

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

In the Matter of)
)
Service Rules for Advanced Wireless Services)
In the 1.7 GHz and 2.1 GHz Bands) WT Docket No. 02-353
)
)
)
)

ORDER ON RECONSIDERATION

Adopted: August 5, 2005

Released: August 15, 2005

By the Commission: Chairman Martin and Commissioners Copps and Adelstein issuing separate statements.

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I. INTRODUCTION

1. This order resolves five petitions for reconsideration of the *Report and Order* adopting service rules for Advanced Wireless Services (AWS) in the 1710-1755 and 2110-2155 MHz bands.¹ In

¹ Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, 18 FCC Rcd 25162 (2003) (*AWS-1 Service Rules Order*). We discuss the petitions for reconsideration of the *AWS-1 Service Rules Order* filed by Rural Communications Association (RCA), T-Mobile USA, Inc. (T-Mobile), Council Tree Communications, Inc. (Council Tree), and Powerwave Technologies, Inc. (Powerwave) in section III below. With respect to the fifth petition, American Petroleum Institute and United Telecom Council (continued....)

this Order, we modify the band plan and make minor revisions to the service rules to provide additional opportunities for smaller and rural wireless carriers and to enhance flexibility for potential licensees. In all other respects, we deny or dismiss the petitions for reconsideration.²

II. BACKGROUND

2. Growth in demand for mobile wireless services, coupled with the rise of the Internet and greater broadband availability, have increased the need for additional spectrum and advanced technologies capable of providing Advanced Wireless Services, including wireless Internet access and other high-speed information and entertainment services. Enhancements to current wireless network technologies, as well as the development of new technologies, are continuing to improve and expand the deployment of wireless broadband.³ These new technologies are more advanced than analog cellular (first generation, or 1G) and digital cellular (second generation or 2G), and are often labeled 2.5G, 3G, 4G, and so on.⁴ In the past two years, mobile telephone carriers have begun to deploy significantly faster broadband technologies on their mobile cellular networks, and many have announced plans to launch or expand these technologies further in the future.

(Continued from previous page) _____
(API/UTC) filed a joint petition in ET Dockets 95-18 and 00-258, as well as WT Docket 02-353, seeking clarification and reconsideration of the Fixed Microwave Service (FMS) relocation procedures adopted for the 2110-2150 MHz band. The Commission addressed API/UTC's petition in the *MSS Fifth Memorandum Opinion and Order*, granting the petition in part and denying the petition otherwise. See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service, Petition for Rule Making of UTStarcom, Inc., Concerning the Unlicensed Personal Communications Service, Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service, ET Docket No. 00-258, RM-9498, RM-10024, ET Docket No. 95-18, *Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order*, 19 FCC Rcd 20720, 20763-20764, ¶¶ 101-105 (2004) (*MSS Fifth MO&O*). Because the Commission addressed the petition in a prior proceeding, we deny the petition relative to the above-captioned proceeding.

² Wireless Communications Association International (WCAI) filed a petition for reconsideration seeking reconsideration of the criteria for AWS licensees to protect incumbent Broadband Radio Service (BRS) operations in the 2150-2160 MHz band. The petition raises issues relating to BRS Channels 1 and 2 that are the subject of ongoing proceedings at the Commission, and will be addressed in subsequent order(s).

³ See Report, Wireless Broadband Access Task Force, GN Docket No. 04-163 (Feb. 2005).

⁴ The term "2.5G" is often used to describe the interim technologies that carriers have used to migrate from their 2G technologies of CDMA, TDMA, GSM, and iDEN to 3G technologies. See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Sixth Report*, 16 FCC Rcd 13350 (2001). The International Telecommunication Union (ITU) has defined 3G network technologies as those that can offer maximum data transfer speeds of 2 megabits per second (Mbps) from a fixed location, 384 kbps at pedestrian speeds, and 144 kbps at traveling speeds of 100 kilometers per hour. See Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Ninth Report*, 19 FCC Rcd 20597 (2004) (*Ninth CMRS Competition Report*) at 20650 n. 314.

3. In order to facilitate the rapid deployment of broadband technologies, the Commission has allocated spectrum to meet the demand for advanced wireless services. In November 2002, as part of the AWS Allocation Second Report and Order, the Commission identified and allocated the two 45-megahertz blocks of spectrum at 1710-1755 MHz and 2110-2155 MHz to the fixed and mobile services for AWS (AWS-1).⁵ In the AWS-1 Service Rules Order adopted in November 2003, the Commission set forth a band plan and licensing procedures for the AWS-1 bands using regional and localized licensing areas.⁶ The Order also established rules governing competitive bidding for the licenses,⁷ as well as operational and technical rules.⁸

III. ISSUES ON RECONSIDERATION

4. In this section, we address petitions for reconsideration of the AWS-1 Service Rules Order filed by Rural Communications Association (RCA), T-Mobile USA, Inc. (T-Mobile), Council Tree Communications, Inc. (Council Tree), and Powerwave Technologies, Inc. (Powerwave). Generally, RCA and T-Mobile seek reconsideration of the AWS-1 band plan to increase the amount of spectrum and number of spectrum blocks within the band that are licensed using smaller geographic areas.⁹ Council Tree seeks to have a portion of the 1710-1755 MHz and 2110-2155 MHz bands set aside exclusively for designated entities or, in the alternative, seeks the addition of a third tier of small business bidding credits to the two-tiered bidding credit adopted in the AWS-1 Service Rules Order.¹⁰ Finally, Powerwave seeks harmonization of the transmitter output power of AWS stations and PCS stations.¹¹

A. Band Plan

5. *Background.* In the AWS-1 Service Rules Order, the Commission adopted a band plan for the 1710-1755 and 2110-2155 MHz bands using a range of geographic licensing areas.¹² In order to foster service to rural areas and tribal lands, and to promote investment in and rapid deployment of new

⁵ See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Second Report and Order*, 17 FCC Rcd 23193 (2002) (*AWS Allocation Second Report and Order*). In addition to the spectrum located in the 1710-1755 and 2110-2155 MHz bands, the Commission has proposed services rules for spectrum in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz bands (AWS-2) and has identified an additional 20 MHz of spectrum (at 2155-2175 MHz) suitable for AWS uses adjacent to the upper 45 megahertz of AWS-1. See generally ET Docket No. 00-258 and ET Docket No. 95-18.

⁶ See generally *AWS-1 Service Rules Order*, 18 FCC Rcd 25162.

⁷ *Id.* at 25215-25220 ¶¶ 138-149.

⁸ *Id.* at 25186-25214 ¶¶ 58-135.

⁹ RCA Petition for Reconsideration (filed Mar. 8, 2004) (RCA Petition) at 8-9; T-Mobile Petition for Reconsideration (filed Mar. 8, 2004) (T-Mobile Petition) at 10-11.

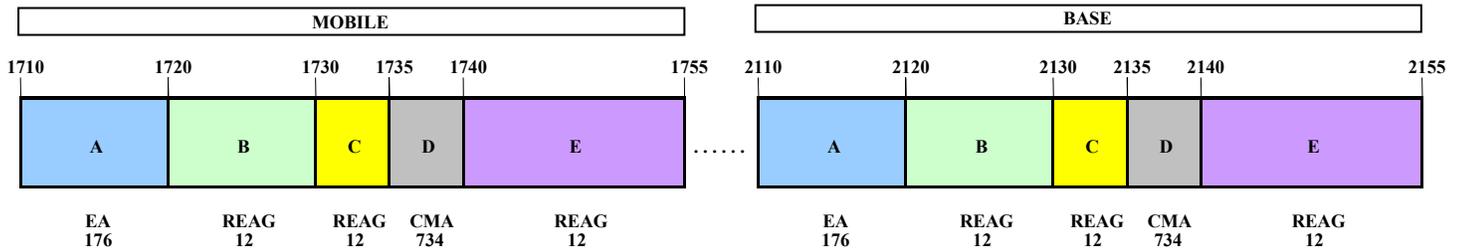
¹⁰ Council Tree Petition for Reconsideration (filed Mar. 8, 2004) (Council Tree Petition) at 4.

¹¹ Powerwave Petition for Reconsideration (filed Mar. 8, 2004) (Powerwave Petition) at 1.

¹² *AWS-1 Service Rules Order*, 18 FCC Rcd at 25173-25179 ¶¶ 27-46.

technologies and services, the Commission included a combination of large regional licensing areas, smaller regional licensing areas, and local licensing areas.¹³ By including a variety of geographic licensing area sizes in the band plan for this spectrum, the Commission sought to promote the policy goal of disseminating licenses among a wide variety of applicants.¹⁴ Further, the Commission stated that there is enough spectrum available in these two bands to accommodate the competing need for both large and small geographic licensing areas and that including these different licensing area sizes in the band plan for this spectrum would provide carriers with the flexibility to tailor their licensing areas to meet their individual business needs and goals.¹⁵ The band plan as adopted in the AWS-1 Service Rules Order is as follows:

<u>Blocks</u>	<u>Pairings</u>	<u>Amount</u>	<u>Area</u>	<u>Licenses</u>
A	1710-1720 and 2110-2120	2x10	EA	176
B	1720-1730 and 2120-2130	2x10	REAG ¹⁶	12
C	1730-1735 and 2130-2135	2x5	REAG	12
D	1735-1740 and 2135-2140	2x5	RSA/MSA ¹⁷	734
E	1740-1755 and 2140-2155	2x15	REAG	12



6. Rural Cellular Association (RCA) filed a petition for reconsideration of the *AWS-1 Service Rules Order*, stating that a single 10 MHz spectrum block, licensed on a Rural Service Area/Metropolitan Statistical Area (RSA/MSA) basis, is insufficient to meet rural needs.¹⁸ RCA restated its concern from the *AWS-1 Service Rules* proceeding that small rural carriers have insufficient bargaining power when

¹³ *Id.* at 25175, ¶ 35.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Of the 12 Regional Economic Area Groupings (REAG), the first six cover the continental United States and the other six cover smaller areas (*i.e.*, Alaska, Hawaii, the islands, and the Gulf of Mexico). 47 C.F.R. § 27.6(a)(1). EAs and REAGs are related to each other and EAs can be aggregated to form REAGs. *See* 47 C.F.R. § 27.6.

¹⁷ MSAs and RSAs are collectively referred to as Cellular Market Areas (CMAs). MSAs and RSAs were originally used to license cellular service. 47 C.F.R. § 22.909. The Commission refined and used these areas for licensing the lower 700 MHz band. 47 C.F.R. § 27.6(c)(2). For purposes of the 1710-1755 and 2110-2155 MHz bands, we stated that we will use the same MSAs and RSAs used for licensing the lower 700 MHz band. MSAs and RSAs cannot be combined to form EAs because several MSAs/RSAs cross EA borders.

¹⁸ RCA Petition at 8-9.

negotiating partitioning and disaggregation agreements, and proposed that the Commission reapportion the spectrum to be sure that at least two 20 megahertz licenses are available on a RSA/MSA basis.¹⁹ RCA later revised its position, seeking to make one 20 megahertz block available to be auctioned on a RSA/MSA basis.²⁰ RCA also requests that the Commission retain a 20 megahertz license with Economic Area (EA) boundaries.²¹ CTIA initially opposed RCA's request to convert multiple spectrum blocks to an RSA/MSA configuration,²² but later agreed that RCA's revised position would be an appropriate means of encouraging effective small and rural carrier participation in the AWS auction.²³ Thus, the final RCA proposal, supported by CTIA, is as follows:

<u>Blocks</u>	<u>Pairings</u>	<u>Amount</u>	<u>Area</u>	<u>Licenses</u>
A	1710-1720 and 2110-2120	2x10	EA	176
B	1720-1730 and 2120-2130	2x10	REAG	12
C	1730-1735 and 2130-2135	2x5	REAG	12
D	1735-1745 and 2135-2145	2x10	REAG	12
E	1745-1755 and 2145-2155	2x10	RSA/MSA	734 ²⁴

7. T-Mobile also filed a petition for reconsideration seeking to split the 30 megahertz E-block into a 20 megahertz block and a 10 megahertz block. T-Mobile argued that it would be better to offer spectrum in smaller blocks that could be aggregated in auction, rather than force applicants to bid on more spectrum than they need (at greater cost) and subsequently contend with excess spectrum through secondary markets mechanisms.²⁵ Later, T-Mobile revised its position in a joint filing with Rural Telecommunications Group (RTG), in which the parties argue in favor of splitting the E-block and creating a sixth licensing block. T-Mobile and RTG seek to increase the amount of spectrum licensed on an RSA/MSA basis and on an EA basis, to be accomplished by shifting the spectrum from the REAG

¹⁹ RCA Petition at iii.

