

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Broadband PCS Spectrum Auction Scheduled for)	DA 04-1639
January 12, 2005)	Report No. AUC-03-58-A, Auction 58

REPLY COMMENTS OF CTIA — THE WIRELESS ASSOCIATION™

CTIA — The Wireless Association™ (“CTIA”)¹ submits these reply comments in response to the comments filed regarding the *Auction 58 Public Notice*.² The range of views expressed by the commenters demonstrates that the Federal Communications Commission (“FCC” or “Commission”) should conduct a rulemaking proceeding to re-examine the justification for the entrepreneur eligibility restrictions. CTIA and Verizon Wireless have offered ample evidence showing that these restrictions are obsolete.³ Those commenters supporting the preservation of the entrepreneur eligibility restrictions have relied upon unsubstantiated conclusions and flawed analyses. Rather than warranting the continuation of the

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. CTIA membership covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See FCC Public Notice, *Broadband PCS Spectrum Auction Scheduled for January 12, 2005*, DA 04-1639 (June 18, 2004) (“*Auction 58 Public Notice*”).

³ See Comments of CTIA; Petition of CTIA for Expedited Rulemaking or, Alternatively, a Waiver; Comments of Verizon Wireless. All comments referenced in this document were filed on July 8, 2004.

entrepreneur eligibility restrictions, their comments underscore the need for a rulemaking to develop a more full and accurate record.

In attempting to justify the continuation of entrepreneur eligibility rules that were adopted for Auction 35 four years ago, the commenters representing Designated Entity (“DE”) interests (collectively, “DE Commenters”) argue the following: (1) set-asides are critical for small businesses to compete against larger carriers for spectrum, obtain capital financing, and build successful businesses;⁴ (2) the results of Auction 35 have been successful for small businesses;⁵ and (3) any change in the DE rules would delay the scheduled commencement of Auction 58 on January 12, 2005.⁶ Council Tree also argues that the Commission should provide for a higher number of “closed” licenses in Auction 58 “in order to more closely replicate” the number of closed licenses that were available in Auction 35.⁷ All of these arguments, however, are either unsubstantiated or based upon inaccurate or misleading facts.

The Commission itself has discredited the proposition that set-asides are critical for small businesses. As Verizon Wireless noted, the Commission declined on numerous occasions to establish set-asides for other auctioned services, finding that set-asides are unnecessary and that

⁴ See, e.g., Comments of Alta Communications at 1-2; Comments of American Women in Radio and Television, Inc. at 5-6 (“AWRT”); Comments of Catalyst Investors at 1-2; Comments of Doyon, Limited at 1; Comments of Highland Cellular LLC at 1; Comments of Madison Dearborn Partners, LLC, at 1-2; Comments of Maxicom PCS, LLC, at 2; Comments of Media Venture Partners at 1-2.

⁵ See, e.g., Comments of 3G PCS, LLC, at 1; Comments of Coloma Spectrum, LLC, at 1; Comments of Arctic Slope Regional Corporation at 2; Comments of Council Tree Communications, Inc. at 5 (“Council Tree”); Comments of Vincent D. McBride and Scott D. Reiter at 1.

⁶ See, e.g., Comments of AWRT at 4; Comments of the Rural Telecommunications Group, Inc. at 2.

⁷ See Comments of Council Tree at 2.

open auctions are effective in promoting small business participation.⁸ In fact, small businesses comprise nearly 80 percent of winning bidders in all of Commission’s open auctions utilizing bidding credits.⁹ Although several DE Commenters suggested that DEs “won 45 percent of all licenses by value” in Auction 35 as a result of closed bidding, they ignored the fact that Auction 35 offered both open and closed licenses.¹⁰ Thus, the DE success rate in Auction 35 cannot be attributed solely to closed bidding and indeed could have been even higher had all of the available licenses been open.

In contrast, CTIA offered compelling evidence, based upon the Auction 35 results, that open auctions with bidding credits are more effective in enabling small businesses to acquire licenses than closed auctions.¹¹ Specifically, CTIA provided data showing that, in the vast majority of the Basic Trading Areas where both open and closed licenses were available in Auction 35, small businesses using bidding credits paid less or no more for their open licenses than the small businesses that won the closed licenses.¹² Moreover, despite the DE Commenters’ claims that closed bidding rules are necessary to enable small businesses to obtain capital financing and develop successful businesses, there is no evidence that small businesses acquiring

⁸ See Comments of Verizon Wireless at 8-9.

⁹ See *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, 18 FCC Rcd 25162, ¶ 148 (2003); *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, Sixth Report and Order and Order on Reconsideration, 15 FCC Rcd 16266, ¶ 22 n.67 (2000) (“*C/F Block Sixth R&O*”).

¹⁰ See, e.g., Comments of 3G PCS, LLC at 1; Comments of Coloma Spectrum, LLC at 1; Comments of Council Tree at 5; Comments of Vincent D. McBride and Scott D. Reiter at 1.

