

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

To: The Commission

REPLY COMMENTS OF THE RURAL CARRIERS

CT Cube, L.P. d/b/a West Central Wireless, Panhandle
Telecommunication Systems, Inc., Plateau Telecommunications, Inc. d/b/a
Plateau Wireless, Volcano Telephone Company, and St. Cloud Wireless
Holdings, Inc. (collectively, the "Rural Carriers"), by their attorneys, hereby
submit reply comments in response to comments filed in the Federal
Communications Commission's ("FCC" or "Commission") *Further Notice of
Proposed Rulemaking* ("Notice") proceeding seeking comment on whether the
Commission should modify its competitive bidding rules ("Part 1" rules)
concerning benefits for designated entities (*i.e.*, small businesses, rural
telephone companies, and business owned by women and minorities).¹ As
designated entities ("DE") serving remote and rural regions of the country,
the Rural Carriers wholeheartedly support the Commission's efforts to

¹ *In re Implementation of the Commercial Spectrum Enhancement Act and
Modernization of the Commission's Competitive Bidding Rules and
Procedures*, WT Docket No. 05-211, Further Notice of Proposed Rulemaking,
FCC 06-8 (February 3, 2006) ("FNPRM").

prohibit larger entities from taking advantage of bidding credits meant for bona fide DEs. However, while doing so, the Commission must ensure that bona fide DEs are not inadvertently excluded for exercising their statutorily supported DE benefits. Like many commenters, the Rural Carriers generally support the proposal submitted by Council Tree Communications, Inc. (“Council Tree”) to prohibit the award of bidding credits or other small business benefits to entities that have a significant “material relationship” with large, in-region incumbent wireless service providers. The comments and statistics submitted on the record provide specific and justifiable support for targeting the top-five wireless carriers with restrictions intended to keep them from circumventing the statutory intent of the DE provisions in Section 309(j) of the Communications Act of 1934, as amended (“Act”).

I. The Council Tree Proposal Is Supported by the Record

The record supports the Commission’s tentative conclusion that it should modify its Part 1 rules to restrict the award of DE benefits such as bidding credits to an otherwise qualified DE where it has a “material relationship” with a large, in-region incumbent wireless service provider.”² Council Tree’s comments and its numerous *ex parte* presentations in this proceeding alone provide adequate evidence that spectrum is increasingly concentrated in the hands of a shrinking number of large, nationwide

² FNPRM at ¶1.

wireless carriers.³ Doyon Communications, Inc., Bristol Bay Native Corporation, and the Bethel Native Corporation all bemoan “the unprecedented consolidation taking place among large national wireless carriers.”⁴ In contrast, CTIA – The Wireless Association® (“CTIA”) and Verizon Wireless (“Verizon”) continue to push their competition canard,⁵ ignoring the fact that the large carriers control 90 percent of all commercial mobile radio service (“CMRS”) subscribers in the United States.⁶ Numerous other commenters provide specific evidence of market consolidation using FCC facts and figures. For example, Columbia Capital, LLC, MC Venture Partners, and TA Associates, Inc. (collectively, the “Joint Commenters”) use the FCC’s past auction figures to demonstrate that spectrum-based opportunities for small and very small businesses are dwindling to the point of being non-existent.⁷

Verizon’s attempt to refute evidence of spectrum consolidation actually supports the Commission’s proposed revisions to its DE rules. Verizon argues that the results of Auction No. 58 “clearly indicates there was room for many non-affiliated DEs” since 10 percent of all licenses in the auction were unsold and another 20 percent were sold for the minimum bid.⁸ In other

³ *See, e.g.*, Council Tree Comments at 17 to 20.

⁴ Doyon Communications, Inc. Bristol Bay Native Corporation, and the Bethel Native Corporation Comments, respectively, at 1.

⁵ CTIA Comments at 3 and Verizon Comments at 9.

⁶ Council Tree Comments at 20.

⁷ Joint Commenters Comments at 3 and 4.

