Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures	)	WT Docket No. 05-211
	)	
Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006	)	AU Docket No. 06-30

To: The Commission

PETITION FOR EXPEDITED RECONSIDERATION

Steve C. Hillard
George T. Laub
Jonathan B. Glass
Council Tree Communications, Inc.
2919 17th Avenue
Suite 205
Longmont, CO 80503
(303) 678-1844

David Honig
Executive Director
Minority Media and Telecommunications Council
3636 16th Street, N.W.
Suite B-366
Washington, DC 20010
(202) 332-7005

Anastasia C. Hoffman
Marc D. Stemp
Bethel Native Corporation
Box 719
Bethel, AK 99559
(907) 543-2124

May 5, 2006

TABLE OF CONTENTS

Page

SUMMARY

The Commission should set aside each of the rule changes adopted as part of the *Second Report and Order and Second Further Notice of Proposed Rule Making* (FCC 06-52) adopted and released in WT Docket 05-211 on April 25, 2006 ("*Second Report and Order*") and retain its current rules for the advanced wireless services ("AWS-1") licenses to be offered in Auction 66. The Commission should do so for several reasons.

None of the new rules is limited to arrangements involving large, in-region incumbent wireless service providers as contemplated in the *Further Notice of Proposed Rule Making* in WT Docket 05-211. Instead, the new rules apply to all designated entity relationships. Adoption of such broadly-applicable new rules merely two weeks before the short-form application deadline for Auction 66 is incurably disruptive to the business plans of designated entities, their investors, and their strategic partners (an outcome the Commission commendably avoided in another context when it did not adopt a rule governing relationships involving any company with $125 million in revenues). It also falls afoul of Section 309(j)(3)(E)(ii) of the Communications Act.

The problem is even greater, however, because many of the rules announced at this eleventh-hour are unsound or unreasonable. The Commission substituted a ten-year unjust enrichment schedule for the five-year schedule that has applied broadly since 1997. The sudden, new schedule has the practical effect of eviscerating a designated entity's access to capital because lenders and investors

who are being asked to back untested new entrants want to see that the designated entity has a clear path to exit if the business is not succeeding. In addition, the new unjust enrichment rules apply to *existing* designated entity relationships that were formed under, and in reliance upon, the current provisions of Section 1.2111(d)(2).

Also unreasonable are the Commission's new rules with respect to limitations on spectrum leasing and resale arrangements, which are so vague as to deny a licensee the reasonable ability to determine whether or not it is in compliance, and a new designated entity reporting requirement, which is deeply confusing as drafted. The resulting situation is destabilizing to designated entities preparing for Auction 66. To remedy this situation, the Commission should set aside the rule changes adopted as part of the *Second Report and Order* and retain its current rules for the licenses offered in Auction 66.

At a minimum, the Commission should set aside the amendments to Section 1.2111(d)(2) of its Rules. The adoption of the new unjust enrichment rules was arbitrary and capricious. The Commission based these last-minute changes on just two lines in two comments that it misconstrued, and it entirely failed to consider the resulting impairment of designated entities' access to capital. The Commission also failed to give adequate notice before it adopted the new unjust enrichment rules. Changing the longstanding five-year unjust enrichment schedule at this late date would violate Section 309(j)(3)(E)(ii) of the Communications Act, upset business plans set for Auction 66, and undermine confidence in the stability of designated entity rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures	)	WT Docket No. 05-211
	)	
Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006	)	AU Docket No. 06-30

To: The Commission

PETITION FOR EXPEDITED RECONSIDERATION

The Minority Media and Telecommunications Council ("MMTC"), Council Tree Communications, Inc. ("Council Tree"), and Bethel Native Corporation ("BNC") (together referred to hereinafter as the "Joint Petitioners"), pursuant to Section 1.429(a) of the Commission's Rules, 47 C.F.R. § 1.429(a), respectfully petition the Commission to reconsider its *Second Report and Order and Second Further Notice of Proposed Rule Making* (FCC 06-52) adopted and released in WT Docket 05-211 on April 25, 2006 ("*Second Report and Order*").1/

The Joint Petitioners urge the Commission to set aside each of the rule changes adopted as part of the *Second Report and Order* and retain its current rules for the advanced wireless services ("AWS-1") licenses to be offered in Auction 66. In

1/ A synopsis of the *Second Report and Order* was published in the Federal Register on May 4, 2006. *See* 71 Fed. Reg. 26,245 (2006).

the alternative, the Joint Petitioners urge the Commission to set aside just the amendments to Section 1.2111(d)(2) of its Rules and retain the five-year unjust enrichment schedule currently set forth therein. Given the short time before applications are due to be filed to participate in Auction 66, the Joint Petitioners respectfully request expedited action on this petition.2/

I. INTRODUCTION

In the *Second Report and Order*, the Commission made a series of changes to its rules governing designated entity relationships and the award of competitive bidding preferences thereto. Among other things, the Commission adopted a ten-year unjust enrichment schedule for licenses acquired with bidding credits,3/ instituted a new unjust enrichment provision requiring full repayment of any bidding credit in many cases where the construction requirements applicable at the end of the license term has not been met,4/ modified rules relating to spectrum leasing and resale arrangements to make certain relationships involving designated entities attributable for the purposes of business size calculations or altogether

---

2/ By separate pleading, the Joint Petitioners respectfully move that, pending reconsideration or judicial review of the action in this case, the Commission (a) stay the effectiveness of each of the rule changes adopted as part of the *Second Report and Order* or, at a minimum, the amendments to Section 1.2111(d)(2) of its Rules and (b) the start of Auction 66 and all associated pre-Auction 66 deadlines.

3/ *See Second Report and Order* at ¶ 37.

4/ *See id.* at ¶ 38.

impermissible,5/ and adopted new application requirements and reporting obligations applicable to designated entities.6/

None of the new rules is limited to arrangements involving large, in-region incumbent wireless service providers as contemplated in the *Further Notice of Proposed Rule Making* in WT Docket 05-211 ("*FNPRM*"). Instead, the new rules apply to all designated entity relationships. Adoption of such broadly-applicable new rules just two weeks before the short-form application deadline for Auction 66 is incurably disruptive to the business plans of designated entities, their investors, and their strategic partners. It is also a violation of Section 309(j)(3)(E)(ii) of the Communications Act.

