

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

In the Matter of)	
)	
Service Rules for Advanced Wireless)	WT Docket No. 12-70
Services in the 2100-2020 MHz and)	
2180-2200 MHz Bands)	
)	
Fixed and Mobile Services in the Mobile)	ET Docket No. 10-142
Satellite Service Bands at 1525-1559 MHz)	
and 1626.5-1660.5 MHz, 1610-1626.5 MHz)	
and 2483.5-2500 MHz, and 2000-2020 MHz)	
and 2175-2180 MHz)	
)	
Service Rules for Advanced Wireless)	WT Docket No. 04-356
Services in the 1915-1920 MHz, 1995-)	
2000 MHz, 2020-2025 MHz and 2175-)	
2180 MHz Bands)	

To: The Commission

**COMMENTS OF
COUNCIL TREE INVESTORS, INC.**

Steve C. Hillard
George T. Laub
Jonathan B. Glass
Council Tree Investors, Inc.
Thornton, CO

May 17, 2012

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY.....	i
I. INTRODUCTION.....	1
II. THE STATUS QUO FOR NEW ENTRANTS IN THE PROVISION OF SPECTRUM-BASED SERVICES IS DISMAL	3
III. THE COMMISSION MUST TAKE THIS OPPORTUNITY TO ADDRESS THE PAST MISTAKES THAT HAVE PRODUCED THIS LACK OF OWNERSHIP DIVERSITY	9
A. In the Absence of Set-Aside Blocks of AWS-4 Spectrum, the Commission Should Offer Materially Increased Bidding Credits to Designated Entities Bidding for Those Spectrum Rights	10
B. In the Absence of Set-Aside Blocks of AWS-4 Spectrum, the Commission Should Apply Spectrum Aggregation Limits to AWS-4 Spectrum.....	14
IV. CONCLUSION.....	16

SUMMARY

The Commission must work to reverse the grave situation facing new entrants with respect to the provision of spectrum-based services. Since 1995, the number and quality of Commission incentives available to designated entities in competitive bidding have steadily eroded. The elimination of Commission measures to assist new entrants in the competitive bidding process, and other ill-considered Commission measures, crippled so-called designated entities in the very context in which the Commission is directed to promote their competitiveness. The impact has been clearly visible in the results of recent auctions of note and in the current state of wireless service market concentration.

If the Commission will authorize independent terrestrial use of the AWS-4 spectrum and award licenses for such use by way of competitive bidding, the Commission must work to improve the ability of designated entities to become AWS-4 licensees through such bidding. In the absence of set aside blocks of AWS-4 spectrum for bidding only by designated entities, materially increased bidding credits and spectrum aggregation limits will be important tools with which to begin to promote the participation in spectrum-based services in these bands by designated entities identified in Section 309(j). Council Tree urges the Commission to offer materially-increased bidding credits to designated entities bidding for AWS-4 licenses and to establish generally applicable spectrum aggregation limits, beyond applying the current spectrum screen for mobile telephony/broadband services, to all mobile telephony/broadband services.

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

In the Matter of)	
)	
Service Rules for Advanced Wireless Services in the 2100-2020 MHz and 2180-2200 MHz Bands)	WT Docket No. 12-70
)	
)	
Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2175-2180 MHz)	ET Docket No. 10-142
)	
)	
Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands)	WT Docket No. 04-356
)	

To: The Commission

**COMMENTS OF
COUNCIL TREE INVESTORS, INC.**

Council Tree Investors, Inc. (“Council Tree”), pursuant to Section 1.415 of the Commission’s Rules, 47 C.F.R. § 1.415, submits these comments in response to the captioned *Notice of Proposed Rulemaking and Notice of Inquiry* (FCC 12-32) adopted and released by the Commission on March 21, 2012 (“*NPRM*”).^{1/}

I. INTRODUCTION

Council Tree is an investment company organized to identify and develop

^{1/} A summary of the *NPRM* was published in the Federal Register on April 17, 2012. See 77 Fed. Reg. 22,720 (April 17, 2012).

communications industry investment opportunities for the benefit of small businesses and new entrants, including those owned by members of minority groups and women. As part of this work, Council Tree has long been an active supporter of responsibly-managed government efforts to encourage the participation of new entrants in the communications industry. Given its investment mission, Council Tree has an interest in seeing that the Commission's rules and policies for Advanced Wireless Service 4 ("AWS-4") spectrum in the 2000-2020 MHz and 2180-2200 MHz bands reflect this goal in a rational and effective manner.

