

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

In the matter of
Amendment of Parts 1, 21, 22, 24, 25, 27, 73, 74,
80, 90, 95, 100, and 101 of the Commission Rules
- Competitive Bidding

ORDER

Adopted: April 11, 2002

Released: April 11, 2002

By the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, the Wireless Telecommunications Bureau ("Bureau") makes conforming edits to service-specific competitive bidding rules and portions of the Part 1 general competitive bidding rules in accordance with the authority delegated by the Commission in the Part 1 Fifth Report and Order. These conforming edits further the Bureau's continuing efforts to streamline its procedures in accordance with the Commission's biennial regulatory review obligations set forth at section 11(a) of the Communications Act of 1934, as amended, and the recommendations contained in the 2000 Biennial Staff Report. In addition to making these conforming edits, we also exercise our delegated authority to make

1 Service-specific rules are rules promulgated by the Commission that are tailored to a particular service. Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order, 9 FCC Rcd 2348, 2350, ¶ 10 (1994) ("Competitive Bidding Second Report and Order").

2 The Part 1 general competitive bidding rules are found in 47 C.F.R. Part 1, Subpart Q ("Part 1 general competitive bidding rules").

3 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, 15330, ¶ 78, 15336, ¶ 101 (2000) ("Part 1 Recon Order of the Third Report & Order" and "Part 1 Fifth Report and Order") ("We hereby instruct the Wireless Telecommunications Bureau to make conforming edits to the Code of Federal Regulations consistent with this decision."); 47 U.S.C. § 155(c); 47 C.F.R. §§ 0.131(d) and 0.331(d).

4 47 U.S.C. § 161(a); see 2000 Biennial Regulatory Review, Report, 16 FCC Rcd 1207 (2001) (The Bureau "has also engaged in a comprehensive effort to streamline its procedures."); Biennial Regulatory Review 2000, Staff Report, 15 FCC Rcd 21089, 21238, 21329, 21324-43, 21352-53, 21358 (2000) ("2000 Biennial Staff Report") (recommending that service-specific rules be eliminated to the extent that they are redundant with the Part 1 competitive bidding rules).

5 47 C.F.R. § 0.331(d).

certain ministerial conforming amendments,⁶ including edits to correct competitive bidding provisions⁷ that were inadvertently altered or deleted by the *Part 1 Third Report and Order* and the *Competitive Bidding Sixth Report and Order*.⁸ We also remove service-specific provisions that are redundant with the Bureau's delegated authority to conduct auctions.⁹ The effect of today's action is to eliminate approximately 66 pages of redundant or unnecessary rules from the Code of Federal Regulations ("C.F.R.").

II. BACKGROUND

2. In the *Competitive Bidding Second Report and Order*, by amending Part 1 of the Commission's rules to add a new Subpart Q, the Commission established general competitive bidding rules that would apply to a variety of spectrum based services licensed by the Commission.¹⁰ In establishing these rules, the Commission intended that the general competitive bidding rules would apply to a particular service unless it adopted service-specific rules that varied from the Part 1 general competitive bidding rules.¹¹ Subsequently, the Commission adopted competitive bidding rules for a number of services.¹² A consequence of the adoption of these service-specific competitive bidding rules was an unnecessary variation in procedures across services.¹³ Additionally, portions of the Part 1 general competitive bidding rules were repeated almost verbatim in the service-specific competitive bidding

⁶ E.g., 47 C.F.R. § 101.538(a)(7) ("and" is changed to "or").

⁷ 47 C.F.R. § 24.711(b) (installment payments for broadband PCS C block licenses).

⁸ 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, 530-31 (1998) ("*Part 1 Third Report and Order*"); Section 309(j) of the Communications Act - Competitive Bidding, *Sixth Report and Order*, 11 FCC Rcd 136 (1996) ("*Competitive Bidding Sixth Report and Order*").

⁹ 47 C.F.R. § 0.331(d). In the *Part 1 Order*, the Commission clarified that the Bureau's delegation of authority to administer auctions includes the authority to implement all of the Commission's rules pertaining to auctions procedures. Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd 5686, 5697-98, ¶ 16 (1997) ("*Part 1 Order*") (citing 47 C.F.R. § 0.131). Accordingly, we delete, in whole or in part, the following service-specific provisions that are redundant with this broad delegation of authority to conduct auctions: sections 22.962, 22.964, 27.202, 90.803, 90.805, 90.806, 90.903(c)-(f), 90.906, 100.73, 100.75, 101.1103(g), 101.1204. 47 C.F.R. §§ 22.962, 22.964, 27.202, 90.803, 90.805, 90.806, 90.903(c)-(f), 90.906, 100.73, 100.75, 101.1103(g), and 101.1204.

¹⁰ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2350, ¶ 10, 2405-12.

¹¹ Accordingly, the service-specific competitive bidding rules explicitly state that the Part 1 rules apply unless otherwise provided. 47 C.F.R. §§ 21.950, 22.201, 22.228, 22.960, 24.301, 24.701, 25.401, 27.201, 27.501(a), 27.701, 73.5000(a), 74.910, 80.1251, 90.801, 90.901, 90.1001, 90.1101, 95.816(a), 100.71, 101.537, 101.1101, 101.1201, and 101.1317. Section 74.910 incorporates this design to the Instructional Television Fixed Service (ITFS) by referencing section 73.5000. 47 C.F.R. §§ 73.5000 and 74.819; *see also Part 1 Third Report and Order*, 13 FCC Rcd at 376-81, ¶¶ 1-3; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2350, ¶ 10 ("[I]n the future, specific rules within the scope of these general [Part 1] rules will be adopted in a Report and Order for each service subject to competitive bidding. These subsequent Reports and Orders will set forth specific competitive bidding rules for each service that meets the criteria in section 309(j)(2).").

¹² *See, e.g.*, 47 C.F.R. §§ 24.301-24.320 (1994) (narrowband Personal Communications Service ("PCS")), 47 C.F.R. §§ 24.701-24.720 (1994) (broadband PCS), 47 C.F.R. §§ 90.901-90.913 (1996) (800 MHz Specialized Mobile Radio (SMR)), 47 C.F.R. § 95.816 (1999) (218-219 MHz Service), 47 C.F.R. §§ 100.71-100.80 (1995) (Direct Broadcast Satellite), and 47 C.F.R. §§ 21.921-21.961 (1995) (Multipoint Distribution Service).

¹³ *Part 1 Order*, 12 FCC Rcd at 5689, ¶ 4.

rules.¹⁴ Accordingly, in 1997, based upon its experience with the competitive bidding process, the Commission initiated the Part 1 proceeding to establish a uniform set of provisions for all services subject to competitive bidding, eliminate unnecessary rules, and provide for a more consistent and efficient licensing process.¹⁵

3. In the *Part 1 Fifth Report and Order*, the most recent comprehensive Order in the Part 1 proceeding, the Commission determined that it had made the majority of the changes contemplated by its prior orders.¹⁶ Therefore, the Commission recognized that it was appropriate to commence the next step in the process, *i.e.*, eliminating service-specific competitive bidding rules from the C.F.R. that have either been superseded by or are redundant with the Part 1 general competitive bidding rules.¹⁷ Accordingly, the Commission delegated to the Bureau the authority to make conforming edits to the C.F.R. consistent with the Part 1 proceeding.¹⁸

III. DISCUSSION

4. Pursuant to our delegated authority, this Order identifies and removes service-specific competitive bidding rules that have been superseded or made redundant¹⁹ by the Part 1 general competitive bidding rules.²⁰ In those instances in which service-specific departures from the Part 1 general competitive bidding rules were tailored for a particular service, we retain such rules.²¹ In addition, pursuant to the Bureau's delegated authority to make ministerial conforming edits²² to Commission rules, we restore and revise certain rule sections that were inadvertently altered, deleted, or

¹⁴ Compare, *e.g.*, 47 C.F.R. § 24.720(e) (definition of "rural telephone company" in the broadband PCS rules) with 47 C.F.R. § 1.2110(c)(4) (definition of "rural telephone company" in the Part 1 rules).

¹⁵ *Part 1 Order*, 12 FCC Rcd at 5689, ¶ 4 ("[W]e seek to establish a uniform set of provisions that would incorporate our experience to date and allow us to conduct future auctions in a more consistent, efficient, and effective manner."); *Part 1 Third Report and Order*, 13 FCC Rcd at 376-81, ¶¶ 1-3.

¹⁶ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15330, ¶ 78.

¹⁷ *Id.* ("We hereby instruct the Wireless Telecommunications Bureau to make conforming edits to the Code of Federal Regulations consistent with this decision.").

¹⁸ *Id.*

¹⁹ Redundant rules repeat or unnecessarily cross-reference the Part 1 general competitive bidding rules.

²⁰ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15330, ¶ 78. The Commission's reference to the "course of the Part 1 proceeding" includes the modifications adopted in the *Part 1 Third Report and Order*.

²¹ When the Commission departed from the Part 1 general competitive bidding rules the Commission so indicated in the rule itself and/or the respective proceeding that adopted the rule. For example, in the Radio Broadcast Services context, section 73.5005, the service-specific rule that outlines the long-form application procedures, is retained because this rule departs from the general competitive long-form application rule in section 1.2107. 47 C.F.R. §§ 1.2107 and 73.5005. Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order*, 13 FCC Rcd 15920, 15984, ¶ 163 (1998) ("*Commercial Broadcast Competitive Bidding First Report and Order* ") (Because of the technical and legal complexities of long-form applications submitted for licenses in the radio broadcast services, winning bidders in the Radio Broadcast Services auction were permitted 30 business days after notification of their winning bidder status to file their long-form application for a license, rather than the 10 days allocated in the Part 1 general competitive bidding rules.); 47 C.F.R. § 1.2107.

²² 47 C.F.R. § 0.331(d).

misstated.²³

5. As explained below, we modify or remove service-specific competitive bidding rules in the following areas: (1) scope of service-specific competitive bidding rules; (2) competitive bidding design options; (3) competitive bidding mechanisms; (4) bidding application and certification procedures, and prohibition of collusion; (5) submission of upfront payments; (6) submission of down and full payments, and filing of long-form applications; (7) procedures for filing petitions to deny against long-form applications; (8) license grant, denial, default, and disqualification; (9) designated entities; (10) unjust enrichment in license assignment or transfer of control; (11) ownership disclosure requirements for short- and long-form applications; and (12) definitions.²⁴ Also, technical edits are made to Commission rules that refer to service-specific competitive bidding rules that have been removed or modified.²⁵

6. Scope of service-specific competitive bidding rules. Each set of service-specific competitive bidding rules contains a provision that provides that the general competitive bidding rules set forth at Part 1, Subpart Q of the Commission's rules apply unless the service-specific rules indicate otherwise. This means that service-specific competitive bidding rules are necessary only to specify departures from or supplemental procedures to the Part 1 competitive bidding rules.²⁶ We adopt uniform language stating this proposition in all services subject to competitive bidding and modify the following service-specific rules: 21.950; 22.201; 22.228; 22.960; 24.301; 24.701; 25.401; 27.201; 27.501(a);

²³ 47 C.F.R. §§ 22.227, 24.711(b)(3)-(5), 73.5009, 90.809(b), 90.813(a), 90.909(c), 90.913(a), 95.816(f), and 101.538(a)(7).

²⁴ We note that some rules or portions thereof are removed or modified for more than one reason. Thus, this Order must be read in its entirety to understand all the reasons a particular rule or portion thereof is modified or removed. For example, portions of section 22.962 are removed because they are redundant with the Bureau's broad delegation of authority to conduct auctions. 47 C.F.R. § 0.331(d); *see supra* note 9. Section 22.962 is also removed because it is redundant with section 1.2104. 47 C.F.R. §§ 1.2104, 22.962; *see* paragraph 8.

²⁵ 47 C.F.R. §§ 1.2107(e), 1.2110(f)(3)(ii)(B), (f)(3)(iii)-(iv), (vii), 21.956(b)(3), 21.960(b)(4), 22.223(b)(3), 24.321(c)(1), 24.709, 24.711(b)-(b)(2), 24.712(a)-(b), 24.714(d)(1), (d)(2)(i), (ii), (d)(3)(i), (ii), 24.716(b)-(b)(2), 24.717(a)-(b), 24.720(b)(5), (c)(2), (j)(2), (k)(4), (n)(3)-(4), 27.15(d)-(e), 73.3571(h)(4)(i), 73.3573(f)(5)(ii), 73.5005(a), 73.5006(d), 80.1252(d), 90.705, 90.813(d)(2)(ii)-(iv), (3)(ii), (e), (f), 90.814(a)(3), 90.910(a), 90.1017(a), 90.1025(b), 90.1103(d), 95.816(e), 95.823(c)(2)(i), (iii), (3), 101.538(c), and 101.1319(b).

²⁶ Thus, to opt out of a particular Part 1 general competitive bidding rule, the service-specific competitive bidding rule need only specify the provision that is not applicable. For example, the Part 1 unjust enrichment provisions contained in section 1.2111(b)-(e) do not apply to assignments or transfers of broadcast construction permits or licenses governed by Part 73 because Part 73 has a service-specific unjust enrichment provision. 47 C.F.R. § 73.5007(c). Accordingly, we modify section 73.5009 to state that section 1.2111(b)-(e) does not apply. However, it is unnecessary to further provide in section 73.5009 that section 1.2111(a) continues to apply in light of the provision in section 73.5000 that the Part 1 competitive bidding rules apply unless otherwise indicated. Similarly, we modify section 73.5009(b) to enumerate only those portions of the Part 1 ownership disclosure requirements contained in section 1.2112(a) that do not apply to the assignment or transfer of broadcast construction permits or licenses that are subject to competitive bidding. 47 C.F.R. §§ 1.2112(a), 73.5009(b); Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *Memorandum Opinion and Order*, 14 FCC Rcd 8724, 8746-47, ¶ 45 (1999) (“*Commercial Broadcast Competitive Bidding MO&O*”). Again, in light of section 73.5000(a), it would be redundant to repeat those portions of section 1.2112 that continue to apply to services governed by Part 73. Further, because section 73.5009(b) only applies to assignment or transfers of control, section 1.2112(a) would continue to apply to short form applications (“FCC Form 175”).

