



# Council Tree Communications, Inc.

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March 28, 2006

BY ELECTRONIC FILING

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room TW-B204  
Washington, DC 20554

Re: Oral and Written *Ex Parte* Presentations  
WT Docket No. 05-211

Dear Ms. Dortch:

Council Tree Communications, Inc. ("Council Tree") hereby gives notice of oral and written *ex parte* presentations in the referenced proceeding. The substance of Council Tree's oral presentation is summarized in the enclosed written material, which was also furnished as part of the presentation.

The presentations were made by Steve Hillard (participating by telephone) and me to Chairman Martin and Fred Campbell in the office of Chairman Martin. A copy of the enclosed written material was also delivered to Aaron Goldberger in the office of Commissioner Tate.

One copy of Council Tree's written presentation is being submitted electronically herewith pursuant to Sections 1.1206(b)(1) and (b)(2) of the Commission's Rules.

Sincerely,

/s/ George T. Laub

George T. Laub

Enclosure

The Commission's Further Notice of Proposed Rulemaking

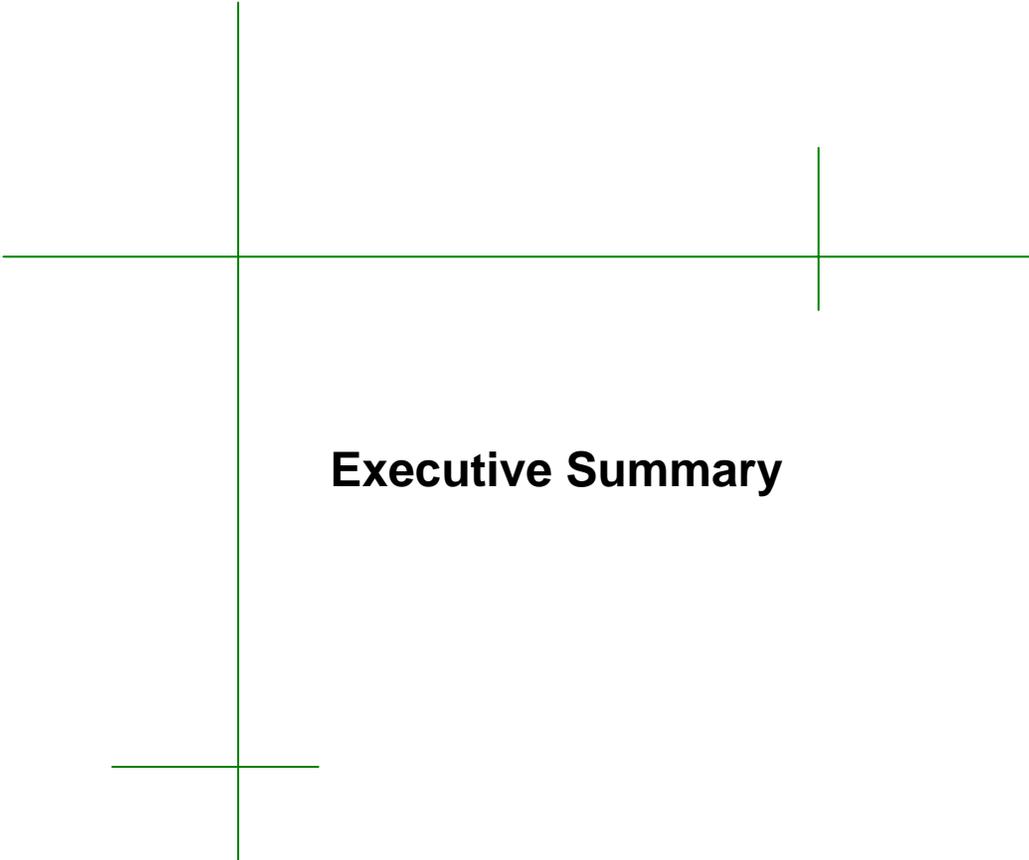
**Withholding Auction Preferences When Designated Entities  
Have Material Relationships with National Wireless Carriers**



**Council Tree Communications, Inc.**

**Written Ex Parte Presentation  
WT Docket No. 05-211**

**March 27, 2006**



## **Executive Summary**

# Proceeding Status

Thank you for your time with us to review the status of the FNPRM

- ▶ **The Commission has built a powerful record to support its tentative conclusion to withhold auction preferences from national wireless carrier DE partnerships**
  - Clear, unassailable pathway for the Commission to adopt a new rule
  
