(*1*) November 20, 1996 letter to Ms. Kathleen C. Callahan, Director of the Division of Environmental Planning and Protection from Deputy Commissioner David Sterman providing a SIP revision for Tenneco Gas Pipeline Company.

(*2*) February 24, 1997 letter to Ronald Borsellino, Chief of the Air Programs Branch from Donald H. Spencer, P.E., providing supplemental information for Tenneco Gas Pipeline Company's Compressor Station #245.

[FR Doc. 03–18301 Filed 7–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 22, 24, 27, 73, 80, 90, 95 and 101

[WT Docket No. 97–82; FCC 03–98]

Competitive Bidding Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses five petitions for reconsideration filed in response to the Commission's Part 1 *Order on Reconsideration of the Third Report and Order, and Fifth Report and Order.* The Commission also adopts several minor modifications and revisions to certain part 1 general competitive bidding rules to provide specific guidance to auction participants and to streamline the competitive bidding regulations.

DATES: Effective September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Regina Martin, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, adopted on April 22, 2003 and released on May 8, 2003. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

I. Overview

1. In the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, the Commission addresses five petitions for reconsideration filed in response to the Commission's *Order on Reconsideration of the Part 1 Third Report and Order*, 65 FR 52401 (August 29, 2000), and *Fifth Report and Order*, 65 FR 52323 (August 29, 2000), which clarified and amended the general competitive bidding rules for all auctionable services.

2. Specifically, in the *Order on Reconsideration of the Part 1 Fifth Report and Order*, the Commission:

- Clarifies that in calculating an applicant's gross revenues under the controlling interest standard, the personal net worth, including personal income, of its officers and directors will not be attributed to the applicant. To the extent that the officers and directors of the applicant are controlling interest holders of other entities, the Commission will attribute the gross revenues of those entities to the applicant.
- Establishes a narrow exemption for the officers and directors of a rural telephone cooperative so that the gross revenues of the affiliates of a rural telephone cooperative's officers and directors need not be attributed to the applicant. Specifically, the gross revenues of the affiliates of an applicant's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets *all* of the following conditions: (i) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law; (ii) the applicant (or the controlling interest) is a ''rural telephone company'' as defined by the Communications Act; and (iii) the applicant (or the controlling interest) is eligible for tax-exempt status under the Internal Revenue Code. However, the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant.
- Declines to revise the controlling interest standard to exclude entities operating under control group structures.
- Modifies the Commission's part 1 default payment rule, § 1.2104(g)(2), to incorporate the combinatorial bidding default rule adopted in the *700 MHz Second Memorandum Opinion and Order*.
- Revises the part 1 rules to make certain conforming edits in the following areas: (i) License default; (ii) definition of consortium; (iii) women- and minority-owned businesses; (iv) clarification of the attribution rule; (v) ownership disclosure requirements; and (vi) short-form disclosure requirements for small or very small business consortiums. Additionally, technical edits are made to Commission rules that refer to service-specific competitive bidding rules that have been removed, revised, or modified.

3. In the *Second Order on Reconsideration of the Part 1 Third Report and Order*, the Commission:

- Dismisses a repetitive challenge to modifications to the installment payment rules adopted in the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998) and the *Order on Reconsideration of the Part 1 Third Report and Order*.
- Reorganizes § 1.2112(a) to move the requirement that each application fully disclose all ''real party or parties in interest'' into § 1.2112(a)(1). The Commission also conforms § 1.2112(a)(1) to the disclosure requirements as set forth in § 1.919(e) to ensure a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant.

II. Order on Reconsideration of the Part 1 Fifth Report and Order

A. Controlling Interest Standard

4. In the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), the Commission adopted as its general attribution rule a controlling interest standard, § 1.2110(c)(2), to be used for determining which applicants are eligible for small business status. The attribution rule is significant because, among other things, it is used to determine which applicants qualify as small businesses and therefore, may apply for bidding credits if they are available in a particular service.

5. Under the controlling interest standard, the Commission attributes to the applicant the gross revenues of the applicant, its controlling interests, the applicant's affiliates, and the affiliates of the applicant's controlling interests, in assessing whether the applicant is eligible for the Commission's small business provisions. Section 1.2110(c)(2)(i) defines a controlling interest as including ''individuals or entities with either *de jure* or *de facto* control.'' Thus, there may be more than one ''controlling interest'' whose gross revenues must be counted. The premise

of this rule is that all parties that control an applicant or have the power to control an applicant, and such parties' affiliates, will have their gross revenues counted and attributed to the applicant in determining the applicant's eligibility for small business status or for any other size-based status using a gross revenue threshold.

Attribution of Officers and Directors

Personal Net Worth of Officers and Directors.

6. Generally, the Commission has excluded personal net worth, including personal income and assets, from attribution for purposes of eligibility for small business provisions. In making this determination, the Commission has stated that attribution of personal net worth was not necessary because most wealthy individuals are likely to have their wealth tied to the ownership of other businesses. The Commission finds this rationale equally applicable here. Accordingly, for purposes of the controlling interest standard, the Commission clarifies that in calculating an applicant's gross revenues under § 1.2110, the personal net worth, including personal income and assets, of its officers and directors will *not* be attributed to the applicant. This clarification is consistent with the Commission's decisions in several service-specific rulemakings. For instance, in using the controlling interest standard to determine the eligibility of applicants in the 929–931 MHz Paging Service (''Auction No. 26'') for small business bidding credits, the Commission made clear that the personal net worth, including personal income, of controlling interests was not attributable to the applicant.

7. Personal income of officers and directors, however, is distinguishable from the gross revenues received by any business entities such individuals may control. For example, if an officer or director were to operate a separate business, the gross revenues derived from that separate business would be attributed to the applicant, although any personal income from such separate business would not be attributed. Further, if an officer or director of an applicant were an affiliate of another entity through any ownership interest or other means of affiliation, the gross revenues of such entity would be attributed to the applicant, whereas any income derived directly by an officer or director from that entity would be considered personal income and not attributed to the applicant. Finally, applicants are reminded that by operation of the Commission's rules all affiliates of controlling interests are attributable to the applicant. Thus, although the Commission does not attribute to the applicant the personal income of its officers and directors, to the extent that the officers and directors are controlling interest holders of other entities, the Commission attributes the gross revenues of those entities to the applicant.

Application of Attribution Rule to the Officers and Directors of a Rural Telephone Cooperative.

8. The Commission grants Rural Telecommunications Group's (''RTG'') request to exclude from attribution the gross revenues of entities controlled by a rural telephone cooperative's officers and directors, by providing a narrow exemption only available where the gross revenues of the affiliates of a rural telephone cooperative's officers and directors would otherwise be attributable based solely on their status as officers and directors of the rural telephone cooperative applicant or as officers and directors of a rural telephone cooperative that controls the applicant. However, if an officer or director of a rural telephone cooperative is considered a controlling interest of the applicant under another section of the controlling interest attribution rule, this exemption does not apply. For example, if an officer or director of the rural telephone cooperative manages its operations pursuant to a management agreement and either has authority to make certain decisions regarding the services offered by the applicant, or significantly influences such decisions, the gross revenues of other entities controlled by the officer or director would be attributed to the rural telephone cooperative. The Commission denies Neoworld's suggestion to broadly exempt officers and directors from the controlling interest standard where an applicant institutes a contractual mechanism in an effort to insulate officers and directors from involvement in an applicant's telecommunications activities.

Limited Exemption for Rural Telephone Cooperatives.

9. In light of the unique nature of rural telephone cooperatives, an exemption from the requirement that the gross revenues of entities controlled by a rural telephone cooperative's officers and directors are attributed to the applicant would not undermine the purpose of the controlling interest attribution rule. The attribution rules are intended to eliminate incentives for entities to create small business ''fronts'' that would enable large firms to secure a benefit to which they are not entitled, *i.e.*, small business bidding credits. The Commission agrees with the commenters' explanation that the key differences between rural cooperatives and other structures make it highly unlikely that rural telephone cooperatives would be able to participate in the types of sham transactions the rule is designed to protect against. For example, ownership and control of the cooperative remain in the hands of patrons of the cooperative (*i.e.*, telephone subscribers), rather than in non-patron equity investors as is often the case with traditional corporations or other business forms. Additionally, unlike traditional corporations or other business forms, the outside business interests of individual officers and directors of rural telephone cooperatives are not financial and management resources available to the cooperative. Further, because of the democratic structure of cooperatives, the patrons of each cooperative control the cooperative. Finally, members contribute equity to, and control, the capital of the cooperative, as opposed to outside investors. In light of these factors, grant of RTG's petition does not undermine the purpose of the controlling interest attribution rule.

10. Accordingly, based upon the comments received, the Commission adopts a narrow exemption for the officers and directors of a rural telephone cooperative so that the gross revenues of the affiliates of a rural telephone cooperative's officers and directors need not be attributed to the applicant. In the Commission's experience, rural telephone cooperatives frequently create wholly owned subsidiaries, or similar entities, to participate in Commission auctions. Accordingly, this exemption for the applicant's officers and directors would also extend to situations where the applicant is not a rural telephone cooperative but is controlled by an eligible rural telephone cooperative. For example, X is a rural telephone cooperative that satisfies all the elements of the exemption. X creates a subsidiary Y. Y's officers and directors are controlling interests solely based upon their status as officers and directors—*i.e.*, solely pursuant to § 1.2110(c)(2)(ii)(F). Y has no other controlling interests. Then, for purposes of determining eligibility for small business provisions, the gross revenues of the affiliates of X's officers and directors and affiliates of Y's officers and directors are not attributed to Y. If, however, Y has another controlling interest (other than Y's officers and directors and X's officers and directors) that is not an eligible rural telephone cooperative or controlled by an eligible

rural telephone cooperative, then the exemption does not apply to Y's officers and directors or such controlling interest's officers or directors. However, the gross revenues of the affiliates of X's officers and directors would not be attributed to Y. Specifically, the gross revenues of the affiliates of an applicant's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets all of the following conditions: (i) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law;[1] (ii) the applicant (or the controlling interest) is a ''rural telephone company'' as defined by the Communications Act;[2] and (iii) the applicant (or the controlling interest) is eligible for tax-exempt status under the Internal Revenue Code. 26 U.S.C. 1381(a)(2)(C); 26 U.S.C.A. 501(c)(12). However, the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant. Further, the mere presence of an eligible rural telephone cooperative as a controlling interest will not ensure that the exemption is wholly applicable to the applicant. Thus, where an applicant is not an eligible rural telephone cooperative, if the applicant has a controlling interest (other than the applicant's officers and directors or the eligible rural telephone cooperative's officers and directors) that is not an eligible rural telephone cooperative, or controlled by an eligible rural telephone cooperative, the exemption will not apply to the applicant's officers and directors or such controlling interest's officers and directors. However, in that situation, the gross revenues of the affiliates of the eligible rural telephone cooperative's officers and directors would not be attributed to the applicant. The exemption the Commission creates is appropriate because where the eligible rural cooperative ultimately controls the applicant, the gating criterion of the cooperative structure precludes the applicant from being a sham entity.