¹¹ See Petition of CTIA at 9-10.

¹² *Id.* at 10.

licenses through open bidding, as a group, have been disadvantaged in obtaining financing or launching successful businesses.

Furthermore, contrary to Council Tree's contention that the number of closed licenses was "dramatically reduced" in Auction 58,¹³ the majority of the licenses available in Auction 35 (252 of 422 licenses) were open, and the majority of the licenses available in Auction 58 are closed (119 of 234 licenses). Thus, if the Commission were to adopt Council Tree's proposal to re-designate the Auction 58 licenses to replicate the percentage of closed and open licenses available in Auction 35, it would need to provide for a higher number of open licenses, rather than reducing the number of open licenses.

Council Tree evades this simple arithmetic by isolating the reduction in the absolute number of MHz pops covered by the open licenses from Auction 35 to Auction 58 without accounting for the higher number of licenses that were available in Auction 35 or for the larger markets that were covered by the Auction 35 licenses.¹⁴ In short, Council Tree analyzed the numerators, without considering the changed denominators. By relying upon absolute numbers, rather than relative percentages, Council Tree provided calculations that offer no basis for any meaningful comparison between the Auction 35 and Auction 58 licenses. Council Tree also arbitrarily and without explanation selected only 17 of the 117 markets covered by the Auction 58 licenses in its attempt to demonstrate the decline in the number of closed licenses available in Auction 58.¹⁵ Presumably, Council Tree cherry-picked the 17 markets that yielded data to present a distorted picture of the amount of closed and open licenses available in Auction 58.

¹³ See Comments of Council Tree at 8-9.

¹⁴ *Id.*

¹⁵ *Id.*

Any valid conclusions regarding the availability of closed and open licenses in Auction 58 would require an analysis of the entire set of markets covered in that auction. To the extent that Council Tree's proposal to modify the entrepreneur eligibility rules to increase the number of closed licenses available in Auction 58 raises any valid considerations, it demonstrates the need for a rulemaking proceeding to review these rules.

Contrary to the DE Commenters' unsubstantiated contention,¹⁶ a rulemaking would not delay the auction. When the Commission last modified the entrepreneur eligibility rules four years ago, it took less than three months to complete the rulemaking proceeding.¹⁷ Thus, the Commission has ample time to initiate and complete a rulemaking proceeding within the six months before the scheduled commencement of Auction 58 in January 2004. Moreover, any time saved by proceeding to Auction 58 without a rulemaking would be more than offset by the administrative and transactional inefficiencies and delays associated with closed bidding.¹⁸

¹⁶ See, e.g., Comments of AWRT at 4.

¹⁷ See *C/F Block Sixth R&O; Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, Further Notice of Proposed Rulemaking, 15 FCC Rcd 9773 (2000).

¹⁸ See Petition of CTIA at 14-15; Comments of Verizon Wireless at 4.

Based on the foregoing, the Commission expeditiously should initiate a rulemaking proceeding to consider rules that will allow the broadest possible group of bidders to participate in Auction 58 and other future auctions.

Respectfully submitted,

Diane Cornell /s/

Diane Cornell
Vice President, Regulatory Policy

Michael Altschul
Senior Vice President, General Counsel

Christopher Guttman-McCabe
Assistant Vice President, Regulatory Policy and
Homeland Security

CTIA — The Wireless AssociationTM
1400 16th Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 785-0081

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CERTIFICATE OF SERVICE

I, Theresa Rollins, hereby certify that, on this 15th day of July 2004, copies of the foregoing Reply Comments were served by electronic mail on the following, unless otherwise indicated:

Bryan Tramont
Chief of Staff
Office of Chairman Powell
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Sheryl Wilkerson
Legal Advisor
Office of Chairman Powell
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Jennifer Manner
Senior Counsel
Office of Commissioner Abernathy
Federal Communications Commission
445 Twelfth Street, N.W.
Washington, D.C. 20554

Sam Feder
Legal Advisor on Spectrum and International
Issues
Office of Commissioner Martin
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Paul Margie
Spectrum and International Legal Advisor
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Barry Ohlson
Senior Legal Advisor, Legal Advisor for
Spectrum and International Issues
Office of Commissioner Adelstein
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

John Muleta
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Peter Tenhula
Acting Deputy Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

David Furth
Associate Bureau Chief/Counsel
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Lauren Patrich
Legal Advisor for Media and Public Affairs
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Dr. Walter D. Strack
Chief Economist
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Harry Wingo
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Margaret Wiener
Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Kathryn Garland**
Deputy Division Chief, Auctions and Spectrum
Access Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

William Kunze
Division Chief, Spectrum and Competition
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Audrey Bashkin
Auctions and Spectrum
Access Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

/s/ Theresa Rollins

Theresa Rollins

** By facsimile