- ▶ **Comments overwhelmingly support the Commission's proposal**
  - 35 Comments representing 46 parties
    - Only 5 opposed
  - 17 Reply Comments representing 60 parties
    - Only 5 opposed
  - DOJ strongly supported the Commission's proposal
  - The Congressional Black Caucus has supported the proposal as well
  
- ▶ **The supporters include a diverse array of groups**
  - DEs, rural telcos, consumer groups, minority groups, small & regional wireless carriers and private equity investors

## Proceeding Status (continued)

- ▶ **Opposition came predictably from large carriers**
  - Verizon Wireless
  - Cingular (filed reply comments only)
  - T-Mobile
  - CTIA
  - Cook Inlet (a DE associated with T-Mobile)
  - Wirefree Partners (a DE associated with Sprint)
  
- ▶ **Notable, however, in the absence of their own comments were**
  - Sprint-Nextel and Alltel

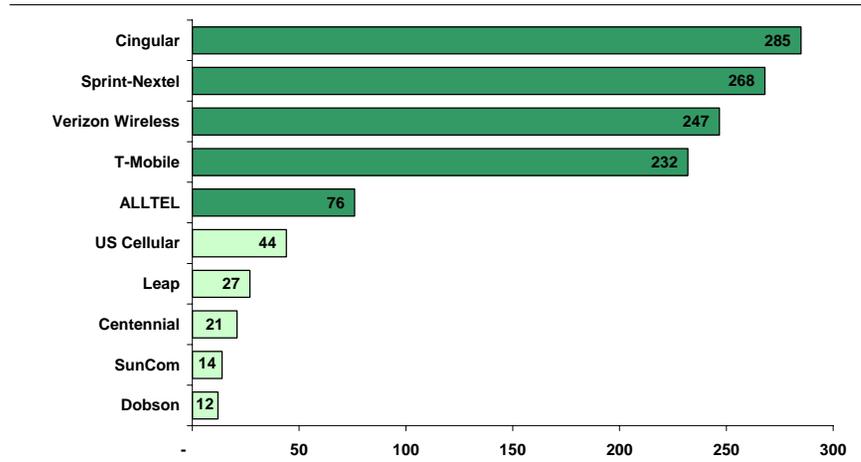
## Proceeding Status (continued)

- ▶ **The record of this proceeding is grounded in unambiguous data that was unchallenged by the national carriers**
  - **National wireless carriers acquire access to most of their new spectrum through DE relationships**
    - 71% via DEs vs. 29% directly in Auction 58 (based on purchase price)
    - Clear implications for Auction 66 if left unchecked
  - **National wireless carriers are different from others with 90% of the market**
    - With robust national networks – a big competitive advantage
  - **309(j) instructs the Commission to avoid “*excessive concentration of licenses*”**
    - And to “*disseminate licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women*”
  
- ▶ **The record does not support a more expansive application of the rule**
  - Such as extending prohibition to other communications service providers
  - Would lead only to open-ended litigation and Auction 66 delays

# Implementation Mechanics

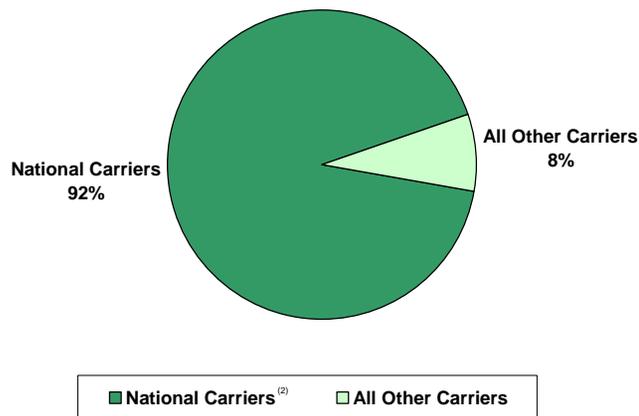
- ▶ **The \$5 billion wireless revenue threshold properly captures the national wireless carriers**
  - Carriers that are dominating the industry
  - Carriers that do not need the benefit of government preferences
  - Addressing the specific problems identified in this record