²⁰ Letter from David Nace, RCA, to Marlene H. Dortch, FCC, WT Docket No. 02-353, (Feb. 17, 2005) (RCA Feb. 17 Letter).

²¹ Letter from David Nace, RCA, to Marlene H. Dortch, FCC, WT Docket No. 02-353, (Aug. 6, 2004) and Erratum (filed Aug. 9, 2004) (RCA Aug. Letter and Erratum).

²² See CTIA Opposition to Petition for Reconsideration (filed Apr. 27, 2004) (CTIA Opposition).

²³ Letter from Diane Cornell, CTIA, to Marlene H. Dortch, FCC, WT Docket No. 02-353, (August 2, 2004) (CTIA Aug. 2 Letter).

²⁴ RCA submitted a request subsequent to its proposed band plan seeking 20 megahertz licensed on an RSA/MSA basis in a part of the band not "encumbered" by BRS Channels 1 & 2. See RCA Feb. 17 Letter. CTIA has stated its preference that RSA/MSA licenses be situated on an edge of the band to facilitate aggregation of REAG and EA licensing blocks. CTIA Aug. 2 Letter.

²⁵ T-Mobile Petition at 10-11.

blocks.²⁶ T-Mobile states that its band plan proposal was developed to also incorporate the concerns of RCA regarding MDS Channels 1 and 2.²⁷ The T-Mobile/RTG proposed band plan is as follows:

<u>Blocks</u>	<u>Pairings</u>	<u>Amount</u>	<u>Area</u>	<u>Licenses</u>
A	1710-1720 and 2110-2120	2x10	EA	176
B	1720-1730 and 2120-2130	2x10	REAG	12
C	1730-1735 and 2130-2135	2x5	REAG	12
D	1735-1745 and 2135-2145	2x10	RSA/MSA	734
E	1745-1750 and 2145-2150	2x5	EA	176
F	1750-1755 and 2150-2155	2x5	REAG	12

8. A number of commenters expressed support for the T-Mobile/RTG plan. Ericsson, Inc. (Ericsson) submitted a letter in support of the T-Mobile/RTG joint plan, stating that changing market conditions subsequent to the company's initial filing in the *AWS-1 Service Rules* docket have caused it to change its band plan recommendation. Specifically, Ericsson revised its recommendation from a band plan with three 15 megahertz paired blocks to a plan with smaller spectrum block sizes combined with the ability to aggregate and disaggregate spectrum blocks and service areas.²⁸ United States Cellular Corp. (US Cellular) also offers its support to the T-Mobile and RTG proposal, asserting that increased use of RSA/MSA and EA licensing areas offers realistic opportunities for local, largely rural carriers to afford adequate spectrum for voice and advanced data services in markets of manageable size suited to their existing operations.²⁹ In addition, PCIA supports the T-Mobile/RTG proposal, noting that by allowing up to six market entrants, the FCC can promote competition in the wireless marketplace.³⁰ Cingular states that it could support the conversion of the D block into a 20 MHz license by taking 10 megahertz of spectrum from the E block and retaining the RSA/MSA designation as proposed by T-Mobile and RTG, but does not support creating additional 10 megahertz blocks in the manner proposed by T-Mobile and RTG.³¹ MetroPCS Communications, Inc. (MetroPCS), in a late *ex parte* filing, also offered a band plan

²⁶ Letter from Tom Sugrue, T-Mobile, to Marlene H. Dortch, FCC, WT Docket No. 02-353 (March 11, 2005) (Joint T-Mobile-RTG Letter); T-Mobile *Ex Parte* Presentation, WT Dockets No. 02-353 and 04-356 (Apr. 4, 2005) (T-Mobile Apr. 4 *Ex Parte*).

²⁷ T-Mobile Apr. 4 *Ex Parte*; see also footnote 24, *supra* (discussing RCA's request).

²⁸ Letter from Mark Racek, Ericsson, to Marlene H. Dortch, FCC, WT Docket No. 02-353 (Mar. 30, 2005) (Ericsson Mar. 30 Letter).

²⁹ Letter from George Wheeler, US Cellular, to Marlene H. Dortch, FCC, WT Docket No. 02-353 (Apr. 29, 2005) (US Cellular Apr. 29 Letter) at 4. In a subsequent *ex parte* presentation, US Cellular also emphasized the importance of providing opportunities for carriers to aggregate adjacent EA and MSA/RSA spectrum blocks or multiple adjacent EA spectrum blocks. Letter from George Wheeler, US Cellular, to Marlene H. Dortch, FCC, WT Docket No. 02-353 (June 17, 2005) (US Cellular June 17 Letter) at 1-2.

³⁰ Letter from Michael T.N. Fitch, PCIA, to Marlene H. Dortch, FCC, WT Docket No. 02-353 (June 8, 2005) at 2.

³¹ Letter from David Wye, Cingular, to Marlene H. Dortch, FCC, WT Docket No. 02-353 (May 11, 2005) (Cingular May 11 Letter); Letter from David Wye, Cingular, to Marlene H. Dortch, FCC, WT Docket No. 02-353 (May 19, 2005) (Cingular May 19 Letter) (discussing 3G band plans in certain European countries).

emphasizing the use of EAs and smaller licensing blocks, as opposed to large REAG blocks, but also supporting use of Major Economic Areas (MEAs)³² while encouraging the Commission to move away from the use of RSA/MSA-based allocations.³³

9. Verizon Wireless also submitted a proposed band plan that it states incorporates a variety of geographic and frequency blocks to allow for efficient aggregation of spectrum.³⁴ Verizon Wireless' plan increases the number of blocks to six, shifts the location of the RSA/MSA license, and does not include a 30 megahertz license. While addressing several parties' concerns and proposing an increase in spectrum licensed on an RSA/MSA basis, Verizon Wireless also proposes that the RSA/MSA license be moved from the middle to the edge of the band plan to enable efficient aggregation of the REAG and EA "building block" spectrum licensing areas.³⁵ The Verizon Wireless proposed band plan is as follows:

<u>Blocks</u>	<u>Pairings</u>	<u>Amount</u>	<u>Area</u>	<u>Licenses</u>
A	1710-1720 and 2110-2120	2x10	RSA/MSA	734
B	1720-1725 and 2120-2125	2x5	EA	176
C	1725-1735 and 2125-2135	2x10	REAG	12
D	1735-1740 and 2135-2140	2x5	REAG	12
E	1740-1750 and 2140-2150	2x10	REAG	12
F	1750-1755 and 2150-2155	2x5	EA	176

10. *Discussion.* In the *AWS-1 Service Rules Order*, the Commission concluded that, by offering three geographic license sizes, the band plan would meet the various needs expressed by potential entrants, as well as the needs of incumbents seeking additional spectrum.³⁶ While we continue to believe that a variety of license area sizes offers the best means of providing spectrum to a wide variety of applicants, the record on reconsideration supports some modifications to the AWS-1 licensing areas. Specifically, we find that more spectrum should be licensed on an RSA/MSA basis to meet the needs of rural carriers, that a 30 megahertz REAG block is too large for most bidders and should be broken into smaller components that could be aggregated, and that offering an additional block licensed on an EA basis would help enhance the mixture of large and small geographic area licenses available to applicants. These determinations are discussed in further detail below.

³² There are 52 MEAs in the U.S., as compared with 176 EAs, and 12 REAGs. The borders of these licensing areas are harmonized, such that EAs "nest" within MEAs, and MEAs within REAGs.

³³ Letter from Carl Northrup, MetroPCS, to Marlene H. Dortch, FCC, June 29, 2005. Supporters of this plan include CSM Wireless, LLC (July 1, 2005 *ex parte*), Royal Street Communications, LLC (July 7, 2005 *ex parte*), Leap Wireless International, Inc. (July 25, 2005 *ex parte*), Centennial Communications Corp. (July 26, 2005 *ex parte*), and Coral Wireless, LLC (July 27, 2005 *ex parte*).

³⁴ Letter from Charla Rath, Verizon Wireless, to Marlene H. Dortch, FCC, WT Docket No 02-353 (May 27, 2005) (Verizon Wireless May 27 Letter).

³⁵ *Id.* at 2.

³⁶ *AWS-1 Service Rules Order*, 18 FCC Rcd at 25176 ¶ 36.

11. First we address the needs of rural carriers. As we stated in the *AWS-1 Service Rules Order*, the adopted band plan meets the needs of entities interested in localized service areas by including licensing areas based on RSAs and MSAs.³⁷ The Commission stated that, these types of smaller geographic service areas provide entry opportunities for smaller carriers, new entrants, and rural telephone companies. However, RCA asserts that small and rural markets are largely underserved by larger wireless carriers, and argues that more spectrum must therefore be made available in RSAs and MSAs in order to adequately serve small markets and rural areas and to achieve a diversity of licensees.³⁸ RCA re-emphasizes concerns it raised earlier in this proceeding that it expects small rural carriers to have insufficient bargaining power when negotiating partitioning and disaggregation agreements to acquire more than 10 megahertz of AWS spectrum.³⁹ CTIA agrees with RCA that making one 20 megahertz block available on a RSA/MSA basis will increase the practical ability of smaller carriers to participate in the offering of CMRS service in the AWS-1 bands, while at the same time appropriately balancing allocation of AWS spectrum between regional and small market areas.⁴⁰ CTIA states that such a block would be most efficient if situated on one end or the other of the allocation, rather than in the middle of the spectrum blocks, to maximize efficiency for those bidders who might be interested in aggregating spectrum blocks.⁴¹

12. In the *AWS-1 Service Rules Order*, the record reflected that a bandwidth of at least five megahertz is required to accommodate the fullest range of advanced wireless services, including all of the 3G radio interfaces.⁴² Five megahertz blocks can be used for new technologies and can be used for some data services, including broadband Internet access.⁴³ For example, paired five megahertz blocks enable a single wideband CDMA channel. The Commission also found that five megahertz blocks would provide entry opportunities for small and rural service providers.⁴⁴ RCA, in its petition for reconsideration, argues that the Commission's band plan relegates small carriers to a position of competing for a single license in each area that is capable of providing a single wideband CDMA channel, while precluding them from offering Internet access at faster speeds, higher data rates, additional capacity, and greater flexibility, which will instead, RCA argues, become the exclusive province of large carriers that can compete for large geographic license areas.⁴⁵

³⁷ *Id.* at 25177 ¶ 39.

³⁸ RCA Petition at 5-6, 7.

³⁹ RCA Petition at 8.

⁴⁰ *See* CTIA Aug. 2 Letter.

⁴¹ *Id.*

⁴² 18 FCC Rcd at 25178 ¶ 44 (noting that worldwide spectrum for advanced wireless services have not been licensed using anything less than five megahertz blocks.)

⁴³ *See* Letter From Michelle Farquhar, SunCom Wireless Operating Company, to Marlene H. Dortch, FCC, WT Docket No. 02-353 (May 20, 2005) (SunCom May 20 Letter) at 3.

⁴⁴ *AWS-1 Service Rules Order*, 18 FCC Rcd at 25178 ¶ 44.

⁴⁵ RCA Petition at 10.

