

**§ 76.1801 Registration statement.**

A system community unit shall be authorized to commence operation only after filing with the Commission the following information:

(a)(1) The legal name of the operator, entity identification or social security number, and whether the operator is an individual, private association, partnership, or corporation. If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied:

(2) The assumed name (if any) used for doing business in the community;

(3) The mail address, including zip code, and the telephone number to which all communications are to be directed;

(4) The date the system provided service to 50 subscribers;

(5) The name of the community or area served and the county in which it is located; and

(6) The television broadcast signals to be carried which previously have not been certified or registered.

(b) Registration statements shall be personally signed by the operator; by one of the partners, if the operator is a partnership; by an officer, if the operator is a corporation; by a member who is an officer, if the operator is an unincorporated association; or by any duly authorized employee of the operator.

(c) Registration statements may be signed by the operator's attorney in case of the operator's physical disability or of his absence from the United States. The attorney shall in that event separately set forth the reasons why the registration statement was signed by the operator. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his knowledge), he shall separately set forth his reasons for believing that such statements are true.

(d) The Commission will give public notice of the filing of registration statements.

**§ 76.1802 Equal employment opportunity.**

Each employment unit with six or more full-time employees shall file an annual employment report (FCC Form 395A) with the Commission on or before September 30 of each year, in accordance with § 76.77.

**§ 76.1803 Aeronautical frequencies: signal list.**

The operator of a cable system shall notify the Commission annually of all signals carried in the aeronautical radio frequency bands (108–137 and 225–400 MHz), noting the type of information

carried by the signal (television picture, aural, pilot carrier, or system control, etc.). The timely filing of FCC Form 325, Schedule 2, will meet this requirement.

**§ 76.1804 Aeronautical frequencies: leakage monitoring (CLI).**

The operator of a cable system shall notify the Commission before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than 10–4 watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands (108–137 and 225–400 MHz). Such notification shall include:

(a) Legal name and local address of the cable television operator;

(b) The names and FCC identifiers (e.g., CA0001) of the system communities affected;

(c) The names and telephone numbers of local system officials who are responsible for compliance with §§ 76.610 through 76.616 and § 76.1803;

(d) Carrier and subcarrier frequencies and tolerance, types of modulation and the maximum average power levels of all carriers and subcarriers occurring at any location in the cable distribution system;

(e) The geographical coordinates of a point near the center of the cable system, together with the distance (in kilometers) from the designated point to the most remote point of the cable plant, existing or planned, which defines a circle enclosing the entire cable plant;

(f) A description of the routine monitoring procedure to be used; and

(g) For cable operators subject to § 76.611, the cumulative signal leakage index derived under § 76.611(a)(1) or the results of airspace measurements derived under § 76.611(a)(2), including a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. The information described in this paragraph (g) shall be provided to the Commission prior to July 1, 1990 and each calendar year thereafter.

**Note to § 76.1804(g):** Timely filing of FCC Form 320, "Basic Signal Leakage Performance Report," will satisfy the annual filing requirement of paragraph (g).

**§ 76.1805 Alternative rate regulation agreements.**

Small systems owned by small cable companies must file with the Commission a copy of any operative alternative rate regulation agreement entered into with a local franchising

authority pursuant to § 76.934(g), within 30 days after its effective date.

**PART 100—DIRECT BROADCAST SATELLITE SERVICE**

57. The authority for Part 100 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 309, and 554.

**§ 100.51 [Amended]**

58. Section 100.51 of paragraph (e) is amended by removing "part 76, subpart E" and adding in its place "part 76, subparts E and U."

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**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 24**

[WT Docket No. 97–82; FCC 00–313]

**Installment Payment Financing for Personal Communications Services (PCS) Licensees**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts modifications to the Commission's rules that will apply to Auction No. 35, the next broadband Personal Communications Services (PCS) C and F block auction, as well as any subsequent auctions of C and F licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future. We conclude that it is in the public interest to modify our auction and service rules for C and F block broadband PCS to achieve various goals.

**DATES:** Effective November 6, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Audrey Bashkin, Attorney, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Sixth Report and Order and Order on Reconsideration ("C/F Block Sixth Report and Order") in the Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees. The complete text of the *C/F Block Sixth Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy

contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857-3800. It is also available on the Commission's web site at <http://www.fcc.gov/wtb/auctions>.

## Synopsis of the C/F Block Sixth Report and Order

### I. Introduction And Executive Summary

1. In the *C/F Block Sixth Report and Order* we address the tentative conclusions and proposals in our recent Further Notice of Proposed Rulemaking in this docket ("*FNPRM*") and resolve the petitions that precipitated the *FNPRM*. See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) licenses, Further Notice of Proposed Rulemaking, 65 FR 37092 (June 13, 2000). The modifications to the Commission's rules that we adopt in the order will apply to Auction No. 35, the next C and F block auction. The modifications also will apply to any subsequent auctions of C or F block licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future.

2. We conclude that it is in the public interest to modify our auction and service rules for C and F block broadband Personal Communications Services (PCS) licenses to achieve the various goals of section 309(j) of the Communications Act. Specifically, in the *C/F Block Sixth Report and Order* we retain, clarify, and revise our rules, as follows:

- *Reconfiguration*. We will reconfigure each 30 MHz C block license available in Auction No. 35 and other future broadband PCS auctions into three 10 MHz C block licenses.
- *Tiers*. We divide Basic Trading Areas (BTAs) into two tiers according to the population size of the BTA. "Tier 1" will comprise BTAs with populations equal to or greater than 2.5 million; "Tier 2" will comprise the remaining BTAs.
- *Eligibility restrictions*. We remove the entrepreneur auction eligibility restrictions—thereby establishing "open" bidding—for the following licenses:
  - two of the three reconfigured 10 MHz C block licenses in Tier 1;
  - one of the three reconfigured 10 MHz C block licenses in Tier 2;
  - all 15 MHz C block licenses in Tier 1;
  - all F block licenses;
  - all C block licenses available but unsold in Auction No. 22.

- *License grouping*. We reject Nextel Communications, Inc. ("Nextel") proposal to license by bulk bidding.

- *"Grandfather" exception*. We clarify an applicant's eligibility for the § 24.709(b)(9)(i) C block "grandfather" exception after it has been involved in a merger, acquisition, or other business combination, as follows:

- When each of the combining entities is individually eligible for the "grandfather" exception, the exception will extend to the resulting entity.
- When one or more of the combining entities is not individually eligible for the grandfather exception, the resulting entity will be eligible for the exception only so long as an originally eligible entity retains *de facto* and *de jure* control of the resulting entity.

- *Bidding credits*.
- *Licenses won in open bidding*: We retain the existing bidding credits for small and very small businesses of 15 percent and 25 percent, respectively.
- *Licenses won in closed bidding*: We eliminate bidding credits.
- *Transfer requirements*.
- *Licenses won in open bidding*: We will not apply the entrepreneur eligibility restrictions to the assignment or transfer of control of C and F block licenses won in open bidding.
- *Licenses won in closed bidding*: Upon satisfaction of the first construction benchmark for a license won in closed bidding, entrepreneur eligibility restrictions on assignment or transfer of control of C and F block licenses will not apply to that license. We will continue to evaluate satisfaction of construction requirements on a license-by-license, rather than on a system-wide, basis.

- *Unjust enrichment*:
  - A licensee that won a license in Auction No. 5 or 10, will not be subject to a bidding credit unjust enrichment payment upon assignment or transfer of that license, pursuant to the Commission's transfer requirements, to an entity not qualifying as a small business.

- *License cap*. We eliminate the § 24.710 cap on the number of C and F block licenses that a single entity may win at auction.
- *Spectrum cap*. We will continue to apply the spectrum cap to C and F block licenses, including those won in Auction No. 35.

### II. Background

3. In the Omnibus Budget Reconciliation Act of 1993, Congress authorized the Commission to employ systems of competitive bidding to award spectrum licenses. This authorization, as amended, is codified as section 309(j)

of the Communications Act. Section 309(j)(3) directs the Commission to "seek to promote" a number of objectives, including:

- the development and rapid deployment of new services for the benefit of the public, including those residing in rural areas;
- promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, *i.e.*, "designated entities;"
- recovery for the public of a portion of the value of the public spectrum resource made available for commercial use.

4. Section 309(j)(4) directs the Commission, in prescribing regulations to implement the objectives of section 309(j)(3), to, *inter alia*, (i) establish performance requirements to ensure prompt delivery of service to rural areas and prevent warehousing of spectrum by licensees; (ii) prescribe area designations and bandwidth assignments that promote an equitable geographic distribution of licenses and services, economic opportunity for a wide variety of applicants, including designated entities, and rapid deployment of services; and (iii) ensure that designated entities are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider using bidding preferences and other procedures.

5. The Commission outlined the original framework for C and F block auctions in the 1994 *Competitive Bidding Fifth Report and Order*, establishing the C and F blocks as "set-aside" licenses for "entrepreneurs" in which eligibility would be restricted to entities below a specified financial threshold. See Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Fifth Report and Order, 59 FR 37566 (July 22, 1994). The initial C block licenses were awarded through two auctions, Auction No. 5, which ended on May 6, 1996, and Auction No. 10, which concluded on July 16, 1996. Auction No. 11, the initial F block auction, ended on January 14, 1997, and also included D and E block licenses. Auction No. 22, which concluded on April 15, 1999, made available C and F block licenses that had been returned to, or reclaimed by, the Commission.

