

HOGAN & HARTSON

L.L.P.

MICHELE C. FARQUHAR
PARTNER
(202) 637-5663
MCFARQUHAR@HHLAW.COM

October 13, 2004

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910
WWW.HHLAW.COM

By ECFS

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

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

Dear Ms. Dortch:

On behalf of Council Tree Communications, Inc. ("Council Tree"), this is to notify you of an *ex parte* telephone conference regarding the above-captioned proceeding on October 12, 2004. Representing Council Tree, I briefly spoke with Paul Margie, legal advisor to Commissioner Copps.

During the conference, I discussed the issues raised in the attached presentation, which addresses arguments raised by CTIA in its recent filing before the FCC's Advisory Committee on Diversity for Communications in the Digital Age ("DAC") and reflects positions described in previous filings by Council Tree relating to the above-referenced proceeding. I also noted the resolution supporting continuation of set-aside licenses in Auction No. 58 adopted by the DAC on October 4.

Please contact me with any questions concerning this presentation.

Respectfully submitted,



Michele C. Farquhar
Counsel for Council Tree Communications

Enclosure

cc: Paul Margie

COUNCIL TREE RESPONSE TO RECENT CTIA POSITION

- Attached is the CTIA's presentation to the FCC's Diversity Committee on October 4, 2004
- Council Tree has provided its responses to the CTIA points

[Council Tree responses are in bold]

ELIMINATING OR WAIVING THE CLOSED BIDDING RULES FOR
AUCTION 58 WILL PROMOTE PARTICIPATION BY SMALL BUSINESSES,
WOMEN, AND MINORITIES

- Diverse segments of the wireless industry, including small business interests, wireless carriers of all sizes, and equipment manufacturers, support the CTIA petition to eliminate or waive the closed bidding rules.
 - **On the contrary – large carriers and CTIA are the ones supporting this position**
 - **The vast majority of comments opposed CTIA and included:**
 - **Small businesses, minority and women’s groups, rural carriers, equity investors and others**
 - **32 out of 43 commenters support the current FCC rules**
 - The Rural Cellular Association, representing approximately 100 small and rural wireless carriers that actually operate wireless networks, noted that "there are more effective tools available to the Commission than closed bidding to provide opportunities for small businesses."
 - **The Rural Cellular Association is dominated by the larger rural wireless carriers who do not qualify as DEs**
 - **The real representatives of small and rural carriers opposed CTIA:**
 - **Rural Telecommunications Group**
 - **National Telecommunications Cooperative Association**
 - **OPASTCO**
 - No consensus among small businesses has formed on whether closed bidding effectively promotes participation by small businesses, women, and minorities.
 - **On the contrary, consensus among DEs is crystal clear and broad-based in asserting the effectiveness of closed bidding**
 - **Please see FCC Diversity Advisory Committee resolution adopted October 4, 2004**
 - **Please see the lengthy record of filings on this subject in the FCC’s Auction No. 58 filings**
- Open bidding with bidding credits is a proven, effective method of promoting participation by small businesses, women, and minorities.
 - **The data confirms that bid credits can be effective, but only in those auctions not dominated by the large carriers**

- **In auctions dominated by large carriers, closed licenses have proven critical to DE participation and success**
 - **82% of the dollar value of all DE licenses won is with Closed licenses**
- Please see our data tables from previous FCC presentations
- In 17 of the 24 markets where both open and closed licenses were available at Auction 35, winners of open licenses paid less using bidding credits than DE winners of closed licenses.
- **CTIA's data is incorrect – there are actually 84 markets (of 195 total markets auctioned) where both an open and a closed license was auctioned in Auction 35**
 - **In those 84 markets, the price for closed licenses represented a 20% discount over the net price (i.e., what DEs paid net of the bid credit) for open licenses in those markets**
 - **This clearly demonstrates that closed licenses have real value**
 - **Please see Exhibit A attached for a list of those 84 markets**
- The FCC repeatedly uses bidding credits, instead of closed bidding, in virtually all other auctions.
 - **Appropriately so because, unlike Auction No. 58 and the PCS auctions, these other auctions are not dominated by the large carriers**
 - **Large carriers have little or no interest in this other spectrum**
 - Please see our data backing-up this statement in previous FCC presentations
- Small companies used bidding credits to win nearly 50% of the available open licenses in Auction 35.
 - **CTIA focuses on the number of licenses, instead of the real measure of success, namely the value of licenses won**
 - **By dollar value, DEs won just 6% of the open licenses for \$0.6 billion, excluding the single outlier of Salmon PCS**
 - **Highlights DE relegation to lower value markets when competing with bid credits only against large carriers**
 - **By comparison, DEs won 100% of closed licenses auctioned for a total of \$5.3 billion**