13. RCA states that only spectrum blocks larger than 10 megahertz will provide sufficient bandwidth for the desired additional capacity and flexibility necessary for AWS.⁴⁶ According to RCA, its members -- for the most part -- hold 800 MHz cellular licenses for RSAs, consisting of 25 megahertz. That spectrum, states RCA, is utilized effectively to provide voice services, but it is not sufficient or useful in combination with AWS spectrum in the 1.7 GHz and 2.1 GHz bands (using mass produced and competitively priced equipment) for deploying anticipated forms of advanced wireless services.⁴⁷ RCA members would like to offer the same quality wireless service as larger carriers, but they assert that they will be unable to do so with only 10 megahertz of AWS spectrum. A carrier with 20 or 30 megahertz of spectrum in the 1.7 GHz and 2.1 GHz bands would be able to provide superior service, according to RCA.⁴⁸

14. We find that including additional spectrum licensed on an RSA/MSA basis will be beneficial to carriers of various sizes, including carriers holding 800 MHz cellular spectrum licensed on an RSA/MSA basis. We believe that the inclusion of 20 megahertz licensed on an RSA/MSA basis in our band plan will foster service to rural areas and tribal lands and thereby bring the benefits of advanced services to these areas. As stated by CTIA, allocating one 20 megahertz block on an RSA/MSA basis will effectively encourage small and rural carrier participation in the AWS auction.⁴⁹ As the Commission has acknowledged, and RCA reiterates, RSAs and MSAs allow entities to mix and match rural and urban areas according to their business plans and that, by being smaller, these types of geographic service areas provide entry opportunities for smaller carriers, new entrants, and rural telephone companies.⁵⁰ Additionally, with respect to larger carriers, the Commission has said that aggregation at auction of smaller spectrum licenses and blocks may provide bidders with greater flexibility to implement their business plans as compared with a more traditional approach of defining an optimal size.⁵¹

15. The record also supports reducing the size of the 30 megahertz REAG block and, instead, creating smaller components that could be aggregated. In the *AWS-1 Service Rules Order*, the Commission stated that the larger 20 and 30 megahertz blocks should enable a broader range of broadband services, including Internet access at faster speeds. These larger blocks should also

⁴⁶ RCA Reply to Oppositions (filed May 10, 2004) at 2. *See also* Cingular May 11 Letter (discussing Cingular's view that paired 2 x 10 megahertz licenses are the minimum needed to effectively support today's technologies while avoiding interference from adjacent bands).

⁴⁷ RCA Reply to Oppositions at 5.

⁴⁸ RCA Reply to Oppositions at 6.

⁴⁹ *See* CTIA *Ex Parte* Presentation, (Feb. 8, 2005) (CTIA Feb. 8 *Ex Parte*) at 4.

⁵⁰ RCA Petition at 5 (citing *AWS-1 Service Rules Order*, 18 FCC Rcd at 21577 ¶ 39). We also note that the FCC Federal Advisory Committee on Diversity for Communications in the Digital Age adopted a recommendation that as a means to promote participation by minorities in emerging technology sectors of the communications industry, the Commission identify spectrum auctions whereby the licenses assigned cover small geographic areas such as MSAs and RSAs. New Technologies Subcommittee Recommendations to the Federal Communications Commission's Advisory Committee on Diversity for Communications in the Digital Age, *Recommendations on Spectrum and Access to Capital* (released June 14, 2004).

⁵¹ T-Mobile Petition at 5 (citing Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licenses, *Sixth Report and Order on Reconsideration*, 15 FCC Rcd 16266 (2000)).

accommodate future, higher data rates and provide operators with additional capacity, and, importantly, with greater flexibility. The Commission also stated that larger blocks should also be of interest to those service providers contemplating a large regional or nationwide service.⁵² T-Mobile and RTG argue, however, that industry consolidation and increases in the spectrum holdings of the largest wireless carriers have increased the importance to other national, regional and rural carriers of gaining the ability to access affordable, appropriately-sized blocks of spectrum. Without this access, assert T-Mobile and RTG, smaller carriers cannot augment their existing voice and data services or deploy innovative product offerings as demanded by their customers.⁵³ Verizon Wireless states that while it initially supported the adoption of a 30 megahertz license, it believes that the Commission can still achieve the objective of permitting carriers to acquire enough contiguous spectrum to provide the capacity for more advanced service by increasing the number of blocks to six, but also organizing the blocks to permit multiple ways of aggregating 30 megahertz of spectrum.⁵⁴ Ericsson and other commenters, also citing to market developments, requests that the Commission adopt smaller spectrum block sizes that licensees can adjust based on existing spectrum holdings to meet their individual business plans.⁵⁵ We agree that, as stated by Ericsson, smaller spectrum block sizes, combined with the ability to aggregate and disaggregate spectrum blocks and service areas, will allow carriers to devise spectrum configurations most appropriate for different markets.⁵⁶ Therefore, we decide to reduce the size of the 30 megahertz REAG block.

16. T-Mobile asserts that licensing AWS spectrum blocks in excess of some carriers' needs would result in unnecessary transaction costs and potential delay in the availability of spectrum to those who value it most.⁵⁷ T-Mobile asserts that the Commission intended to offer bandwidth in amounts that would provide various efficient uses of the spectrum without requiring carriers to adjust their licenses after the fact through multiple secondary market transactions such as partitioning and disaggregation, which tend to be more costly and time consuming than aggregation of licenses during an auction.⁵⁸ As further justification for breaking large blocks into smaller paired blocks, T-Mobile cites to Commission proceedings involving re-packaging of PCS C block, and licensing spectrum in the 700 MHz band.⁵⁹

17. We agree that, in order to facilitate access for smaller carriers, the two 15-megahertz blocks comprising block E should be broken down into smaller blocks. The record supports this approach as a way to enable a wide variety of carriers -- including not only incumbent PCS and cellular providers but

⁵² *AWS-1 Service Rules Order*, 18 FCC Rcd at 25178 ¶ 44.

⁵³ Joint T-Mobile-RTG Letter.

⁵⁴ Verizon Wireless May 27 Letter at 2.

⁵⁵ See Ericsson March 30 Letter. See also SunCom May 20 Letter at 2.

⁵⁶ See Ericsson March 30 Letter at 2.

⁵⁷ T-Mobile Petition at 2-3.

⁵⁸ *Id.* at 4 (citing *AWS-1 Service Rules Order*, 18 FCC Rcd at 25178).

⁵⁹ *Id.* at 5-6 (citing Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services Licenses, Sixth Report and Order on Reconsideration, 15 FCC Rcd 16266 (2000) (*Sixth Report and Order*); *Service Rules for 746-764 MHz and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, First Report and Order, 15 FCC Rcd 476 (2000) (*700 MHz First Report and Order*)).

also new entrants and smaller, rural wireless providers -- to acquire smaller spectrum blocks to deploy advanced services effectively, increase their footprint, and improve service quality.⁶⁰ As T-Mobile stated, any bidders wanting blocks larger than 20 megahertz to suit individual business plans would be able to aggregate two or more smaller blocks at auction or in the secondary market.⁶¹ For these reasons, we conclude that decreasing the size of the paired E blocks from 15 to 10 megahertz will help meet these objectives.

18. We also find that the record on reconsideration supports modifying the AWS-1 band plan to offer an additional block licensed on an EA basis to enhance the mixture of large and small geographic area licenses available to applicants for this spectrum. As T-Mobile, RTG, and Ericsson have suggested, increasing the amount of spectrum licensed on an EA basis will offer applicants the option of combining spectrum blocks and service areas to suit their business plans.⁶² Further, by placing spectrum blocks with the same type of geographic area licenses adjacent to one another, we enable licensees to employ a variety of aggregation possibilities.⁶³

19. In the *AWS-1 Service Rules Order*, the Commission stated that by placing the larger 20 and 30 megahertz blocks at either end of the two bands, licensees in these segments will have sufficient bandwidth and maximum flexibility to resolve adjacent band interference concerns.⁶⁴ That rationale stands. Licensees of the larger blocks should be better able to internalize interference management measures than would licensees of smaller blocks. In addition, there is support in the record for situating the 20 MHz block licensed on an RSA/MSA basis on one end of the allocation to maximize efficiency for

⁶⁰ See Ericsson March 30 Letter; T-Mobile Petition at 5; Joint T-Mobile-RTG Letter at 3-4; US Cellular *Ex Parte* Presentation (Apr. 29, 2005) (US Cellular *Ex Parte*) at 4; Letter from John Shelnut, Alcatel, to Marlene H. Dortch, FCC, WT Docket No. 02-353 (May 23, 2005); Letter from Jill Canfield, National Telecommunications Cooperative Association, to Marlene H. Dortch, FCC, WT Docket No. 02-353 (May 25, 2005); Letter from Stuart Polikoff, OPASTCO, to Marlene H. Dortch, FCC, WT Docket No. 02-353 (June 2, 2005); Letter from Raymond Strassburger, Nortel, to Marlene H. Dortch, FCC, WT Docket No. 02-353 (June 24, 2005).

⁶¹ See T-Mobile Petition at 3.

⁶² Joint T-Mobile-RTG Letter at 2; T-Mobile April 4 *Ex Parte* at 6-8; Ericsson March 30 Letter. Specifically, the addition of an EA licensing area, which is a subset of REAG, as well as the alignment of EAs and REAGs in adjacent blocks, facilitates the ability of licensees to aggregate spectrum where needed to suit individual business plans. See also Cingular May 11 and Letter from Charla M. Rath, Verizon Wireless, to Marlene H. Dortch, FCC, WT Docket no. 02-353 (June 14, 2005) (Verizon Wireless June 14 letter) (supporting contiguous EA and REAG spectrum to facilitate aggregation).

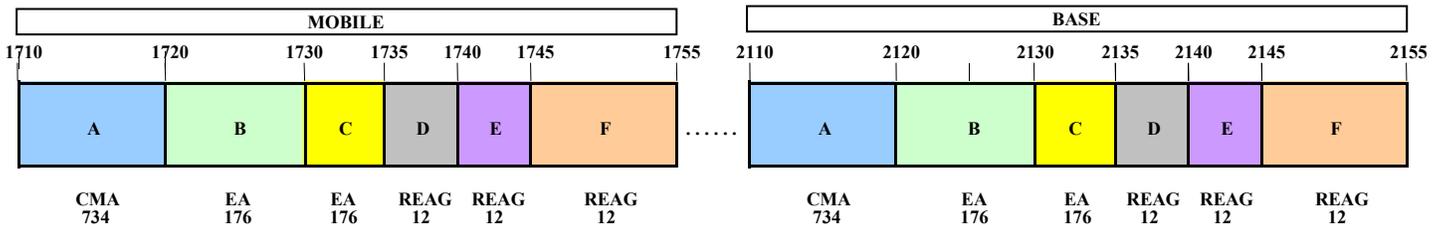
⁶³ The commenting parties also note that EAs cannot only be aggregated together to form larger blocks, EAs also present the opportunity to aggregate with either larger (REAGs) or smaller spectrum blocks (RSA/MSAs). Letter from Michele C. Farquhar, SunCom to Marlene H. Dortch, FCC, WT Docket no. 02-353 (June 17, 2005) at 2; US Cellular June 17 letter at 1-2; Verizon Wireless June 14 letter at 1. Although Cingular stated that it does not support the paired 5 megahertz E and F blocks as proposed by T-Mobile and RTG due to the inability to aggregate these blocks with adjacent spectrum and due to spectrum efficiency and interference concerns, our modified band plan allows carriers to accommodate increased bandwidth requirements of advanced technologies through aggregation at auction or through secondary markets mechanisms. See Cingular May 11 Letter.

⁶⁴ *AWS-1 Service Rules Order*, 18 FCC Rcd at 25178 ¶ 43.

bidders interested in aggregating spectrum blocks.⁶⁵ For these reasons, we will take the same approach the Commission took in the *AWS-1 Service Rules Order* and we will license 20 megahertz blocks at the band edges.