6. Since adoption of the 1994 *Competitive Bidding Fifth Report and Order*, the rules for auctions of C and F block licenses have steadily evolved in response to legislative changes, judicial decisions, the needs of licensees striving to succeed in a rapidly developing wireless market, and the demand of the public for greater access to wireless services. For example, in the 1997 *C Block Second Report and Order*, 62 FR 55348 (October 24, 1997), as modified by the 1998 *C Block Reconsideration Order*, 63 FR 17111 (April 8, 1998), the Commission created a package of financial restructuring options to be offered to C block licensees experiencing financial difficulties in the wake of Auctions No. 5 and No. 10. The Commission also decided in the *C Block Second Report and Order*, as modified by the 1998 *C Block Fourth Report and Order*, 63 FR 50791 (September 23, 1998), to allow, for a period of two years from the beginning of the first post-restructuring C block auction (Auction No. 22), participation in bidding for C block licenses by entities that had participated in Auctions No. 5 and 10, even if such entities had since become too large to qualify as entrepreneurs under the Commission's rules.

7. Prior to the start of Auction No. 22, three C block licensees, NextWave Personal Communications, Inc. ("NextWave"), GWI PCS Inc. ("GWI"), and DCR PCS, Inc. ("DCR"), filed for bankruptcy protection. Bankruptcy filings and payment defaults by C and F block licensees occurred, both before and after the auction; and, to date, a total of 232 C and F block licenses, covering a population ("pops") of approximately 191 million, have been involved in bankruptcy proceedings and/or license payment defaults.

8. In January 2000, the Wireless Telecommunications Bureau ("Bureau"), pursuant to its delegated authority, announced the next C and F block auction, Auction No. 35. Auction No. 35 is slated to include both 30 MHz and 15 MHz C block licenses, as well as F block licenses (all 10 MHz each) for operation on frequencies for which previous licenses had automatically cancelled or had been returned to the Commission. The announcement of Auction No. 35 prompted petitions from SBC Communications Inc. ("SBC"), Nextel, and other parties asking that we waive, modify, or eliminate our entrepreneur eligibility requirements for participation in the auction. In response to those filings, several parties also proposed that we make other modifications to our C and F block rules. Additionally, US WEST Wireless, LLC ("US West") and Sprint Spectrum

L.P. dba Sprint PCS ("Sprint") filed a joint petition for reconsideration of our *C Block Fourth Report and Order Reconsideration*, 65 FR 14213 (March 16, 2000). The *C Block Fourth Report and Order Reconsideration* addressed certain of the rules governing auctions of C block licenses. Sprint and US West requested that the Commission eliminate its eligibility restrictions for participation in the upcoming auction as well as modify other C block rules. In addition, Verizon Wireless ("Verizon") petitioned the Commission for clarification or reconsideration of our two-year C block auction eligibility "grandfather" rule, § 24.709(b)(9)(i). In response to these petitions, a number of parties argued that all, or at least some portion, of the C and F block spectrum should be open to all participants in order to satisfy the Commission's obligations section under 309(j)(4); other parties opposed these arguments.

9. We also received petitions from Bell Atlantic Mobile, Inc. ("Bell Atlantic"), BellSouth Corporation ("BellSouth"), AT&T Wireless Services, Inc. ("AT&T"), and GTE Service Corporation ("GTE") requesting that the Commission waive, forbear from applying, or declare inapplicable the Commercial Mobile Radio Services ("CMRS") spectrum cap with respect to the spectrum available in Auction No. 35.

10. We addressed the issues raised and points made in the various petitions, comments, and other documents filed in this proceeding in the *FNPRM*, released on June 7, 2000, in which we set forth tentative conclusions and proposals concerning our C and F block rules. Also on June 7, 2000, the Bureau announced that Auction No. 35 would begin on November 29, 2000, in order to allow resolution of the issues in the *FNPRM* and implementation of any rule changes prior to the auction. In the *C/F Block Sixth Report and Order*, we resolve the issues raised in the *FNPRM* and in the petitions and other filings in this proceeding by retaining, clarifying, and modifying our rules governing C and F block auctions and licenses.

### III. Discussion

#### A. Reconfiguration of C Block Spectrum License Size

11. *Background.* In the *FNPRM*, we tentatively concluded that each 30 MHz C block license available in Auction No. 35 should be reconfigured into three 10 MHz C block licenses. We asserted that the increased number of licenses available as a result of this reconfiguration, along with elimination of certain of the Commission's C and F

block eligibility requirements, would promote wider auction participation and license distribution in accordance with the goals of section 309(j) of the Communications Act. We tentatively concluded that a 10 MHz C block license is a viable minimum size for voice and some data services, including Internet access, and that it provides an appropriate building block for bidders that wish to acquire a larger amount of spectrum in particular markets. We sought comment on these tentative conclusions, as well as on whether a different configuration, such as creation of 20 MHz C block licenses where possible, would be more appropriate to provide meaningful opportunities for potential bidders, including new entrants into particular markets. Additionally, in the *FNPRM*, we proposed to permit bidders to aggregate the 10 MHz C block licenses, subject only to the CMRS spectrum cap and the relevant remaining eligibility restrictions for these licenses.

12. *Discussion.* We adopt our tentative conclusions in the *FNPRM* to reconfigure each available 30 MHz C block license into three 10 MHz C block licenses and to permit bidders to aggregate the 10 MHz C block licenses, subject to the CMRS spectrum cap and the relevant remaining eligibility restrictions for these licenses. Each 30 MHz C block license that is available for inclusion in the Commission's license inventory for Auction No. 35 or any subsequent auction, will be reconfigured into three 10 MHz C block licenses. Each of the newly reconfigured 10 MHz C block licenses will consist of two paired 5 MHz blocks: 1895–1900 MHz paired with 1975–1980 MHz; 1900–1905 MHz paired with 1980–1985 MHz; and 1905 MHz–1910 MHz paired with 1985–1990 MHz. Accordingly, we deny the Nextel Petition insofar as it requests a different reconfiguration of available 30 MHz C block licenses; and we grant the US West/Sprint Petition to the extent that it requests the reconfiguration we adopt today.

13. The majority of the commenters support our proposal to divide each available 30 MHz C block license into three 10 MHz C block licenses. They contend that dividing the spectrum into three 10 MHz C block licenses will promote a wider dissemination of licenses; provide bidders with more flexibility to adapt their bidding strategies to meet their business plans; and make licenses more affordable, especially for entrepreneurs. Some parties offer contingent support for reconfiguring the 30 MHz C block licenses, e.g., provided that entrepreneur eligibility restrictions are

maintained in their current form, are modified as proposed in the *FNPRM*, or are eliminated for at most only a single 10 MHz C block license in each market. Other parties oppose the Commission's proposal, arguing that such a proposal is contrary to statutory requirements, because it will reduce small business opportunity in the marketplace. Additionally, some parties contend that 10 MHz of C block spectrum is insufficient to provide a full range of third generation ("3G") services.

14. We believe that 10 MHz is a viable broadband PCS license size. Ten MHz has always been one of the principal license sizes used in broadband PCS. In fact, half of the original licenses representing one-fourth of the total broadband PCS spectrum were 10 MHz licenses. In Auction No. 11, we made available to bidders almost 1,500 D, E, and F block licenses, all of which were for 10 MHz of spectrum. Virtually all of those licenses were sold; and, with the exception of licenses won by entrepreneurs with substantial C block holdings, almost none of the them have been returned to, or reclaimed by, the Commission. Moreover, we believe that 10 MHz broadband PCS block licenses provide opportunities to applicants, such as smaller companies and new entrants, that might not be able to acquire 20 or 30 MHz PCS licenses. In our recent *700 MHz First Report and Order*, 65 FR 3139 (January 20, 2000), where we established both 20 MHz and 10 MHz block licenses for wireless use, we noted that 10 MHz block wireless licenses "should prove of interest to parties in the record who desire spectrum to deploy innovative wireless technologies, including high-speed Internet access, that do not require as much spectrum." Those entities that want to obtain more than 10 MHz of C block spectrum where it is available in a BTA, retain the option of bidding on, or otherwise acquiring, as many of the available C block licenses as they are eligible for and aggregating them, or aggregating one or more newly acquired licenses with existing licenses.

15. Accordingly, we conclude that, by dividing each available 30 MHz C block license into three 10 MHz licenses, we can best address the diverse needs of the potential participants in the next C and F block auction. Entrepreneurs that continue to favor smaller blocks will still be able to fulfill their business needs. Parties that desire more spectrum for services will be allowed to aggregate the 10 MHz C block licenses, subject to the CMRS spectrum cap. We will continue to provide set-asides for some C block licenses to ensure that entrepreneurs are provided

opportunities to acquire spectrum for their needs. We believe that this reconfiguration, along with the other rule modifications we make today, will ensure the best use of spectrum through the competitive bidding process while at the same time promoting wider auction participation and license distribution in accordance with the goals of section 309(j) of the Communications Act.

#### B. Eligibility Restrictions Under a Tiered Approach

16. *Background.* In the *FNPRM*, we proposed to remove the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions. We tentatively concluded that we should divide BTAs into two tiers according to population size of the BTA. "Tier 1" would comprise BTAs at and above a 2.5 million population threshold; "Tier 2" would comprise BTAs below that population threshold. We also sought comment on other population thresholds and on establishing a third tier. We tentatively concluded that we would allow "open" bidding (*i.e.*, bidding without eligibility restrictions) for two of the three newly reconfigured 10 MHz C block licenses in Tier 1 and one of the three newly reconfigured 10 MHz C block licenses in Tier 2. We also sought comment on whether there should be "open" bidding for all three of the 10 MHz licenses in Tier 1 and two of the three in Tier 2. With respect to available F block licenses, we sought comment on eliminating the eligibility requirements, or, alternatively, applying a tiered approach or retaining the existing eligibility rules. We tentatively concluded that we would allow "open" bidding for all available 15 MHz C block licenses, because they had not been sold in Auction No. 22. Finally, we sought comment on whether to establish a rule that lifts eligibility restrictions on any C or F block licenses that remain unsold after Auction No. 35 or after other future auctions.