**Top-10 Public Wireless Carriers -- Covered POPs<sup>(1)</sup>**  
(in millions)

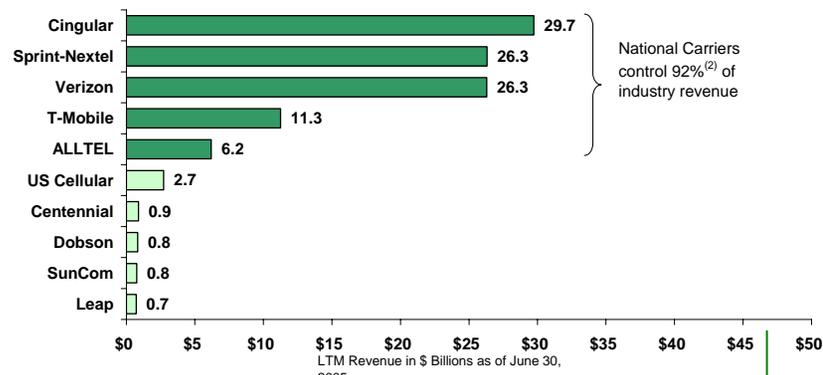


<sup>(1)</sup> Source: As publicly available form Company Reports, Bear Stearns "US Wireless Industry -- January 2006", Lehman Brothers Equity Research -- "Leap Wireless International, January 23, 2006" -- does not include data on private companies such as MetroPCS

**U.S. Wireless Industry Service Revenue<sup>(1)</sup>**



**Top-10 Public Wireless Carriers - Service Revenue<sup>(1)</sup>**  
(in \$ billions)



<sup>(1)</sup> Carrier revenue based on SEC filings and company reports. National Carriers defined as Cingular, Sprint, Verizon Wireless, T-Mobile and Alltel. Does not include private companies such as MetroPCS

<sup>(2)</sup> Total industry LTM revenue of \$108.5 billion based on CTIA's Semi-Annual Wireless Industry Survey for June 2005

<sup>(1)</sup> Last Twelve Months as of June 30, 2005. Total industry LTM revenue of \$108.5 billion based on CTIA's Semi-Annual Wireless Industry Survey for June 2005

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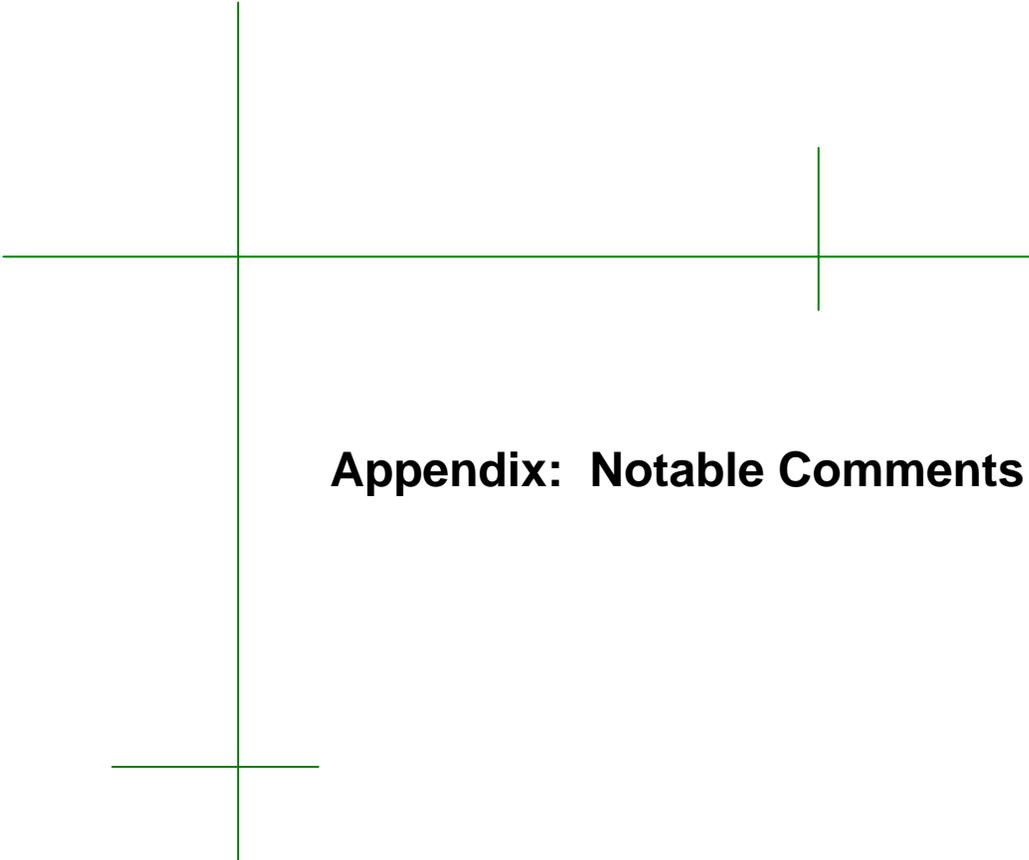
## Implementation Mechanics (continued)

