

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

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

COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. (“JSI”) submits these Comments in response to the invitation of the Federal Communications Commission (“FCC” or “Commission”) to comment on a proposal by Council Tree Communications, Inc. (“Council Tree”) to prohibit entities that have a “material relationship with a large in-region incumbent wireless service provider” from being awarded bidding credits or other small business benefits in wireless spectrum auctions.¹

JSI is a consulting firm offering regulatory, financial and business development services to more than two hundred rate-of-return rural local exchange carriers (“LECs”) throughout the United States and offering consulting services for affiliates of these LECs, which include small and rural wireless carriers. Most, if not all of JSI’s wireline and wireless carrier clients would be eligible for small business bidding credits if they participate in future FCC wireless spectrum auctions. Accordingly, for these and other small entities, it is vital that the Commission ensures that bidding credits fulfill the purpose for which they were designed and are not used as a means for large nationwide wireless providers to obtain spectrum at a discount. JSI believes that

¹ *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Further Notice of Proposed Rule Making, FCC 06-8 (rel. Feb. 3, 2006) (“FNPRM”).

Council Tree’s proposal accomplishes this goal and, with a slight modification, urges its adoption.

Small business provisions in wireless auctions, including bidding credits and set-asides, were designed to encourage small businesses to participate in auctions and thus fulfill the statutory mandate set forth in Section 309(j) of the Communications Act of 1934, as amended, which requires the FCC to “promote opportunities for, and disseminate licenses to, a wide variety of applicants.”² Accordingly, only legitimate small businesses should be eligible for small business provisions. As stated by the Commission in its FNPRM, “[t]he Commission intends that small business provisions ‘be available only to bona fide small businesses.’”³ Under the FCC’s current rules, however, this is not the case as illustrated by the results of the re-auction of PSC spectrum originally awarded to Nextwave Personal Communications. As reported by the trade press, in this auction in which much of the spectrum was available only to qualified designated entities, the majority of the winners were “small businesses” that were actually backed by four large wireless carriers: Sprint PCS, AT&T Wireless, Cingular Wireless and VoiceStream Wireless Corp.⁴

To ensure that only bona fide small businesses receive small business provisions in future auctions, the FCC should adopt Council Tree’s proposal with one modification. JSI supports Council Tree’s proposal to modify FCC Rules to prevent bidding credits from being awarded to small businesses that have a “material relationship” with large in-region incumbent wireless

² *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, Order on Reconsideration, 20 FCC Rcd 14058, Appendix C, Subsection E (2005).

³ FNPRM at para. 7.

⁴ See Kim Sunderland, *Under a Black Cloud: Nation’s Largest Airwaves Auction Faces Controversy*, Xchange, April 1, 2001, at 2 (citing that the data comes from “FCC documents”); Todd Paul, *Room for a View: News and Views – Telecom Giants Win Rigged Spectrum Auction*, Chronogram.com, March 2001, at 1-2 (noting that four of the largest wireless carriers won over 90 percent of the licenses with much of the bidding done through use of small companies).

providers but is opposed to defining “material relationship” in such a way that it would prohibit legitimate small businesses that have operational arrangements with large wireless carriers.

According to the FNPRM, Council Tree’s proposal would “restrict the award of bidding credits or other small business benefits where an entity ‘otherwise qualified’ for eligibility but has a ‘material relationship’ with a ‘large in-region incumbent wireless service provider.’”⁵ In seeking comment on what would be considered a “material relationship,” the FNPRM cites

Council Tree’s proposal and states,

According to Council Tree, the Commission should determine that a ‘material relationship’ exists if a ‘large in-region, incumbent wireless provider’ has provided a material portion of the total capitalization of the applicant (*i.e.*, equity plus debt), or has a material operational arrangement with the applicant (such as management, joint marketing, trademark, or other arrangements) or other material financial arrangement relating to the overlap markets.”⁶

In many instances, small and rural wireless companies, many of which are affiliated with rural telephone companies, have entered into management, marketing or other non-equity arrangements with large wireless carriers which enable them to provide quality wireless services to the rural areas where they are licensed to serve. Defining a “material relationship” as proposed by Council Tree has the potential of prohibiting these and other legitimate small businesses from obtaining bidding credits or other small business benefits in auctions. As an alternative, JSI urges the Commission to adopt Council Tree’s proposal but limit the definition of a “material relationship” to one in which the large in-region incumbent wireless provider has provided a material portion of the total capitalization of the applicant. As noted by the Commission, the FCC has existing rules to address arrangements where a large wireless carrier

⁵ FNPRM at para. 5.

⁶ *Id.* at para. 13.

may exercise too much control over an auction applicant with which it has a non-equity arrangement.⁷

Bidding credits and other small business provisions were designed to provide small businesses with legitimate opportunities to bid on licenses. Council Tree's proposal with JSI's modification makes a significant step towards ensuring that this goal is fulfilled. Accordingly, it is critical that the Commission act now and revise its rules to ensure that only bona fide small businesses receive these benefits.

Respectfully submitted,

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⁷ See FNPRM at para. 14 (citing FCC's "controlling interest standard" and affiliation rules).