



WASHINGTON, DC

S. JENELL TRIGG
MEMBER
202-416-1090
strigg@lermansenter.com

July 29, 2013

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Presentation Notice: WT Docket Nos. 13-135 and 12-268

Dear Ms. Dortch:

On July 25, 2013, George Laub, Managing Director of Council Tree Investors, Inc. (“Council Tree”) and the undersigned, met with David Goldman; Senior Legal Advisor, Office of Commissioner Jessica Rosenworcel.

The policy and legal issues discussed related to the FCC’s designated entity (“DE”) program and the enclosed written presentation. Primarily, Council Tree proposed that the Commission adopt a 45% DE bidding credit for all future auctions, including the upcoming spectrum incentive auction and H Block auction, and to either waive or eliminate the last remaining rule from the FCC’s DE rules adopted in 2006, 47 C.F.R. § 1.2110(b)(3)(iv)(B), which imposes a 25% restriction on wholesaling/leasing spectrum capacity to one entity. Council Tree emphasized that wholesaling/leasing is an integral part of the business model for new entrant DEs and non-DE’s alike, providing an important measure of revenue certainty necessary to quickly and efficiently finance and deploy operations. DEs need the flexibility to build viable business plans in order to provide competition and innovation, benefiting consumers and the public interest.

These proposals are consistent with the FCC’s statutory mandate under 47 U.S. 309(j) to ensure the widespread dissemination of licenses, to protect against the excessive concentration of licenses, and to promote small, minority- and women-owned businesses and rural telcos.



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Please contact the undersigned if you have questions or comments.

Sincerely,

/s/ S. Jenell Trigg

S. Jenell Trigg
Counsel to Council Tree Investors, Inc.

Enclosure

cc: David Goldman

WT Docket No. 13-135

**Two Actionable Modifications to the DE Program
to Promote Competition and Diversity in FCC Wireless Auctions**



July 25, 2013

Two Proposed Changes

We propose two actionable modifications to the FCC's wireless auction rules for Designated Entities (DEs) in preparation for the 600 MHz and H-block auctions

- 1. Increase the DE bid credit from 25% to 45%**
 - So that DEs can compete against AT&T / VZ and other large carriers for spectrum
 - Critical given the absence of closed auctions and other DE support mechanisms
 - 2. Eliminate / waive the anticompetitive 25% limit on DE spectrum wholesaling / leasing**
 - New entrants today (both DE and non-DE) rely on wholesaling / leasing
 - Permits new entrants to tap new revenue streams to support startup operations
 - The 25% limit unfairly precludes DEs from achieving material anchor tenant contracts
- ▶ **Goal: promote competition and ownership diversity in upcoming FCC auctions**
- Giving new entrant DEs the tools to acquire spectrum at auction
 - Competing against AT&T / VZ and other dominant national carriers
- ▶ **Result: with spectrum in hand, and free of the arbitrary 25% limit, DEs can deploy wireless operations to compete against incumbent carriers**
- To provide consumers with lower prices, innovation, greater choice
 - To serve the public interest – e.g., reaching un-served & underserved communities
 - Consistent with successful FCC wireless auction policy from 1995 – 2005



Genesis of the DE Program

Directed by Congress and implemented by the FCC, the DE program is deeply rooted in over \$80 billion of FCC wireless auctions over the past 18 years

- ▶ **Congress passed 309(j) of the Communications Act with these goals:**
 1. **Ensure that the dominant Bells didn't dominate FCC wireless auctions**
 - e.g., ensure the widespread dissemination of licenses
 2. **Promote competition**
 - e.g., protect against excessive concentration of licenses
 3. **Ensure ownership diversity**
 - e.g., promote small, minority-owned, women-owned businesses and rural telcos

- ▶ **In response to 309(j), the FCC adopted the Designated Entity (DE) Program**
 - Providing DEs with wireless auction bidding credits (25%-45% bid credit levels)
 - Providing DEs with wireless auction spectrum set aside for DEs only (closed auctions)
 - Providing DEs with installment payment options (90% government financing)



1995 – 2005: DEs Flourished

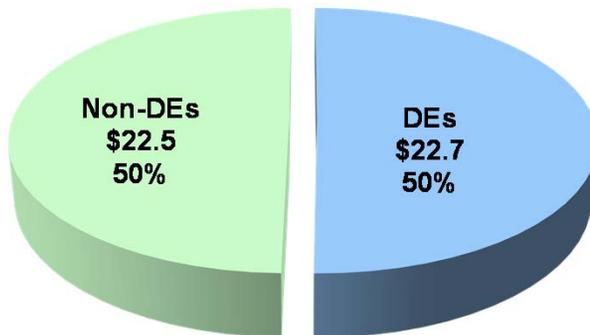
From 1995 – 2005 the DE Program met with remarkable success

DEs acquired \$22.7 billion of spectrum, 50% of the total sold from 1995-2005....