### The \$5 billion wireless service revenue threshold is the right cutoff for affiliation with DEs

- ▶ **While strongly supportive of the Commission, the DOJ raised the possibility of broadening the new rule to also incorporate entities with significant interests in communications services**
  
- ▶ **The only demonstrated problem in the record of this proceeding, however, is with national wireless carriers**
  - Extending the limitation has no support in the record of this proceeding
  - DOJ's own focus has been on the national carrier mergers
  
- ▶ **An expanded prohibition would deny DE access to capital and expertise**
  - Since the inception of the DE program, the Commission has recognized that DEs require access to capital and technical expertise
  
- ▶ **Most important, adoption of an expanded prohibition would lead squarely to litigation and auction delay**
  - This outcome serves no party well
  - And has no appreciable policy benefit

# Conclusion

- ▶ **The answer for the Commission is to use common sense based on the record of this proceeding**
  - This was the intent of Congress when it enacted Section 309(j)
  
- ▶ **The record clearly shows that the Commission's DE preferences are increasingly being used to extend national wireless carrier dominance**
  - In direct contradiction to Congressional intent
  
- ▶ **No party would be denied the right to obtain spectrum** or required to divest existing licenses as a result of this rulemaking
  
- ▶ **National wireless service providers simply should not have their influence extended with the help of government-sponsored preferences**



**Appendix: Notable Comments from this Proceeding**

## Some Points Raised

Opponents argued: ***“National carrier relationships with DEs comply with the Commission’s ownership and control rules – so no problem.”***

- ▶ Whether or not these existing relationships comply with ownership and control rules, **they are permitting national wireless service providers to extend their influence in the CMRS industry**
  
- ▶ **National wireless service providers do not need the benefit of government-sponsored auction preferences to extend their dominant positions**
  - Together, they demonstrably control 90+% of the industry today
  - Neither Congress nor the FCC intended this result
  - That is the problem that the opposition sidesteps!

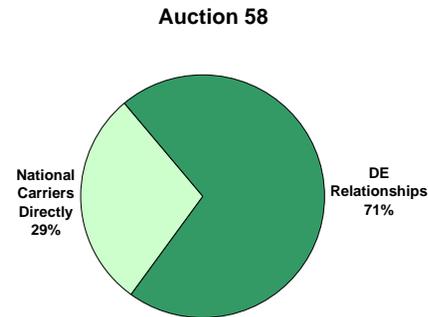
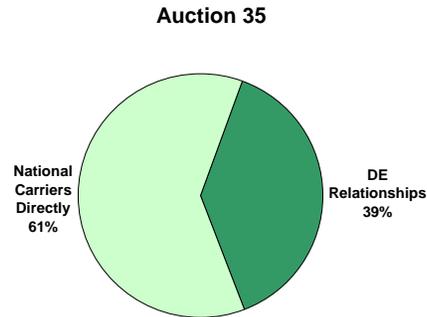
# Recent PCS Auction Results

**The problem is underscored by data clearly showing that national wireless carriers increasingly use DE investments to access additional CMRS spectrum**

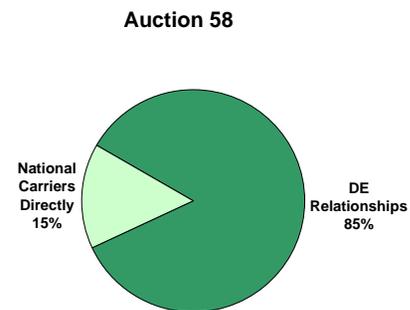
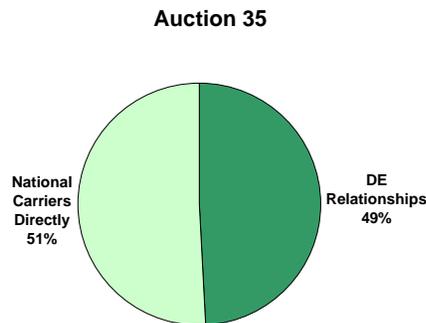
## How National Carriers Amass Spectrum