The problem is even greater, however, because many of the rules announced at this eleventh-hour did not have the benefit of meaningful public comment and are unsound or unreasonable.7/ In the case of the modifications to the Commission's unjust enrichment rules, for example, a ten-year unjust enrichment schedule and full prior build-out requirement for licenses acquired with bidding credits (together, the "new unjust enrichment rules") have the practical effect of

5/ *See id.* at ¶¶ 25-27.

6/ *See id.* at ¶¶ 44-47.

7/ In contrast, after receiving meaningful public comment on the notion of extending the limitation contemplated in the *FNPRM* to govern relationships involving any company with $125 million in revenues, the Commission did not adopt such a rule in the *Second Report and Order*. The Commission is to be commended for this response to public comment.

eliminating a designated entity's access to capital by closing an accepted exit path if the business is not going well. This option is critical for investors who are being asked to back untested new entrants.

In addition, by their terms, the new unjust enrichment rules apply to *existing* designated entity relationships that were formed under, and in reliance upon, the current provisions of Section 1.2111(d)(2). The sudden and unforeseeable application of entirely new unjust enrichment requirements would completely upset those parties' good faith expectations. It would also signal to current and prospective sources of capital that the designated entity regulatory environment is not reliable for investors.

For all of these reasons, and for the reasons set forth below, the Commission should set aside the rule changes adopted as part of the *Second Report and Order*, examine each such change as part of the continuation of WT Docket 05-211, and retain its current rules for the licenses offered in Auction 66. At a minimum, the Commission should set aside the new unjust enrichment rules and retain the five-year unjust enrichment schedule set forth in Section 1.2111 of its Rules.

II. THE COMMISSION SHOULD SET ASIDE THE RULE CHANGES ADOPTED AS PART OF THE *SECOND REPORT AND ORDER* AND RETAIN ITS CURRENT RULES FOR THE LICENSES OFFERED IN AUCTION 66

The Commission should set aside the rule changes adopted as part of the *Second Report and Order*, examine each such change as part of the continuation of WT Docket 05-211, and retain its current rules for the licenses offered in Auction

66. Announcing broadly-applicable changes to designated entity rules so soon before short-form applications are due for Auction 66 throws the business plans of designated entities into turmoil.

Under Section 309(j)(3)(E) of the Communications Act, the Commission is required to see that an adequate period is allowed "after issuance of bidding rules, to ensure that interested parties have sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services."8/ This is critical for designated entities, which must raise capital to enable them to participate in the auction in the first instance.

In the past, the Commission has been quite careful to observe this requirement. In 2004, for example, the Wireless Telecommunications Bureau postponed the start of Auction 58, and the associated pre-auction deadlines, to provide "additional time for bidder preparation and planning" after the Commission had made clear that it would make *no changes* to the applicable designated entity set-aside rules.9/

Here, in contrast, the Commission announced fundamental and sudden rule changes, in one case affecting an unjust enrichment policy that has been settled for nearly nine years, just *two weeks* before the date on which applications are due to

---

8/ 47 U.S.C. § 309(j)(3)(E).

9/ *See Broadband PCS Spectrum Auction Start Date Rescheduled for January 26, 2005, Public Notice*, DA 04-3270, at 1-2 (rel. Oct. 15, 2004); *Eligibility Restrictions on C Block Licenses in the Broadband Personal Communication Services, Memorandum Opinion and Order*, 19 FCC Rcd 20321 (2004).

participate in Auction 66. Such an action is wholly destabilizing for those preparing to participate in the auction. For example, parties who have relied on the existing unjust enrichment schedule in structuring their financing arrangements would be stranded if the new rule is actually applied.

The Commission should also set aside the rule changes adopted as part of the *Second Report and Order* because many of them are unsound or unreasonable. Application of the new just enrichment rules would discourage investment in designated entities. Lenders and investors who are being asked to back untested new entrants want to see that the designated entity has a clear path to exit if the business is not succeeding. A ten-year horizon is wholly inconsistent with those expectations. Rather than increasing "the probability that the designated entity will develop to be a competitive facilities-based service provider," as the Commission assumed,10/ the new just enrichment rules would *reduce* that probability by shrinking the ranks of those willing to invest in designated entities at all.

Also unreasonable are the new limitations on designated entity spectrum leasing and resale arrangements. The Commission declared that any agreement with an individual or entity to lease or resell "25 percent or more of the spectrum capacity of any individual license" would be an attributable material relationship

---

10/ *Second Report and Order* at ¶ 36.

and agreements with one or more entities to lease or resell "50 percent or more of the spectrum capacity of any individual license" would be an impermissible material relationship.11/ Yet, it is not at all clear how the "spectrum capacity of any individual license" is to be measured for these purposes — particularly in the resale context that is so important to designated entities. These new rules are ambiguous to the point that a licensee may not fairly determine whether it is compliance or not.

Finally, there is a similar problem with the new reportable eligibility event rule, which requires designated entities to seek approval for "any event in which they are involved that might affect their ongoing eligibility . . . ."12/ As described in the body of the *Second Report and Order*, such "reportable eligibility events" include:

> changes in the ownership structure of the designated entity and agreements (*e.g.,* management, credit, trademark, marketing, and facilities agreements) entered into between designated entity licensees and third parties that the Commission has not previously reviewed.13/

Yet, the text of the final rule defines a "reportable eligibility event" as any spectrum lease/resale arrangement that would cause a licensee to lose eligibility for competitive bidding preferences or "[a]ny other event that would lead to a change in the eligibility of a licensee for designated entity benefits."14/

11/ *Id.* at ¶ 25.

12/ *Id.* at ¶ 46 (footnote omitted).

13/ *Id.* at ¶ 46 n.116.

14/ *Id.*, Appendix B (text of new Section 1.2114(a)) (emphasis added).

