result in new entrants, WMBEs and other smaller purchasers of the Licenses not being able to meet the June 2013 buildout requirements, resulting in less efficient and less effective deployment of the spectrum represented by the Licenses than would be the case if these purchasers had adequate time to meet the buildout requirements or if the requirements were modified. Thus, by either waiving the June 2013 interim benchmarks deadline, allowing additional time to comply with the buildout requirements or modifying the requirements and establishing benchmarks that purchasers will be able to meet by June 2013, the

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[18] *Reporting Requirements Public Notice* at 3.

[19] *See FCC Strategic Plan*.

Commission would be acting consistent with its goal of efficient deployment and use of spectrum.

III. EXTENDING THE JUNE 2013 INTERIM BENCHMARKS DEADLINE IS CONSISTENT WITH THE COMMISSION'S PRECEDENT EXTENDING BUILDOUT REQUIREMENTS FOR WIRELESS, BROADCAST AND OTHER SERVICES.

Precedent exists for extending deadlines for buildout of FCC-regulated services. In the March 2008 *Broadcast Diversity Order*, the Commission voted unanimously to extend the buildout requirements for small businesses by 18 months, because additional time for compliance would "serve as an appropriate accommodation of the capital constraints and other financial issues that small businesses often confront."[20] This relief had been requested by an unprecedented coalition of 48 national organizations and broadcast licensees, ranging from the National Urban League to the League of United Latin American Citizens ("LULAC") to the Women's Institute for Freedom of the Press to the National Council of Churches.[21]

The situation at hand is similar to the circumstances that warranted the construction permit extension in *Broadcast Diversity Order*. Without such an extension here, new entrants to the market, WMBEs and small businesses might not be able to overcome financial constraints to competitively participating in the market. Extending this broadcast precedent to wireless would help ameliorate the access to capital constraints of WMBEs, small businesses and new entrants seeking to purchase wireless spectrum assets.[22]

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[20] *Broadcast Diversity Order*, 23 FCC Rcd at 5930 ¶15.

[21] *See e.g. Initial Comments of Diversity and Competition Supporters* at 148, available online at http://transition.fcc.gov/ocbo/mmtc_omnibus_comments.pdf (last visited Sept. 14, 2012).

[22] The relief granted in *Broadcast Diversity Order* applied only to small businesses. However, MMTC does not object to a grant of relief to all purchasers of the Licenses who are in need of a waiver, extension or modification of the June 2013 interim benchmarks. In the current wireless financing environment, nearly all of the firms that would need the relief sought herein are small businesses, including most rural carriers and most minority or women owned wireless firms.

Waiver or extension of the June 2013 interim benchmarks would also be consistent with Commission precedent where the request was necessitated by circumstances beyond the licensees' control.[23]

IV. TO FACILITATE DIVERSE OWNERSHIP AND SERVICE TO UNDERSERVED URBAN POPULATIONS, THE COMMISSION SHOULD ALLOW THE JUNE 2013 INTERIM BENCHMARKS DEADLINE TO BE MET BY PROVIDING COVERAGE OF EITHER 35% OF THE LAND COVERING THE SERVICE AREA OR 35% OF THE POPULATION OF THE SERVICE AREA.

As an alternative to the geographic area interim benchmark, the Commission should establish a benchmark defined by the population served. Doing so would be appropriate because, as the Commission has explained in the broadcast context, the public interest is

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The large established carriers already have infrastructure that they can apply to such additional spectrum that they might acquire; thus, they are unlikely to need to avail themselves of the relief sought herein. Furthermore, institutional investors and lenders are likely to regard across-the-board relief as a strong signal from the Commission to encourage investment in the sector – an outcome highly beneficial to minority consumers in light of their extraordinary degree of reliance on wireless, as documented by the Pew Internet and American Life Project. (African-Americans and English-speaking Latinos out pace Whites in the use of mobile data applications. "Nearly two-thirds of African-Americans (64%) and Latinos (63%) are wireless internet users, and minority Americans are significantly more likely to own a cell phone than their white counterparts (87% of blacks and Hispanics own a cell phone, compared with 80% of whites). Additionally, black and Latino cell phone owners take advantage of a much wider array of their phones' data functions compared to white cell phone owners." *See Mobile Access 2010* at 3, July 7, 2010, Pew Internet and American Life Project, Aaron Smith, Research Specialist, http://www.pewinternet.org/Reports/2010/Mobile-Access-2010.aspx.)

[23] *See e.g. Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline*, Order, 21 FCC Rcd 14134 ¶¶9, 12 (WTB 2006) (three-year extension of deployment deadline granted where licensees where confronted with "factors beyond their control" and the public interest would not have been advanced by strict compliance with construction deadlines); *Applications Filed by Licensees in the Local Multipoint Distribution Service*, Memorandum Opinion and Order, 23 FCC Rcd 5894 ¶25 (WTB 2008) (finding that public interest was served by extending 10-year construction requirement because licensees "faced factors beyond their control"); *Request of Warren C. Havens for Waiver or Extension of the Five-Year Construction Requirement for 220 MHz Service Phase II Economic Area and Regional Licensees*, Memorandum Opinion and Order, 19 FCC Rcd 12994 ¶4 (2004) (extending five-year construction requirement).

advanced when "a substantial portion of the population ... is more likely to receive a listenable signal."[24]

Prior to 2001, there was no population or community coverage requirement for noncommercial educational (NCE) FM stations. The Commission recognized that the absence of such a requirement meant that:

> an NCE FM station may be licensed or relocated without any assurance that it would provide service to its principal community. In order to avoid such loss of service to the public, the Commission … adopted 47 CFR 73.515 which requires NCE FM stations to provide [signal coverage] to at least 50 percent of ***the population or area*** within the station's principal community.[25]

Similarly, to ensure that wireless service is actually available to the population within the geographic area of the Licenses at issue here, the Commission should establish a benchmark defined by the percentage of the population served, as an alternative to a geographic area requirement. In many large and diverse markets, those seeking to provide service to urban, multiracial and multilingual populations would elect to build out to central-market dense populations first. Entrepreneurs with that business plan are likely to include many MBEs. An option allowing a licensee to meet the 35% benchmark by covering population rather than territory will benefit underserved urban populations and MBEs wishing to serve them.

CONCLUSION

The considerations described in this Request justly warrant a waiver, limited extension or modification of the June 2013 interim benchmarks deadline set forth in the *700 MHz Second*

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[24] *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, *Second Report and Order,* 15 FCC Rcd 21649, 21671 ¶42 (2000) (emphasis supplied).

[25] 65 FR 79773, 79775 at ¶II(C)(2) (emphasis supplied.) *See also 47 FR 73.315(c)* (requiring that FM transmitters be located so as to encompass "the urban population within the area to be served").

Report and Order[26] and the subsequent public notice.[27] To assist WMBEs, small businesses and new entrants, the Commission should waive or extend the requirement that signal coverage and service be provided to 35% of the geographic area by June 2013.[28] Furthermore, the Commission should allow the June 2013 benchmark to be met with a showing of signal coverage to 35% of the area ***or*** 35% of the population covered by the Licenses. This relief would allow WMBE, small business and new entrant purchasers of the Licenses adequate time to meet the interim benchmarks.

Respectfully submitted,

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[26] *700 MHz Second Report and Order*.

[27] *Reporting Requirements Public Notice*.

[28] *Reporting Requirements Public Notice* at 3, *citing* 47 C.F.R §§27.14(g)(1), (h)(1).