

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

In the Matter of)	
)	
Service Rules for Advanced Wireless Services in)	WT Docket No. 04-356
the 1915-1920 MHz, 1995-2000 MHz, 2020-2025)	
MHz and 2175-2180 MHz Bands)	
)	
Service Rules for Advanced Wireless Services)	WT Docket No. 02-353
in the 1.7 GHz and 2.1 GHz Bands)	

To: The Commission

**REPLY COMMENTS OF
COUNCIL TREE COMMUNICATIONS, INC.**

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Dated: February 8, 2005

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SUMMARY

To address the growing concentration of ownership in the wireless services industry and to promote new entry, the Commission should institute a unitary (*i.e.*, non-tiered) 25 percent bidding credit that will be offered in auctions of H Block and J Block licenses to smaller businesses (a) in which high net worth individuals hold no actual (*i.e.*, non-constructive) controlling interests and (b) that have no material investment or operating relationship with large, incumbent wireless service providers. The Commission should offer this small, new entrant bidding credit in lieu of tiered bidding credits that are awarded based only on business size.

Under this approach, a qualifying smaller business is one with average gross revenues for the preceding three years that do not exceed \$40 million and a high net worth individual is one whose personal net worth equals or exceeds \$3,000,000 (excluding the equity in the individual's primary personal residence). A large in-region incumbent is an entity that (a) is, or has an attributable interest in, a commercial mobile radio service or advanced wireless service licensee whose licensed service area has significant overlap in the geographic area to be licensed to the new entrant applicant and (b) has average gross revenues for the preceding three years exceeding \$2 billion.

In addition, the Commission should adopt H Block and J Block license service areas that help to keep licenses in these bands within the reach of all designated entities. Nationwide or regional license service areas may be attractive to some applicants, but others — particularly rural carriers — could have business plans that feature more targeted geographic areas and network operations. To see that all H Block and J Block license bidders have the flexibility to pursue the scope of geographic coverage that they desire, the Commission should license H Block and J Block spectrum using smaller services areas.

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Council Tree Communications, Inc. (“Council Tree”), pursuant to Section 1.415(c) of the Commission’s Rules, 47 C.F.R. § 1.415(c), submits these reply comments in response to the captioned Notice of Proposed Rule Making (FCC 04-218), adopted by the Commission on September 9, 2004 and released on September 24, 2004 (“NPRM”).¹

I. INTRODUCTION

Council Tree is an investment company organized to identify and develop communications industry investment opportunities for the benefit of businesses owned by members of minority groups and women, recognizing that business success can accompany the meaningful diversification of communications facilities ownership. As part of this work, Council Tree has long been an active supporter of responsibly-managed government efforts to

¹ By Order (DA 04-3664) adopted and released on November 19, 2004, the Wireless Telecommunications Bureau (“Bureau”) extended the time in which to file reply comments in response to the NPRM to January 24, 2005. By Order (DA 05-130) adopted and released on January 19, 2005, the Bureau further extended the time in which to file reply comments to February 8, 2005.

encourage the participation of new entrants in the communications industry. In 2003, Council Tree president Steve C. Hillard was appointed to the Commission’s Advisory Committee on Diversity for Communications in the Digital Age, and he serves as chairman of the Committee’s Transactional Transparency & Related Outreach subcommittee.

Among other groups, Council Tree works with Alaska Native Regional Corporations organized by Congress under the terms of the Alaska Native Claims Settlement Act,² the shareholders of which are recognized to be socially and economically disadvantaged for all purposes of federal law.³ In the competitive bidding context, the Commission is directed under Section 309(j) of the Communications Act to promote “economic opportunity . . . 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,”⁴ and to “ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services”⁵ Given its investment mission, Council Tree has an interest in seeing that the Commission’s spectrum auction rules and policies reflect these mandates, making room for those who could otherwise be excluded under a system of competitive bidding.

In the NPRM, the Commission proposes the establishment of rules intended to aid designated entities bidding for licenses to use advanced wireless services (“AWS”) spectrum in

² See 43 U.S.C. § 1601 *et seq.* (2004).

³ See *id.*, § 1626(e).

⁴ 47 U.S.C. § 309(j)(3)(B) (2004).

