

from any interested party, including those not presenting oral statements, until expiration of the comment period on August 21, 1997. Written comments and data submitted by ESA will be included in the rulemaking record.

Signed at Washington, DC, this 15th day of May, 1997.

Gene Karp,

Deputy Assistant Secretary for Employment Standards.

[FR Doc. 97-13166 Filed 5-19-97; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-252665-96]

RIN 1545-AU82

Intangibles Under Sections 1060 and 338; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to purchase price allocations in taxable asset acquisitions and deemed asset purchases.

DATES: The public hearing originally scheduled for Thursday, May 22, 1997, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 1060 and 338 of the Internal Revenue Code. A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing appearing in the **Federal Register** on Thursday, January 16, 1997 (62 FR 2335), announced that the public hearing on proposed regulations under sections 1060 and 338 of the Internal Revenue Code would be held on Thursday, May 22, 1997, beginning at 10:00 a.m., in the Commissioner's Conference Room, Room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, D.C.

The public hearing scheduled for Thursday, May 22, 1997 is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97-13125 Filed 5-19-97; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3410, 3420, 3440, 3450, 3460, 3470, 3480

[WO-320-1320-02-1A]

RIN 1004-AD11

Coal Management Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Bureau of Land Management (BLM) is reopening for 60 additional days the comment period for the advance notice of proposed rulemaking (ANPR) concerning the revision of its regulations governing coal operations on Federally leased lands. BLM published the ANPR on April 9, 1997. The reopening is in response to a request from a representative of interested parties for additional time to provide information.

DATES: BLM will accept comments until 5 p.m. Eastern time on July 21, 1997. BLM will not necessarily consider comments received after this time in developing the proposed rule or include them in the administrative record.

ADDRESSES: Commenters may mail written comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240; or hand-deliver written comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, D.C. Comments will be available for public review at the L Street address from 7:45 a.m. to 4:15 p.m. Eastern time, Monday through Friday, excluding Federal holidays. See the **SUPPLEMENTARY INFORMATION** section for the electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Bill Radden-Lesage, (202) 452-0350 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing Address

Commenters may transmit comments electronically via the Internet to:

WOCComment@wo.blm.gov. Please submit comments as an ASCII file and avoid the use of special characters or encryption. Please include your name and address in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact the Administrative Record at (202) 452-5030.

On April 9, 1997, BLM published an advance notice of proposed rulemaking requesting comments to assist in the revision of its regulations governing coal operations on Federally leased lands. Interested persons were given 30 days, until May 9, 1997, to submit comments. See 62 FR 17141 for additional information and public comment procedures.

BLM has received a request from the National Mining Association for a 60-day extension of the comment period. The request states that an extension would allow the organization to conduct additional research, gathering, and evaluation of quantitative information necessary to document changes in the electric utility industry. After careful consideration of the request, BLM has decided to accept comments for an additional 60 days. Because the original 30-day comment period has now closed, we are reopening, rather than extending, the comment period on the ANPR.

Dated: May 14, 1997.

Sylvia V. Baca,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 97-13198 Filed 5-19-97; 8:45 am]

BILLING CODE 4310-84-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[GEN Docket No. 90-314; ET Docket No. 92-100; PP Docket No. 93-253; FCC 97-140]

Narrowband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *FNPRM* addresses eligibility and service area issues for the narrowband Personal Communications Services (narrowband PCS) channels and response channels, proposes changes to the Commission's build-out requirements, proposes a partitioning and disaggregation scheme, and proposes modifications to certain provisions of narrowband competitive

bidding rules. The Commission believes that these proposed changes will serve the public interest, promote competition in the wireless services market, allow incumbents to expand their systems, increase buildout flexibility and simplify licensing and competitive bidding procedures.

DATES: Comments are to be filed on or before June 18, 1997; reply comments are to be filed on or before July 7, 1997.

FOR FURTHER INFORMATION CONTACT:

Alice Elder or Mark Bollinger at (202) 418-0660 (Wireless Telecommunications Bureau/Auctions Division) or David Furth or Rhonda Lien at (202) 418-0620 (Wireless Telecommunications Bureau/Commercial Wireless Division).

SUPPLEMENTARY INFORMATION: This is a summary of the *FNPRM* in GEN Docket No. 90-314, ET Docket No. 92-100 and PP Docket 93-253, adopted April 17, 1997 and released April 23, 1997. The complete text of the *FNPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington DC and also may be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

Further Notice of Proposed Rule Making

I. Discussion

A. Background

1. In the narrowband PCS *First Report and Order*, 58 FR 42681 (August 11, 1993), the Commission provided for operation of new, narrowband PCS in the 900 megahertz (MHz) band. The Commission broadly defined PCS as mobile and fixed communications offerings that serve individuals and businesses, and can be integrated with a variety of competing networks. In the *First Report and Order*, the Commission therefore declined to adopt a restrictive definition of narrowband PCS, such as limiting this category of PCS to advanced messaging and paging services. The Commission also adopted a spectrum allocation and channelization plan, licensing rules, and technical standards for narrowband PCS. Consistent with section 309(j) of the Communications Act of 1934, as amended, the Commission has determined that PCS is subject to competitive bidding in the case of mutually exclusive applications.

2. In the *Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994) the Commission adopted general competitive bidding rules for auctionable services. In the *Competitive Bidding Third Report and Order*, 59 FR 26741 (May 24, 1994), the Commission established competitive bidding rules specifically for narrowband PCS. On reconsideration of that *Order*, the Commission revised certain auction processing rules, expanded special provisions for designated entities in future narrowband auctions, and sought comment on additional designated entity provisions for the upcoming narrowband PCS auction. Of the three MHz of spectrum allocated for narrowband PCS, two one-MHz blocks are currently divided into specific channels for immediate licensing. The remaining one MHz of narrowband PCS spectrum currently is reserved to accommodate future development of narrowband PCS.

3. The Commission thus far has conducted two auctions for narrowband PCS licenses. As a result of these two auctions, ten nationwide narrowband PCS licenses and six regional narrowband PCS licenses in five different regions (totalling 30 regional licenses) have been issued. Auctions have not yet been conducted for the narrowband PCS spectrum currently designated for licensing in 51 Major Trading Areas (MTAs) and 493 Basic Trading Areas (BTAs). In addition, the 204 MTA licenses and 1,968 BTA licenses designated as unpaired response channels also have not been auctioned.

B. Service Rules

4. The Commission believes that the channelization plan for narrowband PCS provides a flexible framework that will foster its goals of universality, speed of deployment, diversity of services, and competitive delivery. In the narrowband PCS *First Report and Order*, 58 FR 42681 (August 11, 1993), the Commission found that a mix of paired, unpaired, and varying bandwidths would provide the most flexible solution for meeting the stated needs of narrowband PCS providers. The Commission determined that while there appears to be interest in providing narrowband PCS services across a wide range of local, regional, and nationwide licensed service areas, the bulk of demand is for large regional or nationwide licensed service areas.

5. Thus, the Commission set aside the majority of narrowband PCS spectrum for nationwide and MTA-based licensing. In addition, the Commission recognized that a variety of narrowband

PCS services could be offered on a local level. As a result, the Commission's initial channelization plan for narrowband PCS consisted of 26 channels allocated as follows: 11 channels for nationwide use, 13 channels for use on an MTA basis, and two channels for use on a BTA basis. The Commission also set aside eight unpaired channels with BTA service areas for use by existing 900 MHz paging licensees as acknowledgement or response channels.

6. In the narrowband PCS *Memorandum Opinion & Order*, 59 FR 37163 (July 21, 1994), the Commission modified its initial channelization plan in two respects. First, the Commission determined that while regional service areas based on MTAs contain sufficient population and geographic area to support economically viable PCS services, a continued need existed for an additional category of licenses with a service area smaller than a nationwide area, but larger than an individual MTA. Therefore, the Commission designated six paired channels for licensing in five large regions to better reflect the technologies and business plans of the licensees desiring to implement large regional narrowband PCS systems. Second, the Commission determined that licensing some of the eight unpaired channels for use by existing 900 MHz paging licenses on an MTA basis would make it easier for operators of local and regional paging systems to upgrade and coordinate their operations. Thus, four of the paging response channels are currently licensed using MTA service areas and four using BTA service areas.

7. In the *Competitive Bidding Third Memorandum Opinion & Order/FNPRM*, 59 FR 44058 (August 26, 1994), the Commission proposed to redesignate channels 25 and 26, which currently are licensed on a BTA basis, as regional licenses with the same service areas described in § 24.102 of the Commission's rules. See 47 CFR 24.102. The proposed redesignation of channels 25 and 26 was an outgrowth of the Commission's concern that designated entities interested in narrowband PCS licenses may desire service areas larger than MTAs and BTAs. In this connection, the Commission recognized that over half of the bidders who participated in the nationwide auction would have qualified for an entrepreneurs' block license if it had been available. Thus, the Commission sought comment on whether it should redesignate some or all of the channels licensed on a BTA basis, including the response channels licensed on a BTA basis, to be licensed on an MTA basis,

or take other means to achieve larger license areas. The Commission also permitted MTA and BTA service areas to be aggregated up to and including nationwide coverage.

8. The Commission believes the record provides support for reconfiguring the service area size of the remaining narrowband PCS channels. First, the Commission shares the concern of commenters that the BTA service areas in particular are too small to provide a viable narrowband service. The Commission's experience with similar services suggests that larger licensing areas may be more suitable to the actual configuration of narrowband systems. For example, the Commission recently adopted MTA-based licensing for the 929 MHz and 931 MHz paging bands, which are likely to be directly competitive with narrowband PCS. The Commission also believes that narrowband PCS could be licensed using larger areas without compromising the goal of ensuring entry for small businesses. An illustrative comparison is provided by the 900 MHz Specialized Mobile Radio (SMR) auction, which was MTA-based, in which 60 out of 80 high bidders are small businesses.

9. There may also be additional demand to provide narrowband PCS on a regional or nationwide basis. In the PCS *First Report and Order*, the Commission agreed with commenting parties that regional and nationwide service areas in narrowband PCS would provide economies of scale and should alleviate some of the problems licensees have experienced when they have tried to aggregate smaller license areas. In the previous narrowband PCS auctions, a number of bidders for the regional licenses aggregated their licenses into nationwide service, and several nationwide licenses were aggregated by a single licensee. Moreover, the large number of regional and nationwide paging systems in the 929 and 931 MHz paging bands suggests that the market for this level of coverage is dynamic and competitive.