This final rule text suggests that the instruments referred to in the body of the order ("management, credit, trademark, marketing, and facilities agreements") may now be deemed, in all cases, to "lead to a change in the eligibility of a licensee for designated entity benefits." If that is so, it is a fundamental change to many years of Commission policy and precedent regarding *de jure* and *de facto* control. If that is not so, the Commission's new rule is deeply confusing, leaving affected designated entities without a clear idea of what is expected of them.15/

In short, the Commission has announced broadly-applicable new rules, some of which are unsound or unreasonable, and none of which were not subject to any meaningful notice or public comment — comment that would have exposed the problems noted here and will likely expose others. The resulting situation is destabilizing to designated entities. To remedy this situation, the Commission should set aside the rule changes adopted as part of the *Second Report and Order* and retain its current rules for the licenses offered in Auction 66.

III. AT A MINIMUM, THE COMMISSION SHOULD RETAIN THE FIVE-YEAR UNJUST ENRICHMENT SCHEDULE IN SECTION 1.2111(d)(2) OF ITS RULES

At a minimum, the Commission should address the most clearly unsound portion of the item by reconsidering the adoption of the new unjust enrichment

---

15/ For example, under the new rule, it is not clear if a newly-entered management agreement would have to be submitted to the Commission if the agreement would *not* lead to a change in the eligibility of a licensee for designated entity benefits.

rules and retaining the five-year unjust enrichment schedule currently set forth in Section 1.2111(d)(2) of its Rules. There are at least five reasons to do so.

A. The New Unjust Enrichment Rules Would Sharply Curtail the Ability of Designated Entities to Obtain Financing

First, the Commission should set aside the adoption of the new unjust enrichment rules because application of the rules would sharply curtail the ability of designated entities to obtain financing. From the beginning of the designated entity program, it has been the Commission's policy to help new entrants to attract capital and industry-expertise. New entrants stand little chance of gaining a foothold in this capital-intensive, technologically-complex business without such backing. In the *Second Report and Order*, however, the Commission indicated that, "[b]y extending the unjust enrichment period to ten years, we increase the probability that the designated entity would develop to be a competitive facilities-based service provider."16/ That is not correct, however.

As detailed in the accompanying Declaration of Dr. Ronald J. Rizzuto,17/ the new unjust enrichment rules *reduce* the probability that the designated entity would develop to be a competitive facilities-based service provider. Without a reliable track record in the industry, a designated entity must be able to persuade banks, private equity investors, strategic partners and other backers that it has a

16/ *Second Report and Order* at ¶ 36.

17/ *See* Attachment 1 hereto. Dr. Rizzuto is a professor in the Department of Finance at the Daniels College of Business at the University of Denver.

sensible business plan on which it can perform. Lenders and investors who are asked to back a new entrant with little or no history of performance simply will not commit to provide capital unless the designated entity has a clear exit path if the business is not going well. Similarly, private equity and other investors frequently adhere to three to seven year investment horizons, with five being an accepted average. A designated entity undertaking to refinance at year five would have much less flexibility to do so under the new unjust enrichment rules.

Likewise, lenders depend upon their ability to foreclose on the assets of the untested new entrant to secure the funds being provided. This may mean having to step in and sell assets, or the entire company, in a default scenario at any time during the company's life — whether year one, five, or ten. A ten-year limitation on the free-transferability of licenses is wholly inconsistent with those expectations. Capital providers who anticipate that common exit or foreclosure options would trigger unjust enrichment penalties during the course of their loan or investment would not invest in designated entities at all or would provide markedly less capital and on much less favorable terms. As a result, the amendments to Section 1.2111(d)(2) greatly reduce the probability that the designated entity would develop to be a competitive facilities-based service provider by reducing its chances of obtaining affordable start-up financing in the first place.

Meanwhile, the new unjust enrichment rules would do little to serve the Commission's goal of "prevent[ing] entities ineligible for designated entity benefits from circumventing the intent of the rules by obtaining those benefits indirectly, through their investments in qualified businesses."18/ The largest national wireless service providers, whose already-considerable influence is extended through material relationships with designated entities, may well continue to rely on those relationships in years six through ten of the license term just as they will during years one through five.

Instead, the effect of the new unjust enrichment rules is to limit the chances that meaningful competitors to the largest national wireless service providers would develop from the ranks of new entrants. The largest national wireless service providers are not impaired under the ten-year schedule or full prior build-out obligation; they actually benefit because they will face less competition.

B. The Commission's Adoption of the New Unjust Enrichment Rules was Arbitrary and Capricious

Second, the Commission should reverse the adoption of the new unjust enrichment rules because adoption of the rules was arbitrary and capricious. A court must set aside the Commission's decision making in this context if it is "arbitrary, capricious . . . or otherwise not in accordance with law."19/ According to the Supreme Court:

> [T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made." In reviewing that

---

18/ *See Second Report and Order* at ¶ 8 (footnote omitted).

19/ 5 U.S.C. § 706(2)(A).

> explanation, we must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." <u>Normally, an agency rule would be arbitrary and capricious if the agency . . . entirely failed to consider an important aspect of the problem</u> . . . .<u>20</u>/

In the end, the Commission's action must be supported by substantial evidence in the record of the proceeding.<u>21</u>/ That is not the case here, for the Commission changed a longstanding rule, and applied the change to existing transactions formed in reliance on the five-year schedule, without warning to prospective auction applicants, without the record to support the change, without any evidence of an actual problem associated with the current rule, and without so much as a word regarding the profound negative impact of the change on designated entities.

Beginning in 1994, the five-year unjust enrichment schedule for licenses acquired with bidding credits was applied by the Commission as part of at least ten different sets of service-specific competitive bidding rules.<u>22</u>/ The Commission then

---

<u>20</u>/ *Motor Vehicles Manuf. Assoc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citations omitted) (emphasis added).

<u>21</u>/ *See AT&T Corp. v. FCC*, 394 F.3d 933, 936 (D.C. Cir. 2005); *Melcher v. FCC*, 134 F.3d 1143, 1152 (D.C. Cir. 1998).