⁵ *Id.*, § 309(j)(4)(D). The Commission is also tasked to identify and eliminate regulatory barriers facing small businesses in the ownership of telecommunications facilities and provision of services. *Id.*, § 257.

the 1915-1920 MHz and 1995-2000 MHz bands (hereinafter referred to as the “H Block”) and the 2020-2025 MHz and 2175-2180 MHz bands (hereinafter referred to as the “J Block”). In the NPRM, the Commission proposes to offer a bidding credit of 15 percent to H Block and J Block auction applicants that qualify as small businesses and 25 percent to applicants that qualify as very small businesses.⁶ At the same time, the Commission tentatively concludes that it will not establish eligibility restrictions for licenses in these bands,⁷ including, presumably, limitations on the size of applicants that may bid for particular H Block and J Block licenses (often referred to as “closed bidding”).

In comments filed in response to the NPRM on December 2, 2004, NTCH, Inc. (“NTCH”) urges the Commission to limit eligibility to bid for either H Block or J Block licenses to smaller businesses.⁸ In the alternative, NTCH urges the Commission to institute materially increased bidding credits for smaller business bidding for H Block or J Block licenses.⁹ In either case, NTCH argues, the Commission should cap the number of licenses on which a smaller business could bid in any auction of H Block or J Block licenses or cap the amount that a smaller business could bid therein.¹⁰ Separately, NTCH urges the Commission to license H Block and J

⁶ NPRM at ¶ 123. For the purposes of these bands, the Commission proposes to define a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. Id. at ¶ 122.

⁷ Id. at ¶¶ 67, 69.

⁸ Comments of NTCH, Inc., WT Docket No. 04-356, at 4-5 (filed Dec. 2, 2004).

⁹ Id. at 5. NTCH recommends the adoption of bidding credits “on the order of 75% and 85%.” Id.

¹⁰ Id. at 7.

Block spectrum on a basic trading area or rural service area (“RSA”) basis to keep these important licenses within reach of smaller businesses.¹¹

This is a crucial time for the Commission to refocus its designated entity program. Council Tree does not disagree with the spirit of NTCH’s comments regarding the need for meaningful competitive bidding preferences, though there is a different way in which the Commission should undertake to fulfill the congressional intention to develop a competitive bidding process that is not wholly dominated by entrenched providers. Council Tree will soon file a petition for rulemaking in which it will urge the Commission to amend Part 1 of its Rules to address the prevalence of large, incumbent wireless service providers and wealthy individuals taking advantage of the Commission’s competitive bidding small business preferences. As it prepares to award licenses to use H Block and J Block spectrum, the Commission must ensure that the benefits to be awarded as part of its designated entity program are meaningful and that they help to promote, not stifle, diversification in the ranks of Commission licensees.

II. THE COMMISSION SHOULD INSTITUTE AND OFFER A NEW ENTRANT BIDDING CREDIT IN AUCTIONS OF H BLOCK AND J BLOCK LICENSES

To promote diversity in the ranks of Commission licensees, Council Tree urges the Commission to institute a unitary (*i.e.*, non-tiered) 25 percent bidding credit that will be awarded only to smaller businesses (a) in which high net worth individuals hold no actual controlling interests and (b) that have no material investment or operating relationship with large, incumbent wireless service providers. The Commission should offer this small, new entrant bidding credit (hereinafter referred to as the “AWS New Entrant Bidding Credit”) in lieu of tiered bidding

¹¹ Id. at 3-4. See also Comments of the National Telecommunications Cooperative Association, WT Docket No. 04-356 (filed Nov. 23, 2004); Comments of Rural Cellular Association, WT Docket No. 04-356 (filed Dec. 8, 2004); and Comments of the Rural Telecommunications Group, Inc., WT Docket No. 04-356 (filed Dec. 8, 2004).

credits that today are awarded based only on business size. The three principal elements of the AWS New Entrant Bidding Credit are summarized here in Table 1 and are discussed in greater detail thereafter:

TABLE 1

To qualify for the AWS New Entrant Bidding Credit (25 percent):

1. The new entrant applicant must qualify as a Small Business

A Small Business is one with average gross revenues for the preceding three years that do not exceed \$40 million calculated under the Commission's controlling interest standard.