27.701; 73.3572(e)(2),²⁷ (f),²⁸ 73.5000(a); 80.1251; 90.801; 90.901; 90.1001; 90.1101; 95.816(a); 100.71; 101.537; 101.1101; 101.1201; and 101.1317.²⁹

7. **Competitive bidding design options.** Section 1.2103 of the Commission's rules outlines the general competitive bidding design options (or the different competitive bidding methodologies) for services or classes of services subject to competitive bidding.³⁰ These competitive bidding design options include: simultaneous multiple-round auctions (using remote or on-site electronic bidding); sequential multiple-round auctions (using either oral ascending or remote and/or on-site electronic bidding); sequential or simultaneous single-round auctions (using either sealed paper or remote and/or on-site electronic bidding); combinatorial (package/contingent) bidding auctions; and real-time bidding in all electronic auction designs.³¹ The following service-specific rules, which are redundant with all or part of section 1.2103, are removed: 21.951(a)-(a)(1); 22.203; 22.961; 24.702; 90.802; 90.902; 90.1003; 100.72; 101.1102; and 101.1202.³²

8. **Competitive bidding mechanisms.** Section 1.2104 of the Commission's rules describes the mechanisms used to implement the Commission's competitive bidding design provisions.³³ This rule also sets forth the treatment of bid withdrawal, down and full payment default,³⁴ and bidder disqualification.³⁵ The following service-specific rules redundant with all or part of the competitive bidding design mechanism provisions of section 1.2104³⁶ are modified or removed: 21.951(a)(2)-(c); 22.205; 22.962; 25.402; 27.202; 73.5001; 90.803; 90.903(c)-(f); 90.1005; 90.1015(b); 100.73; 101.1103; and 101.1203.³⁷ Also, the following service-specific rules, which conflict or are redundant with all or part of the bid withdrawal, down or full payment default, and disqualification payment rules of section

²⁷ The cross-reference to section 73.5000 in section 73.3572(e)(2) is removed, and section 73.5000(a) is revised by adding Class A television to the list of services subject to competitive bidding. 47 C.F.R. §§ 73.3572(e)(2) and 73.5000(a).

²⁸ We remove the provision in section 73.3572(f) stating that the competitive bidding procedures will apply to applications for minor modifications to Class A service if there is mutual exclusivity. This provision is redundant with section 73.5000(a), as revised by this Order. 47 C.F.R. §§ 73.3572(f) and 73.5000(a).

²⁹ 47 C.F.R. §§ 21.950, 22.201, 22.228, 22.960, 24.301, 24.701, 25.401, 27.201, 27.501(a), 27.701, 73.3572(e)(2), (f), 73.5000(a), 80.1251, 90.801, 90.901, 90.1001, 90.1101, 95.816(a), 100.71, 101.537, 101.1101, 101.1201, and 101.1317.

³⁰ 47 C.F.R. § 1.2103.

³¹ *Id.*; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2360-68, ¶¶ 68-115; *Part 1 Third Report and Order*, 13 FCC Rcd at 447-54, ¶¶ 123-37.

³² 47 C.F.R. §§ 1.2103, 21.951(a)-(a)(1), 22.203, 22.961, 24.702, 90.802, 90.902, 90.1003, 100.72, 101.1102, and 101.1202.

³³ 47 C.F.R. § 1.2104; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2367-73, ¶¶ 116-45.

³⁴ The default provisions of section 1.2104(g)(2) do not apply to installment payment defaulters. 47 C.F.R. § 1.2104(g)(2); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15315-16, ¶ 39 (clarifying that licensees defaulting on installment payments are not subject to section 1.2104(g)(2), but are instead subject to section 1.2110(g)(4). A petition for reconsideration is pending on this issue).

³⁵ 47 C.F.R. § 1.2104; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2367- 75, ¶¶ 116-59; *Part 1 Third Report and Order*, 13 FCC Rcd at 454-70, ¶¶ 138-169.

³⁶ 47 C.F.R. § 1.2104.

³⁷ 47 C.F.R. §§ 21.951(a)(2)-(c), 22.205, 22.962, 25.402, 27.202, 73.5001, 90.803, 90.903(c)-(f), 90.1005, 90.1015(b), 100.73, 101.1103, and 101.1203.

1.2104,³⁸ are removed: 21.959(a)-(b); 22.207; 22.215(b); 22.963; 24.704; 27.203; 73.5004(a); 90.805; 90.905; 90.1007; 100.74; and 100.78(b).³⁹

9. Bidding application and certification procedures; prohibition of collusion. Section 1.2105 of the Commission's rules describes the short-form application ("FCC Form 175") and certification procedures and the prohibition against applicant collusion.⁴⁰ Section 1.2105 sets forth the information and certifications that applicants must provide to participate in an auction.⁴¹ This section also prohibits applicants from communicating with each other about bids, bidding strategies, or settlements if the applicants are bidding on licenses in the same geographic area unless applicants are members of bidding arrangements identified on a bidder's short-form application.⁴² This prohibition period commences at the short-form application filing deadline and concludes at the post-auction down payment deadline.⁴³ The following service-specific rules, which are redundant with all or part of the Part 1 short-form application and certification procedures in section 1.2105,⁴⁴ are removed in whole or in part: 21.952; 22.209; 22.227; 22.964; 24.709(a)(4)-(5); 27.204(a)-(b); 90.806; 90.906; 90.1009; 100.75; 101.531(a); 101.1104; and 101.1204.⁴⁵ Also, the following service-specific rules, which are redundant with all or part of the prohibition on collusion in section 1.2105,⁴⁶ are modified or removed in whole or in part: 21.953; 25.405; 27.204(c); and 100.79.⁴⁷

10. Submission of upfront payments. Section 1.2106 of the Commission's rules describes the procedures for submitting upfront payments, *i.e.*, the sums an applicant that complies with the short-form application requirements tenders to the Commission before an auction in order to be qualified to bid.⁴⁸ The following service-specific rules, which conflict or are redundant with all or part of section 1.2106 of the Commission's rules,⁴⁹ are removed in whole or in part: 21.954; 22.211(a); 22.965(a); 24.706(a), (c);

³⁸ 47 C.F.R. § 1.2104.

³⁹ 47 C.F.R. §§ 21.959(a)-(b), 22.207, 22.215(b), 22.963, 24.704, 27.203, 73.5004(a), 90.805, 90.905, 90.1007, 100.74, and 100.78(b).

⁴⁰ 47 C.F.R. § 1.2105; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2386-88, ¶¶ 221-26; *Part 1 Third Report and Order*, 13 FCC Rcd at 412-16, ¶¶ 63-70, 463-69, ¶¶ 155-66; *Part 1 Recon Order of the Third Report and Order*, 15 FCC Rcd at 15297-98, ¶¶ 7-8.

⁴¹ 47 C.F.R. § 1.2105; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2375-77, ¶¶ 161-68. Section 1.2105 also sets forth the uniform definitions of major and minor amendments to the short-form application. We also remove service-specific rules inconsistent with this uniform definition. 47 C.F.R. § 1.2105; *Part 1 Third Report and Order*, 13 FCC Rcd at 414, ¶ 66, 465, ¶ 158.

⁴² 47 C.F.R. § 1.2105(c).

⁴³ Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001); Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995).

⁴⁴ 47 C.F.R. § 1.2105.

⁴⁵ 47 C.F.R. §§ 21.952, 22.209, 22.227, 22.964, 24.709(a)(4)-(5), 27.204(a)-(b), 90.806, 90.906, 90.1009, 100.75, 101.531(a), 101.1104, and 101.1204.

⁴⁶ 47 C.F.R. § 1.2105.

⁴⁷ 47 C.F.R. §§ 21.953, 25.405, 27.204(c), and 100.79.

⁴⁸ 47 C.F.R. § 1.2106; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-81, ¶ 169-88; *Part 1 Third Report and Order*, 13 FCC Rcd at 423, ¶ 83.

⁴⁹ 47 C.F.R. § 1.2106.

24.711(a)(1); 24.716(a)(1); 27.205; 73.5003(a); 90.807(a); 90.907(a); 90.1011(a); 100.76(a); 101.1105(a); and 101.1205(a).⁵⁰

11. Submission of down and full payments, and filing of long-form applications. Section 1.2107 of the Commission's rules describes the procedures for submitting down and full payments, and filing the long-form application ("FCC Form 601").⁵¹ The down payment is the sum that the winning bidder(s) must tender to the Commission after the auction closes to bring its total deposit(s) up to twenty (20) percent of its high bid(s).⁵² This payment assures the Commission that the winning bidder is able to tender the full amount of its bid when it later comes due.⁵³ Unless otherwise specified by public notice, the down payment must be made within ten (10) business days after the winning bidder is notified that it is the high bidder for a license(s).⁵⁴ The Commission relies upon the long-form application to determine whether the winning bidder is qualified to be a licensee.⁵⁵ The long-form application must be submitted within ten (10) business days after the winning bidder is notified that it is the high bidder.⁵⁶ After submission of the down payment and long-form application, the winning bidder must submit the full payment due on the license(s) within ten (10) business days of notification that the license(s) is ready for grant,⁵⁷ unless it qualifies to make installment payments.⁵⁸ If the winning bidder fails to make the full payment within this time period, it is afforded an additional ten (10) day period to make full payment, provided that it also pays a late fee equal to five (5) percent of the amount due.⁵⁹ The following service-specific rules, which conflict or are redundant with all or part of section 1.2107 of the Commission's rules,⁶⁰ are modified or removed in whole or in part: 21.955(a), (c); 21.958; 22.211(b); 22.213; 22.965(b); 24.706(b); 24.711(a)(2); 24.716(a)(2); 25.404(a), (b); 27.206; 73.3573(f)(5)(i); 73.5003(b)-(c); 74.1233(d)(5)(i); 90.807(b); 90.808; 90.907(b); 90.908; 90.1011(b); 90.1013; 100.76(b); 101.531;

⁵⁰ 47 C.F.R. §§ 21.954, 22.211(a), 22.965(a), 24.706(a), (c), 24.711(a)(1), 24.716(a)(1), 27.205, 73.5003(a), 90.807(a), 90.907(a), 90.1011(a), 100.76(a), 101.1105(a), and 101.1205(a).

⁵¹ 47 C.F.R. § 1.2107. We recognize that other licensing bureaus may use different FCC Forms for their long-form application. *See e.g.*, 47 C.F.R. § 73.5005 (requiring applicants to submit to the Media Bureau an appropriate long-form application, *i.e.* "FCC Forms 301, 346, 349 or 330," for licenses or construction permits).

⁵² 47 C.F.R. § 1.2107(b). Included in the calculation of the sum due to the Commission is any deduction from the amounts on deposit necessary to satisfy applicable withdrawal or default payments under section 1.2104(g). 47 C.F.R. § 1.2104(g).

⁵³ *Part I Third Report and Order*, 13 FCC Rcd at 427, ¶ 90.

⁵⁴ *Id.*

⁵⁵ 47 C.F.R. § 1.2107; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2383, ¶ 199; *Part I Third Report and Order*, 13 FCC Rcd at 420, ¶ 77, 422, ¶ 80.

⁵⁶ 47 C.F.R. § 1.2107(c).

⁵⁷ 47 C.F.R. § 1.2109(a); *Part I Third Report and Order*, 13 FCC Rcd at 428-29, ¶¶ 92, 95.

⁵⁸ 47 C.F.R. § 1.2110(g). In the *Part I Third Report and Order*, the Commission suspended the use of installment payments as a means of financing small businesses and other designated entities seeking to secure spectrum licenses. *Part I Third Report and Order*, 13 FCC Rcd at 398-400, ¶ 40, *aff'd*, *Part I Fifth Report and Order*, 15 FCC Rcd at 15302-18, ¶¶ 16-43.

⁵⁹ *Id.*

⁶⁰ 47 C.F.R. § 1.2107.

101.1105(b); 101.1205(b); and 101.1206.⁶¹

12. Procedures for filing petitions to deny against long-form applications. Section 1.2108 of the Commission's rules describes the timing and procedures for filing petitions to deny a winning bidder's long-form application.⁶² The period for filing a petition to deny commences after the Commission releases a public notice announcing that a long-form application has been accepted for filing.⁶³ Section 1.2108 also provides that the length of time to file a petition to deny may vary on a service-specific basis,⁶⁴ but cannot exceed ten (10) days.⁶⁵ The following service-specific rules, which conflict or are redundant with all or part of section 1.2108 of the Commission's rules,⁶⁶ are modified or removed: 21.957; 90.1025(a); 101.1110; and 101.1207.⁶⁷

13. License grant, denial, default, and disqualification. Section 1.2109 of the Commission's rules addresses the consequences for a winning bidder that fails to timely make a down payment⁶⁸ or full payment⁶⁹ on its winning bid(s), withdraws its bid(s) after the auction has closed,⁷⁰ violates the federal antitrust laws,⁷¹ or is otherwise found unqualified to be a licensee.⁷² The following service-specific rules, which conflict or are redundant with all or part of section 1.2109 of the Commission's rules,⁷³ are modified or removed: 21.959(c)-(e); 22.207; 22.215; 22.967; 24.708; 24.711(a)(2); 24.716(a)(2); 25.406; 27.208; 73.5004; 90.809(a); 90.909(a)-(b); 90.1015; and 100.78(a).⁷⁴

⁶¹ 47 C.F.R. §§ 21.955(a), (c), 21.958, 22.211(b), 22.213, 22.965(b), 24.706(b), 24.711(a)(2), 24.716(a)(2), 25.404(a), (b), 27.206, 73.3573(f)(5)(i), 73.5003(b)-(c), 74.1233(d)(5)(i), 90.807(b), 90.808, 90.907(b), 90.908, 90.1011(b), 90.1013, 100.76(b), 101.531, 101.1105(b), 101.1205(b), and 101.1206.

⁶² 47 C.F.R. § 1.2108.

⁶³ *Id.*

⁶⁴ The Commission delegated to the appropriate licensing bureau the discretion to reduce this ten-day period for filing petitions to deny. 47 C.F.R. § 1.2108; *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15330, ¶ 78.

⁶⁵ 47 C.F.R. § 1.2108; *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15330, ¶¶ 77-78.

⁶⁶ 47 C.F.R. § 1.2108.

⁶⁷ 47 C.F.R. §§ 21.957, 90.1025(a), 101.1110, and 101.1207.

⁶⁸ 47 C.F.R. § 1.2109(b); *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2381-82, ¶¶ 189-92; *Part 1 Third Report and Order*, 13 FCC Rcd at 428-31, ¶¶ 92-96.

⁶⁹ 47 C.F.R. § 1.2109(a); *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2382, ¶ 194; *Part 1 Third Report and Order*, 13 FCC Rcd at 431-32, ¶¶ 97-99.

⁷⁰ 47 C.F.R. § 1.2109(b); *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2382-84, ¶¶ 195-205; *Part 1 Third Report and Order*, 13 FCC Rcd at 460-62, ¶¶ 151-54.

⁷¹ 47 C.F.R. § 1.2109(d). This section provides for additional sanctions against bidders who violate federal antitrust laws or Commission regulations. *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2387, ¶ 225 (preventing collusion by reliance, in part, on Section One of the Sherman Antitrust Act, 15 U.S.C. § 1 *et. seq.*).