<u>22</u>/ *See, e.g.*, *Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Third Report and Order*, 9 FCC Rcd 2941, 2976 (1994) (adopting five-year unjust enrichment schedule for narrowband PCS licenses); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fourth Report and Order*, 9 FCC Rcd 2330, 2339 (1994) (adopting five-year unjust enrichment schedule for IVDS licenses); *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, Report and Order*, 10 FCC Rcd 9589, 9670 (1995) (adopting five-year unjust enrichment schedule for MDS licenses); *Allocation of Spectrum Below 5 GHz Transferred from Federal*

employed that five-year unjust enrichment schedule when it standardized its Part 1 auction rules in 1997.23/ Since then, the five-year unjust enrichment schedule for licenses acquired with bidding credits has applied to all designated entities subject

---

Government Use, Second Report and Order, 11 FCC Rcd 624, 664-65 (adopting five-year unjust enrichment schedule for GWCS licenses); *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2709 (1995) (adopting five-year unjust enrichment schedule for 900 MHz SMR licenses); *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732, 2819 (1997) (adopting five-year unjust enrichment schedule for common carrier and 929 MHz private paging licenses); *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, Third Report and Order, Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 10943, 11076 (1997) (adopting five-year unjust enrichment schedule for 220 MHz service licenses); *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rule and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545, 12695 (1997) (adopting five-year unjust enrichment schedule for LMDS licenses); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Second Report and Order*, 12 FCC Rcd 19079, 19148 (1997) (adopting five-year unjust enrichment schedule for 800 MHz SMR licenses); *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, Report and Order and Second Notice of Proposed Rule Making*, 12 FCC Rcd 18600, 18667 (1997) (adopting five-year unjust enrichment schedule for 39 GHz band licenses).

23/ *See Amendment of Part 1 of the Commission's Rules – Competitive Bidding, Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 408-09 (1997).

to Section 1.2111,24/ and it is a central to the planning undertaken by designated entities in negotiating and structuring the financing agreements that are so important to their viability.

Then, in February, 2006, the Commission released its *FNPRM* in which it "tentatively conclude[d] that we should modify our requirements regarding designated entity eligibility to restrict the award of designated entity benefits to an otherwise qualified designated entity where it has a 'material relationship' with a 'large in-region incumbent wireless service provider.'"25/ The *FNPRM* later described Council Tree's proposal relating to unjust enrichment in that context (*i.e.*, use of the current unjust enrichment rule to enforce any new limitations involving a large in-region incumbent wireless service provider) and asked: "If we require reimbursement by licensees that, either through a change of 'material relationships' or assignment or transfer of control of the license, lose their eligibility for a bidding

---

24/ The Commission extended the application of Section 1.2111 to broadband PCS C and F block licensees in 1998. *See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Fourth Report and Order*, 13 FCC Rcd 15743, 15768-69, 15799 (1998). The Commission was clear that the terms of Part 1, Subpart Q of its Rules, which includes Section 1.2111, would apply to the licensing of AWS-1 spectrum. *See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, Report and Order*, 18 FCC Rcd 25162, 25217 (2003).

25/ *FNPRM* at ¶ 5.

credit pursuant to any eligibility restriction that we might adopt, over what portion of the license term should such unjust enrichment provisions apply?"26/

Nevertheless, in the *Second Report and Order*, the Commission did nothing with respect to "material relationships" with a "large in-region incumbent wireless service providers." Instead, the Commission suddenly adopted the new unjust enrichment rules and made them applicable to *all* existing and future designated entities. For support in the record of this dramatic and unexpected action, the Commission pointed to the comments of two parties — STX Wireless, LLC ("STX") and MMTC.27/ The Commission's reliance on these comments is misplaced, however, because it misconstrued what the parties wrote.28/

In its Comments, STX wrote that it "supports the proposals submitted by Council Tree."29/ It also added that "the Commission should implement stricter unjust enrichment rules so that the U.S. Treasury may be made whole in the event

---

26/ *Id.* at ¶ 20 (emphasis added). In response, at least five parties were clear that the current unjust enrichment rules (*i.e.*, the five-year unjust enrichment schedule) should be applied in the context of the Commission's new rules applicable to material relationships with a large in-region incumbent wireless service provider. *See* Comments of Aloha Partners, L.P. at 5; Comments of Carroll Wireless, L.P. at 8; Comments of Council Tree at 59; Comments of Wirefree Partners III, LLC at 14; Comments of US Wirefree at 4.

27/ *See Second Report and Order* at ¶¶ 35-36.

28/ Even if the Commission had correctly construed these comments, it is well established that an agency cannot bootstrap notice from comments. *See, e.g.*, *AFL-CIO v. Donovan*, 757 F.2d 330, 340 (D.C. Cir. 1985).

29/ Comments of STX Wireless, LLC at 2.

that a designated entity turns out to have been merely a front organized to secure bidding credits for a large incumbent wireless service provider."30/ STX was not suggesting that the Commission should extend the current unjust enrichment schedule beyond five years, nor was it discussing anything but a rule that would apply to a "large incumbent wireless service provider." Instead, STX was addressing the prospect of a tougher rule to apply when a designated entity and a large incumbent wireless service provider are found to have violated the Commission's rules. That is very different from what the Commission adopted.

Likewise, MMTC wrote that Council Tree's "proposal has merit," explaining that the first five years of the license term is the period when "those that have exploited the DE program are most likely to shift control . . . ."31/ MMTC added the following:

> the Commission should consider initiating an inquiry to adjust its reimbursement obligations to require repayment of 100 percent of the value of the bidding credit. In addition, the Commission should consider expanding the unjust enrichment standard to encompass the entire license term and not just the first five years, as Council Tree recommends.32/

As detailed in the accompanying declaration of MMTC Executive Director David Honig, MMTC certainly was not urging the Commission to throw out its five-year unjust enrichment schedule here without consideration of its impact on designated

---

30/ *Id.*

31/ Comments of MMTC at 14.