10. Based on these factors, the Commission believes that its prior proposal for reconfiguring the service areas of the remaining narrowband PCS channels should be expanded by eliminating all BTA licensing and instead using a combination of MTAs, regional licensing areas, and nationwide licensing. The Commission agrees with those commenters who argue that reallocating some of the response channels for use in larger service areas will facilitate the upgrade of existing paging networks. Specifically, the Commission proposes to (1) redesignate

the two remaining 50 kHz paired channels as nationwide channels; (2) establish one nationwide, three regional, and one MTA-based channel pairs from the five 50/12.5 kHz channel pairs; and (3) convert the four BTA-based 12.5 kHz unpaired response channels to regional channels. By designating these larger service areas, the Commission seeks to give companies, including designated entities, the opportunity to establish a viable narrowband service and to provide regional and nationwide service if circumstances warrant. The Commission requests comment on this proposal and on any possible alternative service area combinations. In particular, commenters should comment on the effect of licensing in larger areas on opportunities for entry and competition by small businesses. The Commission also seeks comment on whether local participation in narrowband PCS by smaller businesses could occur through partitioning or disaggregation arrangements with MTA-based, regional, and nationwide PCS licensees, thus affording more opportunities to serve smaller areas.

11. The Commission also seeks comment on what effect increasing the service area size of as-yet unlicensed channels will have on existing narrowband PCS licenses. Although some commenters argue that using larger areas would devalue their licenses, the Commission notes that they were licensed over two years ago, which would appear to reduce the impact of subsequent licensing. In addition, as noted above, numerous paging licensees have established nationwide and regional systems that already provide competition for narrowband PCS. Finally, the Commission notes that the goal of its spectrum policy is not to preserve the value of the licenses that auction winners acquire, but to promote competition and service in the public interest. The Commission therefore seeks comment on whether its proposals are equitable to existing licensees, and whether they would assist new entrants in offering services to the public in a more efficient manner.

C. Allocation of Reserve Spectrum

12. In the PCS *First Report and Order*, the Commission allocated three MHz for narrowband PCS. Specifically, the narrowband PCS spectrum was allocated into three one-MHz bands, with two MHz of this spectrum divided into specific channels and available for immediate licensing. At that time, the Commission determined that the service proposals for narrowband PCS did not require use of the entire narrowband

PCS spectrum allocation. The Commission retained the flexibility to channelize and license the remaining one MHz of spectrum for expanded narrowband PCS licensing opportunities as the service developed. Subsequently, several commenters to the *Competitive Bidding Third Memorandum Opinion and Order*, 59 FR 44058 (August 26, 1994), raised the issue of the reserve narrowband PCS spectrum and requested that the Commission immediately channelize and license it.

13. The Commission believes that channelizing and licensing the reserve narrowband PCS spectrum will serve the public interest by facilitating competition, opening the market to new entrants, and allowing existing narrowband PCS licensees to expand their systems through access to additional spectrum. Therefore, the Commission tentatively concludes that the one MHz of spectrum that it reserved in the PCS *First Report and Order* should now be channelized and licensed. The Commission seeks comment on this tentative conclusion. The Commission also seeks comment on whether the reserve narrowband PCS spectrum should be channelized for additional narrowband PCS paired-channel use, or whether a greater need exists for narrowband PCS unpaired channels. The Commission also seeks comment on the way in which it should allocate this spectrum. For example, the Commission could authorize three licenses: two 300-kHz licenses and one 400-kHz license. The Commission requests comment on whether another allocation would be preferable.

14. Additionally, the Commission requests comment on the narrowband PCS aggregation limit and whether it should be modified in light of this proposal. Narrowband PCS is not subject to the commercial mobile radio service (CMRS) spectrum cap. However, a single licensee is only permitted to hold licenses for up to three 50 kHz channels, either paired or unpaired. This limit is based on the total narrowband PCS spectrum held by a licensee through nationwide, regional and local licenses at any geographic point. In light of the Commission's proposal to open and license the narrowband PCS reserve spectrum, the Commission seeks comment on whether these aggregation limits on narrowband PCS spectrum are sufficient, or whether it needs to modify, increase or eliminate such aggregation limits.

D. Construction and Coverage Requirements

15. When designing competitive bidding systems, section 309(j)(3) of the

Communications Act states, in part, that "the Commission shall include safeguards to protect the public interest in the use of the spectrum. . . ." 47 CFR 309(j)(3). In addition, section 309(j)(4)(B) states that the Commission shall include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services. 47 U.S.C. 309(j)(3).

16. Pursuant to section 309(j), the Commission has previously adopted performance requirements in the form of minimum coverage requirements for narrowband PCS. 47 U.S.C. 24.103. Specifically, nationwide narrowband PCS licensees must provide coverage to a composite area of 750,000 square kilometers or serve 37.5 percent of the U.S. population within five years of their license grants, and must provide coverage to a composite area of 1,500,000 square kilometers or serve 75 percent of the U.S. population within ten years of license grant. Regional licensees must cover 150,000 square kilometers or serve 37.5 percent of the population in their licensing areas within five years, and must cover 300,000 square kilometers or serve 75 percent of the regional population within ten years. MTA licensees must cover 75,000 square kilometers or serve 25 percent of the MTA population in five years, and must cover 150,000 square kilometers or serve 75 percent of the MTA population in ten years. 47 CFR 24.103.

17. Since the Commission adopted these coverage requirements for narrowband PCS in 1994, it has moved towards a more flexible approach to coverage requirements in other services. For example, in the paging rulemaking, the Commission provided that paging licensees can either meet population coverage benchmarks (one-third of licensing area population within three years of the license grant, and two-thirds of the population within five years) or may meet their performance requirement by demonstrating that they are providing "substantial service" in the licensing area within five years of the license grant. Substantial service is defined as "service that is sound, favorable, and substantially above a level of mediocre service, which would barely warrant renewal." In the Wireless Communications Service (WCS), the Commission concluded that the unique circumstances in that case, including an aggressive deadline for auctions and

exceedingly strict technical requirements necessary to prevent interference, necessitated still more flexible performance requirements. WCS licensees are thus required to provide substantial service to their service areas within ten years. *Report and Order*, 62 FR 9636 (March 3, 1997). The substantial service standard may be met in WCS by providing coverage to 20 percent of the population where mobile service is provided, or four permanent links per one million people in its licensed service area, or by an alternative demonstration of substantial service by the licensee.

18. In light of these developments in other services, the Commission believes it should revisit the narrowband PCS coverage requirements to ensure that they continue to be justified. The Commission believes it is appropriate at a minimum to treat narrowband PCS and paging similarly in this respect: narrowband PCS licensees operate on adjacent bands to the 900 MHz paging licensees, and the Commission has previously observed the close, potentially competitive relationship between the two services. The Commission proposes to conform its narrowband PCS rules to its paging rules by allowing narrowband PCS licensees to meet their performance requirements through a demonstration of substantial service as an alternative to meeting the coverage requirements provided under the existing rules. The Commission seeks comment on this proposal and whether an alternative coverage standard based on geographic areas remains necessary if it adopts a "substantial service" alternative as proposed above.

19. The Commission also seeks comment on whether, in addition to adopting a substantial service option, it should modify its existing narrowband PCS coverage benchmarks. One option would be to conform these requirements to newly adopted requirements for geographic area paging. For example, the initial population coverage benchmark for narrowband PCS MTA licensees is 25 percent at five years, while the benchmark for MTA-based paging is two-thirds coverage at five years. This may reflect differences in technology in the two services or that paging channels already are substantially built out by incumbents, whereas narrowband PCS licensees are only beginning their buildout process. At ten years, MTA-based narrowband PCS licensees must achieve 75 percent population coverage or cover 150,000 square kilometers, whereas paging licensees are not subject to any further coverage benchmark after five years.

The Commission seeks comment on whether the existing benchmarks for MTA-based narrowband PCS licensees are appropriate compared to its paging requirements. Commenters should also discuss applicable coverage requirements for regional and nationwide narrowband PCS licensees.

20. The Commission also seeks comment on whether it should eliminate all coverage requirements for narrowband PCS. As wireless competition evolves, narrowband PCS is likely to face significant competition not only from other narrowband CMRS providers, including paging and 220 MHz licensees, but also from broadband CMRS providers who have the ability to use a portion of their spectrum to offer "narrowband" services such as paging and messaging. Commenters should address whether market forces alone will provide sufficient incentives for narrowband PCS licensees to construct facilities and provide valuable new services to the public. In this regard, the Commission notes that build-out requirements may encourage the provision of service to areas that would not necessarily receive service expeditiously solely through the operation of market forces. In addition, build-out requirements may also prevent stockpiling or warehousing of spectrum by allowing licenses to be recovered and made available to entities more willing and able to provide service expeditiously. On the other hand, simply requiring construction by itself does not ensure that licenses are put to use in an efficient and pro-competitive manner. Moreover, construction requirements alone may not be effective to ensure the provision of service to rural areas, because they can have the unintended consequence of causing licensees to build first in urban areas where the mandatory benchmarks could be met most cheaply, and thus may actually slow the development of service to rural areas.

21. The Commission is obligated under section 309(j) of the Communications Act to take sufficient measures to "ensure prompt delivery of service to rural areas." 47 U.S.C. 309(j)(4)(B). Because narrowband PCS has already been licensed on a nationwide and regional basis, and other competing services such as paging are widely available throughout the U.S., including rural areas, imposing coverage requirements with the specific intent of promoting rural service may be unnecessary. In addition, the Commission's decisions relating to partitioning and disaggregation in narrowband PCS should increase the potential for service to rural or

underserved areas. The Commission seeks comment on the potential impact of eliminating coverage benchmarks on service to rural or underserved areas. Commenters should address whether the auction and service rules that the Commission is adopting and proposing here constitute effective safeguards and performance requirements for narrowband PCS licensing.