11. The exemption the Commission adopts is tailored to the factual assertions and policy arguments provided by commenters. The test the Commission adopts will ensure that the Commission's general assumptions regarding cooperatives hold true with respect to each applicant seeking to avail itself of this exemption. Thus, for example, the Commission is limiting this exemption only to those rural telephone cooperatives that are eligible for Federal tax-exempt status (*i.e.*, those that derive 85% or more of their income from subscribers). Adopting such an objective factor, as well as the other objective factors, will ensure that such exemption would be used only by *bona fide* community-based cooperatives, not sham entities. The Commission believes that this action will increase the number of rural telephone cooperatives that are eligible for small business status (and the corresponding bidding credits). Such a result will enhance the ability of rural telephone cooperatives to participate in spectrum auctions. This, in turn, will promote the deployment of advanced telecommunications services in rural areas as Congress mandated in section 309(j).

12. Accordingly, the Commission incorporates this exemption into the controlling interest standard contained in § 1.2110. If an applicant uses this exemption, its certification on its short-form application (FCC Form 175) that it ''is qualified as a designated entity under § 1.2110'' constitutes a certification that it is eligible for this narrow exemption. In addition, in the long-form application (FCC Form 601) and in the application for assignment or transfer of control (FCC Form 603), applicants seeking to use this exemption will be required to establish eligibility for this exemption based on the factors listed.

13. Consistent with the policy objectives underlying the Commission's decision, the Commission grants three pending waiver requests filed by rural telephone cooperative applicants in Auction No. 44. Specifically, three winning bidders that are rural telephone cooperatives (or wholly-owned by rural telephone cooperatives) filed substantively identical requests for waiver of § 1.2110(c)(2)(ii)(F). *See* Applications to Participate in an FCC Auction (FCC 175) of Cable and Communications Corporation, Northeast Nebraska Telephone Company, and Poka Lambro Telecommunications, Ltd. (initially filed May 8, 2002) (respectively, the ''C&C Application, Northeast Application, and Poka Lambro Application''). Short form applications for Auction No. 44, including the instant applications, may be viewed on the Commission's auctions Web site. *See https://auctionfiling.fcc.gov/form175/index.htm.* In connection with their demonstrations of eligibility for designated entity bidding credits, these applicants argued that the gross revenues of the affiliates of the cooperative's officers and directors should not be attributed to the cooperative. They note that the outside business interests of the cooperative's officers and directors ''have no impact on the cooperative's ability to raise capital or compete for FCC licenses'' due to the cooperative structure under which they are organized. The Commission believes that waiver of the requirement that the gross revenues of entities controlled by a rural telephone cooperative's officers and directors are to be attributed to the applicant would be consistent with its decision to adopt an exemption for rural telephone cooperatives and would promote the development of additional wireless services in their particular rural communities. Accordingly, consistent with the Commission's decision, it grants these waivers conditioned upon the submission to the Commission of information demonstrating the applicant's compliance with the factors adopted herein.

14. The Commission denies Neoworld's suggestion to broadly exempt officers and directors from the controlling interest standard where an applicant institutes a contractual mechanism to insulate officers and directors from involvement in an applicant's telecommunications activities. Generally, § 1.2110(c)(2)(ii)(F) reflects the corporate reality that business decisions and corporate policy

[1] A cooperative is defined pursuant to state law not federal law. Accordingly, the Commission requires that a rural telephone cooperative be validly organized as a cooperative under state law. *See e.g.*, New Mexico Cooperation Act, N.M. Stat. Ann. § 53–4–1 (Michie 1978); Colo. Rev. Stat. Ann. § 7–56–103 (West 2002).

[2] 47 U.S.C. 153(37). The term ''rural telephone company'' is defined in 47 U.S.C. 153(37) and in 47 CFR 1.2110(c)(4) and 51.5. Since passage of the Telecommunications Act of 1996, the Commission generally has used the statutory definition to determine which local exchange carriers can be classified as rural telephone companies. The statutory definition uses a range of standards, including the population of a jurisdiction and the number of access lines serving communities of various sizes. Specifically, section 153(37) states:

The term ''rural telephone company'' means a local exchange carrier operating entity to the extent that such entity—

(A) provides common carrier service to any local exchange carrier study area that does not include either—

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996. 47 U.S.C. 153(37).

are established by a corporation's board of directors and officers. Providing a broad exemption for officers and directors of an applicant would ultimately underestimate the role of officers and directors in an organization; thereby potentially providing large businesses with a significant monetary benefit reserved only for eligible small businesses. Such a result is contrary to the Commission's intent when adopting the controlling interest rule. As the Commission noted in the *Part 1 Fifth Report and Order*, the Commission adopted the attribution rules to ensure that small business bidding credits are extended only to *bona fide* small businesses. Further, adoption of Neoworld's drastic revision to the Commission's rules would essentially require the Commission to conduct a case-by-case review of the specific insulating mechanism employed to ensure that the arrangements are legitimate and are not sham transactions. In contrast, the exemption the Commission adopts for rural telephone cooperatives does not require such a case-by-case analysis. The cooperative's structure coupled with the factors identified serves as gating criteria obviating a need for such a case-by-case analysis.

Application of Controlling Interest Standard to Control Group Structures.

15. TeleCorp, Tritel, Poplar, and Summit (''Petitioners'') request that the Commission revise the controlling interest standard to exclude entities operating under the Commission's previously adopted control group structure. Petitioners state that they are concerned that the controlling interest standard could be interpreted to provide that officers and directors are always considered to have a controlling interest even under a control group structure. Petitioners argue that a literal reading of the rule could be used to expand the definition of affiliates so that greater gross revenues and assets would be attributed on that basis alone. Specifically, Petitioners request that newly established affiliates of existing restricted C/F block licensees that were structured so as to establish their eligibility under a control group attribution rule be able to utilize the same structure used by the existing restricted C/F block licensee to establish their eligibility. The Petitioners did not indicate the context of their request, *i.e.*, whether they sought to use the control group attribution rule solely to determine eligibility to hold a restricted C/F block license, or also to determine if an unjust enrichment payment would be owed upon transfer of control or assignment of such a license.

16. To the extent Petitioners are seeking a modification to the Commission's rule, the Commission denies their petitions for reconsideration and affirms the Commission's decision in the *Part 1 Fifth Report and Order* to consider officers and directors as controlling interests in a licensee or applicant. However, to avoid similar questions in the future, the Commission restates the application of the attribution rules with respect to eligibility to hold restricted C/F block licenses. Generally, if an applicant does not hold a restricted C/F block license under the former control group rules it must use the controlling interest attribution rule to determine eligibility to hold restricted C/F block licenses, whether through auctions or through assignment or transfer of control. However, with respect to the acquisition of restricted C/F block licenses through assignment or transfer of control, wholly-owned subsidiaries and commonly controlled affiliates (whether newly formed or in existence prior to the adoption of the controlling interest attribution rule) that establish their eligibility directly through an existing restricted C/F block licensee, will be eligible to hold a C/F block restricted license to the same extent as the existing restricted C/F block licensees. Thus, in the context of an application to assign or transfer a restricted C/F block license, the eligibility of an existing restricted C/F block licensee (that obtained its license under the former control group rules) and its wholly owned subsidiaries and commonly controlled affiliates to hold such licenses (as opposed to eligibility for small business provisions such as bidding credits) may be determined without application of the controlling interest attribution rule. For example, X creates a wholly-owned subsidiary Y. X also has a commonly controlled affiliate Z. X obtained its restricted C/F block licenses under the former control group rules. W, an unrelated party, also obtained its restricted C/F block licenses under the former control group rules. W seeks to assign its restricted C/F block licenses to Y and Z. Because X, Y, and Z are commonly controlled, Y and Z may establish their eligibility to hold restricted C/F block licenses through X without application of the controlling interest attribution standard. Further, X, Y, and Z will continue to be eligible to hold restricted C/F block licenses provided they comply with the requirements of § 24.709. *See TeleCorp Order,* 16 FCC Rcd at 3725–26, ¶¶ 23–41. Significantly, X, Y, and Z can only exceed the total assets test by permissible growth pursuant to § 24.709(a)(2). *Id.* at ¶ 29. This explanation does not alter the determination that, as stated in the *Part 1 Fifth Report and Order*, for all future C/F block auctions, all applicants will be subject to the attribution rules in effect at the time of filing their short-form applications.

17. For purposes of determining an assignee's or transferee's eligibility for benefits offered to small businesses, such as bidding credits and installment financing, and the application of the unjust enrichment provisions, all applicants will be subject to the attribution rules in effect at the time of filing their applications for assignment or transfer of control. The Commission has previously determined that the fact that an existing restricted C/F block licensee may choose to retain a control group structure does not exempt it from attributing the gross revenues of its affiliates, including the gross revenues of other entities controlled by its officers and directors, to the licensee for purposes of determining eligibility for small business provisions, such as bidding credits and installment financing.

B. Calculation of Default Payments in Combinatorial Bidding

18. The Commission incorporates into the part 1 general competitive bidding rules the combinatorial bidding default rule adopted in the *700 MHz Second Memorandum Opinion and Order*, 66 FR 10374 (February 15, 2001). The Commission adopts this provision because the effects of default in a combinatorial bidding auction are so detrimental to the integrity of the auctions system that they require a strong deterrent against insincere bidding and strategic default. As a commenter noted, in response to the *Auction No. 31 Combinatorial Bidding Comment Public Notice,* 65 FR 35636 (June 5, 2000), ''[d]efault in a combinatorial auction has more far reaching consequences than does default in an auction of single items. In particular, a default in a combinatorial auction could affect the award of many other licenses and [could] be used strategically to do so.'' Comments of Alekansdar Pekec and Michael H. Rothkopf, ''Making the FCC's First Combinatorial Auction Work Well'' (filed June 9, 2000) at section 6. Thus, the rule as adopted in the *700 MHz Second Memorandum Opinion and Order* is necessary to adequately discourage defaults, deter frivolous or insincere bidding, and generally protect the integrity of the auction process. The rule will be used to calculate default

payments for all auctions where a combinatorial bidding design is employed. Although the Commission adopts a new combinatorial bidding default rule, the competitive bidding rules are otherwise applicable. Thus, for example, the winning bid for a package creates the same obligation for the whole package as does a winning bid for a single license in the context of simultaneous multiple round auction without combinatorial bidding.