In the *NPRM*, the Commission proposes "to grant terrestrial authority to operate in the AWS-4 band to the current 2 GHz [Mobile Satellite Service ('MSS')] licensee." *NPRM* at ¶ 74. Nevertheless, the Commission indicates that if "the record developed in this proceeding reflects that it is now possible for separately authorized, independent AWS-4 licensees to protect MSS including [Ancillary Terrestrial Component] operations," then it seeks "comment on other approaches to authorizing terrestrial use, upon creation of the new AWS-4 service." *Id.* at ¶ 80. According to the Commission, such "other approaches may include the assignment of new initial licenses via competitive bidding, if mutually exclusive applications are received, under Section 309(j) of the Communications Act." *Id.* (footnote omitted).

It is in this context that the Commission must work to reverse the grave situation facing new entrants with respect to the provision of spectrum-based services. The elimination of Commission measures to assist new entrants in the competitive bidding process, and other ill-considered Commission measures,

crippled so-called designated entities in the very context in which the Commission is directed to promote their competitiveness. The impact has been clearly visible in the results of recent auctions of note and in the current state of wireless service market concentration. If the Commission will authorize independent terrestrial use of the AWS-4 spectrum and award licenses for such use by way of competitive bidding, the Commission must address its past mistakes and work to improve the ability of designated entities to become AWS-4 licensees through such bidding.

II. THE STATUS QUO FOR NEW ENTRANTS IN THE PROVISION OF SPECTRUM-BASED SERVICES IS DISMAL

The status quo for new entrants in the provision of spectrum-based services is dismal. In the competitive bidding context, the Commission is directed under Section 309(j) of the Communications Act to promote “economic opportunity and competition . . . 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,” 47 U.S.C. § 309(j)(3)(B), 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” *Id.*, § 309(j)(4)(D); *see also NPRM* at ¶ 84. Several Commission actions in recent years have undermined the achievement of these goals.

First, since 1995, the number and quality of Commission incentives available to designated entities in competitive bidding have steadily eroded. Congress

eliminated the availability of tax certificates for members of minority groups.^{2/} For its part, the Commission has stopped setting aside licenses for bidding only by designated entities,^{3/} has stopped offering the installment payment financing that so enhanced the ability of members of minority groups and women to acquire licenses in competitive bidding,^{4/} and has stopped allowing smaller businesses to qualify for an auction with a reduced upfront payment.^{5/} In addition, though it originally permitted designated entities to enter into management or joint marketing agreements with experienced firms without contravening the attribution thresholds in its entrepreneurs' block rules,^{6/} the Commission *now* treats many

^{2/} See Self-Employed Health Insurance Act of 1995, Pub. L. No. 104-7, § 2, 109 Stat. 93 (1995) (eliminating the minority tax certificate program).

^{3/} See, e.g., *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, Report and Order*, 18 FCC Rcd 25162, 25189-90 (2003) (resolving not to set aside any advanced wireless services licenses for bidding only by designated entities).

^{4/} See, e.g., Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 15293, 15322 (2000). The Commission first suspended installment payments for small businesses in 1997. See, e.g., *Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures; Allocation Of Spectrum Below 5 GHz Transferred from Federal Government Use 4660-4685 MHz*, 13 FCC Rcd 374 (1997).

^{5/} See, e.g., *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, 7859-60 (1996).

^{6/} See *Implementation of Sections 3(n) and 332 of the Communications Act, Fourth Report and Order*, 9 FCC Rcd 7123, 7124 (1994) (“We expect that investor/manager agreements are one of the many alternatives available to designated entities This does not mean, however, that these management agreements will be deemed ‘attributable’ for purposes of the revenue thresholds in

management and joint marketing agreements as “attributable.”^{7/} According to the *NPRM*, “[o]ne of the principal means by which the Commission fulfills this [Section 309(j)] mandate is through the award of bidding credits to small businesses.”

NPRM at ¶ 84. As a practical matter, the award of bidding credits is the *only* remaining means by which the Commission works to fulfill this mandate.