20. For the reasons discussed above, we modify the AWS-1 band plan. We will license 20 megahertz at 1710-1720, paired with 2110-2120 on an RSA/MSA basis. Further, consistent with requests on the record, we will license 30 megahertz in this band on an EA basis: 20 megahertz at 1720-1730 paired with 2120-2130, and 10 megahertz at 1730-1735 paired with 2130-2135. We will license 40 megahertz on an REAG basis and we will make these blocks contiguous in a manner that is convenient for aggregation. We have broken up the 2x15 MHz REAG block into a 2x5 MHz E block located at 1740-1745 and 2140-2145 MHz and a new 20 megahertz F block located at 1745-1755 MHz paired with 2145-2155 MHz. Our revised band plan is as follows:

<u>Blocks Licenses</u>	<u>Pairings</u>	<u>Amount</u>	<u>Area</u>	
A	1710-1720 and 2110-2120	2x10	RSA/MSA	734
B	1720-1730 and 2120-2130	2x10	EA	176
C	1730-1735 and 2130-2135	2x5	EA	176
D	1735-1740 and 2135-2140	2x5	REAG	12
E	1740-1745 and 2140-2145	2x5	REAG	12
F	1745-1755 and 2145-2155	2x10	REAG	12



21. We believe that this alteration of the band plan reflects a reasonable balance of the predicted spectrum needs reflected the record. The A, B, and C blocks address the need for additional spectrum licensed on a smaller geographic basis. Reducing the size of the former E-block, while aligning the EA and REAG spectrum in a configuration suitable for aggregation also addresses opportunities for obtaining spectrum suitable to a range of business plans.

B. Provisions for Designated Entities

22. *Background.* In the *AWS-1 Service Rules NPRM*, the Commission sought comment on whether it should set aside spectrum for new entrants or other types of applicants in the 1710-1755 MHz and 2110-2155 MHz bands.⁶⁶ In the *AWS-1 Service Rules Order*, the Commission decided not to set aside any AWS spectrum for designated entities or other categories of bidders.⁶⁷ The Commission

⁶⁵ See CTIA Feb. 8 *Ex Parte*.

⁶⁶ *AWS-1 Service Rules NPRM*, 17 FCC Rcd at 24153 ¶ 42.

⁶⁷ *AWS-1 Service Rules Order*, 18 FCC Rcd at 25189 ¶ 68.

reasoned that by adopting smaller geographic licensing areas such as MSAs and RSAs, as well as smaller spectrum block sizes, it would encourage participation by smaller and rural entities, without the necessity of adopting set-asides or eligibility restrictions.⁶⁸ The Commission also noted that “opening the 1710-1755 MHz and 2110-2155 MHz bands to as wide a range of applicants as possible would encourage entrepreneurial efforts to develop new technologies and services, while helping to ensure efficient use of the spectrum.”⁶⁹

23. In the *AWS-1 Service Rules Order*, the Commission adopted a two-tiered bidding credit for small businesses.⁷⁰ The Commission defined 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. It provided small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent. The small business size standards and associated bidding credits for licenses in the 1710-1755 MHz and 2110-2155 MHz bands are the same as those the Commission adopted for broadband PCS.⁷¹ The Commission concluded that the small business size standards and bidding credit levels that matched those offered in auctions of broadband PCS licenses were appropriate because broadband PCS presented service opportunities, capital requirements, and entry issues comparable to those presented by AWS.⁷²

24. Council Tree filed a petition for reconsideration of the *AWS-1 Service Rules Order*, urging the Commission to reconsider its position with respect to set-asides for designated entities or, in the alternative, to offer a third level of bidding credit.⁷³ Specifically, Council Tree urges the Commission to limit eligibility to bid for the MSA/RSA licenses composing the D block under our original band plan.⁷⁴ Council Tree notes that for broadband PCS, the Commission chose to supplement bidding credits and other special provisions with a limitation on the size of the parties that designated entities will bid against.⁷⁵ It further argues that without the insulation of a set-aside block, bidding credits may prove ineffective for AWS.⁷⁶ Alternatively, Council Tree urges the Commission to offer a 35 percent bidding

⁶⁸ *Id.*

⁶⁹ *Id.* (citing *AWS-1 Service Rules NPRM*, 17 FCC Rcd at 24153 ¶ 42).

⁷⁰ *AWS-1 Service Rules Order*, 18 FCC Rcd at 25220 ¶ 149.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Council Tree Petition at 4.

⁷⁴ *Id.* In the *AWS-1 Service Rules Order*, the Commission adopted a geographic area licensing scheme that created an AWS D block comprising 734 RSA/MSA licenses. Under our revised band plan, the spectrum to be licensed on an MSA/RSA basis will be in the A block.

⁷⁵ Council Tree Petition at 8 (citing Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 414-415 ¶ 16 (1994) (broadband PCS entrepreneur block set aside)).

⁷⁶ *Id.* at 8.

credit to those AWS auction applicants whose average gross revenues for the preceding three years do not exceed \$3 million.⁷⁷

25. In support of its request for a set-aside, Council Tree asserts that the Commission's partitioning and disaggregation policies do not necessarily help to achieve the goal of increasing designated entity participation. In addition, it argues that leasing the use of certain spectrum bands from existing wealthy licensees will not afford opportunities to designated entities because of the transaction costs that spectrum leasing introduces.⁷⁸ CTIA opposes Council Tree's Petition, arguing that the licensing plan adopted in the *AWS-1 Service Rules Order* provides a balance between regional and small market areas that will result in the dissemination of licenses to a diverse range of entrants.⁷⁹ CTIA asserts, among other things, that set-asides are unnecessary due to the participation opportunities created by bidding credits, as well as partitioning and disaggregation.⁸⁰ It states that in the PCS bands, a broad use of partitioning and disaggregation has enabled small and rural carriers to obtain portions of larger Major Trading Area (MTA) authorizations from national carriers for localized services.⁸¹ It further states that the Commission's secondary market policies enable entrants to obtain short- or long-term leases of AWS spectrum, aiding those entrants seeking to provide localized services.⁸² In its Reply to CTIA's Opposition, Council Tree states that "though the Commission's secondary markets and partitioning/disaggregation policies create the potential for post-auction transactions with licensees, unlike the Commission, licensees have no obligation to disseminate licenses widely or make opportunities available to new entrants."⁸³ Consequently, it argues that under Section 309(j) of the Communications Act, it is the Commission's duty to insure that a wide variety of applicants obtain licenses, and that small businesses have the opportunity to provide spectrum-based services.

26. On June 13, 2005, over a year after the AWS-1 reconsideration period had closed, Council Tree submitted an *ex parte* filing to supplement its petition for reconsideration.⁸⁴ In its *ex parte*, Council Tree urges the Commission to add a third small business size standard and offer such entities a 35 percent bidding credit, effectively reiterating the alternative proposal contained in its petition for

⁷⁷ *Id.* at 4, 13. 47 C.F.R. § 1.2110(f)(2)(i).

⁷⁸ Council Tree Petition at 9.

⁷⁹ Opposition of Cellular Telecommunications & Internet Association dated April 27, 2004 (CTIA Opposition) at 2.

⁸⁰ CTIA Opposition at 4.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Reply of Council Tree Communications, Inc. to Opposition to Petition for Reconsideration dated May 7, 2004 (Council Tree Reply) at 8.

⁸⁴ Letter from Messrs. Steve C. Hillard, President and George T. Laub, Council Tree Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket Nos. 02-353, 04-356, RM-10956 (June 13, 2005) (Council Tree *ex parte*). Through this *ex parte* filing, Council Tree also seeks to supplement its February 8, 2005 reply comments in WT Docket No. 04-356 as well as its March 8, 2004 petition for rulemaking (RM-10956).

reconsideration.⁸⁵ Council Tree's *ex parte* makes three additional proposals not made in its original petition for reconsideration. It proposes that large incumbent wireless carriers should not be allowed to have any material investment, financial, or operating relationship with a designated entity if they have licenses with material geographic overlap.⁸⁶ Further, Council Tree proposes that individuals with a net worth exceeding \$3 million (excluding the value of their primary residence) should not be permitted to have an actual controlling interest in a designated entity.⁸⁷ Finally, Council Tree proposes that the Commission should provide an additional 10 percent bidding credit (increasing the maximum 35 percent credit to 45 percent) for those designated entities that provide service to underserved segments of the population, namely lower income customers and members of minority groups.⁸⁸

27. A number of entities filed letters advancing the same proposals raised in Council Tree's *ex parte* and asserting that changes to the designated entity program would help promote competition and ensure diversity of ownership in the wireless industry.⁸⁹ T-Mobile opposes Council Tree's *ex parte* filing, asserting, among other things, that altering the current eligibility rules may adversely affect the new statutory requirement that total cash proceeds equal at least 110 percent of estimated costs of relocating eligible federal incumbents.⁹⁰ CTIA also opposes Council Tree's *ex parte* filing, asserting, among other

⁸⁵ Council Tree *ex parte* at 2, 12.

⁸⁶ Council Tree defines large incumbent wireless carriers as those carriers with wireless revenues of \$5 billion or more. Council Tree *ex parte* at 2, 11.

⁸⁷ *Id.* at 2, 6, 10-13.

⁸⁸ *Id.* at 3, 16-17.

⁸⁹ Letter from Marc D. Stemp, President, Bethel Native Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 02-353, WT Docket 04-356, RM-10956 (June 29, 2005); Letter from Maria Brennan, Executive Director, American Women in Radio and Television to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 02-353, WT Docket 04-356, RM-10956 (June 28, 2005); Letter from Brian Rich, President, Catalyst Investors, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 02-353, WT Docket 04-356, RM-10956 (June 28, 2005); Letter from Barney Uhart, President, Chugach Alaska Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 02-353, WT Docket 04-356, RM-10956 (June 27, 2005); Letter from Daniel S. (Toby) Osborn, Chief Financial Officer, Doyon, Limited to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 02-353, WT Docket 04-356, RM-10956 (June 24, 2005); Letter from Steven Roberts, Managing Director, SR Capital Advisors to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 02-353, WT Docket 04-356, RM-10956 (June 24, 2005); Letter from Robert C. Martin, President, PC Management, Inc. to FCC Chairman Kevin Martin and FCC Commissioners Abernathy, Copps and Adelstein, WT Docket No. 02-353, WT Docket 04-356, RM-10956 (June 23, 2005); Letter from Ed Kurzenski, Chief Technical Officer, Coral Wireless, LLC to FCC Chairman Kevin Martin and FCC Commissioners Abernathy, Copps and Adelstein, WT Docket No. 02-353, WT Docket 04-356, RM-10956 (June 20, 2005); Letter from James H. Barker, Counsel for Leap Wireless International, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 02-353, WT Docket 04-356, RM-10956 (June 20, 2005) (supporting all of Council Tree's proposals except for the limitation on high net worth individuals).