32/ *Id.* at 15.

entities and with virtually no time for the parties to adjust to the change.33/ Instead,MMTC's point was, and is, that such an inquiry is needed because a much broader change would require the Commission to evaluate whether there is any actual problem under the current rule, the means-end fit between the contemplated approach to addressing any identified problem and the results of applying the new rule, and the impact of the rule change on those that it would affect. As discussed below, all of that is missing from the *Second Report and Order* in part because parties were not commenting on such a larger rule change. Lacking such a record from affected parties, the Commission wholly failed to consider an important aspect of the problem (*i.e.*, resulting impairment of designated entities' access to capital), which is precisely why the inquiry suggested by MMTC would have been appropriate.34/

Finally, the change from a five-year unjust enrichment schedule to the new unjust enrichment rules applies not just to new designated entity relationships but also to existing designated entity relationships that were formed under, and in reliance on, the five-year schedule that has been set forth in Section 1.2111(d)(2) of

---

33/ *See* Attachment 2 hereto.

34/ If the Commission reaffirms the contemplated rule changes without thorough consideration of the impact on designated entities' access to capital, it would be repeating the error it made in the broadcast multiple ownership proceeding when it repealed the Failing Station Solicitation Rule, the only television rule aimed at protecting minority ownership, without considering the impact on minority ownership. *See Prometheus Radio Project v. FCC*, 372 F.3d 373, 420-21 (3d Cir. 2004), *cert. denied*, 125 S. Ct. 2902 (2005).

the Commission's Rules since 1997. Thus, designated entities that long ago structured financing arrangements in reliance on the Commission's five-year unjust enrichment schedule now face a wholly changed set of requirements that would likely destroy the expectations of the parties. Nothing of that sort was contemplated in or discussed in the *FNPRM*. In the end, nothing about the Commission's decision to adopt the new just enrichment rules is supported by substantial evidence in the record of the proceeding, and it should be reconsidered.

C. The Commission Failed to Give Adequate Notice and the Opportunity to be Heard Before it Adopted the New Unjust Enrichment Rules

Third, the Commission should set aside the adoption of the new unjust enrichment rules because it failed to give adequate notice and the opportunity to be heard before it adopted those rules. A court must set aside the Commission's decision making in this context if it is "not in accordance with law"35/ or "without observance of procedure required by law."36/ Under the Administrative Procedure Act, the Commission must provide notice of any proposed rules, including the terms or substance thereof or a description of the subjects and issues involved,37/ and the

---

35/ 5 U.S.C. § 706(2)(A).

36/ *Id.*, § 706(2)(D).

37/ *Id.*, § 553(b)(3).

opportunity for interested parties to participate in the rule making through the submission of written data, views, or arguments.38/

These "[n]otice requirements are designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review."39/ While an agency may promulgate final rules that differ from the proposed rule,40/ a final rule is a "logical outgrowth" of a proposed rule only if interested parties "should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period."41/

The Commission's action here was neither the subject of proper notice nor the logical outgrowth of what the Commission had proposed. In the *FNPRM*, the Commission "tentatively conclude[d] that we should modify our requirements regarding designated entity eligibility to restrict the award of designated entity

---

38/ *Id.*, § 553(c).

39/ *International Union, United Mine Workers of America v. Mine Safety and Health Administration*, 407 F.3d 1250, 1259 (D.C. Cir. 2005) (citing *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983)).

40/ *Shell Oil Co. v. EPA*, 950 F.2d 741, 750 (D.C. Cir. 1991).

41/ *United Mine Workers*, 407 F.3d at 1258 (quoting *Northeast Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 952 (D.C. Cir. 2004)) (internal quotation marks omitted).

benefits to an otherwise qualified designated entity where it has a 'material relationship' with a 'large in-region incumbent wireless service provider.'"42/

The *FNPRM* later described Council Tree's proposal relating to unjust enrichment in that context (*i.e.*, use of the current unjust enrichment rule to enforce any new limitations involving a large in-region incumbent wireless service provider) and raised the following:

> We seek comment on whether, if we adopt a new restriction on the award of bidding credits to designated entities, we should adopt revisions to our unjust enrichment rules such as those proposed by Council Tree, or in some other manner. . . . If we require reimbursement by licensees that, either through a change of "material relationships" or assignment or transfer of control of the license, lose their eligibility for a bidding credit <u>pursuant to any eligibility restriction that we might adopt</u>, over what portion of the license term should such unjust enrichment provisions apply?43/

Since the Commission's current unjust enrichment rules already require reimbursement by licenses that lose their eligibility, the Commission's request for comment was plainly, *and by its terms*, directed to the application of unjust enrichment principles as part of "any eligibility restriction that we might adopt."

Nevertheless, the new unjust enrichment rules apply to much more than the eligibility restrictions the Commission adopted in the *Second Report and Order* (*i.e.*, new limitations with respect to spectrum leasing and resale). That possibility was not at all obvious from the language of the *FNPRM*. Indeed, nothing in the *Second*

42/ *FNPRM* at ¶ 5.

43/ *Id.* at ¶ 20 (emphasis added).

Report and Order suggested that the Commission would adopt the new unjust enrichment rules applicable to *all* existing and future designated entities. The Commission received no comments as to whether there was any actual problem to be addressed under the five-year unjust enrichment schedule, and no party had the opportunity to discuss the ways in which the new rules would so greatly impair designated entities' access to capital. It cannot fairly be said that the new unjust enrichment rules were "tested via exposure to diverse public comment."

Likewise, it cannot fairly be said that *existing* designated entities that obtained financing under and in reliance upon the current provisions of Section 1.2111(d)(2) were given notice that the five-year unjust enrichment schedule applicable to them was subject to change. The Commission cannot expect to propose to change such a fundamental rule in a way that dramatically impacts existing relationships and receive no comment on the subject. Yet, that is precisely what occurred: no party commented. That silence was not a product of indifference, it was a product of inadequate notice, revealing that the Commission failed "to ensure fairness to affected parties."

