Before The
Federal Communications Commission
Washington, D.C. 20554

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

COMMENTS OF WIREFREE PARTNERS III, LLC
ON THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

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Summary

Wirefree III recommends that the Commission refrain from adopting regulations beyond those adopted in the Second Report and Order with the exception of reinstating the minimum equity requirement for the controlling interests of a designated entity. The FCC's proposed regulations suggested in the Second Further Notice are unnecessary, unworkable and do not reflect the realities faced by small businesses competing as facilities-based carriers in the wireless marketplace. The results of the AWS auction provide a factual record that demonstrates that, beyond imposing a minimum equity ownership requirement for control groups, additional regulation of a designated entity's business operations and relationships is unnecessary.

Specifically, Wirefree III recommends:

- The Commission not require pre-approval or restrain financial and operational contracts between designated entities and third parties;

- The Commission rely on existing regulation, including the reporting requirements adopted in the Second Report and Order, to obtain continued certification and verification that a designated entity remains eligible for designated entity status;

- The Commission not attempt to define classes of companies that are precluded from currently permissible relationships with designated entities;

- The Commission adopt a minimum 25% equity requirement for the controlling interest holders of a designated entity;

- The Commission clarify that the controlling interest standard does not require that ***each*** director on a designated entity's board of directors be treated as an affiliate but only those representing the controlling interest; and

- The Commission reject the call to impose a personal net worth limitation on members of a controlling interest as unnecessary and punitive against those with business experience and success.

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Wirefree Partners III, LLC ("Wirefree III") hereby respectfully submits its comments in response to the Second Further Notice of Proposed Rulemaking released by the Commission on April 26, 2006 in the above-referenced proceeding (the "Second Further Notice"). The FCC seeks comments, in the Second Further Notice, on the need for additional regulation to restrict designated entities from entering into commercial relationships with third parties. Wirefree III recommends that the Commission refrain from adopting regulations beyond those adopted in the Second Report and Order with the exception of reinstating the minimum equity requirement for the controlling interests of a designated entity. The FCC's proposed regulations suggested in the Second Further Notice are unnecessary, unworkable and do not reflect the realities faced by small businesses competing as facilities-based carriers in the wireless marketplace. Indeed, by adopting an additional layer of government restraints and bureaucratic review, the FCC would be setting the stage for business failure by small businesses seeking to provide facilities-based wireless services using licensed spectrum with no corresponding benefit to the integrity of the designated entity program.

The results of the AWS auction provide a factual record that demonstrates that beyond imposing a minimum equity ownership requirement for control groups, additional regulation of a designated entity's business operations and relationships is unnecessary. In the AWS auction, the large wireless carriers and communications companies targeted by the "class" distinctions proposed by Council Tree and discussed in the Second Further Notice chose not to invest or establish contractual relationships with designated entities. Ironically, Leap Wireless International, Inc. (through its subsidiary Cricket) and United States Cellular Corporation, both regional, mid-sized carriers that would not be subject to the restrictions as proposed by Council Tree, chose to make significant investments in AWS bidders seeking designated entity benefits. These mid-sized, regional carriers, indirectly own 85% and 90% respectively of designated entities that collectively are claiming eligibility for 75% of the bidding discounts in the AWS auction.

Wirefree III suggests that the FCC proceed in a measured and cautious manner weighing the recent auction results and ensure that, while well intentioned, additional regulations do not stifle the business operations of designated entities and eliminate through regulatory fiat the ability of small businesses to acquire spectrum and to provide facilities-based services. Specifically, Wirefree III recommends:

- The Commission not require pre-approval or restrain financial and operational contracts between designated entities and third parties;
- The Commission rely on existing regulation, including the reporting requirements adopted in the Second Report and Order, to obtain continued certification and verification that a designated entity remains eligible for designated entity status;

- The Commission not attempt to define classes of companies that are precluded from currently permissible relationships with designated entities;
- The Commission adopt a minimum 25% equity requirement for the controlling interest holders of a designated entity;
- The Commission clarify that the controlling interest standard does not require that ***each*** director on a designated entity's board of directors be treated as an affiliate but only those representing the controlling interest; and
- The Commission reject the call to impose a personal net worth limitation on members of a controlling interest as unnecessary and punitive against those with business experience and success.

