Overview of Support for Increased Bidding Credits and
Repeal/Waiver of Attributable Material Relationship Rule

Letter from DEs who have participated in FCC Wireless Auctions (Business Intelligence Solutions, Council Tree Investors, Inc., Davey Holdings, LLC, David Miller, Eagle Force Associates, Inc., Holland Wireless LLC, Hurshell Associates, McBride Spectrum Partners, and Piedmont Rural Telephone Cooperative, Incorporated)
GN Docket 13-185 – 3/24/14

"MMTC's recommendation to increase the DE bidding credit to 40% is a necessary step to restoring small business participation in future FCC auctions. For the bidding credit, we propose specifically that the Commission increase by 15 percentage points the bidding credit levels that the Commission has utilized in recent spectrum auctions. Specifically:

(i) A DE bidder with attributable annual gross revenues that do not exceed an average of $40 million for the preceding three years receives a 30 percent discount on its winning bid.

(ii) A DE bidder with attributable annual gross revenues that do not exceed an average of $15 million for the preceding three years receives a 40 percent discount on its winning bid." (Page 1).

King Street Wireless, L.P.
GN Dockets 13-185 and 12-268 – 3/20/14

"As far back as March of 2013, King Street argued for enhanced DE bidding credits. More recently, King Street explained that the Commission is obligated statutorily, as part of the quid pro quo providing basic auction authority to the Commission, to provide small business a bona fide opportunity to participate in the provision of spectrum-based services. King Street also reminded the Commission that in recent auctions the Commission has come perilously close to failing to comply with this mandate, and that the Commission needs to use every available tool to increase DE opportunity. Bid credits is a key one. In its reply comments, King Street cited with approval to a proposal of Council Tree Investor, Inc. to increase bid credits to 40%. There, King Street reminded the Commission that it had previously used 35% bid credits and that, when it did so, DE participation was markedly higher than in more recent auctions where a lower bid credit was applied. Accordingly, King Street actively advocated a return to high DE bid credit levels." (Pages 1-2)

The Wireless Internet Service Providers Association ("WISPA")
GN Dockets 13-185 and 12-268 – 1/9/14

"As an additional measure to promote participation in the 600 MHz auction by smaller entities, the Commission should apply all three levels of bidding credits established in Section 1.2110(f)(2)(i)-(iii), as follows:

- a 15 percent bidding credit for 'small businesses' with average gross revenues for the preceding three years of $40 million or less,
- a 25 percent bidding credit for 'very small businesses' with average gross revenues for the preceding three years of $15 million or less, and
- a 35 percent bidding credit for 'entrepreneurs' with average gross revenues for the preceding three years of $3 million or less." (Page 6).

Council Tree Investors, Inc.
GN Dockets 13-135 and 12-268 – 7/29/13

"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." (Page 1 of Ex parte Letter 07/29/2013)

Given the continuing absence of closed DE auctions, Council Tree urges the Commission to:

(i) implement maximum 45 percent DE bidding credits, a level previously and successfully utilized, and one that is particularly appropriate in light of DEs' inability to participate in a meaningful fashion in Auctions 66 and 73; and

(ii) eliminate or waive the 25% Wholesale Rule, a rule which severely and unnecessarily crimps a particular business model which DEs need to compete in the concentrated wireless marketplace. (Attachment from 07/25/13 meeting)

The Leadership Conference on Civil and Human Rights
GN Docket 12-268 – 1/25/13

"By 2006 the bidding credit system that discounts the bid price a DE would have to pay to obtain a license was among the few remaining elements of the DE program. Then, just weeks before a major spectrum auction, the FCC made significant changes to the DE program that adversely affected DE participation. Many DEs were unable to retain or obtain additional financing, women-owned bidders failed to win any licenses, and minority-owned bidders won less than 1 percent of the available licenses in one of its last major auctions. It will be critical for the Commission to not allow history to repeat itself by preventing women- and minority-owned bidders from successfully participating in the forward auctions. Accordingly, we urge the Commission to at least maintain, and consider increasing, the bidding credit for small and very small businesses." (Page 6 (footnotes omitted))

"We also acknowledge the difficult reality for minority and new entrants to succeed in the wireless market and the many barriers they face. Access to capital, especially in the capital-intensive wireless market, is a large barrier for minorities to enter the market. While bidding credits help address this access to capital barriers, we also urge the Commission to consider allowing these entrants to have the flexibility to pursue a diverse set of business models to remain in business. Many entrants' models include leasing out a portion of their spectrum in order to establish and maintain cash flow for their companies. We urge the Commission to consider how its regulation of designated entity eligibility can help entrants succeed in the wireless marketplace." (Page 7)

FCC Diversity Advisory Committee, Telecom and Broadband Issues Subcommittee
Proposal to Restore the FCC's Designated Entity ("DE") Program - 9/14/09