17. *Discussion.* As described, we adopt our tentative conclusions and other proposals to remove the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions, utilizing the tiered approach outlined in the *FNPRM*. In the *FNPRM*, we discussed at some length the rationale behind those tentative conclusions and other proposals. We find in general that those reasons continue to apply and that they support the actions we take today. We elaborate further on our reasoning in light of the

record we received in response to the *FNPRM*.

18. *Tiers.* Consistent with our tentative conclusion, we will divide all BTAs into two categories, "Tier 1" BTAs and "Tier 2" BTAs. Tier 1 will comprise BTAs with populations that, according to the 1990 census, are equal to or greater than 2.5 million; and Tier 2 will comprise the remaining BTAs. Commenters that support or oppose a tiered approach *per se* do so in the context of removing entrepreneur eligibility restrictions. Certain commenters take issue with our tentative conclusion to demarcate the two tiers at a population of 2.5 million, arguing, for example, that the upper tier should be enlarged to include BTAs with populations of one million or greater, *i.e.*, approximately the top ten percent of the BTAs in the United States, or that we should constrict Tier 1 to include only BTAs with populations over five million.

19. We believe that our decision to establish two tiers with a 2.5 million population demarcation represents the most reasonable balancing of the various competing public interest factors that bear on this issue. Both sides in this debate make credible arguments about their needs for additional spectrum. Because we have only a limited amount of spectrum to offer, we must respond with an approach to eligibility that necessarily will not fully satisfy all competing demands. Under these circumstances, we believe that the mid-course approach proposed in the *FNPRM*, which removes eligibility restrictions for some, but not all, of the available spectrum is the best course. The approach, in conjunction with the changes in entrepreneur eligibility restrictions described, will make relatively more spectrum available for "open" bidding in the most populous markets where the demand for spectrum by existing CMRS carriers is the greatest and the prospects of a spectrum shortage for these carriers is the most acute. At the same time, the modifications we make today will keep most of this spectrum (*i.e.*, 20 MHz) closed in all but the very largest markets, while also retaining restricted eligibility for some spectrum (*i.e.*, 10 MHz) even in those latter cases. Thus, entrepreneurs will have an opportunity to acquire additional spectrum on a set-aside basis in all available C block markets. We note that the tiering approach will split the C block spectrum available in Auction No. 35 almost equally, when weighted by population, between open and closed licenses. For these reasons, implementing our tentative conclusion

provides an effective method of accommodating the conflicting goals of entrepreneurs and non-entrepreneurs and satisfies our objectives under section 309(j).

20. *30 MHz and 15 MHz C block licenses.* For markets with available 30 MHz licenses, other than licenses that were available but unsold in Auction No. 22, we adopt our tentative conclusion and establish open bidding (*i.e.*, bidding without entrepreneur eligibility restrictions) for two of the three newly reconfigured 10 MHz C block licenses in Tier 1 and for one of the three newly reconfigured 10 MHz C block licenses in Tier 2. In Tier 1, the following two 10 MHz blocks will be open: 1900–1905 MHz paired with 1980–1985 MHz and 1905 MHz–1910 MHz paired with 1985–1990 MHz. In Tier 2, the following 10 MHz block will be open: 1905 MHz–1910 MHz paired with 1985–1990 MHz. For available 15 MHz C block licenses, other than for licenses that were available but unsold in Auction No. 22, we eliminate entrepreneur eligibility restrictions for licenses in Tier 1 but retain the restrictions for licenses in Tier 2.

21. A number of commenters oppose any relaxation of the Commission's entrepreneur eligibility restrictions. Some commenters argue that section 309(j) compels the Commission to maintain the C and F block set-aside as is. On the other hand, one commenter responds that nothing in section 309(j) or its legislative history necessitates a C and F block set-aside for entrepreneurs. Some parties that favor elimination of entrepreneur eligibility requirements believe that our tentative conclusion is too limited. These parties, which include most of the major, national carriers, would prefer that we remove entrepreneur eligibility restrictions from more—or all—of the available C and F block licenses. Other commenters ask that the reduction be smaller.

22. Section 309(j)(3) directs the Commission to seek to promote a variety of sometimes competing objectives, including economic opportunity, competition, and the rapid deployment of new technologies and services by, *inter alia*, disseminating licenses among a wide variety of applicants, including small businesses. Section 309(j)(4) requires the Commission to ensure that small businesses and others “are given the opportunity to participate in the provision of spectrum based services” and directs the Commission to consider the use of mechanisms that will further that end. The statute accords the Commission wide latitude in determining how to achieve the stated objectives. For example, section 309(j)

does not mandate the use of set-asides, or any other particular method, to promote the participation of small businesses in spectrum auctions; and the Commission has conducted numerous auctions in recent years in which it has not provided an entrepreneurs’ block set-aside. Similarly, section 309(j)(3) does not require the Commission to promote the participation of small businesses in PCS auctions at the expense of other, potentially conflicting, objectives enumerated in the section, such as the promotion of competition and the rapid deployment of new technologies and services. Finally, section 309(j)(4)(D) does not require the Commission to ensure that licenses actually are granted to small businesses but, rather, requires only that these small businesses be given the *opportunity* to participate in the provision of spectrum-based services.

23. We believe that by implementing our tentative conclusion we give effect to, and reasonably balance, as many of the various and partially conflicting section 309(j) objectives as possible. As discussed in the *FNPRM*, circumstances in the PCS industry have changed dramatically, and continue to change, since the implementation of our rules in 1994. The introduction of wireless Internet, advanced data, and 3G services, and global competition within these services, has created a shortage of suitable available spectrum. Many carriers claim that obtaining additional spectrum to provide such services or satisfy capacity needs is crucial to their business plans. Still other carriers require additional spectrum to “fill out” regional or national service areas. Taking all of our statutory objectives into account, we believe that it is fair and appropriate to apportion the spectrum to accommodate these interests. Apportioning the 30 MHz C block licenses in the manner described will enable larger carriers to obtain additional spectrum, which, we find, will promote the further development of CMRS competition and innovation, especially in larger markets. At the same time, maintaining a significant set aside of C block spectrum for entrepreneurs will help smaller businesses in this band continue to achieve their business goals as well as providing meaningful opportunities for new entrepreneurial firms to enter the market. Entrepreneurs will retain exclusive eligibility to bid on 10MHz of available C block spectrum in Tier 1 markets and on most of the first-time reaucted C block spectrum in Tier 2 markets. Entrepreneurs also will

be eligible to participate, along with non-entrepreneurs, in all open bidding.

24. *F block licenses.* We adopt open bidding—bidding without entrepreneur eligibility restrictions—for F block licenses available in Auction No. 35 and in all future auctions. No commenter advocates a middle ground for the F block, such as disaggregating the F block spectrum into smaller spectrum blocks or applying a tier structure to the F block and removing eligibility restrictions for some of the available licenses. Commenters argue, instead, either for maintaining the entrepreneur restrictions for all F block licenses or for lifting these restrictions entirely. Some parties that favor maintaining the set-aside contend that entrepreneurs have made business plans in reliance on their ability to vie for additional F block licenses in future closed auctions. Some argue that the Commission is constrained by section 309(j) from eliminating the eligibility restrictions. Others point out that the Commission's proposals for modifying eligibility restrictions for C block licenses represent a substantial reduction in the set-aside and contend that the Commission should go no further. Finally, parties believe that, because the F block does not share the C block's history of financial difficulty, there is less, if any, justification for eliminating the F block set-aside.

25. Conversely, commenters supporting the lifting of F block entrepreneur eligibility restrictions argue that the lack of financial difficulties in the F block indicates no further need for continued protection in the form of a set-aside. Other commenters assert that eliminating the F block set-aside would further the goals of section 309(j) by alleviating spectrum congestion, promoting new services, and advancing competition.

26. We believe that it is in the public interest, and consistent with section 309(j), to remove the set-aside for all available F block licenses. As we stated in the *FNPRM*, and as some commenters underscore, the F block has evolved in a fashion largely distinct from that of the C block. The two blocks have been subject to increasingly different regulatory requirements, reflecting in large part the different bidding and marketplace histories of the two blocks and the correspondingly different equity and reliance concerns applicable to bidders and licensees in each of the blocks. Accordingly, as we have recognized previously, there is no longer a rationale for attempting to treat the two blocks in an identical fashion. Moreover, the need for additional open spectrum that exists in the C block

markets also applies in the F block markets; and allowing open eligibility for all available F block licenses might lead to more expeditious provision of service to consumers. Moreover, as discussed in the *FNPRM*, almost every market with an available F block license already has a significant 30 MHz C block entrepreneur presence. Thus, we can modify the F block eligibility rules while preserving the diversity of opportunity and service that are goals of section 309(j).

27. *Unsold set-aside licenses.* For Auction No. 35, we eliminate entrepreneur eligibility requirements for all C block licenses that were available but not sold in Auction No. 22. For all auctions after Auction No. 35, we eliminate the entrepreneur eligibility requirements for any C or F block license that was available, but not sold, in Auction No. 22 or any subsequent auction. In the *FNPRM*, we proposed removing eligibility restrictions for available 15 MHz C block licenses, reasoning that they remained unsold after having been offered in closed bidding in Auction No. 22. We similarly proposed to remove eligibility restrictions on all C and F block licenses that are available, but not sold, in Auction No. 35 as well as on *all* broadband PCS licenses that remain unsold after having been available for closed bidding in any auction after Auction No. 35.