I. Wirefree Partners III Overview

Wirefree III was founded and is managed by entrepreneurs with over 25 years of experience in the wireless telecommunications industry and a track record of success in building and operating facilities-based wireless networks from paging to cellular to PCS. In the late 1990s, the controlling principals of Wirefree III became active bidders in the FCC's PCS auctions seeking to build on their success in owning and operating competitive paging, cellular and fiber optic companies. In the original C block auction, the founders of Wirefree III participated as Airlink, LLC, an entity that placed a $20 Million deposit at the FCC, hoping to acquire licenses to build a competitive PCS network in the Southeastern United States. Airlink subsequently withdrew from the auction in Round 45 based on its belief that the auction prices would not support a sound business plan. Wirefree III's principals participated in the subsequent F block auction and won licenses for five BTAs and participated in the subsequent C block re-auctions – each time honoring in full their companies' payment obligations to the FCC.

Wirefree III's management team also founded AirGate PCS, a NASDAQ company that, using its own equity and debt, built and managed a competitive Sprint PCS network in certain markets in the Southeast covering more than seven million people. After leaving Airgate PCS in 2000 and 2001, the principals continued to seek new entrepreneurial opportunities in the wireless industry. In Auction 58, Wirefree III raised its own equity from leading venture capitalists and completed an independent debt offering to fund its purchase of 16 PCS licenses for total net winning bids of $150 Million. Wirefree III decided not to participate in the Auction 66 for AWS spectrum due to the difficulty in raising capital created by the restrictions on external growth and spectrum leasing adopted by the FCC in the Second Report and Order.

II. Additional Rules that Restrain Financial and Operational Agreements will Thwart Rather than Promote the Offering of Facilities-Based Spectrum Services by Designated Entities

The FCC should not restrict designated entities from entering into financial or operational agreements with third parties on commercial terms. The Commission articulates two goals in achieving the proper balance in regulating designated entities: (1) having designated entities use licensed spectrum to operate their own facilities-based networks and provide service to the public; and (2) ensuring that the benefits of being a designated entity flow only to eligible entities. The FCC is also required under Section 257 of the Communications Act to review its rules and policies to ensure the rules eliminate market entry barriers for entrepreneurs and small businesses in the ownership of telecommunications systems.[1] If the FCC's statutory goals are to be achieved, the FCC should carefully weigh any additional regulation to make sure it reflects the market realities and necessities of providing wireless services to the public and produces a demonstrated benefit in the integrity of the designated entity program.

[1] 47 U.S.C. §257.

A. Access to Capital is Essential for Designated Entities to Become Providers of Facilities-Based Services

Designated entities must be able to enter into financing agreements to fund spectrum acquisition and their business operations. In the Second Further Notice, the Commission seeks comment on whether it should restrict financial agreements or define material relationship in a way that would prohibit a designated entity from securing all its capitalization from outside sources.[2] Wirefree strongly cautions the Commission against cutting off access to capital for designated entities from third parties or requiring small businesses to self fund their entire business operations. Spectrum auctions are expensive to both participate in and to succeed in as a winning bidder. With the elimination of installment payment financing, bidders – including very small business bidders – have immediate payment obligations. The payment in full due shortly after the auction closes but before license grant requires designated entities to raise millions of dollars in advance of an auction. For example, the upfront payment in the AWS auction required to establish eligibility to bid for all the licenses in any **one** of the top six REAGs was over $15 Million.[3] The winning bid for the Cellular Market Area AWS license for Atlanta was over $30 Million. Thus, a small business seeking to run a facilities-based wireless business faces significant costs for spectrum acquisition alone and then must secure financing to fund its network and service operations. Designated entities face capital and operational budgets in the hundreds of millions of dollars to operate even a small, facilities-based wireless network.

Wirefree III funded its Auction 58 spectrum acquisition and is funding the construction of its facilities-based business through the use of venture capital financing and commercial debt.

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[2] Second Further Notice at ¶79.

[3] The upfront payments for the six regional economic areas ranged from $15.6M to $50M. The top six regional economic areas by population and upfront payment are the Northeast, Southeast, Great Lakes, Mississippi Valley, Central and Western Regional Economic Areas. *See* Auction of Advance Wireless Services Licenses Scheduled for June 29, 2006, Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures, *Public Notice*, DA 06-238 (reel. Jan. 31, 2006) ("AWS Procedures Public Notice").

In spectrum costs alone, Wirefree III incurred costs and funded $150 million. The interest of venture capital investors and third-party lenders, as noted by the Commission, is to seek a return on investment and yield on debt, rather than to control a designated entity.[4] For this very reason, investors and lenders place great weight on the strength and experience of a company's management team in making an investment decision. Venture capital funding and debt is "objective" funding that measures the potential of the business by nominal returns, yields and risk of investment. This type of capital market funding poses no concerns of undue influence.

