

April 7, 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:

Attached is a copy of our letter submitted by Carroll Wireless, 3G PCS, CSM Wireless, Royal Street Communications et al. from April 5, 2006 which is now updated to include additional parties as signatories thereto.

Enclosure

April 5, 2006

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Re: WT Docket No. 05-211  
Written Ex Parte Presentation

Dear Chairman Martin:

We are writing to you as designated entities (DEs) and those that have invested in DEs. Included among our ranks are rural wireless carriers, flat rate wireless carriers, and private equity investors. We are deeply troubled by reports that the Commission is contemplating radical changes to the DE program on the eve of Auction 66 that will eviscerate any meaningful opportunity for DEs in this and future wireless auctions.

In particular, we understand that your office is considering a rule that would prohibit the award of auction preferences to a DE that has material investment from any company with revenues exceeding \$125 million, not wireless revenues exceeding \$5 billion as originally contemplated. We strongly oppose this radical change in Commission policy. We urge the Commission to adhere to the \$5 billion threshold that the Commission itself tentatively endorsed in its Further Notice of Proposed Rulemaking in this proceeding.

This proceeding was instituted to address the material and accelerating trend of national wireless carriers using DE relationships to extend their influence in terms of geography, spectrum depth, technological reach, and marketing exposure. The national wireless carriers at issue each have gross revenues in excess of \$5 billion. Because of the scope of their operations, DEs that are closely aligned with them are not new entrants and do not bring independent competitive pressure to the marketplace. \$5 billion is the threshold at which any new prohibition should be set – not a radically lower level that bears no relationship to the problem at hand.

Imposing severe new limitations on DEs sourcing investments from a broad category of companies defined as having revenues of \$125 million or more will have the effect of killing the DE program. As the Commission itself has long recognized, DEs must have access to substantial investment capital and technical and managerial guidance provided by those experienced in the wireless industry. The appropriate balance envisioned in the Further Notice would stimulate that access to capital and stop the growing domination of the program by the nation's supercarriers. Under this policy, DEs can count on many smaller and mid-sized wireless carriers such as Leap Wireless, MetroPCS, U.S. Cellular, SunCom Wireless, and others to assist them in ventures that will truly add diversity and competitiveness to the CMRS marketplace. Adopting too low a revenue threshold ends up "throwing the baby out with the bathwater."

Under the rule now being considered, these fruitful relationships would be functionally disabled. If so, DEs will stand little chance of financing their business plans – particularly at this late hour in the run-up to Auction 66 – which will make meaningful auction participation by them infeasible. Yet, the Commission has absolutely no justification on the record of the proceeding

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or otherwise to turn its longstanding DE policy on its head and penalize DEs with dramatic, sweeping new restrictions on their ability to access capital.

It is telling that the Commission originally set aside broadband PCS licenses for entrepreneurs with \$125 million or less in revenues. Using that same figure to define who may invest meaningfully in new entrants this context would mean that, going forward, only DEs can invest in DEs. Plainly, that is nonsensical. It is also squarely contrary to years of Commission precedent.

In the end, the only beneficiaries of such a bad new policy would be the national wireless carriers whose domination of the wireless market is at issue in this proceeding. Free of competition from viable new entrants, these largest of the large will continue to dominate the forthcoming auctions of critical spectrum rights and, as a result, the wireless industry. We urge you to avoid such a legacy. Restoring the outcome of this proceeding to its original purpose, and addressing the real problem of national carrier dominance, will mean that Auction 66 and future auctions contribute substantially to the diversification of ownership of the wireless industry.

That should be the legacy of this proceeding and this Commission, not the evisceration of the DE program for the benefit of national wireless carriers.

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The Honorable Kevin J. Martin  
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Respectfully submitted,

-/s/-

Allison Cryor DiNardo  
President  
CARROLL WIRELESS, LP

-/s/-

Barry B. Lewis  
President  
3G PCS, LLC

-/s/-

Thomas A. Stroup  
President  
CSM WIRELESS, LLC

-/s/-

Robert A. Gerard  
Chief Executive Officer  
ROYAL STREET COMMUNICATIONS, LLC

-/s/-

S. Douglas Hutcheson  
President and Chief Executive Officer  
LEAP WIRELESS INTERNATIONAL, INC.

-/s/-

Roger D. Linqvist  
President, Chief Executive Officer and  
Chairman of the Board  
METROPCS COMMUNICATIONS, INC.

-/s/-

John E. Rooney  
President and Chief Executive Officer  
UNITED STATES CELLULAR CORPORATION

-/s/-

Brian A. Rich  
Managing Partner  
CATALYST INVESTORS

-/s/-

Charles Kallenbach  
Senior Vice President, Legal and Regulatory  
Affairs  
SUNCOM WIRELESS

-/s/-

Edward Kurzenski  
Vice President Engineering, CTO  
MOBIPCS

-/s/-

C. Kevin Landry  
Managing Director and CEO  
TA ASSOCIATES

-/s/-

James N. Perry, Jr.  
Managing Director  
MADISON DEARBORN PARTNERS, LLC

-/s/-

Steve Hillard  
President and CEO  
COUNCIL TREE COMMUNICATIONS, INC.

cc: The Honorable Jonathan S. Adelstein  
The Honorable Michael J. Copps  
The Honorable Deborah Taylor Tate  
Fred Campbell  
Barry Ohlson  
John Giusti  
Aaron Goldberger