⁹⁰ Letter from Robert A. Calaff, Director, Federal Policy, T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 02-353 (June 22, 2005). Section 203 of the Commercial Spectrum Enhancement Act, Pub. L. No. 108-494, 118 Stat. 3986, (2004) imposes such a requirement for auctions of "eligible frequencies," including the 1710-1755 MHz band, which is designated for AWS-1.

things, that Council Tree's proposed changes to designated entity qualifications are beyond the scope of the pending petitions for reconsideration. It further states that Council Tree's proposed constraint on designated entities' affiliation with large wireless carriers is contrary to the Commission's goal of providing legitimate small businesses maximum flexibility in attracting passive financing.⁹¹ It also asserts that additional bidding credits for providing service to underserved segments of the population should not be adopted through auction policy and that even if, as a policy matter, such bidding credits were deemed appropriate for this purpose, the bidding credits should be available to all bidders and not just to designated entities.⁹² Cook Inlet Region, Inc. also opposed Council Tree's *ex parte* filing asserting, among other things, that Council Tree's new suggestions "at the eleventh hour in this proceeding" would result in delay in conducting the auctions and in permitting highly demanded new service to be provided to the public.⁹³

28. *Discussion.* We deny Council Tree's request to set aside spectrum in the 1710-1755 MHz and 2110-2155 MHz bands for designated entities or other categories of bidders. We also deny Council Tree's alternative request, reiterated in its *ex parte*, to establish a third small business size standard and offer a 35 percent bidding credit to those AWS auction applicants whose average gross revenues for the preceding three years do not exceed \$3 million. With respect to Council Tree's *ex parte*, as discussed below, we reject its proposal that individuals with a net worth exceeding \$3 million (excluding the value of their primary residence) should not be permitted to have an actual controlling interest in a designated entity. We also reject Council Tree's proposal that the Commission provide an additional 10 percent bidding credit for those designated entities that provide service to underserved segments of the population, namely lower income customers and members of minority groups. Finally, we reject Council Tree's proposal that large incumbent wireless carriers should not be allowed to have any material investment, financial, or operating relationship with a designated entity if they have licenses with material geographic overlap.⁹⁴ Although we reject this proposal based on the record in this proceeding, we believe it warrants further study by the Commission. The Commission therefore plans to examine this proposal in a separate action.

29. *Set Aside.* In the *AWS-1 Service Rules Order*, the Commission stated that its objectives of ensuring both efficient use of spectrum and diversity of licensees can best be achieved by adopting a variety of license areas and spectrum block sizes, and ensuring the ability of licensees to partition and disaggregate their licenses and fully participate in the secondary spectrum markets.⁹⁵ The Commission

⁹¹ Letter from Diane Cornell, Vice President, Regulatory Policy, Cellular Telecommunications & Internet Association to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 02-353 (June 30, 2005).

⁹² *Id.*

⁹³ Letter from Kurt Wimmer, Counsel for Cook Inlet Region, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 02-353, (July 28, 2005).

⁹⁴ Council Tree defines large incumbent wireless carriers as those carriers with wireless revenues of \$5 billion or more. Council Tree *ex parte* at 2, 11.

⁹⁵ *AWS 1 Service Rules Order*, 18 FCC Rcd at 25189 ¶ 68 (2003).

also noted that the adoption of spectrum leasing policies applicable to AWS spectrum should facilitate the ability of wireless licensees to lease spectrum usage rights to third parties.⁹⁶

30. We do not believe that Council Tree has presented any grounds to warrant reconsideration of the Commission's decision not to establish a spectrum set-aside in the 1710-1755 MHz and 2110-2155 MHz bands.⁹⁷ As Council Tree recognizes, the Commission has generally used bidding credits rather than eligibility restrictions to encourage the participation of designated entities in competitive bidding.⁹⁸ Indeed, in other services, the Commission has refrained from establishing small business set-asides like those adopted in PCS. In rejecting small business set-asides, the Commission generally has cited the "large number of licenses available" and the effectiveness of bidding credits and other special provisions that allow for extensive participation of small businesses without the use of spectrum set-asides.⁹⁹ As CTIA points out, in recent auctions of spectrum in the Multichannel Video Distribution and Data Service (MVDDS)¹⁰⁰ and the Lower 700 MHz band,¹⁰¹ even in the absence of a spectrum set-aside, designated entities won a majority of licenses sold at auction.¹⁰² Moreover, in examining all auctions of non-broadcast licenses where no spectrum was set aside for designated entities, we have determined that

⁹⁶ *Id.*

⁹⁷ Council Tree proposes that we set aside the AWS D block spectrum for a substantially narrower class of bidders than is eligible to bid on spectrum offered to entrepreneurs in broadband PCS through closed bidding. It proposes that we adopt a set aside that would be limited to those that qualify as "small businesses" (entities with average annual gross revenues for the preceding three years not exceeding \$40 million) and "very small businesses" (entities with average annual gross revenues for the preceding three years not exceeding \$15 million). In contrast, to be eligible to bid on broadband PCS C and F block licenses available in closed bidding, applicants must have gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million. 47 C.F.R. § 24.709.

⁹⁸ Council Tree Petition at 11.

⁹⁹ See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *First Report and Order*, 15 FCC Rcd 476, 506, 530 ¶¶ 74, 134 (2000); Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, Third Report and Order, Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10942, 11077 ¶319 (1997); Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development Of Paging Systems; and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-18, PP Docket No. 930253, 12 FCC Rcd 2732, 2820 ¶201 (1997); Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands; Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Notice of Proposed Rule Making and Order, ET Docket No. 95-183, PP Docket No. 93-253, 11 FCC Rcd 4930, 4975 ¶94 (1995); Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order, GN Docket No. 96-228, 12 FCC Rcd 10785, 10882 ¶200 (1997).

¹⁰⁰ See rounds results for Auction No. 53 at <http://wireless.fcc.gov/auctions/53/>

¹⁰¹ See rounds results for Auction No. 49 at <http://wireless.fcc.gov/auctions/49/>

¹⁰² CTIA Opposition at 5.

designated entities won approximately 53 percent of all of the licenses won in these auctions.¹⁰³ Based on the record of success of designated entities in auctions without set-asides, we find that it is unnecessary to establish a set-aside of AWS-1 spectrum.

31. We find that Council Tree has not provided sufficient reason for us to create a set-aside in AWS. Other than Council Tree, no other party supports a set-aside and we see no need to supplement the incentives for small business participation that the Commission has already adopted by foreclosing any of the licenses to other bidders. We also continue to believe that the Commission's adoption of spectrum leasing policies applicable to AWS spectrum and the ability of licensees to partition and disaggregate their licenses and fully participate in the secondary spectrum markets should facilitate the ability of wireless licensees to transfer or lease spectrum usage rights to third parties. We therefore affirm the Commission's conclusion in the *AWS-1 Service Rules Order* that adoption of a variety of license areas and spectrum block sizes obviates the need for any type of set-aside for designated entities. We find that our revised band plan creating additional licensing opportunities for DEs makes such a spectrum set-aside even less necessary.

32. *Additional Bidding Credit.* Council Tree requests, in the alternative, that if we do not adopt a set-aside for the AWS D Block, we offer a 35 percent bidding credit to those AWS auction applicants whose average gross revenues are \$3 million or less consistent with Section 1.2110(f)(2)(i) of the Commission's rules.¹⁰⁴ Council Tree states that this larger bidding credit will provide smaller businesses with a measure of needed assistance in becoming Commission licensees.¹⁰⁵ CTIA opposes Council Tree's proposal to add a third tier of bidding credit, asserting that the bidding credits that the Commission adopted in the *AWS-1 Service Rules Order* were set at an appropriate level and that the Commission's secondary markets policies permit entrants seeking to implement more localized services to obtain either short term or long term leases of AWS spectrum.¹⁰⁶ In its Reply to CTIA's Opposition, Council Tree asserts that the Commission developed the 35 percent bidding credit in its Part 1 standardized schedule to help achieve the objectives set forth in Section 309(j) of the Communications Act when other measures to promote the participation of designated entities in competitive bidding are not offered.¹⁰⁷

33. We do not find that Council Tree has presented any grounds to warrant reconsideration of the Commission's decision to establish two tiers of bidding credits in the 1710-1755 MHz and 2110-2155 MHz bands. In the *AWS-1 Service Rules Order*, the Commission adopted the same two tiers of bidding credits for licenses in the 1710-1755 MHz and 2110-2155 MHz bands that it adopted for broadband

¹⁰³ Rounds results for all of the Commission's auctions may be found on the Commission's website at http://wireless.fcc.gov/auctions/default.htm?job=round_results_all

¹⁰⁴ Council Tree Petition at 11-13. Council Tree proposed a similar bidding credit increase in its *ex parte* filing. Council Tree *ex parte* at 2, 12. Section 1.2110(f)(2)(i) of the Commission's rules provides that businesses that qualify as a small business with average gross revenues for the preceding three years of \$3 million or less are eligible for bidding credits of 35 percent. 47 C.F.R. § 1.2110(f)(2)(i). Section 1.2110(f)(1) provides that service specific competitive bidding rules will identify the size standards for bidding credit eligibility.

¹⁰⁵ Council Tree Petition at 11.

¹⁰⁶ CTIA Opposition at 3.

¹⁰⁷ Council Tree Reply at 7, 8.

PCS.¹⁰⁸ In reviewing the record before it, the Commission concluded that licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees, including those involved in relocating incumbents, and developing markets, technologies, and services.¹⁰⁹ Accordingly, consistent with its practice of establishing service-specific small business size standards the Commission defined 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. Consistent with the standardized schedule of bidding credits at 47 C.F.R. § 1.2110(f)(2), the Commission provided “small businesses” with a bidding credit of 15 percent and “very small businesses” with a bidding credit of 25 percent. It is notable that in response to the Commission’s *AWS-1 Service Rules NPRM*, commenters did not oppose the Commission’s proposal for two tiers of bidding credits and did not suggest an alternative bidding credit regime. Upon reconsideration, we do not find that Council Tree has provided any basis for revisiting the Commission’s determination in the *AWS-1 Service Rules Order*.¹¹⁰

34. Pursuant to its service specific approach to establishing small business size standards and associated bidding credits, in establishing designated entity provisions for AWS-1, the Commission considered the distinctive characteristics of this service, including the capital requirements for the variety of licenses to be available in the band plan. In adopting the AWS-1 band plan, the Commission noted that in order to meet competing needs and to provide maximum flexibility, it would license the 1710-1755 MHz and 2110-2155 MHz bands using a range of geographic licensing areas, including large regional licensing areas, smaller licensing areas, and local licensing areas, across multiple spectrum blocks.¹¹¹ The Commission stated that by adopting such varied geographic licensing areas, it would promote the policy goal of disseminating licenses among a wide variety of applicants.¹¹² The revised band plan that we adopt in this *Order on Reconsideration* increases the variety of licenses to meet the needs of potential new entrants as well as the needs of incumbents seeking additional spectrum. We believe that such a band plan creates a playing field in which the range of available licenses should encourage competition in each block among similarly sized applicants. We do not believe that the adoption of a third small business size standard and bidding credit tier is necessary in this proceeding, where our licensing scheme provides a broad spectrum of regional and small market areas across multiple spectrum blocks which should result in the dissemination of licenses to a diverse range of entrants.

35. In looking at all of the characteristics and the capital requirements of the AWS service as well as the variety and number of licenses that will become available for this spectrum, we find that the two small business size standards and corresponding tiers of bidding credits adopted in the *AWS-1 Service Rules Order* are appropriate and offer sufficient incentives for smaller businesses to compete effectively.

¹⁰⁸ *AWS-1 Service Rules Order*, 18 FCC Rcd at 25220 ¶ 149.

¹⁰⁹ *Id.*

¹¹⁰ In the *AWS-1 Service Rules NPRM*, the Commission emphasized that to the extent commenters support a different bidding credit regime, they should support their proposals with relevant information on the types of system architecture that are likely to be deployed in these bands, the availability of equipment, market conditions, and other factors that may affect the capital requirements of the types of services that may be provided. *AWS-1 Service Rules NPRM*, 17 FCC Rcd at 24153 ¶ 78. Council Tree does not offer any such support.

¹¹¹ *AWS-1 Service Rules Order* at 25175-76 ¶ 35.