Wirefree III's founders also have raised funds for several start-up, wireless businesses through the public equity markets, public debt markets and through vendor financing. Based on market conditions, Wirefree Partners has learned that different sources of capital are available at different times and sometimes certain sources simply are unavailable to entrepreneurs. Currently, vendor financing is scarce and the market for initial public offerings for telecommunications companies and especially for new business is very difficult. For this reason, Wirefree recommends that the FCC not impose regulatory constraints on the source or type of funding designated entities receive through financial agreements other than applying the general standards that the agreements be on commercially reasonable terms and not endow the lenders or investors with *de jure* or *de facto* control.

B. Restrictions on, or Prior-Approval of, Operational Contracts will Result in Government Micro-Management of a Designated Entity and Impose Unacceptable Delays

As a business matter, small facilities-based providers of wireless services must be able to enter into strategic commercial transactions with other companies to succeed in the competitive wireless marketplace. Accordingly, if the FCC wants small facilities-based providers of wireless

[4] Second Further Notice at ¶81.

services to succeed, the FCC must reject the call to artificially and rigidly restrain small businesses from developing operational relationships with others in the communications industry. From routine contracts like vendor contracts executed to purchase and finance network equipment to trademark agreements that may provide a marketing advantage and consumer acceptance, a single contract can provide a designated entity with the foundation to open funding doors to much needed capital and operational success. Significantly, most of these agreements, such as trademark licensing agreements, roaming and branding agreements, operational agreements and financing agreements do not carry any attributes of control or ownership. Most contractual relationships between communications companies are market-based transactions that provide small businesses with an independent basis on which to raise their own capital and build their own businesses and service offerings.

Additional FCC regulation of operational or marketing contracts is unnecessary and will impose significant burdens and delays that will impede a small business' ability to compete as a facilities-based provider. For example, if the FCC were to require prior approval of a trademark agreement between a designated entity and third party, the review is likely to take months and could easily thwart the timely market advantage to be gained by the trademark agreement.[5] Commission review of a trademark agreement would impose a bureaucratic level of review and delay with no corresponding benefit. A designated entity's mere use of a trademark or branding of a service in no way undercuts the fact that the designated entity owns and operates a facilities-

[5] The Commission's staff, while working diligently, does not have the resources to review every operational contract entered into by a designated entity in a timely manner. A designated entity can face months of indecision at significant business risk to its operations. For example, on November 7, 2005, Wirefree III filed a waiver request seeking to exclude from affiliation with Wirefree III, those members of its nine member board that are in a minority position and represent the venture capital investors and independent directors appointed following Wirefree III's debt offering. To date, the Commission has not acted on the waiver. Similar delays in approving contracts with third party vendors would permanently disadvantage designated entities' ability to compete with other carriers in the highly competitive wireless industry.

based business. Indeed, branding actually may spur consumer acceptance of a designated entity's wireless services. Many small businesses today operate successfully due in large part to trademark or franchise agreements with established large company brands such as McDonalds, Subway, 7-11, yet each one of these business is independently owned and operated.   In the wireless industry, independent operators have formed alliances, such as Cellular One, to market their services under a common brand.

The public interest and wireless subscribers, in particular, often benefit directly when smaller carriers enter into operational agreements with larger carriers. For example, many rural carriers noted the importance of roaming agreements in the comments filed earlier in this proceeding.[6] Rural wireless carriers commonly use roaming agreements with large carriers to extend the network coverage available to their subscribers without requiring the rural carrier to become a national carrier. If operational roaming agreements are restricted or reviewed, it would hamper a rural carrier's ability to extend services to its customers in a broader coverage area --- hardly a goal sought to be achieved by the FCC in the Second Further Notice.

The FCC's adoption of regulations restraining operational contracts also could delay the delivery of facilities-based services to the public. Designated entities, similar to all facilities-based carriers, routinely enter into purchase agreements and contracts for network equipment with large suppliers.   These contracts can include some operational services such as base station installation and monitoring. If additional contract review and pre-approval is imposed on designated entities by the FCC, vendor contracts with equipment suppliers could be held up for months – inhibiting the very deployment of the network facilities the FCC seeks to promote.

