

October 4, 2004

VIA ELECTRONIC MAIL

FCC Federal Advisory Committee on Diversity
445 12th Street, S.W.
Washington, D.C. 20554

Re: Resolution Supporting Retention of C-Block Eligibility Rules for Auction 58

Dear Diversity Committee Members,

T-Mobile USA, Inc. (“T-Mobile”) urges you to reject both the original Draft Resolution Supporting Retention of C-Block Eligibility Rules for Auction 58 and the Draft Resolution Supporting Retention of Designated Entity Rules that was proposed by Julia Johnson on September 21, 2004. Although these resolutions are well-intentioned to promote diversity among wireless licensees, we believe they are ill-designed to achieve that objective.

T-Mobile is the fastest growing national wireless carrier. Its GSM 1.9 GHz footprint covers 254 million POPs and 46 of the top 50 metro markets. T-Mobile has deployed GSM/GPRS over 224 million POPs and expects to deploy EDGE in 2005. Currently, T-Mobile has 15.4 million subscribers, with 5 million new subscribers in the past 12 months. T-Mobile, however, only has 20 MHz of spectrum or less in seven of the top 15 markets. As a result, T-Mobile’s ability to continue to compete as a value leader is dependent on new spectrum.

The draft resolutions advocate the retention of a set-aside for designated entities (“DEs”) in the C-Block PCS Band. The wireless industry, however, was considerably different when set-asides were first adopted. Competition was extremely limited, service was largely restricted to voice, and service was available only in and around major population centers. Furthermore, the Commission’s auction authority was new and the Commission had little experience with auctions. To ensure competition and diversity among licensees, a number of eligibility restrictions were imposed, including a spectrum cap and a limitation on cellular/PCS cross-ownership as well as DE set-asides.

In response to the changing wireless industry and the Commission’s growing experience with auctions, eligibility restrictions on wireless licenses have been eliminated over time, with the exception of the set-asides utilized in the PCS C block. Today, the wireless industry is highly competitive and carrier offerings have evolved to meet consumer demands. Consumers have demanded national or super-regional services, ubiquitous coverage, and high quality, low cost voice and data services. In large part, wireless providers have responded to that demand. New spectrum, however, is needed if the smaller providers are to continue to meet that demand and further competition. DE set-asides prevent these competitive providers from gaining efficient access to much needed spectrum.

DE set-asides also have a significant impact on consumer welfare and, to date, have resulted in a *lost consumer surplus of between \$13 and \$32 billion dollars*, as calculated by Dr. Simon Wilkie, former FCC Chief Economist. By definition, set-asides arbitrarily limit the entities that may compete for licenses. As a result, set-asides do not necessarily result in licenses

being assigned to those who value them most highly. Moreover, entities that are eligible to bid on such licenses often do not have the most accurate information as to the value of the licenses. Without this information and without participation by larger entities who can signal to these entities when the correct valuation of the license has been surpassed, DEs frequently overbid for their licenses. Indeed, set-asides have historically resulted in financial failures by DEs, which frequently result in extensive litigation. Even if a given DE does not ultimately fail financially, history has shown that these entities typically sell this spectrum to larger entities, and therefore DE set-asides do not promote long-term industry involvement by smaller sized entities. In contrast, other mechanisms designed to encourage DE participation in auctions, such as bidding credits, have proven effective at ensuring entry and opportunities for a diverse set of licensees. Indeed, DEs have acquired over three quarters of all available licenses in open auctions where bidding credits were available.

Set-asides do not even achieve the objectives of Section 309(j). The Congressional goals inherent in Section 309(j) are the dissemination of wireless authorizations to a wide variety of licensees to ensure new and innovative technologies are readily accessible to the American people and the rapid dissemination of those licenses without administrative or judicial delay. As indicated above, however, the DEs who have obtained their licenses via set-asides either are in financial distress or have sold their licenses. As a result, extensive litigation has occurred and very few services are currently being provided by DEs on this set-aside spectrum. This continued lack of service eight years after the original auction clearly is not the intended consequence of Section 309(j).

For these reasons, T-Mobile urges you to reject the proposals to support retention of the Commission's DE set-aside for the C-Block. For more information on the ineffectiveness of DE set-asides, please review our comments and reply comments that were filed in response to the Commission's Auction No. 58 Public Notice and CTIA's Petition for Rulemaking and are attached.

Sincerely,

/s/ James W. Hedlund

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