Finally, the Commission cannot maintain that parties received notice of the new unjust enrichment rules by virtue of their participation in the proceeding. For support of its dramatic and unexpected action, the Commission pointed to the comments of STX and MMTC. Yet, STX addressed only the prospect of a tougher rule to apply when a designated entity and a large incumbent wireless service provider are found to have violated the Commission's rules. MMTC endorsed the Council Tree proposal and suggested that the Commission "consider initiating an inquiry" regarding a broader rule change. Neither filing proposed, or in any way suggested, an imminent change to a longstanding, existing rule. As the D.C. Circuit phrased it in a recent case, these types of "ambiguous comments and weak signals from the agency gave petitioners no such opportunity to anticipate and criticize the rules or to offer alternatives. Under these circumstances, the . . . rules exceed the limits of a 'logical outgrowth.'"44/

D. Changing the Longstanding Five-Year Unjust Enrichment Schedule at This Late Date Would Violate Section 309(j)(3)(E) of the Communications Act, Upset Business Plans Set for Auction 66, and Undermine Confidence in the Stability of Designated Entity Rules

Fourth, the Commission should set aside the adoption of the new unjust enrichment rules because changing the longstanding five-year unjust enrichment schedule at this late date would violate the Communications Act, upset business plans set for Auction 66, and undermine confidence in the stability of designated entity rules. Under Section 309(j) of the Communications Act, the Commission is required to see that an adequate period is allowed "after issuance of bidding rules, to ensure that interested parties have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the

44/ *United Mine Workers*, 407 F.3d at 1261 (quoting *Shell Oil Co.*, 950 F.2d at 751).

relevant services."45/ This is critical for designated entities, which must raise capital to enable them to participate in the auction in the first instance.

In the instant case, however, the Commission announced a fundamental and sudden rule change, affecting a policy that has been settled for nearly nine-years, just *two weeks* before the date on which applications are due to participate in Auction 66. Parties that have relied on the existing unjust enrichment schedule in structuring their financing arrangements would be stranded if the new rule, which was wholly unforeseeable, is actually applied.

Likewise, the sudden application of the new unjust enrichment rules to *existing* designated entities that obtained investment under, and in reliance on, the five-year schedule would have a chilling effect on prospective investors in current and future designated entities. Designated entities undertaking to attract capital would find it difficult to persuade prospective lenders, investors, and strategic partners that the Commission rules on which their relationships would be structured are reliable.46/ The Commission's action here has the effect of undermining confidence in the stability of designated entity rules, which has the effect of undermining designated entities.

45/ 47 U.S.C. § 309(j)(3)(E).

46/ The Commission previously has undertaken to *preserve* settled expectations and existing business relationships as a way to promote investment in designated entity auction applicants. *See, e.g., Omnipoint Corp. v. FCC*, 78 F.3d 620, 629-30, 634 (D.C. Cir. 1996); *Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, 11 FCC Rcd 7824, 7837-39 (1996).

E. Under Section 309(j)(3)(A) of the Communications Act, the Commission Must Avoid Judicial Delays that Would Hinder the Deployment of AWS-1 Spectrum

Finally, the Commission should set aside the adoption the new unjust enrichment rules for licenses acquired with bidding credits to avoid judicial delays that would hinder the deployment of AWS-1 spectrum. Section 309(j)(3) of the Communications Act provides that the Commission shall promote "the development and rapid deployment of new technologies, products, and services for the benefit of the public . . . without administrative or judicial delays."47/ On this basis, the Commission has frequently modified its rules in a way designed to avoid uncertainty and licensing delays that would result from litigation.48/

Here, the prospects of litigation and delay are great. The Commission has announced new rules just two weeks before the deadline to apply for a major spectrum auction. In the case of the amendments to Section 1.2111(d)(2), the Commission did not clearly notice its new rules for public comment, it based its decision on two comments that it misconstrued, it entirely failed to consider an important aspect of the problem associated with the new unjust enrichment rules, it applied these new rules to longstanding relationships formed under the five-year unjust enrichment schedule, and it completely upset business plans and financing commitments of designated entities on the eve of Auction 66. To avoid judicial

---

47/ 47 U.S.C. § 309(j)(3)(A) (emphasis added).

48/ *See, e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Sixth Report and Order*, 11 FCC Rcd 136, 146 (1995).

delays that would freeze the deployment of AWS-1 spectrum, the Commission should set aside the amendments to Section 1.2111(d)(2) of its Rules and retain the five-year unjust enrichment schedule currently set forth therein.

IV. CONCLUSION

For these reasons, the Commission should set aside each of the rule changes adopted as part of the *Second Report and Order* and retain its current rules for the licenses offered in Auction 66. At a minimum, the Commission should set aside the amendments to Section 1.2111(d)(2) of its Rules and retain the five-year unjust enrichment schedule currently set forth therein. The Joint Petitioners respectfully request expedited action on this petition.

Respectfully submitted,

/s/ Steve C. Hillard
Steve C. Hillard
George T. Laub
Jonathan B. Glass
Council Tree Communications, Inc.
2919 17th Avenue
Suite 205
Longmont, CO 80503
(303) 678-1844

/s/ David Honig
David Honig
Executive Director
Minority Media and Telecommunications Council
3636 16th Street, N.W.
Suite B-366
Washington, DC 20010
(202) 332-7005

/s/ Anastasia C. Hoffman
Anastasia C. Hoffman
Marc D. Stemp
Bethel Native Corporation
Box 719
Bethel, AK 99559
(907) 543-2124

May 5, 2006

Attachment 1

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures	)	WT Docket No. 05-211
	)	
Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006	)	AU Docket No. 06-30

DECLARATION OF DR. RONALD J. RIZZUTO

1. I, Dr. Ronald J. Rizzuto, am a Professor in the Department of Finance at the Daniels College of Business at the University of Denver. My finance specialty areas include capital expenditure analysis, corporate financial planning and M&A. I have a B.S. in finance from the University of Colorado and my M.B.A. and Ph.D. are in finance and economics from New York University. I have served as consultant to US West, Time Warner Cable, Showtime, TCI and Chevron. I have also served as a featured speaker at Inc. Magazine's annual business conference.

2. In the Second Report and Order and Second Further Notice of Proposed Rule Making (FCC 06-52) in WT Docket 05-211, the Commission amended Section 1.2111(d)(2) of its Rules to extend the unjust enrichment schedule to ten years from the current five years. Correspondingly, changes to the bid credit repayment terms are as follows:

	Previous	Now
1-2 years	100% + interest	100% + interest
3 years	75% + interest	100% + interest
4 years	50% + interest	100% + interest
5 years	25% + interest	100% + interest
6 years	0 %	75% + interest
7 years	0%	75% + interest
8-9 years	0%	50% + interest
10 years	0%	25% + interest
> 10 years	0%	0%

The Commission also instituted a provision requiring full repayment of any bid credit where the construction requirements applicable at the end of the license term has not been met.