E. Auction Design

22. The *Competitive Bidding Third Report and Order*, 59 FR 26741 (May 24, 1994), established simultaneous multiple round auctions as the methodology for awarding narrowband PCS licenses. In light of the experience gained from the nationwide narrowband PCS auction, the Commission later revised or clarified provisions governing minimum opening bids, activity rules, pre-auction procedures, the release of bidder information, and collusion. The Commission generally reaffirms the auction methodology adopted for narrowband PCS, but seeks comment on whether modifications should be made to the overall auction design adopted for narrowband PCS. Additionally, having now completed thirteen auctions under the competitive bidding authority granted by Congress and recently having initiated a rule making to revise our general auction rules, in this *FNPRM* the Commission revisits certain provisions governing the general bidding procedures for narrowband PCS that it believes require revision.

1. Activity Rules

23. In order to ensure that simultaneous multiple round auctions close within a reasonable period of time and to increase the information conveyed by bid prices during the auction, it is necessary to impose an activity rule to prevent bidders from waiting until the end of the auction before participating. The Commission determined in the *Competitive Bidding Third Report & Order*, 59 FR 44058 (August 26, 1994) that the Milgrom-Wilson activity rule would be used in conjunction with a simultaneous stopping rule to award narrowband PCS licenses.

24. The Commission determined in the *Competitive Bidding Third Report and Order* that a waiver procedure would apply, whereby bidders would be permitted five automatic waivers from the activity rule during the course of an auction. In the *Competitive Bidding Third Memorandum Opinion & Order/FNPRM*, the Commission modified the waiver procedure for the narrowband PCS auctions and allowed one automatic waiver during each stage of

an auction, or one automatic waiver during a number of bidding rounds specified by Public Notice. The Commission noted that while proactive waivers would keep the bidding open, under no circumstances would an automatic waiver prevent an auction from closing.

25. With respect to broadband PCS auctions, the Commission initially determined that only proactive waivers, and not automatic waivers, would keep an auction open. In that context, however, the Commission later modified the rule by retaining the discretion to keep an auction open even if no new acceptable bids and no proactive waivers are submitted in a single round. The Commission observed that this would facilitate the rapid completion of the auction by permitting the Commission to use larger bid increments, thereby speeding the auction pace without risking a premature auction close.

26. The Commission proposes for narrowband PCS that it retain the same discretion as it has in the broadband PCS auctions to keep an auction open even if no new acceptable bids and no proactive waivers are submitted in a single round. The Commission tentatively concludes that this provision will allow the completion of the narrowband PCS auction in a timely and efficient manner. The Commission seeks comment on whether this modification of its activity and stopping rules is appropriate.

2. License Grouping

27. In the *Competitive Bidding Third Report and Order*, the Commission determined that choosing which licenses to auction simultaneously requires a judgment about the degree of interdependence of the licenses, *i.e.*, the extent to which the amount the bidders are willing to pay for one license depends on the price of another. The Commission auctioned the nationwide narrowband PCS licenses in a simultaneous multiple round auction. The Commission then auctioned the five regional blocks for a total of 30 licenses together in one simultaneous multiple round auction. The Commission decided to conduct a third simultaneous multiple round auction for all of the 50/50 kHz paired, 50/12.5 kHz paired, and the 50 kHz unpaired MTA licenses for a total of 357 licenses and, after the MTA licenses are auctioned, to conduct another simultaneous multiple round auction for the 50/12.5 kHz paired BTA licenses for a total of 986 licenses.

28. In light of the channel reallocation the Commission adopts herein, it tentatively concludes that it will

conduct one auction for the remaining narrowband PCS spectrum that has been allocated. The Commission reserves the right, however, to auction each category, *i.e.*, nationwide, regional, MTA of the channels adopted separately. As a result of its proposal, the Commission considers the issue raised by commenters that BTAs should be auctioned before MTAs to be moot. The Commission seeks comment on this proposal. The Commission also seeks comment on whether it should auction certain categories together if it decides to conduct more than one auction for the remaining narrowband PCS spectrum, *e.g.*, nationwide and regional.

3. Auction Design for Response Channels

29. There are 204 MTA 12.5 kHz unpaired response channel licenses and 1,968 BTA 12.5 kHz unpaired response channel licenses. In the *Competitive Bidding Third Report and Order*, the Commission decided to auction the 12.5 kHz unpaired MTA and BTA response channel licenses in a single round sealed bid auction because it determined the value of the licenses to be low relative to the cost of conducting more complex auctions. Moreover, because only incumbent paging licensees are eligible to bid on these licenses, it believed that sealed bid auctions would help to reduce the chances of collusion among the limited number of bidders. However, petitioners convinced the Commission that paging response channel licenses may have more interdependency and higher value than was apparent at the time of its decision in the *Competitive Bidding Third Report and Order*. In addition, the Commission stated in the *Competitive Bidding Third Memorandum Opinion & Order/FNPRM* that the nationwide narrowband auction demonstrated simultaneous multiple round auctions are easier and less expensive to implement than anticipated. Thus, the Commission deferred its decision regarding auction design for the paging response channels.

30. The Commission proposes to auction the paging response channels in one simultaneous multiple round auction, but reserves the option of auctioning these channels with the remaining narrowband PCS licenses. The Commission now has the experience necessary to conduct a large simultaneous multiple round auction in an administratively efficient manner. In addition, in balancing the advantages of simultaneous multiple round bidding with the greater complexity that this method entails, the Commission believes that it is the most appropriate

auction methodology for these auctions, because of the high value of most narrowband PCS licenses and the significant interdependence between spectrum blocks and geographic regions. The Commission seeks comment on this proposal.

4. Auction Design for Reserved Spectrum

31. The Commission seeks comment on the manner in which it should auction the one MHz of reserved spectrum. Specifically, the Commission seeks comment on whether it should use its current narrowband PCS rules, as set forth in part 24 of its rules or whether other rules should be adopted to auction this spectrum. In addition, the Commission seeks comment on whether or not it should auction the reserve spectrum in conjunction with other narrowband spectrum. The Commission additionally seeks comment on whether there should be any special provisions for small businesses, and if so, whether to adopt the small business size definition and the special provisions proposed herein.

F. Treatment of Designated Entities

1. Overview of *Adarand Constructors, Inc. v. Peña*

32. The Commission has employed in its narrowband PCS auction rules a wide range of special provisions and eligibility criteria designed to meet the statutory objectives of providing opportunities to small businesses, rural telephone companies, and businesses owned by members of minority groups and women, collectively known as "designated entities." Notably, the special provisions adopted for designated entities in the two narrowband PCS auctions completed thus far produced varied results. In the nationwide narrowband PCS auction, the Commission provided a 25 percent bidding credit for businesses owned by members of minority groups and/or women. No designated entities won licenses in this auction. Although other factors could have caused this result, the bidding credit of 25 percent proved insufficient to assist designated entities in obtaining nationwide narrowband PCS licenses when no other provisions were provided. The Commission considered the results of the nationwide narrowband auction when contemplating the provisions that would govern the regional narrowband PCS auction and raised the bidding credit to 40 percent for businesses owned by members of minority groups and/or women. In addition, the Commission implemented an

installment payment plan for businesses owned by members of minority groups and women. Designated entities were more successful in the regional narrowband PCS auction, winning all of the licenses for which a bidding credit was provided for designated entities. In total, designated entities won 11 of the 30 licenses offered in the regional narrowband auction. Specifically, four of the nine winners in the entire auction were designated entities that qualified as small businesses owned by members of minority groups and/or women.

33. At the time the Commission's narrowband PCS rules were adopted, an intermediate scrutiny standard of review was applied to federal race- and gender-based programs. In *Adarand Constructors v. Peña*, 115 S. Ct. at 2113, the Supreme Court held that all racial classifications, whether imposed at the federal, state or local government level, must be analyzed by a reviewing court under a strict scrutiny standard of review. This standard requires such classifications to be narrowly tailored to further a compelling governmental interest. In *VMI, United States v. Commonwealth of Virginia*, ___ U.S. ___, 116 S.Ct. 2264 (1996), the Supreme Court reviewed a state program containing gender classification and held it was unconstitutional under an intermediate scrutiny standard of review. This standard requires that "[p]arties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive justification' for that action." Under this test, the government must show "at least that the [challenged] classification serves 'important governmental objectives and that the discriminatory means employed' are 'substantially related to the achievement of those objectives.'" *VMI*, 116 S. Ct. at 2274. While the Supreme Court has not directly addressed constitutional challenges to federal gender-based programs since *Adarand* and *VMI*, the Commission's review of the relevant broad language in *VMI* indicates that the Court does not differentiate between federal and state official actions in its equal protection analysis. Similarly, the *Adarand* decision definitively eliminated any distinction between federal and state race-based programs in setting its strict scrutiny standard of judicial review. Therefore, the Commission concludes that any gender-based preference maintained in the narrowband PCS auction rules would need to meet the *VMI* intermediate scrutiny standard of review.

34. The *Adarand* decision potentially affects three race- and gender-based measures in the Commission's

narrowband PCS auction rules and proposals. First, the Commission's attribution rules enable an applicant in which women or minorities hold 50.1 percent of the equity while another investor holds 49.9 percent of the equity to obtain special status as businesses owned by minorities or women. Second, businesses owned by minorities or women and small businesses owned by minorities or women receive larger bidding credits than other designated entities. Finally, the *Competitive Bidding Third Memorandum Opinion & Order/FNPRM* proposes that small businesses owned by minorities or women receive the most favorable installment payment options available. The purpose of these provisions was to address the lack of access to capital problem that the Commission's record showed women and minorities face.

35. The Commission tentatively concludes that the present record in support of its race-based narrowband PCS rules lack sufficient evidentiary support to withstand strict scrutiny. The Commission seeks comment on its tentative conclusion and whether its provisions promote a compelling governmental interest and, more particularly, whether compensating for discrimination in lending practices and in practices in the communications industry constitutes such an interest. The Commission also asks interested parties to comment on nonremedial objectives that could be furthered by the minority-based provisions of its rules and whether they could be considered compelling governmental interests, such as increased diversity in ownership and employment in the communications industry or increased industry competition. In commenting, the Commission asks parties to submit statistical data, personal accounts, studies, or any other data relevant to the entry of specific racial groups into the field of telecommunications. Examples of relevant evidence could include discrimination against minorities trying to obtain FCC licenses; discrimination against minorities seeking positions of ownership or employment in communications or related businesses; discrimination against minorities attempting to obtain capital to start up a telecommunications enterprise, including terms and conditions; and discrimination against minorities operating telecommunications businesses, including treatment by vendors and suppliers.

