

Council Tree's Proposal to:

**Preserve Access to AWS Spectrum for All
Wireless Carriers and Fix the DE Program**

WT Docket 02-353

WT Docket 04-356

RM-10956



Council Tree Communications

June 30, 2005

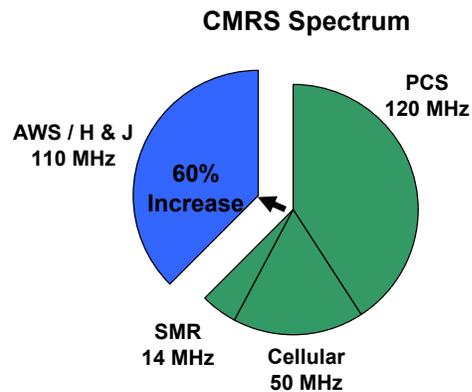
Background

Council Tree has proposed modifications to the Designated Entity (DE) Program to: (i) ensure broad access to AWS spectrum, and (ii) fix the DE Program

- ▶ **These issues and proposals are squarely in front of the Commission**
 - Numerous FCC filings and meetings
 - (1) Raise the AWS DE bid credit from 25% to 35% / 45%
 - (2) Limit top-5 national wireless carriers from partnering with DEs in-region
 - (3) Implement a personal net worth test for individuals controlling DEs
- ▶ **The Commission has addressed other AWS matters serially, but not yet these**
 - Including the AWS band plan
- ▶ **Necessary to address Council Tree's issues, particularly given recent developments**
 - Unprecedented consolidation among the national carriers
 - Auction 58 results, starkly highlighting problems with the DE Program
 - Critical AWS auctions on the horizon
- ▶ **The Commission's own Diversity Advisory Committee has spoken**
 - Repeatedly urging needed changes of this nature to the DE Program
- ▶ **Better for the Commission to address these issues now than later**
 - In response to questions from Congress and the public

Overview

Broad access to AWS licenses is vital to the future of real wireless competition



- ▶ **Mission critical spectrum for regional carriers, small carriers and new entrants**
 - AWS represents a 60% increase in CMRS spectrum nationwide
 - “Must have” spectrum necessary to deploy new 3G services
- ▶ **Top-5 national wireless carriers can and will shut out competitors**
 - Top-5 control 89% of subscribers today – inexorable trend will continue
 - Overwhelming financial resources to lock-up / warehouse spectrum
- ▶ **Spectrum has been the lifeblood of innovation and competition**
 - Legacy of VoiceStream, Sprint PCS, Leap, MetroPCS and many others
 - Benefiting consumers with more choices and better values
- ▶ **Council Tree’s 4-point solution ensures access to spectrum and competition**
 - Through practical changes to the DE Program
- ▶ **Council Tree’s solution also fixes a wayward DE program**
 - Program co-opted by large national carriers and high net worth individuals
 - Restores Program integrity by limiting application of DE benefits

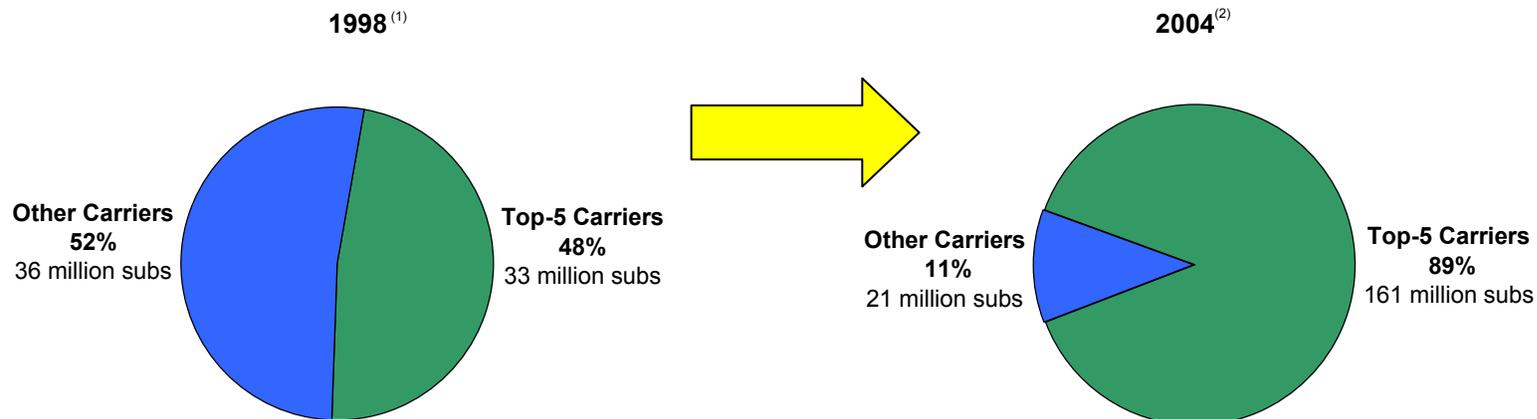
The Problem

National Carrier Dominance = Barrier to Entry for Competitors

The top-5 national carriers will dominate spectrum auctions as never before

- ▶ National carriers will use overwhelming resources to shut out auction competitors
- ▶ Analogous to the dominant airline carriers years ago
 - Who warehoused landing gates to keep out competitors
 - However, with access to gates, Southwest, JetBlue and others have flourished

Top-5 Wireless Carrier Market Share by Subscribers



(1) Source: FCC Second Annual Report and Analysis Of Competitive Market Conditions With Respect to Commercial Mobile Services.