3. These changes will have substantial, apparently unintended, consequences for Designated Entities. They will make it, if not impossible, extremely difficult and substantially more expensive for them to obtain both debt and equity financing. These changes will, in my opinion, significantly exacerbate the problems of access to capital and capital cost that I understand have been identified by the Commission as a critical barrier to the entry for small, rural, and minority and women-owned businesses. For example, William Bradford has previously identified this problem for Minority and Women-Owned Firms.[1]

4. Limiting Access to Debt Capital. Designated Entities, many of which are likely to be start-ups, have inherently limited access to debt capital to begin with. The new rules will greatly diminish that limited availability. The primary reason that these changes will so negatively impact Designated Entities' already high cost and

---

[1] William D. Bradford, "Discrimination in Capital Markets, Broadcast/Wireless Spectrum Service Providers and Auction Outcomes", December 5, 2000, available at http://www.fcc.gov/opportunity/meb_study.

already limited access to debt capital is because the net effect of these changes is to significantly increase the risk to the lender. These changes increase the risk to the lender in the following three ways:

i. they reduce the collateral value of the Designated Entities' assets,

ii. they reduce the liquidation value of assets in the event of a need to foreclose; and

iii. they delay the lender's access to the proceeds in a liquidation situation.

The illustration further below will demonstrate the negative impact of the new Unjust Enrichment schedule to lenders on their collateral package, driving lenders to cut-off capital to Designated Entities.

5. <u>Limiting Access to Equity Capital.</u> Since most Designated Entities are start-ups, they do not have access to the public equity markets. As a consequence, they will need to rely on private equity sources (venture capital funds and private equity funds) for equity capital. Investors who are asked to back a new entrant with little or no history of performance simply will not commit to provide capital unless the designated entity has a clear exit path if the business is not going well. Likewise, the investors in these private equity sources (e.g. individuals, pension funds, government, organizations and institutions) generally have a shorter investment horizon than ten years. The typical venture capital firm looks to exit an investment in five years. Lenders and investors who are asked to back a new entrant with little or no history of performance simply will not commit to provide capital unless the designated entity has a clear exit path if the business is not going well. A designated entity, its lenders,

and investors also cannot base a business plan on potential refinancing in 5 years to provide liquidity to investors because prospects for business problems remain unknown and the Unjust Enrichment obligations will continue for five more years.

6. Given this investment profile for private equity sources, the new Unjust Enrichment Schedule will not only make the transaction structure unattractive, but will significantly increase the risk to the equity investor for the same reasons as noted above. Of course the risk to the equity investor is even greater than the risk to the lender, since the lender has the first right to any proceeds in a liquidation. Furthermore in the unlikely scenario that a Designated Entity is able to access debt capital as discussed above, a designated entity will be required to sell more equity to finance its venture, which has additional burden of diluting the return to the pool of equity investors. The cumulative effect is to make a designated entity investment unattractive to equity investors.

7. Overall Effect. The net effect of the capital structure necessitated by the new Unjust Enrichment schedule is to create an almost prohibitive barrier to capital for Designated Entities. It will eliminate market based sources of debt and equity for Designated Entities. Hence, where the intent of these rule changes was to reduce the likelihood of Unjust Enrichment, the reality for Designated Entities is the overall elimination of sources of capital.

8. Numerical Illustration. The following numerical example illustrates the impact of the old and the new Unjust Enrichment Schedule on lenders and their collateral package. In this illustration, we assume a 2.5 million POP market where a

bidder acquires 20 MHz of spectrum in the auction. If the Per MHz POP bid price is $1.67, then the Designed Entity will bid $83.5 million. Given a 25% Bid Discount, the Designated Entity will need to raise $62.6 million to purchase the wireless license. We further illustrate a lender providing 50% of the net bid price or $31.3 million in the form of a loan. Since start-up wireless ventures have negative cash flow in the first few years, lenders will accrue interest on the initial loan. In the example below, we assume an interest rate of 14%. Consequently, the loan will increase by 14% per year, so that by year 6 the amount owed under the Designated Entity's loan will be $68.7 million.

9. Under the old Unjust Enrichment Rules, if the lender had to foreclose on the Designed Entity after three years with an associated assignment of the Designated Entity's licenses to a non-designated entity, assuming the liquidation value of the Designated Entity was equal to the original cost of the license, the lender would have sufficient funds to pay the 75% Unjust Enrichment Bid Penalty and the 5.25% Unjust Enrichment Interest for the three years and get substantially all their loan ($46.4 million) back. If the lender foreclosed in the fifth year, they would receive substantially all of their funds back with the 25% Unjust Enrichment Bid Penalty and Interest included.

10. However, under the new Unjust Enrichment Rules the lender would suffer a significant loss if they had to foreclose. If they foreclosed in three years, they would lose $7.5 million. If the foreclose took place in year 5, the loss would increase to $23.9 million. Likewise if the loss took place in the sixth year, the loss would jump to

$26.8 million. The corresponding loan write-off percentages would be 16%, 40% and 39%, respectively. The substantial increase in lender risk is likely to eliminate debt capital availability.

Wireless Designated Entity
2.5 Million POP Market Illustration
Impact on Lenders
($ in millions)

