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July 22, 2004

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By *ECFS and electronic mail*

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**RE: Broadband PCS Spectrum Auction Scheduled for January 12, 2005,
Comment Sought on Reserve Prices Or Minimum Opening Bids And
Other Auction Procedures, *Public Notice* DA 04-1639**

**Petition for Rulemaking or, Alternatively, a Waiver of the
Entrepreneur Eligibility Restrictions on C Block Licenses in the
Broadband Personal Communications Services, RM-11019**

**Petition for Amendment of Part 1 of the Commission's Rules to
Include a Personal Net Worth Limitation for Competitive Bidding
Small Business Preference Eligibility, RM-10956**

Dear Ms. Dortch:

On behalf of Council Tree Communications, Inc. ("Council Tree"), this is to notify you of *ex parte* meetings regarding the above-captioned proceedings on July 21, 2004 with certain members of the Commission's staff. Steve Hillard (President), George Laub (Managing Director), and I represented Council Tree.

We met with the following Commission staff:

- Jennifer Manner (senior counsel) and Marjorie Manne (intern), Office of Commissioner Abernathy
- Paul Margie, advisor to Commissioner Copps

During the meetings, Council Tree discussed the issues raised in the attached presentations, which reflect positions discussed in previous filings by Council Tree relating to the above-referenced proceedings. In particular, Council Tree stressed the importance of preserving the current DE set-aside rules for upcoming Auction No. 58.

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Please contact me with any questions concerning this presentation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michele Farquhar".

Michele C. Farquhar
Counsel for Council Tree Communications, Inc.

cc: Jennifer Manner
Paul Margie

**PRESERVING OPPORTUNITIES FOR SMALLER BUSINESSES
THROUGH MEANINGFUL DESIGNATED ENTITY RULES**

FCC Auction No. 58
Public Notice DA 04-1639 (Report No. AUC-03-58-A)

I. An Overwhelming Number of Parties, Representing a Breadth of Interests, Have Urged the Commission to Continue to Enforce the DE Program As Is

- **15 of 19 parties commenting endorsed the Commission's *Public Notice***
 - And decision to maintain the DE rules without modification
- **The Commission heard from a broad cross-section of interested parties**
 - Individual DEs, DE carriers, rural carriers, investors and Alaska Native entities
 - "DE Supporters" coalition representing 11 national minority organizations, including League of United Latin American Citizens, NAACP and NUL
 - American Women in Radio & Television

II. The Commission Should Not Undertake to Weaken These Rules Even Further

- **The Commission already scaled-back the DE rules for these licenses in 2000**
 - Very substantially reduced the number of Closed licenses in Auction No. 35
- **Auction No. 35 was highly successful with DEs winning 45% of spectrum**
- **The Commission is now merely enforcing the farsighted decisions reached in 2000**
 - With Auction No. 35, the Commission announced that those rules "*will apply to any subsequent auctions of C or F block licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future*"
- **"Changed circumstances" widely cited by carriers to eliminate Closed licenses actually point to the need to increase, or at least maintain, Closed licenses**
 - Increasing demand for spectrum by large carriers places even more pressure on small business participation, as does continuing industry consolidation
 - Closed licenses are critical to DE participation, as the Commission recognized
- **39% fewer Closed licenses available today vs. Auction No. 35**
 - Closed licenses stayed with Nextwave or were assigned to Cingular
 - Precisely why the Commission should re-designate more licenses as Closed
- **Current DE rules fulfill Congress's mandate to enhance small business presence and participation of women and minorities**
 - At a time marked by the decline of such participation in communications
- **Rule changes will delay the auction and disrupt DE financing plans**

PRESERVING OPPORTUNITIES FOR SMALLER BUSINESSES
BY IMPLEMENTING A PERSONAL NET WORTH TEST

RM-10956

I. The FCC's Designated Entity ("DE") Program Needs Re-tuning

A. Loophole in the DE Program allows wealthy individuals to slip in

- Wealthy individuals have discovered they slip through the FCC screen if they do not own a sizeable company
- Because the FCC tests business size, not *personal wealth*, in assessing eligibility for designated entities
- High net worth individuals parlay wealth and contacts to develop attractive opportunities as DEs

B. Creates an unfair barrier for smaller businesses

- Squeezes out legitimate small businesses participation
- Will create an even bigger barrier for small business in future auctions
- Will cause an uproar such as that which killed the tax certificate program

II. The Solution: Implement A *Personal Net Worth Test*

- Adopt the SBA's *personal net worth test* to test DE eligibility
- For Auction No. 58, calibrate at \$3 million of personal net worth (excluding house and small business interest)
- Effectively screens out those wealthy individuals masquerading as DEs

III. Effect the Personal Net Worth Rule Changes in Time for Auction No. 58

- January 12, 2005 start date for Auction No. 58, the Nextwave re-auction
- Advanced Wireless Services ("3G") auction thereafter
- Personal Net Worth Test critical to these auctions