⁸ Verizon Comments at 4, n. 5.

words, *unwanted* license areas were available to small businesses, as well as those valued the least. Thus, according to Verizon, bona fide DEs should be happy with auction “scraps.” Verizon’s spin on the results of Auction No. 58 reveals the need for a rule change that leaves genuine DEs with more than Verizon’s and the other top-five carriers’ leftovers.

Not only does the record support excluding the top-five wireless incumbents from using DEs to garner bidding credits and other DE benefits, such an administrative action would be fully consistent with Section 309(j) of the Act. Section 309(j) allows the Commission to use bidding preferences and other benefits to ensure that rural telephone companies, small businesses, and other DEs “are given the opportunity to participate in the provision of spectrum-based services.”⁹ The record, as discussed above, shows an excessive concentration of spectrum in the hands of the top-five wireless carriers – a result that is contrary to the intent of Section 309(j). The Commission’s tentative conclusion to adopt the Council Tree proposal is consistent with the statutory purpose of a DE program and, based on the record in this proceeding, is a reasonable way to increase spectrum opportunities for bona fide small businesses.

II. The Commission’s Definition of “Material Relationship” Must Not Exclude Genuine Designated Entities

⁹ 47 U.S.C. § 309(j)(4)(D).

The Rural Carriers agree with the commenters who support the Council Tree proposal but are worried that an overbroad definition of “material relationship” might exclude genuine DEs such as small businesses and rural telephone companies that are specifically mentioned in the Act¹⁰ from exercising DE benefits.¹¹ The Rural Carriers all have relationships with large incumbent carriers. Such common relationships should not disqualify them from benefiting from the Commission’s DE program. Thus, as argued by RTG and OPASTCO, resale arrangements should not be considered a “material relationship,” and neither should roaming arrangements or switching agreements.¹²

The Rural Carriers also agree with RTG and OPASTCO that an overreaching concept of “controlling interest” that would exclude certain bona fide DEs such as independently owned and cooperative rural telephone companies should be avoided.¹³ The Rural carriers oppose Council Tree’s suggestion that individuals with a net worth exceeding \$3 million (excluding the value of their primary residence) should not be permitted to have a controlling interest in a designated entity.¹⁴ Such a proposal is “too broad”¹⁵ and would possibly exclude many family-owned, independent rural telephone

¹⁰ 47 U.S.C. § 309(j)(4)(D).

¹¹ *See generally*, NTCA Comments, John Staurulakis, Inc. Comments, and RTG and OPASTCO Comments.

¹² RTG and OPASTCO Comments at 4 and 5.

¹³ *Id.* at 5.

¹⁴ FNPRM at ¶4.

¹⁵ NTCA Comments at 1.

companies, successful small businesses, and most cooperative rural telephone companies.

III. The AWS-1 Auction Should Commence as Planned

The Rural Carriers also agree with commenters who would like to see the AWS-1 auction commence, as planned, on June 29, 2006.¹⁶ Ensuring that the AWS-1 auction takes place as scheduled is of paramount importance to the Rural Carriers. If there is any overwhelming industry consensus in this proceeding, it is the desire by most carriers that the AWS-1 auction commences on time.

IV. Conclusion

For the reasons stated herein, the Rural Carriers respectfully request that the Commission adopt its tentative conclusion, which is fully supported by the record, to restrict the award of DE benefits such as bidding credits to an otherwise qualified DE where it has a “material relationship” with a large, in-region incumbent wireless service provider¹⁷ In doing so, the Commission, consistent with the discussion *supra*, must make sure that it does not inadvertently exclude genuine DEs from effectively participating in upcoming spectrum auctions.

¹⁶ *See, e.g.*, T-Mobile Comments at 1 and Leap Wireless Comments at 17 and 18.

¹⁷ FNPRM at ¶1.

Respectfully submitted,

The Rural Carriers

By: _____ /s/_____

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Dated: March 3, 2006

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