28. The failure of certain 15 MHz C block licenses to sell in Auction No. 22 indicates that closed bidding for these licenses will not necessarily result in their acquisition and construction and in service to the public. By lifting the eligibility restrictions for these unsold licenses now, we hope to prevent additional delays in their utilization. We find persuasive Nextel's argument that the same rationale that applies to 15 MHz C block licenses should apply to 30 MHz C block licenses, and we believe that the rationale is equally applicable to all C and F block licenses that have failed to sell in Auction No. 22 or any subsequent auction. We note that no commenter opposed Nextel's suggestion to extend our proposal. Accordingly, we will implement the rule change for all C or F block licenses that were available, but not sold, in Auction No. 22 or that remain unsold after having been available for closed bidding in Auction No. 35 or in any auction thereafter.

#### C. Determination of Entrepreneur Eligibility

29. *Background.* To qualify as an entrepreneur under current rules, a C or F block applicant (together with its

affiliates and persons or entities that hold interests in the applicant and their affiliates) must have had gross revenues of less than \$125 million in each of the last two years and must have total assets of less than \$500 million at the short-form deadline. Total assets are generally determined by the applicant's most recent audited financial statements. As discussed, the grandfather exception provides that, in addition to entities qualifying as entrepreneurs at the time of the short form filing deadline, any entity that was eligible for and participated in either of the first two C block auctions will be eligible to bid in any auction of C block spectrum that begins within two years of the March 23, 1999 start date of Auction No. 22. Each C or F block licensee, whether its license was acquired at auction or by transfer or assignment, must maintain its entrepreneur eligibility during the five-year holding period, which begins on the date of the initial license grant, except that a licensee's increased gross revenues or increased total assets due to nonattributable equity investments, debt financing, revenue from operations or other investments, business development, or expanded service will not be considered. With respect to applications for assignment or transfer of control of C or F block licenses during the five-year holding period, the proposed transferee or assignee must meet the entrepreneur eligibility criteria at the time the assignment or transfer application is filed or the proposed transferee or assignee must already hold other C or F block licenses and, at the time of receipt of such licenses, have met the entrepreneur eligibility criteria.

30. *Discussion.* In its comments, Nextel asks that the Commission review its rules on reporting "total assets" for entrepreneur eligibility and require applicants to report total assets as of the short form filing deadline. Nextel asserts that Leap Wireless International, Inc. ("Leap") may try to qualify for Auction No. 35 based on the unavailability, at the short-form filing deadline, of Leap's audited financial statement for its fiscal year ending August 31, 2000. In reply, Leap states that departing from a clear, bright-line test that uses credible audited numbers could facilitate manipulation of the eligibility calculations. Leap states that there is no need for it to "slip in" under the asset cap since the current rules allow it to remain eligible to participate in future C and F block auctions, even if its assets exceed \$500 million due to growth allowable under § 24.709(a)(3). In short, Leap claims that the natural growth exception which allows C or F block

licensees to retain their entrepreneur eligibility during the holding period establishes its eligibility for the upcoming C block auction, Auction No. 35.

31. Leap confuses the concept of maintaining entrepreneur eligibility for the purpose of meeting the five-year holding period with the concept of eligibility to participate as an entrepreneur in a C or F block auction. By allowing licensees to maintain their eligibility despite growth beyond the financial caps, the Commission intended to encourage entrepreneurs to grow and succeed during the five-year holding period. Contrary to Leap's assertions, although the Commission intended to ignore natural growth for purposes of entrepreneur eligibility during the five-year holding period, it did not intend to ignore such growth in determining eligibility to participate in future C and F block auctions. In other words, Leap, which is not eligible for the grandfather exception, would have us read the natural growth rule, that allows a licensee to maintain eligibility for the holding period despite growth beyond the financial caps, as an alternative grandfathering exception. If the Commission had intended the natural growth rule to be read as Leap contends, then the two-year grandfather exception for Auction No. 5 participants would have been more narrowly drafted. Instead, the Commission applied the grandfather exception to all entities that had qualified for, and participated in, either of the first two C block auctions.

32. Nextel's comments raise the issue of whether eligibility for C block auctions is determined by an applicant's most recently available audited financial statements, even if those statements are then a year or more out of date, or whether eligibility should be based on the relevant financial data as of the most recently completed calendar/fiscal year, even if audited financial statements for the most recent year are not available as of the short-form filing deadline. Under § 24.720, an entrepreneurs' block applicant must evidence its gross revenues and total assets with its most recent audited financial statements, or, if the applicant does not otherwise use audited financial statements, a certification by the applicant's chief financial officer or its equivalent. We see no need to modify these rules. We note, however, that we expect an applicant to obtain financial statements within a reasonable period of time after the close of the applicable calendar or fiscal year and to base its claim to eligibility on those financial statements. If an applicant delays, or

takes action that results in delay in, the generation and/or submission of current audited financial statements in order to capture entrepreneur eligibility to which the applicant would otherwise not be entitled, it will risk being declared ineligible for auction participation or license grant or jeopardize its continuing eligibility to hold its licenses.

#### D. License Grouping for Bids and Competitive Bidding Design

33. *Background.* In the *FNPRM*, we tentatively concluded that we would take bids separately on each license in Auction No. 35 on a simultaneous multiple round basis as we have done in the past. We agreed with commenters that Nextel's bulk bid proposal, under which the Commission would reconfigure the available 30 MHz C block licenses into separate 20 MHz and 10 MHz licenses and offer the newly created 20 MHz C block licenses and the available 15 MHz C block licenses together on a "bulk bid" (*i.e.*, winner-take-all) basis, would exclude all but a very few competitors. We stated that small entities would be hard pressed to obtain the financing necessary to win and pay for the licenses and construct the systems included in the bulk bid proposal, while many other carriers would be constrained from participating by the CMRS spectrum cap. We noted that our past auctions demonstrate that significant aggregations of licenses through the auction process are feasible and that bidding for each license separately is unlikely to preclude carriers from aggregating licenses on a nationwide or regional basis.

34. At the same time, we explained that we were considering implementation of a combinatorial, or package, bidding design for the auction of licenses in the 700 MHz bands in order to facilitate aggregations of complementary licenses into larger blocks. We invited parties to suggest ways in which bidders could efficiently aggregate licenses in Auction No. 35; although, we noted that it might be impractical to implement a package bidding design for that auction.

35. *Discussion.* We reject Nextel's bulk bid proposal. Instead, we leave to the Wireless Telecommunications Bureau ("Bureau"), under its existing delegated authority, the final selection of a competitive bidding design and methodology for Auction No. 35, including the decision whether or not to implement a combinatorial bidding design for the auction. There is no support in the record for the Nextel bulk bid proposal. We continue to be concerned that, as argued by the bulk

bid opponents, Nextel's suggested approach would unduly favor Nextel to the possible exclusion of most other potential applicants.

36. Some of the parties that commented on ways to aggregate licenses in the auction process, argue against the use of package bidding for Auction No. 35, on the ground that such a design would be complex and impractical. Other commenters support implementation of package bidding as a way to enhance the ability of auction participants to acquire their targeted groups of licenses while reducing their exposure. In preparing for Auction No. 35, the Bureau, under its existing delegated authority and pursuant to public notice and comment, will determine the competitive bidding design most appropriate for the auction. Following the Bureau's determination of the auction design, we will, if necessary, revisit the need for any rule modifications.

#### E. Grandfather Exception

37. *Background.* In the *FNPRM*, the Commission tentatively concluded that upon the merger of two entities, the grandfather exception contained in § 24.709(b)(9)(i) should extend to the resulting entity when each of the two original entities is eligible for the exception, but not when only one of them is eligible for the exception. The Commission sought comment on how to determine C and F block eligibility when faced with more complex transactions. The Commission also sought comment on issues raised by Verizon in its petition for reconsideration or clarification of the *C Block Fourth Report and Order Reconsideration*. Verizon asks us to reexamine the grandfather exception and limit resulting eligibility to those Auction No. 5 and 10 participants that won licenses in the auctions and then returned spectrum pursuant to the Commission's C block restructuring options. Verizon also proposes that the entity claiming the grandfather exception must be the same company—having substantially the same ownership and control—as the one that acquired the entrepreneur status.

38. *Discussion.* We clarify an applicant's eligibility for the grandfather exception after it has been involved in a merger, acquisition, or other business combination, as follows. When each of the combining entities is individually eligible for the "grandfather" exception, the exception will extend to the resulting entity. When one or more of the entities are not individually eligible for the grandfather exception, the resulting entity will be eligible for the

exception only so long as an originally eligible entity retains *de facto* and *de jure* control of the resulting entity.

39. We deny the Verizon petition to the extent that it asks that the exception be available only to Auction No. 5 and 10 participants that won licenses in those auctions and then returned spectrum. Despite its narrowly worded caption, the rule codifying the grandfather exception is clear on its face. It applies not just to Auction No. 5 and 10 participants that returned spectrum to the Commission but also to participants in either of those auctions that either won no licenses or won licenses but did not disaggregate or return spectrum. We deny the remainder of the Verizon petition as moot in light of our clarification of the application of the grandfather exception to an auction applicant that has been involved in a business combination.

40. We do not believe that, when entities eligible for the grandfather exception combine, the resulting entity should be penalized. Accordingly, we clarify that, under such circumstances, the grandfather exception will extend to the resulting entity. For situations where at least one of the entities is not individually eligible for the grandfather exception, we find persuasive the suggestion that we adopt a simple control analysis to determine whether an entity is "substantially the same" as the prior auction participant in Auction No. 5 or 10. Pursuant to this reasoning, the grandfather exception should be available to the resulting entity, so long as at least one entity that was originally eligible for the grandfather exception retains *de facto* and *de jure* control over the resulting entity. Other than to make these clarifications, we see no need to modify the grandfather exception, which will apply to auctions of C block licenses that begin on or before March 23, 2001.

