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July 23, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Designated Entity Eligibility: Notification of *Ex Parte*
Communication WT Docket Nos. 96-86, 06-150; PS Docket No.
06-229

Dear Ms. Dortch:

The question of the availability of DE credits to eligible small businesses is an important issue in these proceedings. On July 20, 2007, Jon Blake and Gerry Waldron met with Sam Feder, David Horowitz and Joseph Palmore in the Office of General Counsel to discuss DE eligibility. Accordingly, Frontline Wireless continues to urge that the Commission interpret the statute and its rules to permit otherwise eligible small businesses to receive bidding credits in connection with building out and operating a wholesale network, especially in the C and D Block auctions.

The Commission's rules state: "An applicant or licensee has an impermissible material relationship when it has arrangements with one or more entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any one of the applicant's or licensee's licenses." But the so-called "wholesale" prohibition that some derive from this rule is not a necessary interpretation, since "wholesale" is mentioned only as an example of "resale" and perhaps of "lease," not as a stand-alone concept. Moreover, the sort of wholesaling involved here (to public safety, critical infrastructure providers, smaller cellular operators for their roaming customers, as well as to retailers -- three out of four of which are "end-users") is an instance of neither resale or lease. Furthermore, the rule refers to lease or resale of "spectrum capacity," whereas here the business would be sale of network services offered from an entity that has fully built-out and operates a network using the available spectrum.

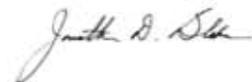
Even less so does the statute prohibit bidding credits to small businesses that engage in wholesaling of fully built-out network services. Section 309(j) merely requires that small businesses be given "the opportunity to *participate* in the provision of spectrum-based services." It makes no distinction between retail and wholesale. The Commission may interpret that statutory provision to enable it to require DEs to "offer services to their own end users." That is the application of Section 309(j) that the Commission is defending in the *Council Tree* case, but it is certainly not the only permissible application of the statutory provision. By constructing a

network and selling network capacity to retailers, a wholesale facilities based provider would also constitute a *participant* “in the provision of spectrum-based services,” for the purposes of the statute.

The parties made the above points and then, using the attached slidedeck, sought to show why DE eligibility is particularly appropriate in the case of the 700 MHz auction. This auction has features that are unique in the Commission’s history of spectrum auctions. With respect to the spectrum block that will be adjacent to public safety’s spectrum, that block comes with i) unprecedented coverage requirements of 99%; and ii) unprecedented sharing requirements with public safety. These factors make a wholesale service compelling, since it will be very difficult for any company to have a retail presence serving 99% of the population, and small businesses should not be precluded from participating in the auction to provide this service. Moreover, a wholesale arrangement aligns neatly with public safety’s interest, since it would be in an advantageous position, from a price and service perspective, if it purchased service from a wholesaler. Public safety would be better off on pricing, because it would have a reference point for comparison, which if the entity were a retailer there would not be transparent pricing. And public safety would be better off from a service perspective, because it would be dealing with an entity that is committed to wholesale arrangements and does not have to also focus on a large retail presence. Again, small businesses should not be precluded from the opportunity to provide these services to public safety.

Please direct any questions concerning this matter to the undersigned.

Sincerely,



Jonathan D. Blake
*Counsel to Frontline
Wireless, LLC*

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Marlene H. Dortch, Secretary

Page 3

cc: Chairman Kevin J. Martin
Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Deborah Taylor Tate
Sam Feder
David Horowitz
Joseph Palmore
Erika Olsen
Daniel Gonzalez
Barry Ohlson
Bruce Gottlieb
Angela Giancarlo
Aaron Goldberger
Fred Campbell
Cathleen Massey
James Schlichting

CONGRESSIONAL MANDATES FAVOR AWARDING BIDDING CREDITS TO SMALL BUSINESSES

- The Commission should “avoid excessive concentration of licenses” through the use of “bidding preferences and other procedures.” 47 U.S.C. § 309(j)(3)-(4)(D).
- Commission is statutorily charged with “attracting a wide variety of small business applicants.” 47 U.S.C. § 309(j)(3)(B).
- “The law specifies that the Commission should promote economic opportunity and competition by disseminating licenses among a wide variety of applicants, including small businesses.”
House Subcommittee on Telecommunications Chair Ed Markey

DEFINITION OF DEs TO BE DETERMINED SERVICE-BY-SERVICE

- FCC in 1997: “We adopt our proposal to continue to define small businesses, as we have in the past, based on the characteristics and capital requirements of the specific service. We believe that this approach has given us flexibility that will continue to benefit small businesses in future auctions.”
- FCC in 1997: “We also note that this approach is consistent with the Small Business Administration’s practice of approving small business size standards on a service-by-service basis.”

SERVICE-BY-SERVICE DEFINITION OF DEs (cont.)

- Further Notice In This Proceeding (April 27, 2007): “The Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold.”
- “The Commission has also stated that, while it standardizes many auction rules, the Commission will continue a service-by-service approach when it comes to defining small businesses.”

ALL OTHER DE REQUIREMENTS WOULD APPLY

- DE bidder would have to comply with all other financial, affiliation and attribution relationship rules.
- DE licensee could not sell as much as 25% of its service to any one entity.
- DE would have to be a facilities based provider.
- DE would be subject to unjust enrichment requirements.

DE ELIGIBILITY FOR ALL 700 MHZ SPECTRUM TO BE AUCTIONED

- Commissioners all favor encouraging new entrants.
- Because of size of undertaking, bidding credit is especially appropriate and needed to raise money and compete with incumbents; otherwise new entrants will be shut out.
- The business credit is necessary to counteract incumbents' blocking premium.
- A wholesale network is in the public interest, even if not required, because it promotes competition and innovation.

DE ELIGIBILITY ON THE D BLOCK

- D Block has unprecedented buildout requirements which will be cost prohibitive for small businesses without the DE credit.
- DE credits are particularly appropriate on D Block to encourage new entrants because incumbents reluctantly propose only 75% buildout of the shared public safety network, while one potential DE applicant has proposed 99% buildout.
- With the DE credit, however, a well financed small business will be able to construct a new, 4G, interoperable broadband network to public safety specifications.

DE ELIGIBILITY ON THE C BLOCK

- Open access requirements create a new opportunity in which new entrants and small businesses should be encouraged to participate.
- Facilitating bidding by small businesses with an open access/wholesale model will help to ensure the development and continued availability of a platform for new devices, services and technologies.

DIFFERENT FROM COUNCIL TREE LITIGATION

- The AWS auction was for a different set of services than the shared public/private network and open access network proposed for the 700 MHz spectrum.
- The FCC has said it will differentiate DE rules on a service-by-service basis.
- A 700 MHz specific DE rule or interpretation would not create a precedent undermining the integrity of the DE bidding credit.

DIFFERENT FROM COUNCIL TREE

- It had the seventh largest wireless carrier as a major investor right from the beginning.
- Council Tree challenged the 24.9% rule.