

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

In the Matter of)	
)	
Implementation of the Commercial Spectrum)	
Enhancement Act and Modernization of the)	WT Docket No. 05-211
Commission's Competitive Bidding Rules and)	
Procedures)	

**REPLY COMMENTS OF
CONSUMERS UNION**

In order to ensure the Designated Entity (DE) program truly works for its intended beneficiaries (i.e. small, minority and women-owned businesses) by providing much-needed access to spectrum licenses, and by passing on the benefits of competition and new market entry to consumers, Consumers Union (CU), the non-profit, independent publisher of Consumer Reports ®, is pleased to submit these reply comments in response to the Further Notice of Proposed Rulemaking issued by the Commission in the above-captioned docket.¹

CU urges the Commission to immediately adopt its tentative proposal to “restrict the award of designated entity benefits to an otherwise qualified designated entity where it has a ‘material relationship’ with a ‘large in-region incumbent wireless service provider.’”² In addition, CU echoes

¹ *In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Further Notice of Proposed Rulemaking, WT Docket No. 05-211 (re. Feb. 3, 2006) (“FNPRM”)

² FNPRM at 5.

the comments submitted by the Media Access Project,³ on behalf of the National Hispanic Media Coalition, (NHMC) et. al, in calling for a further period of inquiry into whether additional restrictions and/or modifications should be made to the DE program.

Specifically, as the Commission considers the best means to promote its mandate to promote growth and opportunity for small, minority and women-owned communications businesses and to promote competition and deployment of advanced wireless communications services to all Americans, particularly underserved low-income, minority and rural communities, CU urges the Commission to strike a careful balance. As Council Tree Communications⁴ (Council Tree) and the Minority Media Telecommunications Council⁵ (MMTC) explain in their comments, there is a risk that drawing the line regarding DE partnerships too narrowly could limit DE access to necessary capital and other forms of support. For example, MMTC recommends defining “large” wireless carriers in terms of the number of CMRS subscribers as a “reasonably simple and effective” way to determine which carriers have the greatest potential to misuse the DE program benefits.⁶ Yet, as NHMC explains, further restrictions, such as broadening the proposed restrictions to include “out of region” wireless carriers,

³ *In the Matter of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, (February 24, 2006); “Comments of National Hispanic Media Coalition, The Office Of Communication Of The United Church Of Christ, Inc., and Media Alliance. (NHMC)

⁴ *In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, WT Docket No. 05-211; (February 24, 2006); “Comments of Council Tree Communications, Inc.”

⁵ *In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, WT Docket No. 05-211; (February 24, 2006); “Comments of the Minority Media and Telecommunications Council.” (MMTC)

⁶ MMTC at 2.

may avoid harming DEs while preventing further market concentration through fraudulent use of DE partnerships by large wireless carriers.⁷

Furthermore, as NHMC and a number of small communications providers argued in their comments, it would be appropriate for the Commission to consider additional means by which to promote opportunity for small, minority and women-owned businesses.⁸ During a period of further inquiry, the Commission could begin to consider whether reinstatement of the minority bidding credit policy would be a permissible way to advance these goals, in light of recent Supreme Court holdings regarding the use of race-based policies to achieve compelling governmental objectives.

In addition, CU firmly disagrees with the basic premise of the comments filed by, or on behalf of, companies that would be considered “large wireless carriers.” These comments argue that there is no evidence of concentration in the wireless market. On the contrary, in CU comments and reply comments filed in the Cingular/AT&T Wireless⁹ and Sprint/Nextel¹⁰ merger proceedings, we outlined our grave concerns that those mergers dealt a devastating blow to the competitiveness of the market. By permitting these mergers to proceed, the Commission further reduced the number of large wireless providers to a mere handful of giant companies. These entities now control an excessive

⁷ NHMC at 3.

⁸ See, e.g. NHMC at 15-18

⁹ *In the Matter of Application for the Transfer of Control of Licenses and Authorizations from AT&T Wireless Services, Inc., and Its Subsidiaries to Cingular Wireless Corporation*, WT Docket No. 04-70; May 3, 2004; “Petition to Deny of Consumer Federation of America and Consumers Union, (Cingular) and “Reply of Consumer Federation of America and Consumers Union to Joint Opposition to Petitions to Deny of AT&T Wireless Inc. and Cingular Wireless Corporation.”

¹⁰ *In the Matter of Nextel Communications Inc. and Sprint Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63; March 30, 2005; “Petition to Deny of Consumer Federation of America and Consumers Union.”

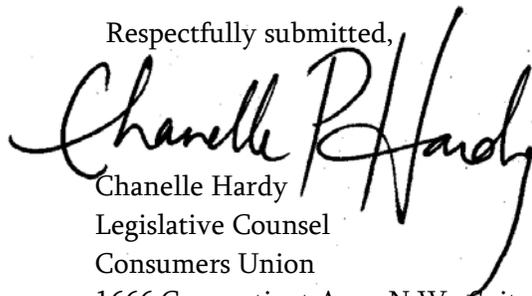
amount of wireless communications spectrum, which poses great risk to consumer choice, cost and access to innovative technology. As always, these harms are particularly onerous in the case of underserved low-income, minority and rural communities, who are too often on the wrong side of the Digital Divide.

Not only did CU argue that the mergers dramatically increased concentration in the wireless market, we argued that they decreased competition in the communications market as a whole. For example, by allowing AT&T and Cingular to merge, we argued that any potential competition that had existed between Cingular's wireless products and AT&T's local wireline and wireline-Internet services, had been neutralized. In short, these mergers gave large, incumbent providers the ability to bundle voice, data, wireless and wireline services, substantially reducing competitive pressures, at the expense of consumer cost and choice.¹¹

For these reasons, CU respectfully requests that the Commission proceed as outlined above.

March 3, 2006

Respectfully submitted,

A handwritten signature in black ink that reads "Chanelle R Hardy". The signature is written in a cursive, flowing style.

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¹¹ Cingular at 5,6.