⁷² 47 C.F.R. § 1.2109(c); *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2382-84, ¶¶ 195-205; *Part 1 Third Report and Order*, 13 FCC Rcd at 516.

⁷³ 47 C.F.R. § 1.2109.

⁷⁴ 47 C.F.R. §§ 21.959(c)-(e), 22.207, 22.215, 22.967, 24.708, 24.711(a)(2), 24.716(a)(2), 25.406, 27.208, 73.5004, 90.809(a), 90.909(a)-(b), 90.1015, and 100.78(a).

14. Designated entities.⁷⁵ Section 1.2110 of the Commission's rules sets forth certain provisions applicable to designated entities – small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies.⁷⁶ This section also provides the eligibility criteria for small businesses, defines terms specific to designated entities, and addresses bidding credits and other financial incentives available to certain designated entities. The following service-specific rules, which are redundant with certain portions of section 1.2110 of the Commission's rules,⁷⁷ are removed: 21.955(b); 24.321(a)(7); 24.716(c); 27.210(b)(3)(ii), (c); 27.502(a)(7); 90.812(a); and 101.538(a)(8).⁷⁸ We also modify or remove the following service-specific rules in whole or in part because they conflict or are redundant with section 1.2110(b) of the Commission's rules,⁷⁹ the Part 1 eligibility criteria for small business status: 21.961(b)(2); 22.223(b)(2)-(4); 24.321(a)(3)-(5); 24.709(a)(2); 24.720(b)(3)-(4); 27.210(b)(3); 27.502(a)(3)-(5); 80.1252(b)(3)-(4); 90.814(b)(2); 90.912(b)(3); 90.1021(b)(3); 90.1103(b)(3)-(4); 95.816(c)(3)-(4); 101.538(a)(5)-(6); and 101.1209(b)(2).⁸⁰ We modify the following service-specific rules by changing the term “controlling principal” to “controlling interest” to conform the rules with the Commission's general competitive bidding rules:⁸¹ 90.912(b)(1)-(2); 90.913(a)(1); 90.1021(b)(1)-(2); 90.1023(a)(1); 101.1109(a)(1); and 101.1112(b)-(e).⁸² Additionally, we modify or remove the following service-specific rules in whole or in part because they conflict or are redundant with section 1.2110(c)(2) of the Commission's rules,⁸³ the Part 1 definition of “controlling interest”: 22.223(e); 22.225(e); 24.321(b); 27.502(b); 80.1252(c); 90.814(g); 90.1103(c); 95.816(d); and 101.538(b).⁸⁴ We also modify section 24.709 to clarify its applicability to existing licensees.⁸⁵

⁷⁵ Other modifications to definitions are discussed in paragraph 10 of this Order. For ease of reference, we include here changes to definitional sections that are based on the “controlling interest” standard.

⁷⁶ 47 C.F.R. § 1.2110; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2393-98, ¶¶ 258-88; *Part 1 Third Report and Order*, 13 FCC Rcd at 386-389, ¶¶ 13-19, 394-95, ¶¶ 31-33; *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15318-21, ¶¶ 45-53. The Commission's rules define designated entities as “small businesses, businesses owned by women or members of minority groups, and rural telephone companies.” 47 C.F.R. § 1.2110(a); see 47 U.S.C. §§ 309(j)(4)(C)-(D). However, the term is generally used in a more limited context to refer to those entities qualifying for benefits available to businesses based on size standards.

⁷⁷ 47 C.F.R. § 1.2110.

⁷⁸ 47 C.F.R. §§ 21.955(b), 24.321(a)(7), 24.716(c), 27.210(b)(3)(ii), (c), 27.502(a)(7), 90.812(a), and 101.538(a)(8).

⁷⁹ 47 C.F.R. § 1.2110(b).

⁸⁰ 47 C.F.R. §§ 21.961(b)(2), 22.223(b)(2)-(4), 24.321(a)(3)-(5), 24.709(a)(2), 24.720(b)(3)-(4), 27.210(b)(3), 27.502(a)(3)-(5), 80.1252(b)(3)-(4), 90.814(b)(2), 90.912(b)(3), 90.1021(b)(3), 90.1103(b)(3)-(4), 95.816(c)(3)-(4), 101.538(a)(5)-(6), and 101.1209(b)(2).

⁸¹ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15323-25, ¶¶ 58-64.

⁸² 47 C.F.R. §§ 90.912(b)(1)-(2), 90.913(a)(1), 90.1021(b)(1)-(2), 90.1023(a)(1), 101.1109(a)(1), and 101.1112(b)-(e). We make these modifications to comport with the *Part 1 Fifth Report and Order*, 15 FCC Rcd at 323-27, ¶¶ 58-67, which adopted the “controlling interest” standard as the general attribution rule for determining which applicants qualify for designated entity status based on size standards.

⁸³ 47 C.F.R. §§ 1.2110(c)(2).

⁸⁴ 47 C.F.R. §§ 22.223(e), 22.225(e), 24.321(b), 27.502(b), 80.1252(c), 90.812(a), 90.814(g), 90.1103(c), 95.816(d), and 101.538(b).

⁸⁵ Section 24.709 is modified to conform the rule to the Commission's direction in the *Part 1 Fifth Report and Order* specifying how the “controlling interest” standard would apply to current C and F block licensees that won licenses or otherwise acquired licenses through assignment or transfer once the “controlling interest” standard became effective. *Part 1 Fifth Report and Order*, 15 FCC Rcd at 326-27, ¶ 67.

15. Assignment or transfer of control: unjust enrichment. Section 1.2111 of the Commission's rules contains the procedures and reporting requirements for assigning or transferring licenses.⁸⁶ This section also contains the rules for partitioning a license and disaggregating spectrum, including the related matters of unjust enrichment, bidding credits, installment payments, the length of the license term, and construction requirements. The following service-specific rules, which are redundant with all or part of section 1.2111 of the Commission's rules,⁸⁷ are modified or removed in whole or in part: 21.960(b)(5)(i)-(ii), (d)(1); 22.217(b); 24.711(c); 24.712(c); 24.714(c); 24.716(d); 24.717(c); 27.15(c); 27.209(d); 73.5009(a); 90.810(b); 90.812(b); 90.813(c), (d)(2)(i);⁸⁸ 90.910(b); 90.911(c); 90.1017(b); 95.823(c)(1); 101.56(i); 101.535(a)(1), (c); 101.1107(e); 101.1208(b); 101.1319(c); and 101.1323(c).⁸⁹

16. Ownership disclosure requirements for short- and long-form applications. Section 1.2112 of the Commission's rules contains the Commission's ownership disclosure requirements for both the short-form application, which is a pre-requisite to participation in an auction,⁹⁰ and the long-form application, which is filed by the winning bidder(s) to assist the Commission in determining whether the winning bidder is qualified to be a licensee.⁹¹ We modify or remove sections 22.225(b); 90.815(a)-(b); 90.913(a)-(b); 90.1023(a)-(b); and 101.1109(a)-(b)⁹² because these service-specific rules are redundant with the ownership disclosure requirements set forth in section 1.2112 of the Commission's rules.⁹³ We also modify section 73.5009(b) to indicate that the ownership disclosure requirements found at section 1.2112(a) do not apply to the assignment or transfer of licenses or construction permits in the broadcast

⁸⁶ 47 C.F.R. § 1.2111.

⁸⁷ *Id.*

⁸⁸ Although sections 90.813(c) and (d)(2)(i) were removed as redundant with section 1.2111 of the Commission's rules, other portions of section 90.813(d)(2) were retained because they provide additional details regarding assignments and transfers. 47 C.F.R. §§ 1.2111, 90.813(c), (d)(2)(i). As noted earlier in paragraph 6, service-specific competitive bidding rules that supplement the Part 1 general competitive bidding rules are retained.

⁸⁹ 47 C.F.R. §§ 21.960(b)(5)(i)-(ii), (d)(1), 22.217(b), 24.711(c), 24.712(c), 24.714(c), 24.716(d), 24.717(c), 27.15(c), 27.209(d), 73.5009(a), 90.810(b), 90.812(b), 90.813(c), (d)(2)(i), 90.910(b), 90.911(c), 90.1017(b), 95.823(c)(1), 101.56(i), 101.535(a)(1), (c), 101.1107(e), 101.1208(b), 101.1319(c), and 101.1323(c). Section 73.5007, the unjust enrichment provision for broadcast services subject to competitive bidding, as defined in section 73.5000, has been retained because based on the bidding credit eligibility standards applicable to broadcast services, this service-specific rule departs from the Part 1 general competitive bidding unjust enrichment rule. *Commercial Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15997-98 ¶¶ 193-96, 16046-47 (1998); *Commercial Broadcast Competitive Bidding MO&O*, 14 FCC Rcd at 8767-68, ¶¶ 83-85 (1999). The service-specific unjust enrichment provision in section 73.5007 applies where bidding credit eligibility is determined according to a new entrant's attributable interests in mass media facilities. 47 C.F.R. § 73.5007; *Commercial Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15994-95, ¶ 189. Whereas, the Part 1 unjust enrichment provision applies to situations where bidding credit eligibility is determined according to a bidder's average gross revenue. 47 C.F.R. § 1.2111.

⁹⁰ 47 C.F.R. § 1.2112; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2375-77, ¶¶ 161-68; see also, 47 C.F.R. § 1.2105.

⁹¹ 47 C.F.R. § 1.2112; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2383, ¶ 199; *Part 1 Third Report and Order*, 13 FCC Rcd at 420, ¶ 77, 422, ¶ 80; see also, 47 C.F.R. § 1.2107(c).

⁹² 47 C.F.R. §§ 22.225(b), 90.815(a)-(b), 90.913(a)-(b), 90.1023(a)-(b), and 101.1109(a)-(b).

⁹³ 47 C.F.R. § 1.2112.

services subject to competitive bidding.⁹⁴

17. **Definitions.** Section 1.2110 of the Commission’s rules provides uniform definitions for “affiliate,”⁹⁵ “audits,”⁹⁶ “businesses owned by members of minority groups and/or women,”⁹⁷ “controlling interests,”⁹⁸ “eligibility for small business provisions,”⁹⁹ “gross revenues,”¹⁰⁰ and “rural telephone company.”¹⁰¹ We modify or remove the following rules in whole or in part because they conflict or are redundant with section 1.2110(c)(5) of the Commission’s rules,¹⁰² the Part 1 definition of “affiliate”: 21.961(d); 22.223(d); 22.225(e); 24.709(g); 24.720(l); 27.210(d); 90.814(h); 90.815(e); 90.912(d); 90.913(d)(3); 90.1021(d); 90.1023(e); 90.1323(e); 101.1112(h); and 101.1209(e).¹⁰³ We modify the definition of “audits” in section 1.2110(m)¹⁰⁴ to clarify that all applicants and licensees claiming designated entity status are subject to audits. Accordingly, the following service-specific rules, which are redundant with section 1.2110(m) of the Commission’s rules, are removed: 21.960(g); 22.225(d); 24.709(d); 90.815(d); 90.913(d); 90.1023(d); and 101.1109(d).¹⁰⁵ We also remove the following service-specific rules because they conflict or are redundant with section 1.2110(c)(3) of the Commission’s rules,¹⁰⁶ the Part 1 definition for “businesses owned by members of minority groups and/or women”: 24.709(g); 24.720(i); 90.814(e)-(f); and 90.815(e).¹⁰⁷ We remove the following service-specific rules in whole or in part because they conflict or are redundant with section 1.2110(n) of the Commission’s rules,¹⁰⁸ the Part 1 definition of “gross revenues”: 21.961(c); 22.223(c); 22.225(e); 24.709(g); 24.720(f);

⁹⁴ 47 C.F.R. §§ 1.2112(a), 73.5009(b). For a discussion of the interrelationship between section 73.5009 and the Part 1 competitive bidding rules *see supra* note 26.

⁹⁵ 47 C.F.R. § 1.2110(c)(5); *Part 1 Third Report and Order*, 13 FCC Rcd at 390, ¶ 27 (discussing uniform definitions of “affiliate”); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15323-27, ¶¶ 58-67 (discussing the attribution “gross revenues” of investors and “affiliates”).

⁹⁶ 47 C.F.R. § 1.2110(m); *Part 1 Third Report and Order*, 9 FCC Rcd at 422-23, ¶¶ 81-82 (modifying the Commission’s rules governing designated entity eligibility to expressly provide that applicants claiming eligibility for small business provisions shall be subject to audits by the Commission).

⁹⁷ 47 C.F.R. § 1.2110(c)(3); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15318-20, ¶¶ 45-50 (amending the term “minority” to conform to the definition adopted by the U.S. Office of Management and Budget).

⁹⁸ 47 C.F.R. § 1.2110(c)(2); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15323-27, ¶¶ 58-67 (adopting the “controlling interest standard” as the general attribution rule for determining which applicants qualify as a small business).

⁹⁹ 47 C.F.R. § 1.2110(c)(1); *Part 1 Third Report and Order*, 13 FCC Rcd at 388-89, ¶¶ 18-19 (“small business size standards”).

¹⁰⁰ 47 C.F.R. § 1.2110(n); *Part 1 Third Report and Order*, 13 FCC Rcd at 389-392, ¶¶ 20-25 (definition of “gross revenues”); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15323-27, ¶¶ 58-67.

¹⁰¹ 47 C.F.R. § 1.2110(c)(4); *Part 1 Third Report and Order*, 13 FCC Rcd at 395, ¶ 33.

¹⁰² 47 C.F.R. § 1.2110(c)(5).

¹⁰³ 47 C.F.R. §§ 21.961(d), 22.223(d), 22.225(e), 24.709(g), 24.720(l), 27.210(d), 90.814(h), 90.815(e), 90.912(d), 90.913(d)(3), 90.1021(d), 90.1023(e), 90.1323(e), 101.1112(h), and 101.1209(e).

¹⁰⁴ 47 C.F.R. § 1.2110(m).

¹⁰⁵ 47 C.F.R. §§ 1.2110(m), 21.960(g), 22.225(d), 24.709(d), 90.815(d), 90.913(d), 90.1023(d), and 101.1109(d).

¹⁰⁶ 47 C.F.R. § 1.2110(c)(3).

¹⁰⁷ 47 C.F.R. §§ 24.709(g), 24.720(i), 90.814(e)-(f), and 90.815(e).

¹⁰⁸ 47 C.F.R. § 1.2110(n).