19. For convenience sake, the Commission provides the following explanation of the application of the rule. This substantially reiterates the explanation provided in the 700 MHz *Second Memorandum Opinion and Order*.

(i) Where a defaulting bidder held winning bids on individual licenses (*i.e.*, not as part of a package), and in a subsequent auction the licenses are also won individually, the deficiency portion will be calculated by subtracting the subsequent winning bid from the defaulted bid. 47 CFR 1.2104(g)(3)(i)(a) as adopted herein. The deficiency portion for such bids will be calculated on a license-by-license basis (*i.e.*, in the event of defaults on multiple bids, the differences between the amounts originally bid and the amounts subsequently bid will not be aggregated to determine a net amount owed). *Id.* For example, if a bidder defaults on two bids, one for License A for $100 and one for License B for $150, and in a subsequent auction, the licenses are won as License A for $150 and License B for $120, the default payment would be calculated separately for License A (by comparing the original bid ($100) to the amounts subsequently bid ($150), yielding no deficiency but an additional 25% payment)) and License B (by comparing the original bid ($150) to the amount subsequently bid for License B ($120), yielding a deficiency of $30, plus an additional 25% payment)). If the subsequent winning bid(s) exceed the defaulted bid(s), no deficiency portion will be assessed. Even in the absence of a deficiency portion, however, an additional 25% payment will be due. *Id.*

(ii) Where a defaulting bidder won licenses in package(s), and in a subsequent auction the licenses are won either (a) in the same package(s), or (b) in smaller packages or as individual licenses that correlate to the defaulted package(s), the deficiency portion will be determined on a package-by-package basis. 47 CFR 1.2104(g)(3)(i)(b) as adopted herein. In the event a defaulting bidder defaults on more than one such bid, the differences between the amount originally bid and the amounts(s) subsequently bid will not be aggregated to determine a net amount owed. *Id.* For example, if a bidder defaults on Package ABC (*i.e.*, a package consisting of Licenses A, B and C) with a bid of $900 and Package DE with a bid of $600, and in a subsequent auction, the licenses are won as License A for $200, Package BC for $600, and Package DE for $700, the default payment would be calculated separately for Package ABC (by comparing the original bid ($900) to the amounts subsequently bid for License A and Package BC ($200 and $600, which equals $800, yielding a $100 deficiency plus the additional payment)) and Package DE (by comparing the original bid ($600) to the amount subsequently bid for Package DE ($700, yielding no deficiency, but an additional 25% payment)). Thus, in this situation, the deficiency portion will be calculated in a manner analogous to where the licenses are sold individually. However, with regard to each individual package, where the licenses are subsequently sold individually or as part of smaller packages, the amounts received in the subsequent auction will be aggregated in order to determine any deficiency.

(iii) Where a defaulting bidder or bidders won licenses either individually or as part of packages, and in a subsequent auction the licenses are won as larger packages or different packages (not including the situation described in preceding paragraph), the deficiency portion will be calculated by subtracting the aggregate amount originally bid for the licenses from the aggregate amount bid in the subsequent auction for the licenses. 47 CFR 1.2104(g)(3)(i)(c) as adopted herein. For example, if a bidder defaults on Package AB with a bid of $200 and Package CD with a bid of $300, and in a subsequent auction the licenses are sold as Package AC for $250 and Package BD for $250, the default payment would be calculated by aggregating the amounts originally bid ($200 plus $300 equals $500) to the amounts subsequently bid ($250 plus $250 equals $500) to determine the deficiency amount ($500 less $500 equals $0); the additional payment would be based on either the original aggregate amount or the subsequent aggregate amount, whichever is less (in this case, they are the same, $500). Thus, in this situation, the deficiency portion will not be calculated on a bid-by-bid basis.

(iv) If, in a situation requiring that bids be aggregated in order to determine the deficiency portion of the default payments for bids, there are multiple defaulting bidders, the default payment (both the deficiency portion and the additional 25% payment portion) will be allocated to the defaulting bidders in proportion to the their share of the aggregated default bids. 47 CFR 1.2104(g)(3)(i)(d) as adopted herein. For example, if Bidder 1 defaults on Package ABC for $200, and Bidder 2 defaults on Package DE for $400, and in a subsequent auction the licenses are won in Package AB for $150 and Package CDE for $350, Bidder 1 would be liable for 1/3 of the default payment and Bidder 2 would be responsible for 2/3. The total default payment would be equal to the difference between the total of the original bids ($600) and the total of the subsequent amounts bid ($500) plus an additional amount of 25% of the total of the subsequent amounts bid. The total default payment therefore would equal $100 ($600–$500) plus 25 percent of $500 ($125), for a total default payment of $225.

(v) In the event that a bidding credit applies to any applicable bids(s), the deficiency portion of the default payment will be assessed using the lesser of the difference between gross bids and the difference between net bids. 47 CFR 1.2104(g)(3) as adopted herein. (In the event that a bidder does not have a bidding credit, the bidder's gross bid and net bid are the same). In other words, the Commission will compare (i) the sum of the gross defaulted bid(s) minus the gross subsequent winning bid(s) and (ii) the sum of the net defaulted bid(s) minus the net subsequent winning bid(s). The Commission will use the lesser of (i) and (ii) to calculate the deficiency portion of the default payment.

(vi) The default payment consists of the deficiency portion and an additional 25% payment. *Id.* The additional payment will be 25% of the lesser of the subsequent winning bids(s) and the defaulted bid(s). 47 CFR 1.2104(g)(3)(ii) as adopted herein. The Commission will use the same gross or net bid(s) that were used to calculate the deficiency portion when assessing the additional 25% payment. *Id.* That is, the Commission will compare the defaulted and subsequent bid(s) according to the methods described for calculation of the deficiency portion of the default payment when determining whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount. *Id.* Should there be no difference between the gross or net bid(s) for purposes of assessing the deficiency portion, the Commission will assess the additional 25% payment using the lesser of the gross or net bid(s).

20. Finally, the Commission will maintain its practice of assessing an interim default payment with a slight modification. Specifically, in the case of combinatorial bidding defaults, the

Commission will assess a 25% interim default payment pending assessment of the final default payment after a subsequent auction. This procedure is appropriate because even under the most favorable set of circumstances for the defaulting bidder, *i.e.*, where the bid price for the package at the subsequent auction exceeds defaulted bid, the final default payment would be 25% of the defaulted bid.

C. Licenses Subject to Auction After Default in Combinatorial Bidding Auctions

21. When the Commission adopted the default rules, it stated, as a general rule, that in the event of default by a winning bidder, the best course of action would be to offer licenses for the spectrum in a subsequent auction. Currently, under the Commission's part 1 auction rules, if a bidder defaults on a bid (or bids), the Commission may offer the license(s) for the spectrum in a new auction or it may also offer the license(s) to the other highest bidders. In the *700 MHz Second Memorandum Opinion and Order*, the Commission determined that for combinatorial bidding in the Upper 700 MHz band if a bidder defaults on a package bid, the Commission would auction the licenses making up the package on which the party defaulted, and only those licenses. This would occur even if, under the combinatorial bidding procedures, a different set of packages would have won had the defaulting bidder not bid. As the Commission explained in that *700 MHz Second Memorandum Opinion and Order*, any other result would be extremely problematic in the context of combinatorial bidding. The Commission sees no reason to change this decision now. Accordingly, in all future combinatorial bidding auctions, the Commission will not offer the package or licenses to the next highest bidder and will instead auction the license(s) for the spectrum in a new auction.

D. Conforming Edits to Competitive Bidding Rules

22. The Commission revises or removes service-specific and/or part 1 competitive bidding rules in the following areas: (i) License default; (ii) definition of consortium; (iii) women- and minority-owned businesses; (iv) clarification of the attribution rule; (v) ownership disclosure requirements; and (vi) short-form disclosure requirements for small or very small business consortiums. Also, technical edits are made to Commission rules that refer to service-specific competitive bidding rules that have been removed, revised, or modified.

23. *License default.* Section 1.2109, among other things, provides the conditions upon which a winning bidder will be deemed to have defaulted. Specifically, § 1.2109(b) states, in pertinent part, that ''[i]f a winning bidder withdraws its bid * * * the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in § 1.2104(g)(2).'' However, § 1.2109(c) states, in pertinent part, that ''[a] winning bidder who is found unqualified to be a licensee * * * will be deemed to have defaulted and will be liable for the payment set forth in § 1.2104(g)(2).'' The language regarding the dismissal of an application was inadvertently omitted from § 1.2109(c). Thus, the Commission revises § 1.2109(c) to add dismissal language to conform to § 1.2109(b).

24. *Definition of consortium.* The Commission's service-specific competitive bidding rules for several services define the terms ''small business consortium'' and ''very small business consortium.'' However, neither of these terms are defined in the Commission's part 1 rules. To streamline the Commission's rules and eliminate redundancies, the Commission incorporates a definition of the term ''consortium'' into the part 1 rules. This definition is taken almost verbatim from the service-specific definitions. Accordingly, the Commission deletes the definitions of small and very small business consortium in the service-specific competitive bidding rules.

25. Further, the Commission has generally defined a ''small or very small business consortium'' as a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a small or very small business as defined on a service-specific basis. In the *Part 1 Third Report and Order*, the Commission, in clarifying the part 1 definition of affiliate, determined that a ''consortium'' for purposes of determining status as a designated entity will not be treated as a ''joint venture'' under the Commission's attribution standards. In that Order, however, the Commission failed to also revise the part 1 definition of a ''small or very small business consortium.'' Thus, the Commission revises the part 1 rules to exclude the term ''joint venture'' from the definition of ''consortium.''

26. *Clarification of the attribution rules:* In the *Part 1 Fifth Report and Order*, the Commission established a controlling interest standard for attributing to an applicant the gross revenues of the applicant, its affiliates, its controlling interest, and the affiliates of the applicant's controlling interests in determining which applicants qualify as small businesses. In doing so the Commission amended the part 1 competitive bidding rules to incorporate new rules adopting the controlling interest standard. Specifically, § 1.2110(c)(2)(ii)(F) provides, in pertinent part, that ''[o]fficers and directors of an entity shall be considered to have a controlling interest in the entity.'' Under the controlling interest standard, however, a controlling interest includes individuals or entities, or groups of individuals or entities, that have control of the applicant under the principles of either *de jure* or *de facto* control. Therefore, the Commission revises § 1.2110(c)(ii)(F) to read, in pertinent part, that ''[o]fficers and directors of an applicant shall be considered to have a controlling interest in the applicant.''