- Small companies account for nearly 80% of all winning bidders in open auctions utilizing bidding credits.
 - **Not surprising given abundance of licenses auctioned by the FCC over the past 10 years that have extremely low values and in which the large carriers have shown little or no interest in acquiring**
 - **Please see our data tables in previous FCC presentations that further illustrate this point**
- Additional measures also are effective in promoting participation by small businesses, women, and minorities.
 - The FCC's reconfiguration of 30 MHz C block licenses into 10 MHz licenses allowed small businesses, women, and minorities to launch services in these spectrum blocks.
 - **CTIA refers to the FCC's 2000 "reconfiguration" which served only to severely diminish the opportunity for DEs**
 - **Originally, 100% of this 30 MHz C block was closed for DEs only**
 - **In 2000, the large carriers succeeded in pressing for the break-up of these licenses, moving 58% to open licenses**
 - **This was clearly a major set-back for DEs in 2000**
 - **In exchange for this severe reduction, the FCC committed to retaining these closed licenses going forward**
 - Geographic partitioning and spectrum disaggregation have been widely used to enable small businesses, women, and minorities to enter markets, provide new services, and fill in or expand their footprints.
 - **Underlying assumption that DEs should be relegated to only the least valuable markets**
 - **The whole point of the DE program is to give DEs an opportunity to compete in the valuable larger markets, as well as others**
 - **This argument fails to provide any data or support demonstrating that disaggregation has benefited DEs**
 - Partitioning and disaggregation have led to an increase of more than 300% in the number of active A and B block PCS licenses (from 102 to 420 licenses).
 - **See above**
 - Partitioning has led to an increase of nearly 20% in the number of active cellular licenses (from 1,468 to 1,720 licenses).

- See above
- The FCC's secondary market rules and policies offer leasing opportunities and enhance the ability of small businesses, women, and minorities to enter markets with viable business plans.
 - **While potentially helpful, they do not even begin to assist DEs meaningfully in the way that the closed license auctions do**
 - **Again, this argument offers no supporting data**
- Closed bidding imposes significant costs to DEs and consumers.
 - **Simply not true – refuted point-by-point below**
 - In Auction 35, closed bidding resulted in many DEs paying more for closed licenses (on average, 10% more) than companies that won open licenses using bidding credits in the same markets.
 - **Please see our answer above relating to the fact that DEs paid 20% less for closed licenses than for comparable open licenses**
 - **CTIA’s data, as illustrated in our earlier answer describing the 84 market relevant sample, is again incorrect**
 - Economic evidence submitted in the record demonstrates that closed bidding for C block licenses resulted in consumer surplus losses of \$13.6 billion to \$32 billion.
 - **This is a fallacious assertion built off of what we already recognize to be true:**
 - **The FCC’s well-intentioned, but failed installment loan program, contributed to some DE over-leveraging**
 - **The FCC no longer offers installment loans**
 - Economic evidence submitted in the record demonstrates that closed bidding was at least partly responsible for DE payment defaults and bankruptcies that have prevented or delayed spectrum use for eight years and counting.
 - **This is incorrect – closed licenses had nothing to do with failures**
 - **As noted above, the source of any problem was the now discontinued installment loan program**

Exhibit A: List of Auction No. 35 Markets in Which Both an Open and a Closed License Were Offered for Sale

