



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

News Media Information: 202-418-0500
Internet: www.fcc.gov
TTY: 888-835-5322

DA 19-1184

Released: November 15, 2019

COMMENT SOUGHT ON SMALL BUSINESS SIZE STANDARDS FOR AUCTIONS OF LICENSES IN THE 2.5 GHz BAND

WT Docket No. 18-120

Comment Date: [30 days after Federal Register publication]
Reply Comment Date: [45 days after Federal Register publication]

By this Public Notice, the Wireless Telecommunications Bureau (WTB), in conjunction with the Office of Economics and Analytics (OEA), seeks comment on the small business size standards to be used to determine an entity's eligibility for small business bidding credits in an auction of unassigned Educational Broadband Service (EBS) spectrum in the 2.5 GHz band. In the *2.5 GHz Report and Order*, the Commission modernized the regulatory framework for the 2.5 GHz band to make this swath of vital mid-band spectrum available for advanced wireless services, including 5G, with unassigned spectrum to be made available for commercial use via competitive bidding following the completion of a Rural Tribal priority filing window.¹ In so doing, the Commission adopted small business size standards and associated bidding credits for new EBS licenses to improve the ability of small businesses to attract the capital necessary to participate meaningfully in the auction of 2.5 GHz spectrum.²

The Notice of Proposed Rulemaking (NPRM) in this proceeding proposed to conduct any auction of EBS licenses in conformity with the Commission's Part 1 competitive bidding rules.³ The NPRM also proposed not to apply designated entity preferences in such auctions, and accordingly did not propose any small business size standards under which qualifying small businesses would receive bidding credits.⁴ In comments and *ex parte* letters submitted in response to the NPRM, several parties supported the adoption of bidding credits in an EBS auction to encourage the participation of small service providers.⁵ Upon

¹ *Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Report and Order, 34 FCC Rcd 5446 (2019) (*2.5 GHz Report and Order*).

² *Id.* at 5478-79, paras. 88-89.

³ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking, 33 FCC Rcd 4687, 4702, para. 49 (2018) (NPRM).

⁴ *Id.*

⁵ See, e.g., Select Spectrum LLC Reply at 3; Educators and Broadband Providers for American Rural Communities Reply at 4-5; Letter from Slayton S. Stewart, Chief Executive Officer, Carolina West Wireless, et al. to Marlene Dortch, H. Secretary, FCC, WT Docket No. 18-120 at 2 (filed July 3, 2019); Letter from Stephen E. Coran, Counsel to the Wireless Internet Service Providers Association to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18- (continued....)

consideration of the record in this proceeding, the Commission concluded that using bidding credits in competitive bidding for EBS licenses in the 2.5 GHz band would be an effective tool to achieve the statutory objective of promoting the participation of designated entities in the provision of spectrum-based services.⁶ Noting that the removal of the eligibility restriction and educational use requirements will attract more commercial operators to the 2.5 GHz band, the Commission found that bidding credits should help facilitate greater participation in any auction of EBS licenses and that offering bidding credits to designated entities should improve the ability of small businesses to attract the capital necessary to meaningfully participate in such an auction.⁷ Thus, the *2.5 GHz Report and Order* adopted small business size standards and associated bidding credits for new EBS licenses.⁸

A Federal department or agency that adopts a size standard for categorizing a business concern as a small business is required to consult with the Small Business Administration (SBA) prior to proposing the size standard for public comment and subsequently, it is required to obtain the SBA Administrator's approval of the size standard.⁹ In this proceeding, because the NPRM did not propose to apply designated entity preferences in auctions of new EBS licenses in the 2.5 GHz band, the NPRM did not propose any size standards under which qualifying small businesses would receive bidding credits. Therefore, the Commission did not consult with the SBA regarding proposed size standards for new EBS licenses in the 2.5 GHz band. However, in the *2.5 GHz Report and Order*, the Commission directed the WTB, in conjunction with OEA, to seek further comment on the two adopted small business size standards¹⁰ and to consult with the SBA and obtain its approval of the adopted size standards in advance of any auction of 2.5 GHz EBS overlay licenses,¹¹ as required by law.¹²

Accordingly, we seek comment on the definitions of a “small business” as an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues that are not more than \$55 million for the preceding five years, and a “very small business” as an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues that are not more than \$20 million for the preceding five years.¹³

(Continued from previous page)

120 at 1-2 (filed June 28, 2019); Letter from Nicole Tupman, Assistant General Counsel, Midcontinent Communications, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120 at 6 (filed Mar. 5, 2019).

