

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

In the Matter of)	
)	
Reallocation and Service Rules)	GN Docket No. 01-74
for the 698-746 MHz Spectrum)	
Band (Television Channels 52-59))	

To: The Commission

**OPPOSITION OF COUNCIL TREE COMMUNICATIONS, LLC
TO PETITIONS FOR RECONSIDERATION**

Council Tree Communications, LLC (“Council Tree”) hereby submits its opposition to several Petitions for Reconsideration submitted in the above-referenced proceeding.

Council Tree is an investment company organized to develop telecommunications industry partnerships for the benefit of minority-owned and female-owned investors. Council Tree is working with several small businesses to develop partnerships which will participate in both the 747-792 MHz (“Upper 700 Band”) and 698-746 MHz (“Lower 700 Band”) spectrum auctions. Accordingly, Council Tree has an interest in the rules and polices which govern the implementation and operation of new services in this spectrum.

On January 18, 2002, the Commission released a Report and Order adopting allocation and service rules for the 48 MHz of spectrum currently occupied by television

channels 52-59.¹ In that Report and Order, the Commission established a band plan for the spectrum being reallocated from broadcast operations to other services. Specifically, the Commission divided the spectrum into three 12 MHz blocks of two paired 6 MHz segments and two 6 MHz blocks of contiguous unpaired spectrum.² The Commission designated A Block spectrum as the paired frequencies of 698-704 MHz and 728-734 MHz; B Block spectrum as the paired frequencies of 704-710 MHz and 734-740 MHz; and C Block spectrum as the paired frequencies of 710-716 MHz and 740-746 MHz. The Commission then allocated the remaining spectrum (716-728 MHz) to the two contiguous 6 MHz blocks, designated D and E Blocks.³ The Commission further determined that it would license the A, B, D, and E Block spectrum on an Economic Area Group (“EAG”) basis and the C Block spectrum by MSA/RSA.⁴ For this entire spectrum allocation, the Commission established an operating maximum power limit of 50 kW ERP.⁵

Spectrum Exchange Group, LLC and Allen & Company Incorporated (“Spectrum Exchange”) and Access Spectrum, LLC (“Access”) request that the Commission

¹ *Reallocation and Service Rules of the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, FCC 01-364, GN Docket No. 01-74 (rel. January 18, 2002) (“Lower 700 MHz Order”).

² Lower 700 MHz Order at para. 77.

³ Id.

⁴ Id. at para. 90.

⁵ Id. at para. 102.

reconsider various portions of its spectrum allocation decisions.⁶ Spectrum Exchange finds fault with the Commission’s proposed band plan and claims that it has unintended consequences for the Upper 700 Band. Spectrum Exchange primarily is concerned about a “free-rider” problem (i.e., channel 60 licensees paying to clear channel 59). Spectrum Exchange asserts that channel 59 needs to be cleared in order make effective use of channel 60 and that this process will be much more difficult if channel 59 is licensed on an MSA/RSA basis rather than by EAG. Therefore, Spectrum Exchange proposes several alternative band plans.

Spectrum Exchange states its proposed band plans will better advance the Commission’s spectrum objectives while making it easier for channel 60 licensees to clear channel 59 without free-riding. Spectrum Exchange then asserts that absent a change to one of its proposed plans, large carriers are likely to compete aggressively against smaller carriers for channel 59’s RSA/MSA designated spectrum if only to prevent the supposed “free-riding” problem. However, Spectrum Exchange provides no support for its blanket assertion that smaller carriers will be unable to compete for this paired C Block spectrum – citing neither a study nor conversation with any potential bidder for this spectrum. Moreover, Spectrum Exchange ignores the stated advantages of the Commission’s proposed band plan. The Commission’s band plan allows for the development of a variety of services and new technologies by investors such as Council Tree; provides an opportunity for future licensees to offer services with very wide

⁶ See Petition for Reconsideration of Access Spectrum, LLC submitted March 8, 2002 and Petition for Reconsideration of Spectrum Exchange Group, LLC and Allen & Company Incorporated submitted March 8, 2002.

emission types requiring more than 6 MHz of contiguous spectrum; and provides for a 30 MHz separation between the upper and lower segments of the paired license blocks, which meets many equipment and technology requirements.⁷ Further, any change to the Commission's proposed band plan likely requires further notice and comment, which will only unnecessarily delay the auction. The Commission's band allocation plan was thoroughly thought through after extensive notice and comment; the Commission should leave its band plan as proposed in the Lower 700 MHz Order.