(2) 12/31/04. Pro forma for the following completed or announced mergers: Cingular / AT&T Wireless, Sprint / Nextel, Alltel / Western Wireless. Pro forma Top-5 carriers are Verizon Wireless, Cingular Wireless, Sprint PCS/Nextel, T-Mobile, ALLTEL.

The Problem

Top-5 National Carriers Have Usurped the DE Program

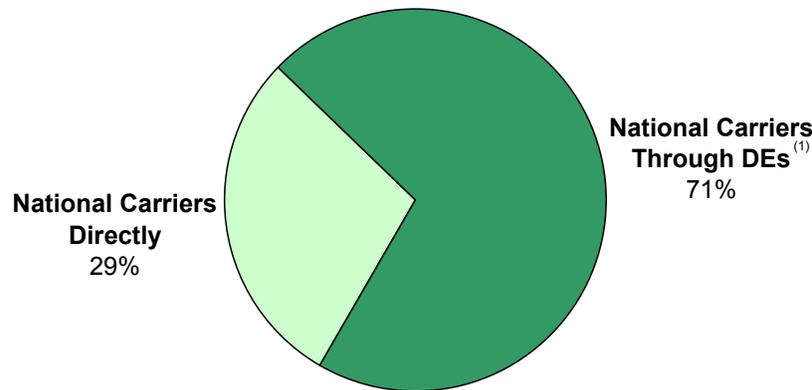
The 2005 Auction 58 results again demonstrate that the national carriers use DEs as spectrum acquisition platforms

- ▶ **Large national carriers acquired 71% of their Auction 58 spectrum using DEs**
- ▶ **Large national carriers have no need for DE benefits**
 - Congress did not envision a DE Program to benefit national carriers

Auction 58: Analysis of National Carrier Licenses Won

(By Dollar Value)

\$1.3 billion of Winning Bids



(1) National carrier DEs include: Vista PCS (Verizon), Cook Inlet/VS GSM VII PCS (T-Mobile), Edge Mobile (Cingular) and Wirefree Partners III (Sprint).

DEs Will Be Crippled without Closed Licenses

Council Tree's DE Program modifications are necessary to compensate for the Commission's decision to eliminate closed licenses from the AWS auction

- ▶ **AWS may be the first major CMRS auction ever with no closed licenses**
- ▶ **Closed licenses have accounted for 80% of total DE licenses won historically**
 - Closed licenses are central to DE success
- ▶ **DEs won't win material open licenses without changes to the rules**
 - Bidding credits alone fail for DEs against large incumbents
- ▶ **Longtime understanding, borne of Commission practice, that DE bid credits would be increased in the absence of closed licenses**

The Problem

Wealthy Individuals Preempt Legitimate DEs

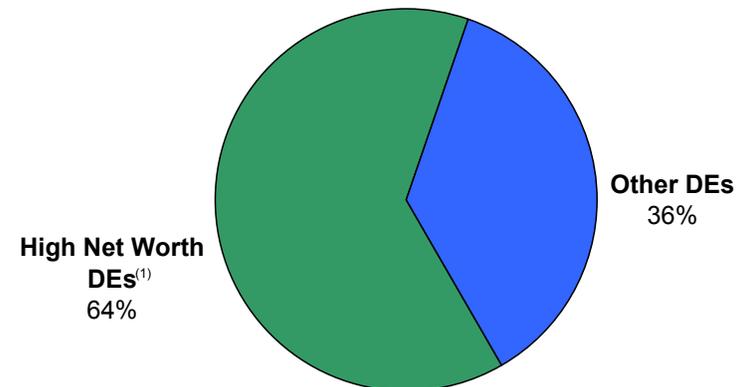
High net worth individuals, who have no need for government assistance, dominate the DE Program at the expense of legitimate DEs

Auction 58: Analysis of DE License Winners

(By Dollar Value)

\$1.5 billion of DE Winning Bids

- ▶ **High net worth individuals dominated Auction 58 DEs**
 - Won at least 64% of the dollar value of DE licenses



- ▶ **Wealthy individuals, masquerading as DEs, usurp DE opportunities**
 - Typically wealthy individuals well-connected with large carrier executives
 - Clearly not the intent of Congress or 309(j)
- ▶ **This is a page-1 *Wall Street Journal* story waiting to happen**
 - Embarrassment for the Commission
 - Compelling story given the large size of the AWS auction

