



May 25, 2006

Chairman Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W., Room 5 C450  
Washington, D.C. 20554

**Re: WT Docket No. 05-211**

Dear Chairman Martin:

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> submits this letter to express our limited support for the Petition for Expedited Reconsideration of the Designated Entity (DE) Rules filed by Council Tree Communications, Inc., the Minority Media and Telecommunications Council and Bethel Native Corporation (petitioners).<sup>2</sup>

NTCA agrees with petitioners that some of the changes to the DE rules came without fair notice to the industry and with no opportunity for public comment. The lack of critical input from legitimate designated entities was a clear violation of the law and may have led the Commission to inadvertently adopt rule changes that will ultimately harm the entities the rules were intended to protect.

The new 10-year unjust enrichment time frame and its retroactive application<sup>3</sup> could not have been anticipated based on the public record in the proceeding and the new rules came too close to the revised AWS auction start date (August 9, 2006) for entities to adequately respond. Similarly, the broad limitations on leasing, reselling and wholesaling may dramatically impact NTCA's members' business plans for the spectrum and opportunities for auction financing.

<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 556 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many also provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). And all are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> Minority Media and Telecommunications Council, Council Tree Communications, Inc., and Bethel Native Corporation, Petition for Expedited Consideration, WT Docket No. 05-211, AU Docket No. 06-30 (filed May 5, 2006).

<sup>3</sup> *Second Report and Order and Second Further Notice of Proposed Rule Making*, WT Docket No. 05-211, FCC 06-52 (rel. Apr. 25, 2006) (Second FNPRM), Appendix B, § 1.2111.

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The Commission has a legal obligation to provide the opportunity for public comment on substantive rule changes.<sup>4</sup> There was no indication in the Commission's Notice of Proposed Rulemaking, or on the public record in the proceeding that the Commission was considering changes to the applicable period or the broad limitations on leasing, reselling and wholesaling adopted as part of the unjust enrichment rules. Further, the time span between the effective date of the rules and the start of the AWS auction does not provide rural telephone companies<sup>5</sup> with sufficient time to "develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant service."<sup>6</sup>

Therefore, NTCA requests that the Commission: (1) rescind the 10-year unjust enrichment time frame and return to the 5-year period contained in the current rules; and (2) rescind the broad new limitations on leasing, reselling and wholesaling of spectrum.

To be clear, NTCA's members continue to support changes to DE rules that will prevent large operations from using small carriers as fronts to obtain bidding credits and unfairly compete for spectrum at auction. To help insure program integrity, and because the industry was inadequately noticed on potential changes to the DE reporting requirements, NTCA recommends that the Commission retain the remaining new audit and reporting requirements.<sup>7</sup> NTCA also believes that the Commission should tighten the DE restrictions in the upcoming rulemaking to review all DE rules.<sup>8</sup>

If you have any questions or wish to discuss this matter further, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Daniel Mitchell  
Daniel Mitchell  
Vice-President, Legal and Industry  
NTCA

/s/ Jill Canfield  
Jill Canfield  
Senior Regulatory Counsel  
NTCA

cc: Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate

<sup>4</sup> 5 U.S.C. § 553(c).

<sup>5</sup> Rural Telephone Companies are "designated entities" as that term is defined in 47 U.S.C. § 309(j)(4)(D), .

<sup>6</sup> 47 U.S.C. § 309(j)(3)(E).

<sup>7</sup> Second FNPRM, Appendix B, §§ 1.1913, 1.1919, 1.2105, 1.2110, 1.2112, and 1.2114.

<sup>8</sup> Second FNPRM, ¶ 6.