⁶ *2.5 GHz Order*, 34 FCC Rcd at 5478, para. 88.

⁷ *Id.*

⁸ *Id.* at 5478-79, paras. 88-89.

⁹ 15 U.S.C. § 632(a)(2)(C); 13 CFR § 121.903(a).

¹⁰ *2.5 GHz Report and Order*, 34 FCC Rcd at 5478-79, para 89 n.260. The Commission explained that under these two size standards, a “small business” would be defined as a business with average gross revenues for the preceding five years that do not exceed \$55 million, and a “very small business” would be defined as a business with average gross revenues for the preceding five years that does not exceed \$20 million. *Id.*

¹¹ With overlay licenses, the licensees obtain the rights to geographic area licenses “overlaid” on top of the existing incumbent licenses. As with an ordinary flexible use license, the overlay licensee may operate anywhere within its geographic area, subject to protecting the licensed areas of incumbent licensees. *2.5 GHz Order*, 34 FCC Rcd at 5473, para. 77.

¹² 15 U.S.C. § 632(a)(2)(C); 13 CFR § 121.903(a). See *2.5 GHz Report and Order* at 5478-79, para 89 n.260.

¹³ *2.5 GHz Report and Order*, 34 FCC Rcd at 5478, 5502, para. 88, App’x A (47 CFR § 27.1219(a)). See 47 CFR § 1.2110(f)(2) (standardized schedule of small business sizes and bidding credits for use for assignment of licenses by competitive bidding). Although the standardized schedule of bidding credits provided in section 1.2110(f)(2)(i) of our Part 1 competitive bidding rules defines small businesses based on average gross revenues for the preceding three years, in December 2018, Congress revised the standard set out in the Small Business Act for categorizing a business concern as a “small business concern,” by changing the annual average gross receipts benchmark from a (continued....)

Pursuant to the *2.5 GHz Report and Order*, a winning bidder in an auction of EBS licenses that qualifies as a “small business” would be eligible for a 15% bidding credit, and a winning bidder qualifying as a “very small business” would be eligible for a 25% bidding credit.¹⁴

Copies of the comments and replies filed in response to this Public Notice will be provided to the SBA consistent with SBA procedures for approval of size standards prescribed by Federal departments and agencies.¹⁵

Filing Requirements. Interested parties may file comments and replies on or before the dates indicated on the first page of this document.¹⁶ All filings must reference WT Docket No. 18-120. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).¹⁷

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

Ex Parte Rules. This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁸ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments

(Continued from previous page) _____
three-year period to a five-year period. 15 U.S.C. § 632(a)(2)(C)(ii)(II), as amended by Small Business Runway Extension Act of 2018, Pub. L. No. 115-324 (Dec. 17, 2018).

¹⁴ See 47 CFR § 1.2110(f)(2)(i)(B)-(C); 47 CFR § 27.1219(b) (small business bidding credit eligibility for winning bidders of EBS licenses). The designated entity provisions for winning bidders of EBS licenses become effective on April 27, 2020. Transforming the 2.5 GHz Band, 84 Fed. Reg. 57343, 57343 (Oct. 25, 2019).

¹⁵ See 15 U.S.C. § 632(a)(2)(C); 13 CFR § 121.903.

¹⁶ 47 CFR § 1.2.

¹⁷ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹⁸ 47 CFR §§ 1.1200 *et seq.*

already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 844-432-2275 (videophone), or 202-418-0432 (TTY).

Additional Information. For further information regarding this Public Notice, please contact Mary Lovejoy, Attorney Advisor, Auctions Division, Office of Economics and Analytics (202) 418-0660; mary.lovejoy@fcc.gov.

–FCC–