



WASHINGTON, DC

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June 4, 2015

VIA ELECTRONIC FILING

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, SW
Washington, DC 20554

**Re: Ex Parte Notice: WT Docket Nos. 14-170 and 05-211,
GN Docket No. 12-268, and RM-11395**

Dear Ms. Dortch:

On June 3, 2015, the undersigned spoke with Louis Peraertz, Senior Legal Advisor - Wireless, International, and Public Safety, Office of Commissioner Mignon Clyburn. The policy and legal issues discussed related to the FCC's designated entity ("DE") program and Council Tree Investors, Inc.'s ("Council Tree") various filings in the aforementioned dockets, as well as the AT&T and Rural-26 DE Coalition joint proposal for a cap on DE bidding credits. *See* Letter from Joan Marsh, VP – Federal Regulatory, AT&T, and Steve Merriam, CEO/General Manager, Arctic Slope Telephone Association Cooperative, Inc. et al., to Roger Sherman, Chief, Wireless Telecommunications Bureau, FCC, WT Docket No. 14-170 et al. (filed May 11, 2015).

The undersigned discussed the legislative history of Section 309(j) of the Communications Act of 1934, as amended, and the formation of the DE program, as documented in Council Tree's May 14, 2015 Comments and May 21, 2015 Reply Comments on the Public Notice, in this proceeding. The legislative history of the Omnibus Budget Reconciliation Act of 1993 ("OBRA") makes clear that Congress was concerned about the ability of small businesses and new entrants, especially minority- and women-owned businesses, to enter the telecommunications industry and to participate in competitive bidding proceedings in a capital intensive wireless industry. The term "small business" in this industry is relative. Today's small business DE (which is how the DE program has been implemented post-*Adarand*) must still be able to raise large sums of capital in order to compete against incumbents of any size *and* to construct a wireless network. Incumbents have unique advantages over new entrants, including existing revenue and subscribers, built out network facilities, and access to traditional financing.



The cost of acquiring spectrum has increased since the OBRA, as well as the cost to construct a network. The undersigned cited to other comments in the record that document this fact, such as the Wood & Wood study accompanying the Reply Comments of King Street Wireless, L.P., WT Docket No. 14-170 (filed May 21, 2015), Exhibit 1.

The undersigned also reiterated Council Tree's opposition to any cap on bidding credits, whether the cap is based on revenue, small business size standard, or a flat cap of \$10 million as proposed by the AT&T and the Rural-26 DE Coalition. The record is devoid of any data or other factual support for DE bidding credit cap proposals. Such proposals are based on nothing more than bare allegations which have now been refuted on the record. These proposals appear to benefit only rural telcos, which are incumbents and should not be elevated to a special class of DEs superior to other different types of DEs, such as other small businesses, minority- and women-owned businesses. Council Tree's Comments also noted that Congress anticipated competition in rural America when it was deliberating competitive bidding authority granted under OBRA.

Bidding credits are the last remaining incentive to foster competition by DEs in a consolidated wireless industry. Diminishment of the value or use of a bidding credit through an arbitrary cap would be inherently anti-competitive. First, a cap restricts DEs – especially new entrant DEs - to small markets and small spectrum blocks, which is inconsistent with the statutory mandates under Section 309(j) to ensure the widespread dissemination of licenses to a wide variety of applicants, to avoid the excessive concentration of licenses, and to promote small businesses, rural telephone companies, and businesses owned by members of minority groups and women. 47 U.S.C. § 309(j)(3)(B). Second, given the evolving nature of the wireless industry, the exponential rate of technological advances, and increased consumer need for mobile services and applications, how can a cap set today by the federal government be consistent with changes in marketplace factors and auction dynamics tomorrow? For example, when the FCC was planning for Auction 66, it could not have anticipated the tremendous growth of the iPhone and Android devices, including the rise of mobile broadband and mobile applications. Today, it is unknown how the Internet of Things or a yet undiscovered use of spectrum will change spectrum demand or usage for future auctions.

Finally, the practical impact of a bidding credit cap also potentially harms rural telcos. Council Tree documented in its Reply Comments and the accompanying attachments that AT&T was rural telcos' biggest rival for spectrum in Auction 97. AT&T's dominance in Auction 97, even in traditional rural markets, raises the risk that AT&T or any large incumbent can simply bid at higher levels that will eclipse any cap and therefore, dominate an auction to even higher levels than in Auction 73 (where AT&T/Verizon Wireless combined secured 84.4% of auction revenues).



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DEs need the flexibility to build viable business plans in order to provide competition and innovation, benefiting consumers and the public interest, particularly since different types of DEs have differing capital needs. Council Tree opposes any proposal that would hamper or negate the ability of a new entrant to compete for spectrum in small, medium or large markets.

Please contact the undersigned if you have questions or comments.

Sincerely,

/s/ S. Jenell Trigg

S. Jenell Trigg
Counsel to Council Tree Investors, Inc.

cc: Louis Peraertz