¹¹² *Id.*

We further find that the distinctive characteristics of the AWS-1 service make inapposite the cases cited by Council Tree in support of its request for a third bidding credit tier. As noted above, unlike a number of those cases, the AWS-1 band plan provides a broad spectrum of regional and small market areas across multiple spectrum blocks.¹¹³ Moreover, in none of the cases cited did the Commission face circumstances or characteristics substantially similar to those in AWS-1.¹¹⁴

36. We also believe that the adoption of two tiers of bidding credits is appropriate in light of the Commission's establishment of secondary markets policies which, among other things, clarifies policies that facilitate the entry of entities seeking to implement more localized services.¹¹⁵ The adoption of spectrum leasing policies applicable to AWS spectrum and the ability of licensees to partition and disaggregate their licenses and fully participate in the secondary spectrum markets should facilitate the ability of wireless licensees to transfer or lease spectrum usage rights to third parties. In looking at all of these factors as well as our revised band plan which creates additional smaller licenses, we find that it is

¹¹³ See Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002) (Commission adopted a third tier of bidding credit for a block of MSA/RSA licenses, where all of the other licenses in that service were based on large, regional geographic areas); Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2-12.7 GHz Band, ET Docket No. 98-206, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614 (2002) *aff'd* Northpoint Technology, Ltd. V. FCC, Case No. 02-1194 (D.C. Cir. July 15, 2005) (Commission adopted three small business size standards where it established only one block of geographic area licenses); Implementation of Competitive Bidding Rules to License Certain Rural Service Areas, *Report and Order*, 17 FCC Rcd 1960 (2002) (Commission justified the adoption of a third tier of bidding credit where only four licenses for relatively small rural markets were available).

¹¹⁴ As Council Tree acknowledges, in many of the cases it cites, the Commission adopted a bidding credit of 35 percent (or more, in one case) because it had suspended its previously available installment financing program. See Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, *Report and Order*, 12 FCC Rcd 10785 (1997); 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 (1997); 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 (1997); 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 (1999). However, the Commission's inclusion of a 35 percent bidding credit in the Part 1 standardized schedule adopted in 1997, does not mean that the Commission intended that all three tiers of small business size standards would be applicable to every service. The Commission intended this schedule to provide small businesses with a certain level of predictability regarding the potential bidding credits that would be available to businesses of certain sizes, depending on the particular circumstances involved in any particular service. 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, 386, 388 ¶¶ 14, 18 (1997).

¹¹⁵ Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003).

appropriate to affirm the Commission's conclusion in the *AWS-1 Service Rules Order* and maintain two tiers of bidding credits for the 1710-1755 MHz and 2110-2155 MHz bands.

37. *Three-Million Dollar Net Worth Limit.* We find that Council Tree has not presented any persuasive arguments to support the adoption of its proposal to impose a \$3 million net worth limit on individual controlling interests of a designated entity.¹¹⁶ The Commission has generally excluded personal net worth, including personal income and assets, from attribution for purposes of eligibility for designated entity provisions. The Commission has considered and rejected personal net worth limitations several times in the past for a number of reasons.¹¹⁷ In making this determination, the Commission observed that personal net worth limits are difficult to apply and enforce and may be easily manipulated.¹¹⁸ The Commission explained it did not believe that eliminating the personal net worth limits would facilitate significant encroachment by "deep pockets" that can be accessed by wealthy individuals through affiliated entities because, in those instances where access to such resources would create an unfair advantage, the affiliation rules will continue to apply and require that such an entity's assets and revenues be included in determining an applicant's size. The Commission emphasized that it believed the affiliation rules make the personal net worth rules largely unnecessary because most wealthy individuals are likely to have their wealth closely tied to ownership of another business.¹¹⁹

38. We find that the factual predicate that underpins our prior decisions to reject net worth limitations is fully applicable today. Council Tree's proposal to add a personal net worth test for DE eligibility at this time does not appear to add sufficient value to justify imposition of an additional regulatory burden and administrative cost. We believe that imposing such a limitation could limit the ability of small businesses to raise capital without an overriding public interest benefit and thereby undermine the purpose of our designated entity provisions to promote small business participation in the highly competitive telecommunications marketplace. Moreover, our attribution and affiliation rules will continue to apply, and already serve to address Council Tree's concerns.¹²⁰ As the Commission has stated previously, we do not believe that the lack of a personal net worth limitation will facilitate encroachment by "deep pockets" that can be accessed by wealthy individuals through affiliated entities because, in those instances where access to such resources would create an unfair advantage, the

¹¹⁶ Council Tree *ex parte* at 2, 6, 10-13. This proposal is similar to, but expands substantially upon a proposal contained in a Petition for Rulemaking that Council Tree filed on March 8, 2004. That petition sought to have the Commission adopt a personal net worth limit of \$750,000 on individuals with a controlling interest in a designated entity. The Commission did not receive any comments on this petition for rulemaking.

¹¹⁷ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403 (1994).

¹¹⁸ *Id.* at 421 ¶30.

¹¹⁹ *Id.*

¹²⁰ See, e.g., 47 C.F.R. § 1.2110; Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Second Report and Order*, 9 FCC Rcd 2348 (1994); 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 Rule Making*, 15 FCC Rcd 15293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)) ("*Part 1 Fifth Report and Order*"); Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002).

Commission's affiliation rules will require that such an entity's assets and revenues be included in determining an applicant's size. In light of Commission precedent disfavoring individual net worth limitations, coupled with the dearth of any new information or justification in the record that brings this precedent into question, we find Council Tree's argument that its proposal will limit designated entity benefits to only those entities that merit assistance neither relevant nor persuasive. As such, we reject Council Tree's individual net worth proposal.

39. *Additional 10 Percent Bidding Credit.* Similarly, we find that the record contains virtually no evidence to justify adoption of Council Tree's proposal that the Commission provide an additional 10 percent bidding credit to designated entities that provide service to underserved segments of the population¹²¹ In describing its proposal, Council Tree suggests that to qualify for such a bidding credit, an applicant be required to submit as part of its long-form application (FCC Form 601), a business plan showing its intent to target lower income and minority group customers for the provision of services with its licensed spectrum. Council Tree further proposes that the designated entity be required to submit to the Commission "a demonstration, through statistically-valid sampling, that it had met the presumption of targeting on the third anniversary of the date of the corresponding AWS license grant."¹²²

40. First, we note that Council Tree's proposal would duplicate in large part the Commission's tribal land bidding credit program, which targets a very substantial part of the nation's underserved population, and has the advantage of being available to any winning bidder that provides service to a tribal land, regardless of whether it is a designated entity. Council Tree has provided no evidence to support a finding that an additional 10 percent bidding credit would result in the provision of service to underserved populations outside of tribal lands. In addition, because Council Tree's proposed bidding credit is intended to promote service to underserved populations and is not based on the characteristics of the licensee, there is inadequate justification to adopt such a bidding credit that is limited to designated entities. Moreover, we find that the conditions imposed on the recipient of the proposed bidding credit enhancement could be administratively burdensome and very difficult to enforce, requiring the Commission to, among other things, review the winning bidder's business plan as well as monitor and verify the licensee's subsequent activities. Given the current availability of a bidding credit to winning bidders that will provide service to tribal lands, and the lack of sufficient data to support Council Tree's proposal, we decline to adopt it.

41. *Investment Restriction.* As noted above, Council Tree proposes that the Commission restrict large incumbent wireless service providers from having any material investment, financial, or operating relationship with a designated entity if they have licenses with material geographic overlap.¹²³ Among other things, Council Tree proposes that the Commission 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 in the geographic area to be licensed to the new entrant applicant and (b) has average gross wireless revenues for the preceding three years exceeding \$5 billion. We believe that Council Tree's proposal warrants further study by the Commission. However, because Council Tree did not raise this issue in its

¹²¹ Council Tree *ex parte* at 3, 16-17.

¹²² *Id.* at 17.

¹²³ Council Tree defines large incumbent wireless carriers as those carriers with wireless revenues of \$5 billion or more. *Id.* at 2, 11.

reconsideration petition and instead filed this proposal in an *ex parte* extremely late in this proceeding, the record on this issue is undeveloped. We therefore reject Council Tree's proposal. Nevertheless, we plan to examine this proposal in a separate proceeding.

C. Technical Rules

42. In the *AWS-I Service Rules Order*, the Commission stated that an important goal in the AWS proceeding is to try, to the extent possible, to provide the same technical criteria for AWS equipment as currently exist for broadband PCS.¹²⁴ The Commission found that it would be best to establish the same method for limiting transmitter output power in the AWS bands that is currently used for measuring transmitter output power in the broadband PCS bands.¹²⁵ The Commission adopted a peak transmitter output power of 100 watts for fixed and base stations transmitting in the 2110-2155 MHz band.¹²⁶

43. Powerwave asserts in its petition that the Commission intended to adopt the same transmitter output power limitations for AWS that apply to broadband PCS systems in Section 24.232, but that the language in Section 27.50(d)(1) sets a transmitter output power limit that is more restrictive than the limit applicable to broadband PCS.¹²⁷ Powerwave therefore asks that we reconsider Section 27.50(d)(1) governing the transmitter output power of AWS stations operating in the 2110-2155 MHz band, and change the rule so that it is the same as the rule governing PCS stations.

44. In the recently released *Biennial Regulatory Review Report and Order*, we amended Sections 24.232(a)-(b) to completely eliminate the base station transmitter power output limits for PCS stations.¹²⁸ Consistent with the Commission's goal of trying to provide the same technical criteria for

¹²⁴ *AWS-I Service Rules Order*, 18 FCC Rcd at 25200 ¶ 97.

¹²⁵ See 47 C.F.R. § 24.232.

¹²⁶ 47 C.F.R. § 27.50(d)(1). Subsequently, the *Rural Report and Order* amended the power limit rules for broadband PCS and AWS, sections 24.232(b) and 27.50(d)(1) respectively, to allow twice as much radiated power (3280 watts EIRP) and twice as much transmitter output power (200 watts) in rural areas. Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14, Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation, WT Docket No. 03-202, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd. 19078 (2004) (*Rural Report and Order*).

¹²⁷ Powerwave Petition at 1. Powerwave explains the difference: § 24.232(a) states, "In no case may the peak output power of a base station transmitter exceed 100 watts" while § 27.50(d)(1) also creates a 100 watt peak output power limit, but applies it not to a "base station transmitter" but to the entire base station. Powerwave at 3.

¹²⁸ We made this decision in an effort to afford more flexibility to wireless services. *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services* WT Docket No. 03-264, FCC 05-144, (rel. Aug. 9, 2005) (*Biennial Review*), ¶ 19. We also indicated in the Order that requests on the *Biennial Regulatory Review* record that any changes made to section 24.232(a) of our rules be uniformly applied to our Part 27 rules involving transmitter output power for AWS systems, specifically section 27.50 (d)(1), would be better addressed in the instant proceeding. *Biennial Review*, note 64.

AWS equipment as currently exist for broadband PCS, we revise Section 27.50(d)(1) to similarly eliminate the transmitter output power limits for AWS base and fixed stations.¹²⁹

IV. PROCEDURAL MATTERS

A. Supplemental Final Regulatory Flexibility Analysis

45. Consistent with the Regulatory Flexibility Act, *see* 5 U.S.C. § 604, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) of the possible significant economic impact on small entities of the rules amended in this document. The Supplemental FRFA is set forth in Appendix C. The Commission will send a copy of this Order on Reconsideration, including a copy of the Supplemental FRFA, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹³⁰ In addition, the Order on Reconsideration and the Supplemental FRFA will be sent to the Chief Counsel for Advocacy of the SBA, and will be published (in full or in summary form) in the Federal Register.¹³¹

B. Paperwork Reduction Act of 1995 Analysis

46. This Order does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

C. Authority

47. This action is taken pursuant to Sections 1, 2, 4(i), 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333.

D. Further Information

48. For further information, contact Peter Corea of the Broadband Division, Wireless Telecommunications Bureau, at 202-418-BITS (2487) (voice) or 202-418-1169 (TTY).

V. ORDERING CLAUSES

49. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Rural Communications Association IS GRANTED TO THE EXTENT INDICATED HEREIN, and IS OTHERWISE DENIED.

¹²⁹ We note that requests by Motorola, Inc. (Motorola) and Qualcomm, Inc. (Qualcomm) to modify our EIRP rules for AWS stations will not be addressed in this proceeding. *See* Motorola Reply at 3-4; Qualcomm Comments at 2. We are considering possible revisions to the current EIRP limits for both PCS and AWS systems in the *Biennial Review FNPRM*.