36. With respect to the Commission's gender-based provisions, the Commission seeks comment on whether there are remedial or nonremedial goals that would satisfy the "important

governmental objective" requirement of the intermediate scrutiny standard. Are the Commission's gender-based rules "substantially related" to the achievement of such objectives? Just as the Commission requested above, in addressing evidence to support the narrowband race-based provisions, it asks parties to submit statistical data, personal accounts, studies, or any other data relevant to the entry of women into the field of telecommunications. The Commission is also interested in supplementing the current record to support race- and gender-based provisions in its other rules. In this regard, the Commission initiated a comprehensive rule making proceeding to explore market barriers to women- and minority-owned businesses, as well as small businesses, pursuant to section 257 of the Communications Act. The record created in response to this *FNPRM* will also be incorporated into that docket.

37. Based on the Commission's tentative conclusions, it proposes to offer only race- and gender-neutral provisions for narrowband PCS. The Commission proposes that bidding credits and installment payments should be made available to small businesses—including those owned by minorities and women.

2. Eligibility for Bidding Credits and Installment Payments

a. Small Business Definition

38. In the *Competitive Bidding Second Memorandum Opinion & Order*, 59 FR 44272 (August 26, 1994), the Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service. In the recently adopted *Part One NPRM*, 62 FR 13540 (March 21, 1997), it proposed to continue this practice. Once small business eligibility requirements are defined, however, the Commission proposed in the *Part One NPRM* to adopt uniform schedules of bidding credits and installment payments that would determine the level of benefits provided to small businesses. For the regional narrowband PCS and broadband PCS auctions, the Commission believed that build-out and operational costs would be high and adopted a small business threshold of \$40 million. More recently, the Commission have adopted a "tiered" approach for determining small business eligibility. For instance, for the 900 MHz Specialized Mobile Radio (SMR) service it adopted a two-tiered

system for determining eligibility for bidding credits, reduced down payments, and installment payment plans.

39. The Commission proposes to limit eligibility for bidding credits and installment payments to small businesses. The Commission proposes a "two-tiered" approach in defining small businesses, based on a \$40 million and \$15 million definition. Currently, it has a \$40 million small business definition. Businesses with gross revenues of not more than \$40 million may have significantly greater difficulty in obtaining capital than larger enterprises. At the same time, a company with \$40 million in revenue is sufficiently large that it could survive in a competitive wireless communications market. The Commission believes that "small businesses," as defined by the Commission's proposal, will be at a disadvantage in competing against large companies. Accordingly, the Commission proposes to enhance special provisions for small businesses by creating an additional category, very small business entities, with a \$15 million threshold.

40. The Commission seeks comment on these proposals. Specifically, are \$40 million and \$15 million appropriate thresholds? Are such tiers necessary to ensure that small businesses, including those owned by minorities and women, have the opportunity to participate in providing service on an MTA, regional, and nationwide basis? Should the thresholds be higher or lower, based on the types of companies that are likely to benefit from the special provisions proposed below? Also, should different definitions of small businesses be used for different channel blocks? For example, should the threshold for nationwide licenses be higher than the threshold for regional licenses?

b. Attribution

41. To ensure that only bona fide small businesses avail themselves of the special provisions provided to them, the narrowband PCS rules requires the Commission to consider the gross revenues of the applicant, its affiliates, and all "attributable" investors in the applicant on a cumulative basis. The attribution rules established for narrowband PCS count the gross revenues of all investors in, and affiliates of, an applicant on a cumulative, fully-diluted basis for purposes of determining whether the \$40 million gross revenue threshold for small businesses has been exceeded. In addition, an applicant will not qualify as a small business if any one attributable investor in, or affiliate of,

the entity has \$40 million or more in personal net worth. There are two exceptions, however. First, applicants that meet the definition of a small business may form consortia of small businesses that, on an aggregate basis, exceed the gross revenue cap. Second, if the applicant forms a "control group," the gross revenues, personal net worth, and affiliations of any investor in the applicant are not considered so long as the investor holds 25 percent or less of the applicant's passive equity, is not a member of the applicant's control group, and the control group holds at least 25 percent of the applicant's equity.

42. The Commission also established in the *Competitive Bidding Third Memorandum Opinion & Order/FNPRM* a relaxed attribution standard for women- and minority-owned businesses. Under this standard, the gross revenues or net worth of any single investor in a minority- or woman-owned small business applicant that is not a member of the applicant's control group is not attributable unless it holds more than 49.9 percent of the passive equity of the applicant. The control group must (1) own at least 50.1 percent of the applicant's equity, (2) retain control and hold at least 50.1 percent of the voting stock, and (3) consist entirely of minorities and/or women or entities 100 percent owned and controlled by minorities and/or women. The gross revenues and net worth of each member of the control group and each member's affiliates are counted toward the gross revenue threshold or the individual \$40 million individual net worth limitation, regardless of the size of the member's total interest in the applicant. These provisions were intended to address the special problems of women and minorities in obtaining financing due, in part, to discriminatory lending practices by private financial institutions.

43. The Commission proposes replacing the "control group" structure established for narrowband PCS in the *Competitive Bidding Third Memorandum Opinion and Order* with simpler structural and control requirements. In determining whether an applicant qualifies as a small business in the narrowband PCS auction, the Commission will consider the gross revenues of the small business applicant, its affiliates, and certain investors in the applicant. Specifically, for purposes of determining small business status, the Commission will attribute the gross revenues of all controlling principals in the small business applicant as well as the gross revenues of affiliates of the applicant. The Commission also chooses not to

impose specific equity requirements on the controlling principals that meet its small business definition.

44. The Commission will still require, however, that in order for an applicant to qualify as a small business, qualifying small business principals must maintain "control" of the applicant. The term "control" would include both *de facto* and *de jure* control of the applicant. For this purpose, the Commission would borrow from certain Small Business Administration (SBA) rules that are used to determine when a firm should be deemed an affiliate of a small business. Typically, *de jure* control is evidenced by ownership of 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. An entity must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant: (1) The entity constitutes or appoints more than 50 percent of the board of directors or partnership management committee; (2) the entity has authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensees; and (3) the entity plays an integral role in all major management decisions. While the Commission is not imposing specific equity requirements on the small business principals, the absence of significant equity could raise questions about whether the applicant qualifies as a bona fide small business. The existence of special small business provisions requires the Commission to adopt the provisions set forth herein in order to prevent their improper use. Accordingly, the Commission seeks comment on whether it should count the gross revenues and assets only of controlling principals in the applicant to determine small business eligibility. The Commission also seeks comment on whether there is a more appropriate attribution standard for determining size.

45. The Commission also proposes to eliminate the \$40 million individual net worth limitation currently applicable in the Commission's narrowband PCS rules. The Commission eliminated the personal net worth limits for broadband PCS. In that context, the Commission determined that the obstacles faced by minorities and minority-controlled businesses in raising capital are not necessarily confined to minorities with limited personal net worth. Rather than eliminating the personal net worth limits for minorities only, however, it eliminated the requirement for all applicants because such limits are difficult to apply and enforce. The Commission seeks comment on whether

the individual net worth limitation should be eliminated for narrowband PCS.

3. Bidding Credits

46. Bidding credits allow eligible designated entities to receive a payment discount for their winning bid in an auction. In the *Competitive Bidding Third Report and Order*, the Commission determined that women and minorities would receive a 25 percent bidding credit for three nationwide channels, two regional channels, three MTA channels, and one BTA channel. After considering the outcome of the nationwide narrowband auction in which no designated entities won licenses, the Commission increased the bidding credit on the designated regional licenses from 25 percent to 40 percent. In addition, the Commission proposed in the *Competitive Bidding Third Memorandum Opinion & Order/FNPRM* to provide bidding credits in the proposed entrepreneurs' blocks that would give small businesses a 10 percent bidding credit, women and minority-owned businesses a 15 percent credit, and small businesses owned by women and minorities an aggregate credit of 25 percent.

47. Taking into account the recent *Adarand* decision and the Commission's decision to redesignate the remaining narrowband channel blocks into larger license areas, the Commission proposes to eliminate the bidding credit scheme adopted in the *Competitive Bidding Third Report and Order* and subsequently modified in the *Competitive Bidding Third Memorandum Opinion & Order/FNPRM*. The Commission proposes instead to extend a bidding credit to all small businesses on a "tiered" basis consistent with its proposal in the *Part One NPRM*. The Commission proposes that small businesses with gross revenues of not more than \$15 million for the preceding three years be entitled to a 15 percent credit and small businesses with gross revenues of not more than \$40 million for the preceding three years be entitled to a 10 percent bidding credit. Bidding credits for small businesses will not be cumulative. Thus, a \$15 million small business will be eligible for only a 15 percent credit, not a 25 percent credit.

48. The Commission recognizes that this proposal would enhance the competitiveness of small businesses, which will receive a bidding credit that they did not receive previously. The Commission tentatively concludes, however, that extending the bidding credit to small businesses will achieve the objectives of Congress by providing

small businesses, including women-owned and minority-owned small businesses, a meaningful opportunity to obtain licenses in the narrowband PCS auction. The Commission tentatively concludes that the redesignation of channel blocks into larger geographic license areas would increase the value of the licenses by allowing larger firms to bid on licenses that will enable wide-area service. As a result, the Commission believes that small businesses would require additional bidding enhancements in order to participate in the auction.

49. The Commission further recognizes that this bidding credit would be less than the bidding credit previously made available to minority- and women-owned businesses in the *Competitive Bidding Third Report and Order* and the *Competitive Bidding Third Memorandum Opinion & Order/FNPRM* i.e., 25 percent for selected nationwide and 40 percent for selected regional licenses. However, the Commission believes that a lower bidding credit, combined with the installment payments will provide sufficient opportunities for small businesses to compete for the licenses. Furthermore, tiered bidding credits are narrowly tailored to the varying abilities of businesses to access capital. Thus, the Commission believes that tiering will account for the fact that smaller businesses, which often include businesses owned by minorities and women, have more difficulty accessing capital and thus need a more substantial bidding credit.