Second, in 2006, the Commission issued new rules that did grave damage to the ability of designated entities to utilize even the bidding credit mechanism. In its *Second Report and Order* in WT Docket No. 05-211, the Commission, *inter alia*:

- doubled the duration of its unjust enrichment schedule for licenses acquired with bidding credits from five years to ten years (“Ten Year Hold Rule”),^{8/} and
- modified rules relating to spectrum leasing and resale arrangements to deprive designated entities of the value of their bidding credits if they lease, wholesale, or permit to be resold more than 25 percent of their “spectrum capacity” to any one party (“Attributable Material Relationship Rule”) or more than 50 percent of their “spectrum capacity” in the aggregate (“Impermissible Material Relationship Rule”).^{9/}

the entrepreneur’s blocks”); *Implementation of Section 309(j) of the Communications Act — Competitive Bidding, Fifth Report and Order*, 9 FCC Rcd 5532, 5580, 5601 n.135 (1994) (“So long as the applicant remains under the *de jure* and *de facto* control of the control group, we shall not bar passive investors from entering into management agreements with applicants”).

^{7/} See 47 C.F.R. § 1.2110(c)(2)(ii)(H)-(I).

^{8/} See *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures, Second Report and Order and Second Further Notice of Proposed Rule Making*, 21 FCC Rcd 4753, 4766-67 (2006) (“*Second Report and Order*”).

^{9/} See *id.* at 4763-64.

The new rules were first announced when the *Second Report and Order* was released on April 25, 2006, and the Commission made clear that the rules would immediately apply to designated entities bidding in its auction of advanced wireless services licenses (“Auction 66”),^{10/} which opened on August 9, 2006. The negative effect of the new rules on small business participation in the auction was enormous. Four years later, the United States Court of Appeals for the Third Circuit ruled that the Commission had acted unlawfully, and it vacated the Ten Year Hold Rule and the Impermissible Material Relationship Rule. *See Council Tree Communications, Inc. v. FCC*, 619 F.3d 235, 258-59 (3rd Cir. 2010).

Finally, after twice announcing that the Impermissible Material Relationship Rule would apply to all DE bidding activity in the 2008 auction of 700 MHz band spectrum rights (“Auction 73”), the Commission abruptly changed its mind “on its own motion” — without any public participation — and waived the application of the Impermissible Material Relationship Rule for any potential DE winner of a single block of 700 MHz band spectrum, while renewing its adherence to the new 2006 rules in all other respects. *See Waiver of Section 1.2110(b)(3)(iv)(A) of the Commission’s Rules For the Upper 700 MHz Band D Block License, Order*, 22 FCC Rcd 20354 (2007). This action came a mere two business days before the FCC Form 175 “short form” window for Auction 73 was to open and eleven business days before that window’s December 3, 2007 close. For the single block of spectrum to which

^{10/} *See Second Report and Order*, 21 FCC Rcd at 4771.

the waiver applied, the Commission's action came at such a late time and in such a manner that designated entities once again could not adjust to the shifting regulatory environment and obtain financing based on the suddenly changed rules. In the end, the Commission's waiver merely reinforced the widespread perception in the financial community that the regulatory environment for designated entities is negative, volatile, and unreliable.

The impact of these various events has been clear in competitive bidding. Prior to Auction 66, DEs had won an average of 74 percent of licenses by value (as a percentage of net winning bids) in the six major commercial mobile radio service ("CMRS") license auctions in which designated entity preferences were offered for the ten years preceding Auction 66. In Auction 66, however, designated entities won just 4 percent of licenses by value (as a percentage of net winning bids) — by far the lowest of any major CMRS auction in which the Commission offered DE preferences and a shocking drop from the 74 percent DE success rate in the earlier major auctions just noted.

