

# **CTIA Opposition to the Motion for Expedited Stay Pending Reconsideration or Judicial Review filed by Council Tree Communications, MMTC and BNC**

**WT Docket No. 05-211**

**AU Docket No. 06-30**

CTIA – The Wireless Association®

Presentation to

Fred Campbell

Office of Chairman Kevin J. Martin

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# Petitioners Have Not Satisfied the Requirements for a Stay

- The Commission should promptly deny Petitioners' Motion for Expedited Stay and Petition for Expedited Reconsideration.
- The motivation for Petitioners' stay request appears to be self-interested dissatisfaction with the outcome of a proceeding that they themselves initiated.
- Council Tree endorsed the current auction schedule, even though it requested more dramatic changes in the DE auction rules than the ones the Commission ultimately adopted. Only *after* the Commission issued rules not to its liking did Council Tree assert that the auction must not proceed.
- Petitioners seek to overturn evenly-applied rules to prevent fraud by using points that were made or should have been made in comments before the Commission.

# Petitioners Have Not Shown a Substantial Likelihood of Successfully Challenging the New DE Rules.

- Notice and Comment: Petitioners' assertion of inadequate notice and opportunity to comment belies the plain language of the *FNPRM* regarding the DE rules. The *FNPRM* gave clear notice to all parties that the Commission could examine any element of the DE rules. The new DE rules are a logical outgrowth of the language from the *FNPRM*.
- Timing: The *FNPRM* alerted the public that its rules would apply to the June 29th auction and the parties did not contest this scheduling in their comments.
- Changes to Unjust Enrichment Rules: Petitioners fail to show how the FCC's action would go beyond or contradict the plainly-expressed intent of Congress.
  - MMTC, one of the Petitioners, expressly requested that the "Commission consider expanding the unjust enrichment standard to encompass the entire license term and not just the first five years." Comments of MMTC at 15.

# Petitioners Have Not Satisfied the High Standard to Show Irreparable Harm

- Rather than introduce regulatory uncertainty into Auction 66, the new rules apply in an even manner to “all determinations of eligibility for all designated entity benefits....”
- No party was barred from bidding in Auction 66 or from filing a short form application.
- No party was barred from obtaining investors – even alternative investors, if primary investors objected to the new provisions – to support its down payment and bid.
- The affidavit of the Petitioner purporting irreparable harm does not show *how* the Commission’s specific rules have prevented it from entering the auction and participating in it.

# Third Parties Will be Harmed if Petitioners' Motion for Stay is Granted

- Wireless entities have the urgent need for spectrum *now*.
  - Commenters RTG and OPASTCO stated that “ensuring that the AWS-1 auction takes place as scheduled is of paramount importance. . . .” and in their experience “spectrum prices tend to go up when auctions are delayed, *oftentimes putting spectrum out of reach for small carriers with limited resources.*” Comments of RTG and OPASTCO at 6 (emphasis added).
  - Even Council Tree, before the FCC issued rules that were not to its liking, expressed this need for proceeding with Auction 66 on schedule when it stated that the auction was “a critical opportunity for smaller carriers and new entrants to acquire access to vital spectrum resources. *It will be the first such major opportunity in many years, and that opportunity should not be delayed.*” Comments of Council Tree at 61 (emphasis added).
- Granting a stay will harm numerous participants, including CTIA members, who have adequately planned and carefully structured contractual and financial arrangements in preparation for Auction 66.

# The Public Interest Strongly Favors Denial of a Stay

- Auction 66 holds tremendous promise for bringing advanced wireless services to the American public.
- All congressional pre-requisites for conducting Auction 66 have been satisfied.
- The public – as represented by Congress, the President, the Commission, numerous commenters, and even some of the Petitioners – have all recognized that it is in the public interest to allow Auction 66 to proceed without a stay.
- Congress has expressed its intention that the Commission conduct auctions in a manner that will promote the “*rapid* deployment of new technologies . . . for the benefit of the public.”
- In 2005, Chairman Martin, acknowledged that the public interest will be served by conducting Auction 66 without unnecessary delay, stating “Making this large swath of spectrum available will enable carriers to provide a wide range of new and better services, including in rural areas.” *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, 18 FCC Rcd 25162 (2003), recon. 20 FCC Rcd 14058, Separate Statement of Chairman Kevin J. Martin (2005).