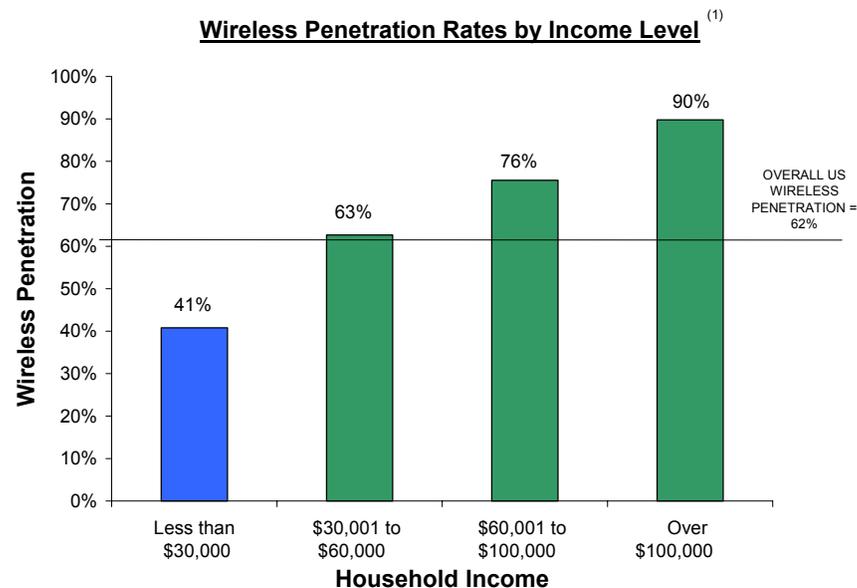
(1) High Net Worth DEs estimated to include: Vista PCS (Verizon), Edge Mobile (Cingular), Wirefree Partners III (Sprint), and Royal Street Communications (MetroPCS).

The Problem

Certain Population Segments Are Not Well Served by National Carriers

While the wireless community generally has been slow to penetrate the lower income segment of the population, smaller carriers and new entrants have not

- ▶ **Wireless penetration lags at just 41% for the lower income population segment**
 - Large national carriers focus on more lucrative segments
 - Also don't want to cannibalize their existing customer base
- ▶ **Many non-national carriers have embraced these segments**
 - Providing valuable services – regional carriers, Leap, MetroPCS and others



(1) Source: Estimate based on data derived from Bear, Stearns & Co, Inc and Compete, Inc. report dated February 2005

Council Tree's 4-Point Solution

Our 4-point solution adopts practical modifications to the DE Program

- ▶ **(1) Increase the maximum DE bid credits for AWS from 25% to 35%**
 - Allows DEs a footing to compete for licenses with national carriers
 - “Honoring the deal” and avoiding litigation risk if no closed licenses in AWS auctions

- ▶ **(2) Prohibit Large National Wireless Carriers from partnering with DEs in-region**
 - Large National Wireless Carriers > \$5 billion of wireless revenues
 - Stops DEs from being spectrum acquisition platforms for large carriers
 - Significantly increases auction proceeds to the U.S. Treasury
 - By limiting national carrier access to the DE bid credit

- ▶ **(3) High Net Worth Individuals may not be permitted to be DEs**
 - High Net Worth is > \$3 million (excluding the value of primary residence)
 - Adopt model and approach used by the SBA today
 - Does not preclude wealthy individuals from having a non-controlling investment in a DE or being a non-controlling director or officer
 - High net worth individuals as DEs have no need for government assistance
 - Absent corrective measures, this “welfare for millionaires” will inevitably grow into a much larger issue

Council Tree's Solution (cont'd)

- ▶ **(4) Add 10 points of bid credit by (i.e., increase from 35%, as proposed, to 45%) for DEs serving Underserved Segments of the population**
 - Underserved Segments are lower income & members of minority groups
 - Fosters DE acquisition of spectrum to broaden deployment of new services to underserved segments
 - Implementation: after 3 years DE must demonstrate that lower income and / or minority group customers are represented in the DE licensee customer base at levels at least 25% higher than levels at which they are represented in the population of licensee's AWS markets

Summary

- ▶ **AWS spectrum is vital to 3G deployment for DEs and non-national carriers**
 - National carriers will lock up AWS spectrum if permitted
- ▶ **The DE Program has been severely undermined**
 - No DE closed licenses as yet for AWS auctions
 - Program co-opted by national carriers and high net worth individuals
- ▶ **Our solutions start to level the playing field for non-national carriers**
 - Limit access to DE benefits (i.e., not national carriers or wealthy individuals)
 - Enhance benefits for qualifying DEs (i.e., 35% / 45% bid credit)
- ▶ **Our pro-competition solutions are the right antidote to industry consolidation**
 - Competition leads to new services and better prices to consumers
- ▶ **Our solutions will increase auction proceeds to the U.S. Treasury**
 - Requiring the top-5 national carriers to bid without access to DE bid credits
- ▶ **Our solutions fix the DE Program, avoiding a backlash**
 - Brings the DE Program in line with original congressional intent in Section 309(j)
- ▶ **Our solutions foster minority ownership – languishing at near zero**
 - Reinforce recommendations of the Commission’s own Diversity Committee