4. Payment Matters

50. The current narrowband PCS rules provide installment payments for small businesses and businesses owned by members of minority groups and/or women bidding for any of the BTA, MTA, or regional narrowband PCS licenses. The terms and conditions of the installment payments follow those set forth in the Commission's general Part 1 rules, entitling eligible licensees to pay their winning bid amount in installments over the term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations. Qualified licensees would make interest-only payments during the first two years of the license term.

51. In light of the *Adarand* decision, for other services the Commission has adopted a "tiered" approach to implementing installment payment plans, which is based solely on the financial status of licensees. Most recently, in the *Broadband PCS Report and Order*, the Commission adopted a

tiered installment plan for the D, E, and F block broadband PCS licenses, but limited the interest payment period to two years. 61 FR 33859 (July 1, 1996). In the earlier 900 MHz *Second Order on Reconsideration/Seventh Report and Order*, 60 FR 48913 (September 21, 1995), the Commission adopted a tiered installment payment plan for 900 MHz SMR licensees.

52. The Commission tentatively concludes that quarterly installment payments are appropriate for small businesses acquiring licenses for narrowband PCS. Installment payments will provide financial assistance to all small businesses. By allowing payment in installments, the government is in effect extending credit to licensees, thus reducing the amount of private financing needed prior to the auction. Such government financing will promote participation by small businesses that, because of their size and lack of access to capital, need such incentives to participate in new spectrum opportunities such as narrowband PCS.

53. The installment payment plan the Commission proposes today is consistent with the plans set out in the proposed schedule in the *Part One NPRM*. Small businesses with gross revenues that are not more than \$40 million for the preceding three years would be required to pay interest only for the first two years of the license term at the Treasury note rate plus 2.5 percent. Very small businesses with gross revenues that are not more than \$15 million for the preceding three years would be able to make interest-only payments for two years at the Treasury note rate without the additional 1.5 percent. In both cases, i.e., small businesses with gross revenues of not more than \$40 million and not more than \$15 million, payment of principal and interest will be amortized over the remaining eight years of the license term and be payable in equal, quarterly payments. Timely payment of all quarterly installments would be a condition of the license grant, and failure to make such timely payment could ultimately be grounds for revocation of the license. The Commission seeks comment on this proposal. The Commission also seeks comment on alternative installment payment plans.

54. Consistent with its recent proposal in the *Part One NPRM*, the Commission seeks comment on whether it should adopt a late payment fee on any installment payment that is overdue. Payments would be applied in the following order: late charges, interest charges, principal payments. Thus, a

licensee who makes payment after the due date but does make payment sufficient to pay the late fee, interest, and principal (only if principal is due), will be deemed to have failed to make full payment and will be subject to license cancellation pursuant to the Commission's rules. The Commission tentatively concludes that such a late payment provision is necessary to ensure that licensees have an adequate financial incentive to make installment payments on time. It notes that licensees would continue to have 90 days before a payment is deemed delinquent but a late payment fee would be assessed during this period. It also notes that in the *Part One NPRM* it proposed that where a winning bidder misses the second down payment deadline and fails to remit the required payment (plus the applicable late fee) by the end of the late payment period, it would be declared in default and subject to applicable default payments. The Commission seeks comment on the applicability of this proposal within the context of narrowband PCS.

55. Under § 1.2110(e)(4)(ii) of the Commission's rules, interest that accrues during a grace period will be amortized over the remaining term of the license. Amortizing interest in this way has the effect of changing the amount of all future payments and requiring the Commission, or its designee, to generate a new payment schedule for the license. Changing the amount of the installment payment has, in turn, created uncertainty about the interest schedule, and increased the administrative burden by requiring formulation of a new amortization schedule. In order to avoid potential problems associated with changing the amount of installment payments and consistent with its proposal in the *Part One NPRM*, the Commission proposes to require all current licensees who avail themselves of the grace period to pay all fees, all interest accrued during the grace period, and the appropriate scheduled payment with the first payment made following the conclusion of the grace period. The Commission seeks comment on this proposal.

5. Unjust Enrichment, Holding Period and Transfer Restrictions

56. Under current rules for narrowband PCS, licensees that receive bidding credits and installment payments, and choose to transfer their licenses to entities not eligible for these benefits, are subject to certain restrictions. Entities seeking to transfer a license acquired through a bidding credit are required to repay the amount of the bidding credit on a graduated

basis until six years after the license grant. Similarly, if a small business making installment payments seeks to transfer a license to a non-small business entity during the term of the license, it must pay the remaining principal balance as a condition of the license transfer. The ineligible transferee would not have the benefit of installment payments.

57. The Commission later sought comment on revising these provisions in the *Competitive Bidding Third Memorandum Opinion & Order/FNPRM*. With regard to bidding credits, the Commission proposed that if, within the original 10 year term, a licensee applies to assign or transfer control of a license to an entity that is not eligible for as high a level of bidding credit, then the assignor would be required to pay to the U.S. Treasury the difference between the bidding credit obtained by the assignor and the bidding credit for which the acquiring party would qualify as a condition of transfer. Similarly, a sale to an entity that would not qualify for bidding credits would entail full repayment of the original bidding credit as a condition of transfer. With regard to installment payments, the Commission proposed to retain the unjust enrichment provisions adopted in the *Competitive Bidding Third Report and Order* and clarified these provisions, noting that if an entity seeks to assign or transfer control of a license to an entity that does not qualify for as favorable an installment payment plan, the installment payment plan for which the acquiring entity qualifies would become effective immediately upon transfer. Thus, a higher interest rate and earlier payment of principal may begin to be applied.

58. In the *Competitive Bidding Third Memorandum Opinion & Order/FNPRM*, the Commission also proposed that entrepreneurs' block licensees be prohibited from voluntarily assigning or transferring control of their licenses for a period of three years from the date of grant. The Commission asked commenters whether, for the next two to seven years of the license term, it should permit the licensee to assign or transfer control of its authorization only to an entity that satisfies the entrepreneurs' blocks entry criteria. During this limited transfer period, licensees would continue to be bound by the financial eligibility requirements, and a transferee or assignee who receives an entrepreneurs' block license during this period would remain subject to the transfer restrictions for the balance of the holding period. The Commission recognized that in order to provide significant opportunities for

entrepreneurs and small businesses, applicants require flexibility. The Commission was concerned, however, that such flexibility would undermine the more fundamental objective to ensure that designated entities retain *de facto* and *de jure* control of their companies. Thus, the Commission proposed a holding and limited transfer period to address this concern.

59. The Commission now seeks further comment on the applicability of unjust enrichment, assignment, and transfer restrictions to the Commission's proposed narrowband PCS rules, as they apply to designated entities. The Commission tentatively concludes that the unjust enrichment provisions already applicable to narrowband PCS will ensure that large businesses do not become the unintended beneficiaries of provisions intended to benefit small firms. The Commission thus proposes unjust enrichment restrictions as applied to bidding credits and installment payments, similar to the existing restrictions for narrowband PCS. Specifically, the Commission proposes that if a small business that has received bidding credits or is making installment payments seeks to transfer a license to a non-small business entity during the term of the license, it will be required to reimburse the government for the amount of the bidding credit plus interest or the remaining principal balance on the license, respectively, as a condition of the license transfer. The Commission seeks comment on this proposal. The Commission also seeks comment on whether it should eliminate the service-specific unjust enrichment rule for narrowband PCS in favor of the rule proposed in the *Part One NPRM*, which conforms to the broadband PCS unjust enrichment rules. Furthermore, in light of the Commission's decision not to establish an entrepreneurs' block for narrowband PCS, the Commission tentatively concludes that it is not necessary to propose holding and transfer restrictions for the licenses. The Commission seeks comment on this tentative conclusion.

6. Partitioning

60. The Commission recently adopted a detailed framework for revising the geographic partitioning and spectrum disaggregation rules for broadband PCS. In particular, it modified the rules to (1) allow broadband PCS licensees in the non-entrepreneurs' blocks to partition any portion of their license area or disaggregate any portion of their spectrum post-auction to entities that are eligible to be a broadband licensee, (2) allow entrepreneurs' block licensees

to partition and/or disaggregate during the first five years of the license term any portion of their licensed geographic area and/or spectrum post-auction to entities that qualify as "entrepreneurs" and are eligible to be broadband PCS licensees, (3) establish license term provisions that permit partitioned license holders (partitionees) to hold partitioned licenses for the duration of the original ten year license term, and (4) establish flexible construction requirements to ensure expedient access to broadband PCS service in partitioned areas. The Commission concluded that these rules would facilitate the efficient use of the broadband PCS spectrum, increase competition, and expedite the provision of broadband PCS service to areas that may not otherwise receive broadband PCS or other wireless services in the near term.

61. In light of the Commission's decision to redesignate narrowband PCS MTA and BTA channel blocks to create larger service areas, it believes that a partitioning proposal for narrowband PCS is warranted. The Commission proposes a geographic partitioning scheme similar to that adopted for broadband PCS. Under this proposal, anyone eligible to be a narrowband PCS licensee, *i.e.*, "qualifying entity," would be allowed to acquire a partitioned license. This more liberal partitioning policy would allow spectrum to be used more efficiently, speed service to underserved areas, and increase competition. The Commission seeks comment on this proposal. Specifically, the Commission seeks comment on whether a partitioning scheme should be available to all qualifying entities, or limited to rural telephone companies as in the initial broadband PCS rules.

62. The Commission proposes to allow all narrowband PCS licensees to partition at any time to any entity eligible for an narrowband PCS license. It notes that small businesses and others may face certain barriers to entry into the provision of spectrum-based services which, it believes, may be addressed by changes in the partitioning rules. The Commission tentatively concludes that providing narrowband PCS licensees with the flexibility to partition their geographic service areas would create smaller areas that could be licensed to small businesses, including those entities which previously may not have had the resources to participate successfully in spectrum auctions. The Commission also tentatively concludes that partitioning may provide a funding source that would enable licensees to construct their systems and provide the latest in technological enhancements to the public. The Commission seeks

comment on these tentative conclusions. In particular, commenters are invited to address whether the partitioning scheme will help eliminate market entry barriers for small businesses pursuant to section 257 of the Communications Act.