27.210(c); 90.814(d); 90.815(e); 90.912(c); 90.913(d)(3); 90.1021(c); 90.1023(e); 90.1323(e); 101.1112(g); and 101.1209(d).¹⁰⁹ We also modify or remove the following service-specific rules in whole or in part because they are redundant with section 1.2110(c)(4) of the Commission's rules,¹¹⁰ the Part 1 definition of "rural telephone company": sections 24.720(e); 90.814(c); and 101.1209(c).¹¹¹ We also add a definition of "total assets" to section 1.2110 of the Commission's rules¹¹² to address the circumstances in which "total assets" information is relevant to the determination of whether an applicant (or licensee) is eligible for status as an entrepreneur.¹¹³ Accordingly, we delete the redundant portions of the following service-specific rules that pertain to "total assets": sections 24.709(g); 24.720(g); and 90.815(e).¹¹⁴

18. Technical/ministerial edits to Commission rules. As a result of the conforming edits made in this Order, some of the service-specific competitive bidding rules refer to sections of the Part 1 general competitive bidding rules that have been removed or modified. Accordingly, we modify the following rules to eliminate or correct references to rules that have been removed or modified: 1.2107(e); 1.2110(f)(3)(ii)(B), (f)(3)(iii)-(iv), (vii); 21.956(b)(3); 21.960(b)(4); 22.223(b)(3); 24.321(c)(1); 24.709; 24.711(b)-(b)(2); 24.712(a)-(b); 24.714(d)(1), (d)(2)(i), (iii), (d)(3)(i), (ii); 24.716(b)-(b)(2); 24.717(a)-(b); 24.720(b)(5), (c)(2), (j)(2), (k)(4), (n)(3)-(4); 27.15(d)-(e); 73.3571(h)(4)(i); 73.3573(f)(5)(ii); 73.5005(a); 73.5006(d); 80.1252(d); 90.705; 90.813(d)(2)(ii)-(iv), (3)(ii), (e), (f); 90.814(a)(3); 90.910(a); 90.1017(a); 90.1025(b); 90.1103(d); 95.816(e); 95.823(c)(2), (c)(2)(iii), (c)(3); 101.538(c); and 101.1319(b).¹¹⁵ Finally, we correct errors in the following rules pursuant to the Bureau's delegated authority under section 0.331(d) to make ministerial conforming edits:¹¹⁶ 22.227; 24.711(b)(3)-(5);¹¹⁷

¹⁰⁹ 47 C.F.R. §§ 21.961(c), 22.223(c), 22.225(e), 24.709(g), 24.720(f), 27.210(c), 90.814(d), 90.815(e), 90.912(c), 90.913(d)(3), 90.1021(c), 90.1023(e), 90.1323(e), 101.1112(g), and 101.1209(d).

¹¹⁰ 47 C.F.R. § 1.2110(c)(4).

¹¹¹ 47 C.F.R. §§ 24.720(e), 90.814(c), and 101.1209(c).

¹¹² 47 C.F.R. §§ 1.2110(b),(o).

¹¹³ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15326-27, ¶ 67 (modified by *Erratum*, 15 FCC Rcd 21520 (2000)). We recognize that the Commission, in the *Part 1 Eighth Report and Order*, declined to include a "total assets" test for purposes of determining small business bidding credit eligibility. Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Eighth Report and Order*, FCC 02-34, ¶ 3 (rel. February 13, 2002) ("*Part 1 Eighth Report and Order*"). The "total assets" test added by this Order to the Part 1 general competitive bidding rules is used to evaluate the eligibility of applicants to acquire broadband Personal Communications Services C and F block licenses made available in "closed" (entrepreneur-only) bidding. *Id.* at ¶ 2; 47 C.F.R. § 24.709(a). Although only applicable in limited circumstances, we move this attribution rule to the Part 1 general competitive bidding rules for ease of reference.

¹¹⁴ 47 C.F.R. § 24.709(g), 24.720(g), and 90.815(e).

¹¹⁵ 47 C.F.R. §§ 1.2107(e), 1.2110(f)(3)(ii)(B), (f)(3)(iii)-(iv), (vii), 21.956(b)(3), 21.960(b)(4), 22.223(b)(3), 24.321(c)(1), 24.709, 24.711(b)-(b)(2), 24.712(a)-(b), 24.714(d)(1), (d)(2)(i), (iii), (d)(3)(i), (ii), 24.716(b)-(b)(2), 24.717(a)-(b), 24.720(b)(5), (c)(2), (j)(2), (k)(4), (n)(3)-(4), 27.15(d)-(e), 73.3571(h)(4)(i), 73.3573(f)(5)(ii), 73.5005(a), 73.5006(d), 80.1252(d), 90.705, 90.813(d)(2)(ii)-(iv), (3)(ii), (e), (f), 90.814(a)(3), 90.910(a), 90.1017(a), 90.1025(b), 90.1103(d), 95.816(e), 95.823(c)(2), (c)(2)(iii), (c)(3), 101.538(c), and 101.1319(b). With respect to section 24.709, we note that the technical amendments related to this rule may be found in Attachment A.

¹¹⁶ 47 C.F.R. § 0.331(d).

¹¹⁷ 47 C.F.R. § 24.711(b)(3)-(5). The *Competitive Bidding Sixth Report and Order* deleted sections 24.711(b)(4)-(5), which, respectively, concern installment payment terms for minority- and/or women-owned businesses and small businesses that are also a minority- and/or women-owned. 47 C.F.R. § 24.711(b)(4)-(5); *Competitive Bidding Sixth Report and Order*, 11 FCC Rcd at 156-59, ¶¶ 35-43, Appendix A, ¶ 172. The Federal Register summary of the *Competitive Bidding Sixth Report and Order*, however, inadvertently, did not indicate this deletion. *Sixth Report and Order*, 60 Fed. Reg. 37786 (July 21, 1995). Moreover, the installment payment terms for

(continued...)

73.5009;¹¹⁸ 90.809(b); 90.813(a); 90.909(c); 90.913(a); 95.816(f); and 101.538(a)(7).¹¹⁹

IV. ORDERING CLAUSE

19. IT IS ORDERED that Parts 1, 21, 22, 24, 25, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission's rules are AMENDED in accordance with the foregoing Order and as set forth in Appendix A, effective 30 days after publication in the *Federal Register*. This action is taken pursuant to the authority delegated by the Commission in the *Part 1 Fifth Report and Order*, 47 U.S.C. § 155(c), and 47 C.F.R. §§ 0.131(c) and 0.331(d).

FEDERAL COMMUNICATIONS COMMISSION

Kathleen O'Brien Ham
Deputy Chief, Wireless Telecommunications Bureau

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eligible small businesses in section 24.711(b) were inadvertently changed in the "final rule" appendix to the *Part 1 Third Report and Order*. *Part 1 Third Report and Order*, 13 FCC Rcd at 530-31. Therefore, a ministerial conforming amendment is made to section 24.711(b)(3)-(5) to implement the changes indicated in the *Competitive Bidding Sixth Report and Order*. 47 C.F.R. § 24.711(b)(3)-(5); *Competitive Bidding Sixth Report and Order*, 11 FCC Rcd at 156-59, ¶¶ 35-43, Appendix A, ¶ 172.

¹¹⁸ 47 C.F.R. § 73.5009; *see supra* n.26.

¹¹⁹ 47 C.F.R. §§ 22.227, 24.711(b)(3)-(5), 73.5009, 90.809(b), 90.813(a), 90.909(c), 90.913(a), 95.816(f), and 101.538(a)(7). Moreover, sections 22.227, 90.809(b), and 90.909(c) were modified to comport with the changes made by the *1998 Biennial Regulatory Review*. Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 80, 87, 90, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, 13 FCC Rcd 21027 at Appendix E, "ULS Rule Conversion Chart" (1998) ("*1998 Biennial Regulatory Review*") (Appendix not reproduced in the FCC Record, but available on-line at 1998 WL 735878).

APPENDIX A: Rule Changes

For the reasons discussed in the preamble the Federal Communications Commission amends 47 CFR parts 1, 21, 22, 24, 25, 27, 73, 74, 80, 90, 95, 100, and 101 as follows:

1. Amend § 1.2107 by revising paragraph (e) to read as follows:

§ 1.2107 Submission of down payment and filing of long-form application.

* * * * *

(e) A winning bidder that seeks a bidding credit to serve a qualifying tribal land, as defined in § 1.2110(f)(3)(i), within a particular market must indicate on the long-form application (FCC Form 601) that it intends to serve a qualifying tribal land within that market.

* * * * *

2. Amend § 1.2110 by revising paragraphs (b)(1), (f)(3)(ii)(B), (f)(3)(iii), (f)(3)(iv), (f)(3)(vii), and (m)(1) and adding new paragraph (o) to read as follows:

§ 1.2110 Designated entities.

* * * * *

(b) Eligibility for small business and entrepreneur provisions.

(1) Size attribution.

(i) The gross revenues of the applicant (or licensee), its controlling interests and their affiliates shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business. An applicant seeking status as a small business must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and their affiliates for each of the previous three years.

(ii) If applicable, the total assets of the applicant (or licensee), its controlling interests and their affiliates shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as an entrepreneur. An applicant seeking status as an entrepreneur must disclose on its short- and long-form applications, separately and in

the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and their affiliates for each of the previous two years.

* * * * *

(f) * * *

(3) * * *

(ii) * * *

(B) In addition, within ninety (90) days after the filing deadline for long- form applications, the winning bidder must amend its long-form application and file a certification that it will comply with the buildout requirements set forth in § 1.2110(f)(vi) and consult with the tribal government regarding the siting of facilities and deployment of service on the tribal land.

(iii) Bidding credit formula. Subject to the applicable bidding credit limit set forth in § 1.2110(f)(3)(iv), the bidding credit shall equal three hundred thousand (300,000) dollars for the first two hundred (200) square miles (518 square kilometers) of qualifying tribal land, and fifteen hundred (1500) dollars for each additional square mile (2.590 square kilometer) of qualifying tribal land above two hundred (200) square miles (518 square kilometers).

(iv) Bidding credit limit. If the high bid is equal to or less than one million (1,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(f)(3)(iii) shall not exceed fifty (50) percent of the high bid. If the high bid is greater than one million (1,000,000) dollars, but equal to or less than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(f)(3)(iii) shall not exceed five hundred thousand (500,000) dollars. If the high bid is greater than two million (2,000,000) dollars, the maximum bidding credit calculated pursuant to § 1.2110(f)(3)(iii) shall not exceed twenty-five (25) percent of the high bid.

* * * * *

(vii) Performance penalties. If a recipient of a bidding credit under this section fails to provide the post-construction certification required by § 1.2110(f)(3)(vi), then it shall repay the bidding credit amount in its entirety, plus interest. The interest will be based on the rate for ten-year U.S. Treasury obligations

applicable on the date the license is granted. Such payment shall be made within thirty (30) days of the third anniversary of the initial grant of its license.

* * * * *

(m) * * *

(1) Applicants and licensees claiming eligibility shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

* * * * *

(o) Total Assets. Total assets shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidence by the most recently audited financial statements or certified by the applicant's chief financial officer or its equivalent if the applicant does not otherwise use audited financial statements.

3. Revise § 21.950 to read as follows:

§ 21.950 MDS subject to competitive bidding.

Mutually exclusive initial applications for MDS licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this part.

§ 21.951 through § 21.953 [Removed and Reserved]

4. Remove and reserve § 21.951 through § 21.953.

5. Revise § 21.954 to read as follows:

§ 21.954 Submission of upfront payments.

Applicants who are small businesses eligible for reduced upfront payments will be required to submit an upfront payment amount in accordance with § 21.960(c).

§21.955 [Removed and Reserved]

6. Remove and reserve § 21.955.

7. Amend § 21.956 by revising paragraph (b)(3) to read as follows:

§ 21.956 Filing of long-form applications or statements of intention.

* * * * *

(b) * * *

(3) an exhibit complying with §§ 1.2110(j) of this chapter and 21.960(e), if the winning bidder submitting the long-form application or statement of intention claims status as a designated entity.

* * * * *

8. Revise § 21.957 to read as follows:

§ 21.957 Comments on statements of intention.

In addition to the provisions of § 21.30, parties wishing to comment or oppose the issuance of a BTA authorization in connection with the filing of a statement of intention by a winning bidder must do so prior to the Commission’s issuance of the BTA authorization.

9. Revise § 21.958 to read as follows:

§ 21.958 Issuance of BTA licenses.

A winning bidder who submitted a long-form application for an MDS station license within its BTA service area pursuant to § 21.956(a) will receive its BTA authorization concurrent with the grant of its MDS conditional station license within its BTA service area. A winning bidder who submitted a statement of intention with regard to its BTA service area pursuant to § 21.956(a) will receive its BTA authorization following the Commission's review of its statement of intention. The Commission will issue a BTA authorization to a winning bidder within ten (10) business days following notification of receipt of full payment of the amount of the winning bid.

§ 21.959 [Removed and Reserved]

10. Remove and reserve § 21.959.

11. Amend § 21.960 by revising paragraph (b)(5) and removing paragraphs (d)(1) and (g) to read as follows:

§ 21.960 Designated entity provisions for MDS.

* * * * *

(b) * * *

(5) Unjust enrichment. If an eligible BTA authorization holder that utilizes installment financing under this subsection seeks to partition, pursuant to § 21.931, a portion of its BTA containing one-third or more of the population of the area within its control in the licensed BTA to an entity not meeting the eligibility standards for installment payments, the holder must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of partition as a condition of approval.

* * * * *

12. Amend § 21.961 by redesignating paragraph (b)(3) as (b)(2), and removing paragraphs (c) and (d).

13. Revise § 22.201 to read as follows:

§ 22.201 Paging geographic area authorizations are subject to competitive bidding.

Mutually exclusive initial applications for paging geographic area licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart and Part 90 of this chapter.

§ 22.203 [Removed and Reserved]

14. Remove and reserve § 22.203.

§ 22.205 [Removed and Reserved]

15. Remove and reserve § 22.205.

§ 22.207 [Removed and Reserved]

16. Remove and reserve § 22.207.

§ 22.209 [Removed and Reserved]

17. Remove and reserve § 22.209.

§ 22.211 [Removed and Reserved]

18. Remove and reserve § 22.211.

19. Revise § 22.213 to read as follows:

§ 22.213 Filing of long-form applications.

After an auction, the Commission will not accept long form applications for paging geographic authorizations from anyone other than the auction winners and parties seeking partitioned authorizations pursuant to agreements with auction winners under § 22.221 of this part.

§ 22.215 [Removed and Reserved]

20. Remove and reserve § 22.215.

21. Revise § 22.217 to read as follows:

§ 22.217 Bidding credit for small businesses.

A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 22.223(b)(1)(i) of this part may use a bidding credit of thirty-five (35) percent to lower the cost of its winning bid. A winning bidder that qualifies as a small business or consortium of small businesses as defined in § 22.223(b)(1)(ii) of this part may use a bidding credit of twenty-five (25) percent to lower the cost of its winning bid.