Auction Spectrum Acquired by DEs 1994-2005

(\$ billions, net winning bids)

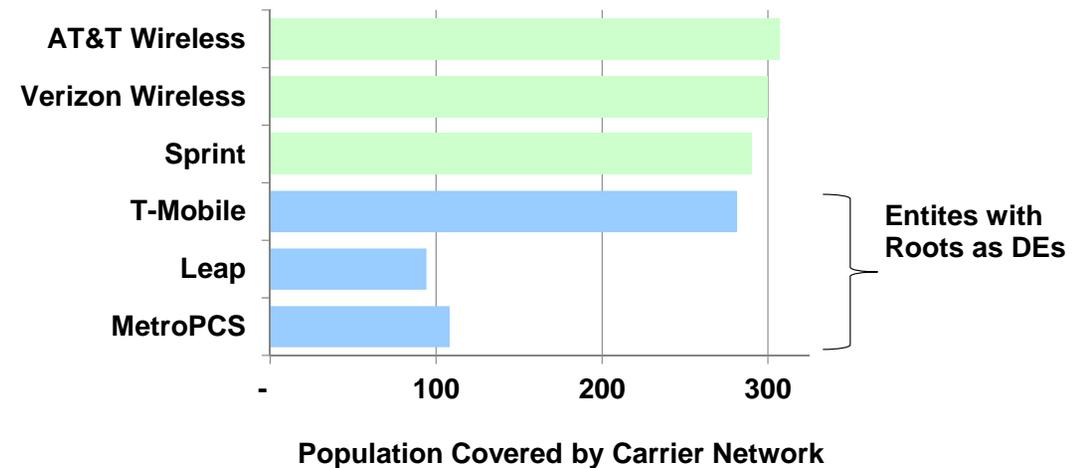
\$45.2 Billion of Licenses in 64 Auctions



DEs then built major companies.....

Top-6 Wireless Carriers by Covered POPs

(pops in million as of 10/12)



- ▶ Closed auctions and bidding credits were key to DE success

- ▶ T-Mobile, MetroPCS and Leap all started as DEs, in addition to many other DE success stories

DE success has benefited consumers with lower prices, innovation and choice

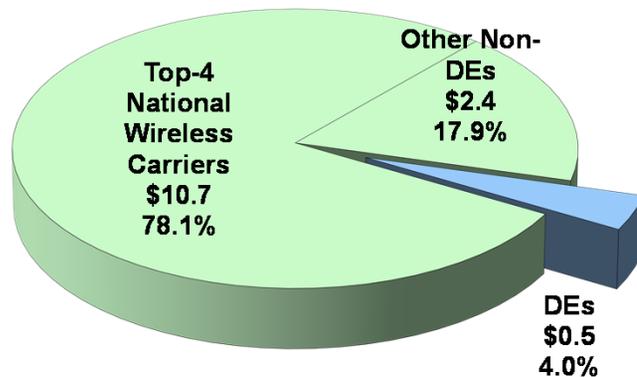


After 2005: DEs Languish

DE auction winnings plummeted from the 50% (\$22.7 billion of \$45 billion) in 1995 - 2005 to just 3.0% (\$1 billion of \$33 billion) in the recent two major auctions in 2006 and 2008

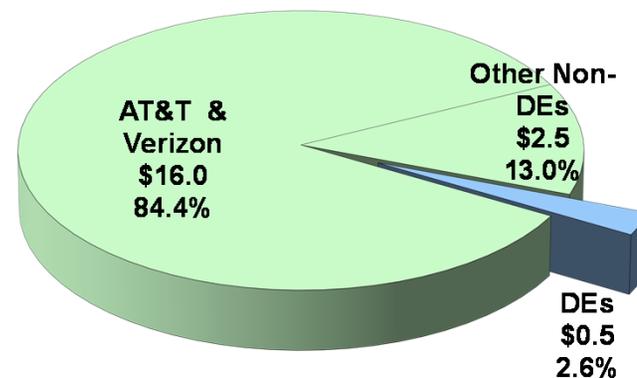
Auction 66 Results in 2006: DEs 4.0%

(\$ billions, net winning bids)
\$14 billion of Spectrum



Auction 73 Results in 2008: DEs 2.6%

(\$ billions, net winning bids)
\$19 billion of Spectrum



- ▶ **DE failure is attributable to FCC DE rule changes, two of which have since been vacated by the courts**
 - i.e., a 10-year DE license hold period and 25% / 50% wholesaling / leasing limits
 - Two of the three vacated by the 3rd Circuit Court of Appeals in 2010

With DEs hobbled in these auctions, AT&T and Verizon dominated in unprecedented fashion – just as the 309(j) authors had feared would be the case with the Bells

