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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

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.

(d) *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.

(e) *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 (e): 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) of this chapter).

(f) *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 § 1.2110(c)(5) of the Commission's rules.

(g) *Qualifying 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) 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 shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(3) 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).

(h) *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 TO PARAGRAPH (h): 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.

[67 FR 45372, July 9, 2002, as amended at 68 FR 42999, July 21, 2003; 68 FR 57829, Oct. 7, 2003]

Subpart I—Interim Application, Licensing, and Processing Rules for Broadband PCS

SOURCE: 59 FR 37610, July 22, 1994, unless otherwise noted.

§§ 24.801–24.803 [Reserved]

§ 24.804 Eligibility.

(a) General. Authorizations will be granted upon proper application if:

(1) The applicant is qualified under all applicable laws and Commission regulations, policies and decisions;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien ownership. A broadband PCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any corporation organized under the laws of any foreign government.

(3) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of another country.

(4) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such a license.

(c) A broadband PCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

[59 FR 37610, July 22, 1994, as amended at 61 FR 55581, Oct. 28, 1996]