22. Amend § 22.223 by redesignating paragraph (b)(3) as (b)(2), removing paragraphs (b)(4), (c), (d) and (e), and revising newly redesignated paragraph (b)(2) to read as follows:

§ 22.223 Definitions concerning competitive bidding process.

* * * * *

(b) * * *

(2) A consortium of small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a small business in paragraph (b)(1)(i) or (b)(1)(ii) of this section. Each individual member must establish its eligibility as a small business, as defined in this section.

23. Revise § 22.225 to read as follows:

§ 22.225 Certifications, disclosures, records maintenance, and definitions.

(a) Short-form applications: certifications and disclosure. In addition to certifications and disclosures required by Part 1, Subpart Q of this chapter, each applicant for a paging license which qualifies as a

small business or consortium of small businesses shall append the following information as an exhibit to its FCC Form 175: the identity of the applicant's controlling interest and affiliates, and, if a consortium of small businesses, the members of the joint venture.

(b) Records maintenance. All winning bidders qualifying as small businesses shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any documents necessary to establish small businesses under § 22.223. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

(c) Definitions. The terms small business and consortium of small businesses used in this section are defined in § 22.223.

24. Revise § 22.227 to read as follows:

§ 22.227 Petitions to deny and limitations on settlements.

(a) Procedures regarding petitions to deny long-form applications in the paging service will be governed by § 1.939.

(b) The consideration that an individual or an entity will be permitted to receive for agreeing to withdraw an application or petition to deny will be limited by the provisions set forth in § 1.935.

25. Revise § 22.228 to read as follows:

§ 22.228 Cellular Rural Service Area licenses subject to competitive bidding.

Mutually exclusive initial applications for Cellular Rural Service Area licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

26. Revise § 22.960 to read as follows:

§ 22.960 Cellular unserved area radiotelephone licenses subject to competitive bidding.

Mutually exclusive initial applications for cellular unserved area Phase I and Phase II licenses filed after July 26, 1993 are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

§§ 22.961 through 22.965 [Removed and Reserved]

27. Remove and reserve §§ 22.961 through 22.965.

§ 22.967 [Removed and Reserved]

28. Remove and reserve § 22.967.

29. Revise § 24.301 to read as follows:

§ 24.301 Narrowband PCS subject to competitive bidding.

Mutually exclusive initial applications for narrowband PCS service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

30. Revise § 24.321 to read as follows:

§ 24.321 Designated entities.

(a) Eligibility for small business provisions.

(1) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$ 40 million for the preceding three years.

(2) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$ 15 million for the preceding three years.

(3) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section (or each of which individually satisfies the definition in paragraph (a)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(b) Bidding credits. (1) After August 7, 2000, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter.

(2)(i) Businesses owned by members of minority groups and women, including small businesses owned by members of minority groups and women, that are winning bidders on nationwide licenses on Channel 5, Channel 8, and Channel 11 prior to [effective date of rules] will be eligible for a twenty-five (25) percent bidding credit.

(ii) Businesses owned by members of minority groups and women, including small businesses owned by members of minority groups and women, that are winning bidders on regional licenses on Channel 13 and Channel 17 prior to August 7, 2000 will be eligible for a forty (40) percent bidding credit.

(c) Installment payments. Small businesses, including small businesses owned by members of minority groups and women, that are winning bidders on any regional license prior to August 7, 2000 will be eligible to pay the full amount of their winning bids in installments over the term of the license pursuant to the terms set forth in § 1.2110(g) of this chapter.

31. Revise § 24.701 to read as follows:

§ 24.701 Broadband PCS subject to competitive bidding.

Mutually exclusive initial applications for broadband PCS service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 24.702 [Removed and Reserved]

32. Remove and reserve § 24.702.

§ 24.704 [Removed and Reserved]

33. Remove and reserve § 24.704.

§ 24.706 [Removed and Reserved]

34. Remove and reserve § 24.706.

§ 24.708 [Removed and Reserved]

35. Remove and reserve § 24.708.

36. Revise § 24.709 to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C or F.

(a) *General Rule for licenses offered for closed bidding.*

(1) No application is acceptable for filing and no license shall be granted to a winning bidder in closed bidding for frequency block C or frequency block F, unless the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, have had gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million at the time the applicant's short-form application (Form 175) is filed.

(2) Any licensee awarded a license won in closed bidding pursuant to the eligibility requirements of this section (or pursuant to § 24.839(a)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments (i.e., from sources whose gross revenues and total assets are not considered under paragraph (b) of this section), debt financing, revenue from operations or other investments, business development, or expanded service shall not be considered.

(3) *Tiers.* (i) For purposes of determining spectrum to which the eligibility requirements of this section are applicable, the BTA service areas (see § 24.202(b)) are divided into two tiers according to their population as follows:

(A) Tier 1: BTA service areas with population equal to or greater than 2.5 million;

(B) Tier 2: BTA service areas with population less than 2.5 million.

(ii) For Auction No. 35, the population of individual BTA service areas will be based on the 1990 census. For auctions beginning after the start of Auction No. 35, the population of individual BTA service areas will be based on the most recent available decennial census.

(4) *Application of eligibility requirements.* (i) The following categories of licenses will be subject to

closed bidding pursuant to the eligibility requirements of this section in auctions that begin after the effective date of this paragraph.

(A) For Tier 1 BTAs, one of the 10 MHz C block licenses (1895-1900 MHz paired with 1975-1980 MHz);

(B) For Tier 2 BTAs, two of the 10 MHz C block licenses (1895-1900 MHz paired with 1975-1980 MHz; 1900-1905 MHz paired with 1980-1985 MHz) and all 15 MHz C block licenses.

(ii) Notwithstanding the provisions of paragraph (a)(4)(i) of this section, any C block license for operation on spectrum that has been offered, but not won by a bidder, in closed bidding in any auction beginning on or after March 23, 1999, will not be subject in a subsequent auction to closed bidding pursuant to the eligibility requirements of this section.

(5) *Special rule for licensees disaggregating or returning certain spectrum in frequency block C.*

(i) In addition to entities qualifying for closed bidding under paragraph (a)(1) of this section, any entity that was eligible for and participated in the auction for frequency block C, which began on December 18, 1995, or the reauction for frequency block C, which began on July 3, 1996, will be eligible to bid for C block licenses offered in closed bidding in any reauction of frequency block C spectrum that begins within two years of March 23, 1999.

(ii) In cases of merger, acquisition, or other business combination of entities, where each of the entities is eligible to bid for C block licenses offered in closed bidding in any reauction of C block spectrum on the basis of the eligibility exception set forth in paragraph (a)(5)(i) of this section, the resulting entity will also be eligible for the exception specified in paragraph (a)(5)(i).

(iii) In cases of merger, acquisition, or other business combination of entities, where one or more of the entities are ineligible for the exception set forth in paragraph (a)(5)(i) of this section, the resulting entity will not be eligible pursuant to paragraph (a)(5)(i) unless an eligible entity possesses *de jure* and *de facto* control over the resulting entity.

(iv) The following restrictions will apply for any reauction of frequency block C spectrum conducted after March 24, 1998:

(A) Applicants that elected to disaggregate and surrender to the Commission 15 MHz of spectrum from any or all of their frequency block C licenses, as provided in Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 97-82, 12 FCC Rcd 16,436 (1997), as modified by the Order on Reconsideration of the Second Report and Order, WT Docket No. 97-82, FCC 98-46 (rel. Mar. 24, 1998), will not be eligible to apply for such disaggregated spectrum until 2 years from the start of the reauction of that spectrum.

(B) Applicants that surrendered to the Commission any of their frequency block C licenses, as provided in Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 97-82, 12 FCC Rcd 16,436 (1997), as modified by the Order on Reconsideration of the Second Report and Order, WT Docket No. 97-82, FCC 98-46 (rel. Mar. 24, 1998), will not be eligible to apply for the licenses that they surrendered to the Commission until 2 years from the start of the reauction of those licenses if they elected to apply a credit of 70% of the down payment they made on those licenses toward the prepayment of licenses they did not surrender.

(b) *Exceptions to General Rule.*

(1) *Scope.* The following provisions apply to licenses acquired in Auctions No. 5, 10, 11 or 22, or pursuant to § 24.839(a)(2) or (a)(3) prior to October 30, 2000.

(i) *Small Business Consortia.* Where an applicant (or licensee) is a consortium of small businesses, the gross revenues and total assets of each small business shall not be aggregated.

(ii) *Publicly-Traded Corporations.* Where an applicant (or licensee) is a publicly traded corporation with widely dispersed voting power, the gross revenues and total assets of a person or entity that holds an interest in the applicant (or licensee), and its affiliates, shall not be considered.

(iii) *25 Percent Equity Exception.* The gross revenues and total assets of a person or entity that holds an interest in the applicant (or licensee), and its affiliates, shall not be considered so long as:

(A) Such person or entity, together with its *affiliates*, holds only *nonattributable equity* equaling no more

than 25 percent of the applicant's (or licensee's) total equity;

(B) Except as provided in paragraph (b)(1)(v) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group*; and

(C) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(1)(v) of this section, and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(iv) *49.9 Percent Equity Exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its affiliates, shall not be considered so long as:

(A) Such person or entity, together with its *affiliates*, holds only *nonattributable equity* equaling no more than 49.9 percent of the applicant's (or licensee's) total equity;

(B) Except as provided in paragraph (b)(1)(vi) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group*; and

(C) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(1)(vi) of this section and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(v) *Control Group Minimum 25 Percent Equity Requirement.* In order to be eligible to exclude gross revenues and total assets of persons or entities identified in paragraph (b)(1)(iii) of this section, and applicant (or licensee) must comply with the following requirements:

(A) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity*, as provided in paragraph (b)(1)(v)(B) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) control group must own at least 25 percent of the applicant's (or licensee's) total equity as follows:

(1) At least 15 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors*,

either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(2) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group, and must have *de facto* control of the control group and of the applicant;

(3) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned, either unconditionally or in the form of stock options, by any of the following entities, which may not comply with § 24.720(i)(1):

(i) *Institutional Investors*;

(ii) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group*;

(iii) Individuals that are members of the applicant's (or licensee's) management; or

(iv) *Qualifying investors*, as specified in § 24.720(i)(4).

(4) Following termination of the three-year period specified in paragraph (b)(1)(v)(A) of this section, *qualifying investors* must continue to own at least 10 percent of the applicant's (or licensee's) total equity unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(1)(v)(A)(1) of this section. The restrictions specified in paragraph (b)(1)(v)(A)(3)(i) through (b)(1)(v)(A)(3)(iv) of this section no longer apply to the remaining equity after termination of such three-year period.

(B) At the election of an applicant (or licensee) whose *control group's* sole member is a preexisting entity, the 25 percent minimum equity requirements set forth in paragraph (b)(1)(v)(A) of this section shall apply, except that only 10 percent of the applicant's (or licensee's) total equity must be held in *qualifying investors*, and that the remaining 15 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors*, or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 15 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(1)(v)(A) of this section.

(vi) *Control Group Minimum 50.1 Percent Equity Requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(1)(iv) of this section, an applicant (or licensee) must comply with the following requirements:

(A) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity*, as provided in paragraph (b)(1)(vi)(B) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 50.1 percent of the applicant's (or licensee's) total equity as follows:

(1) at least 30 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors*, either unconditionally or in the form of options, exercisable at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(2) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group and must have *de facto* control of the control group and of the applicant;

(3) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors*, either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(1)(vi)(A)(1) of this section, or by any of the following entities which may not comply with § 24.720(i)(1):

(i) *Institutional investors*, either unconditionally or in the form of stock options;

(ii) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group*, either unconditionally or in the form of stock options;

(iii) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options; or

(iv) *Qualifying investors*, as specified in 24.720(i)(4).

(4) Following termination of the three-year period specified in paragraph (b)(1)(vi)(A) of this section, *qualifying investors* must continue to own at least 20 percent of the applicant's (or licensee's) total equity

unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(1)(vi)(A)(1) of this section. The restrictions specified in paragraph (b)(1)(vi)(A)(3)(i) through (b)(1)(vi)(A)(3)(iv) of this section no longer apply to the remaining equity after termination of such three-year period.

(B) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity*, the 50.1 percent minimum equity requirements set forth in paragraph (b)(1)(vi)(A) of this section shall apply, except that only 20 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors*, and that the remaining 30.1 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors*, or noncontrolling existing investors in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 30.1 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(1)(vi)(A) of this section.

(vii) *Calculation of Certain Interests.* Except as provided in paragraphs (b)(1)(v) and (b)(1)(vi) of this section, ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may not be used to appear to terminate or divest ownership interests before they actually do so, in order to comply with the *nonattributable equity* requirements in paragraphs (b)(1)(iii)(A) and (b)(1)(iv)(A) of this section.

(viii) *Aggregation of Affiliate Interests.* Persons or entities that hold interest in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(c)(5)(iii) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the *nonattributable equity* requirements in paragraphs (b)(1)(iii)(A) and (b)(1)(iv)(A) of this section.

Example 1 for paragraph (b)(1)(viii). ABC Corp. is owned by individuals, A, B, and C, each having an equal one-third voting interest in ABC Corp. A and B together, with two-thirds of the stock have the power to control ABC Corp. and have an identity of interest. If A & B invest in DE Corp., a broadband PCS applicant for block C, A and B's separate interests in DE Corp. must be aggregated because A and B

are to be treated as one person.

Example 2 for paragraph (b)(1)(viii). ABC Corp. has subsidiary BC Corp., of which it holds a controlling 51 percent of the stock. If ABC Corp. and BC Corp., both invest in DE Corp., their separate interests in DE Corp. must be aggregated because ABC Corp. and BC Corp. are affiliates of each other.

(2) The following provisions apply to licenses acquired pursuant to § 24.839(a)(2) or (a)(3) on or after October 30, 2000.

(i) In addition to the eligibility requirements set forth at 24.709(a) and (b), applicants and/or licensees seeking to acquire C and/or F block licenses pursuant to 24.839(a)(2) or (a)(3) will be subject to the controlling interest standard in 1.2110(c)(2) of the Commission's rules for purposes of determining unjust enrichment payment obligations. See § 1.2111.

(c) Short-Form and Long-Form Applications: Certifications and Disclosure.

(1) Short-form Application. In addition to certifications and disclosures required by Part 1, subpart Q of this chapter, each applicant to participate in closed bidding for frequency block C or frequency block F shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), and (if applicable) that it is eligible for designated entity status pursuant to this section and § 24.720, and shall append the following information as an exhibit to its Form 175:

(i) For all applicants:

(A) The applicant's gross revenues and total assets, computed in accordance with paragraphs (a) of this section and § 1.2110(b)(1)-(b)(2).