27. Additionally, the Commission makes slight modifications to § 1.2110(b)(1)(i) to provide further guidance to applicants. Specifically, the term ''their affiliates'' in § 1.2110(b)(1)(i) includes both affiliates of the applicant and affiliates of the applicant's controlling interests.

28. *Disclosure requirements for small businesses.* Section 1.2112(a) of the Commission's rules formerly required all applications to participate in competitive bidding or for a license, authorization, assignment, or transfer of control to disclose certain information pertaining to controlling interests including ''a list of names, addresses, and citizenship of all controlling interests of the applicants, as set forth in § 1.2110.'' In the *Part 1 Fifth Report and Order*, the Commission determined that only applicants claiming small business status would be required to disclose controlling interest information under § 1.2112. Accordingly, the controlling interest disclosure requirements from § 1.2112(a) were moved to § 1.2112(b) which applies to entities claiming eligibility for small business provisions. At the same time, § 1.2112(b) was divided into two parts: Paragraph (b)(1), applying to short-form applications; and paragraph (b)(2), applying to long-form applications. The controlling interest language from § 1.2112(a), however, was inadvertently only carried over to paragraph (b)(1) instead of in both paragraphs (b)(1) and (b)(2). In addition, in dividing § 1.2112(b) into two sections, the Commission failed to specifically mention applications for an assignment

or transfer of control. Accordingly, the Commission makes conforming edits to § 1.2112(b) to correct these inadvertent errors to fully implement its intent that all applicants claiming small business status, including those filing applications for a license, authorization, assignment, or transfer of control as well as those filing short-form applications, are required to disclose the controlling interest information.

29. Section 1.2112(b)(1)(i) requires an applicant to list, as part of the disclosure obligations, the ''names, addresses, and citizenship of all officers, directors, and other controlling interests of the applicant.'' However, in addition to these disclosures, certain service-specific rules also require the applicant to disclose the same information for affiliates and small and very small business consortium. Section 1.2112(b)(1)(i) does not require the applicant to disclose this additional information. The Commission removes the service-specific short-form disclosure requirements and revises subsection 1.2112(b)(1)(i) to add affiliate and small or very small business consortium language as part of the short-form disclosure obligations.

30. Additionally, the Commission revises § 1.2112(b)(1)(ii) to comport with the Commission's previous correction made to § 1.2112(a)(6) in the *Part 1 Erratum*. Specifically, the Commission revises § 1.2112(b)(1)(ii) to require applicants claiming eligibility for small business provisions to list any *FCC-regulated entity* (instead of the current requirement to list any FCC-licensed entity) or applicant for an FCC license in which any controlling interest of the applicant owns a 10 percent or greater interest or a total of 10 percent or more of any class of stock, warrants, options or debt securities. This revision is consistent with the Commission's intent, as stated in the *Part 1 Fifth Report and Order*, to require that FCC-regulated entities be reported when there is a connection between such entity and the applicant at issue through a common owner.

31. *Women- and minority-owned businesses*. The Commission's rules set forth certain provisions applicable to designated entities—small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. In particular, § 1.2110(c)(3) of the part 1 general competitive bidding rules defines and provides the eligibility criteria for businesses owned by members of minority groups and/or women. However, § 24.720 (c), (d), and (i)(2) also define women- and minority-owned businesses and qualifying minority and/or woman investor. In light of the Commission's ongoing efforts to eliminate from the Code of Federal Regulations service-specific competitive bidding rules that are either repetitive with or have been superseded by the part 1 general competitive bidding rules, the Commission removes § 24.720 (c), (d), and (i)(2). The Commission's action is technical in nature and does not substantively affect the status of women- and minority-owed businesses.

III. Second Order on Reconsideration of the Third Report and Order

A. Installment Grace Periods and Imposition of Late Payment Fees

32. NextWave urges the Commission to restore the original installment payment rules as adopted in the *Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994). This Order does not address the petitions for reconsideration challenging the Commission's statement that § 1.2104(g)(2) does not apply to licensees who default on their installment payments, *see Order on Reconsideration of the Part 1 Third Report and Order*, 66 FR 51594 (October 10, 2001). The Commission received three petitions for reconsideration on this point. NextWave Petition, TeleCorp/Tritel/Poplar/Summit Petition, and MetroPCS Petition. The Commission will address this point in a subsequent order. In its petition, NextWave again relies upon the arguments that the modifications to the rules constitute impermissible retroactive rulemaking, that the changes were unreasonable and not consistent with commercial practices, and that contract-based theories precluded the Commission from modifying the installment payment rules. These arguments were previously the subject of reconsideration and fully considered and rejected in the *Order on Reconsideration of the Part 1 Third Report and Order. Part 1 Fifth Report and Order; Compare* NextWave Petition, filed September 28, 2000, in response to the *Order on Reconsideration of the Part 1 Third Report and Order* with NextWave Petition, filed February 17, 1998, in response to the *Part 1 Third Report and Order*. Additionally, as also noted, the Court of Appeals for the District of Columbia Circuit has substantially addressed and rejected these arguments in the context of a challenge to the application of the revised installment payment rules to the 218–219 MHz Service licensees. In light of these circumstances, the Commission declines to grant reconsideration.

33. The Commission does not grant reconsideration for the purpose of allowing a petitioner to reiterate arguments already presented. This is particularly true where a petitioner advances arguments that the Commission previously considered and rejected in a prior order on reconsideration. If this were not the case, the Commission would be involved in a never-ending process of review that would frustrate the Commission's ability to conduct business in an orderly fashion. However, the Commission will entertain a petition for reconsideration if it is based on new evidence or changed circumstances or if the reconsideration is in the public interest. In this instance, NextWave's arguments were previously raised and fully addressed in the *Order on Reconsideration of the Part 1 Third Report and Order*. NextWave did not plead or otherwise establish new facts, changed circumstances, or new public interest considerations that would merit review of its request for reconsideration. Thus, the Commission dismisses NextWave's arguments here as repetitious.

B. Ownership Disclosure Requirements

34. The Commission reorders § 1.2112 to move the requirement that each application for competitive bidding, or for a license, authorization, assignment or transfer for control fully disclose all ''real party or parties in interest'' from § 1.2112(a) to § 1.2112(a)(1). At the same time, the Commission conforms § 1.2112(a)(1) to the disclosure requirements as set forth in § 1.919(e) to ensure that applicants include a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant. The Commission also reminds applicants that, if the information disclosed pursuant to § 1.2112(a) changes while the application is pending, § 1.65 of the Commission's rules requires that additional or corrected information be submitted. These rule revisions are consistent with the Commission's efforts to provide specific guidance to applicants, to provide transparency at all stages in the competitive bidding and licensing process; and, finally to ensure that the Commission, the public, and interested parties, are aware of the real party or parties in interest before the Commission acts on a pending application.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act, 5 U.S.C. 604, the Commission prepared a Supplemental Final Regulatory Flexibility Analysis for the *Order on Reconsideration of the Part 1 Fifth Report and Order*. The Commission also prepared a second Supplemental Final Regulatory Flexibility Analysis for the *Second Order on Reconsideration of the Part 1 Third Report and Order*.

B. Paperwork Reduction Act Analysis

36. This *Second Order on Reconsideration of the Part 1 Third Report and Order, and Order on Reconsideration of the Part 1 Fifth Report and Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It was submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public and other Federal agencies are invited to comment on the new or modified collection(s) contained in this proceeding.

V. Supplemental Final Regulatory Flexibility Analysis (Order on Reconsideration of the Part 1 Fifth Report and Order)

37. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the report and order section of the *Part 1 Fifth Report and Order* in WT Docket No. 97–82. The Commission received four petitions for reconsideration, two comments, two reply comments, and *ex parte* filings from three parties in response to the *Part 1 Fifth Report and Order*. This present supplemental FRFA (SFRA) conforms to the RFA.

A. Need for, and Objectives of, the Order on Reconsideration of the Part 1 Fifth Report and Order

38. In August 2000, the Commission released the most recent comprehensive order in the part 1 proceeding, the *Order on Reconsideration of the Part 1 Third Report and Order, Part 1 Fifth Report and Order, and Part 1 Fourth Further Notice of Proposed Rule Making*, which clarified and amended the general competitive bidding rules for all auctionable services. Most significantly, in the *Part 1 Fifth Report and Order*, the Commission adopted, as its general attribution rule, a controlling interest standard to be used for determining which applicants are eligible for small business status.

39. The Commission received petitions for reconsideration from several parties in response to the *Part 1 Fifth Report and Order*. Petitioners request reconsideration of certain aspects of the new controlling interest standard, § 1.2110(c)(2), by which the Commission attributes to the applicant the gross revenues of the applicant, its controlling interests, the applicant's affiliates, and the affiliates of the applicant's controlling interests, in assessing whether the applicant is eligible for the Commission's small business provisions. Specifically, petitioners request reconsideration of the attribution of the personal net worth of an applicant's officers and directors to the applicant, application of the controlling interest attribution rule as applied to the officers and directors of rural telephone cooperatives, and application of the controlling interest standard to entities operating under the former control group rules. In the *Order on Reconsideration of the Part 1 Fifth Report and Order* the Commission resolves the petitions for reconsideration filed in response to the *Part 1 Fifth Report and Order*.

40. First, the Commission clarifies that in calculating an applicant's gross revenues under the controlling interest standard, the personal net worth, including personal income and assets, of its officers and directors will not be attributed to the applicant. To the extent that the officers and directors of the applicant are controlling interest holders of other entities, the Commission will attribute the gross revenues of those entities to the applicant. Second, based upon the comments received, the Commission adopts a narrow exemption for the officers and directors of a rural telephone cooperative so that the gross revenues of the affiliates of a rural telephone cooperative's officers and directors need not be attributed to the applicant. Specifically, the gross revenues of the affiliates of an applicant's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets *all* of the following conditions: (i) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law; (ii) the applicant (or the controlling interest) is a ''rural telephone company'' as defined by the Communications Act; and (iii) the applicant (or the controlling interest) is eligible for tax-exempt status under the Internal Revenue Code. However, the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant. Third, the Commission declines to revise the controlling interest standard to exclude entities operating under control group structures. At the same time, the Commission restates the application of the attribution rules with respect to eligibility to hold restricted C/F block licenses.