#### F. Bidding Credits

41. *Background.* In the *FNPRM*, we sought comment on whether we should make adjustments to the current C and F block bidding credits for future auctions based on whether such auctions are open to all bidders or subject to eligibility restrictions. More specifically, we sought comment on whether we should retain existing small and very small business bidding credits (15 percent and 25 percent, respectively) for licenses subject to open bidding or increase them to 25 percent and 40 percent, respectively. For licenses subject to closed bidding, we sought comment on whether we should increase the bidding credits, retain them

at the current level, or eliminate them entirely.

42. *Discussion.* For licenses subject to open bidding, we will maintain the current level of bidding credits for small and very small businesses and consortia thereof, of 15 percent and 25 percent, respectively. For licenses subject to closed bidding, we will eliminate all bidding credits. While a number of commenters, primarily small and very small businesses, support an increase in bidding credits for licenses won in open bidding, other parties contend that the existing bidding credits would enable small and very small businesses to compete successfully in open auctions. We agree with the latter contingent that bidding credits of 15 and 25 percent will allow effective competition by small businesses in open C and F block bidding. We note that in our Specialized Mobile Radio (SMR) 900 MHz auction—using bidding credits of 10 percent and 15 percent—75 percent of the winning bidders were small businesses, winning 26 percent of the licenses. Moreover, in Auction No. 11, the auction of D, E, and F block licenses, small and very small business were the high bidders for 141 of the 986 D and E block licenses won in that auction, even though bidding credits are not available for D and E block licenses.

43. With respect to closed bidding, we believe that the continued use of bidding credits in restricted auctions would not necessarily serve its intended purpose. As we explained in the *FNPRM*, among those eligible to participate in entrepreneurs' block auctions, some well capitalized new entities with small gross revenues qualify for bidding credits, while some older companies with small total assets and net revenues but high gross revenues do not. One commenter asserts that bidding credits in set-aside auctions "simply skew these auctions in favor of well-capitalized applicants that are carefully structured to shield deep-pocketed investors from attribution." Furthermore, the results of Auction No. 11 suggest that if small and very small businesses can compete effectively in open bidding without bidding credits, they can certainly compete effectively in closed bidding without bidding credits.

#### G. Transfer Requirements

##### i. Open bidding

44. *Background.* In the *FNPRM*, we proposed to modify the transfer restrictions for C and F block licenses to correspond to our proposed changes in entrepreneur eligibility requirements and to encourage rapid construction of C and F block systems. We tentatively

concluded that C and F block licenses won pursuant to open bidding at Auction No. 35, or in any future open auction for such spectrum, would not be subject to the restrictions against transfers to non-entrepreneurs.

45. *Discussion.* Pursuant to our tentative conclusion, we will not subject C and F block spectrum licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum, to a five-year holding and limited transfer rule. Thus, such licenses may be transferred or assigned at any time after grant to any qualified entity, entrepreneur or not. Several commenters support removing the transfer restrictions for C and F block licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum. None of the commenters urge maintaining transfer restrictions on licenses won in open bidding. The only purpose for restricting the transfer of C and F block licenses to non-entrepreneurs is to ensure the integrity of the set-aside auction process. Because these licenses will now be subject to competitive bidding in open auctions, there is no longer a need to restrict their transfer and assignment solely to entrepreneurs.

##### ii. Closed bidding

46. *Background.* With respect to licenses won in closed bidding in any C or F block auction, past or future, we sought comment on tying the holding period to completion of build-out requirements. Under our proposal, a licensee would be able to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed by our rules. In this way, we sought to minimize the trafficking of C and F block licenses won pursuant to closed bidding, while enhancing the likelihood of early build-out.

47. *Discussion.* We will allow a licensee to assign or transfer a license won in closed bidding to any qualified entity, entrepreneur or not, as soon as the licensee has satisfied its first construction benchmark. The decision to transfer a restricted license to a non-entrepreneur before the end of the five-year holding period in this manner must be made affirmatively by those in control of the entrepreneur. As discussed, even under our modified rule, an early transfer or assignment may be subject to unjust enrichment payment requirements.

48. Most commenters that addressed this issue support the elimination of transfer restrictions upon completion of

the first construction benchmark for licenses won in closed bidding in any C or F block auction, past or future. Other commenters advocate retention of the transfer restrictions in "closed" auctions. In our estimation, permitting such assignments and transfers will encourage rapid build-out and service to the public, two objectives of section 309(j), while at the same time providing C and F block licensees with the ability to access capital. The result should be increased competition and more efficient spectrum use.

49. Normally, if a C or F block licensee that used a bidding credit assigns or transfers its license within the first five years after the initial license grant date to an entity not qualifying for a bidding credit, or as favorable a bidding credit, the licensee is subject to an unjust enrichment payment requirement. In the case of early transfers or assignments of C block licenses won in Auctions No. 5 and 10, where virtually all bidders, and all license winners, qualified for a single 25 percent bidding credit, we see no purpose in requiring the payment. When all bidders are given the same bidding credit, the competitive effect is the same as if no bidder has a credit. Thus, bidding credits likely did not affect the outcome of those auctions in terms of who won or how much money was paid to the government. Accordingly, allowing the early sale of a C block license by an Auction No. 5 or 10 licensee would not constitute unjust enrichment. When there is an early transfer or assignment of a license won in Auctions No. 11 or 22, or of any other license won in closed bidding, we will continue to require any applicable unjust enrichment payment. In Auctions No 11 and 22, where two levels of bidding credits were used and a significant number of bidders and winners did not receive a bidding credit, the use of such credit by some bidders may well have influenced the results of the auction.

##### iii. System-wide satisfaction of construction benchmark

50. *Background.* In the *FNPRM*, we sought comment on whether we should, under certain circumstances, evaluate an incumbent licensee's compliance with construction requirements on a system-wide basis. Noting that at least one carrier had argued that it needs the flexibility to sell and exchange licenses in order to restructure its business plans, we sought comment on whether we should allow a carrier to exchange and transfer licenses if the carrier can demonstrate "substantial service" throughout its system, rather than in a

particular market. We also sought comment on any other modifications to our transfer restrictions that would provide incumbent licensees with the flexibility to restructure their business plans without decreasing their incentive to rapidly construct systems and place them into operation.

51. *Discussion.* Although several commenters urge us to do so, we do not believe that we should allow a carrier to exchange and transfer licenses where the carrier can demonstrate "substantial service" throughout its system, but not in the particular market that would be affected by the transfer. Although permitting such transfers might provide incumbent licensees with the flexibility to restructure their business plans, we believe that it would also remove an important incentive for carriers to construct systems rapidly and place them into operation in all markets where they are licensed. If we adopt a system-wide "substantial service" standard, carriers may choose to build out selectively in more populous markets at the expense of less populated areas in anticipation of transferring or exchanging licenses. Also, an entrepreneur could acquire a license in a closed auction and immediately sell the newly acquired—and wholly unconstructed—license on the open market so long as the entrepreneur satisfied the system-wide standard, even with the newly acquired license included in its "system." We do not think that such a result is consistent with making licenses available for closed bidding by entrepreneurs.

#### H. License Cap

52. *Background.* In the *FNPRM*, we tentatively concluded that we would remove from the Commission's rules § 24.710, which prohibits an auction applicant from winning (but not from acquiring in the secondary market) more than 98 C and F block licenses.

53. *Discussion.* We adopt our proposal to remove § 24.710 from the Commission's rules. When established in 1994, this license cap was intended to facilitate a fair distribution of licenses within the C and F blocks by preventing an entity from winning more than approximately 10 percent of the then-total of 986 D and F block licenses. In the *FNPRM*, we explained that the Commission has already achieved its objective of disseminating the C and F block licenses among a variety of entrepreneurs. While most commenters agree that the license cap has outlived its purpose, a few believe that the cap is still necessary to prevent big applicants from acquiring large numbers of licenses. We believe that the license

cap is no longer necessary. Not only is there already substantial diversity among C and F block licensees, but our decision today to reconfigure each available 30 MHz C block license into three 10 MHz licenses—tripling the number of available C block licenses—and to eliminate the eligibility restrictions for many of the available C block licenses, and all of the available F block licenses, should enhance that diversity.

#### I. Spectrum Cap

54. *Background.* In the *FNPRM*, we tentatively concluded that we would continue to apply the CMRS spectrum cap, as set forth in § 20.6 of the Commission's rules, to the spectrum awarded in the upcoming C and F block auction. Almost a year ago, we determined in our *Biennial CMRS Spectrum Cap Order*, 64 FR 54564 (October 7, 1999), that the CMRS spectrum cap, with some modification, continued to be an efficient means to promote competition and protect the public interest. In addition, we established and clarified a process by which any carrier with a demonstrable need for additional spectrum to provide 3G or other advanced services in a particular geographic area could seek a waiver of the spectrum cap rule. Finally, we stated that we would be reexamining whether to retain, modify, or eliminate the CMRS spectrum cap as part of our year 2000 biennial review.

55. *Discussion.* We conclude that we will continue to apply the CMRS spectrum cap to the C and F block licenses to be auctioned. Those parties requesting that the cap be eliminated with respect to this spectrum have not provided sufficient bases in the record to revise a rule or eliminate the cap in the context of this particular auction of initial licenses.