and

2. No High Net Worth Individual may hold an actual (*i.e.*, non-constructive) controlling interest in the new entrant applicant (with any necessary accommodations for rural telephone cooperatives)

A High Net Worth Individual is one whose personal net worth equals or exceeds \$3 million, excluding the equity in the individual's primary personal residence.

and

3. No Large In-Region Incumbent may provide a material portion of the total capitalization (equity plus debt) of the new entrant applicant or have any material operating arrangement with the new entrant

A Large In-Region Incumbent is an entity (including all parties under common control) that (a) is, or has an attributable interest (47 C.F.R. § 20.6(d)) in, a commercial mobile radio service ("CMRS") or AWS licensee whose licensed service area has significant overlap (using the standard in 47 C.F.R. § 20.6(c) adapted to include AWS service areas) in the geographic area to be licensed to the new entrant applicant and (b) has average gross revenues for the preceding three years exceeding \$2 billion.

A. Small Business Size Standard

First, consistent with its more general proposal in the NPRM, the Commission should limit the availability of any bidding credit offered in auctions of H Block and J Block licenses to those that qualify as smaller businesses. As noted, Section 309(j) of the Communications Act directs the Commission to promote “economic opportunity . . . 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,”¹² and to “ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services”¹³ The Commission has determined that preferences for small business frequently aid businesses owned by members of minority groups and women without raising substantial constitutional implications.¹⁴ Council Tree shares this view, and it urges the Commission to maintain preferences for smaller businesses as part of any update of the designated entity program.

¹² 47 U.S.C. § 309(j)(3)(B) (2004).

¹³ Id., § 309(j)(4)(D). The Commission is also tasked to identify and eliminate regulatory barriers facing small businesses in the ownership of telecommunications facilities and provision of services. Id., § 257.

¹⁴ See, e.g., Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Report, 12 FCC Rcd 16802, 16920-21 (1997); Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Notice of Inquiry, 11 FCC Rcd 6280, 6292 (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, 7833, 7844 (1996); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Eighth Report and Order, 11 FCC Rcd 1463, 1575 (1995); Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Sixth Report and Order, 11 FCC Rcd 136, 143, 158 (1996).

Here, the Commission should define a small business for the purposes of the AWS New Entrant Bidding Credit as one with average gross revenues for the preceding three years that do not exceed \$40 million (calculated under the Commission's controlling interest standard), which is the highest of the three eligibility levels set forth in the Commission's standardized Part 1 schedule of bidding credits.¹⁵ Using this standard as part of the AWS New Entrant Bidding Credit will help to prevent large corporations, which need no government assistance in this area, from appropriating the benefits of the contemplated bidding credit for themselves. At the same time, the eligibility level is high enough to permit new entrants of varying histories and business sizes to secure opportunities to enter the wireless service market under this modified preference approach.

B. Limitation on Control by High Net Worth Individuals

Second, the Commission should limit the availability of any bidding credit offered in auctions of H Block and J Block licenses to those small business applicants in which a high net worth individual holds no actual controlling interest (with any necessary accommodations for rural telephone cooperatives¹⁶). In 2004, Council Tree filed a Petition for Rulemaking in which it urged the Commission to institute a personal net worth limitation for competitive bidding small business preference eligibility.¹⁷ As detailed in that Petition, the Commission generally does not count personal wealth in assessing the size of a business that applies for auction-related bidding credits or set-asides. If a high net worth individual does not have his or her wealth tied to

¹⁵ See 47 C.F.R. § 1.2110(f).

¹⁶ See, e.g., *id.*, § 1.2110(b)(3)(iii).

¹⁷ See Council Tree Communications, Inc., Petition for Rulemaking, RM 10956 (filed March 8, 2004).

ownership of other businesses — or if such other businesses have few or no gross revenues — the Commission’s approach leaves the door open for that individual to receive the government benefits meant for disadvantaged enterprises.