41. Lastly, on its own motion, the Commission also modifies the part 1 default payment rule, § 1.2104(g)(2), to incorporate the combinatorial bidding default rule adopted in the *700 MHz Second Memorandum Opinion and Order*. The Commission also makes certain ministerial conforming amendments and rule revisions to the part 1 general competitive bidding rules, and portions of the service-specific competitive bidding rules, to conform to the new rule revisions in part 1 in the following areas: (i) License default; (ii) definition of consortium; (iii) women- and minority-owned businesses; (iv) clarification of the attribution rule; (v) ownership disclosure requirements; and (vi) short-form disclosure requirements for small or very small business consortiums. Finally, technical edits are made to Commission rules that refer to service-specific competitive bidding rules that have been removed or revised.

B. Summary of Significant Issues Raised by Public Comments in Response to the FRFA Contained in the Order on Reconsideration of the Part 1 Third Report and Order

42. No petitions for reconsideration or comments were filed directly in response to the FRFA. However, the Commission did receive petitions for reconsideration and comments on issues affecting small businesses. As previously noted, in this SFRFA, petitioners request reconsideration of certain aspects of the new controlling interest standard, to be used for determining which applicants are eligible for small business status. Most notably, under the controlling interest standard, officers and directors of any applicant will be considered to have a controlling interest in the applicant. Thus, in calculating an applicant's gross revenues, the gross revenues of other entities controlled by such officers and directors must be included. Specifically, RTG seeks an exemption for rural telephone cooperatives from the requirement that the gross revenues of entities controlled by a rural telephone cooperative's officers and directors are to be attributed to the applicant. NTCA

and PVT reiterate points made by RTG. However, Neoworld seeks to extend RTG's proposal. In particular, Neoworld proposes that the Commission adopt a test under which an officer or director would not be considered to be a controlling interest if the applicant can demonstrate that it has developed insulating mechanisms to prevent such a director from being materially involved directly or indirectly in the management or telecommunications activities of the licensee.

43. Furthermore, TeleCorp, Tritel, Poplar, and Summit (''Petitioners'') request that the Commission revise the controlling interest standard to exclude entities operating under the Commission's previously adopted control group structure. Petitioners are concerned that a literal reading of the rule could be used to expand the definition of affiliates so that greater gross revenues and assets would be attributed to an applicant on that basis alone. Specifically, Petitioners request that newly established affiliates of existing restricted C/F block licensees that were structured so as to establish their eligibility under a control group attribution rule be able to utilize the same structure used by the existing restricted C/F block licensee to establish their eligibility. Additionally, Petitioners request that the Commission clarify that the controlling interest standard excludes from attribution the personal assets and revenues of individuals.

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

44. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small organization,'' ''small business,'' and ''small governmental jurisdiction.'' The term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the SBA.

45. The rule modifications and clarifications adopted in the *Order on Reconsideration of the Part 1 Fifth Report and Order* are of general applicability to all services and do not apply on a service-specific basis. Therefore, this SFRFA provides a general analysis of the impact of the revised part 1 rule on small businesses rather than a service by service analysis. Accordingly, the revised rules will apply to all entities that apply to participate in Commission auctions, including both small and large entities. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. In all of the Commission's auctions held to date except for the auctions for broadcast licenses, 1,752 out of a total of 2,235 qualified bidders have been small businesses as that term has been defined under rules adopted by the Commission for specific services. Given these statistics, the Commission expects that, in the future, a large percentage of participants in its auctions program generally will continue to be small businesses; although there may not be a large percentage in every auction.

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

46. All license applicants, as contemplated by the actions the Commission takes in the *Order on Reconsideration of the Part 1 Fifth Report and Order,* are subject to the reporting and recordkeeping requirements of the competitive bidding rules. These requirements apply in the same way to both large and small entities. Furthermore, applicants are required to apply for spectrum auctions by filing a short-form application (FCC Form 175) prior to the auction. Applicants are also required to file a long-form application (FCC Form 601) at the conclusion of the auction. Specifically, entities seeking status as a small business must disclose on their FCC Form 175s, FCC Form 601s, and on their application for assignment or transfer of control (FCC Form 603), separately and in the aggregate, the gross revenues of the applicant (or licensee), its affiliates, its controlling interests and affiliates of the applicant's controlling interests for each of the previous three years.

47. As a result of the actions taken in the *Order on Reconsideration of the Part 1 Fifth Report and Order,* for purposes of the controlling interest standard, in calculating the gross revenues of any applicant under § 1.2110, the personal net worth of its officers and directors will not be attributed to the applicant. However, auction applicants will be required to disclose the gross revenues received by any business entities such individuals may control. All affiliates of controlling interests are attributable to the applicant. Additionally, in the FCC Form 601, rural telephone cooperative auction applicants, or those controlled by rural telephone cooperatives, seeking an exemption from the requirement that the gross revenues of entities controlled by an applicant's officers and directors are attributed to the applicant must establish eligibility for this exemption based upon the four factors listed.

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

48. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule or any part thereof for small entities. The Commission has considered the economic impact on small entities of the following modifications and clarifications adopted in the *Order on Reconsideration of the Part 1 Fifth Report and Order* and has taken steps to minimize the burdens on small entities.

49. *Personal net worth of officers and directors.* The Commission clarifies that, for purposes of the controlling interest standard, in calculating an applicant's gross revenues under § 1.2110, the controlling interest standard, the personal net worth, including personal income and assets, of its officers and directors will not be attributed to the applicant. The Commission concludes that attribution of personal net worth is not necessary because most wealthy individuals are likely to have their wealth tied to the ownership of other businesses. Although the Commission does not attribute to the applicant the personal net worth of its officers and directors, to the extent that the officers and directors are affiliates of other entities, the Commission attributes the gross revenues of those entities to the applicant. Therefore, this will ensure that small business bidding credits are extended only to *bona fide* small businesses despite the personal net worth of wealthy individuals. An alternative action that would eliminate consideration of the gross revenues of such affiliates would provide an opportunity for large businesses to receive a significant monetary benefit

reserved only for eligible small businesses.

50. *Application of attribution rule to rural telephone cooperatives.* The Commission adopts a narrow exemption for the officers and directors of a rural telephone cooperative so that the gross revenues of the affiliates of a rural telephone cooperative's officers and directors need not be attributed to the applicant. This exemption for the applicant's officers and directors extends to situations where the applicant is not a rural telephone cooperative but is controlled by an eligible rural telephone cooperative. Specifically, the gross revenues of the affiliates of an applicant's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets *all* of the following conditions: (i) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law; (ii) the applicant (or the controlling interest) is a ''rural telephone company'' as defined by the Communications Act; and (iii) the applicant (or the controlling interest) is eligible for tax-exempt status under the Internal Revenue Code. However, the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant.

51. The Commission limits this exemption to only those rural telephone cooperatives that are eligible for Federal tax-exempt status, which will ensure that such exemption would be used only by *bona fide* community-based cooperatives, not sham entities. The Commission believes that this action will increase the number of rural telephone cooperatives that are eligible for small business status (and the corresponding bidding credits). Such a result will enhance the ability of rural telephone cooperatives to participate in spectrum auctions. This, in turn, will promote the deployment of advanced telecommunications services in rural areas as Congress mandated in section 309(j). At the same time, the Commission concludes that an across-the-board change to § 1.2110(c)(2)(ii)(F), as proposed as an alternative by Neoworld, to broadly exempt officers and directors from the controlling interest standard where an applicant institutes a contractual mechanism to insulate officers and directors from involvement in an applicant's telecommunications activities, is not warranted. Such a drastic revision to the Commission's rules would require additional scrutiny on the Commission's part to ensure that such contractual arrangements are legitimate and are not sham transactions that could undercut the basis of the attribution rule.

52. *Application of controlling interest standard to control group structures.* The Commission affirms its decision in the *Part 1 Fifth Report and Order* to consider officers and directors as controlling interests in a licensee or applicant. However, to avoid similar questions in the future, the Commission takes this opportunity, in the *Order on Reconsideration of the Part 1 Fifth Report and Order,* to clarify the application of the attribution rules with respect to eligibility to hold restricted C/F block licenses. Generally, if an applicant does not hold a restricted C/F block license under the former control group rules it must use the controlling interest attribution rule to determine eligibility to hold restricted C/F block licenses, whether through auctions or through assignment or transfer of control.

53. However, with respect to the acquisition of restricted C/F block licenses through assignment or transfer of control, wholly-owned subsidiaries and commonly controlled affiliates (whether newly formed or in existence prior to the adoption of the controlling interest attribution rule) that establish their eligibility directly through an existing restricted C/F block licensee, will be eligible to hold a C/F block restricted license to the same extent as the existing restricted C/F block licensees. Thus, in the context of an application to assign or transfer a restricted C/F block license, the eligibility of an existing restricted C/F block licensee (that obtained its license under the former control group rules) and its wholly owned subsidiaries and commonly controlled affiliates to hold such licenses (as opposed to eligibility for small business provisions) may be determined without application of the controlling interest attribution rule. For all future C/F block auctions, however, pursuant to the Commission's determination in the *Part 1 Fifth Report and Order,* all applicants will be subject to the attribution rules in effect at the time of filing their short-form applications. This decision will prevent large firms from illegitimately seeking small business status. A less restrictive alternative would frustrate the Commission's achievement of its goal of preventing large firms from gaining benefits only reserved for smaller entities.

54. *Conforming edits to the Part 1 competitive bidding rules.* The Commission, on its own motion, makes certain ministerial conforming amendments and rule revisions to the part 1 general competitive bidding rules and portions of the service-specific competitive bidding rules to conform to the new rule revisions in part 1. These rule revisions are consistent with the Commission's efforts to provide specific guidance to future auction participants and to streamline the competitive bidding regulations by eliminating certain service-specific rules.

F. Report to Congress

55. The Commission will send a copy of the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order,* including this SFRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order,* including this SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Second Supplemental Final Regulatory Flexibility Analysis (Second Order on Reconsideration of the Part 1 Third Report and Order)

56. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Supplementary Final Regulatory Flexibility Analysis (SFRFA) was incorporated into the report and order section of the *Order on Reconsideration of the Part 1 Third Report and Order* in WT Docket No. 97–82. The Commission received three petitions for reconsideration and one reply comment in response to the *Order on Reconsideration of the Part 1 Third Report and Order.* This present second SFRFA conforms to the RFA.