56. In the comments on this *FNPRM*, almost all of the commenters supported our tentative conclusion not to eliminate the CMRS spectrum cap with respect to these C and F block licenses. They agreed with our general conclusion that the parties requesting elimination of the cap have not provided the Commission sufficient bases for revising the CMRS spectrum. Only four commenters, including three of the parties that petitioned the Commission earlier this year, opposed our tentative conclusion; they did not, however, supply any additional substantive arguments to those raised in the petitions filed earlier this year.

57. As we indicated in the *FNPRM*, we did not find that those petitions requesting waiver, or limited forbearance from application, of the

CMRS spectrum cap were persuasive. In requesting waiver or forbearance, AT&T, Bell Atlantic, BellSouth, and GTE only supplied very general assertions that, absent lifting of the cap, they would face considerable difficulty rolling out 3G and other advanced broadband services. We agree with most of the commenters to the petitions that the petitioners failed to satisfy the waiver standard set forth either in the *Biennial CMRS Spectrum Cap Order* or in § 1.3 of the Commission's rules. We also agree that Bell Atlantic failed to establish the basis for reversing our determination that the spectrum cap promoted the public interest, as would be necessary for granting a forbearance request. Finally, we find unpersuasive GTE's argument that the CMRS spectrum cap does not apply to the C and F block spectrum in the upcoming auction, and therefore deny its request for a declaratory ruling.

58. As a practical matter, we believe that our decision to reconfigure the 30 MHz blocks of C block spectrum into 10 MHz blocks will better enable all carriers to obtain additional spectrum in the vast majority of markets without the need to exceed the CMRS spectrum cap. In only a few locations have carriers accumulated spectrum up to the CMRS spectrum cap limits, either the general 45 MHz cap or the 55 MHz cap that applies to rural areas. More particularly, in the upcoming C and F block auction, almost all carriers in every market could obtain additional spectrum in blocks of 10 MHz (or 15 MHz where applicable) and still comply with the spectrum cap without any need for disaggregation. Finally, as we noted, we will shortly issue a Notice of Proposed Rulemaking as part of our biennial review of the spectrum cap rule. That proceeding will provide the Commission a better opportunity to revisit, in a more comprehensive manner than in this context, issues pertaining to the CMRS spectrum cap, taking into consideration existing competitive conditions and technological developments that could affect the continued need for the cap.

#### IV. Procedural Matters And Ordering Clauses

##### A. Final Regulatory Flexibility Analysis

59. Pursuant to the Regulatory Flexibility Act, the Final Regulatory Flexibility Analysis incorporated herein. See 5 U.S.C. 604.

##### B. Paperwork Reduction Act Analysis

60. The *C/F Block Sixth Report and Order* contains neither a new nor a modified information collection.

### C. Ordering Clauses

61. Authority for issuance of the *C/F Block Sixth Report and Order* is contained in sections 4(i), 5(b), 5(c)(1), 309(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 155(b), 156(c)(1), 303(r), and 309(j). Accordingly, it is ordered that part 24 of the Commission's rules is amended as specified and become effective November 6, 2000.

62. It is further ordered that the Commission's Consumer Information Bureau, Reference Operations Division, shall send a copy of the *C/F Block Sixth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### Final Regulatory Flexibility Analysis

63. As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the *FNPRM*. The Commission sought written public comment on the tentative conclusions, proposals, and alternatives in the *FNPRM*, including comment on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

#### A. Need for, and Objectives of, the *C/F Block Sixth Report and Order* in WT Docket No. 97-82

64. This *C/F Block Sixth Report and Order* addresses the tentative conclusions and proposals in our recent *FNPRM* and also resolves the petitions that precipitated the *FNPRM*. The modifications to the Commission's rules that we adopt in this order will apply to Auction No. 35, a C and F block auction currently scheduled to begin on November 29, 2000. The modifications will also apply to any subsequent auctions of C or F block licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future.

65. We conclude that it is in the public interest to modify our auction and service rules for C and F block broadband Personal Communications Services ("PCS") licenses to achieve the various goals of section 309(j) of the Communications Act. In reaching this conclusion, we recognize that many carriers, including small and very small businesses, need additional spectrum to "fill out" their service areas or to satisfy capacity needs. Although our modifications to the rules include the elimination of entrepreneur eligibility requirements (allowing open bidding) for some C and F block licenses, our

revised rules provide entrepreneurs with a significant set-aside of C block spectrum (for closed bidding) in order to assist them in achieving their business goals. Section 309(j) does not mandate the use of set-asides to promote the participation of small businesses in spectrum auctions. In fact, we note that there have been numerous auctions in recent years in which we have not included an entrepreneurs' block set-aside. By maintaining a significant set aside for entrepreneurs, small and very small businesses will be given the opportunity to participate in the provision of spectrum-based services. Additionally, in open auctions, small and very small businesses will continue to be provided with bidding credits in order to ensure meaningful participation. The *C/F Block Sixth Report and Order* reflects the Commission's continuing commitment to encouraging participation by small businesses while at the same time helping to ensure the best use of spectrum through the competitive bidding process.

#### B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

66. There were no comments filed directly in response to the IRFA. However, a number of parties did submit general comments on the Commission's tentative conclusions and proposals set forth in the *FNPRM*. The significant issues raised by small and very small businesses primarily concerned the removal of the entrepreneur eligibility restrictions for some licenses available in future C and F block auctions and the use of bidding credits. For example, some commenters opposed the Commission's proposal to reconfigure the available 30 MHz C block license into three 10 MHz C block licenses, arguing that such a proposal is contrary to statutory requirements, because it will reduce small business opportunity in the marketplace. Many of the commenters that opposed the reconfiguration, contended that 10 MHz of C block spectrum is insufficient to provide a full range of third generation ("3G") services. In addition, a number of commenters opposed any relaxation of the Commission's entrepreneur eligibility restrictions. Some commenters argued that section 309(j) compels the Commission to maintain the C and F block set-aside as is. In addition, small and very small businesses supported an increase in bidding credits in open bidding.

67. On the other hand, a number of larger entities, including most of the major national carriers, favored the

elimination of eligibility restrictions from more, or all, of the available C and F block licenses. Many carriers claimed that obtaining additional spectrum to provide advanced telecommunications services and global competition within these services, or to satisfy capacity needs, was crucial to their business plans. In addition, these carriers stated that they require additional spectrum to complete regional or national service areas. As required by the RFA, and in light of the numerous comments received, the Commission considered the economic impact on small businesses of the rules adopted herein. See section E, *infra*.

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

68. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. Generally, the RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." The term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. 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) meets any additional criteria established by the Small Business Administration ("SBA"). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations." "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 local governments in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.

69. The rule changes effected by the *C/F Block Sixth Report and Order* affect all small entities that choose to participate in the upcoming auction of C and F block spectrum and other future auctions of C and F block spectrum, including small businesses currently holding C and F block licenses, and other small businesses that may participate in and/or acquire licenses through the auction. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has auctioned licenses in each block. Frequency blocks C and F were originally designated by the Commission as "entrepreneurs' blocks," and participation in past auctions of C and F block licenses was limited to entities qualifying under the Commission's rules as entrepreneurs. The Commission's rules define an entrepreneur as an entity (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) that had gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million at the time the FCC Form 175 application was filed. For blocks C and F, the Commission has defined "small business" as a firm, together with its affiliates, that had average gross revenues of not more than \$40 million in the three previous calendar years, and "very small business" has been defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These definitions have been approved by the SBA.

70. On May 6, 1996, the Commission concluded the first broadband PCS C block auction. On July 16, 1996, the second C block auction closed. On January 14, 1997, the broadband PCS D, E, and F block auction closed. Ninety (90) bidders (prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in these C and F block auctions were eligible for bidding credits and installment payment plans. On April 15, 1999, Auction No. 22, which included 347 C and F block licenses, closed.

71. On January 12, 2000, the Wireless Telecommunications Bureau ("Bureau") announced an auction of broadband PCS C and F block licenses scheduled for July 26, 2000 (Auction No. 35). At that time, under the Commission's eligibility rules, in order to participate in an entrepreneur auction, a C or F block applicant (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) must have had gross revenues

of less than \$125 million in each of the last two years and must have total assets of less than \$500 million. Following the announcement of Auction No. 35, the Commission received several formal requests to waive, modify, or eliminate the C and F block auction and service rules in order to allow companies other than entrepreneurs to participate in the upcoming PCS auction. The Commission addressed the issues raised in the various petitions, comments, and other documents filed in this proceeding in *FNPRM*, in which we set forth tentative conclusions and proposals to retain, clarify, and modify our rules related to the C and F block auctions and service. In addition, on June 7, 2000, the Bureau announced that Auction No. 35 would begin on November 29, 2000, in order to allow resolution of the issues in the *FNPRM* and implementation of any rule changes prior to the auction. In the *C/F Block Sixth Report and Order*, we resolve the issues raised in the *FNPRM* and in the petitions and other filings in this proceeding by retaining, clarifying, and modifying our rules governing C and F block auctions and licenses.

72. Auction No. 35 is slated to include C block licenses as well as F block licenses for operation on frequencies for which previous licenses had automatically cancelled or had been returned to the Commission. For purposes of our evaluations and conclusions in this IRFA, we assume that all of the original 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by the *C/F Block Sixth Report and Order* are small entities. In addition to the 178 original small business licensees that may participate in the auction of the C block licenses, a number of additional small business entities may seek to acquire licenses through auction; thus, these business entities would be affected by these rules.

#### *D. Description of Reporting, Recordkeeping, and Other Compliance Requirements*

73. The *C/F Block Sixth Report and Order* does not impose new reporting, recordkeeping, or other compliance requirements upon auction participants. As customary, auction participants will need to follow the standard procedural rules used for broadband PCS spectrum auctions, including application and payment rules.