(Directly or via DE Relationships)

Measured by:  
**Net License Purchase Price**



Measured by:  
**By MHz-POPs**



▶ **Importantly, opponents ignore this data, offering none in response**



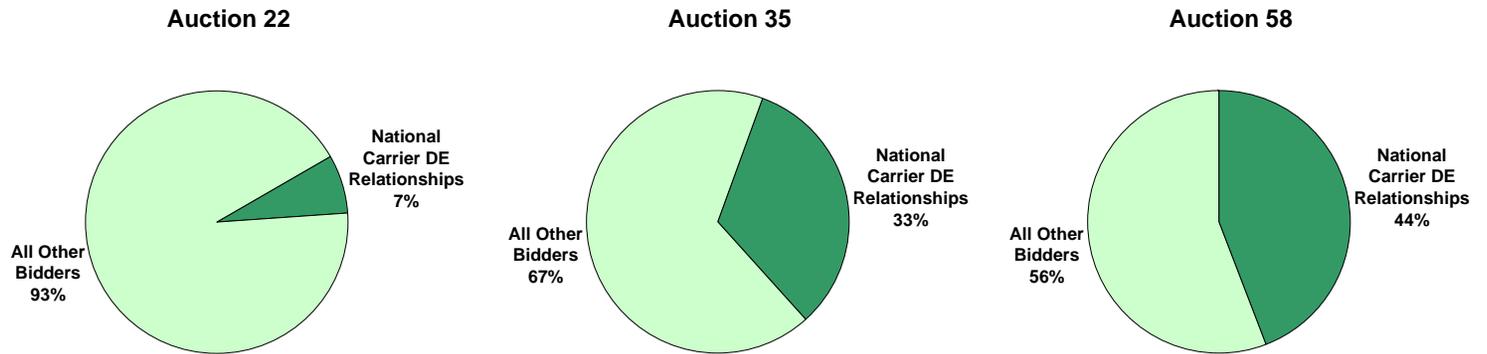
(1) National carrier DEs include: Vista PCS (Verizon), Cook Inlet/VS GSM VII PCS (T-Mobile), Edge Mobile (Cingular) and Wirefree Partners III (Sprint).

# Recent PCS Auction Results (continued)

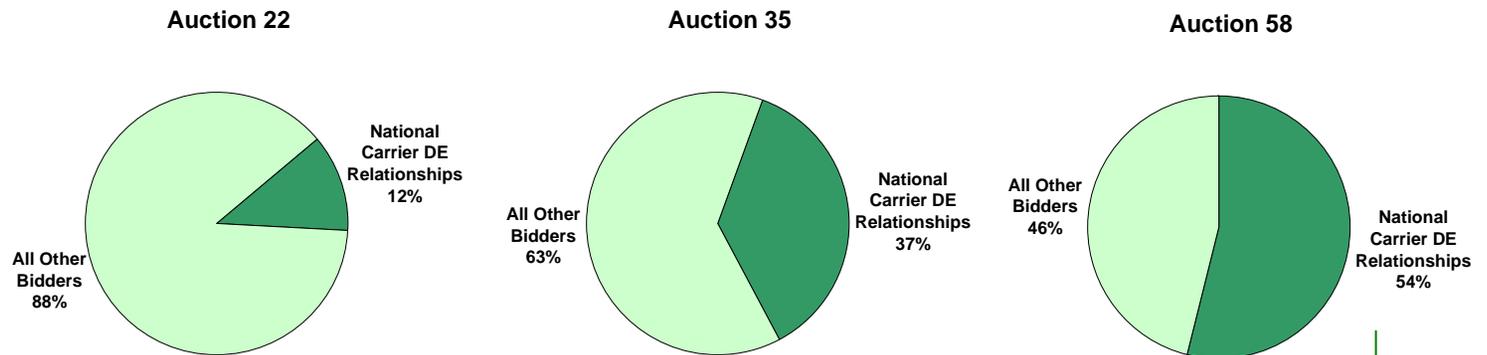
**The Problem** is further underscored by data clearly showing that DEs associated with national carriers win very large and growing shares of CMRS auction licenses