The examples cited above demonstrate the treacherous risks of regulating operational contracts entered into by designated entities. Since the number and type of contracts a facilities-

[6] Second Further Notice at ¶19,

based carrier needs to implement its business plan will vary based on business strategy and economics, the FCC should not attempt to define categories of permissible and impermissible agreements or to label them as good or evil. To do so would be to ignore the fact that designated entities operate in a competitive market environment that requires flexibility and speed to meet consumer demand for wireless services that are useful, innovative and competitively priced. The FCC's existing designated entity rules provide sufficient protection to ensure that *de facto* and *de jure* control remain with a designated entity and its controlling interest and is preserved fully in any contract.

C. Existing Reporting Requirements and Application Review are Sufficient to Ensure Continued Designated Entity Eligibility

The FCC should continue to require designated entities to certify in their short form and long form applications that any financial or operational agreements they enter into with third parties that are ineligible as designated entities do not include a transfer of *de jure* or *de facto* control and subject those agreements to close scrutiny. The FCC, through its reporting obligations imposed in the Second Report and Order, has adopted regulations that ensure that designated entities remain eligible as a designated entity during the required term. The rules adopted in the Second Report and Order require a designated entity to get pre-approval of any event that "would lead to a change in the eligibility of a licensee for designated entity benefits." 47 C.F.R. §1.2114(a). The annual reporting requirements provide the FCC with an annual summary of contracts that relate to a designated entity's eligibility. 47 C.F.R. § 1.2114(n). In addition, the Commission's audit authority gives the Commission authority to spot check compliance. Prior to the license grant, the FCC has an opportunity to conduct an in depth review of a designated entity's relationships in its review of the long form application. The existing protections are sufficient to ensure that designated entities remain eligible and are the primary beneficiaries of any benefits conferred on them based on their status.

III. The FCC Should Not Create Discriminatory Class Distinctions between Carriers or Companies

The FCC should not adopt static, class-based distinctions between commercial entities that are permitted and commercial entities that are prohibited from dealing with designated entities. The Commission suggests a host of possible class-based distinctions in the Second Further Notice. The categories include classes based on financial size, geographic coverage, service offerings, regulatory status, and spectrum holdings. Missing from the Second Further Notice and the record is any factual basis to suggest that a company by virtue of falling in to one of these class categories has or will exercise undue influence over a designated entity's operations or strip from the designated entity *de jure* or *de facto* control. As Council Tree stated in its comments on the Notice of Proposed Rulemaking in this proceeding:

> The Commission would be required to justify the distinctions that it crafts, based on objective evidence, and to articulate a rational connection between the facts found on the record of this proceeding and the choices made as a result thereof.[7]

There is no rational basis for discriminating against investment or agreements with a designated entity based solely on the size of the carrier, the services of a company or a company's spectrum holdings. Large carriers often enter into commercial agreements with smaller companies that provide benefits to each company, perhaps through roaming agreements or trademark agreements, that do not rise to the level of control or render the small business a mere pawn. The Commission should recognize that wireless market realities provide opportunities for all size businesses and that small businesses will be at a significant

[7] Council Tree Comments at 38.

disadvantage if they must reject all relationships with a large in-region carrier or company with significant revenues or interests in communications services.

The evolving state of the industry means that any government regulation based on classes or categories of companies is likely to be outdated or misdirected shortly after its adoption. The wireless industry in the United States is competitive and rapidly evolving both in technology and strategic marketing strategies making any class definition difficult. While the larger wireless carriers have undergone a period of consolidation the participants in the wireless industry, more broadly, continue to expand to now include non-traditional companies offering mobile services. For example, there is expansive growth in wireless applications such as streaming video, MP3 downloads to mobile phones and in non facilities-based MVNOs seeking to target specific mobile users such as Helio, Disney and ESPN. At this point, the future of dominance in the wireless industry is up for grabs.