¹³⁰ *See* 5 U.S.C. § 801(a)(1)(A).

¹³¹ *See* 5 U.S.C. § 604.

50. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by T-Mobile, USA, Inc. IS GRANTED TO THE EXTENT INDICATED HEREIN, and IS OTHERWISE DENIED.

51. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Council Tree Communications, Inc. IS DENIED.

52. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Powerwave Technologies, Inc. IS GRANTED TO THE EXTENT INDICATED HEREIN.

53. IT IS FURTHER ORDERED that Part 27 of the Commission's Rules is amended as set forth in Appendix B.

54. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by American Petroleum Institute and United Telecom Council IS DENIED TO THE EXTENT INDICATED HEREIN.

55. IT IS FURTHER ORDERED that the rule amendments made by this Order and specified in Appendix B SHALL BECOME EFFECTIVE 30 days after the date of their publication in the Federal Register.

56. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary

APPENDIX A: LIST OF COMMENTERSPetitions for Reconsideration

American Petroleum Institute and United Telecom Council (API/UTC)
Council Tree Communications, Inc.
Powerwave Technologies, Inc.
Rural Communications Association (RCA)
T-Mobile USA, Inc.
Wireless Communications Association International (WCAI)

Oppositions/Replies

Council Tree Communications, Inc.
CTIA- The Wireless Association
Motorola, Inc.
Rural Communications Association
Wireless Communications Association International

Ex Parte Communications

Alcatel
American Women in Radio and Television
Bethel Native Corporation
Catalyst Investors, LLC
Centennial Communications Corp.
Chugach Alaska Corporation
Cingular Wireless
Cook Inlet Region, Inc.
Coral Wireless, LLC
CSM Wireless, LLC
CTIA- The Wireless Association
Doyon, Limited
Ericsson, Inc.
Leap Wireless International, Inc.
MetroPCS Communications, Inc.
National Telecommunications Cooperative Association (NTCA)
Nokia, Inc.
Nortel
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
PCIA—the Wireless Infrastructure Association (PCIA)
PC Management, Inc.
Qualcomm, Inc.
Royal Street Communications, LLC
Rural Communications Association
Rural Telecommunications Group (RTG)
SR Capital Advisors
SunCom Wireless Operating Company, LLC
T-Mobile USA, Inc.
United States Cellular Corp.
Verizon Wireless

APPENDIX B: FINAL RULES**PART 27 – MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES**

1. The authority citation for Part 27 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Section 27.5 is revised to amend section (h) to read as follows:

§ 27.5 Frequencies.

* * * * *

(h) *1710–1755 MHz and 2110–2155 MHz bands.* The following frequencies are available for licensing pursuant to this part in the 1710–1755 MHz and 2110–2155 MHz bands:

(1) Three paired channel blocks of 10 megahertz each are available for assignment as follows:

Block A: 1710–1720 MHz and 2110–2120 MHz;

Block B: 1720–1730 MHz and 2120–2130 MHz; and

Block F: 1745–1755 MHz and 2145–2155 MHz.

(2) Three paired channel blocks of 5 megahertz each are available for assignment as follows:

Block C: 1730–1735 MHz and 2130–2135 MHz;

Block D: 1735–1740 MHz and 2135–2140 MHz; and

Block E: 1740–1745 MHz and 2140–2145 MHz.

3. Section 27.6 is revised to amend section (h) to read as follows:

§ 27.6 Service areas.

* * * * *

(h) *1710–1755 and 2110–2155 MHz bands.* AWS service areas for the 1710–1755 MHz and 2110–2155 MHz bands are as follows:

(1) Service areas for Block A (1710–1720 MHz and 2110–2120 MHz) are based on cellular markets comprising Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) as defined by Public Notice Report No. CL–92–40 “Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties,” dated January 24, 1992, DA 92–109, 7 FCC Rcd 742 (1992), with the following modifications:

(i) The service areas of cellular markets that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline.

(ii) The service area of cellular market 306 that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf.

(2) Service areas for Blocks B (1720–1730 MHz and 2120–2130 MHz) and C (1730–1735 MHz and 2130–2135 MHz) are based on Economic Areas (EAs) as defined in paragraph (a) of this section.

(3) Service areas for blocks D (1735–1740 MHz and 2135–2140 MHz), E (1740–1745 MHz and 2140–2145 MHz) and F (1745–1755 MHz and 2145–2155 MHz) are based on Regional Economic Area Groupings (REAGs) as defined by paragraph (a) of this section.

4. Section 27.11 is revised to amend section (i) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(i) *1710–1755 MHz and 2110–2155 MHz bands.* Initial authorizations for the 1710–1755 MHz and 2110–2155 MHz bands shall be for 5 or 10 megahertz of spectrum in each band in accordance with §27.5(h) of this part.

(1) Authorizations for Block A, consisting of two paired channels of 10 megahertz each, will be based on those geographic areas specified in §27.6(h)(1).

(2) Authorizations for Block B, consisting of two paired channels of 10 megahertz each, will be based on those geographic areas specified in §27.6(h)(2).

(3) Authorizations for Block C, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in §27.6(h)(2).

(4) Authorizations for Blocks D, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in §27.6(h)(3).

(5) Authorizations for Blocks E, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in §27.6(h)(3).

(6) Authorizations for Block F, consisting of two paired channels of 10 megahertz each, will be based on those geographic areas specified in §27.6(h)(3).

5. Section 27.50 is revised to amend section (d) to read as follows:

Subpart C—Technical Standards

27.50 Power and antenna height limits.

* * * * *

(d) The following power and antenna height requirements apply to stations transmitting in the 1710–1755 MHz and 2110–2155 MHz bands:

(1) The power of each fixed or base station transmitting in the 2110–2155 MHz band and located in any county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, is limited to a peak equivalent isotropically radiated power (EIRP) of 3280 watts. The power of each fixed or base station transmitting in the 2110–2155 MHz band from any other location is limited to a peak EIRP of 1640 watts. A licensee operating a base or fixed station utilizing a power of more than 1640 watts EIRP must coordinate such operations in advance with all Government and non-Government satellite entities in the 2025–2110 MHz band.

Operations above 1640 watts EIRP must also be coordinated in advance with the following licensees within 120 kilometers (75 miles) of the base or fixed station: all Multipoint Distribution Service (MDS) licensees authorized under Part 21 in the 2155–2160 MHz band and all AWS licensees in the 2110–2155 MHz band.

APPENDIX C

SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* in WT Docket No. 02-353 (*NPRM*).² The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. In addition, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Report and Order* in WT Docket No. 02-353 (*Report and Order*).³ This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) for the Order on Reconsideration conforms to the RFA.⁴

A. Need for, and Objectives of, the Amended Rules

The Order on Reconsideration responds to petitions for reconsideration of the *Report and Order* adopting service rules for Advanced Wireless Services in the 1710-1755 and 2110-2155 MHz bands (AWS-1).⁵ The need for and objectives of the rules adopted in this Order on Reconsideration are the same as those discussed in the FRFA for the *Report and Order*. In the *Report and Order*, the Commission adopted provisions for application, licensing, operating and technical rules, and for competitive bidding for AWS-1. As adopted, the rules provide flexibility to licensees to provide any fixed or mobile service that is consistent with the allocations for this spectrum and, in order to accommodate differing needs, the band plan includes both localized and regional geographic service areas and symmetrically paired spectrum blocks with pairings composed of different bandwidths. The market-oriented licensing framework for these bands will ensure that this spectrum is efficiently utilized and will foster the development of new and innovative technologies and services, as well as encourage the growth and development of broadband services, ultimately leading to greater benefits to consumers.

On reconsideration, we take the following actions: (1) modify the band plan to increase the amount of spectrum available to smaller and rural wireless carriers; (2) break a 30 MHz block into smaller components that can be aggregated; (3) offer an additional block licensed on an Economic Area (EA) basis to help enhance the mixture of large and small geographic area licenses available to applicants; and (4) eliminate the transmitter output power limits for AWS base and fixed stations to make the rule consistent with the rule governing PCS stations.⁶ The Commission affirmed its decision in the *AWS-1*

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Notice of Proposed Rule Making*, WT Docket No. 02-353, 17 FCC Rcd 24135, 24167 (2002) (*Notice*).

³ See *AWS-1 Service Rules Order*, 18 FCC Rcd 25162, 25221 and Appendix B.

⁴ See 5 U.S.C. § 604.

⁵ See *AWS-1 Service Rules Order*.

⁶ *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, WT Docket No. 03-264, FCC 05-144 (rel. Aug. 9, 2005).

Service Rules Order not to set aside spectrum for designated entities in the 1710-1755 and 2110-2155 MHz bands and also affirmed its decision to maintain two levels of bidding credits.

B. Summary of Significant Issues Raised by Public

We received no comments directly in response to the IRFA or FRFA in this proceeding. We did, however, consider the potential impact of our rules on smaller entities. For example, in the present Order, we have adopted certain changes in the band plan requested by the Rural Cellular Association (RCA) and the Rural Telecommunications Group (RTG), in conjunction with other commenting parties, which increase the amount of spectrum and number of spectrum blocks licensed on a smaller geographic basis. These changes are expected to increase opportunities for local, largely rural carriers, to be able to afford adequate spectrum and to utilize a building block approach to suit their particular needs.

We also note that in the *Report and Order*, the Commission decided to encourage participation by smaller and rural entities by adopting smaller geographic licensing areas such as MSAs and RSAs, as well as smaller spectrum block sizes, rather than adopting set-asides or eligibility restrictions.⁷ The Commission reasoned that opening the bands to as wide a range of applicants as possible would encourage entrepreneurial efforts to develop new technologies and services, while helping ensure the spectrum is used efficiently.⁸

In a petition for reconsideration, Council Tree urged the Commission to reconsider its decision not to adopt a set aside for designated entities in the 1710-1755 and 2110-2155 MHz bands or, in the alternative, to adopt a third tier of bidding credit. In a separate ex parte filing, Council Tree also made certain proposals relating to designated entity status and benefits. As noted above, while we affirm the Commission's decision in the *AWS-1 Service Rules Order* and decline to amend the designated entity rules in this proceeding, we will examine, in a separate action, Council Tree's proposal to restrict large incumbent wireless service providers from having any material investment, financial, or operating relationship with a designated entity.

C. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”¹⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹¹ A small business is one

⁷ See *AWS-1 Service Rules Order*, 18 FCC Rcd at 25189.

⁸ *Id.*

⁹ 5 U.S.C. § 603(b)(3).

¹⁰ 5 U.S.C. § 601(6).

¹¹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public (continued....)”

which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹² Nationwide, there are approximately 22.4 million small businesses, total, according to the SBA data.¹³

A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁴ Nationwide, as of 2002, there were approximately 1.6 million small organizations.¹⁵ Last, the definition of “small governmental jurisdiction” is one with populations of fewer than 50,000.¹⁶ The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁷ As of 1997, there were about 87,453 governmental jurisdictions in the United States.¹⁸ This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

The rules amended in the Order on Reconsideration affect applicants who wish to provide service in the 1710-1755 MHz and 2110-2155 MHz bands. As discussed in the *Report and Order*, we do not know precisely the type of service that a licensee in these bands might seek to provide.¹⁹ Nonetheless, we anticipate that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Further, at the time the broadband PCS service was established, it was similarly anticipated that it would facilitate the introduction of a new generation of service. Therefore, the *Report and Order* adopted the same small business size standards here that the Commission adopted for the broadband PCS service. In particular, the *Report and Order* defined 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. The *Report and Order* also provided small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

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comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

¹² Small Business Act, 15 U.S.C. § 632 (1996).

¹³ See SBA, *Programs and Services*, SBA Pamphlet no. CO-0028, at page 40 (July 2002).

¹⁴ 5 U.S.C. § 601(4).

¹⁵ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹⁶ 5 U.S.C. § 601(5).

¹⁷ 5 U.S.C. 601(5).