A. Need for, and Objectives of, the Order on Reconsideration of the Part 1 Fifth Report and Order

57. In August 2000, the Commission released the most recent comprehensive order in the Part 1 proceeding, the *Order on Reconsideration of the Part 1 Third Report and Order, Part 1 Fifth Report and Order, and Part 1 Fourth Further Notice of Proposed Rule Making,* which clarified and amended the general competitive bidding rules for all auctionable services. The Commission received petitions for reconsideration from several parties in response to the *Order on Reconsideration of the Part 1 Third Report and Order.* Specifically, the Commission received a petition for reconsideration, filed by NextWave, of the Commission's installment payment rules. In this *Second Order on*

Reconsideration of the Part 1 Third Report and Order, the Commission dismisses as repetitive NextWave's second challenge to modifications to the installment payment rules adopted in the 1997 *Part 1 Third Report and Order.* In addition, the Commission, on its own motion, makes certain conforming rule revisions to the part 1 general competitive bidding rules to clarify the requirement that applicants fully disclose the real party or parties in interest.

B. Summary of Significant Issues Raised by Public Comments in Response to the FRFA Contained in the Order on Reconsideration of the Part 1 Third Report and Order

58. No petitions for reconsideration or comments were filed directly in response to the FRFA or on issues affecting small businesses.

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

59. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small organization,'' ''small business,'' and ''small governmental jurisdiction.'' The term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (i) is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the SBA.

60. The rule revision adopted in this *Second Order on Reconsideration of the Part 1 Third Report and Order* rule is of general applicability to all services and does not apply on a service-specific basis. Therefore, this SFRFA provides a general analysis of the impact of the revised part 1 rule on small businesses rather than a service by service analysis. Accordingly, this rule revision will apply to all entities that apply to participate in Commission auctions, including both large and small entities. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. In all of the Commission's auctions held to date except for the auctions for broadcast licenses, 1,752 out of a total of 2,235 qualified bidders have been small businesses as that term has been defined under rules adopted by the Commission for specific services. Given these statistics, the Commission expects that, in the future, a large percentage of participants in its auctions program generally will continue to be small businesses; although there may not be a large percentage in every auction.

D. Description of the Projected Reporting, Record-keeping, and Other Compliance Requirements

61. All license applicants, as contemplated by the actions the Commission takes take in this *Second Order on Reconsideration of the Part 1 Third Report and Order,* are subject to the reporting and record-keeping requirements of the competitive bidding rules. These requirements apply in the same way to both large and small entities. Applicants are required to apply for spectrum auctions by filing a short-form application (FCC Form 175) prior to the auction. Applicants are also required to file a long-form application (FCC Form 601) at the conclusion of the auction. Specifically, entities seeking status as a small business must disclose on their FCC Form 175s, FCC Form 601s, and on their application for assignment or transfer of control (FCC Form 603), separately and in the aggregate, the gross revenues of the applicant (or licensee), its affiliates, its controlling interests and affiliates of the applicant's controlling interests for each of the previous three years.

62. As a result of the actions taken in the *Second Order on Reconsideration of the Part 1 Third Report and Order,* all applicants, as part of the Commission's ownership disclosure requirements, are required to fully disclose all ''real party or parties in interest'' including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant.

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

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

64. The Commission has considered the economic impact on small entities of the reorganizing § 1.2112(a) and making other conforming revisions to this rule as adopted in this *Second Order on Reconsideration of the Part 1 Third Report and Order* and has taken steps to minimize the burdens on small entities.

65. *Ownership disclosure requirements.* In the *Order on Reconsideration of the Part 1 Third Report and Order,* the Commission revised § 1.2112(a) which requires each application for competitive bidding (*i.e.*, short-form application), or for a license, authorization, assignment or transfer for control to disclose fully the real party or parties in interest. Specifically, the Commission deleted unnecessary language, clarified certain sections, and reordered the disclosure requirements in order to provide applicants with a clearer understanding of the information that must be disclosed. Although the reorganization has generally resulted in greater clarity for applicants, the Commission is concerned that the current structure of the rule may be construed by some applicants as allowing them to provide less than a full disclosure of all the real parties in interest.

66. Accordingly, the Commission reorders § 1.2112 to move the requirement that an applicant to fully disclose all ''real party or parties in interest'' in the applicant or application from § 1.2112(a) to § 1.2112(a)(1). At the same time, the Commission conforms § 1.2112(a)(1) to the disclosure requirements as set forth in § 1.919(e) to ensure that applicants include a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant to a section of the rule. This rule revision is preferred over a revision that would require disclosure of less information, because it is decidedly more consistent with the Commission's efforts to provide specific guidance to applicants, to provide transparency at all stages in the competitive bidding and licensing process; and, finally to ensure that the Commission, the public, and interested parties, are aware of the real party or parties in interest before the Commission acts on an application.

F. Report to Congress

67. The Commission will send a copy of the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order,* including this second SFRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the

Commission will send a copy of the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order,* including this second SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Ordering Clauses

68. It is ordered that, pursuant to the authority granted in sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b), 155(c)(1), 303(r), and 309(j), the *Second Order on Recon* are hereby adopted and parts 1, 21, 22, 24, 27, 73, 80, 90, 95 and 101 of the Commission's rules are amended as set forth, and become effective September 19, 2003.

69. It is further ordered that the Consumer Information Bureau, Reference Information Center, shall send a copy of the *Second Order on Recon,* including the Supplemental Final Regulatory Flexibility Analyses to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Parts 1, 21, 22, 24 and 27

Communications common carriers.

47 CFR Parts 73, 80, 90, 95 and 101

Communications equipment.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

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

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

■ 2. Amend § 1.913 by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 1.913 Application forms; electronic and manual filing.

(a) * * *

* * * * *

(2) *FCC Form 602, Wireless Radio Services Ownership Form.* FCC Form 602 is used by applicants and licensees in auctionable services to provide and update ownership information as required by §§ 1.919, 1.948, 1.2112, and any other section that requires the submission of such information.

* * * * *

(b) * * *

* * * * *

(2) Any associated documents (*see* § 1.2112) submitted with an application must be uploaded as attachments to the application whenever possible. The attachment should be uploaded via ULS in Adobe Acrobat Portable Document Format (PDF) whenever possible.

* * * * *

■ 3. Amend § 1.919 by revising paragraphs (a), (b) introductory text, and (e) to read as follows:

§ 1.919 Ownership information.

(a) Applicants or licensees in Wireless Radio Services that are subject to the ownership reporting requirements of § 1.2112 shall use FCC Form 602 to provide all ownership information required by the chapter.

(b) Any applicant or licensee that is subject to the ownership reporting requirements of § 1.2112 shall file an FCC Form 602, or file an updated form if the ownership information on a previously filed FCC Form 602 is not current, at the time it submits:

* * * * *

(e) Applicants or licensees in Wireless Radio Services that are not subject to the ownership reporting requirements of § 1.2112 are not required to file FCC Form 602. However, such applicants and licensees may be required by the rules applicable to such services to disclose the real party (or parties) in interest to the application, including (as required) a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant or licensee.

■ 4. Amend § 1.948 by revising paragraph (c) introductory text to read as follows:

§ 1.948 Assignment of authorization or transfer of control, notification of consummation.

* * * * *

(c) *Application required.* In the case of an assignment of authorization or transfer of control, the assignor must file an application for approval of the assignment on FCC Form 603. If the assignee or transferee is subject to the ownership reporting requirements of § 1.2112, the assignee or transferee must also file an updated FCC Form 602 or certify that a current FCC Form 602 is on file.

* * * * *

■ 5. Amend § 1.2103 by revising paragraph (a)(4) to read as follows:

§ 1.2103 Competitive bidding design options.

(a) * * *

* * * * *

(4) Combinatorial (package) bidding auctions.

* * * * *

■ 6. Amend § 1.2104 by adding paragraph (g)(3) to read as follows:

§ 1.2104 Competitive bidding mechanisms.

* * * * *

(g) * * *

(3) *Default or disqualification in combinatorial bidding auctions after close of auction.* A bidder assumes a binding obligation to pay its full bid amount upon acceptance of the high bid at the close of an auction. When the Commission conducts a combinatorial bidding auction pursuant to § 1.2103 (a)(4), if a high bidder defaults or is disqualified after close of a combinatorial bidding auction, the defaulting bidder will be subject to a default payment. The default payment consists of a deficiency portion and an additional payment. The deficiency portion of the default payment shall be calculated as set forth in § 1.2104(g)(3)(i). The additional payment shall be calculated as set forth in § 1.2104(g)(3)(ii).

(i) *Deficiency payment.* The deficiency portion of the default payment shall be calculated as set forth. In the case that any of the relevant bids are subject to bidding credits, the default payment will be adjusted in an analogous manner to that used in § 1.2104(g)(1).

(A) Where a defaulting bidder won licenses individually (*i.e.*, not as part of a package), and in a subsequent auction the licenses are also won individually, the deficiency portion will be calculated on a license-by-license basis (*i.e.*, the differences between the amounts originally bid and the amounts subsequently bid will not be aggregated to determine a net amount owed). If the subsequent winning bid(s) exceed the defaulted bid(s), no deficiency portion will be assessed. Even in the absence of a deficiency portion, however, an additional 25% payment will be due.

(B) Where a defaulting bidder won licenses in a package(s), and in a subsequent auction the licenses are won either in the same package(s), or in smaller packages or as individual licenses that correlate to the defaulted package(s), the deficiency portion will be determined on a package-by-package basis, and the differences between the amount originally bid and the amount(s) subsequently bid will not be aggregated to determine a net amount owed. Thus,

in this situation, the deficiency portion will be calculated in an analogous manner to that used in § 1.2104(g)(2). However, with regard to each individual package, where the licenses are subsequently sold individually or as part of smaller packages, the amounts received in the subsequent auction will be aggregated in order to determine any deficiency.

(C) Where a defaulting bidder or bidders won licenses either individually or as part of packages, and in a subsequent auction the licenses are won as larger packages or different packages (not including the situation described in paragraph (b) of this section), the deficiency portion will be calculated by subtracting the aggregate amount originally bid for the licenses from the aggregate amount bid in the subsequent auction for the licenses.

(D) When in the situation described in paragraph (c) of this section, there are multiple defaulting bidders, the default payment (both the deficiency portion and the additional amount portion) will be allocated to the defaulting bidders in proportion to the amount they originally bid.

Example: Bidder 1 defaults on Package ABC for $200, and Bidder 2 defaults on Package DE for $400, and in a subsequent auction the licenses are won in Package AB for $150 and Package CDE for $350, Bidder 1 would be liable for ⅓ of the default payment and Bidder 2 would be responsible for ⅔. The total default payment would be equal to the difference between the total of the original bids ($600) and the total of the subsequent amounts bid ($500) plus an additional amount of 25 percent of the total of the subsequent amounts bid. The total default payment therefore would equal $100 ($600-$500) plus 25 percent of $500 ($125), for a total default payment of $225.

