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**Civil Rights, Public Interest, and Women & Minority Groups, Together with
Small Wireless Companies, Form a Coalition to File an Amici Brief in
Third Circuit Court of Appeals Asking to Overturn Recent FCC Wireless Auctions**

Washington, DC August 19, 2008 -- Ten prominent national civil rights, public interest, and women and minority groups joined forces with six small wireless businesses, including minority-owned businesses (the "Amici Coalition"), to file an Amicus Curiae Brief last Friday, August 15, in a case in the U.S. Court of Appeals for the Third Circuit that has profound implications for the future of diversity in the United States wireless communications industry. The Amici Coalition supports Council Tree Communications, Inc., Bethel Native Corporation and the Minority Media and Telecommunications Council (collectively, "Petitioners") in their court challenge to the rules adopted by the Federal Communications Commission ("FCC"). The challenged rules make it difficult for small businesses, including minority- and women-owned businesses, commonly known as "Designated Entities" or "DEs," to bid and compete for spectrum.

In 2006, moments before the FCC conducted one of the largest spectrum auctions ever, named Auction 66, the agency critically altered two aspects of its DE rules, FCC regulations which are designed to provide DEs with certain auction benefits, such as bidding credits, with the goal of allowing them to compete in the auctions against larger wireless carriers like Verizon Wireless, AT&T and T-Mobile. The first of these rule changes requires DEs to operate at least 50% of their business through retail distribution, the most expensive and capital intensive form of distribution, and placed severe limits on DEs' ability to lease and wholesale their spectrum capacity. The second rule change effectively requires DEs to hold their licenses for at least 10 years, removing liquidity and flexibility for debt and equity investors in a DE. These two new rules apply uniquely to DEs, and not other participants in wireless auctions. The net result was to badly impair established DE business plans and reduce, or altogether eliminate, DE access to capital. In turn, this removed DEs as viable competitors to the large incumbent carriers in two important FCC wireless auctions, in sharp contrast to success historically enjoyed by DEs prior to the FCC's rule changes.

The DEs in the Amici Coalition include a combination of small businesses that participated successfully in FCC Auctions prior to the 2006 adoption of the new DE rules and/or sought to obtain spectrum in Auction 66 or Auction 73 (Auction 73 being the FCC's largest ever wireless auction of valuable 700 MHz spectrum earlier this year). All of the DE Amici were unable to

either participate and/or succeed in these two auctions given the damaging impact of the new DE rules on their business plans and access to capital. Prior to the start of these two auctions, DEs had extensively warned the FCC of the disabling impact of their new rules, but the FCC proceeded with the auctions with predictably disastrous results for DEs.

When Congress passed that part of the Communications Act which allowed the FCC to auction off wireless spectrum, it specifically required, in a section to the Communications Act numbered 309(j), the agency to “promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.” Martha Allen, Director of the **Women's Institute for Freedom of The Press** remarked, “The public relies on the FCC to live up to the obligation imposed by Congress and Section 309(j) of the Communications Act to make sure that small businesses, including women- and minority-owned companies, are given a meaningful opportunity to compete. The FCC did not fulfill that responsibility here.”

There is universal concern among the members of the Amici Coalition regarding the FCC’s failure to promote diversity in ownership, particularly its continuing failure to address the issue of access to capital for DEs. “We joined the brief because we were concerned about the FCC’s decision-making,” said Cheryl Leanza, Policy Director for the **Office of Communication, United Church of Christ, Inc.** “Access to capital is a major hurdle for small businesses and a serious barrier to increasing diversity and competition. Diversity in media ownership is a primary concern of the UCC, and the FCC’s track record in promoting diversity of ownership has been dismal in a wide range of proceedings. Because the FCC has allowed diversity in ownership to languish at the back of the bus, we must resort to the courts to resolve this matter.”

Shelly Spencer, President of **Wirefree Partners, LLC**, speaking on behalf of the DE Amici, said, “Small businesses are a vital part of the U.S. In order to meet the congressional mandate of 309(j) to promote small business participation in the auction process, the FCC’s spectrum policy must adhere to three fundamental principles: 1) provide a meaningful opportunity for DEs to participate in auctions; 2) adopt regulations that provide flexibility for DEs to run their businesses; and 3) ensure regulatory certainty, stability and sufficient notice of new rules that impact the ability of DEs to raise capital and develop viable business plans. In adopting the new DE Rules in 2006, the FCC failed miserably on all three counts. Instead, DEs have been relegated to the sidelines of one of the fastest growing industries in this country.” economy.