(ii) For all applicants that participated in Auction Nos. 5, 10, 11, and/or 22:

(A) The identity of each member of the applicant's *control group*, regardless of the size of each member's total interest in the applicant, and the percentage and type of interest held;

(B) The citizenship and the gender or minority group classification for each member of the applicant's *control group* if the applicant is claiming status as a *business owned by members of minority groups and/or women*;

(C) The status of each *control group* member that is an *institutional investor*, an *existing investor*, and/or a member of the applicant's management;

(D) The identify of each *affiliate* of the applicant and each affiliate of individuals or entities identified pursuant to paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(C) of this section;

(E) A certification that the applicant's sole *control group* member is a *preexisting entity*, if the applicant makes the election in either paragraph (b)(1)(v)(B) or (b)(1)(vi)(B) of this section; and

(F) For an applicant that is a *publicly traded corporation with widely disbursed voting power*:

(1) A certified statement that such applicant complies with the requirements of the definition of *publicly traded corporation with widely disbursed voting power* set forth in § 24.720(h);

(2) The identify of each *affiliate* of the applicant.

(iii) For each applicant claiming status as a *small business consortium*, the information specified in paragraph (c)(1)(ii) of this section, for each member of such consortium.

(2) *Long-form Application*. In addition to the requirements in subpart I of this part and other applicable rules (e.g., §§ 20.6(e) and 20.9(b) of this chapter), each applicant submitting a long-form application for a license(s) for frequency block C or F shall in an exhibit to its long- form application:

(i) Disclose separately and in the aggregate the *gross revenues* and *total assets*, computed in accordance with paragraphs (a) and (b) of this section, for each of the following: the applicant; the applicant's *affiliates*, the applicant's *control group* members; the applicant's attributable investors; and *affiliates* of its attributable investors;

(ii) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility for a license(s) for frequency block C or frequency block F and its eligibility under §§ 24.711, 24.712, 24.714 and 24.720, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

(iii) List and summarize any investor protection agreements and identify specifically any such provisions in those agreements identified pursuant to paragraph (c)(2)(ii) of this section, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(3) *Records Maintenance.* All applicants, including those that are winning bidders, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including those documents referenced in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section and any other documents necessary to establish eligibility under this section or under the definitions of *small business and/or business owned by members of minority groups and/or women*. Licensees (and their successors in interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (Form 175), whichever is earlier.

(d) *Definitions.* The terms consortium of small businesses, control group, existing investor, institutional investor, nonattributable equity, preexisting entity, publicly traded corporation with widely dispersed voting power, qualifying investor, and small business used in this section are defined in § 24.720 of this chapter.

37. Revise § 24.711 to read as follows:

§ 24.711 Installment payments for licenses for frequency Block C.

Installment payments. Each eligible licensee of frequency Block C may pay the remaining 90 percent of the net auction price for the license in installment payments pursuant to § 1.2110(f) of this chapter and under the following terms:

(a) For an eligible licensee with gross revenues exceeding \$75 million (calculated in accordance with §§ 1.2110(b) and 24.709(b)) in each of the two preceding years (calculated in accordance with § 1.2110(n) of the Commission's rules), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license.

(b) For an eligible licensee with gross revenues not exceeding \$75 million (calculated in accordance with §§ 1.2110(b) and 24.709(b)) in each of the two preceding years, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term.

(c) For an eligible licensee that qualifies as a small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first six years and payments of interest and principal amortized over the remaining four years of the license term.

38. Revise 24.712 to read as follows:

§ 24.712 Bidding credits for licenses won for frequency Block C.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(3) may use a bidding credit of fifteen percent, as specified in § 1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(4) may use a bidding credit of twenty-five percent as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid.

(c) Unjust enrichment. The unjust enrichment provisions of § 1.2111(d) and (e)(2) shall not apply with respect to licenses acquired in either the auction for frequency block C that began on December 18, 1995, or the reauction of block C spectrum that began on July 3, 1996.

39. Amend § 24.714 by redesignating paragraph (d) as (c) and revising newly redesignated paragraphs (c)(1), (c)(2)(i), (c)(2)(iii), (c)(3)(i), and (c)(3)(ii) to read as follows:

§ 24.714 Partitioned licenses and disaggregated spectrum.

* * * * *

(c) Installment payments--(1) Apportioning the balance on installment payment plans. When a winning bidder elects to pay for its license through an installment payment plan pursuant to §§ 1.2110(g) of this chapter or 24.716, and partitions its licensed area or disaggregates spectrum to another party, the outstanding balance owed by the licensee on its installment payment plan (including accrued and unpaid interest) shall be apportioned between the licensee and partitionee or disaggregatee. Both parties will be responsible for paying their proportionate share of the outstanding balance to the U.S. Treasury. In the case of partitioning, the balance shall be apportioned based upon the ratio of the population of the partitioned area to the population of the entire original license area calculated based upon the most recent census data. In the case of disaggregation, the balance shall be apportioned based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum allocated to the licensed area.

(2) * * *

(i) When a winning bidder elects to pay for its license through an installment payment plan, and partitions its license or disaggregates spectrum to another party that would not qualify for an installment payment plan or elects not to pay its share of the license through installment payments, the outstanding balance owed by the licensee (including accrued and unpaid interest shall be apportioned according to § 24.714(c)(1).

* * * * *

(iii) The licensee shall be permitted to continue to pay its pro rata share of the outstanding balance and shall receive new financing documents (promissory note, security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. These financing documents will replace the licensee's existing financing documents, which shall be marked "superseded" and returned to the licensee upon receipt of the new financing documents. The original interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the licensee's portion of the remaining government obligation. We will require, as a further condition to approval of the partial assignment application, that the licensee execute and return to the U.S. Treasury the new financing documents within

30 days of the Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application.

* * * * *

(3) * * *

(i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligations, as calculated according to § 24.714(c)(1).

(ii) Each party will be required, as a condition to approval of the partial assignment application, to execute separate financing documents (promissory note, security agreement) agreeing to pay their pro rata portion of the balance due (including accrued and unpaid interest) based upon the installment payment terms for which they qualify under the rules. The financing documents must be returned to the U.S. Treasury within thirty (30) days of the Public Notice conditionally granting the partial assignment application. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for their portion of the partitioned market or disaggregated spectrum.

* * * * *

40. Revise § 24.716 to read as follows:

§ 24.716 Installment payments for licenses for frequency Block F.

Installment Payments. Each eligible licensee of frequency Block F may pay the remaining 80 percent of the net auction price for the license in installment payments pursuant to § 1.2110(g) of this chapter and under the following terms:

(a) For an eligible licensee with gross revenues exceeding \$75 million (calculated in accordance with §§ 1.2110(b) and, when applicable, 24.709(b)) in each of the two preceding years (calculated in accordance with § 1.2110(n) of the Commission's rules), interest shall be imposed based on the rate for ten-year U.S.

Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license;

(b) For an eligible licensee with gross revenues not exceeding \$75 million (calculated in accordance with §§ 1.2110(b) and, when applicable, 24.709(b)) in each of the two preceding years (calculated in accordance with § 1.2110(n) of the Commission's rules), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term; or

(c) For an eligible licensee that qualifies as a small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

41. Revise § 24.717 to read as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(3) may use a bidding credit of fifteen percent, as specified in § 1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(4) may use a bidding credit of twenty-five percent as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid.

42. Revise §24.720 to read as follows:

§ 24.720 Definitions.

(a) Scope. The definitions in this section apply to §§ 24.709 through 24.717, unless otherwise specified in those sections.

(b) *Small business; very small business; consortia.*

(1) A *small business* is an entity that, together with its *affiliates* and persons or entities that hold interest in such entity and their affiliates, has average annual *gross revenues* that are not more than \$40 million for the preceding three years.

(2) A *very small business* is an entity that, together with its *affiliates* and persons or entities that hold interests in such entity and their *affiliates*, has average annual *gross revenues* that are not more than \$15 million for the preceding three years.

(3) A *small business consortium* is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a *small business* in paragraph (b)(1) of this section.

(4) A *very small business* consortium is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a *very small business* in paragraph (b)(2) of this section.

(c) *Business Owned by Members of Minority Groups and/or Women.* A business owned by members of minority groups and/or women is an entity:

(1) In which the *qualifying investor* members of an applicant's *control group* are members of minority groups and/or women who are United States citizens; and

(2) That complies with the requirements of §§ 24.709(b)(1)(iii) and (b)(1)(v) or § 24.709(b)(1)(iv) and (b)(vi).

(d) *Small Business Owned by Members of Minority Groups and/or Women: Consortium of Small Businesses Owned by Members of Minority and/or Women.* A Small business owned by members of minority groups and/or women is an entity that meets the definitions in both paragraphs (b) and (c) of this section. A *consortium of small businesses owned by members of minority groups and/or women* is a conglomerate organization formed as a joint venture between mutually- independent business firms, each of which individually satisfies the definitions in paragraphs (b) and (c) of this section.

(e) *Institutional Investor.* An *institutional investor* is an insurance company, a bank holding stock in

trust accounts through its trust department, or an investment company as defined in 15 U.S.C. 80a-3(a), including within such definition any entity that would otherwise meet the definition of investment company under 15 U.S.C. 80a-3(a) but is excluded by the exemptions set forth in 15 U.S.C. 80a-3 (b) and (c), without regard to whether such entity is an issuer of securities; provided that, if such investment company is owned, in whole or in part, by other entities, such investment company, such other entities and the *affiliates* of such other entities, taken as a whole, must be primarily engaged in the business of investing, reinvesting or trading in securities or in distributing or providing investment management services for securities.

(f) *Nonattributable Equity*.

(1) *Nonattributable equity* shall mean:

(i) For corporations, voting stock or non-voting stock that includes no more than twenty-five percent of the total voting equity, including the right to vote such stock through a voting trust or other arrangement;

(ii) For partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

(2) For purposes of assessing compliance with the equity limits in §§ 24.709 (b)(1)(iii)(A) and (b)(1)(iv)(A), where such interests are not held directly in the applicant, the total equity held by a person or entity shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(g) *Control Group*. A *control group* is an entity, or a group of individuals or entities, that possesses *de jure* control and *de facto* control of an applicant or licensee, and as to which the applicant's or licensee's charters, bylaws, agreements and any other relevant documents (and amendments thereto) provide:

(1) That the entity and/or its members own unconditionally at least 50.1 percent of the total voting interests of a corporation;

(2) That the entity and/or its members receive at least 50.1 percent of the annual distribution or any dividends paid on the voting stock of a corporation;

(3) That, in the event of dissolution or liquidation of a corporation, the entity and/or its members are

entitled to receive 100 percent of the value of each share of stock in its possession and a percentage of the retained earnings of the concern that is equivalent to the amount of equity held in the corporation; and

(4) That, for other types of businesses, the entity and/or its members have the right to receive dividends, profits and regular and liquidating distributions from the business in proportion to the amount of equity held in the business.

NOTE to paragraph (g): Voting control does not always assure *de facto* control, such as for example, when the voting stock of the control group is widely dispersed (see e.g., § 1.2110(c)(5)(ii)(C)).

(h) *Publicly Traded Corporation with Widely Dispersed Voting Power.* A publicly traded corporation with widely dispersed voting power is a business entity organized under the laws of the United States:

(1) Whose shares, debt, or other ownership interests are traded on an organized securities exchange within the United States;

(2) In which no person

(i) Owns more than 15 percent of the equity; or

(ii) Possesses, directly or indirectly, through the ownership of voting securities, by contract or otherwise, the power to control the election of more than 15 percent of the members of the board of directors or other governing body of such publicly traded corporation; and

(3) Over which no person other than the management and members of the board of directors or other governing body of such publicly traded corporation, in their capacities as such, has *de facto* control.

(4) The term *person* shall be defined as in section 13(d) of the Securities and Exchange Act of 1934, as amended (15 U.S.C. 78(m)), and shall also include investors that are commonly controlled under the indicia of control set forth in the definition of affiliate in paragraphs (1)(2) through (1) of this section.

(i) *Qualifying Investor; Qualifying Minority and/or Woman Investor.*

(1) A *qualifying investor* is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets, when aggregated with those of all other attributable investors and affiliates, do not exceed the gross revenues and total assets limits specified in § 24.709(a), or, in the case of an applicant (or licensee) that is a small business, do not exceed the gross

revenues limit specified in paragraph (b) of this section.

(2) A *qualifying minority and/or woman investor* is a person who is a *qualifying investor* under paragraph (i)(1), who is (or holds an interest in) a member of the applicant's (or licensee's) *control group* and who is a *member of a minority group* or a woman and a United States citizen.

(3) For purposes of assessing compliance with the minimum equity requirements of § 24.709(b)(1)(v) and (b)(1)(vi), where such equity interests are not held directly in the applicant, interests held by qualifying investors or qualifying minority and/or woman investors shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(4) For purposes of § 24.709 (b)(1)(v)(A)(3) and (b)(1)(vi)(A)(3), a qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets do not exceed the gross revenues and total assets limits specified in § 24.709(a).

(j) *Preexisting entity; Existing investor.* A *preexisting entity* is an entity that was operating and earning revenues for at least two years prior to December 31, 1994. An *existing investor* is a person or entity that was an owner of record of a preexisting entity's equity as of November 10, 1994, and any person or entity acquiring *de minimis* equity holdings in a *preexisting entity* after that date.

Note: In applying the term *existing investor* to *de minimis* interests in preexisting entities obtained or increased after November 10, 1994, the Commission will scrutinize any significant restructuring of the *preexisting entity* that occurs after that date and will presume that any change of equity that is five percent or less of the *preexisting entity's* total equity is *de minimis*. The burden is on the applicant (or licensee) to demonstrate that changes that exceed five percent are not significant.

43. Revise § 25.401 to read as follows:

§ 25.401 Satellite DARS applications subject to competitive bidding.

Mutually exclusive initial applications for DARS service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this part.

§ 25.402 [Removed and Reserved]

44. Remove and reserve § 25.402.

45. Revise § 25.404 to read as follows:

§ 25.404 Submission of down payment and filing of long-form applications.

A high bidder that meets its down payment obligations in a timely manner must, within thirty (30) business days after being notified that it is a high bidder, submit an amendment to its pending application to provide the information required by § 25.144.