## Spectrum Won by DEs with National Carrier Relationships

By Net License Purchase Price



By MHz-POPs



► An accelerating trend with clear implications for Auction 66

## Some Points Raised (continued)

Some opponents argued that *“We are just helping DEs get access to capital”*

- ▶ **That is a worthy goal in the abstract**
  - Indeed, DEs must have access to sources of capital and industry and technical expertise to survive
  
- ▶ **But allowing already-dominant national wireless service providers to provide that capital and expertise is increasingly contrary to the rationale of the DE preference program**
  - In its comments, T-Mobile acknowledged that such relationships are “helpful to both companies”
  - National wireless service provider SEC filings reveal the extension of these carriers’ influence through DE relationships

## Some Points Raised (continued)

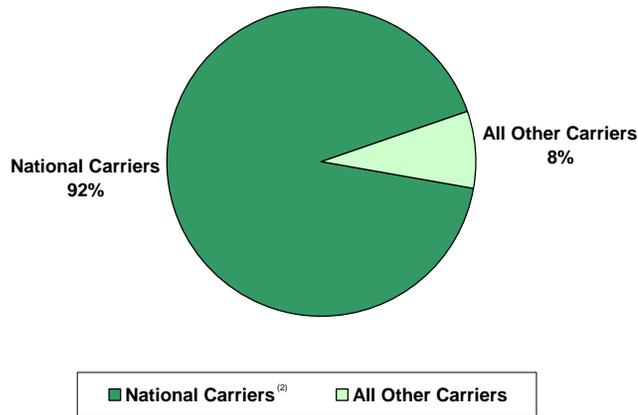
Some opponents argued *“You have not proven that the wireless industry is dominated by the large national carriers – the Commission approved large scale wireless mergers involving some of those carriers”*

- ▶ **The record of this proceeding contains substantial evidence of profound concentration of the CMRS industry in the hands of national wireless carriers**
  - Even T-Mobile notes that “recent mergers and acquisitions have resulted in much of the currently available spectrum becoming consolidated with a few large wireless carriers”
- ▶ **Yet, the Commission does not need to make a finding that the CMRS market is not effectively competitive in order to update DE rules**
- ▶ **At issue is whether the DE program is satisfying Section 309(j)**
  - Mandate to secure opportunities to participate in the provision of spectrum-based services for those who would otherwise be excluded under a system of competitive bidding
  - To promote the resulting diversification and competition
- ▶ **This is an entirely different undertaking than the imposition of an industry-wide spectrum cap or a market-specific merger review, and the different types of proceedings should not be confused**

# National Carrier Metrics

- ▶ The data clearly underscores industry concentration
- ▶ And the \$5 billion wireless revenue threshold properly captures a national wireless carrier
- ▶ Strong, fact based analytical record for such a cutoff

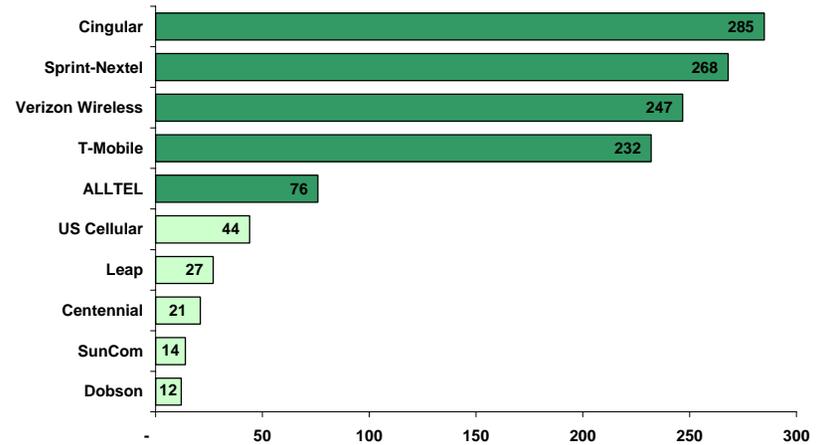
U.S. Wireless Industry Service Revenue<sup>(1)</sup>



<sup>(1)</sup> Last Twelve Months as of June 30, 2005. Total industry LTM revenue of \$108.5 billion based on CTIA's Semi-Annual Wireless Industry Survey for June 2005