#### *E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

74. 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. 5 U.S.C. 603.

75. The Commission concludes that it is in the public interest to modify our auction and service rules for C and F block broadband Personal Communications Services (PCS) licenses to achieve the various goals of section 309(j) of the Communications Act. Specifically, in this *C/F Block Sixth Report and Order* we retain, clarify, and revise our rules, as follows:

*Reconfiguration of C Block License Size:* The Commission will reconfigure each 30 MHz C block license available in future broadband PCS auctions into three 10 MHz C block licenses. By increasing the number of available licenses through this reconfiguration, rather than retaining the larger spectrum blocks (with fewer licenses), taken together with lifting certain of our eligibility requirements, providing set-asides, and providing small and very small business bidding credits to small entities for licenses offered in open bidding, the Commission will promote wider auction participation and license distribution in accordance with the goals of section 309(j) of the Communications Act. Under this alternative, small bidders should be able to fulfill their business needs, while large bidders should enjoy greater flexibility in tailoring their bidding to their business plans without running afoul of the spectrum cap.

*Utilization of a Tiered Approach:* The Commission will remove the entrepreneur eligibility restrictions for some, but not all, licenses available in future C and F block auctions. Based on the demand for spectrum to satisfy congestion, new technology and competitive needs, the Commission has considered the alternatives and determined that it would serve the public interest to make some additional spectrum available to all interested bidders, not just entrepreneurs. The

Commission will divide Basic Trading Areas ("BTAs") into two tiers according to population size of the BTA. "Tier 1" would comprise BTAs at and above a 2.5 million population threshold; "Tier 2" would comprise BTAs below that population threshold. The Commission believes that by dividing BTAs into two tiers, according to population, the Commission has greater flexibility to eliminate the entrepreneur eligibility restrictions in some of the largest markets while retaining the restrictions in many mid-sized and smaller markets, where smaller entities have proven more successful.

**Eligibility Restrictions Under a Tiered Approach:** For markets with available 30 MHz licenses, other than licenses that were available but unsold in Auction No. 22, the Commission will allow open bidding for two of the three newly reconfigured 10 MHz C block licenses in Tier 1 and for one of the three newly reconfigured 10 MHz C block licenses in Tier 2. Specifically, in Tier 1, the Commission will allow open bidding for two 10 MHz blocks, 1900–1905 MHz paired with 1980–1985 MHz and 1905 MHz–1910 MHz paired with 1985–1990 MHz. In Tier 2, the Commission will allow open bidding for one 10 MHz block, 1905 MHz–1910 MHz paired with 1985–1990 MHz. The Commission believes this approach will split the C block spectrum available in Auction No. 35 almost equally, when weighted by population, between open and closed licenses. Moreover, in light of the alternatives, this approach, in conjunction with the other revisions to the entrepreneur eligibility restrictions, will make relatively more spectrum available for open bidding in the most populous markets where the demand for spectrum by the large Commercial Mobile Radio Service ("CMRS") carriers is the greatest and the prospects of a spectrum shortage for these carriers is the most acute. For available 15 MHz C block licenses, other than licenses that were available but unsold in Auction No. 22, the Commission will eliminate entrepreneur eligibility restrictions in Tier 1 but retain the restrictions in Tier 2. The Commission believes that in this way we give effect to as many of the section 309(j) objectives as possible. Balancing all of our statutory objectives and considering alternative possibilities, we believe that it is fair and appropriate to apportion the spectrum to accommodate the interests of many carriers that need additional spectrum to "fill out" their service areas or to satisfy capacity needs. Apportioning the 30 MHz C block licenses in the manner described will enable larger carriers to

obtain spectrum crucial to their business plans. At the same time, maintaining a significant set aside of C block spectrum for entrepreneurs will help smaller businesses in this band continue to achieve their business goals as well as providing meaningful opportunities for new entrepreneurial firms to enter the market.

In addition, the Commission will allow open bidding for all F block licenses available in Auction No. 35 and in all future auctions. The Commission believes that it is in the public interest and consistent with section 309(j), to remove the set-aside for all available F block licenses. The F block has evolved in a fashion largely distinct from that of the C block; thus, the two blocks have been subject to increasingly different regulatory requirements, reflecting the separate equity and reliance concerns applicable to each of the blocks. Therefore, there is no longer a rationale for attempting to treat the two blocks in an identical or a substantially similar fashion.

Lastly, the Commission will establish open bidding for all broadband PCS C and F block licenses available but unsold in Auction No. 35 or in any other future auction and for all C block licenses, 15 MHz or 30 MHz (reconfigured into 10 MHz), that were available but not sold in Auction No. 22. Bidding to date has failed to result in construction of these licenses and service to the public. By lifting the eligibility restrictions for these unsold licenses now, the Commission hopes to prevent additional delays in their utilization.

**Entrepreneur Eligibility:** The Commission will not apply the natural growth exception, which allows C and F block licensees to retain their entrepreneur eligibility during the five-year holding period, to determinations of entrepreneur eligibility for Auction No. 35. Although the Commission intended to ignore natural growth for purposes of entrepreneur eligibility during the five-year holding period, it did not intend to ignore such growth in determining eligibility to participate in future C and F block auctions. In addition, the Commission does not see a need to modify § 24.720 which states that an entrepreneurs' block applicant must substantiate its gross revenues and total assets with its most recent audited financial statements, or, if the applicant does not otherwise use audited financial statements, a certification by the applicant's chief financial officer or its equivalent. However, the Commission expects applicants to obtain audited financial statements within a reasonable period of time after the close of the

applicable calendar or fiscal year and to base its claim to eligibility on those financial statements.

**License Grouping for Bids and Competitive Design:** The Commission will not license by bulk bidding. As stated in the *FNPRM*, the Commission is concerned that small entities may be hard pressed to obtain the financing necessary to win and pay for licenses and construct systems included in the bulk bid proposal, while many other carriers may be constrained from participating by the CMRS spectrum cap. Some of the parties that commented on ways to aggregate licenses in the auction process, argued against the use of package bidding for Auction No. 35, on the ground that such a design would be complex and impractical. Other commenters support implementation of package bidding as a way to enhance the ability of auction participants to acquire their targeted groups of licenses while reducing their exposure. The Bureau has discretion, under its existing delegated authority and pursuant to public notice and comment, to determine the competitive bidding design most appropriate for the auction.

**"Grandfather" Exception:** The Commission will not eliminate the "grandfather" exception contained in § 24.709(b)(9)(i). Instead, the Commission will clarify an applicant's eligibility for the "grandfather" exception after it has been involved in a merger, acquisition, or other business combination, as follows. When each of the merging entities is individually eligible for the "grandfather" exception, the exception will extend to the resulting entity. When one or more of the entities is not individually eligible for the "grandfather" exception, the resulting entity will be eligible for the exception only so long as an originally eligible entity retains *de facto* and *de jure* control of the resulting entity. The Commission does not believe that, when entities eligible for the "grandfather" exception combine, the resulting entity should be penalized. This revision to the Commission's rules will provide spectrum opportunities for entrepreneurs while at the same time maintaining a fair implementation of the auctions program.

**Bidding Credits:** The Commission will maintain the current level of bidding credits for small and very small businesses, and consortia thereof, of 15 percent and 25 percent, respectively, for licenses subject to "open" bidding. After considering the alternatives, the Commission believes that bidding credits of 15 and 25 percent will allow effective competition by small

businesses in open C and F block bidding. In our Specialized Mobile Radio (SMR) 900 MHz auction—using bidding credits of 10 percent and 15 percent—75 percent of the winning bidders were small businesses, winning 26 percent of the licenses. Moreover, in Auction No. 11, the auction of D, E, and F block licenses, small and very small business were the high bidders for 141 of the 986 D and E block licenses won in that auction, even though bidding credits are not available for D and E block licenses. The current level of bidding credits for broadband PCS C and F blocks seems to allow significant participation of small and very small entities; therefore, we do not see a need to increase the current level of bidding credits.

For licenses subject to “closed” bidding, the Commission will eliminate all bidding credits. After considering the alternatives, the Commission believes that the continued use of bidding credits in restricted auctions would not necessarily serve its intended purpose. As explained in the Further Notice, some well-capitalized new entities with small gross revenues qualify for bidding credits, while some older companies with small total assets and net revenues but high gross revenues do not. Eliminating bidding credits in a closed auction will remove this anomaly while at the same time continuing to provide small and very small businesses with a meaningful opportunity to compete in Auction No. 35.

**Transfer Requirements for Certain Licenses:** The Commission will modify its transfer requirements to correspond to the Commission’s changes in the eligibility requirements, and to encourage rapid construction of C and F block systems. Specifically, C and F block licenses won pursuant to “open” bidding at Auction No. 35, or any future open auction for such spectrum, will not be subject to a holding rule. For C and F block licenses won pursuant to “closed” bidding, the Commission will permit a licensee to assign or transfer its licenses to any qualified entity, entrepreneur or not, upon the licensee’s completion of its first construction benchmark, whether or not it takes the full five years allowed by our rules. This will encourage rapid build-out and service to the public while at the same time providing C and F block licensees with the ability to access capital; thus, resulting in a more efficient use of spectrum. The Commission will continue to evaluate satisfaction of construction requirements on a licensee-by-licensee, rather than on a system-wide, basis.