§ 25.405 through § 25.406 [Removed and Reserved]

46. Remove and reserve § 25.405 through § 25.406.

47. Amend § 27.15 by redesignating paragraphs (d) and (e) as (c) and (d).

48. Revise § 27.201 to read as follows:

§ 27.201 WCS in the 2305-2320 MHz and 2345-2360 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for WCS licenses in the 2305-2320 MHz and 2345-2360 MHz bands are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 27.202 through § 27.206 [Removed and Reserved]

49. Remove and reserve § 27.202 through § 27.206.

§ 27.208 [Removed and Reserved]

50. Remove and reserve § 27.208.

51. Amend § 27.209 by removing paragraph (d).

52. Revise § 27.210 to read as follows:

§ 27.210 Definitions

(a) Scope. The definitions in this section apply to § 27.209, unless otherwise specified in those sections.

(b) Small Business; Very Small Business; Consortia.

(1) A small business is an entity that, together with its affiliates and controlling principals, has average annual gross revenues that are not more than \$40 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates and controlling principals, has average annual gross revenues that are not more than \$15 million for the preceding three years.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, the personal net worth of an applicant and its affiliates is not included in the applicant's gross revenues.

(4) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (b)(1) of this section or each of which satisfies the definition in paragraph (b)(2) of this section. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

53. Amend § 27.501 by revising paragraph (a) to read as follows:

§ 27.501 746-761 MHz and 776-794 MHz bands subject to competitive bidding.

(a) Mutually exclusive initial applications for licenses in the 746-764 MHz and 776-794 MHz bands are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

* * * * *

54. Revise § 27.502 to read as follows:

§ 27.502 Designated entities

Eligibility for small business provisions.

(a) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$40 million for the preceding three years.

(b) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$15 million for the preceding three years.

(c) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section (or each of which individually satisfies the definition in paragraph (a)(2) of this section).

55. Amend § 27.701 by revising paragraph (a) to read as follows:

§ 27.701 698-746 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 698-746 MHz band are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

56. Amend § 73.3571 by revising paragraph (h)(4)(i) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(h) * * *

(4)(i) The auction will be held pursuant to the procedures set forth in §§ 1.2101 et seq. and 73.5000 et seq. Subsequent to the auction, the FCC will release a Public Notice announcing the close of the auction and identifying the winning bidders. Winning bidders will be subject to the provisions of § 1.2107 regarding down payments and will be required to submit the appropriate down payment within 10 business days of the Public Notice. Pursuant to §§ 1.2107 and 73.5005, a winning bidder that meets its down payment obligations in a timely manner must, within 30 days of the release of the Public Notice announcing the close of the auction, submit the appropriate long-form application for each construction permit for which it was the winning bidder. Long-form applications filed by winning bidders shall include the exhibits identified in § 73.5005(a).

* * * * *

57. Amend § 73.3572 by revising paragraphs (e) and (f) to read as follows:

§ 73.3572 Processing of TV Broadcast, Class A TV Broadcast, low power TV, TV translator and TV booster station applications.

* * * * *

(e) The FCC will specify by Public Notice, pursuant to § 73.5002, a period for filing applications for a new non-reserved television, low power TV and TV translator stations or for major modifications in the facilities of such authorized stations and major modifications in the facilities of Class A TV stations.

(f) Applications for minor modification of Class A TV, low power TV, TV translator and TV booster stations may be filed at any time, unless restricted by the FCC, and will be processed on a "first-come/first-served" basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. Provided, however, that applications for minor modifications of Class A TV and those of TV broadcast stations may become mutually exclusive until grant of a pending Class A TV or TV broadcast minor modification application.

* * * * *

58. Amend § 73.3573 by revising paragraph (f)(5)(i) and (f)(5)(ii) to read as follows:

§ 73.3573 Processing FM broadcast station applications.

* * * * *

(f) * * *

(5) * * *

(i) Pursuant to §§ 1.2107 and 73.5005, a winning bidder that meets its down payment obligations in a timely manner must, within 30 days of the release of the public notice announcing the close of the auction, submit the appropriate long-form application for each construction permit for which it was the winning bidder. Long-form applications filed by winning bidders shall include the exhibits identified in § 73.5005(a).

(ii) These applications will be processed and the FCC will periodically release a Public Notice listing such applications that have been accepted for filing and announcing a date by which petitions to deny must be filed in accordance with the provisions of §§ 73.5006 and 73.3584 of this chapter. If the applicant is duly qualified, and upon examination, the FCC finds that the public interest, convenience and necessity will be served by the granting of the winning bidder's long-form application, a Public Notice will be issued announcing that the construction permit is ready to be granted. Each winning bidder shall pay the balance of its winning bid in a lump sum within 10 business days after release of the Public Notice, as set forth in §§ 1.2109(a) and 73.5003. Construction permits will be granted by the Commission following the receipt of the full payment.

* * * * *

59. Amend § 73.5000 by revising paragraph (a) to read as follows:

§ 73.5000 Services subject to competitive bidding.

(a) Mutually exclusive applications for new facilities and for major changes to existing facilities in the following broadcast services are subject to competitive bidding: AM; FM; FM translator; analog television; low power television; television translator; Instructional Television Fixed Service (ITFS); and Class A television. Mutually exclusive applications for minor modifications of Class A television and television broadcast are also subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in Part 73 or Part 74.

* * * * *

§ 73.5001 [Removed and Reserved]

60. Remove and reserve § 73.5001.

61. Revise § 73.5003 to read as follows:

§ 73.5003 Submission of full payments.

If a winning bidder fails to pay the balance of its winning bid in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five (5) percent of the amount due. Broadcast construction permits and ITFS licenses will be granted by the Commission following the receipt of full payment

§ 73.5004 [Removed and Reserved]

62. Remove and reserve § 73.5004.

63. Amend § 73.5005 by revising paragraph (a) to read as follows:

§ 73.5005 Filing of long-form applications.

(a) Within thirty (30) days following the close of bidding and notification to the winning bidders, each winning bidder must submit an appropriate long-form application (FCC Form 301, FCC Form 346, FCC Form 349 or FCC Form 330) for each construction permit or license for which it was the high

bidder. Long-form applications filed by winning bidders shall include the exhibits required by 47 CFR 1.2107(d) (concerning any bidding consortia or joint bidding arrangements); § 1.2110(j) (concerning designated entity status, if applicable); and § 1.2112 (a) and (b) (concerning disclosure of ownership and real party in interest information, and, if applicable, disclosure of gross revenue information for small business applicants).

* * * * *

64. Amend § 73.5006 by revising paragraph (d) to read as follows:

§ 73.5006 Filing of petitions to deny against long-form applications

* * * * *

(d) If the Commission denies or dismisses all petitions to deny, if any are filed, and is otherwise satisfied that an applicant is qualified, a public notice will be issued announcing that the broadcast construction permit(s) or ITFS license(s) is ready to be granted, upon full payment of the balance of the winning bid(s). See 47 CFR 73.5003. Construction of broadcast stations or ITFS facilities shall not commence until the grant of such permit or license to the winning bidder.

65. Revise § 73.5009 to read as follows:

§ 73.5009 Assignment or transfer of control.

- (a) The unjust enrichment provisions found at sections 1.2111(b) through (e) of this chapter shall not apply to applicants seeking approval of a transfer of control or assignment of a broadcast construction permit or license within three years of receiving such permit or license by means of competitive bidding.
- (b) The ownership disclosure requirements found at section 1.2112(a) of this chapter shall not apply to an applicant seeking consent to assign or transfer control of a broadcast construction permit or license awarded by competitive bidding.

66. Amend § 74.1233 by revising paragraph (5)(i) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

* * * * *

(5)(i) Pursuant to § 1.2107, a winning bidder that meets its down payment obligations in a timely manner must, within 30 days of the release of the public notice announcing the close of the auction, submit the appropriate long-form application for each construction permit for which it was the winning bidder. Long-form applications filed by winning bidders shall include the exhibits identified in § 73.5005.

* * * * *

67. Revise § 80.1251 to read as follows:

§ 80.1251 Maritime communications subject to competitive bidding.

Mutually exclusive initial applications for VPCSA licenses and AMTS coast station licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this part.

68. Amend § 80.1252 by redesignating paragraphs (b)(5) and (d) as (b)(3) and (c), removing paragraph (b)(4), and revising newly redesignated paragraph (c) to read as follows:

§ 80.1252 Designated entities.

* * * * *

(c) A winning bidder that qualifies as a small business or consortium of small businesses as defined in § 80.1252(b)(1) or § 80.1252(b)(3) of this subpart may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business or consortium of very small businesses as defined in § 80.1252(b)(2) or § 80.1252(b)(3) may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter.

69. Amend § 90.705 by revising the first sentence to read as follows:

§ 90.705 Forms to be used.

Phase II applications for EA, Regional, or Nationwide radio facilities under this subpart must be prepared in accordance with §§ 1.2105 and 1.2107 of this chapter. * * *

70. Revise § 90.801 to read as follows:

§ 90.801 900 MHz SMR spectrum subject to competitive bidding.

Mutually exclusive initial applications for 900 MHz SMR service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 90.802 through § 90.803 [Removed and Reserved]

71. Remove and reserve § 90.802 through § 90.803.

§ 90.805 through § 90.806 [Removed and Reserved]

72. Remove and reserve § 90.805 through § 90.806.

73. Revise § 90.807 to read as follows:

§ 90.807 Submission of upfront payments.

Each bidder in the 900 MHz SMR auction will be required to submit an upfront payment of \$0.02 per MHz per pop, for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid.

§ 90.808 [Remove and Reserve]

74. Remove and reserve § 90.808.

75. Revise § 90.809 to read as follows:

§ 90.809 License grants.

MTA licenses pursued through competitive bidding will be granted pursuant to the requirements specified in § 1.945 of this chapter.

76. Revise § 90.810 to read as follows:

§ 90.810 Bidding credits for small businesses.

A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 90.814(b)(1)(i) may use a bidding credit of 15 percent to lower the cost of its winning bid on any of the blocks identified in § 90.617(d), Table 4B. A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 90.814(b)(1)(ii) may use a bidding credit of 10 percent to lower the cost of its winning bid on any of the blocks identified in § 90.617(d), Table 4B.

§ 90.812 [Remove and Reserve]

77. Remove and reserve § 90.812.

78. Amend § 90.813 by redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), and revising paragraph (a) and newly redesignated paragraph (c) to read as follows:

§ 90.813 Partitioned licenses and disaggregated spectrum.

(a) Eligibility. Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 1.948 of this chapter.

* * * * *

(c) Installment Payments.

(1) Apportioning the Balance on Installment Payment Plans. When a winning bidder elects to pay for its license through an installment payment plan pursuant to § 90.812, and partitions its licensed area or disaggregates spectrum to another party, the outstanding balance owed by the licensee on its installment payment plan (including accrued and unpaid interest) shall be apportioned between the licensee and partitionee or disaggregatee. Both parties will be responsible for paying their proportionate share of the outstanding balance to the U.S. Treasury. In the case of partitioning, the balance shall be apportioned based upon the ratio of the population of the partitioned area to the population of the entire original license area calculated based upon the most recent census data. In the case of disaggregation, the balance shall be apportioned based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum allocated to the licensed area.

(2) Parties Not Qualified For Installment Payment Plans.

(i) The partitionee or disaggregatee shall, as a condition of the approval of the partial assignment application, pay its entire pro rata amount within 30 days of Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in a rescission of the grant of the partial assignment application.

(ii) The licensee shall be permitted to continue to pay its pro rata share of the outstanding balance and shall receive new financing documents (promissory note, security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. These financing documents will replace the licensee's existing financing documents which shall be marked

“superseded” and returned to the licensee upon receipt of the new financing documents. The original interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the licensee's portion of the remaining government obligation. We will require, as a further condition to approval of the partial assignment application, that the licensee execute and return to the U.S. Treasury the new financing documents within 30 days of the Public Notice conditionally granting the partial assignment application. Failure to meet this condition will result in the automatic cancellation of the grant of the partial assignment application.

(iii) A default on the licensee's payment obligation will only affect the licensee's portion of the market.

(3) Parties Qualified For Installment Payment Plans.

(i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligation, as calculated according to paragraph (d)(1) of this section.

(ii) Each party will be required, as a condition to approval of the partial assignment application, to execute separate financing documents (promissory note, security agreement) agreeing to pay their pro rata portion of the balance due (including accrued and unpaid interest) based upon the installment payment terms for which they qualify under the rules. The financing documents must be returned to the U.S. Treasury within thirty (30) days of the Public Notice conditionally granting the partial assignment application. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for their portion of the partitioned market or disaggregated spectrum.

(iii) A default on an obligation will only affect that portion of the market area held by the defaulting party.

(iv) Partitionees and disaggregatees that qualify for installment payment plans may elect to pay some of their pro rata portion of the balance due in a lump sum payment to the U.S. Treasury and to pay the

remaining portion of the balance due pursuant to an installment payment plan.

* * * * *

79. Amend § 90.814 by redesignating paragraph (b)(3) as (b)(2), revising newly redesignated paragraph (b)(2), and removing paragraphs (c), (d), (e), (f), (g), and (h) to read as follows:

§ 90.814 Definitions.

* * * * *

(b) * * *

(2) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies either definition of a small business in paragraph (b)(1) of this section. In a consortium of small businesses, each individual member must establish its eligibility as a small business, as defined in this section.

80. Revise § 90.815 to read as follows:

§ 90.815 Certifications, disclosures, records maintenance, and definitions.

(a) Short-Form Applications: Certifications and Disclosure. Each applicant for an MTA license which qualifies as a small business or consortium of small businesses shall append the following information as an exhibit to its short- form application (Form 175): The identity of the applicant's affiliates, persons or entities that hold attributable interests in such entity, and their affiliates, and, if a consortium of small businesses, the members in the joint venture.

(b) Records Maintenance. All winning bidders qualifying as small businesses, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including any documents necessary to establish eligibility as a small business and/or consortium of small businesses under § 90.814. Licensees (and their successors in interest) shall maintain such files for the term of the license.

(c) Definitions. The terms affiliate, business owned by members of minority groups and/or women, consortium of small businesses, gross revenues, members of minority groups, nonattributable equity, small business and total assets used in this section are defined in § 90.814.

81. Revise § 90.901 to read as follows:

§ 90.901 900 MHz SMR spectrum subject to competitive bidding.

Mutually exclusive initial applications for 800 MHz band licenses in Spectrum Blocks A through V are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 90.902 [Removed and Reserved]

82. Remove and reserve § 90.903.

83. Revise § 90.903 to read as follows:

§ 90.903 Competitive bidding mechanisms.

(a) Sequencing. The Wireless Telecommunications Bureau will establish and may vary the sequence in which 800 MHz SMR licenses for Spectrum Blocks A through V will be auctioned.

(b) Grouping.

(1) All EA licenses for Spectrum Blocks A through V will be auctioned simultaneously, unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative method of grouping these licenses for auction.