63. The Commission further proposes that a partitionee be authorized to hold its license for the remainder of the original ten-year license term. It tentatively concludes that this term is appropriate because a licensee, through partitioning, should not be able to confer greater rights than it was awarded under the terms of its license grant. The Commission solicits comment on this proposal.

64. It seeks comment on what should be the respective obligations of the participants in a partitioning arrangement. First, with respect to scope of narrowband PCS partitioned areas, the Commission tentatively concludes that a flexible approach, similar to the one it adopted for broadband PCS, is appropriate for narrowband PCS licenses. Therefore, the Commission proposes to permit partitioning of narrowband PCS licenses based on any geographic area defined by the parties to a partitioning arrangement. The Commission seeks comment on this proposal, and in particular on whether this proposal is consistent with its licensing of narrowband PCS spectrum, and whether there are any technical or other issues unique to narrowband PCS that might impede the adoption of a flexible approach to defining partitioned license areas.

65. Second, with respect to construction requirements, the Commission seeks comment as to which party should be held responsible for satisfying outstanding construction requirements. In this *FNPRM*, the Commission has proposed construction requirements for geographic narrowband PCS licensees at the five-year and ten-year benchmarks, including a "substantial service" benchmark. In the *Partitioning and Disaggregation Report and Order*, the Commission adopted two construction options for partitioning broadband PCS licensees which give the parties the flexibility to choose how to apportion the responsibility to build out the partitioned license areas. The Commission tentatively concludes that a similar approach is appropriate for the narrowband PCS context. Thus, it proposes two options for meeting the applicable narrowband PCS construction requirements in a partitioning arrangement: (1) The partitionee can certify that it will satisfy the same construction requirements as

the original licensee with the partitionee meeting the requirements in its partitioned area and the partitioner being responsible for satisfying the requirements in the area it has retained; or (2) the original licensee can certify that it has already met or will meet its five-year construction requirement and that it will meet the 10-year requirement for the entire market involved. The Commission also proposes to require that the parties to such partitioning arrangements file supporting documentation showing compliance with the applicable construction requirements. The Commission seeks comment on these proposals. It also seeks comment on whether, and if so, how the option of partitioning could be extended to incumbent narrowband PCS licensees as well.

66. Consistent with the rules for broadband PCS, the Commission proposes to establish separate installment payment and default obligations for the small business licensees and partitionees. When a licensee paying its winning bid through installment payments partitions to a party that would qualify for installment payments, the partitionee will be permitted to make installment payments of its *pro rata* portion of the remaining government obligation. The payments will be based on the ratio of the population of the partitioned area to the population of the entire license area calculated on the latest available census data. Partitionees that do not qualify for installment payments will be required to pay their entire *pro rata* share with 30 days of the Public Notice conditionally granting the partitioning transaction. The Commission requests comment on its proposals.

67. The Commission also proposes that in cases where a licensee that has qualified as a small business has received a bidding credit partitions a portion of its licenses to an entity that would not meet the eligibility standards for a bidding credit, it will require that the licensee reimburse the government for the amount of the bidding credit calculated on a proportional basis based on the ratio of the population. If a small business licensee that received a bidding credit partitions to an entity that would qualify for a lower bidding credit, the Commission will require that the licensee reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the partitionee is eligible calculated on a proportional basis based upon the ratio of population of the partitioned area. The Commission requests comment on its proposal.

68. It also seeks comment on the type of unjust enrichment requirements that should be placed as a condition for approval of an application for a partial transfer of a license owned by a qualified small business to a non-small business entity. The Commission tentatively concludes that these unjust enrichment provisions would include accelerated payment of bidding credits, unpaid principal, and accrued unpaid interest, and would be applied on a proportional basis. The Commission seeks comment on how such unjust enrichment amounts should be calculated, especially in light of the difficulty of devising a methodology or formula that will differentiate the relative market value of the opportunities to provide service to various partitioned areas within a geographic or market area. The Commission seeks comment on whether it should consider the price paid by the partitionee in determining the percentage of the outstanding principle balance to be repaid.

7. Disaggregation

69. The Commission seeks comment on the feasibility of spectrum disaggregation for narrowband PCS. Commenters should provide technical justifications and other relevant support in responding to this issue. Commenters should address whether minimum disaggregation standards are necessary for narrowband PCS services. Commenters should also address whether the Commission should permit nationwide licensees to disaggregate spectrum.

70. The Commission also seeks comment on what the respective obligations of the participants in a disaggregation transfer should be, and whether each party should be required to guarantee a proportionate amount of the disaggregator's original auction-related obligation in the event of default or bankruptcy by any of the parties to the disaggregation transfer. The Commission seeks comment on whether the disaggregator (the original licensee) should have a continuing obligation with respect to the entire initial license. Alternatively, should the parties have available a choice of options, ranging from an accelerated payment based on purchase price to a guarantee for a larger payment by one party in the event another party defaults? Parties are invited to comment on whether the disaggregating parties should be able to determine which party has a continuing obligation with respect to the original license area.

71. The Commission proposes to allow all small business licensees to

disaggregate to similarly qualifying parties as well as parties not eligible for small business provisions. It tentatively concludes that if it permits a qualified small business licensee to disaggregate to a non-small business entity, the disaggregating licensee should be required to repay any benefits it received from the small business special provisions on a proportional basis. This would include accelerated payment of bidding credits, unpaid principal, and accrued unpaid interest. The Commission seeks comment on how such repayment amounts should be calculated. It also seeks comment on whether it should consider the price paid by the disaggregatee in determining the percentage of the outstanding principal balance to be repaid.

72. The Commission tentatively concludes that if it permits a small business licensee to disaggregate to another qualified small business that would not qualify for the same level of bidding credit as the disaggregating licensee, the disaggregating licensee should be required to repay a portion of the benefit it received. It seeks comment on how that amount should be calculated. Finally, the Commission seeks comment on what provisions, if any, it should adopt to address the situation of a small business licensee's disaggregation followed by default in payment of a winning bid at auction.

G. Ownership Disclosure Requirements

73. The rules for narrowband PCS currently require applicants to disclose on their short-form applications, FCC Form 175, and long-form applications, FCC Form 600, certain ownership information. Section 24.413(a) of the Commission's rules provides that parties filing the short-form application to participate in the narrowband PCS auction and auction winners filing the long-form application shall include in an exhibit, *inter alia*, (1) a list of its subsidiaries, if any, (2) a list of its affiliates, if any, and (3) in the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership, and a signed and dated copy of the partnership agreement. 47 CFR § 24.413(a).

74. The broadband PCS rules similarly contained ownership disclosure requirements for both the short-form and long-form applications. The Commission waived the five percent ownership disclosure requirements, however, for the broadband PCS A, B, and C block auctions. 61 FR 25808 (May 23, 1996). In that context, the Commission reasoned that requiring applicants to list

all businesses in which each attributable stockholder owns at least 5 percent would necessitate reporting of interests in firms with no relation to the services for which licenses are being auctioned, and for many companies, particularly investment firms with diverse holdings, might be extremely burdensome. The Commission therefore waived §§ 24.813(a)(1) and 24.813(a)(2) of the rules. Disclosure of direct, attributable ownership interests in other commercial mobile radio service licensees or applicants, however, is still required under § 20.6 of the Commission's rules. Similarly, the Commission waived the requirement that partnerships submit a signed and dated copy of partnership agreements with the short-form application. In waiving this requirement, it noted that partnership agreements often discuss strategic business objectives and financial and business obligations, including bidding strategies, which might be highly sensitive.

75. The Commission proposes to modify the ownership disclosure requirements for narrowband PCS as the Commission modified those requirements for broadband PCS through waiver. The Commission tentatively concludes that relaxing the disclosure requirements in this regard serves the public interest by reducing the administrative burdens associated with the auction process. The Commission seeks comment on this proposal. Furthermore, the Commission seeks comment on whether a separate schedule to the FCC Form 175 should be designed, which would formalize the ownership disclosure requirements for the short-form application that are presently reported in separate exhibits to the FCC Form 175.

H. Construction Prior To Grant of Licenses for Narrowband and Broadband PCS

76. In the *Third Report and Order*, 59 FR 26741 (August 24, 1994), the Commission determined that all commercial mobile radio service applicants should be subject to the same rules governing the construction of facilities prior to grant of pending applications. The Commission later clarified that such rules would extend to successful broadband PCS bidders that had filed a long-form application. Thus, 35 days after the date of the Public Notice announcing the Form 600 applications accepted for filing, PCS applicants listed therein may, at their own risk, commence construction of facilities, provided that (1) no petitions to deny the application have been filed, (2) the application does not contain a

request for a rule waiver; (3) the applicant complies fully with the antenna structure provisions of 47 CFR 24.416, 24.816, including FAA notification and Commission filing requirements; (4) the application indicates that the facilities for which construction is commenced would not have a significant environmental effect (see 47 CFR 24.413(f), 24.813(f)); and (5) international coordination of the facility for which construction is commenced is not required.

77. The Commission proposes to modify its pre-licensing construction requirements for both broadband and narrowband PCS in order to expedite service to the public. Specifically, the Commission proposes that long-form applicants may begin construction of facilities at their own risk regardless of whether petitions to deny have been filed. In adopting pre-grant construction rules for CMRS applicants in general, the Commission favored a more liberal approach, urged by the industry's comments that granting applicants authority to engage in pre-grant construction could advance the date on which the public receives service. The Commission continues to believe that liberal pre-grant construction rules could speed the deployment of services to the public. The Commission also believes that applicants that begin construction pursuant to these provisions before receiving a final license grant do so at their own risk and, thus, they assume the risk that their licenses may not be granted as a result of pending petitions to deny. The Commission proposes to retain the remaining restrictions, however, in light of the specific public interest considerations they promote. The Commission seeks comment on these tentative conclusions and proposals.

II. Conclusion

78. The Commission believes that the proposals set forth for narrowband PCS in this *FNPRM* will promote the public policy goals set forth by Congress.

