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July 23, 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 22, 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:

- Barry Ohlson, Senior Legal Advisor to Commissioner Adelstein
- Carolyn Fleming Williams (Director), Eric Malinen (Senior Attorney/Advisor), Allan Manuel (Senior Attorney/Advisor), and Curtis Jones (Intern), Office of Communications Business Opportunities
- Sam Feder, Legal Advisor to Commissioner Martin
- Peter Tenhula (Deputy Chief), Harry Wingo (Legal Advisor to the Bureau Chief), and Margaret Wiener (Chief, Auctions & Spectrum Access Division), Wireless Telecommunications Bureau
- Sheryl Wilkerson (Legal Advisor) and Eric Gunner (Intern), Office of Chairman Powell

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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.

Please contact me with any questions concerning this presentation.

Respectfully submitted,



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

cc: Sam Feder
Eric Malinen
Allan Manuel
Barry Ohlson
Peter Tenhula
Margaret Wiener
Sheryl Wilkerson
Carolyn Fleming Williams
Harry Wingo

**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