This harmful trend accelerated itself in Auction 73. Just two carriers — AT&T and Verizon — acquired approximately \$16 billion of the nearly \$19 billion, or 84.4 percent, of the spectrum sold. Meanwhile, DE participation fell even more, to a mere 2.6 percent of licenses won by value, a material reduction from the already meager 4 percent of licenses won by value in Auction 66. The 2.6 percent included incumbent rural telcos. Preliminary Commission data regarding winning bidders in Auction 73 indicated that "based on self-reporting, women-owned bidders

failed to win any licenses and minority-owned bidders won less than one percent of licenses (7 of 1,090 licenses, or 0.64%), despite the fact that women constitute over half the U.S. population and minorities around one-third of the U.S. population.”^{11/}

These results are reflected in widely-seen data regarding the CMRS industry generally. According to data included in the Commission’s Fifteenth Report on the state of competition in the mobile services marketplace, Verizon Wireless and AT&T provide service to more than 61 percent of all mobile telephone subscribers nationwide, and the top four CMRS providers serve more than 90 percent of subscribers. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Fifteenth Report*, 26 FCC Rcd 9664, 9698 (2011) (“*Fifteenth Report*”). The Commission cites one report indicating that Verizon Wireless and AT&T together accounted for more than 80 percent of wireless industry EBITDA during the third quarter of 2010. *See id.* at 9796.

The scale and resources of these large national wireless carriers have in turn allowed them to amass huge amounts of wireless spectrum. The same Commission report concludes that “five providers together — Verizon Wireless, AT&T, T-Mobile, as well as Sprint Nextel and Clearwire — hold more than 80 percent of all spectrum, measured on a MHz-POPs basis, that is potentially usable for the provision of mobile wireless services” *Id.* at 9830. This existing market concentration formed the basis of a finding of the Commission staff that the

^{11/} *Commissioner Jonathan S. Adelstein Comments on Lack of Diversity Among Winners of the 700 MHz Auction, FCC News Release*, at 1 (rel. March 20, 2008).

proposed 2011 AT&T acquisition of T-Mobile would likely have lead to substantial lessening of competition. *See Applications of AT&T Inc. and Deutsche Telekom AG, Order*, 26 FCC Rcd 16184, ¶¶ 3, 8 (Wir. Tel. Bur. 2011) (releasing Staff Analysis and Findings, WT Docket No. 11-65). And, the Commission is now examining the proposed assignment of more than 150 AWS-1 licenses from SpectrumCo, LLC and Cox TMI Wireless, LLC to Verizon Wireless. *See Public Notice: Cellco Partnership D/B/A Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek FCC Consent to the Assignment of AWS-1 Licenses*, WT Docket No. 12-4, DA 12-67 (rel. Jan. 19, 2012).

III. THE COMMISSION MUST TAKE THIS OPPORTUNITY TO ADDRESS THE PAST MISTAKES THAT HAVE PRODUCED THIS LACK OF OWNERSHIP DIVERSITY

Against this background, the Commission must take the opportunity to craft competitive bidding rules for any AWS-4 spectrum rights authorized for independent terrestrial use to address past mistakes that have produced this market concentration and lack of ownership diversity. As demonstrated below, in the absence of set aside blocks of AWS-4 spectrum for bidding only by designated entities, materially increased bidding credits and spectrum aggregation limits will be important tools with which to begin to promote the participation in spectrum-based services in these bands by designated entities identified in Section 309(j).

A. In the Absence of Set-Aside Blocks of AWS-4 Spectrum, the Commission Should Offer Materially Increased Bidding Credits to Designated Entities Bidding for Those Spectrum Rights

In the *NPRM*, the Commission proposes to apply small business size standards and offer bidding credits to designated entities bidding on AWS-4 spectrum rights that are the same the Commission adopted for the AWS-1 band. *See NPRM* at ¶ 86. According to the Commission, the same size standards and bidding credits would be appropriate because “[i]n the event that the Commission assigns exclusive geographic area licenses for terrestrial use of the AWS-4 band, we believe that this spectrum would be employed for purposes similar to those for which the AWS-1 band is used.” *Id.* Council Tree disagrees that potentially similar utility means that identical designated preferences are warranted.

It has been six years since the Commission first offered AWS-1 licenses in Auction 66, and the market conditions facing designated entities are far worse than they were in 2006. Capital previously available to designated entities has been limited in the wake of the global market collapse of 2008, and lenders and investors have not returned at the same levels to help capitalize new entrants. On the other hand, the large incumbent carriers’ access to capital has improved significantly since the global market collapse of 2008. In these conditions, matching a bidding credit value now to that offered for licenses offered in 2006 on the theory that the *spectrum* would be employed for similar purposes would be gravely unfair to the new entrants it is meant to help. The Commission must consider current market conditions for any bidding credit assistance it offers now to be meaningful.