IV. The AWS Auction Results Confirm that Class-Based Distinctions Are Unnecessary but a Minimum Equity Threshold may be Appropriate

The record in the AWS auction demonstrates that any class distinction the FCC adopts will quickly become antiquated or irrelevant The AWS auction results provide a current, factual record to evaluate the effect of rules the Commission adopted in the Second Report and Order and the need for further regulation. In the AWS auction, the large wireless carriers and communications companies targeted by the “class” distinctions proposed by Council Tree and discussed in the Second Further Notice chose not to invest or establish contractual relationships with designated entities. Ironically, Leap Wireless International, Inc. and United States Cellular Corporation, regional carriers that would not be subject to the restrictions as proposed by Council Tree, chose to invest in AWS bidders seeking designated entity benefits. The structures of the two highest bidders bidding in the AWS auction as designated entities show that significant ownership in a designated entity rather than contractual relationships continue to pose a risk of conferring undue influence over a designated entity

In the AWS auction, it is the mid-sized, regional carriers Leap Wireless and United States Cellular that are significant investors in the top two designated entities. These carrier-backed designated entities have gross high bids of over $500 Million and collectively are claiming eligibility for 75% of all the bidding discounts applied in the AWS auction. According to the short form applications filed by these bidders seeking designated entity status, Leap Wireless owns 85% of Denali Spectrum License, LLC ("Denali")[8] and United States Cellular owns 90% of Barat Wireless, LP ("Barat").[9] Barat's sole general partner is owned by a single individual and the short form includes no evidence of a management team or key officers that will manage the facilities-based business for the presumptive licensee. Both Denali and Barat claim eligibility for a 25% bidding discount off their provisionally high winning bids. The discounts if granted would result in $91.3M in savings on high bids of $365 Million for Denali and $42M in savings on high bids of $169 Million for Barat. Neither of these entities would be restricted from these investments under the designated entity reforms initially proposed by Council Tree.

Both Denali and Barat disclosed in their short form applications for the AWS auction that they have not entered into any lease or wholesale arrangement with their carrier investors. The disproportionately high equity stake of the regional, mid-sized carriers, however, clearly puts the carriers in an influential position. Indeed, an equity owner of 85-90% of a company or partnership is much more likely to confer significant influence over the actions of a designated

[8] Short Form Application of Denali Spectrum License, LLC, File No. 0002605611.

[9] Short Form Application of Barat Wireless, LP, File No. 0002605271.

entity than a third party with a purely contractual relationship even if that contract is a spectrum lease or wholesale agreement.

The FCC should address the influence that can be used by single equity interests held by entities that do not meet the definition of entrepreneurial or small business by reinstating a minimum equity requirement of 25% for the qualifying designated entity. Over the thirteen year history of spectrum auctions, the FCC has adopted different rules for determining small business qualification and affiliation as the Commission aptly lays out in the Second Further Notice. In the first C block auction for PCS, the FCC clearly defined the boundaries for equity ownership, requiring the small business/entrepreneur to own at least 25% of the equity as well as exercise *de facto* and *de jure* control over the licensee. In 2000, the FCC moved away from the minimum equity requirement to the controlling interest standard and eliminated any minimum requirement for equity ownership by the DE. This rule, allows for significant levels of ownership in designated entities by entities other than the qualifying small business or entrepreneurial management team. In light of the significant ownership stake being taken by mid sized carriers in designated entities, the FCC should consider reviving the bright line equity test of 25% that clearly establishes a meaningful equity interest for the designated entity controlling interest.

V. The Commission Should Clarify its Controlling Interest Rules Outside of Carrier Investments

The Commission should take this opportunity to clarify that its "controlling interest" rule does not require a designated entity to attribute the revenues and assets of every single member of its board of directors or the board member's affiliates.[10] The Commission modified its rules

[10] On November 7, 2005, Wirefree III filed a waiver request seeking to exclude from affiliation with Wirefree III, those members of its nine member board that are in a minority position and represent the venture

to eliminate the "control group" structure in favor of a more flexible "controlling interest" standard in order to promote small business participation in auctions.[11] When it adopted the more flexible "controlling interest" standard, the Commission said that the purpose was to "identify those controlling interests that actually have control through the application of the principles of either *de jure* or *de facto* control.[12] However, the Commission also adopted a rule that states that **all** officers and directors are deemed "controlling interests of the applicant."[13] The Commission's designation of **every** officer and director as a controlling interest is in direct conflict with the intended flexibility of the controlling interest standard. It is well established precedent, both for designated entities and in corporate law, that a single director and a minority of directors on a board do not exercise *de jure* control over a corporate entity. Indeed, the definition of *de jure* control used consistently by the Commission imposes a majority control and 51% voting rule.[14]

In addition, if the related businesses of every single member of an applicant's board of managers is attributable, this rule will have a chilling effect on investment in designated entities since applicants and designated entity licensees will be forced to screen their managers and directors for their attributable revenues and assets rather than their qualifications, investment or industry expertise. For example, the rule as applied prohibits a general partner in a venture capital firm who may be responsible for the investment decision in a designated entity from

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capital investors and independent directors appointed following Wirefree III's debt offering. To date, the Commission has not acted on the waiver request.