III. Procedural Matters

A. Regulatory Flexibility Act

79. With respect to this *FNPRM*, as required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *FNPRM* but they must

have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *FNPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

80. *Reason for Action:* This *FNPRM* was initiated to secure comment on proposals for revising rules for narrowband PCS. Such changes to the rules for the narrowband PCS service would promote efficient licensing and enhance the service's competitive potential in the Commercial Mobile Radio Service marketplace. The adopted and proposed rules are based on the competitive bidding authority of section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 309(j), which authorized the Commission to use auctions to select among mutually exclusive initial applications in certain services, including narrowband Personal Communications Services (PCS).

81. *Objectives of this Action:* The Omnibus Budget Reconciliation Act of 1993 (Budget Act), Pub. L. 103-66, Title VI, section 6002, and the subsequent Commission actions to implement it are intended to establish a system of competitive bidding for choosing among certain applications for initial licenses, and to carry out statutory mandates that certain designated entities, including small businesses, are afforded an opportunity to participate in the competitive bidding process and in the provision of narrowband PCS services.

82. *Legal Basis:* The proposed action is authorized under the Budget Act and in sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j).

83. *Reporting, Recordkeeping, and Other Compliance Requirements:* The proposals under consideration in this *FNPRM* include the possibility of new reporting and recordkeeping requirements for a number of small business entities, as follows. The Commission requests comment on these proposals.

a. *Service Area Reallocation.* The Commission proposes revising its current channelization plan to ensure that it provides sufficient opportunities for all interested parties, including small businesses, to establish a viable narrowband PCS system. The Commission is concerned that such opportunities may not be meaningful if a single Basic Trading Area (BTA) is not

a sufficiently large service area for implementation of narrowband PCS. The Commission has previously stated that the larger Major Trading Area licenses (MTAs) will provide for more reasonable and homogeneous license areas for the provision of PCS. In addition, the Commission reiterates that local participation in narrowband PCS could occur through franchising or partitioning arrangements with nationwide and regional PCS licensees, thus affording more opportunities to serve smaller areas. As a result, the Commission tentatively concludes that it will redesignate certain narrowband PCS frequencies for larger service areas and will thus provide additional opportunities for designated entities, including small businesses. The Commission proposes that the remaining narrowband PCS channel blocks will be redesignated as follows: (1) redesignate the two remaining 50 kHz paired channels as nationwide channels; (2) establish one nationwide, three regional, and one MTA-based channel pairs from the five 50/12.5 kHz channel pairs; and (3) convert the four BTA-based 12.5 kHz unpaired response channels to regional channels. The Commission does not anticipate any additional reporting or recordkeeping requirements from this proposal.

b. *Response Channel Redesignation.* The Commission tentatively concludes that the paging response channels should be reallocated for use in larger service areas. The Commission agrees with commenters who argue that reallocating some of the response channels for use in larger service areas will facilitate the upgrade of existing paging networks and enhance narrowband PCS systems. The Commission therefore proposes to redesignate the four 12.5 kHz unpaired response channels currently licensed as BTA channel blocks as regional channel blocks, and retain the four MTA paging response channels. Additionally, the Commission does not redesignate response channels to an entrepreneurs' block. Instead, as discussed in the *FNPRM*, the Commission proposes to open eligibility for these channels to all applicants, not just incumbent paging licensees. The Commission does not anticipate any additional reporting or recordkeeping requirements from this proposal.

c. *Construction Requirements.* The proposals in the *FNPRM* include the possibility of imposing reporting and recordkeeping requirements for new narrowband PCS licensees to establish compliance with the coverage requirements, if such requirements are adopted.

d. *Geographic Partitioning and Spectrum Disaggregation.* The proposals in the *FNPRM* include the possibility of imposing reporting and recordkeeping requirements for small businesses seeking licenses through the proposed partitioning and disaggregation rules. The information requirements would be used to determine whether the licensee is a qualifying entity to obtain partitioned or disaggregated spectrum. This information will be a one-time filing by any applicant requesting such a license. The information will be submitted on the FCC Forms 490 (or 430 and/or 600 filed as one package under cover of the Form 490) which are currently in use and have already received OMB clearance. The Commission estimates that the average burden on the applicant is three hours for the information necessary to complete these forms. The Commission estimates that 75 percent of the respondents, which may include small businesses, will contract out the burden of responding. The Commission estimates that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents, which may include small businesses, are estimated to employ in-house staff to provide the information. Applicants, including small businesses, filing the package under cover of FCC Form 490 electronically will incur a \$2.30 per minute on-line charge. On-line time would amount to no more than 30 minutes. The Commission estimates that 75 percent of the applicants may file electronically. The Commission estimates that applicants contracting out the information would use an attorney or engineer, with an average cost of \$200 per hour, to prepare the information.

e. *Construction Prior to Grant of Licenses for Narrowband and Broadband PCS.* The proposals in the *FNPRM* include the possibility of changing existing Commission pre-licensing construction requirements for narrowband PCS. The proposal in the *FNPRM* would allow long-form applicants to begin construction of facilities at their own risk, regardless of whether any petitions to deny have been filed. The Commission does not anticipate any additional reporting or recordkeeping requirements from this proposal.

f. *Small Business Definition.* The *FNPRM* proposes a two-tiered definition to define small businesses: (1) A small business is a business with average gross revenues for each of the preceding three years that do not exceed \$40 million, and (2) a very small business is

one which has less than an average of \$15 million in gross revenues in each of the last three years. Qualifying entities will be eligible for bidding credits and installment plans. In order to qualify as small business under either tier, an entity must demonstrate that its gross revenues fall within the proposed thresholds. The information will be submitted on the FCC Form 600, which is currently in use and which has received OMB clearance. Such entities will also need to maintain supporting documentation at their principal place of business.

g. *Ownership Disclosure Requirements.* The proposals in the *FNPRM* include the possibility of changing the ownership disclosure requirements for all applicants. The information requirements would be used to determine whether the licensee is a qualifying entity under the Commission's ownership rules. The proposals include relaxing the disclosure requirements, such as the required submittal of partnership agreements, which would reduce the administrative burdens associated with the auction process. The Commission also seeks comment on whether a separate schedule to FCC Form 175 should be designated, which would formalize the disclosure requirements to the current FCC Form 175. The proposal in the *FNPRM* would decrease the amount of information that a narrowband PCS applicant would be required to file. This information will be a one-time filing by any applicant requesting such a license. The information will be submitted on the FCC Forms 600 and FCC Form 175, which are currently in use and have already received OMB clearance.

84. *Federal Rules Which Overlap, Duplicate or Conflict With These Rules:* None.

85. *Description, Potential Impact, and Number of Small Entities Involved:* The *FNPRM* would establish certain narrowband PCS spectrum blocks for bidding by smaller entities as well as larger entities, and would provide installment payments and bidding credits to certain eligible entities bidding within those blocks. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total entities, existing and potential, would be affected by the proposed rules in the *FNPRM*. In particular, the Commission

seeks estimates of how many such entities will be considered small businesses.

86. *Geographic Partitioning and Spectrum Disaggregation.* The partitioning and disaggregation rule changes proposed in this proceeding will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding narrowband PCS licenses who choose to partition and/or disaggregate and small businesses who may acquire licenses through partitioning and/or disaggregation.

87. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total entities, existing and potential, would be affected by the proposed rules in the *FNPRM*. In particular, the Commission seeks estimates of how many such entities will be considered small businesses. The Commission is utilizing the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing less than 1,500 persons. 13 CFR 121.201, Standard Industrial Classification Code 4812. The Commission seeks comment on whether this definition is appropriate for narrowband PCS licensees in this context. Additionally, the Commission requests each commenter to identify whether it is a small business under this definition. If a commenter is a subsidiary of another entity, this information should be provided for both the subsidiary and the parent corporation or entity.

88. The Commission estimates that the approximately 30 current regional narrowband PCS licensees and 11 nationwide narrowband PCS licensees could take the opportunity to partition and/or disaggregate a license or obtain an additional license through partitioning or disaggregation. New entrants could obtain narrowband PCS licenses through the competitive bidding procedure, and take the opportunity to partition and/or disaggregate a license or obtain an additional license through partitioning or disaggregation. Additionally, entities that are neither incumbent licensees nor geographic area licensees could enter the market by obtaining a narrowband PCS license through partitioning or disaggregation. The Commission cannot estimate how many licensees or potential licensees could take the

opportunity to partition and/or disaggregate a license or obtain a license through partitioning and/or disaggregation, because it has not yet determined the size or number of narrowband PCS licenses that will be granted in the future. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of future narrowband PCS licensees can be made, the Commission assumes for purposes of this IRFA that all of the licenses will be awarded to small businesses. It is possible that a significant number of the potential licensees who could take the opportunity to partition and/or disaggregate a license or who could obtain a license through partitioning and/or disaggregation will be small businesses.

89. *Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives:* In the *FNPRM*, the Commission seeks comment on whether coverage requirements should be imposed for all narrowband PCS licensees. Any significant alternatives presented in the comments will be considered. Coverage requirements for narrowband PCS licensees, if adopted, would probably not affect small businesses.

90. With respect to partitioning, the Commission tentatively concludes that unjust enrichment provisions should apply when a licensee has benefitted from the small business provisions in the auction rules and partitions a portion of the geographic license area to another entity that would not qualify for such benefits. The alternative to applying the unjust enrichment provisions would be to allow an entity who had benefitted from the special bidding provisions for small businesses to become unjustly enriched by partitioning a portion of their license area to parties that do not qualify for such benefits. The Commission also seeks comment on whether spectrum disaggregation would be feasible for narrowband PCS, and how much spectrum a narrowband PCS licensee should be permitted to disaggregate.

91. The *FNPRM* proposes certain provisions for smaller entities designed to ensure that such entities have the opportunity to participate in the competitive bidding process and in the provision of narrowband PCS services. Any significant alternatives presented in the comments will be considered.

B. Paperwork Reduction Act

92. As required by the Regulatory Flexibility Act, *see* 3 U.S.C. 603, the Commission has prepared an Initial

Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed and adopted in the *FNPRM* section of this *Report and Order and FNPRM*. Written public comments are requested on the IRFA and must be filed by the deadlines for comments on the *Report and Order and FNPRM*.

C. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

D. Description, Potential Impact, and Number of Small Entities Involved

93. The *FNPRM* would establish certain narrowband PCS spectrum blocks for bidding by smaller entities as well as larger entities, and would provide installment payments and bidding credits to certain eligible entities bidding within those blocks. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total entities, existing and potential, would be affected by the proposed rules in the *FNPRM*. In particular, the Commission seeks estimates of how many such entities will be considered small businesses.

94. *Geographic Partitioning and Spectrum Disaggregation.* The partitioning and disaggregation rule changes proposed in this proceeding will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding narrowband PCS licenses who choose to partition and/or disaggregate and small businesses who may acquire licenses through partitioning and/or disaggregation.

95. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total entities, existing and potential, would be affected by the proposed rules in the *FNPRM*. In particular, the Commission seeks estimates of how many such entities will be considered small businesses. The Commission is utilizing the Small Business Administration definition applicable to radiotelephone companies, *i.e.*, an entity employing less

than 1,500 persons. The Commission seeks comment on whether this definition is appropriate for narrowband PCS licensees in this context. Additionally, the Commission requests each commenter to identify whether it is a small business under this definition. If a commenter is a subsidiary of another entity, this information should be provided for both the subsidiary and the parent corporation or entity.

96. The Commission estimates that the approximately 30 current regional narrowband PCS licensees and 11 nationwide narrowband PCS licensees could take the opportunity to partition and/or disaggregate a license or obtain an additional license through partitioning or disaggregation. New entrants could obtain narrowband PCS licenses through the competitive bidding procedure, and take the opportunity to partition and/or disaggregate a license or obtain an additional license through partitioning or disaggregation. Additionally, entities that are neither incumbent licensees nor geographic area licensees could enter the market by obtaining a narrowband PCS license through partitioning or disaggregation. The Commission cannot estimate how many licensees or potential licensees could take the opportunity to partition and/or disaggregate a license or obtain a license through partitioning and/or disaggregation, because it has not yet determined the size or number of narrowband PCS licenses that will be granted in the future. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of future narrowband PCS licensees can be made, the Commission assumes for purposes of this IRFA that all of the licenses will be awarded to small businesses. It is possible that a significant number of the potential licensees who could take the opportunity to partition and/or disaggregate a license or who could obtain a license through partitioning and/or disaggregation will be small businesses.

E. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

97. In the *FNPRM* the Commission seeks comment on whether coverage requirements should be imposed for all narrowband PCS licensees. Any significant alternatives presented in the comments will be considered. Coverage requirements for narrowband PCS licensees, if adopted, would probably not affect small businesses.

98. With respect to partitioning, the Commission tentatively concludes that unjust enrichment provisions should apply when a licensee has benefitted from the small business provisions in the auction rules and partitions a portion of the geographic license area to another entity that would not qualify for such benefits. The alternative to applying the unjust enrichment provisions would be to allow an entity who had benefitted from the special bidding provisions for small businesses to become unjustly enriched by partitioning a portion of their license area to parties that do not qualify for such benefits. The Commission also seeks comment on whether spectrum disaggregation would be feasible for narrowband PCS, and how much spectrum a narrowband PCS licensee should be permitted to disaggregate.

99. The *FNPRM* proposes certain provisions for smaller entities designed to ensure that such entities have the opportunity to participate in the competitive bidding process and in the provision of narrowband PCS services. Any significant alternatives presented in the comments will be considered.

100. *IRFA Comments:* The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraph 109 of this *FNPRM*.

101. *Dates.* Written comments by the public on the proposed information collections are due on or before June 18, 1997 and reply comments are due on or before July 7, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before June 18, 1997 and reply comments are due on or before July 7, 1997.

102. *Addresses:* In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street NW, Washington DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street NW, Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

103. *Further Information:* For additional information concerning the information collections contained in the *NPRM*, contact Dorothy Conway at (202) 418-0217, or via the Internet at dconway@fcc.gov.

104. *Supplementary Information:*

Title: Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, implementation of section 309(j) of the Communications Act—Competitive Bidding, Narrowband PCS, *FNPRM*.

OMB Number: 3060-0604.

Form Number: FCC Forms 175 and 600.

Type of Review: Revision of existing collection.

Respondents:

Affected public: Individuals, State or local governments, Businesses or other for-profit, Small businesses or organizations.

Number of respondents: 6,136.

Estimated time per response: 6 hours.

Total annual burden: 16,000.5 hours.

Needs and uses: The auction rules require narrowband PCS applicants to submit (1) information to qualify for small businesses, (2) ownership information, (3) proof of compliance with coverage requirements and (4) eligibility to participate in partitioning and disaggregation. The information needed to qualify as a small business and the ownership information will be submitted as attachments to FCC Form 600. Coverage requirements will be submitted in letter form during designated benchmarks during the license term. The information for partitioning and disaggregation will be covered under a generic clearance which has been submitted to OMB for approval. Collection of information is required so that the Commission can determine whether narrowband PCS applicants are legally, technically and financially qualified to be licensed and whether applicants are entitled to receive certain benefits. The information will also be used to ensure that licensees who acquire their licenses through competitive bidding are not unjustly enriched by premature transfer of their licenses. Without the information, the Commission could not determine whether to issue the licenses to the applicants that provide telecommunication services to the public. The information is used by Commission staff in carrying out its duties under the Communications Act. This is a revision of a previously approved collection. If no changes are made to these collections in the Report and Order, a correction worksheet will be submitted at that time.

F. Ex Parte Rules—Non-Restricted Proceeding

105. This is a non-restricted notice proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are

disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

G. Comment Dates

106. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 18, 1997, and reply comments on or before July 7, 1997. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, NW, Washington, DC 20554.

H. Ordering Clauses

107. Authority for issuance of this *FNPRM* is contained in sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j).

List of Subjects in 47 CFR Part 24

Communications common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-13147 Filed 5-19-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Chapter V

Consumer Information; Motor Vehicle Safety; Rollover Prevention

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for rulemaking.

SUMMARY: The agency grants an August 20, 1996 petition for rulemaking from Consumers Union of United States, Inc., requesting NHTSA to commence a rulemaking proceeding to consider establishing "an emergency handling test [for sport-utility vehicles] and to require that information derived from

that test be included in the consumer warnings required by the agency." The agency seeks to evaluate the issues raised in the petition in view of the agency's continuing interest in rollover safety, as evidenced by its 1994 rulemaking proposal to amend its consumer information regulations to require passenger vehicles to be labeled with information about their resistance to rollover, and other related rulemaking activities.

The agency will respond in a separate notice to a request from the petitioner that NHTSA should commence a proceeding to decide whether to issue an order concerning an alleged defect in model year (MY) 1995-96 Isuzu Trooper and Acura SLX sport-utility vehicles.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Michael Pyne or Gayle Dalrymple, Office of Crash Avoidance Standards, NPS-20, telephone (202) 366-4931, National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

For legal issues: Deirdre Fujita, Office of the Chief Counsel, NCC-20, telephone (202) 366-2992, address same as above.

SUPPLEMENTARY INFORMATION: This document announces that NHTSA is granting a petition for rulemaking from Consumers Union of United States, Inc. (CU), requesting NHTSA to establish a standard and/or a rating system "that will help consumers to compare emergency handling performance of sport-utility vehicles." CU asks the agency to "augment its consumer information disclosure requirement by (1) establishing a testing system that rates comparatively the ability of sport-utility vehicles to perform emergency maneuvers acceptably, (2) [requiring] that each such vehicle include its rating in the required warning, and (3) [requiring] vehicles that exhibit a high rollover propensity during emergency handling testing to achieve a minimum acceptable rating through vehicle modifications."

The agency issued a rulemaking proposal (NPRM) in 1994 to amend its consumer information regulations (49 CFR Part 575) to require passenger vehicles to be labeled with information about their resistance to rollover. That proposal, which is still pending, would require vehicles to be labeled by make/model with a "stability metric," which is a measured vehicle characteristic that relates to some degree to a vehicle's likelihood of rollover involvement. The agency issued the proposal in the belief that the information would enable prospective purchasers to make informed choices about new vehicles

based on differences in rollover risk, and motivate manufacturers to give more priority to rollover stability in designing their vehicles.

NHTSA has also undertaken a variety of other activities intended to mitigate the adverse effects of rollovers, including a final rule requiring upgraded padding on the upper interior of light vehicles, a final rule extending the side door latch requirements to rear doors, and research evaluating improved roof crush resistance, enhanced side window glazing, improved door latches, and advanced occupant restraint systems. These activities are explained in detail in the May 1996 "Status Report for Rollover Prevention and Injury Mitigation," available in NHTSA Docket No. 91-68, Notice 5.

CU's petition is related to the 1994 NPRM: both pertain to the rollover resistance of vehicles and envision a rating system by which prospective purchasers may compare vehicle performance. However, the petition differs from the NPRM in several key respects. The CU petition focuses on on-road, untripped rollover crashes, while the NPRM encompasses both on- and off-road single vehicle rollovers. Also, the CU petition envisions a dynamic test for evaluating vehicle performance, while the NPRM proposed a static test which isolates and measures a vehicle attribute.

NHTSA will initially focus on exploring whether it can develop a practicable, repeatable and appropriate dynamic emergency handling test that assesses, among other issues, a vehicle's propensity for involvement in an on-road, untripped rollover crash. The agency will expand this exploration beyond CU's suggestion that any such emergency handling test be limited to sport utility vehicles. Assuming the agency can develop a technically sound test protocol, it should be equally useful for all light vehicles, including cars, trucks, and vans.

The granting of CU's rulemaking petition should not be misinterpreted as an endorsement of the CU test procedure. In its petition, CU described a particular dynamic test procedure that it has been using since 1988 to rate the rollover propensity of vehicles. Based on preliminary testing conducted by the agency's Office of Defects Investigation, it does not currently appear that the CU "short course" test by itself is an appropriate assessment of rollover propensity or will be the primary focus of NHTSA's exploration of a dynamic handling test. Indeed, CU's rulemaking petition shows that CU did not anticipate that the agency would focus