Population (millions)	2.5		
MHz	20		
Per MHz Pop Price	$1.67		
Gross Bid Price	$83.5		
Bid Discount	25%		
Bid Discount Per MHz Pop Price	$1.25		
Net Bid Price	$62.6		
Bid Discount	$20.9		
U.S. Treasury 10 year rate for Unjust Enrichment Interest	5.25%		
Loan to License Cost	50%		
Loan Amount	$31.3		
Interest Rate on Loan	14%		
Terms	10 years; Term		
Loan Value in 3 years	$46.4		
Loan Value in 5 years	60.3		
Loan Value in 6 years	68.7		
Scenario:			
Company declares bankruptcy 1 day into the 3rd and 5th year			
Lender forcloses on the stock of the Designed Entity			
Stock of the Designed Entity worth cost of license			
Old Unjust Enrichment Rules	**Year 3**	**Year 5**	
Proceeds from Lender Foreclosing	$62.6	$62.6	
Less: Unjust Enrichment Bid Penalty	(15.7)	(5.2)	
Less: Unjust Enrichment Interest	(2.1)	(1.4)	
Net Proceeds	$44.8	$56.1	
Loan Value	46.4	60.3	
Loan Write-Off	**($1.6)**	**($4.2)**	
Unjust Enrichment Penalty	75.0%	25.0%	
Loan Write-Off %	**3.4%**	**7.0%**	
New Unjust Enrichment Rules	**Year 3**	**Year 5**	**Year 6**
Proceeds from Lender Foreclosing	$62.6	$62.6	$62.6
Less: Unjust Enrichment Bid Penalty	(20.9)	(20.9)	(15.7)
Less: Unjust Enrichment Interest	(2.8)	(5.4)	(5.1)
Net Proceeds	$38.9	$36.3	$41.9
Loan Value	46.4	60.3	68.7
Loan Write-Off	**($7.5)**	**($23.9)**	**($26.8)**
Unjust Enrichment Penalty	100.0%	100.0%	75.0%
Loan Write-Off %	**16.1%**	**39.7%**	**39.1%**

11. Conclusion. The changes in the Unjust Enrichment Schedule will have substantial unintended consequences for Designated Entities that will eliminate access to capital, and make any capital that is available more expensive for Designated Entities. Rather than serve to strengthen the Designated Entity

program, the new Unjust Enrichment Schedule will undercut the program by choking Designated Entity capital availability.

I declare under penalty of perjury that the foregoing is true and correct.

Dr. Ronald J. Rizzuto
Professor of Finance
University of Denver
2101 South University Blvd.
Room 564
Denver, CO 80208
(303) 871-2010

May 4, 2006

Attachment 2

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures	)	WT Docket No. 05-211
Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006	)	AU Docket No. 06-30

DECLARATION OF DAVID HONIG

I am the Executive Director of the Minority Media and Telecommunications Council (MMTC), a party in the above-referenced proceeding. Since the creation of the Designated Entity Program (with which we played a significant role), we have been a leading advocate for diversity and competition in telecommunications. Our membership includes a number of entrepreneurs who participate, or would like to participate, in the designated entity program.

In our Comments (filed February 24, 2006, pp. 14-15) we stated that "the first five years of the life of a license is when those that have exploited the DE program are most likely to shift control from the initial 'qualified' individual or entity to an entity that may not be qualified to benefit from discounted licenses." We added that

> The Commission should consider initiating an inquiry to adjust its reimbursement obligations to require repayment of 100 percent of the value of the bidding credit. In addition, the Commission should consider expanding the unjust enrichment standard to encompass the entire license term and not just the first five years, as Council Tree recommends.

MMTC certainly was not urging the Commission to throw out its five-year unjust enrichment schedule here without consideration of its impact on designated entities and with virtually no time for the parties to adjust to the change A foreseeable exit period is critical to financing a wireless transaction. The exit period must be short enough to allow investors to avoid long-term losses in a business that does not go well, but long enough to preserve the public's expectation that designated entities will use the bidding advantages given them under the designated entity program to operate their wireless facilities for a significant period of time.

Traditionally, the exit period length that has balanced these objectives has been five years. As noted above, in our Comments we indicated that a change in the length of the exit period might be worthy of further consideration. However, independent of the possible results of such further consideration, neither MMTC nor any other party contemplated that the Commission would impose a dramatic change in the exit period with just two weeks to go before the AWS-1 auction. The unintended consequence of imposing this dramatic a rule change this close to the auction date would be to freeze out virtually all designated entities from participation in Auction 66.

The question of whether the exit period should be five years or a longer period is a fair one, but it is far too important to be resolved in haste with no record, and to be applied with no time for designated entities and other parties to revise their business plans and, in many or most cases, find new investors. Instead, the question of the length of the exit period should be considered as part of the further rulemaking the Commission intends to conduct after Auction 66 is concluded. Anything the Commission resolves to do there should apply only to new relationships entered after the new rules are effective; the Commission should not change the rules as they apply to existing relationships formed in good faith under existing rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration is true and correct.

Executed May 5, 2006.

David Honig
Executive Director
Minority Media and
Telecommunications Council
3636 16th Street N.W.
Suite B-366
Washington, D.C. 20010
(202) 332-7005

Federal Communications Commission

The FCC Acknowledges Receipt of Comments From …

Minority Media & Telecommunications Council, Council Tree & Bethel Native Corp

…and Thank You for Your Comments

Your Confirmation Number is: '200655620355 '

Date Received:	**May 5 2006**
Docket:	**05-211**
Number of Files Transmitted:	**1**

DISCLOSURE

This confirmation verifies that ECFS has received and accepted your filing. However, your filing will be rejected by ECFS if it contains macros, passwords, redlining, read-only formatting, a virus or automated links to source documents that is not included with your filing.
Filers are encouraged to retrieve and view their filing within 24 hours of receipt of this confirmation. For any problems contact the Help Desk at 202-418-0193.

Initiate a Submission | Search ECFS | Return to ECFS Home Page

FCC Home Page | Search | Commissioners | Bureaus/Offices | Finding Info

updated 12/11/03

Federal Communications Commission

The FCC Acknowledges Receipt of Comments From …

Minority Media & Telecommunications Council, Council Tree & Bethel Native Corp

…and Thank You for Your Comments

Your Confirmation Number is:	**'200655901639 '**
Date Received:	**May 5 2006**
Docket:	**06-30**
Number of Files Transmitted:	**1**

DISCLOSURE

This confirmation verifies that ECFS has received and accepted your filing. However, your filing will be rejected by ECFS if it contains macros, passwords, redlining, read-only formatting, a virus or automated links to source documents that is not included with your filing.
Filers are encouraged to retrieve and view their filing within 24 hours of receipt of this confirmation. For any problems contact the Help Desk at 202-418-0193.

Initiate a Submission | Search ECFS | Return to ECFS Home Page

FCC Home Page | Search | Commissioners | Bureaus/Offices | Finding Info

updated 12/11/03