

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Request for Further Comment on Issues Related to Competitive Bidding Proceeding; Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170, GN Docket No. 12-268, RM-11395, WT Docket No. 05-211.

Since 2010, I have been calling on the Commission to establish innovative and legally sustainable approaches for greater participation by new entrants and small businesses in the communications industry. This proceeding, initiated in part to update our designated entity rules so that small businesses have the flexibility needed to secure financing and develop business models to effectively compete in an increasingly consolidated wireless market, also includes suggestions on ways to encourage more build-out in persistent poverty counties. I am grateful to parties that filed comments as we consider much needed comprehensive reforms of our competitive bidding rules.

As this Public Notice makes plain, the most contentious issue in the docket thus far, is what rules we should adopt to deter large companies, who hold equity stakes in designated entities, from circumventing the purposes of the designated entity rules. The plain language of Section 309(j) of the Communications Act requires the Commission to balance several policy goals objectives when designing auctions. Our rules should “promot[e] economic opportunity and competition,” “disseminat[e] licenses among a wide variety of applicants, including small businesses,” and avoid “unjust enrichment.” The best way to comply with Congress’s mandate is to carefully craft rules that strike the proper balance and promote all of these goals. In 2006, the Commission tried to impose more stringent unjust enrichment rules on designated entities. The United States Court of Appeals for the Third Circuit struck down a number of rules for lack of notice and strongly suggested that the rationale for adopting them was flawed.¹ In our zeal to prevent unjust enrichment, I hope we do not lose sight of the other policy goals Congress requires us to promote. This rulemaking gives us the opportunity to address any bidding coordination problems caused by the current rules as we consider the comments in response to the NPRM’s proposals. If we are careful and approach this proceeding in a fair and objective manner, I am confident that we will strike the proper balance and realize all of these important public interest goals.

¹ *Council Tree v. F.C.C.*, 619 F.3d 235, 255 & n.8, 256 & n.10 (3rd Cir. 2010).