[11] The Commission declined to adopt a minimum equity requirement because "this policy would thus limit a small business' ability to raise capital and undermine our intention of promoting small business participation in the highly competitive telecommunications marketplace." See *Fifth Report and Order* at Para. 65.

[12] *Id* at para. 66.

[13] 47 C.F.R. §1.2110(c)(2)(F).

[14] 47 C.F.R. §1.2110(c)(2).

serving on a designated entity's board – even if that manager is one of nine members of a board of managers. Similarly, the rule would prevent an investor with multiple outside investments and board positions in companies that exceed the revenue and asset caps for designated entities from serving on the board in a minority capacity. The Commission should clarify that only the affiliation of officers and of board members representing or appointed by the qualifying controlling interest should be counted in determining a designated entity's size.

VI. A Personal Net Worth Restriction is Unnecessary and Counterproductive to the Goals of the Designated Entity Program

The Commission should continue to reject calls to impose personal net worth limitations of any size on individuals who hold a controlling interest in a designated entity. An individual's personal net worth is not tantamount to a business' revenues as Council Tree unreasonably suggests. Furthermore, the absence of a personal net worth standard should not be regarded as a "loophole" but rather as a means to encourage the creation of new spectrum-based businesses by seasoned wireless veterans. A personal net worth restriction will reduce the number of qualified entrepreneurs willing to start spectrum-based businesses and limit the ability of existing and future designated entities to draw on experienced wireless executives and raise capital.

As Wirefree III's founders well know from their 25 years of experience building wireless networks, it is not easy or inexpensive to build and operate a successful facilities-based wireless business capable of provide service to the public. Spectrum-based businesses require a seasoned, senior management team that can efficiently build a network and market services to the public. The track record of success of a wireless entrepreneur, contrary to Council Tree's assertion, should not be used as a filter for assessing a small business' challenges in raising its own capital to finance a facilities-based spectrum business. With the millions of dollars required for a small company to acquire spectrum and run a wireless business, a single, wealthy individual is unlikely to pledge his or her personal assets to entirely fund the entity. The records from prior auctions do not provide any evidence of designated entities funded by a single, successful executive.

Designated entities need a management team that can raise the millions of dollars required to fund spectrum acquisition and the capital and operational expenses of running a facilities-based wireless business. Only a company with an experienced management team that has a track record of success is likely to be able to raise the amount of capital necessary to fund a spectrum-based business. Council Tree suggests that the experience and contacts developed by a person with experience in the wireless industry and some net worth should taint a designated entity's qualifications. Ironically, it is just this experience and knowledge that are important to a designated entity's chances to raise capital and succeed in running a facilities-based business.

A personal net worth limitation would require that the management team be screened to exclude executives with a minimum level of success or wealth to the detriment of the designated entity's business acumen and ability to access capital. Significantly, the strength and experience of a management team is one of the most important factors used by venture capitalists to decide whether to fund a new business. By excluding individuals above a certain net worth, the pool of potential controlling interests of a designated entity will be diluted and the Commission's goal of promoting the facilities-based offering of wireless services by designated entities will be thwarted with no corresponding benefit.

Over the past decade, the Commission repeatedly has found a personal net worth limitation unnecessary and unworkable. In the initial rules the Commission adopted for designated entities in 1994, the Commission included a personal net worth limitation of $40

Million for individuals in control of a designated entity and attributable investors. Prior to the C block PCS auction, the Commission abandoned this standard as unworkable and unnecessary. Specifically, the Commission found that obstacles faced by minority-owned business in accessing capital (at that time the rules provided different bidding discounts for minority and women-owned businesses) were not confined to those with limited net worth. The FCC also determined that the personal net worth limits would be difficult to apply and enforce and could be easily manipulated.[15] As the application filings of designated entities in the multitude of auctions since the first auction have demonstrated, the Commission was correct in its conclusion in 1994 that the affiliation rules make the personal net worth rules unnecessary since most wealthy individuals are likely to have their wealth closely tied to ownership of another business. Accordingly, the Commission should refrain from imposing a net worth cap on individuals with a controlling interest in a designated entity and recognize Council Tree's request for the restriction as one of its many attempts to narrow the class of eligible designated entities to serve its own self-interest.

Respectfully submitted,

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September 20, 2006

[15] In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403 at ¶ 30 (1994).