Two Measures to Restore DEs

1. Increase the DE Bid Credit from 25% to 45%

- ▶ **Giving DEs a viable chance to win spectrum vs. deep-pocketed, entrenched national carriers**
 - And potentially compete effectively, as they once did
- ▶ **AT&T / VZ alone have \$71 billion of annual cash flow (EBITDA)**
 - And together control 70% of industry revenues
 - Staggering numbers that permit the Bells to dominate all FCC spectrum auctions
 - Making the Bells of 1995 look like the Seven Dwarfs
- ▶ **The FCC has ample precedent for adopting the 45% bid credit**
 - Solely a matter of Commission judgment and discretion
 - 45% level justified given the absence of DE closed licenses, DE installment loans and other DE support mechanisms associated with prior DE auction success
 - Also helps to compensate for damage due to unlawful 2006 DE rules

There has never been more compelling data in support of the Commission exercising its discretion to implement a 45% bid credit



Two Measures to Restore DEs (cont'd)

2. Remove or Waive the 25% Limit on DE Wholesaling and Leasing

- ▶ **Remove / waive the 25% limit on DE wholesaling / leasing to any one party**
 - The sole remaining limit that ex-Chairman Martin implemented in 2006
- ▶ **This limit arbitrarily applies only to DEs and NOT to non-DEs**
- ▶ **Wholesaling / leasing is now integral to the new entrant model (both DE and non-DE)**
 - New entrants (DE and non-DE) will actively wholesale / lease to parties who need spectrum / capacity but may not see wireless as their core business
 - e.g., to smaller local companies such as telcos, cable TV operators, ISPs
 - e.g., to any number any number of larger companies like CenturyLink, Windstream, Google, DirecTV, Echostar, Microsoft, Amazon, Intel, Netflix, Comcast, Time Warner, Apple, Best Buy, Walmart and a host of others
- ▶ **Wholesale / lease contracts provide new entrants with immediate revenue streams**
 - To in turn allow DEs to build out their initial operations quickly and efficiently
- ▶ **There are many examples of credible parties looking to leasing / wholesaling**
 - Clearwire – with Sprint, Leap and a host of MVNOs
 - Frontline – Reed Hundt's venture-backed entity bidding on D-block spectrum
 - Lightsquared & Echostar – nationwide spectrum holders
 - Grain Management – recent minority-owned new entrant

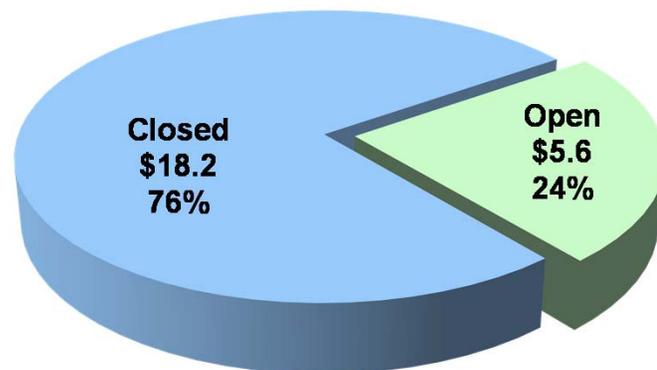


Two Measures to Restore DEs (cont'd)

These measures are particularly important given the disappearance of closed auctions (DEs only) after 2005

- ▶ **Closed auctions, or set aside spectrum, have been key to DE success to-date**

DE Auction Winnings: Closed vs. Open
\$23.8 Billion in Total DE Winnings (\$ billions)



- Closed auctions account for \$18 billion, or 76%, of DE spectrum won historically
- ▶ **Closed auctions provided the Commission and public with certainty that a specified share of spectrum will, with 100% certainty, end up in the hands of DEs**
 - 1995 – 2005 – Closed auctions were a central plank of FCC DE policy
 - After 2005 – Ex-Chairman Martin was the first Commissioner to conduct major auctions without set asides, in 2006 and 2008, with devastating consequences for DEs

Conclusion: Compelling Opportunity for the FCC / Public Interest

With major wireless auctions on the horizon (600 MHz, H-block, etc.) the Commission has a great opportunity to re-inject competition and diversity via revitalized DEs

- ▶ **A robust DE program is a counterweight to AT&T / VZ dominance**
 - Where AT&T / VZ alone won 84% of the \$19 billion of spectrum in Auction 73
 - Where AT&T / VZ have \$71 billion of EBITDA and 70% of industry revenues
- ▶ **A robust DE program – via our two modifications – will help DEs acquire spectrum to deploy innovative new technologies and services**
 - Just as T-Mobile innovated as a new national carrier with discounted plans
 - Just as MetroPCS / Leap innovated with new unlimited plans tailored minority communities that are not a focus of the large national carriers
- ▶ **As DEs succeed, the public interest ultimately wins**
 - Competition, innovation, choice, lower pricing
- ▶ **Without a DE program the public would be vastly worse off today**
 - Bell monopoly, no discount plans, lower penetration, older technology

The Commission has all that it needs to make these two DE changes – jurisdiction, historical context, current data / state of play – and can dramatically improve the national public interest