(ii) *Additional payment.* If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (g)(3)(i) of this section plus an additional payment equal to 25 percent of the subsequent winning bid(s) or the defaulting bid(s), whichever is less. In the case that either the subsequent winning bid(s) or the defaulting bid(s) is subject to bidding credits, the additional payment will be calculated in an analogous manner to that used in § 1.2104(g)(2). In calculating the additional payment to determine whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount, the defaulted and subsequent bid(s) will be compared according to the rules set forth in paragraphs (g)(3)(i)(A) through (g)(3)(i)(D) of this section for calculation of the deficiency portion of the default payment.

* * * * *

■ 7. Amend § 1.2109 by revising paragraphs (b) and (c) to read as follows:

§ 1.2109 License grant, denial, default, and disqualification.

* * * * *

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within ten (10) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in §§ 1.2104(g)(2) or 1.2104(g)(3), whichever is applicable. In such event, the Commission, at its discretion, may either re-auction the license(s) to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. If the license(s) is offered to the other highest bidders (in descending order), the down payment obligations set forth in § 1.2107(b) will apply. However, in combinatorial bidding auctions, the Commission will only re-auction the license(s) to existing or new applicants. The Commission will not offer the package or licenses to the next highest bidder.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in §§ 1.2104(g)(2) or 1.2104(g)(3), whichever is applicable. In such event, the Commission may either re-auction the license(s) to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. However, in combinatorial bidding auctions, the Commission will only re-auction the license(s) to existing or new applicants. The Commission will not offer the package or licenses to the next highest bidder.

* * * * *

■ 8. Amend § 1.2110 by revising paragraphs (b)(1)(i), (b)(1)(ii), (b)(3)(i) and (c)(2)(ii)(F), and adding new paragraphs (b)(3)(iii) and (c)(6) to read as follows:

§ 1.2110 Designated entities.

* * * * *

(b) * * *

(1) * * *

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

(ii) If applicable, pursuant to § 24.709 of this chapter, the total assets of the applicant (or licensee), its affiliates, its controlling interests and affiliates of the applicant's controlling interests shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as an entrepreneur. An applicant seeking status as an entrepreneur must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its affiliates, its controlling interests and affiliates of the applicant's controlling interests for each of the previous two years.

* * * * *

(3) * * *

(i) *Consortium.* Where an applicant (or licensee) is a consortium of small businesses, very small businesses, or entrepreneurs, as those terms are defined in the service-specific rules, the gross revenues of each consortium member shall not be aggregated. Each consortium member must constitute a separate and distinct legal entity to qualify.

* * * * *

(iii) *Rural telephone cooperatives.* (A) An applicant will be exempt from § 1.2110(c)(2)(ii)(F) for the purpose of attribution in § 1.2110(b)(1), if the applicant or a controlling interest in the applicant, as the case may be, meets all of the following conditions:

(*1*) the applicant (or the controlling interest) is organized as a cooperative pursuant to state law;

(*2*) the applicant (or the controlling interest) is a ''rural telephone company'' as defined by the Communications Act; and

(*3*) the applicant (or the controlling interest) is eligible for tax-exempt status under the Internal Revenue Code. The applicant will not be exempt from § 1.2110(c)(2)(ii)(F) for the purpose of

attribution in § 1.2110(b)(1) if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant.

(B) However, if the applicant is not an eligible rural telephone cooperative under paragraph (a) of this section, and the applicant has a controlling interest other than the applicant's officers and directors or an eligible rural telephone cooperative's officers and directors, paragraph (a) of this section applies with respect to the applicant's officers and directors and such controlling interest's officers and directors only when such controlling interest is either:

(*1*) An eligible rural telephone cooperative under paragraph (a) of this section or

(*2*) controlled by an eligible rural telephone cooperative under paragraph (a) of this section.

(c) * * *

* * * * *

(2) * * *

(ii) * * *

(F) Officers and directors of the applicant shall be considered to have a controlling interest in the applicant. The officers and directors of an entity that controls a licensee or applicant shall be considered to have a controlling interest in the licensee or applicant. The personal net worth, including personal income of the officers and directors of an applicant, is not attributed to the applicant. To the extent that the officers and directors of an applicant are affiliates of other entities, the gross revenues of the other entities are attributed to the applicant.

* * * * *

(6) *Consortium.* A consortium of small businesses, very small businesses, or entrepreneurs is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules. Each individual member must constitute a separate and distinct legal entity to qualify.

* * * * *

■ 9. Revise § 1.2112 to read as follows:

§ 1.2112 Ownership disclosure requirements for applications.

(a) Each application to participate in competitive bidding (*i.e.*, short-form application (*see* 47 CFR 1.2105)), or for a license, authorization, assignment, or transfer of control shall fully disclose the following:

(1) List the real party or parties in interest in the applicant or application, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant;

(2) List the name, address, and citizenship of any party holding 10 percent or more of stock in the applicant, whether voting or nonvoting, common or preferred, including the specific amount of the interest or percentage held;

(3) List, in the case of a limited partnership, the name, address and citizenship of each limited partner whose interest in the applicant is 10 percent or greater (as calculated according to the percentage of equity paid in or the percentage of distribution of profits and losses);

(4) List, in the case of a general partnership, the name, address and citizenship of each partner, and the share or interest participation in the partnership;

(5) List, in the case of a limited liability company, the name, address, and citizenship of each of its members whose interest in the applicant is 10 percent or greater;

(6) List all parties holding indirect ownership interests in the applicant as determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain, that equals 10 percent or more of the applicant, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated and reported as if it were a 100 percent interest; and

(7) List any FCC-regulated entity or applicant for an FCC license, in which the applicant or any of the parties identified in paragraphs (a)(1) through (a)(5) of this section, owns 10 percent or more of stock, whether voting or nonvoting, common or preferred. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant (*e.g.*, Company A owns 10 percent of Company B (the applicant) and 10 percent of Company C, then Companies A and C must be listed on Company B's application, where C is an FCC licensee and/or license applicant).

(b) *Designated entity status.* In addition to the information required under paragraph (a) of this section, each applicant claiming eligibility for small business provisions shall disclose the following:

(1) On its application to participate in competitive bidding (*i.e.*, short-form application (see 47 CFR 1.2105)):

(i) List the names, addresses, and citizenship of all officers, directors, affiliates, and other controlling interests of the applicant, as described in § 1.2110, and, if a consortium of small businesses or consortium of very small businesses, the members of the conglomerate organization;

(ii) List any FCC-regulated entity or applicant for an FCC license, in which any controlling interest of the applicant owns a 10 percent or greater interest or a total of 10 percent or more of any class of stock, warrants, options or debt securities. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant; and

(iii) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: The applicant, its affiliates, its controlling interests, and affiliates of its controlling interests; and if a consortium of small businesses, the members comprising the consortium.

(2) As an exhibit to its application for a license, authorization, assignment, or transfer of control:

(i) List the names, addresses, and citizenship of all officers, directors, and other controlling interests of the applicant, as described in § 1.2110;

(ii) List any FCC-regulated entity or applicant for an FCC license, in which any controlling interest of the applicant owns a 10 percent or greater interest or a total of 10 percent or more of any class of stock, warrants, options or debt securities. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant;

(iii) List and summarize all agreements or instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business under the applicable designated entity provisions, including the establishment of *de facto* or *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written;

(iv) List and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees;

(v) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: the applicant, its affiliates, its controlling interests, and affiliates of its controlling interests; and if a consortium of small businesses, the members comprising the consortium; and

(vi) List and summarize, if seeking the exemption for rural telephone cooperatives pursuant to § 1.2110, all documentation to establish eligibility pursuant to the four factors listed under § 1.2110(b)(3)(iii).

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

■ 10. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

■ 11. Amend § 21.930 by revising paragraph (d)(2)(i) to read as follows:

§ 21.930 Five-year build-out requirements.

* * * * *

(d) * * *

(2) * * *

(i) The competitive bidding procedures set forth in §§ 21.950 through 21.960 shall be followed by applicants seeking authority to provide MDS service to the unserved partitioned area.

* * * * *

■ 12. Revise § 21.954 to read as follows:

§ 21.954 Submission of upfront payments.

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

■ 13. Amend § 21.956 by revising paragraphs (b)(2) and (b)(3) to read as follows:

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

* * * * *

(b) * * *

(2) An exhibit detailing the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement the winning bidder had entered into relating to the competitive bidding process prior to the time bidding was completed (*see* 47 CFR 1.2107(d) of this chapter);

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

* * * * *

■ 14. Amend § 21.960 by redesignating paragraphs (a), (b), (c), (d), (e), and (f) as paragraphs (b), (c), (d), (e), (f), and (g), and adding new paragraph (a) to read as follows:

§ 21.960 Designated entity provisions for MDS.

(a) *Eligibility for small business provisions.* A small business is an entity that together with its affiliates has average annual gross revenues that are not more than $40 million for the preceding three calendar years.

* * * * *

§ 21.961 [Removed and Reserved]

■ 15. Remove and reserve § 21.961.

PART 22—PUBLIC MOBILE SERVICES

■ 16. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

■ 17. Revise § 22.217 to read as follows:

§ 22.217 Bidding credit for small businesses.

A winning bidder that qualifies as a small business, as defined in § 22.223(b)(1), or a consortium of small businesses may use a bidding credit of thirty-five (35) percent to lower the cost of its winning bid. A winning bidder that qualifies as a small business, as defined in § 22.223(b)(2), or consortium of small businesses may use a bidding credit of twenty-five (25) percent to lower the cost of its winning bid.

■ 18. Revise § 22.223 to read as follows:

§ 22.223 Designated entities.

(a) *Scope.* The definitions in this section apply to §§ 22.201 through 22.227, unless otherwise specified in those sections.

(b) A small business is an entity that either:

(1) Together with its affiliates and controlling interests has average gross revenues that are not more than $3 million for the preceding three years; or

(2) Together with its affiliates and controlling interests has average gross revenues that are not more than $15 million for the preceding three years.

■ 19. Amend § 22.225 by removing paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (a) and (b), and revising newly redesignated paragraph (b) to read as follows:

§ 22.225 Records maintenance and definitions.

* * * * *

(b) *Definition.* The term small business used in this section is defined in § 22.223.

