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§ 24.713 [Reserved]

§ 24.714 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility*. (1) Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 24.839.

(2) Broadband PCS licensees in spectrum blocks A, B, D, and E and broadband PCS C and F block licenses not subject to the eligibility requirements of § 24.709 may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(3) Broadband PCS licensees that acquired C or F block licenses in closed bidding subject to the eligibility requirements of § 24.709 may partition their licensed geographic service area or disaggregate their licensed spectrum at any time to an entity that meets the eligibility criteria set forth in § 24.709 at the time the request for partial assignment of license is filed or to an entity that holds license(s) for frequency blocks C and F that met the eligibility criteria set forth in § 24.709 at the time of receipt of such license(s). Partial assignment applications seeking partitioning or disaggregation of broadband PCS licenses in spectrum blocks C and F must include an attachment demonstrating compliance with this section.

(b) *Technical standards*—(1) *Partitioning*. In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

(2) *Disaggregation*. Spectrum may be disaggregated in any amount.

(3) *Combined partitioning and disaggregation*. The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(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) *Parties not qualified for installment payment plans*. (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)).

(ii) 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.

(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. The Commission 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.

(iv) 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 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.

(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.

(d) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in §24.15.

(e) *Construction requirements*—(1) *Requirements for partitioning.* Parties seeking authority to partition must meet one of the following construction requirements:

(i) The partitionee may certify that it will satisfy the applicable construction requirements set forth in §24.203 for the partitioned license area; or

(ii) The original licensee may certify that it has or will meet its five-year construction requirement and will meet the ten-year construction requirement, as set forth in §24.203, for the entire license area. In that case, the partitionee must only satisfy the requirements for ''substantial service,'' as set forth in §24.16(a), for the partitioned license area by the end of the original ten-year license term of the licensee.

(iii) Applications requesting partial assignments of license for partitioning must include a certification by each party as to which of the above construction options they select.

(iv) Partitionees must submit supporting documents showing compliance with the respective construction requirements within the appropriate five- and ten-year construction benchmarks set forth in §24.203.

(v) Failure by any partitionee to meet its respective construction requirements will result in the automatic cancellation of the partitioned or disaggregated license without further Commission action.

(2) *Requirements for disaggregation.* Parties seeking authority to disaggregate must submit with their

partial assignment application a certification signed by both parties stating which of the parties will be responsible for meeting the five- and ten-year construction requirements for the PCS market as set forth in §24.203. Parties may agree to share responsibility for meeting the construction requirements. Parties that accept responsibility for meeting the construction requirements and later fail to do so will be subject to license forfeiture without further Commission action.

[62 FR 661, Jan. 6, 1997, as amended at 63 FR 68953, Dec. 14, 1998; 65 FR 53638, Sept. 5, 2000; 67 FR 45371, July 9, 2002; 68 FR 42999, July 21, 2003]

§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) of this chapter and, when applicable, §24.709(b)) in each of the two preceding years (calculated in accordance with §1.2110(n) of this chapter), 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) of this chapter and, when applicable, §24.709(b)) in each of the two preceding years (calculated in accordance with §1.2110(n) of this chapter), 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.

[67 FR 45371, July 9, 2002, as amended at 68 FR 42999, July 21, 2003]

§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, as defined in §24.720(b)(1), or a consortium of small businesses 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, as defined in §24.720(b)(2), or a consortium of very small businesses 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.

[68 FR 42999, July 21, 2003]

§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 and very small business*. (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.

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