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Council Tree Communications, Inc.  
Minority Media and Telecommunications Council  
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**U.S. Court of Appeals for the Third Circuit Issues Landmark Ruling Vacating Two Restrictive Rules Applied by the FCC to \$33 Billion of Wireless Spectrum License Auctions**

**The Unlawful Rules Impaired Auction Participation as National Wireless Carrier Incumbents Dominated**

Today the U.S. Third Circuit Court of Appeals (Philadelphia) struck down two challenged rules under which the Federal Communications Commission (FCC) conducted two substantial wireless auctions, namely the \$14 billion auction of Advanced Wireless Services (AWS) licenses in 2006 and the \$19 billion auction of 700 MHz licenses in 2008. On the eve of the 2006 AWS auction, the FCC abruptly and without notice introduced two major restrictions into rules that were originally meant to foster robust competition in federal wireless spectrum license auctions. As a result, competition in the auctions was severely reduced, facilitating further industry consolidation, with fewer choices for consumers.

In its ruling, the Court struck down, for failure to provide the requisite public notice and comment, the FCC's 2006 rule changes that (1) doubled from five to ten years the time during which qualifying small businesses must hold their licenses before seeking liquidity without substantial penalty, and (2) prohibited small businesses from leasing or wholesaling more than 50% of their network capacity to third parties. The Court found that "the deficiencies in the challenged [FCC] rulemaking to be serious." [Opinion, page 52].

While the Court declined to overturn the results of the two major auctions affected by the vacated rules, there is ample precedent by the Supreme Court for such action. In 2003, the Supreme Court, on appeal in *FCC v. Nextwave*, ruled that FCC procedures for Auction 35, a \$17.6 billion FCC auction of wireless licenses, were inappropriate, leading to the overturn of that auction.

Petitioners in today's action included Council Tree Communications, Inc., an investor in wireless businesses; Bethel Native Corporation, a small Alaskan Native Corporation that was seeking to acquire and build out wireless licenses in rural areas; and Minority Media and Telecommunications Council (MMTC), an advocacy group that supports minority ownership in telecommunications.

Commenting, Council Tree Managing Director George Laub, noted: "It's been a long road these past four years seeking to resolve matters with the FCC, and we are pleased with the clear-cut ruling that the Court made in our favor on the merits. This ruling restores a pathway for wireless competition, innovation and diversity by ensuring the 'dissemination of licenses among a wide variety of applicants' envisioned by Congress in establishing the FCC's wireless auction authority. We are carefully reviewing the Court's opinion and will evaluate all of our options as to next steps."

MMTC President David Honig commented: "We are gratified that the Court recognized the merits of this case in vacating the two new rules. This pro-small business, pro-new entrant and pro-diversity ruling will advance wireless industry competition and ultimately benefit consumers and business alike."