(2) Spectrum Blocks D through V. All EA licenses for Spectrum Blocks D through V will be auctioned by the following Regions:

(i) Region 1 (Northeast): The Northeast Region consists of the following MTAs:

Boston-Providence, Buffalo-Rochester, New York, Philadelphia, and Pittsburgh.

(ii) Region 2 (South): The South Region consists of the following MTAs: Atlanta,

Charlotte-Greensboro-Greenville-Raleigh, Jacksonville, Knoxville, Louisville-Lexington-Evansville, Nashville, Miami-Fort Lauderdale, Richmond- Norfolk, Tampa-St. Petersburg-Orlando, and Washington-Baltimore; and, Puerto Rico and United States Virgin Islands.

(iii) Region 3 (Midwest): The Midwest Region consists of the following MTAs: Chicago,

Cincinnati-Dayton, Cleveland, Columbus, Des Moines-Quad Cities, Detroit, Indianapolis, Milwaukee, Minneapolis-St. Paul, and Omaha.

(iv) Region 4 (Central): The Central Region consists of the following MTAs: Birmingham, Dallas-Fort Worth, Denver, El Paso-Albuquerque, Houston, Kansas City, Little Rock, Memphis-Jackson, New Orleans-Baton Rouge, Oklahoma City, San Antonio, St. Louis, Tulsa, and Wichita.

(v) Region 5 (West): The West Region consists of the following MTAs: Honolulu, Los Angeles-San Diego, Phoenix, Portland, Salt Lake City, San Francisco-Oakland-San Jose, Seattle (including Alaska), and Spokane-Billings; and, American Samoa, Guam, and the Northern Mariana Islands.

§ 90.905 through § 90.908 [Removed and Reserved]

84. Remove and reserve § 90.905 through § 90.908.

85. Revise § 90.909 to read as follows:

§ 90.909 License grants.

EA licenses pursued through competitive bidding procedures will be granted pursuant to the requirements specified in § 1.945 of this chapter.

86. Revise § 90.910 to read as follows:

§ 90.910 Bidding credits.

A winning bidder that qualifies as a very small business or a consortium of very small businesses, as defined in §§ 90.912(b)(2) and (b)(4), may use a bidding credit of 35 percent to lower the cost of its winning bid on Spectrum Blocks A through V. A winning bidder that qualifies as a small business or a consortium of small businesses, as defined in §§ 90.912(b)(1) or (b)(3), may use a bidding credit of 25 percent to lower the cost of its winning bid on Spectrum Blocks A through V.

87. Amend § 90.911 by redesignating paragraphs (d), (e), (f) and (g) as (c), (d), (e) and (f).

88. Amend § 90.912 by redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(3) and (b)(4), revising paragraphs (b)(1) and (b)(2), and removing paragraphs (c) and (d) to read as follows:

§ 90.912 Definitions.

* * * * *

(b) Small Business; Very Small Business; Consortium of Small Businesses; Consortium of Very Small Businesses.

(1) A small business is an entity that together with its affiliates and controlling interests, has average gross revenues that do not exceed \$15 million for the three preceding years; or

(2) A very small business is an entity that together with its affiliates and controlling interests, has average gross revenues that do not exceed \$3 million for the three preceding years.

89. Revise § 90.913 to read as follows:

§ 90.913 Certifications, disclosures, records maintenance, and definitions.

(a) Short-Form Applications: Certifications and Disclosure. Each applicant for an EA license which qualifies as a small business or consortium of small businesses under § 90.912(b) shall append as an exhibit to its short-form application (FCC Form 175): The identity of the applicant's affiliates and controlling principals, and, if a consortium of small businesses (or a consortium of very small businesses), the members of the joint venture.

(b) Records Maintenance. All winning bidders qualifying as small businesses or very small businesses, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including any document necessary to establish eligibility as a small business, very small business and/or consortium of small businesses (or consortium of very small businesses) under § 90.912. Licensees (and their successors in interest) shall maintain such files for the term of the license.

(c) Definitions. The terms small business, very small business, consortium of small businesses, and consortium of very small businesses used in this section are defined in § 90.912.

90. Revise § 90.1001 to read as follows:

§ 90.1001 220 MHz service subject to competitive bidding.

Mutually exclusive initial applications for 200 MHz geographic area licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 90.1003 [Removed and Reserved]

91. Remove and reserve § 90.1003.

§ 90.1005 [Removed and Reserved]

92. Remove and reserve § 90.1005.

§ 90.1007 [Removed and Reserved]

93. Remove and reserve § 90.1007.

§ 90.1009 [Removed and Reserved]

94. Remove and reserve § 90.1009.

§ 90.1011 [Removed and Reserved]

95. Remove and reserve § 90.1011.

§ 90.1013 [Removed and Reserved]

96. Remove and reserve § 90.1013.

§ 90.1015 [Removed and Reserved]

97. Remove and reserve § 90.1015.

98. Revise § 90.1017 to read as follows:

§ 90.1017 Bidding credits for small businesses and very small businesses.

Bidding credits. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in §§ 90.1021(b)(1) or 90.1021(b)(3) may use a bidding credit of 25 percent to lower the cost of its winning bid. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in §§ 90.1021(b)(2) or 90.1021(b)(3) may use a bidding credit of 35 percent to lower the cost of its winning bid.

99. Amend § 90.1021, by redesignating paragraph (b)(4) as paragraph (b)(3), revising paragraphs (b)(1) and (b)(2), and removing paragraphs (c) and (d) to read as follows:

§ 90.1021 Definitions concerning competitive bidding process.

* * * * *

(b) * * *

(1) A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues that are not more than \$15 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates and controlling interests, has

average gross revenues that are not more than \$3 million for the preceding three years.

* * * * *

100. Revise § 90.1023 to read as follows:

§ 90.1023 Certifications, disclosures, and records maintenance.

(a) Short-Form Applications: Certifications and Disclosure. In addition to certifications and disclosures required in Part 1, Subpart Q, of this chapter, each applicant for a 220 MHz service geographic area license which qualifies as a small business, very small business, consortium of small businesses, or consortium of very small businesses, shall append the following information as an exhibit to its FCC Form 175: the identity of the applicant's affiliates and controlling interests, and, if a consortium of small businesses (or consortium of very small businesses), the members of the joint venture.

(b) Records maintenance. All winning bidders qualifying as small businesses or very small businesses shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any documents necessary to establish eligibility as a small business or very small business and/or consortium of small businesses (or consortium of very small businesses) under § 90.1021. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

(c) Definitions. The terms affiliate, small business, very small business, consortium of small businesses (or consortium of very small businesses), and gross revenues used in this section are defined in § 90.1021.

101. Revise § 90.1025 to read as follows:

§ 90.1025 Limitations on settlements.

The consideration that an individual or an entity will be permitted to receive for agreeing to withdraw an application or a petition to deny will be limited by the provisions set forth in § 1.2105(c) of this chapter.

102. Revise § 90.1101 to read as follows:

§ 90.1101 Location and Monitoring service subject to competitive bidding.

Mutually exclusive initial applications for multilateration Location and Monitoring Service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

103. Amend § 90.1103 by redesignating paragraphs (b)(5) and (d) as paragraphs (b)(3) and (c), and revising newly redesignated paragraph (c) to read as follows:

§ 90.1103 Designated entities.

* * * * *

(c) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in paragraphs (b)(1) or (b)(3) of this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small businesses or a consortium of very small businesses as defined in paragraph (b)(2) or (b)(3) of this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter.

104. Amend § 95.816 by redesignating paragraphs (c)(5), (e), and (f) as paragraphs (c)(3), (d), and (e), revising paragraph (a), and revising newly redesignated paragraphs (d) and (e) to read as follows:

§95.816 Competitive bidding proceedings.

(a) Mutually exclusive initial applications for 218-219 MHz Service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this part.

* * * * *

(d) Bidding credits. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this subsection may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this subsection may use the bidding credit specified in accordance with § 1.2110(f)(2)(i) of this chapter.

(e) Winning bidders in Auction No. 2, which took place on July 28-29, 1994, that, at the time of

auction, met the qualifications under the Commission's rules then in effect, for small business status will receive a twenty-five percent bidding credit pursuant to Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, Report and Order and Memorandum Opinion and Order, FCC 99-239 (released September 10, 1999).

105. Amend § 95.823 by redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(1) and (c)(2), and revising newly redesignated paragraphs (c)(1)(i) and (c)(1)(iii) to read as follows:

§ 95.823 Geographic partitioning and spectrum disaggregation.

* * * * *

(c) * * *

(1) * * *

(i) When a winning bidder (partitionor or disaggregator) that elected to pay for its license through an installment payment plan partitions its license or disaggregates spectrum to another party (partitionee or disaggregatee) that would not qualify for an installment payment plan, or elects not to pay for its share of the license through installment payments, the outstanding principal balance owed by the partitionor or disaggregator shall be apportioned according to § 1.2111(e)(3) of this chapter. The partitionor or disaggregator is responsible for accrued and unpaid interest through and including the consummation date.

* * * * *

(iii) The partitionor or disaggregator shall be permitted to continue to pay its pro rata share of the outstanding balance and, if applicable, shall receive loan documents evidencing the partitioning and disaggregation. The original interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the partitionor's or disaggregator's portion of the remaining government obligation.

* * * * *

106. Revise § 100.71 to read as follows:

§ 100.71 DBS subject to competitive bidding.

Mutually exclusive initial applications for DBS service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this part.

§ 100.72 through § 100.76 [Removed and Reserved]

107. Remove and reserve § 100.72 through § 100.76.

§ 100.78 through § 100.79 [Removed and Reserved]

108. Remove and reserve § 100.78 through § 100.79.

109. Amend § 101.56 by revising paragraph (i) to read as follows:

§ 101.56 Partitioned service areas (PSAs) and disaggregated spectrum.

* * * * *

(i) Licensees, including those using bidding credits in a competitive bidding procedure, shall have the authority to partition service areas or disaggregate spectrum.

§101.531 [Removed and Reserved]

110. Remove and reserve §101.531.

111. Amend § 101.535 by redesignating paragraphs (a)(2) (a)(3), (d), and (e) as paragraphs (a)(1) (a)(2), (c), and (d).

112. Revise § 101.537 to read as follows:

§ 101.537 24 GHz band subject to competitive bidding.

Mutually exclusive initial applications for 24 GHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

113. Amend § 101.538 by redesignating paragraphs (a)(7) and (c) as paragraphs (a)(5) and (b) and revising newly redesignated paragraphs (a)(5) and (b) to read as follows:

§ 101.538 Designated entities.

(a) * * *

(5) A consortium of very small businesses, a consortium of small businesses, or a consortium of

entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the applicable definition in paragraphs (a)(1), (a)(2) or (a)(3) of this section. Where an applicant or licensee is a consortium of very small businesses, a consortium of small businesses, or a consortium of entrepreneurs, the gross revenues of each very small business, small business, or entrepreneur shall not be aggregated.

(b) Bidding credits. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

114. Revise § 101.1101 to read as follows:

§ 101.1101 LMDS service subject to competitive bidding.

Mutually exclusive initial applications for LMDS licenses are subject to competitive bidding procedures. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 101.1102 through § 101.1105 [Removed and Reserved]

115. Remove and reserve § 101.1102 through § 101.1105.

116. Revise § 101.1107 to read as follows:

§ 101.1107 Bidding credits for very small businesses, small businesses and entrepreneurs.

(a) A winning bidder that qualifies as a very small business or a consortium of very small businesses pursuant to § 101.1112 may use a bidding credit of 45 percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a small business or a consortium of small businesses pursuant to § 101.1112 may use a bidding credit of 35 percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs pursuant to § 101.1112 may use a bidding credit of 25 percent to lower the cost of its winning bid.

(d) The bidding credits referenced in paragraphs (a), (b) and (c) of this section are not cumulative.

117. Revise § 101.1109 to read as follows:

§ 101.1109 Certifications, disclosures, and records maintenance.

(a) Short-form applications: certifications and disclosure. In addition to certifications and disclosures required in Part 1, Subpart Q, of this chapter, each applicant for an LMDS license which qualifies as a very small business, small business or entrepreneurs pursuant to § 101.1112 shall append the following information as an exhibit to its short-form applications (FCC Form 175): The identities of the applicant's affiliates and controlling interests.

(b) Records maintenance. All winning bidders qualifying as very small businesses, small businesses or entrepreneurs shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any document necessary to establish eligibility as a very small business, small business or entrepreneur. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

§ 101.1110 [Removed and Reserved]

118. Remove and reserve § 101.1110.

119. Amend § 101.1112 by revising paragraphs (b), (c), (d), and (e) to read as follows:

§ 101.1112 Definitions.

* * * * *

(b) Very small business. A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million.

(c) Small business. A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of more than \$15 million but not more than \$40 million.

- (d) Entrepreneur. An entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million.
- (e) For purposes of determining whether an entity meets the definition of very small business, small business or entrepreneur, the gross revenues of the applicant, its affiliates and controlling interests shall be considered on a cumulative basis and aggregated.

* * * * *

120. Revise § 101.1201 to read as follows:

§ 101.1201 38.6-40.0 GHz subject to competitive bidding.

Mutually exclusive initial applications for 38.6-40.0 GHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 101.1202 through § 101.1207 [Removed and Reserved]

121. Remove and reserve § 101.1202 through § 101.1207.

122. Revise § 101.1208 to read as follows:

§ 101.1208 Bidding credits for small businesses.

A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 101.1209(b)(1)(i)) may use a bidding credit of 25 percent to lower the cost of its winning bid on any of the licenses in this part. A winning bidder that qualifies as a very small business or a consortium of very small businesses, (as defined in § 101.1209(b)(1)(ii)) may use a bidding credit of 35 percent to lower the cost of its winning bid on any of the licenses in this part.

123. Amend § 101.1209 by redesignating paragraph (b)(3) as (b)(2) and revising newly redesignated paragraph (b)(2) to read as follows:

§ 101.1209 Definitions.

* * * * *

(b) * * *

(2) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies either definition of a small business in paragraphs (b)(1) of this section.

124. Revise § 101.1317 to read as follows:

§ 101.1317 Competitive bidding procedures for mutually exclusive MAS EA applications.

Mutually exclusive initial applications for licenses in the portions of the MAS bands licensed on a geographic area basis are subject to competitive bidding procedures. The general competitive bidding procedures set forth in Part 1, Subpart Q of this chapter will apply unless otherwise provided in this subpart.

125. Amend § 101.1319 by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 101.1319 Competitive bidding provisions.

* * * * *

(b) Bidding credits. A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses, may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses, may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter.

126. Amend § 101.1323 by redesignating paragraphs (d) and (e) as paragraphs (c) and (d).