To establish a meaningful personal net worth limitation for competitive bidding small business preference eligibility, the Commission should look to the SBA’s small disadvantaged business program.¹⁸ A concern is not eligible for the benefits of the SBA’s program if, *inter alia*, any attributable investor in the applicant has personal net worth valued at \$750,000 or more.¹⁹ (Under the SBA’s rules, the attributable investor or investors must unconditionally own 51 percent or more of the applicant to qualify for the program.²⁰) Council Tree urges the Commission to utilize such a personal net worth limitation for AWS New Entrant Bidding Credit eligibility, but with modifications to account for the capital-intensive nature of the communications industry.

Specifically — in addition to applying the gross revenues test discussed above — the Commission should provide that the AWS New Entrant Bidding Credit shall not be awarded to an applicant if the personal net worth of any attributable individual investor in the applicant equals \$3,000,000 or more at the time the applicant’s short-form application is filed. This limitation should be applied only to an individual with an *actual* controlling interest in the applicant under the Commission’s Rules (*i.e.*, an individual with *de jure* or *de facto* control of

¹⁸ See Section 257 Triennial Report to Congress, Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses, Report, 19 FCC Rcd 3034, 3075 (2004) (“Federal departments and agencies that promulgate regulations that affect small businesses usually use the SBA’s size criteria as they develop the regulations.”) (footnote omitted).

¹⁹ See 13 C.F.R. § 124.1002(c) (2004).

²⁰ See *id.*, § 124.1002(b)(2).

the applicant as determined under the controlling interest standard). That condition is important because the Commission's attribution rules provide that the officers and directors of an applicant, and the officers and directors of an entity that controls the applicant, shall be "considered" to have a controlling interest in the applicant.²¹ Unless application of the personal net worth test is limited to individuals with actual *de jure* or *de facto* control of the applicant, legitimate designated entities would risk losing preference eligibility due to the net worth of an officer or director who has only constructive control (under Section 1.2110(c)(2)(ii)(F)), which could discourage designated entities from hiring experienced managers and industry veterans to serve as officers or directors at all.

C. Limitation on Involvement of Large In-Region Incumbents

Finally, the Commission should limit the availability of any bidding credit offered in auctions of H Block and J Block licenses to those qualifying small business applicants (*i.e.*, in which high net worth individuals hold no actual controlling interests) that have no material investment or operating relationship with large, incumbent wireless service providers. It is imperative in this time of rapid wireless industry ownership consolidation that the Commission take aggressive measures to preserve and create opportunities for new entrants to participate in the provision of spectrum-based services. This is particularly important when implementing the Commission's competitive bidding authority. According to a 1993 House Budget Committee Report on the legislation that became the Omnibus Budget Reconciliation Act of 1993:

The Committee is concerned that, unless the Commission is sensitive to the need to maintain opportunities for small businesses, competitive bidding could result in a significant increase in concentration in the telecommunications industries.²²

²¹ See 47 C.F.R. § 1.2110(c)(2)(ii)(F).

²² H.R. Rep. No. 103-111, at 254 (1993) (emphasis added).

On that basis, as part of the grant of auction authority under Section 309(j), the Commission was directed to promote competition by “avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants . . .”²³

Here, the Commission tentatively concludes that it will not establish eligibility restrictions for licenses in these bands,²⁴ including, presumably, limitations on the size of applicants that may bid for particular H Block and J Block licenses, and that it will *not* impose a band-specific spectrum aggregation limit for H Block and J Block licenses.²⁵ At the same time, the Commission’s CMRS spectrum aggregation limit is no longer in effect.²⁶ As a result, entrenched service providers will generally be able to aggregate H Block and J Block spectrum, whether in their existing service regions or otherwise. To fulfill the plain intentions of Congress, the Commission should craft a competitive bidding advantage tailored to offset the growing concentration of ownership in the wireless service industry.

To do so, the Commission should limit the permissible investment by, and involvement of, any large, incumbent wireless service provider in an entity that will qualify for an AWS New Entrant Bidding Credit. For these purposes, the Commission should define a large, incumbent wireless service provider as an entity (including all parties under common control) that (a) is, or has an attributable interest in, a CMRS or AWS licensee whose licensed service area has significant overlap (using the standard in 47 C.F.R. § 20.6(c) adapted to include AWS service

²³ 47 U.S.C. § 309(j)(3)(B) (2004) (emphasis added).

²⁴ NPRM at ¶¶ 67, 69.

²⁵ Id. at ¶¶ 67-68.