Moreover, as shown, prior to Auction 66, DEs had won an average of 74 percent of licenses by value (as a percentage of net winning bids) in the six major CMRS license auctions in which designated entity preferences were offered for the ten years preceding Auction 66. In Auction 66, however, designated entities won just 4 percent of licenses by value (as a percentage of net winning bids). And, that trend worsened in Auction 73 with the very same the same size standards and bidding credits offered in bidding for AWS-1 licenses in Auction 66. In short, the AWS-1/Auction 66 model is not something the Commission should follow with respect to designated entities going forward.

Accordingly, to the extent the Commission does not limit eligibility to bid for licenses in the AWS-4 bands, Council Tree urges the Commission to undertake to improve the assistance available to designated entities by offering materially increased bidding credits to designated entities bidding for AWS-4 licenses. In the *NPRM*, the Commission proposes to offer in any auction of AWS-4 licenses bidding credits of 15 percent to businesses with average annual gross revenues not exceeding \$40 million and 25 percent to businesses with average annual gross revenues not exceeding \$15 million. *See NPRM* at ¶¶ 86-87. The standardized schedule of bidding credits set forth in Part 1 of the Commission's rules provides that businesses with average annual gross revenues not exceeding \$3 million are eligible for a bidding credit of 35 percent. *See* 47 C.F.R. § 1.2110(f)(2)(i).

Given the current state of the markets and the concentration of CMRS license ownership, the Commission should offer in any auction of AWS-4 licenses

bidding credits of 25 percent to businesses with average annual gross revenues not exceeding \$40 million, 35 percent to businesses with average annual gross revenues not exceeding \$15 million, and 45 percent to businesses with average annual gross revenues not exceeding \$3 million. Increasing the bidding credit offered to smaller businesses under these circumstances would be consistent with the Commission's prior decisions to use a *higher* bidding credit level in the absence of other designated entity preferences.^{12/} Importantly, in 1997, the Commission expressly compensated for the lack of installment payments plans for Local Multipoint Distribution Service ("LMDS") licenses by offering bidding credits of 25 percent, 35 percent, and 45 percent (applied to slightly different business size standards).^{13/} The Commission characterized the higher bidding credits as "a reasonable

^{12/} See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 201, 215-16 (1994) (raising bidding credit offered to businesses owned by members of minority groups and women from 25 to 40 percent to help in bidding for licenses that were not within blocks set-aside for designated entities); *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), Report and Order*, 12 FCC Rcd 10785, 10878-79 (1997) (raising bidding credit levels due to unavailability of installment payment financing for WCS licensees); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 9972, 10013 (1997) (raising bidding credit levels due to unavailability of installment payment financing for 800 MHz SMR licensees).

^{13/} See *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 Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Second Order on Reconsideration*, 12 FCC Rcd 15082, 15095-96 (1997).

adjustment . . . for the unavailability of installment payment plans for LMDS licensees.”^{14/} By the same logic — and considering the state of the markets and industry concentration — such higher bidding credits should be offered to designated entities bidding for AWS-4 licenses.

Council Tree acknowledges that the Commission established a maximum *35 percent* bidding credit level in crafting its uniform Part 1 competitive bidding rules as part of a broader increase in the value of bidding credits to offset its decision to suspend the availability of installment payment financing.^{15/} Nearly fifteen years has passed since the Commission reached that decision, and the rates of designated entity success in the most recent major Commission auctions have been abysmal. In light of this, and in light of prevailing conditions in the CMRS market —

^{14/} *Id.* at 15096.

^{15/} *See Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 403 (1997) (“*Part 1 Third Report and Order*”). The Commission has relied on this 35 percent bidding credit to offset the absence of other designated entity incentives since adopting the schedule in 1997. *See, e.g., Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, 10091 (1999) (“To balance the impact on small businesses of eliminating installment payments, we amend our rules to increase the tiered bidding credits available to paging bidders, consistent with the schedule of bidding credits adopted in the *Part 1 Third Report and Order*”); *Implementation of Competitive Bidding Rules to License Certain Rural Service Areas, Report and Order*, 17 FCC Rcd 1960, 1974 n.86 (2002) (resolving to supplement the broadband PCS bidding credit scheme with the 35 percent bidding credit for its auction of RSA cellular licenses “because smaller businesses may be interested in acquiring licenses to provide service in these markets.”).

including CMRS market concentration that did not exist in 1997 — Council Tree urges the Commission to apply to AWS-4 licenses the three-tiered approach to bidding credits set forth in its uniform Part 1 competitive bidding rules, but to apply the bidding credit levels adopted for LMDS.

