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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

WT Docket No. 97-82

In the Matter of )  
 )  
Amendment of the Commission's Rules )  
Regarding Installment Payment Financing )  
For Personal Communications Services )  
(PCS) Licenses )

To: The Commission

**OPPOSITION TO PETITION FOR RECONSIDERATION  
FILED BY ALPINE PCS, INC.**

Cook Inlet Region, Inc. ("CIRI"),<sup>1</sup> pursuant to Section 1.429(f) of the Commission's rules, opposes the Petition for Reconsideration (the "Petition") of the Commission's *Sixth Report and Order and Order on Reconsideration* in the above-captioned proceeding<sup>2</sup> filed by Alpine PCS, Inc. ("Alpine") because Alpine is taking advantage of a general rulemaking proceeding governing the qualification requirements of entrepreneurs in order to challenge CIRI's participation in upcoming spectrum auctions. Furthermore, Alpine's attack on CIRI's eligibility as an entrepreneur comes in the wrong place and at the wrong time. The Commission should deny Alpine's Petition to the extent that it requests that CIRI's participation in Auction 35 should be restricted.

<sup>1</sup> CIRI is an Alaska Native Regional Corporation organized pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.* CIRI PCS entities qualify as "entrepreneurs" under the Commission's rules and provide service in many areas of the United States.

<sup>2</sup> *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, *Sixth Report and Order and Order on Reconsideration*, FCC 00-313 (rel. Aug. 29, 2000) ("*Sixth Report and Order*").

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**I. THE LEGISLATION RELIEVING CIRI FROM CERTAIN TRANSFER RESTRICTIONS DOES NOT JUSTIFY THE DISQUALIFICATION OF CIRI FROM PARTICIPATING IN FUTURE AUCTIONS AS AN ENTREPRENEUR.**

In its Petition, Alpine urges the Commission to rule that CIRI is not eligible to participate in Auction 35 as an entrepreneur because CIRI is a beneficiary of recent legislation passed by Congress that eliminates the restrictions otherwise imposed by the Commission on the transferability of entrepreneur block personal communications service licenses held by Alaska Native Regional Corporations.<sup>3</sup> The legislation that provides CIRI with relief from the Commission's transfer restrictions does not in any way render CIRI ineligible for entrepreneur status in Auction 35 or in any future auction. Alpine's argument that the legislation does not expressly guarantee CIRI's ability to participate in future auctions as an entrepreneur is irrelevant. The legislation neither disqualifies nor justifies the disqualification of CIRI, or any other Alaska Native Regional Corporation or entity controlled by such a corporation, as an entrepreneur. The legislation is, and should be treated as, separate from the Commission's decisions related to the rules that will govern participation in Auction 35 and the qualification of individual applicants as entrepreneurs.

Alpine raises a number of concerns regarding the impact of the legislation on future auctions involving entrepreneurs and suggests that this impact justifies restricting CIRI's eligibility to participate as an entrepreneur. Alpine, in raising these issues, effectively ignores the fact that the Commission has already recognized and taken significant steps to address these issues for all participants in future auctions. Specifically, the Commission has relaxed the transfer restrictions on entrepreneur block licenses for all entrepreneurs. In 1996, the

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<sup>3</sup> See Department of Defense Appropriations 2001, Pub. L. No. 106-259, § 8149, 144 Stat. 656 (2000); see also *Alpine Petition* at 12.

Commission relaxed its holding requirement for C and F block licensees and allowed transfer or assignment during the first five years to other entrepreneurs, reasoning that the former “strict holding requirements may actually be hampering the ability of entrepreneurs to attract the capital necessary to construct and operate their systems.”<sup>4</sup> More recently, the Commission, in the *Sixth Report and Order*, further relaxed the transfer restrictions on C and F block licenses by eliminating the five-year holding period requirement; now, entrepreneurs may freely transfer licenses to any entity otherwise qualified as a Commission licensee so long as the minimum construction benchmark has been met prior to the transfer or assignment.<sup>5</sup> By taking these steps, the Commission has helped to level the playing field for entrepreneurs with respect to other licensees, making it easier for entrepreneurs to restructure their spectrum holdings in the after-auction market in order to operate a more efficient and competitive personal communications system, speed build out and provide additional access to capital for entrepreneur licensees.<sup>6</sup>

In addition to relaxing the transfer restrictions, the Commission has taken additional steps to increase entrepreneurs’ access to capital and improve the flexibility afforded to entrepreneurs in structuring their businesses. Specifically, in the *Order on Reconsideration*, the Commission declined to adopt a minimum equity requirement for entrepreneurs “because it is contrary to our goal of providing legitimate small businesses maximum flexibility in attracting

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<sup>4</sup> See *In re Amendment of parts 20 and 24 of the Commission’s Rules*, WT Docket No., 96-59, *Amendment of the Commission’s Cellular/PCS Cross-Ownership Rule*, GN Docket No. 90-314, *Report and Order*, 11 FCC Rcd. 7824 at ¶¶ 83-84 (1996).