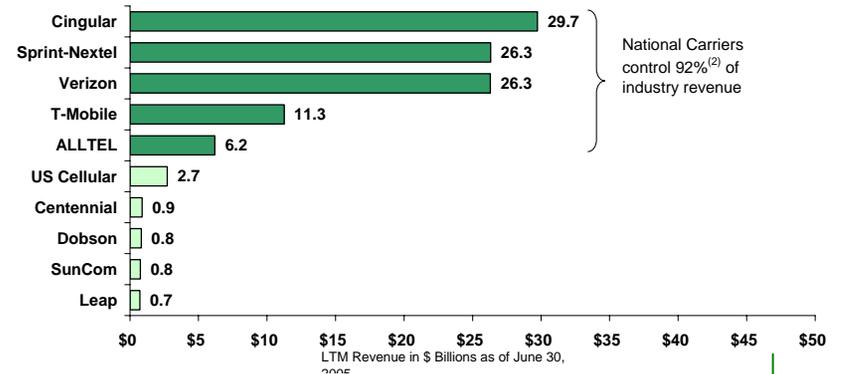
<sup>(2)</sup> Carrier revenue based on SEC filings and company reports. National Carriers defined as Cingular, Sprint, Verizon Wireless,

Top-10 Public Wireless Carriers -- Covered POPs<sup>(1)</sup>  
(in millions)



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Top-10 Public Wireless Carriers - Service Revenue<sup>(1)</sup>  
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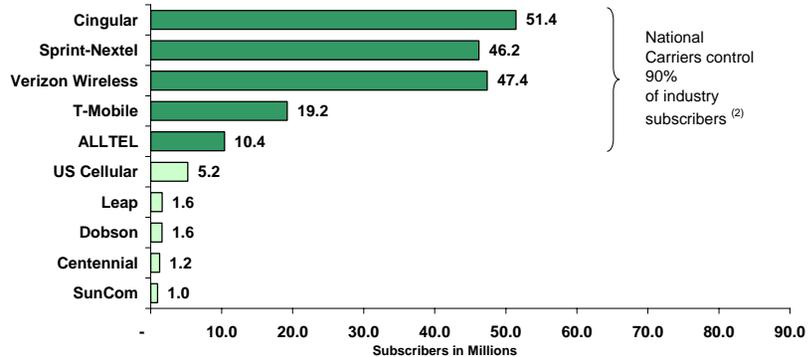
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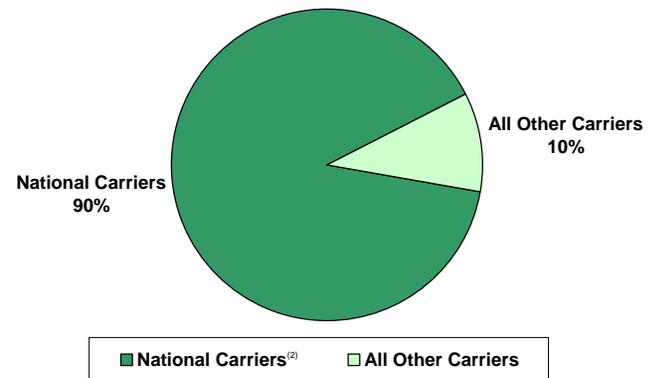
# National Carrier Metrics (continued)

A solid record of data convincingly demonstrates national carrier dominance

**Top-10 Public Wireless Carriers Subscribers <sup>(1)</sup>**  
(in millions)



**U.S. Wireless Industry Subscribers <sup>(1)</sup>**



<sup>(1)</sup> As of June 30, 2005. Carrier subscribers based on SEC filings and company reports. National Carriers defined as Cingular, Sprint and its affiliates, Verizon Wireless, T-Mobile and Alltel. Does not include private companies such as MetroPCS

<sup>(2)</sup> Total industry subscribers of 194.5 million based on CTIA's Semi-Annual Wireless Industry Survey for June 2005

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<sup>(2)</sup> Carrier subscribers based on SEC filings and company reports. National Carriers defined as Cingular, Sprint and its affiliates, Verizon Wireless, T-Mobile and Alltel

► And again, opponents ignore this data, offering none in response

## Some Points Raised (continued)

Some opponents argued *“Why not extend the prohibition to all large companies with significant interests in communications services”*

- ▶ **The only demonstrated problem relates to national wireless carriers**
  - Other communications services companies are not dominating the CMRS industry
  
- ▶ **If adopted, such an expanded prohibition would deny DEs access to important sources of capital and expertise**
  - With no appreciable policy benefit
  
- ▶ Undertaking to identify distinctions among such entities for the purposes of a prohibition **would dramatically complicate and delay this proceeding, along with the start of Auction 66**