- **Wholesale / Lease Restriction** – strict new limits on DE leasing / wholesaling
- Significantly restricts DEs' access to financing, contrary to the FCC's own Secondary Markets Initiative whose flexibility the Commission heralded to Congress (§257 Triennial Report)

Asian American Justice Center ("AAJC"); Antares Holding, LLC, Benton Foundation, Benton Foundation; Faithfone Wireless Inc.; Kinex Networking Solutions, Inc.; Media Alliance; National Association for the Advancement of Colored People; National Hispanic Media Coalition; National Indian Telecommunications Institute; National Organization for Women Foundation; Office of Communication of the United Church of Christ, Inc.; OVTC, Inc.; Rainbow PUSH Coalition; Wirefree Partners,LLC; Women's Institute for Freedom of the Press; and Xanadoo 700 MHz DE, LLC
WT Dockets 06-150 and 05-211, Amici Curiae Brief, Case No. 08-2036, U.S. Court of Appeals for the Third Circuit - 8/15/08

"DEs need considerable business plan flexibility in order to compete with incumbents that have extensive existing facilities and are able to benefit from economies of scale. For example, in order to build early revenue growth and facilitate access to financing capital, a facilities based DE may need to wholesale sizable amounts of spectrum capacity to 'anchor tenants,' retail companies who need spectrum to compete effectively against the largest incumbents. DEs benefit from this 'rental income' arrangement to help augment early revenue streams and finance network buildouts, in tum positioning DEs to utilize or market remaining spectrum as they see fit. Without a dependable income stream from such industry-standard arrangements, most DEs face massive barriers in attempting to compete directly against incumbent providers." (Page 12).

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Wirefree Partners III, LLC
WT Docket 06-150 and PS Docket 06-229 – 11/12/08

“The spectrum leasing restrictions impose a government mandate on the permitted lines of business for a designated entity that acquires D Block spectrum. In confronting the reality of this mandate in the first D Block auction, the Commission found that the circumstances and obligations of the D Block justified a waiver of the restriction on leasing 50% of spectrum to multiple parties but left in tack the restriction on a designated entity leasing more than 25% of the spectrum to a single entity. This limited waiver may have made sense when the D Block was to be licensed as a solitary, nationwide license. Now, the waiver should be broadened to include a waiver of all the leasing restrictions, including the 25% restriction. This is justified since the auction could produce regional licensees versus a single nationwide licensee and in light of the current, harsh financial environment. In this environment the FCC should seek to promote small business growth and flexibility not impose artificial restrictions on permitted lines of businesses. Ironically, the leasing restriction applies only to designated entities and not to any other bidders seeking to acquire D Block spectrum.” (Pages 3-4).

Frontline Wireless, LLC
WT Dockets 06-150, 01-309, 03-264, 06-169, 96-86, 07-166, 05-211; CC Docket 94-102; and PS Docket 06-229 – 10/17/07

“Similarly, the Congressionally-mandated Designated Entity program can and should be used to promote the entry of small businesses in the wireless broadband marketplace. The Commission has never ruled on the bidding-credit eligibility of a small business that wishes to build out and operate its own network, is not a front for any incumbent or other large company, will offer wholesale services, and will meet and honor all of the Commission’s other DE requirements. The Commission should not artificially constrain the business judgments of bona fide DEs by refusing to allow them bidding credits if they engage in a facilities-based, wholesale operation.” (Page ii)

Office of Advocacy, the U. S. Small Business Administration
WT Docket 06-150 and PS Docket 06-229 – 5/21/07

“While a number of different changes were made to the DE rules, two specific modifications inhibit small business access to capital. First, the Commission’s restrictions on wholesale arrangements and leasing will limit the ability of DEs to structure their business models. The rules now prohibit DEs from entering into agreements with one or more entities ‘for the lease…or resale (including under a wholesale arrangement)’ of fifty percent of their ‘spectrum capacity of any individual license.’ The rules further stipulate that a small entity that resells or leases more than 25 percent of the spectrum capacity for an individual license may also compromise that entity’s eligibility for the DE Program. Small businesses fear that these rules will limit their ability to work with mobile virtual network operators (“MVNOs”), which operate based on a wholesale relationship. The severe restrictions on a DE’s ability to participate in dynamic business partnerships such as this presents an insurmountable obstacle to many small entities interested in obtaining spectrum.” (Page 5 (footnotes omitted)).

New Technologies Subcommittee Recommendations to the Federal Communications Commission’s Advisory Committee on Diversity for Communications in the Digital Age
6/10/04
Recommendations on Spectrum and Access to Capital; and For Facilitating Access to Opportunities Requiring Licensed Spectrum:

“Increase the bidding credits available to qualifying ‘small’ and ‘very small’ business in FCC spectrum auctions to 25 percent and 50 percent respectfully.”

Also see various comments against revisions to the competitive bidding rules and restrictions on DEs in general, and objections to the 2006 DE Rules in WT Docket 05-211 from rural industry groups, financial investors, various DEs, and larger carriers.