The Amici Coalition understands the importance of the wireless industry to its constituents. Tracy Rosenberg, Managing Director for **The Media Alliance** observed, “With over 260 million Americans now subscribing to wireless voice and, increasingly, data services, wireless is fast becoming the principal means for dissemination of information and content of all forms. In short, wireless is the new media.” And a diverse ownership of wireless licenses is very important to delivering the “new media” to all Americans. For diversity to have a meaningful voice, diversity of ownership is paramount, which is why the FCC auctions are so important as the most realistic and viable entry point for such diversification of the ownership ranks.

However, at no time has the diversity of ownership in media and telecommunications been lower than it is today. The U.S. Census Bureau reports that minority groups represent 33% of United States citizens, its fastest growing segment. However, in radio, TV, wireless or other communications sectors, minority ownership has withered to the low single digits in the best of cases. In the wireless industry it stands at a fraction above 0%. Women ownership does not fare better. The lack of diversity in the Auction 66 sale of advanced wireless services, together with the Auction 73 sale of spectrum vacated by analog broadcasters in the 700 MHz band, are of great concern to the Amici Coalition.

“The Public Interest Amici on this brief represent important segments of our citizens’ diversity within the United States,” added Inez Gonzalez, Vice President of Media Policy for the **National Hispanic Media Coalition**. “In addition to lamenting the failing of DEs in general, we note with particular dismay that the participation of minorities and women in the past two auctions was virtually nil. Of the \$19 billion of licenses sold in Auction 73 earlier this year, minorities acquired just \$5 million, or three hundredths of one percent of the auction value (0.03%).”

President of the **National Organization for Women** Kim Gandy, spoke on behalf of **National Organization for Women Foundation**, which participated as a member of the Amici Coalition. “The public interest has been greatly harmed by the FCC’s actions and the one-sided auction results that these actions created. Diversity has taken a generational step backwards, especially for women. In Auction 73, women-owned businesses won zero licenses,” she stated.

Kimberly Marcus, Executive Director of Media and Telecommunications for the **Rainbow PUSH Coalition** summarized, “This near total failure to remedy the lack of ownership diversity in the wireless industry is a spectacular missed opportunity that, if not rectified, will have painful, adverse reverberations for years to come.” Angela Ciccolo, Interim General Counsel of the **National Association for the Advancement of Colored People** concurred, “An entire generation of minority and small business owners has been frozen out of the most important wireless industry entry points in a decade. Unfortunately, consumers will pay with less innovation, content and services responsive to their particular interests and needs.”

In addition to the difficulty in raising capital under the new DE Rules, the Amici Coalition are concerned about DE’s limitations on development of a viable business model because of the FCC’s restrictions on lease, resale and wholesale arrangements. “Women and minority-owned businesses find it difficult enough to compete against the larger players and some small wireless companies have been innovative enough to devise unique business models that allow them to compete by leasing portions of their spectrum. The new rules prohibiting the lease, resale or wholesale of more than 50% of spectrum won in an auction unfairly discriminates against DEs,” said the Vincent Eng, Deputy Director of **Asian American Justice Center**. Shelly Spencer of **Wirefree** emphasized that “Regulation beyond the traditional test of ownership and control stifles small business participation in spectrum auctions and in developing service offerings dependent on commercial relationships with others in the wireless industry. Flexibility is critical.”

DEs are not the only group to be harmed by the FCC’s egregious rules and failed auction process. Karen Buller Elliot, President and CEO of the **National Indian Telecommunications**

Institute observed that, "The FCC not only harmed minority DEs, but also harmed many underserved minority communities, who are often best served by small minority businesses that can fill in the gaps not served by the large incumbents. Native American and Alaska Native communities are particularly affected by the lack of diversity in this industry." Petitioner Bethel Native Corporation is an Alaska Native company that planned to offer advanced wireless services to its community of approximately 21,000 that lack updated communications technology.

Petitioners, now joined by the Amici Coalition, are asking the Court to quickly overturn the auctions and re-conduct them under proper lawful rules.

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