<sup>5</sup> See *Sixth Report and Order* at ¶¶ 48-51 (“Permitting such assignments and transfers will encourage rapid build-out and service to the public, two objectives of section 309(j), while at the same time providing C and F block licensees with the ability to access capital.”).

<sup>6</sup> *Id.* at ¶ 50.

passive financing.”<sup>7</sup> In this way, the Commission has recognized the importance of flexible capital arrangements for licensees, particularly those small businesses that qualify as entrepreneurs under the Commission’s rules.

It is particularly ironic that Alpine has singled out Alaska Native Regional Corporations, and CIRI specifically, for special, discriminatory treatment, because CIRI been a consistent supporter of the elimination of all transfer restrictions for entrepreneurs.<sup>8</sup> In numerous proceedings, CIRI has maintained that entrepreneurs should be free to transfer licenses to any other qualified entity because the transfer restrictions prevent the ebb and flow of license ownership and may stifle effective competition by entrepreneurs. CIRI supports the rule changes, described above, that have been effected by the Commission and believes that those changes will provide benefits similar to other entrepreneurs participating in Auction 35. Particularly in light of these generally applicable rule changes, there is no justification under the legislation or the Commission’s rules to preclude any Alaska Native Regional Corporation, including CIRI, from participating in Auction 35 as an entrepreneur.

## **II. ALPINE’S CHALLENGE TO CIRI’S ENTREPRENEUR STATUS COMES IN THE WRONG PLACE AND AT THE WRONG TIME.**

Even if there was some basis for arguing that CIRI or any other Alaska Native Regional Corporation should be deemed ineligible as an entrepreneur (and CIRI believes there is none), a general rulemaking proceeding is not the place for challenges to the qualifications of a

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<sup>7</sup> *In re Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures*, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rulemaking*, FCC 00-274 at ¶ 65 (rel. Aug. 14, 2000) (“*Order on Reconsideration*”).

<sup>8</sup> *See Petition for Reconsideration of Alpine, PCS, Inc.*, WT Docket No. 97-82 (filed Oct. 5, 2000), at 11-12 (“*Petition*”) at 11-12.

specific potential licensee.<sup>9</sup> Alpine is attempting to take advantage of a general rulemaking to request that the Commission decide a specific question of licensee qualification. The *Sixth Report and Order* is designed generally to address the requirements for participation in the closed auction as an entrepreneur, not to decide which entities will in fact be eligible to participate, and the *Sixth Report and Order* does not discuss the eligibility of any specific licensee or applicant. The Commission should not be asked to decide the qualifications and eligibility of any specific licensee at this stage in the process, nor is the question ripe for consideration at this stage. Instead, any questions about a specific licensee's eligibility should be addressed in the context of an application filed by that potential licensee.

Moreover, Alpine's challenges to CIRI's entrepreneur status for Auction 35 are procedurally misplaced and speculative.<sup>10</sup> The opportunity for Alpine to challenge a licensee's entrepreneurial status will arise *after* the successful bidders file their long form applications. It is impossible today, before a long-form application has been filed or before the auction has even begun, to evaluate the eligibility of CIRI, any other Alaska Native Regional Corporation or any other applicant to participate or qualification as an entrepreneur; only after an application has been filed can the Commission or any other party evaluate an entity's entrepreneur status. The focus of the Commission and interested parties at this stage in this proceeding should be on the general rules that will govern Auction 35 and future auctions, not whether a specific applicant is or will qualify as an entrepreneur under the Commission's rules.

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<sup>9</sup> See 47 C.F.R. § 1.429(a).

<sup>10</sup> See *Petition* at 11-12.

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For the foregoing reasons, Alpine's Petition, and particularly Alpine's request that the Commission exclude CIRI from participating in Auction 35, should be denied.

Respectfully submitted,

**COOK INLET REGION, INC.**



Mark Kroloff  
Senior Vice President and General Counsel  
Cook Inlet Region, Inc.  
2525 C Street, Suite 500  
Anchorage, AK 99509-3330  
(907) 263-5155

Jonathan D. Blake  
Christine E. Enemark  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2401  
(202) 662-6000

Scott Torrison  
Director, Telecommunications  
Cook Inlet Region, Inc.  
2525 C Street, Suite 500  
Anchorage, AK 99509-3330  
(907) 263-5176

*Its attorneys*

November 14, 2000

**CERTIFICATE OF SERVICE**

I, Christine E. Enemark, an attorney with the law firm of Covington & Burling, do hereby certify that the foregoing Opposition was served on the parties listed below by first class mail this 14th day of November, 2000.

James F. Ireland, III  
Cole, Raywid & Braverman, LLP  
1919 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, D.C. 20006  
*counsel for Alpine PCS, Inc.*

  
Christine E. Enemark