²⁶ See 47 C.F.R. § 20.6(f).

areas) in the geographic area to be licensed to the new entrant applicant and (b) has average gross revenues for the preceding three years exceeding \$2 billion. This approach is similar to that employed by the Commission as part of its broadcast auction “new entrant bidding credit,” where no bidding credit is available to a winning bidder if the bidder, or any party with an attributable interest therein, has an attributable interest in any existing media of mass communication in the same area as the proposed broadcast facility.²⁷

Here, the Commission should employ (in part) the wireless service overlap and CMRS ownership attribution standards established as part of the Commission’s CMRS spectrum aggregation limit,²⁸ which were applied by the Commission to address the potential anti-competitive effects of spectrum aggregation. According to the Commission, it developed the standards out of concern “that excessive aggregation by any one or several CMRS licensees could reduce competition by precluding entry by other service providers and might thus confer excessive market power on incumbents.”²⁹ Though the CMRS spectrum aggregation limit has now sunset,³⁰ the Commission may employ the “significant overlap” and CMRS “attributable interest” standards that were part thereof for the purposes of administering the AWS New Entrant Bidding Credit. To do so, the Commission should adapt the CMRS spectrum aggregation significant overlap standard to include the geographic service areas that have been and will be developed for AWS spectrum licensing.

²⁷ See 47 C.F.R. § 73.5007(b).

²⁸ See id., §§ 20.6(c); 20.6(d).

²⁹ Implementation of Sections 3(n) and 332 of the Communications Act – Regulatory Treatment of Mobile Services, Third Report and Order, 9 FCC Rcd 7988, 8101 (1994).

³⁰ See 47 C.F.R. § 20.6(f).

Under this plan, an otherwise qualified applicant will not be eligible for the AWS New Entrant Bidding Credit if an entity that has an attributable interest in a CMRS or AWS licensee (as determined under the standards set forth in 47 C.F.R. § 20.6(d)) whose licensed CMRS or AWS service area has significant overlap with the applicant’s proposed H Block or J Block service area (as determined under the standards set forth in 47 C.F.R. § 20.6(c) adapted to include AWS service areas) has provided a material portion of the total capitalization of the applicant (*i.e.*, equity plus debt). This approach is similar to that employed by the Commission as part of its broadcast auction “new entrant bidding credit,” where attribution in the “new entrant” is defined as a percentage holding of all equity in plus all debt of the applicant.³¹ As the Commission explained in that context, “[a]ttributing the interests, whether debt or equity, of substantial investors is justified to insure that only true new entrants qualify for the bidding credit because holders of otherwise nonattributable nonvoting interests may well have ‘a realistic potential’ to influence bidders claiming new entrant status.”³² In this case, it is also important to provide that an otherwise qualified applicant will not be eligible for the AWS New Entrant Bidding Credit if an entity that has an attributable interest in a CMRS or AWS licensee whose licensed CMRS or AWS service area has significant overlap with the applicant’s proposed H Block or J Block service area has any material operating arrangement with the applicant (such as management, joint marketing, trademark, or other arrangements) relating to the overlap markets.

Finally, the Commission should *exclude* from the limitations applicable to in-region incumbents investments by and agreements with those in-region CMRS and AWS licensees that

³¹ See *id.*, § 73.5009(c).

³² Implementation of Section 309(j) of the Communications Act - Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, Memorandum Opinion and Order, 14 FCC Rcd 12541, ¶ 7 (1999) (footnote omitted).

have average gross revenues for the preceding three years that do not exceed \$2 billion. This exception (effectively for *smaller* in-region incumbents) will help true new entrants to attract capital and draw on the experience of existing firms and managers as a way to increase their odds of success — something the Commission has long undertaken to promote³³ — without exacerbating the ownership concentration problems associated with turning to large incumbent providers in their existing regions for support.

It is important to note that the AWS New Entrant Bidding Credit plan described here would not operate as a license eligibility limitation. A large incumbent CMRS or AWS provider would not be prevented under the plan from acquiring any H Block and J Block license through competitive bidding itself, and the incumbent could invest at a material level in, or enter material operating arrangements with, any new entrant applying for H Block or J Block licenses that have no significant overlap with the incumbent’s existing CMRS or AWS license service areas. The large incumbent simply could not utilize the AWS New Entrant Bidding Credit itself or invest at a material level in, or enter material operating arrangements with, an AWS New Entrant Bidding Credit applicant “in-region.”