Access also is dissatisfied with the Commission's allocation plan; however, Access's main complaint is that the proposed maximum power level of 50 kW ERP, particularly on channels 57-59, will harm operations on the 746-747 MHz guard band of which it is the licensee of 21 licenses. Access asserts that there is a potential that some operations on channels 57-59 will create significant interference for users in the guard band and that the Commission's proposed mitigation measures do not remedy the problem. Access further asserts that the Commission's coordination requirements with licensees on channels 57-59 on a case-by-case basis is "inadequate" for its operations. Therefore, Access proposes that the Commission establish different power levels in the various spectrum blocks and reducing the power levels available for use in the channel 57-59 blocks.

The Commission adopted a 50 kW ERP for the lower 700 MHz band in order to provide maximum flexibility in allowing many different services to co-exist and provide

⁷ Lower 700 MHz Order at paras. 79-85.

for the most efficient use of the spectrum.⁸ The Commission further stated it was adopting the same power level across the spectrum because “it is important to create a consistent set of technical rules for all services operating in this [Lower 700] band.”⁹ Moreover, the Commission specifically recognized that in adopting a 50 kW ERP power level there is a potential for interference to systems operating at lower power levels on adjacent channels, whether such systems operate on adjacent channels in the Upper or Lower 700 Bands.¹⁰ Therefore, the Commission adopted a variety of technical rules to provide mitigation of such interference to protect other licensees.¹¹

Access essentially requests that the Commission protect Access at the expense of future licensees’ operations in the Lower 700 Band – i.e., that the Commission change the rules solely to protect Access’s investment in the guard band regardless of how this impacts Lower 700 Band business plans. The Commission’s determination to allow for a 50 kW ERP across the Lower 700 Band was made after extensive notice and comment and is well thought through. The Commission should not reduce the power level solely to make it easier for one licensee to protect its investment.

Council Tree also opposes the request of The WB Television Network (“WB”) to delay the auction of the Lower 700 Band spectrum. WB seeks to delay the start of the auction because it believes the auction is likely to be postponed for several years and that

⁸ Id. at para. 103.

⁹ Id.

¹⁰ Id. at para. 104.

¹¹ Id. at para. 106.

such delay will allow for the commencement of new analog television service in the spectrum, contrary to the Commission's decision to prohibit such new service.¹² WB relies on legislation that has been proposed by the Bush Administration but not enacted by Congress.¹³ However, Section 309(j)(14)(C)(ii) of the Communications Act of 1934, as amended, which set the deadline by which the Commission must complete the auction of the Lower 700 Band, remains the operative law as of this date. Therefore, unless Congress enacts new legislation changing the proposed outside auction date, the Commission is required to hold the auction so that it is completed by September 30, 2002.¹⁴ Indeed, the Commission recognizes its responsibility to proceed with the auction having recently released guidelines to govern the auction process.¹⁵ Moreover, holding the auction as scheduled will allow participants to begin formulating plans for the implementation of new services for the public which in the public interest.

¹² Petition for Reconsideration of The WB Television Network submitted March 8, 2002 at p. 10. Council Tree stated its support for the Commission's decision to prohibit new analog service on channels 52-59 in its Opposition to Petition for Reconsideration of the Spectrum Clearing Alliance submitted on March 14, 2002.

¹³ The Bush Administration stated it would propose legislation to shift the statutory deadlines for the auction of channels 52-59 from 2002 to 2006. Executive Office of the President and Office of Management and Budget, *Budget of the United States Government*, Fiscal Year 2003.

¹⁴ Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-843 (1984) (holding that if Congress has directly spoken to the precise question, the agency must give effect to the unambiguously expressed intent of Congress).

¹⁵ Auction of Licenses in the 698-746 MHz Band Scheduled for June 19, 2002, *Notice of Filing Requirements, Minimum Opening Bids Upfront Payments and Other Auction Procedures*, Public Notice DA 02-563, released March 20, 2002.

WHEREFORE, for the foregoing reasons, Council Tree urges that the Commission deny the petitions for reconsideration filed by Spectrum Exchange, Access and WB, and not change its decisions with respect to the Lower 700 MHz Band plan and auction schedule.

Respectfully submitted,

COUNCIL TREE COMMUNICATIONS,
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CERTIFICATE OF SERVICE

I, Elizabeth Hammond, certify that a true and correct copy of the foregoing “Opposition Of Council Tree Communications, LLC” has been mailed first-class, postage prepaid mail this 25th day of March to the following:

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