¹⁸ U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

¹⁹ See *AWS-1 Service Rules Order*, 18 FCC Rcd at 25218.

We do not yet know how many applicants or licensees in these bands will be small entities. Thus, the Commission assumes, for purposes of this Supplemental FRFA, that all prospective licensees are small entities as that term is defined by the SBA or by our three special small business size standards for these bands. Although we do not know for certain which entities are likely to apply for these frequencies, we note that the 1710-1755 MHz and 2110-2155 MHz bands are comparable to those used for cellular service and personal communications service.

Wireless Telephony Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers. The SBA has developed a small business size standard for wireless small businesses within the two separate categories of **Paging**²⁰ and **Cellular and Other Wireless Telecommunications**.²¹ Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. We can assess small business prevalence by using data provided annually to the Commission by Telecommunications Relay Service (TRS) carriers. The TRS data compilation, published in the Commission's *Trends in Telephone Service*, groups together cellular, personal communications services, and specialized mobile radio telephony carriers into a single category called "Wireless Telephony." As noted above, under the pertinent SBA small business size standard, a wireless business is small if it has 1,500 or fewer employees.²² According to *Trends in Telephone Service* data, 447 carriers have reported that they provide Wireless Telephony.²³ Of that total, an estimated 245 are small providers, under the SBA size standard. Thus, we can estimate that the majority of such businesses are small. In addition, the TRS data include a larger reporting category, "Wireless Service Providers," that includes the above entities plus paging, data, and other mobile providers. According to the *Trends in Telephone Service* data, 975 carriers have reported that they are Wireless Service Providers.²⁴ Of that total, an estimated 767 are small providers, under the SBA size standard. Thus, we can again estimate that the majority of such businesses are small. Consequently, the Commission estimates that most wireless service providers, as defined herein, are small.

D. Description of Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

Applicants for AWS licenses in the 1710-1755 MHz and the 2110-2155 MHz bands will be required to submit short-form auction applications using FCC Form 175.²⁵ In addition, winning bidders must submit long-form license applications through the Universal Licensing System using Form 601,²⁶ FCC Ownership Disclosure Information for the Wireless Telecommunications Services using FCC Form

²⁰ 13 C.F.R. § 121.201, NAICS code 517211.

²¹ 13 C.F.R. § 121.201, NAICS code 517212.

²² 13 C.F.R. § 121.201, NAICS code 517212.

²³ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

²⁴ *Id.*

²⁵ *See generally*, 47 C.F.R. § 1.2105.

²⁶ 47 C.F.R. § 1.913(a)(1).

602, and other appropriate forms.²⁷ These requirements were established in the *Report and Order* and are not modified by the Order on Reconsideration.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its adopted approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁸

We have taken significant steps to reduce burdens on small entities wherever possible, and considered various alternatives in this regard. To provide opportunities for small entities to participate in any auction that is held, we provide bidding credits for small businesses and very small businesses. The bidding credits adopted are 15 percent for small businesses and 25 percent for very small businesses. Although petitioner Council Tree requested set asides for designated entities in the 1710-1755 MHz and 2110-2155 MHz bands, we have found that the use of tiered or graduated small business size standards and bidding credits is useful in furthering our mandate under Section 309(j) of the Communications Act to promote opportunities for, and disseminate licenses to, a wide variety of applicants. As discussed above in the Summary of Significant Issues Raised by Public, we decline to supplement the incentives for small business participation that the Commission has already adopted by foreclosing any of the licenses to other bidders.

Regarding our decisions to modify slightly the licensing approach to provide additional spectrum licensed on an RSA/MSA basis and to add an additional block offered on an EA basis, we anticipate that on balance small entities will benefit from this licensing approach. Geographic licensing in these bands supports the Commission's overall spectrum management goals in that it allows licensees to quickly respond to market demand. Small entities that acquire spectrum that is licensed on a geographic area basis will benefit from such flexibility. Moreover, we have attempted to strike a balance by using varying sizes of geographic areas. For example, small entities may be more interested in spectrum licensed using smaller geographic areas rather than in spectrum licensed on a nationwide or large regional basis. Consequently, we have decided to include licensing areas based on MSAs and RSAs, which permit entities who are only interested in serving rural areas to acquire spectrum licenses for these areas alone, and avoid acquiring spectrum licenses with high population densities that make purchase of license rights too expensive for these types of entities. MSAs and RSAs allow entities to mix and match rural and urban areas according to their business plans. These types of smaller geographic service areas provide entry opportunities for smaller carriers, new entrants, and rural telephone companies. Their inclusion in our band plan will foster service to rural areas and tribal lands and thereby bring the benefits of advanced services to these areas.²⁹ Smaller service providers could acquire an RSA and create a new service area or

²⁷ 47 C.F.R. § 1.2107.

²⁸ See 5 U.S.C. § 603(c)(1)-(4).

²⁹ While we did not receive any comments from Tribal governments, we remain interested in ensuring that the communication needs of these communities are met. See *AWS Service Rules NPRM*, 17 FCC Rcd at (continued...)

they could expand an existing service territory or supplement the spectrum they are licensed to operate in by adding an RSA. They could also combine a few MSAs and RSAs to create a larger but localized service territory. An alternative to our decision to use geographic areas for licensing would have been to employ a site-by-site licensing approach. Site-by-site licensing, however, would be an inefficient licensing method due to a greater strain on Commission resources and less flexibility afforded to licensees.

We have also made adjustments to the band plan to license the spectrum in different bandwidths. We do not believe this will disadvantage small entities. In fact, we have decided that the RSA/MSA license areas will be licensed as paired spectrum at 1710-1720 and 2110-2120 for a total of 734 licenses, and we have decided that the B and C blocks will be licensed as paired 10- and 5-MHz blocks, respectively, on an EA basis. These block sizes should provide flexibility to licensees in constructing their systems. Our approach provides maximum flexibility for both small and large entities to offer a wide range of communications services.

F. Report to Congress

The Commission will send a copy of the Order, including this Supplemental FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.³⁰ In addition, the Commission will send a copy of the Order, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.³¹

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24146-47 ¶ 25; *see also* Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, 16 FCC Rcd 4078 (2000).

³⁰ *See* 5 U.S.C. § 801(a)(1)(A).

³¹ *See* 5 U.S.C. § 604(b).

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Order on Reconsideration (WT Docket No. 02-353)

By our actions in this order, the Commission takes another step forward in our continuing efforts to make spectrum available for wireless broadband services.

Adoption of this order will allow the Commission to move forward expeditiously to auction 90 MHz of wireless spectrum. Making this large swath of spectrum available will enable carriers to provide a wide range of new and better services, including in rural areas. The revised band plan also incorporates a recommendation of the Commission's Advisory Committee on Diversity to identify spectrum covering small geographic areas, which promotes participation by minorities in emerging technology sectors.

Perhaps most importantly, I expect much of this spectrum to be used for new wireless broadband services. Adoption of this item thus brings us closer to achieving our goal of universal, affordable broadband access.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

RE: Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, Order on Reconsideration (WT Docket No. 02-353)

I am committed to sticking to our schedule and conducting the AWS auction as soon as possible. The changes that we make today to the band plan will make this a better auction. The band plan balances the needs of different types of wireless companies by offering both geographically large and small auction areas. I think we came up with a solution that gives everyone a chance to participate meaningfully in the auction, a result that will serve both rural and urban consumers. We all want to make this spectrum available as quickly as possible, and we take a big step toward that goal today.

The Order also announces that the Commission will initiate a NPRM on the question of whether we should close a potentially troubling loophole in the designated entity program. The DE program is designed to create opportunities for smaller carriers to obtain the spectrum resources needed to bring new services to consumers. The program is often particularly useful in rural areas. In this auction, carriers that qualify under the DE program as small companies will receive a 25 percent auction discount. That discount can add up to millions of dollars.

I strongly support the DE program and consider it a powerful tool that can create new competition and entry by small businesses. But I also believe that we must be vigilant and guard against misuse of the program. Some entities cast themselves as small companies to qualify for auction discounts, having already entered into agreements to lease the spectrum rights they win to industry giants that themselves do not qualify for the discount. I am glad that we are exploring whether we should limit the ability of companies with billions of dollars in revenues to effectively receive discounts intended for small companies by entering into such arrangements. The DE program was initiated to create new competition and to give small entrepreneurs a chance to bring innovations to consumers. If there is a loophole that could result in millions of dollars less in auction revenues without these goals being served, we should act expeditiously to protect the DE program.

Our largest auction in many years is going to be held in June. We need to put this NPRM out immediately, compile the record, and develop whatever action plan may be necessary if it is determined that new protections are needed for the DE program—well before the auction is held. We need not delay this auction, but at the same time we must protect taxpayer money. I see no reason – if we move quickly – why we can't achieve both of these goals.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, Order on Reconsideration (WT Docket No. 02-353)

I have repeatedly said the FCC needs to improve access to spectrum by those providers who want to offer service to traditionally under-served areas. That is why I pressed for the inclusion of both Economic Area (EA) as well as Cellular Market Area (CMA) licenses in the Advanced Wireless Services (AWS) Report and Order adopted last year.

I am very pleased that my initial push for EA licenses has been so well received by a number of carriers and manufacturers. Since our original decision, diverse interests have come together to actively support an even better balance between smaller and larger license areas through a variety of changes to the AWS band plan, many of which we adopt today.

All of this interest has resulted in a full and complete record that eminently supports our decision-making process. As a result, we have unanimous agreement at the Commission to make changes to our band plan that specifically respond to suggestions made by a number of different groups within the wireless industry. In particular, we are making additional spectrum available on both an EA and CMA basis.

I certainly recognize that there is value in offering larger service areas for economies of scale and to facilitate larger scale deployments, and our Order accommodates this need. But the public interest demands that we find a balance in developing a band plan, and we have done so today, particularly in light of recent consolidation among some of the largest wireless carriers since we first considered the issue. Also, in modifying our band plan, we move another step closer to seeing a more diverse group of providers offer a new generation of wireless services in this country.

I also am very pleased that in this item we commit to launching a separate proceeding to explore the narrow issue of limiting the ability of designated entities (DEs) who have a relationship with the largest wireless carriers from having access to bidding credits in this and future auctions. The stakes are simply too high to not allow a further question on whether or not we should allow this potential loophole to apply in the upcoming AWS auction. Considering this issue is particularly important given the dramatic scope of consolidation in the wireless industry in just the last 12 months and the ever-increasing market share of the largest carriers (up to 90% by some estimates).

Of course, we do not want to see the AWS auction unnecessarily delayed. But there is at least ten months until then, and if we all agree to move fast, we surely can resolve this matter in time. Indeed, there are a number of variables, both within and outside the Commission's control that may independently affect the timing of the auction, such as the submission of NTIA relocation costs. There also are MDS relocation issues that have not yet been resolved. So we have an open window, but we have to act quickly. And I thank the Chairman for agreeing to move forward on this important issue. Immediate action truly is important to ensure that there is as little uncertainty as possible as interested parties prepare for this landmark auction.

I look forward to seeing the record in this proceeding because, at this time, it is unclear to me why the Commission allows large wireless companies to partner with DEs. This is even more important in the AWS auction where auction proceeds must be sufficient to cover government relocation costs.

Also, the AWS auction should raise \$15 billion dollars by some estimates for the federal Government at a time our budget is under ever increasing pressure. Do we want the nation's largest wireless carriers partnering with DEs to get a 25% discount so that auction revenues to the U.S. treasury could potentially be reduced by well over a billion dollars? How is the public interest served in that outcome?

At a time of wholesale consolidation in the industry, it seems unwise to allow wireless giants to access a discount by being allowed to partner with a supposedly small business. Allowing access to discounts by the country's largest wireless businesses, at the expense of taxpayers, seems completely at odds with a program whose purpose is to help small telecommunications businesses get a foothold so that they can compete on a more level playing field with more established companies.

I look forward to working with my colleagues and the Bureau to making sure this auction is as successful as it can possibly be.