Market Name	Average Price of License		Closed Premium (Discount) to Open
	Closed	Open	
Albany, NY	17,228,500	23,573,000	-26.9%
Allentown, PA	5,300,500	7,811,000	-32.1%
Asheville, NC	6,196,500	6,701,875	-7.5%
Austin, TX	21,925,000	34,081,000	-35.7%
Baltimore, MD	38,398,000	35,287,500	8.8%
Bellingham, WA	672,000	898,000	-25.2%
Binghamton, NY	5,356,000	7,284,000	-26.5%
Bloomington, IN	2,067,000	1,696,000	21.9%
Boston, MA	125,092,000	201,839,500	-38.0%
Brownsville, TX	3,830,000	5,111,000	-25.1%
Bryan, TX	1,004,500	1,246,000	-19.4%
Burlington, NC	298,000	339,250	-12.2%
Burlington, VT	4,629,000	7,367,000	-37.2%
Charlotte, NC	77,795,500	120,510,000	-35.4%
Cincinnati, OH	56,814,000	50,340,000	12.9%
Cleveland, OH	72,736,000	83,766,500	-13.2%
Cleveland, TN	302,000	297,750	1.4%
Columbus, IN	435,000	617,000	-29.5%
Columbus, OH	19,604,500	25,239,000	-22.3%
Dayton, OH	24,268,000	24,206,250	0.3%
Denver, CO	66,109,500	80,537,000	-17.9%
El Paso, TX	15,695,500	21,261,000	-26.2%
Elmira, NY	5,752,000	7,638,000	-24.7%
Evansville, IN	1,503,000	2,187,000	-31.3%
Fayetteville, NC	20,781,500	23,375,000	-11.1%
Gainesville, FL	3,814,000	3,830,250	-0.4%
Goldsboro, NC	767,000	1,047,000	-26.7%
Greensboro, NC	40,981,000	57,871,000	-29.2%
Greenville, NC	972,000	1,222,500	-20.5%
Hagerstown, MD	1,601,500	2,427,000	-34.0%
Hickory, NC	6,153,000	4,444,000	38.5%
Houston, TX	104,409,000	119,701,000	-12.8%
Indianapolis, IN	26,581,000	38,640,000	-31.2%
Jacksonville, FL	23,926,000	23,184,000	3.2%
Jacksonville, NC	1,075,000	1,149,000	-6.4%
Joplin, MO	482,000	481,500	0.1%
Kansas City, MO	82,279,000	56,878,500	44.7%
Lafayette, IN	1,485,500	1,379,000	7.7%
Lakeland, FL	2,843,500	3,954,000	-28.1%
Lansing, MI	4,673,000	9,468,000	-50.6%
Las Cruces, NM	1,825,000	2,444,000	-25.3%
Lewiston, ME	2,616,000	3,558,000	-26.5%
Lexington, KY	7,067,500	9,062,000	-22.0%

Market Name	Average Price of License		Closed Premium (Discount) to Open
	Closed	Open	
Longview, WA	280,500	333,875	-16.0%
Los Angeles, CA	435,205,000	461,397,500	-5.7%
Louisville, KY	17,860,000	25,878,000	-31.0%
Manchester, NH	5,529,500	7,266,000	-23.9%
McAllen, TX	7,100,500	8,737,000	-18.7%
Melbourne, FL	3,641,500	5,190,000	-29.8%
Minneapolis, MN	134,747,000	144,788,250	-6.9%
Mt Pleasant, MI	316,000	778,000	-59.4%
New Bern, NC	930,500	1,903,000	-51.1%
New Haven, CT	11,706,500	15,325,000	-23.6%
New London, CT	1,444,500	2,753,000	-47.5%
New York, NY	1,484,327,000	2,047,663,000	-27.5%
Norfolk, VA	89,394,000	72,498,200	23.3%
Oklahoma City, OK	44,859,500	58,849,000	-23.8%
Olympia, WA	1,519,500	2,181,000	-30.3%
Oneonta, NY	1,141,000	1,721,000	-33.7%
Orlando, FL	34,220,500	31,436,250	8.9%
Pittsburgh, PA	97,848,000	99,220,625	-1.4%
Portland, ME	4,683,000	7,250,000	-35.4%
Portland, OR	64,096,000	72,373,750	-11.4%
Poughkeepsie, NY	2,095,500	5,093,000	-58.9%
Providence, RI	21,090,000	33,443,000	-36.9%
Raleigh, NC	59,149,500	72,705,000	-18.6%
Richmond, VA	40,950,500	45,453,875	-9.9%
Roanoke Rapids, NC	236,500	335,000	-29.4%
Roanoke, VA	10,238,500	14,711,500	-30.4%
Rocky Mount, NC	767,000	1,122,000	-31.6%
Rutland, VT	1,085,000	1,585,000	-31.5%
Saginaw, MI	3,189,000	5,292,000	-39.7%
San Antonio, TX	39,985,000	58,795,000	-32.0%
San Diego, CA	79,336,500	119,015,000	-33.3%
Sarasota, FL	7,830,500	10,949,000	-28.5%
Scranton, PA	3,453,500	4,306,875	-19.8%
Seattle, WA	102,531,000	141,168,500	-27.4%
Springfield, MO	6,242,500	11,845,500	-47.3%
Tampa, FL	73,835,000	63,027,750	17.1%
Temple, TX	5,766,000	5,011,000	15.1%
Washington, DC	172,184,000	189,944,125	-9.4%
Watertown, NY	656,000	624,750	5.0%
Wilmington, NC	3,790,000	6,128,000	-38.2%
Worcester, MA	4,348,000	5,231,000	-16.9%
Grand Total	3,986,954,000	4,977,279,700	-19.9%

In 69 markets, Closed Licenses were sold at a discount to Open Licenses
In 15 markets, Closed Licenses were sold at a premium to Open Licenses