■ 20. Amend § 22.229 by removing paragraphs (a)(4) and (a)(5) and revising paragraph (b) to read as follows:

§ 22.229 Designated entities.

* * * * *

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

PART 24—PERSONAL COMMUNICATIONS SERVICES

■ 21. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 302, 303, 309, and 332.

■ 22. Amend § 24.321 by removing paragraph (a)(3) and revising paragraphs (b) and (c) to read as follows:

§ 24.321 Designated entities.

* * * * *

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

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

■ 23. Amend § 24.709 by removing pargraph (c)(1)(ii)(B), redesignating paragraphs (c)(1)(ii)(C), (c)(1)(ii)(D), (c)(1)(ii)(E) and (c)(1)(ii)(F) as (c)(1)(ii)(B), (c)(1)(ii)(C), (c)(1)(ii)(D) and (c)(1)(ii)(E), and revising paragraphs

(b)(1)(v)(A)(*3*) introductory text, (b)(1)(v)(A)(*3*)(*iv*), (b)(1)(vi)(A)(*3*) introductory text, (b)(1)(vi)(A)(*3*)(*iv*), newly redesignated paragraphs (c)(1)(ii)(C), (c)(1)(ii)(E)(1), (c)(*1*)(ii)(E)(*2*) and paragraphs (c)(3) and (d) to read as follows:

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

* * * * *

(b) * * *

(1) * * *

(v) * * *

(A) * * *

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

* * * * *

(*iv*) Qualifying investors, as specified in § 24.720(g)(3).

* * * * *

(vi) * * *

(A) * * *

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

* * * * *

(*iv*) Qualifying investors, as specified in § 24.720(g)(3).

* * * * *

(c) * * *

(1) * * *

(ii) * *

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

* * * * *

(E) * * *

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

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

* * * * *

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

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

§ 24.711 [Amended]

■ 24. Amend § 24.711 by replacing the reference to ''section 1.2110(o)'' in paragraph (a) with ''section 1.2110(n)''.

■ 25. Amend § 24.712 by revising paragraphs (a) and (b) to read as follows:

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

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

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

* * * * *

§ 24.714 [Amended]

■ 26. Amend § 24.714 by replacing the reference to ''The Bureau'' in paragraph (c)(2)(iii) with ''The Commission''.

§ 24.716 [Amended]

■ 27. Amend § 24.716 by replacing all references to ''section 1.2110(o)'' in paragraphs (a) and (b) with ''section 1.2110(n)''.

■ 28. Revise § 24.717 to read as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

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

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

■ 29. Amend § 24.720 by removing paragraphs (b)(3) and (b)(4), redesignating paragraphs (e), (f), (g), (h), (i), and (j) as paragraphs (c), (d), (e), (f), (g), and (h), redesignating the Note to Paragraph (j) as the Note to Paragraph (h) and revising paragraph (b) introductory text and newly redesignated paragraph (g) to read as follows:

§ 24.720 Definitions.

* * * * *

(b) *Small and very small business.* * * *

* * * * *

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

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

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

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 30. The authority citation for part 27 continues to read as follows:

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

■ 31. Amend § 27.210 by revising paragraph (b) to read as follows:

§ 27.210 Definitions.

* * * * *

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

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

■ 32. Revise § 27.501 to read as follows:

§ 27.501 746–764 MHz and 776–794 MHz bands subject to competitive bidding.

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

§ 27.502 [Amended]

■ 33. Amend § 27.502 by removing paragraph (c).

■ 34. Amend § 27.702 by removing paragraph (a)(4) and revising paragraph (b) to read as follows:

§ 27.702 Designated entities.

* * * * *

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

■ 35. Amend § 27.807 by removing paragraphs (a)(3) and (a)(4) and revising paragraph (b) to read as follows:

§ 27.807 Designated entities.

* * * * *

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

36. Amend § 27.906 by removing paragraphs (a)(3) and (a)(4), and revising paragraph (b) to read as follows:

§ 27.906 Designated entities.

* * * * *

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

37. Amend § 27.1006 by removing paragraphs (a)(3) and (a)(4), and revising paragraph (b) to read as follows:

§ 27.1006 Designated entities.

* * * * *

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

PART 73—RADIO BROADCAST SERVICES

■ 38. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

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

§ 73.5005 Filing of long-form applications.

(a) Within thirty (30) days following the close of bidding and notification to the winning bidders, each winning bidder must submit an appropriate long-form application (FCC Form 301, FCC Form 346, FCC Form 349 or FCC Form 330) for each construction permit or license for which it was the high bidder. Long-form applications filed by winning bidders shall include the exhibits required by § 1.2107(d) of this chapter (concerning any bidding consortia or joint bidding arrangements); § 1.2110(j) of this chapter (concerning designated entity status, if applicable); and § 1.2112 of this chapter (concerning disclosure of ownership and real party in interest information, and, if applicable, disclosure of gross revenue information for small business applicants).

* * * * *

■ 40. Amend § 73.5009 by revising paragraph (b) to read as follows:

§ 73.5009 Assignment or transfer of control.

* * * * *

(b) The ownership disclosure requirements found at § 1.2112(a) of this chapter shall not apply to an applicant seeking consent to assign or transfer control of a broadcast construction permit or license awarded by competitive bidding.

PART 80—STATIONS IN THE MARITIME SERVICES

■ 41. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 42. Amend § 80.1252 by removing paragraph (b)(3) and revising paragraphs (a) and (c) to read as follows:

§ 80.1252 Designated entities.

(a) This section addresses certain issues concerning designated entities in maritime communications services subject to competitive bidding.

* * * * *

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

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 43. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 44. Revise § 90.810 to read as follows:

§ 90.810 Bidding credits for small businesses.

A winning bidder that qualifies as a small business, as defined in § 90.814(b)(1), or a consortium of small businesses may use a bidding credit of 15 percent to lower the cost of its winning bid on any of the blocks identified in § 90.617(d), Table 4B. A winning bidder that qualifies as a small business, as defined in § 90.814(b)(2), or a consortium of small businesses may use a bidding credit of 10 percent to lower the cost of its winning bid on any of the blocks identified in § 90.617(d), Table 4B.

§ 90.813 [Amended]

■ 45. Amend § 90.813 by replacing the reference to ''The Bureau'' in paragraph (c)(2)(ii) with ''The Commission.''

■ 46. Amend § 90.814 by revising paragraph (b) to read as follows:

§ 90.814 Definitions.

(b) A small business is an entity that either:

(1) Together with its affiliates, persons or entities that hold attributable interests in such entity, and their affiliates, has average gross revenues that are not more than $3 million for the preceding three years; or

(2) Together with its affiliates, persons or entities that hold attributable interests in such entity, and their affiliates, has average gross revenues that are not more than $15 million for the preceding three years.

■ 47. Revise § 90.815 to read as follows:

§ 90.815 Records maintenance and definitions.

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

(b) *Definitions.* The term *small business* used in this section is defined in § 90.814.

■ 48. Amend § 90.901 by revising the section heading to read as follows:

§ 90.901 800 MHz SMR spectrum subject to competitive bidding.

* * * * *

■ 49. Revise § 90.910 to read as follows:

§ 90.910 Bidding credits.

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

■ 50. Amend § 90.912 by removing paragraphs (b)(3) and (b)(4), and revising paragraph (b) introductory text to read as follows:

§ 90.912 Definitions.

* * * * *

(b) *Small and very small businesses.* * * *

* * * * *

■ 51. Revise § 90.913 to read as follows:

§ 90.913 Record maintenance and definitions.

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

(b) *Definitions.* The terms *small and very small business* used in this section are defined in § 90.912.

■ 52. Revise § 90.1017 to read as follows:

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

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

■ 53. Amend § 90.1021 by removing paragraph (b)(3) and revising (b) introductory text to read as follows:

§ 90.1021 Definitions concerning competitive bidding process.

* * * * *

(b) *Small and very small business.* * * *

* * * * *

■ 54. Revise § 90.1023 to read as follows:

§ 90.1023 Records maintenance and definitions.

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

(b) *Definitions.* The terms small and very small business used in this section are defined in § 90.1021.

■ 55. Amend § 90.1103 by removing paragraphs (b)(3) and revising paragraphs (a) and (c) to read as follows:

§ 90.1103 Designated entities.

(a) This section addresses certain issues concerning designated entities in the Location and Monitoring Service (LMS) subject to competitive bidding.

* * * * *

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

PART 95—PERSONAL RADIO SERVICE

■ 56. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

■ 57. Amend § 95.816 by removing paragraph (c)(3) and revising paragraph (d) to read as follows:

§ 95.816 Competitive bidding proceedings.

* * * * *

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

small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in accordance with § 1.2110(f)(2)(i) of this chapter.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

■ 58. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 59. Amend § 101.538 by removing paragraphs (a)(4) and (a)(5) and revising paragraph (b) to read as follows:

§ 101.538 Designated entities.

* * * * *

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

■ 60. Revise § 101.1107 to read as follows:

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

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

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

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

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

■ 61. Revise § 101.1109 to read as follows:

§ 101.1109 Records maintenance.

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

§ 101.1112 [Amended]

■ 62. Amend § 101.1112 by removing paragraphs (e) and (f).

■ 63. Amend § 101.1209 by revising paragraph (b) to read as follows:

§ 101.1209 Definitions.

* * * * *

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

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

■ 64. Amend § 101.1429 by removing paragraphs (a)(4) and (a)(5) and revising paragraph (b) to read as follows:

§ 101.1429 Designated entities.

* * * * *

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

[FR Doc. 03–18430 Filed 7–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[WT Docket No. 03–66; RM–10586; WT Docket No. 03–67; MM Docket No. 97–217; WT Docket No. 02–68; RM–9718; FCC 03–169]

Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; reinstatement.

SUMMARY: This item modifies a Final rule to delete the request for comment on how the Commission should handle pending applications for extension of time to construct Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) stations. In light of representations that many entities have developed plans in the near future to deploy high-speed wireless broadband systems under our existing rules, the Commission now believes that acting on applications for extension of time to construct will facilitate continued deployment of broadband services and promote innovation and investment. This item also reinstates the Commission's rules and clarifies that MDS Basic Trading Area authorization holders need not comply with the build out requirements contained in the Commission's rules pending publication of a *Report and Order* in this proceeding.

DATES: Effective July 21, 2003, § 21.930 which was suspended on June 10, 2003 (68 FR 34560) is reinstated.

FOR FURTHER INFORMATION CONTACT: Charles Oliver and John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Order, FCC 03–169, adopted on July 10, 2003, and released on July 10, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://*