B. In the Absence of Set-Aside Blocks of AWS-4 Spectrum, the Commission Should Apply Spectrum Aggregation Limits to AWS-4 Spectrum

In the *NPRM*, the Commission inquires as to whether the acquisition of AWS-4 spectrum should be subject to the same general spectrum aggregation policies currently applicable to frequency bands that the Commission has determined to be available and suitable for mobile telephony/broadband services. *See NPRM* at ¶ 111. The Commission asks specifically whether the current spectrum screen for mobile telephony/broadband services should be revised to include AWS-4 spectrum, *id.*, but the Commission also seeks “comment generally on whether and how to address any spectrum aggregation concerns involving AWS-4 spectrum.” *Id.*

Council Tree urges the Commission to establish generally applicable spectrum aggregation limits — beyond applying the current spectrum screen for mobile telephony/broadband services — to all mobile telephony/broadband services. The Commission’s initial “screen” analysis was first applied in a merger context in 2004, *see Fifteenth Report*, 26 FCC Rcd at 9827, and the Commission has since modified its screen to include additional spectrum and to examine the product

market for both mobile telephony services and mobile broadband services. *See id.* at 9827-28.

The application of the Commission's spectrum screen on a case-by-case basis has not prevented the acquisition of spectrum rights that then go unused for a material time. For example, T-Mobile, USA, Inc. recently claimed that Verizon Wireless already "is sitting on valuable spectrum which it has not deployed for any use yet."^{16/} While Verizon Wireless is proposing to acquire a great deal of "unbuilt" AWS spectrum, it acknowledges that it "has sufficient spectrum to meet its immediate needs, and generally to meet increased demands in many areas until 2015"^{17/} In the absence of aggregation limits, it seems all too easy for existing service providers to acquire spectrum rights simply to keep them from the hands of aggressive new entrants and competitors.

Moreover, recent amendments to Section 309(j) make clear that nothing therein "affects any authority the Commission has to adopt and enforce rules of general applicability, including rules concerning spectrum aggregation that promote competition." 47 U.S.C. § 309(j)(17)(B). Given the current levels of concentration in the CMRS market and the possibility that some entities are acquiring spectrum for some reason other than intensive use in serving the public, it would be in the public

^{16/} T-Mobile, USA, Inc., Petition to Deny, WT Docket No. 12-4, at 14 (filed Feb. 21, 2012).

^{17/} Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC, Description of Transaction and Public Interest Statement, WT Docket No. 12-4, at 13 (filed Dec. 16, 2011).

interest for the Commission to promote competition by establishing generally applicable spectrum aggregation limits — beyond applying the current spectrum screen for mobile telephony/broadband services — to all mobile telephony/broadband services.

If properly managed, such spectrum aggregation limits can open the door to new entrants intent on offering competitive services to consumers. As the Commission is aware, aggressive competitors such as T-Mobile, Cricket and MetroPCS were formed or expanded with the aid of the designated entity program. If existing carriers can accumulate new spectrum rights without limitation, the Commission will likely not see the rise of these type of competitors in the future.

IV. CONCLUSION

If the Commission will authorize independent terrestrial use of the AWS-4 spectrum and award licenses for such use by way of competitive bidding, the Commission must address its past mistakes and work to improve the ability of designated entities to become AWS-4 licensees through such bidding. For these reasons, Council Tree urges the Commission to offer materially-increased bidding credits to designated entities bidding for AWS-4 licenses and to establish generally applicable spectrum aggregation limits — beyond applying the current spectrum screen for mobile telephony/broadband services — to all mobile telephony/broadband services.

Respectfully submitted,

/s/ Steve C. Hillard
Steve C. Hillard
George T. Laub
Jonathan B. Glass
Council Tree Investors, Inc.
Thornton, CO

May 17, 2012