D. Unjust Enrichment Considerations

To fulfill the Commission’s statutory obligations to prevent unjust enrichment in this context³⁴ and to ensure that the AWS New Entrant Bidding Credit has the intended effect of helping eligible entities to acquire H Block and J Block licenses, the Commission should require reimbursement of any AWS New Entrant Bidding Credit, under the terms of Section 1.2111(d)

³³ See, e.g., Implementation of Section 309(j) of the Communications Act — Competitive Bidding, Competitive Bidding Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 441 (1994).

³⁴ See 47 U.S.C. § 309(j)(4)(E).

of the Commission's Rules,³⁵ whenever an entity that used the AWS New Entrant Bidding Credit to acquire an H Block or J Block license proposes to transfer the license to a non-qualifying entity, or to make a change that would result in its loss of eligibility for the AWS New Entrant Bidding Credit, in the first five years of the license term. This reimbursement obligation should not apply in the case of the "natural growth" either of the personal net worth of attributable investors in the licensee or the gross revenues of attributable non-controlling investors to levels above those set forth here. Instead, the obligation should apply only where the new entrant licensee takes on new investment, or enters into any operating arrangement, that would have disqualified the licensee for the AWS New Entrant Bidding Credit had it been in place at the time of the licensee's initial application.

III. THE COMMISSION SHOULD ADOPT H BLOCK AND J BLOCK SERVICE AREAS THAT HELP TO KEEP LICENSES IN THESE BANDS WITHIN THE REACH OF ALL DESIGNATED ENTITIES

In connection with undertaking to see that the designated entity benefits to be offered in competitive bidding are reserved for those that legitimately need government assistance to join the information economy, the Commission should ensure that H Block and J Block licenses remain within the reach of all that qualify for such assistance. Though nationwide or regional license service areas may well be attractive to some applicants, others — particularly rural carriers — could have business plans that feature more targeted geographic areas and network operations. All H Block and J Block license bidders should have the flexibility to pursue the scope of geographic coverage that they desire. Thus, Council Tree agrees with NTCH and other commenters that the Commission should license H Block and J Block spectrum using smaller (sometimes referred to as "local") services areas, such as metropolitan statistical areas or RSAs.

³⁵ See 47 C.F.R. § 1.2111(d).

Rural carriers in particular will be well-served by the ability to acquire valuable H Block or J Block licenses that are tailored more closely to their existing operating territories, and rural-area customers will likely see new services much sooner as a result.

Finally, it is important to note that, though the Commission's partitioning/disaggregation and secondary markets policies are important for designated entities,³⁶ these policies should not lead the Commission to prescribe unduly large H Block or J Block service areas on the theory that new entrants may instead look for access to spectrum rights in the post-auction market. Section 309(j) of the Communications Act directs the *Commission* to "prescribe area designations and bandwidth assignments that [] promote . . . economic opportunity for a wide variety of applicants, including small business, rural telephone companies, and businesses owned by members of minority groups and women . . ." ³⁷ Unlike the Commission, licensees have no *obligation* to disseminate licenses widely or make opportunities available to new entrants. Moreover, compared to the breadth and value of spectrum rights to be offered by the Commission in an auction of AWS licenses, the spectrum rights that new entrants can expect to see through partitioning/disaggregation or leasing amount to a mere trickle. The speculative prospect of downstream private partitioning/disaggregation or leasing transactions is not a fair trade for reliable, Commission-administered provisions benefiting smaller and rural companies competing for licenses in the first instance. Manageable H Block and J Block license service areas are an essential component of those provisions.

³⁶ See NPRM at ¶ 77.

³⁷ 47 U.S.C. § 309(j)(4)(C).

IV. CONCLUSION

For these reasons, Council Tree urges the Commission to institute and offer the AWS New Entrant Bidding credit, as it is described herein, in auctions of H Block and J Block licenses and to adopt service areas that help to keep licenses in these bands within the reach of all designated entities.

Respectfully submitted,

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