Additionally, a licensee that won a license in Auction No. 5 or 10 will not be subject to a bidding credit unjust enrichment payment upon transfer and assignment of the license to an entity not qualifying as a small business, subject to the Commission’s transfer requirements. Because all license winners in those auctions qualified for the available 25 percent bidding credit, there is no purpose in requiring the payment. However, licenses won in other auctions using a bidding credit will be subject to a bidding credit unjust enrichment payment upon transfer or assignment in accordance with the Commission’s transfer requirements.

**License Cap:** The Commission will remove § 24.710, which prohibits an auction applicant from winning more than 98 C and F block licenses, from the Commission’s rules. When this rule was established, the license cap was intended to facilitate a fair distribution of licenses within the C and F blocks. The Commission has achieved this objective; moreover, the reconfiguration of the available 30 MHz C block licenses will create additional C block licenses, while the elimination of the eligibility restrictions will increase the chances of C and F block licenses being won by a variety of entities.

**Spectrum Cap:** The Commission will continue to apply the CMRS spectrum cap to PCS C and F block licenses to be auctioned. In September 1999, the Commission decided that the spectrum cap, with some modification, continued to promote competition, efficient spectrum use, innovation, and a wide dissemination of licenses. The Commission believes that implementation of the C and F block auction and service rule changes will ease the impact of the spectrum cap for Auction No. 35, making the alternative of spectrum cap relief unnecessary with respect to licenses in this auction. Moreover, the Commission will soon begin its year 2000 biennial review of the spectrum cap rules, providing another opportunity for a comprehensive review of related issues.

76. Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. The Commission believes that these revisions to the C and F block auction

and service rules as set forth in the *C/F Block Sixth Report and Order* promote these goals while maintaining the fair and efficient execution of the auctions program.

77. *Report to Congress:* The Commission will send a copy of the *C/F Block Sixth Report and Order*, including this FRFA, in report to be sent to Congress pursuant to the SBREFA, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *C/F Block Sixth Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 24

Personal communications services.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 24 as follows:

#### PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for part 24 continues to read as follows:

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

2. Amend § 24.202 by revising the introductory text to read as follows:

##### § 24.202 Service areas.

Broadband PCS service areas are Major Trading Areas (MTAs) and Basic Trading Areas (BTAs) as defined in this section. MTAs and BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39 (“BTA/MTA Map”). Rand McNally organizes the 50 states and the District of Columbia into 47 MTAs and 487 BTAs. The BTA/MTA Map is available for public inspection at the Office of Engineering and Technology’s Technical Information Center, 445 12th Street, SW, Washington, DC 20554.

\* \* \* \* \*

3. Amend § 24.203 by revising paragraph (b) to read as follows:

##### § 24.203 Construction requirements.

\* \* \* \* \*

(b) Licensees of 10 MHz blocks, including 10 MHz C block licenses reconfigured pursuant to Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97–82,

*Sixth Report and Order*, FCC 00–313, and 15 MHz blocks resulting from the disaggregation option as provided in the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket 97–82, 12 FCC Rcd 16436 (1997), as modified by Order on Reconsideration of the Second Report and Order, WT Docket 97–82, 13 FCC Rcd 8345 (1998), must serve with a signal level sufficient to provide adequate service to at least one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial service in their licensed area within five years of being licensed. Population is defined as the 1990 population census. Licensees may elect to use the 2000 population census to determine the five-year construction requirement. Failure by any licensee to meet these requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

\* \* \* \* \*

4. Amend § 24.229 by revising paragraph (b) to read as follows:

**§ 24.229 Frequencies.**

\* \* \* \* \*

(b) The following frequency blocks are available for assignment on a BTA basis:

Block C: 1895–1910 MHz paired with 1975–1990 MHz;

Pursuant to Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97–82, *Sixth Report and Order*, FCC 00–313, all 30 MHz Block C licenses available for auction in Auction No. 35 or any subsequent auction will be reconfigured into three 10 MHz C block licenses as follows: 1895–1900 MHz paired with 1975–1980 MHz, 1900–1905 MHz paired with 1980–1985 MHz, 1905–1910 MHz paired with 1985–1990 MHz;

Block D: 1865–1870 MHz paired with 1945–1950 MHz;

Block E: 1885–1890 MHz paired with 1965–1970 MHz;

Block F: 1890–1895 MHz paired with 1970–1975 MHz;

5. Amend § 24.709 by revising paragraphs (a), (a)(1), (a)(3), (b)(9)(i), redesignating paragraph (b)(9)(ii) as paragraph (b)(9)(iv), adding new paragraphs (b)(9)(ii), (b)(9)(iii), revising paragraph (d)(1), redesignating paragraph (e) as paragraph (g), and adding new paragraphs (e) and (f) to read as follows:

**§ 24.709 Eligibility for licenses for frequency Blocks C and F.**

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

\* \* \* \* \*

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

(b) \* \* \*

(9) \* \* \*

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

(ii) In cases of merger, acquisition, or other business combination of entities, where each of the entities is eligible to bid for C block licenses offered in closed bidding in any reauction of C block spectrum on the basis of the eligibility exception set forth in paragraph (b)(9)(i) of this section, the resulting entity will also be eligible for the exception specified in paragraph (b)(9)(i).

(iii) In cases of merger, acquisition, or other business combination of entities, where one or more of the entities are ineligible for the exception set forth in paragraph (b)(9)(i) of this section, the resulting entity will not be eligible pursuant to paragraph (b)(9)(i) unless an eligible entity possesses *de jure* and *de facto* control over the resulting entity.

\* \* \* \* \*

(d) \* \* \* (1) Applicants and licensees claiming eligibility for closed bidding under this section or for other provisions under §§ 24.711 through 24.720 shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

\* \* \* \* \*

(e) *Tiers.* (1) For purposes of determining spectrum to which the eligibility requirements of this section are applicable, the BTA service areas (see § 24.202(b)) are divided into two tiers according to their population as follows:

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

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

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

(f) *Application of eligibility requirements.* (1) The following categories of licenses will be subject to closed bidding pursuant to the eligibility requirements of this section in auctions that begin after the effective date of this paragraph.

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

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

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, any C block license for operation on spectrum that has been offered, but not won by a bidder, in closed bidding in any auction beginning on or after March 23, 1999, will not be subject in a subsequent auction to closed bidding pursuant to the eligibility requirements of this section.

\* \* \* \* \*

**§ 24.710 [Removed and Reserved]**

6. Remove and reserve § 24.710.

7. Revise § 24.712 to read as follows:

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

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or

§ 24.720(b)(4) may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(5) may use a bidding credit of twenty-five percent as specified in § 1.2110(e)(2)(ii) of this chapter, to lower the cost of its winning bid.

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

8. Amend § 24.714 by revising paragraphs (a)(2) and (a)(3) to read as follows:

**§ 24.714 Partitioned licenses and disaggregated spectrum.**

(a) \* \* \*

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

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

\* \* \* \* \*

9. Amend § 24.717 by revising paragraphs (a) and (b) to read as follows:

**§ 24.717 Bidding credits for licenses for frequency Block F.**

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning

bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(4) may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(5) may use a bidding credit of twenty-five percent as specified in § 1.2110(e)(2)(ii) of this chapter, to lower the cost of its winning bid.

\* \* \* \* \*

10. Amend § 24.720 by revising paragraph (i) to read as follows.

**§ 24.720 Definitions.**

\* \* \* \* \*

(i) *Members of Minority Groups.* Members of minority groups include individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian, and Asian American extraction.

\* \* \* \* \*

11. Amend § 24.839 by revising paragraphs (a) introductory text, (a)(2), (a)(3) and (a)(5) and by adding paragraph (a)(6) to read as follows:

**§ 24.839 Transfer of control or assignment of license.**

(a) Restrictions on Assignments and Transfers of Licenses for Frequency Blocks C and F won in closed bidding. No assignment or transfer of control of a license for frequency Block C or frequency Block F won in closed bidding pursuant to the eligibility requirements of § 24.709 will be granted unless:

\* \* \* \* \*

(2) The proposed assignee or transferee meets the eligibility criteria set forth in § 24.709 of this part at the time the application for assignment or transfer of control is filed, or the proposed assignee or transferee holds other license(s) for frequency blocks C and F and, at the time of receipt of such license(s), met the eligibility criteria set forth in § 24.709 of this part; or

(3) The application is for partial assignment of a partitioned service area to a rural telephone company pursuant to § 24.714 of this part and the proposed assignee meets the eligibility criteria set forth in § 24.709 of this part; or

\* \* \* \* \*

(5) The assignment or transfer of control is pro forma; or

(6) The application for assignment or transfer of control is filed on or after the date the licensee has notified the Commission pursuant to § 24.203(c) that its five-year construction requirement has been satisfied.

\* \* \* \* \*

[FR Doc. 00-22630 Filed 9-1-00; 8:45 am]

BILLING CODE 6712-01-U

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA No. 00-1898; MM Docket No. 99-299; RM-9687 & RM-9813]

**Radio Broadcasting Services; Osceola, Sedalia & Wheatland, MO**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a proposal filed by The Clair Group, we will substitute Channel 262A for Channel 222A at Osceola, MO and modify the license for Station KCVJ and substitute Channel 222A for Channel 221A at Sedalia, MO and modify the license for Station KSDL. See 64 FR 56723, October 21, 1999. The coordinates for Channel 262A, Osceola, are 38-03-09 and 93-35-16. The coordinates for Channel 222A, Sedalia, are 38-43-52 and 93-13-32. In response to a counterproposal filed by Bott Communications, Inc. we will allot Channel 226A to Wheatland, Missouri, at coordinates 37-55-00 and 93-14-30. There is a site restriction 14.3 kilometers (8.9 miles) east of the community. A filing window for Channel 226A at Wheatland will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective October 2, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99-299, adopted August 9, 2000, and released August 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription