

253. We do not adopt royalties as an alternative payment method for designated entities. As we stated in the Notice, this approach must be weighed against several difficulties. First, if the royalties are based on the output or revenues of the winning firm they will act as a tax and tend to reduce output.¹⁹⁹ Second, royalties on FCC licenses may be very costly to administer. Unlike oil and gas royalties there is no easily identifiable output associated with the license. To collect royalties on Commission licenses the agency must establish accounting rules for identifying the share of revenues or profits attributable to such licenses. This is likely to prove extremely intrusive and difficult to implement in practice, especially when a license is used by a firm as part of a highly integrated communications service. Finally, the Commission may have difficulty determining an appropriate royalty rate to apply in all circumstances. Accordingly, we adopt our tentative conclusion in the notice not to develop a royalties payment program for designated entities. However, as noted above, we agree with SBA that it would be fair to schedule payment to the government after the start-up phase of the business when licensees typically begin receiving income from operations, as we are doing in the case of installment payments.

6. Innovator's preference

254. In the Notice we requested comment on the SBAC's proposal to provide an "innovator's bidding preference," which would be designed to encourage participation by designated entities, and by strategic small business alliances, by awarding credits equal to 10 percent of an applicant's bid.²⁰⁰ Under the proposal, alternative bidding calculations would allow technical and non-technical innovators to discount, or amortize, the bid the applicant would otherwise pay based on a qualitative assessment of the applicant's business development proposal. To qualify for the credit, the SBAC Report states that the bidder would have to qualify as (a) a member of a designated entity, or (b) a consortium owned and controlled by firms owned by members of the designated entities. We asked for comment on the extent to which members of the preferred groups can be deemed to be "technical innovators," and the extent to which it is feasible to reach such determinations prior to conducting individual auctions.

255. In ET Docket No. 93-266, we are currently reviewing our pioneer's preference rules in light of the Commission's new competitive bidding authority. See Notice of Proposed Rule Making in ET Docket No. 93-266, 8 FCC Rcd 7692 (1993). The pioneer's preference rules currently award innovation by providing a means by which an applicant that demonstrates having developed a new communications service or technology may obtain a license without being subject to mutually exclusive applications. See 47 C.F.R. § 1.402. In the pioneer's preference review proceeding, we requested comment on alternatives to a dispositive preference in a competitive bidding environment, including a bid discount for

¹⁹⁹ See comments of BellSouth at 26.

²⁰⁰ See NPRM at ¶¶ 50 and 80, n. 61.

designated innovators. 8 FCC Rcd at 7694. We asked for specific comments in that proceeding regarding the innovator's preference proposals for designated entities set forth in the Notice in this proceeding. *Id.* at 7694, n. 13.

256. Since the innovator's preference proposal for competitive bidding is inextricably related to our general review of the pioneer's preference rules, this issue will be resolved in ET Docket No. 93-266.²⁰¹

7. Distress Sales to Designated Entities

257. In the Notice we requested comment on the SBAC's distress sale proposal. We indicated that the proposal would encourage transfers to designated entities where winning bidders are unable to pay, ineligible, or unqualified.²⁰² Only a few commenters addressed this proposal.²⁰³ For example, one commenter suggested that distress sales be utilized in the event a designated entity defaults on its installment payments.²⁰⁴ Since distress sales, if adopted, would be a post-auction measure designed to provide additional opportunities to designated entities to participate in the provision of spectrum-based services, we have decided not to resolve this issue at this time. Rather, we will evaluate the success of our other measures adopted herein and in our service-specific rules and determine whether distress sales should be authorized.

D. Preventing Unjust Enrichment

258. Section 309(j)(3)(B) requires that the Commission craft our competitive bidding rules so as to "promot[e] economic opportunity and competition and ensur[e] that new and innovative services are readily available to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including [designated entities]." To ensure that our preference measures are effective,

²⁰¹ Several commenters suggest that we provide waivers or exceptions to our PCS rules concerning spectrum aggregation or cellular cross-ownership where an applicant enters into partnerships or other joint ventures with designated entities. *See, e.g.*, comments of Bell Atlantic at 15, AWCC at 33-34, Cook Inlet at 28-29, NAMTEC at 22, and Murray at 12. With regard to broadband PCS, these and other issues have been raised in petitions for reconsideration of those rules. It therefore would be better addressed in the context of that proceeding. *See generally Second Report and Order* in GN Docket No. 90-314, 8 FCC Rcd 7700 (1993) (petitions for reconsideration and clarification pending). In other proceedings, such a determination will be made in orders addressing each auctionable service.

²⁰² NPRM at ¶ 71, *citing* SBAC Report at 16.

²⁰³ *See, e.g.*, comments of Chickasaw Telephone Company at 6.

²⁰⁴ *See* comments of Corporate Technology Partners at 5.

however, we must also adopt rules that will prevent abuse of our preference measures. See Section 309(j)(4)(E). In particular, we must adopt rules to ensure that the preferences foster the creation of new telecommunications businesses owned by designated entities which will continue to provide telecommunications services. Our rules are intended to prevent designated entities from profiting by the rapid sale of licenses acquired through the benefit of our preference policies. This goal is wholly consistent with Congressional intent: "to the extent that the Commission is attempting to achieve a justifiable social policy goal . . . licensees should not be permitted to frustrate that goal by selling their license in the aftermarket." H.R. Rep. No. 103-111 at 257.

259. We wish to ensure against unjust enrichment in those situations where Congress recognized that the likelihood of unjust enrichment was highest, or specifically when licenses were obtained under circumstances where the government undertook special efforts to limit competition for licenses to ensure opportunities for certain classes of applicants, i.e., the designated entities. We therefore are adopting unjust enrichment rules applicable specifically to designated entities to deter speculation and participation in the licensing process by those who do not intend to offer service to the public, or who intend to use our preferences to obtain a license at a lower cost than they otherwise would have to pay and later to sell it at the market price. We have decided that we may rely on three principal preferences for designated entities -- installment payments, set-asides and bidding credits -- and each leads to a different method to prevent abuse and unjust enrichment. These methods are discussed below. We may also employ other methods, such as random audits, to ensure that entities purporting to be designated entities have retained that status after being awarded licenses. Of course, as discussed below, in circumstances in which penalties are applicable, licensees that wish to take actions relating to ownership or control that would result in loss of designated entity status must also report those proposed actions to the Commission.

260. Designated Entity Set-asides. If licenses are set aside for application exclusively by designated entities, the concern expressed by Congress over unjust enrichment is great. If a class of licenses is exclusively assigned for use by designated entity applicants, it is reasonable to assume that these licenses will be auctioned at a lower price than they would bring if they were not set-aside. It would be unjust and inconsistent with the will of Congress for such preferred licensees to obtain a license with the government's help, transfer that license after a short period of time to an entity that was not entitled to special treatment at the auction, and appropriate for themselves the difference between the full market value of the license and the discounted price which they paid the government for that license. Therefore, if we employ set-asides to benefit some or all of the designated entities, we will impose a recapture provision, applicable in the event of sale to a non-designated entity, that would be designed to recoup for the government a portion of the value of the benefit received by the designated entity in the bidding.

261. Such a recapture provision would require that licensees seeking to transfer their licenses for profit (or to take other actions relating to ownership or control that cause them to lose their status as designated entities) must, within a specified time remit to the government a

penalty equal to a portion of the total value of the benefit conferred by the government.²⁰⁵ If similar licenses that are not set-aside are auctioned at the same time as set-aside licenses, the penalty would be set based on the price at which non-set-aside licenses were awarded. In other cases, the Commission will calculate the value of the difference between the set-aside price and the price that would have been obtained at auction without a set-aside. The Commission will make this initial calculation and the burden will be on the applicant to disprove this amount.

262. In order to encourage efficiency and reward entities that have provided valuable services, we will generally reduce the penalty as time passes or construction benchmarks are met. However, because license terms and construction requirements vary by service, we will set forth any specific recapture provisions in competitive bidding rules applicable to any services in which we decide to set aside licenses. In no event will recapture provisions apply to the transfer or assignment of a license that has been held for more than five years. If the transfer is to be made to another eligible designated entity, there would be no penalty. In the event that a penalty is assessed, the penalty will not prevent the transferring designated entity from recovering the depreciated value of its capital investment. Similar approaches found support in the comments of Calcell Wireless and Wisconsin Wireless Communications.

263. Designated Entity Installment Payments and Bidding Credits. Where other preferential measures are employed (i.e., installment financing or bidding credits), the Commission will impose appropriate unjust enrichment measures. For example, if a small business making installment payments sells its license to an entity that does not qualify under the standards we have set for small businesses, we will require payment of the full amount of the remaining principal balance as a condition of the license transfer. We recognize that this remedy may still allow some gains to accrue to a small business licensee who makes installment payments at a relatively low interest rate and then transfers the license, but we expect the number of such instances to be small and believe that the magnitude of such gains would not warrant the cost of calculating and imposing penalties to address this concern.

264. Where bidding credits are used, the Commission will require a designated entity seeking approval for a transfer of control or an assignment of license to a non-designated entity, or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before transfer of the license will be permitted. This approach was supported in the comments as well. See, e.g., comments of BellSouth at 32-33. The penalty will be equal to the current value of the bidding credits. If the bidding credit was related to a designated entity's commitment to expanded construction requirements, and the

²⁰⁵ We might, in appropriate circumstances, waive recapture if the licensee had incurred substantial start-up costs or made significant capital investments with the intention of starting service, but due to circumstances beyond its control, was unable to provide service.

construction requirements extend over the term of the license, the penalty will not be reduced over time.

265. These modest requirements address Congressional concerns over unjust enrichment but should not inhibit investment or economic growth. Because of our concerns on the possible impact of transfer restrictions on willingness to invest in the industries we regulate, we are not adopting our proposal to establish a minimum time during which transfer of licenses obtained through competitive bidding would be prohibited. As we recognized in ¶ 84 of the NPRM, such restrictions "may block or delay efficient market transactions needed to attract capital, reduce costs, or otherwise put in place owners capable of bringing service to the public expeditiously."

E. Definitions

266. In the Notice we requested comment on definitions to apply to the designated entities enumerated by Congress. These definitions are important both to establish eligibility criteria and to deter the use of sham companies to take advantage of the benefits meant for groups truly in need of the measures outlined above. See NPRM at ¶¶ 77-78.

1. Small Business

267. With regard to small businesses, we asked parties to discuss whether we should rely on the definition devised by the Small Business Administration (SBA). NPRM at ¶ 77. We noted that the SBA definition permits an applicant to qualify for financial assistance based on a net worth not in excess of \$6 million with average net income after Federal income taxes for the two preceding years not in excess of \$2 million. Alternatively, an applicant for SBA assistance can qualify by showing that together with affiliates, and excluding affiliates, it meets the size standard for the industry in which it is primarily engaged as set forth in 13 C.F.R. 121.601. NPRM at ¶ 77, n. 51. This size standard translates into a business with less than 1500 employees for the telecommunications industry. 13 C.F.R. 121.601.

268. Many commenters, including the Chief Counsel for Advocacy of the SBA, argue that the SBA net worth/revenue definition is too restrictive and will exclude businesses of sufficient size to survive, much less succeed, in the competitive wireless communications marketplace. The SBA's Chief Counsel and Suite 12 Group advocate adoption of a revenue test, arguing that a net worth test could be misleading as some very large companies have low net worth. The SBA's Chief Counsel recommends that the revenue standard be raised to include firms that (together with affiliates) have less than \$40 million in revenue. Similarly, Suite 12 suggests a \$75 million in annual sales threshold.²⁰⁶ As another option, the SBA's

²⁰⁶ Many other commenters set forth their recommendations on the appropriate small business definition. See, e.g., comments of Tri-State (\$5 million average annual operating cash flow), Luxcel (net worth not exceeding \$20 million), and Iowa Network (less than \$40

Chief Counsel suggests that the Commission consider a higher revenue ceiling or adopt different size standards for different telecommunications markets.²⁰⁷

269. Other parties worry that the definition used by the Commission might impede the ability of small businesses to raise capital in anticipation of auctions. They note that many small firms are soliciting investors to enable these firms to compete better in auctions, and argue that their designated entity status should not be jeopardized as a result. Thus, these commenters suggest, if the FCC adopts the SBA's net worth standard, the net worth valuation should relate back to the date of the PCS Final Report and Order (September 23, 1993).

270. In contrast, several commenters argue that the small business definition must be made more restrictive in order to prevent large firms from spinning off companies to compete as designated entities. In this regard, some parties recommend limiting preferences to those small businesses that were in existence for the previous two years.

271. We believe that in most circumstances the existing SBA net worth/income size standard is the appropriate threshold for small businesses to qualify as designated entities. At this juncture, we are unable to conclude that the other proposals suggested by commenters are superior to this established standard. In this regard, we also note that the legislative history indicates that the SBA's Chief Counsel and other commenters are correct that in certain telecommunications industry sectors this standard may not be high enough to encompass those entities that require the benefits, but also have the financial wherewithal to construct and operate the systems. Nevertheless, the threshold can be adjusted upward on a service-by-service basis to accommodate such situations. Thus, in order to qualify as a small business eligible to receive designated entity benefits, the applicant must show that, together with its affiliates, the entity has no more than a \$6 million net worth and after federal income taxes (excluding any carry over losses), does not have in excess of \$2 million in annual profits for the previous two years. This small business definition may be modified, however, if the SBA changes its definition or the Commission deems that an alternative definition is more appropriate for capital intensive services, for example.

272. The inclusion of all "affiliates" of the entity for purposes of the net revenue/net worth calculation should alleviate the concerns of some commenters who fear competing with

million in annual revenues and 50,000 or fewer access lines).

²⁰⁷ Some parties recommend using the SBA's 1500 employee standard. See, e.g., comments of SBA Associate Administrator for Procurement Assistance at 2, CFW Communications at 2, and Iowa Network at 17. A number of other commenters argue, however, that adoption of this alternative SBA definition would open up a huge loophole in the designated entity eligibility criteria. Specifically, they contend that telecommunications is a capital, rather than labor, intensive industry, and that an entity with 1,500 employees is likely to be extremely well capitalized and have no need for the special treatment outlined by Congress in the Budget Act. See, e.g., comments of LuxCel Group, Inc. at 4, Suite 12 Group at 10-11.

the "designated entity" affiliates of large, well-financed corporations. Moreover, we intend to scrutinize relationships between parties very carefully to determine if they rise to the level of affiliation. As provided in the SBA regulations, for example, we will consider entities to be affiliates of each other when, either directly or indirectly, one entity controls or has the power to control the other, or a third party or parties controls or has the power to control both. Compare 13 C.F.R. § 121.401(a)(2). Thus, stock options, convertible debentures, and agreements to merge will be treated as if the rights thereunder already had been exercised.²⁰⁸ Likewise, financing agreements may result in a finding of affiliation if the debt relationship essentially gives the creditor the power to control the enterprise -- for example, if the size of the debt is particularly large, the terms of the loan are not commercially reasonable, and the definition of default is unconventional. Affiliation may also arise when entities have common officers, directors, or key employees, or when they enter into joint ventures. See 13 C.F.R. 121.410. Given this close scrutiny of business relationships, we do not think it is necessary to require small businesses to have been in existence for two years to qualify as designated entities. Such a rule would unduly restrict the entry of bona fide, newly-formed bidders.

273. Finally, as recommended by a number of parties, we reject the SBA's alternative 1,500 employee standard as a means to qualify as a designated entity. We agree with those commenters that argue that such a definition is too inclusive and would allow many large telecommunications firms to take advantage of preferences not intended for them.

2. Minority- and Female-Owned Businesses

274. In the Notice, we proposed to rely on existing Commission definitions of minority and female owned businesses. We asked for comment, however, on whether we should require women and minority backed applicants to be 50.1 percent owned by members of these groups or whether simple control, regardless of equity ownership, would be sufficient.

275. Most commenters favor strict eligibility criteria in this area in order to prevent abuse. They argue that minorities and women should be required to have both 50.1 percent voting control and a significant equity interest (at least 20 percent) in the applicant to qualify for designated entity status. Numerous commenters contend that preferences should be granted only to applicants that are more than 50 percent female or minority owned. They assert that such a requirement is necessary to fulfill the legislative intent of Section 309(j), which explicitly requires the Commission to foster opportunities for "businesses owned by members of minority groups and women." In addition, a number of parties recommend that minorities and women should be required to have control of day-to-day management and operations of the entity.

²⁰⁸ An affiliate cannot use such options, debentures and agreements, however, to appear to have relinquished control over another entity before it actually does so. Compare 13 C.F.R. § 121.401(f).

276. Other parties recommend, however, that eligibility extend to businesses over which women or minorities have actual operating control, even if they do not have a majority share of the equity. They argue that such a standard would enhance the ability of female and minority entrepreneurs to obtain financing.

277. We are persuaded by the commenters that, to establish "ownership" by minorities and women, we should adopt a strict eligibility standard that requires minorities or women to have at least a 50.1 percent equity ownership and a 50.1 percent controlling interest in the designated entity. In the context of limited partnerships, the general partner must be a minority and/or a woman (or an entity 100 percent owned and controlled by minorities and/or women) that owns at least 50.1 percent of the partnership equity. The interests of minorities and women in designated entities will generally be calculated on a fully-diluted basis. Thus, agreements such as stock options and convertible debentures will generally be considered to have a present effect on the power to control the entity and will be treated as if the rights thereunder already have been fully exercised. We will depart from the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis only upon a demonstration, in individual cases, that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity.

278. We seek to encourage designated entities to raise capital by selling less than controlling interests in their companies. We recognize that there may be situations in which a designated entity may be able to best attract equity by offering investors such inducements as preferential dividends, liquidation preferences and other incentives typically offered to noncontrolling principals. We do not intend to restrict the use of such financing mechanisms, provided that the minority and female principals continue to maintain 50.1 percent of the equity on a fully-diluted basis and that their equity interest entitles them to a substantial stake in the profits and liquidation value of the venture relative to the non-controlling principals. While different standards may be appropriate in other contexts, our objective here is to deter the establishment of sham companies in a manner that permits easy resolution of eligibility issues without the delay of administrative hearings, and thereby to achieve one of the primary purposes underlying the auction statute.²⁰⁹ Of course, applicants must ensure and be prepared to demonstrate that de facto control truly resides with the minority or female principals.

²⁰⁹ We see no reason to depart from the Commission's current definition of the term minority, which includes "those of Black, Hispanic Surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction." See Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979, 980 n.8 (1978); Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849, 489 n.1 (1982). We do agree with the comments of some parties, who suggested restricting minority preferences to citizens of the United States. Thus, minority and female owned businesses will be eligible for preferences only if voting control and at least 50.1 percent of the equity resides with minorities and women who are United States citizens.

While control over daily operation remains one of several factors in determining de facto control,²¹⁰ we will not require that the minority and female principals devote their full time and attention to the day-to-day management and operations to qualify for available preferences, provided that the designated entity can demonstrate that the minority and female principals are in control of the enterprise.

3. Rural Telephone Companies

279. We also tentatively decided to base our definition of rural telephone companies on existing Commission rules and policies and, thus, proposed that they qualify for designated entity status if they are eligible for exemption from the cable television-telephone company cross-ownership prohibition contained in Section 63.58 of our Rules (i.e., they serve no community with more than 2,500 inhabitants). In addition, we sought comment on whether we should impose geographic restrictions on the rural telephone company preference or if such companies should be able to obtain a preference in any market licensed by the Commission.

280. Most commenters argue that the 2,500 hundred resident standard contained in Section 63.58 is too restrictive and is not related to Congress's concerns.²¹¹ For example, Iowa Network and Telephone Electronics assert that the 2,500 population limit in the rule was not meant to define rural telephone companies, but rather to carve out a narrow exception to the telephone-cable cross-ownership restriction.²¹² Likewise, NTCA argues that it is neither necessary nor appropriate to use the same criteria to define rural telephone companies in rules pertaining to a different service, technology, and industry.²¹³

281. As an alternative, many commenters support OPASTCO's proposal to limit rural telephone eligibility to carriers serving communities with no more than 10,000 inhabitants, asserting that such a standard better comports with common notions about which telephone companies are "rural."²¹⁴ A number of other commenters also suggest that the definition of rural telephone company should include a limitation on the size of the company. OPASTCO, for example, asserts that such a limitation would comport with the statutory mandate to ensure opportunity for rural telephone companies because "the problem such companies face in the

²¹⁰ See, e.g., Intermountain Microwave, 24 Rad. Reg. 983, 984 (1963); Cellular Control Notice, 1 FCC Rcd 3 (1986).

²¹¹ See, e.g., comments of NRTA, NTCA, Rochester Telephone Corp., Iowa Network, TAM, SBA, PMN and Small Telephone Companies of Louisiana.

²¹² See Comments of Iowa Network at 13 and Telephone Electronics at 11.

²¹³ See comments of NTCA at 4.

²¹⁴ See, e.g., comments of Iowa Network, Saco River and Telephone Electronics.

competitive bidding arena" is as much a function of their size as of the rural character of their service areas."²¹⁵ NTCA similarly contends that small companies have shown the interest and commitment needed to fulfill the explicit statutory goal of "rapid deployment of new . . . services for . . . those residing in rural areas," citing as support a report on the deployment of digital switching by small LECs.²¹⁶ The commenters differ on the what the proper measure of a company's size should be. McCaw and TDS, for instance, recommend that the total number of access lines served by a rural telephone company must not exceed 150,000, while the SBA advocates a 50,000-line cap. Other parties suggest that the Commission adopt a definition similar to the one that appeared in the unenacted antecedent of the Budget Act, S.1134: a rural telephone company either (a) "provides telephone exchange service by wire in a rural area" (i.e., a non-urbanized area containing no incorporated place with more than 10,000 inhabitants), (b) "provides telephone exchange service by wire to less than 10,000 subscribers," or (c) "is a telephone utility whose income accrues to a State or political subdivision thereof."

282. As discussed previously, rural telephone companies may be eligible for bidding credits. We agree with many of the commenters that the standard contained in Section 63.58 of our Rules is unnecessarily restrictive for purposes of this proceeding. Thus, as recommended by OPASTCO, in order to be eligible for a bidding preference on a particular license, rural telephone companies must not serve communities with more than 10,000 inhabitants in the licensed area. On the other hand, we believe that a limitation on the size of eligible rural telephone companies is appropriate, because we do not believe Congress intended for us to give preferences to large LECs that happen to serve small rural communities. Thus, as suggested by SBA, in order to be eligible for a preference, a rural telephone company must not have more than 50,000 access lines, including all affiliates.²¹⁷

4. Designated Entities and Consortia

283. In the Notice we asked interested parties to comment on how to apply the designated entity eligibility criteria to consortia. Specifically, we sought comment on whether such consortia must be wholly or predominantly comprised of eligible designated entities to qualify for special treatment. NPRM at ¶ 78.

284. Commenters present a range of proposals concerning the treatment of consortia in this regard. Some commenters believe that the consortium seeking a preference must itself

²¹⁵ Comments of OPASTCO at 5.

²¹⁶ Comments of NTCA at 7-8.

²¹⁷ If a rural telephone company qualifies as a designated entity on some other basis (e.g., as a small business), it will be eligible for installment payments in other markets on that ground.

meet the criteria for designated entity eligibility.²¹⁸ Others suggest that, to qualify as a designated entity, at least half of the aggregate equity interest should be held by designated entities.²¹⁹ Still others propose that such consortia should only be controlled by designated entities, even if designated entities have less than a 50 percent combined equity stake.²²⁰ Finally, some believe a qualifying consortium must be controlled by designated entities and designated entities must hold a majority of the equity in the venture.²²¹

285. Other commenters state that a consortium should be deemed eligible for designated entity benefits if all of its members qualify as designated entities individually, even if the consortium as a whole does not qualify because, for example the rural telephone companies in the consortium together serve communities with more than 10,000 inhabitants.²²²

286. The issue here is whether we should provide an exception to the above eligibility criteria for applicants that are a consortium of various individual entities, most or all of which qualify as designated entities individually. We do not believe that such combinations, if they deviate from our standard definitions of designated entities, should be eligible for preferences expressly designed for designated entities. Accordingly, we reject proposals to accord preferences to consortia of otherwise eligible designated entities that, when combined, result in a new entity that does not meet our definitions.

287. Our policy objective, as noted above, is to provide economic opportunity to those entities designated in the statute and to ensure such entities the opportunity to provide spectrum-based services. Establishing exceptions to our definitions for consortia (even those wholly composed of otherwise qualified designated entities) would undermine this objective. If applicants made up of a number of entities were allowed special treatment, the economic opportunity for individual qualified designated entities would be diluted. Moreover, we believe that allowing applicants to be formed from a combination of eligible and ineligible entities would invite attempts to abuse the designated entity preferences by those not entitled to them. Accordingly, every applicant seeking special treatment as a designated entity (whether such applicant is an individual person or a separate entity, a joint venture or

²¹⁸ See, e.g., comments at McCaw at 21, Meyers at 6, Pacific Bell at 21 (regarding preferences for female or minority ownership specifically).

²¹⁹ See comments of Sprint at 10, and PMN, Inc. at 9.

²²⁰ See, e.g., comments of SBA at 15-17, Southwestern Bell at 41, and Chickasaw Telephone Company at 6-8.

²²¹ See comments of AT&T at 25-26, United Native American Telecommunications, Inc. at 16, TDS at 17, and Telephone Association of Michigan at 7.

²²² See, e.g., comments of Telephone Electronics at 16, Iowa Network at 17-18, SBA at 11-12 (regarding small business consortia).

consortium, an unincorporated association of entities, or a standard partnership or corporation), must certify, and be prepared to show, that it meets the definitions established for designated entities in our rules. As noted above, we may determine on a service-specific basis to allow a consortium to receive other benefits based on equity and operational participation in the consortium by one or more designated entities, but such a consortium would not be entitled to qualify for preferences designed specifically for entities meeting the definitions set forth above.

288. The above discussion should not be construed as preventing applicants and licensees for individual licenses for different spectrum blocks or different markets from entering into arms-length agreements concerning the cooperation or coordination of separate facilities, so long as each applicant or licensee retains control over the license and so long as such arrangements are consistent with our affiliation rules and other restrictions against collusion and agreements in restraint of trade. Since designated entities would still retain control of their licensed facilities under such arrangements, cross-license, arms-length arrangements between or among designated entities, and between designated entities and non-designated entities are consistent with our policies discussed above. Moreover, such arrangements could result in more efficient aggregation of ubiquitous, interoperable service offerings that could not be obtained through the auction process.

F. Constitutional Issues

289. If we determine that race or gender-based preferences are necessary to satisfy the statutory command of section 309(j)(4)(D), we must also address the constitutionality of such measures. In the Notice, we stated that the proper standard of scrutiny to be employed in this context is the "intermediate scrutiny" standard used in Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990). Virtually all of the commenters agree that Metro's intermediate scrutiny standard should be applied in these circumstances, and we also note that recent case law fully supports that conclusion. See S.J. Groves & Sons Co. v. Fulton County, 920 F.2d 752, 767 (11th Cir. 1991); Adarand Constructors, Inc. v. Skinner, 790 F.Supp. 240 (D. Colo. 1992); see also Lamprecht v. FCC, 958 F.2d 382 (D.C. Cir. 1992). Further, as the Metro case did not involve federal action vis-a-vis the states, it is also clear that the intermediate scrutiny standard may be applied in circumstances that go beyond those in which Congress exercises its powers under section 5 of the Fourteenth Amendment.²²³ Thus, intermediate scrutiny is to be applied even if the measures are deemed to relate solely to the Federal government's activities.

²²³ In the context of gender preferences, we observe that the intermediate scrutiny standard applies whether or not the measure is used by Congress or the States. See, e.g., Contractors Association of Eastern Pennsylvania, Inc. v. City of Philadelphia, 6 F.3d 990, 1009 (3rd Cir. 1993).

290. Applying the Metro standard itself, Metro instructs that benign race-conscious measures approved by Congress do not violate the equal protection clause if they serve important governmental objectives within the power of Congress and are substantially related to achievement of those objectives. 110 S. Ct. at 3008-09. We agree with the vast majority of commenters who contend that preferential measures afforded under section 309(j)(4)(D) serve important governmental objectives sufficient to satisfy Metro. The commenters agree with the assertion in the Notice that, from the language and history of the section, it is evident that Congress enacted the provision in the interest of promoting economic opportunity for minorities and women, who are underrepresented in the communications industry. The commenters maintain that this is an important and legitimate congressional objective, and we agree.

291. Cook Inlet also observes that the congressional espousal of that stated objective in the auction statute is implicitly predicated on Congress' well-founded belief that minorities and women are underrepresented among business owners in the communications industry.²²⁴ Similarly, UCC asserts that the provisions regarding female and minority preferences were enacted on the implicit understanding that women and minorities have been hindered from participation in the communications industry as a result of invidious discrimination. UCC notes that there are ample grounds for a legislative finding to that effect, citing the statement in Metro that Congress has consistently recognized the barriers encountered by minorities in entering the broadcast industry.²²⁵ Murray and others also cite the SBAC Report as a compilation of evidence of the existence of current and historical barriers to minority participation in the telecommunications industry.²²⁶ Cook Inlet, in addition, cites a 1982 House conference report and statements in the Congressional Record as grounds for such a finding and refers to an appendix listing reports and studies concerning minority underrepresentation in business and barriers to entry.²²⁷ The Minority Business Enterprise Legal Defense and Education Fund, Inc. has submitted a copy of a massive report on racial discrimination in contracting in the telecommunications industry that it had previously

²²⁴ Comments of Cook Inlet at 15.

²²⁵ Reply comments of UCC at 8.

²²⁶ See comments of George E. Murray at 7.

²²⁷ Comments of Cook Inlet at 11-15, citing H.R. Conf. Rep. No. 765, 97th Cong., 2d Sess. 43 (1982), 128 Cong. Rec. H8954 (daily ed. December 6, 1982), 131 Cong. Rec. H4981-83 (daily ed. June 28, 1985); see also comments of American Wireless at 13-15.

presented to Congress.²²⁸ Finally, Calcell Wireless, Inc. refers to information concerning systematic bias against African and Hispanic Americans by mortgage lenders.²²⁹

292. Similar arguments and information have been submitted in this record concerning women. AWRP points out that in Califano v. Webster, 430 U.S. 313, 317 (1977), the Supreme Court made clear that reduction in the disparity in economic condition between men and women caused by the long history of discrimination against women is an important governmental objective.²³⁰ AWRP, Call-Her and Palmer Communications, Inc. refer to findings that women are statistically underrepresented among business owners in the SBAC Report, the 1992 Annual Report of the National Women's Business Council, and recent publications of the U.S. Department of Commerce.²³¹ Call-Her also notes that Congress made conclusive findings in the Women's Business Ownership Act of 1988, 15 U.S.C. § 631(h), that women are hindered in pursuit of entrepreneurial endeavors by sexual discrimination affecting their ability to raise capital and acquire managerial skills.²³²

293. These commenters, we believe, have offered persuasive arguments and evidence that any measures we may adopt to implement section 309(j)(4)(D) satisfy the "important governmental interest" aspect of the Metro intermediate scrutiny test. In this regard, many commenters point out that in Metro the Supreme Court concluded that a full appreciation of the legislative process counseled against a court limiting its analysis to the legislative history of the particular act under review.²³³ Examined against this complete legislative backdrop, the record compiled herein indicates that Congress had a full understanding of the barriers to entry that have led to underrepresentation of minorities and women in the communications industry. Further, the commenters in this proceeding have submitted much additional evidence relating to this underrepresentation and the factors causing it.

294. In this regard, we note that, even under a standard of "strict scrutiny," it is not necessary to demonstrate government sponsored discrimination. Even where the government is only a passive participant in the discrimination to be remedied, the government may permissibly use race-based measures to redress discrimination committed by private parties

²²⁸ Comments of MBELDEF at 2, 60 and Appendix (Minority Business Legal Defense and Education Fund Report to the U.S. Congress, Discrimination Practices in the Telecommunications Industry (1993)).

²²⁹ Comments of CalCell at 23 n. 36.

²³⁰ See comments of AWRP at 7.

²³¹ See id. at 5-7, comments of Call-Her at 4-8, and Palmer at 5 (Reply).

²³² Comments of Call-Her at 4-5.

²³³ See comments of Cook Inlet at 13, citing Metro, 497 U.S. at 572.

within the government's jurisdiction. See Associated General Contractors of California v. Coalition for Economic Equity, 950 F.2d 1401, 1413 (9th Cir. 1991), citing Richmond v. Croson, 488 U.S. 467, 491-92; O'Donnell Construction Co. v. District of Columbia, 963 F.2d 420, 429 (D.C. Cir. 1992) (Ginsburg, J. concurring). Similarly, under the intermediate scrutiny standard as it has been applied to sex-based preferences, evidence of governmental discrimination against women is not required to establish the necessary important government interest. Coral Construction Co. v. King County, 941 F.2d 910, 916 (9th Cir. 1991). Thus, to justify racial or gender preferences in the context of the auction law, it is unnecessary to demonstrate that the Federal government or the FCC has engaged in discriminatory practices in the allocation of licenses.

295. No commenter has alleged such governmental discrimination. Instead, the sorts of barriers to entry cited by commenters include discrimination in commercial lending practices that thwart entry by minorities and women into capital intensive industries such as communications and discriminatory contracting practices by communications companies against minority firms providing equipment and services in the telecommunications industry. The study submitted by the Minority Business Enterprise Legal Defense Fund indicates, moreover, that minority firms are willing and qualified to provide these services, but that discriminatory practices have hindered their opportunities for meaningful participation in the communications industry.

296. The Metro intermediate scrutiny standard also requires a determination that the remedial scheme is "substantially related" to the important governmental objective. For this purpose, the Commission must ensure that minority and gender-based preferences are not over-inclusive and are narrowly tailored to fulfill the statutory objective of ensuring economic opportunity for women and minorities. Several commenters maintain that the Commission can satisfy this standard by adopting eligibility rules that would ensure that only legitimate minority-owned firms could obtain the preferences and by adopting a waiver rule by which any set-aside spectrum blocks are released to general bidding if no qualified minorities apply to bid for them.²³⁴ In the alternative, Cook Inlet recommends that if the Commission has constitutional concerns, it should limit preferences to firms that are socially or economically disadvantaged, according to definitional standards set forth in rules for the SBA's "section 8(a)" program.²³⁵ Some commenters, such as Iowa Network, contend that set-asides for minority or female-owned businesses would be overinclusive if they were available to all such businesses regardless of their capital resources. Iowa Network argues in this regard that it would not serve the justifying purpose of promoting economic opportunity for the disadvantaged to confer preferential treatment on those who are already successful.²³⁶

²³⁴ See, e.g., comments of Cook Inlet at 18-19, American Wireless at 18, and NAMTEC at 13.

²³⁵ Comments of Cook Inlet at 39-40.

²³⁶ See reply comments of Iowa Network at 8.

Similarly, BellSouth argues there is no evidence publicly-held companies controlled by females and minorities have suffered lack of economic opportunity and they should not be eligible for preferences.²³⁷

297. As discussed above in Section VI.E., we have adopted strict eligibility rules to ensure that only legitimate minority-owned and women-owned firms are eligible for preferences, and that such preferences are not over-inclusive and are narrowly tailored. For example, as suggested by some commenters, minority and women-owned entities must be owned and controlled by United States citizens since the record contains no evidence of discriminatory entry barriers for aliens. If, in the future, we decide that race or gender-based preferences are necessary, we shall determine then whether additional tailoring mechanisms should be adopted, such as those proposed by commenters.

VII. CONCLUSION, PROCEDURAL MATTERS AND ORDERING CLAUSES

298. As we stated in the Notice, the Commission is entering new and uncharted territory in this proceeding. The Commission is poised to unleash great potential to stimulate economic growth and create thousands of jobs for Americans by awarding thousands of new licenses. We believe that the decisions we have made in this Second Report and Order will significantly improve the efficiency of our licensing processes. We believe that these decisions promote the public policy objectives set forth by Congress, and that they will serve the Commission's goals of promoting economic growth and enhancing access to telecommunications service offerings for consumers, producers, and new entrants. Our competitive bidding system is designed to award licenses expeditiously and in a way that will encourage efficient spectrum use and promote competition for service provision. Finally, we believe that the menu of preferences we have adopted for designated entities will satisfy Congress's objective of ensuring diversity in the ownership and management of telecommunications facilities.

A. Final Regulatory Flexibility Analysis

299. Pursuant to the Regulatory Flexibility Act of 1980, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in PP Docket No. 93-253. Written comments on the IRFA were requested. The Commission's final analysis is as follows:

300. Need for and purpose of the action. This rulemaking proceeding was initiated to implement Section 309(j) of the Communications Act, as amended. The rules adopted herein will carry out Congress's intent to establish a system of competitive bidding for choosing from among mutually exclusive applications for initial licenses to use the electromagnetic

²³⁷ See comments of BellSouth at 29 n. 47.

spectrum principally for the transmission or reception of communications signals to or from subscribers for compensation. The rules adopted herein also will carry out Congress's intent to ensure that small businesses, rural telephone companies, and businesses owned by women and minorities are afforded an opportunity to participate in the provision of spectrum-based services.

301. Issues raised in response to the IRFA. The IRFA noted that the proposals under consideration in the NPRM included the possibility of new reporting and recordkeeping requirements for a number of small business entities. No commenters responded specifically to the issues raised in the IRFA. We have made some modifications to the proposed requirements as appropriate.

302. Significant alternatives considered and rejected. All significant alternatives have been addressed in the Second Report and Order.

B. Ordering Clauses

303. Accordingly, IT IS ORDERED that Part 1 of the Commission's Rules is amended as set forth in the attached Appendix B.

304. IT IS FURTHER ORDERED that the rules adopted herein WILL BECOME EFFECTIVE 30 days after publication in the Federal Register.²³⁸ This action is taken pursuant to Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j).

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton
Acting Secretary

²³⁸ The Commission may conclude in subsequent Reports and Orders in this docket that specified procedural rules applicable to particular services should become effective upon publication in the Federal Register.

APPENDIX A

COMMENTS AND REPLY COMMENTS FILED IN PP DOCKET NO. 93-253

Comments

- 1 Advanced Mobilcomm Technologies, Inc., and Digital Spread Spectrum Technologies, Inc.
- 2 James Aidala
- 3 Oye Ajayi-Obe
- 4 Alcatel Network Systems, Inc. (Alcatel)
- 5 AllCity Paging, Inc. (AllCity)
- 6 Alliance for Fairness and Viable Opportunity (Alliance for Fairness)
- 7 Alliance of Rural Area Telephone & Cellular Service Providers (ARAT)
- 8 Alliance Telecom, Inc.
- 9 Alpine Electronics and Communication (Alpine)
- 10 American Automobile Association (AAA)
- 11 American Mobile Satellite Corp. (AMSC)
- 12 American Mobile Telecommunications Association (AMTA)
- 13 American Personal Communications (APC)
- 14 The American Petroleum Institute (API)
- 15 American Wireless Communication Corporation (AWCC or American Wireless)
- 16 American Women in Radio and Television, Inc. (AWRT)
- 17 Ameritech
- 18 AMSC Subsidiary Corporation
- 19 Anchorage Telephone Utility (Anchorage)
- 20 Charles N. Andreae/Andreae & Associates, Inc.
- 21 John G. Andrikopoulos, et al.
- 22 Arch Communications Group, Inc. (Arch Communications)
- 23 Association for Maximum Service Telecasters & National Association of Broadcasters (MSTV/NAB)
- 24 Association of American Railroads (AAR)
- 25 Association of America's Public Television Stations (APTS)
- 26 Association of Independent Designated Entities (AIDE)
- 27 Association of Public-Safety Communications Officials International, Inc. (APCO)
- 28 AT&T
- 29 Baraff, Koerner, Olender & Hochberg, P.C.
- 30 Bechtel & Cole
- 31 Bell Atlantic Personal Communications, Inc. (Bell Atlantic)
- 32 BellSouth Corp., BellSouth Telecommunications, Inc., BellSouth Cellular Corp., and
Mobile Communications Corporation of America (BellSouth)
- 33 Jeffrey T. Bergner
- 34 Art Boroughs
- 35 Van R. Boyette
- 36 D.B. Branch
- 37 Quentin L. Breen
- 38 Dennis C. Brown and Robert H. Schwaninger (Brown and Schwaninger)
- 39 Cablevision Industries, Comcast Corp., Cox Cable Communications, and Jones Intercable, Inc.
- 40 Calcell Wireless, Inc. (Calcell)
- 41 California Microwave, Inc. (California Microwave)
- 42 California Public Utilities Commission (CPUC)
- 43 Call-Her, L.L.C. (Call-Her)
- 44 Capitol Hill Management

- 45 Catapult Communications (Catapult)
- 46 Cellular Communications, Inc. (CCI)
- 47 Cellular Service, Inc. (CSI)
- 48 Cellular Settlement Groups
- 49 Cellular Telecommunications Industry Association (CTIA)
- 50 Cencall Communications Corp. (Cencall)
- 51 Century Communications Corp. (Century)
- 52 CFW Communications Corp., Denver and Ephrata Tel. and Tel. Co., and Lexington Tel. Co.
- 53 Chase Communications Corp. (Chase)
- 54 The Chase McNulty Group, Inc. (Chase McNulty)
- 55 Chickasaw Telephone Company (Chickasaw)
- 56 Citizens Utility Company (Citizens)
- 57 Coalition for Equity in Licensing
- 58 Cole, Raywid & Braverman
- 59 Wendy C. Coleman d/b/a WCC Cellular (WCC Cellular)
- 60 Comcast Corporation (Comcast)
- 61 Comsat Corporation (Comsat)
- 62 ComTech Associates, Inc. (Comtech)
- 63 Converging Industries
- 64 Cook Inlet Region, Inc. (Cook Inlet)
- 65 Corporate Technology Partners (CTP)
- 66 Council of 100
- 67 Cox Enterprises, Inc. (Cox)
- 68 Thomas Crema
- 69 Data Link Communications (Data Link)
- 70 Devsha Corporation
- 71 Dial Page, Inc.
- 72 Steven L. Dickerson
- 73 Abby Dilley
- 74 Diversified Cellular Communications (Diversified)
- 75 Domestic Automation Company (Domestic Automation)
- 76 Laura G. Dooley
- 77 John Dudinsky
- 78 Mark H. Duesenberg
- 79 John R. Duesenberg
- 80 Duncan, Weinberg, Miller & Pembroke, P.C.
- 81 Economics and Technology, Inc.
- 82 FiberSouth, Inc. (FiberSouth)
- 83 First Cellular of Maryland
- 84 Firstcom, Inc.
- 85 Fisher, Wayland, Cooper and Leader (Fisher Wayland)
- 86 David F. Gencarelli, Esq.
- 87 Janet B. Gencarelli
- 88 General Communications, Inc. (GCI or General Communications)
- 89 GEOTEK Industries, Inc. (GEOTEK)
- 90 Debra Gervasini
- 91 Martin Charles Gleyier
- 92 GTE Services Corp. (GTE)
- 93 GVNW, Inc./Management (GVNW)
- 94 John G. Heard
- 95 Hughes Communications Galaxy, Inc. & DirecTv, Inc. (DirecTv)
- 96 Hughes Transportation Management Systems (Hughes)
- 97 Independent Cellular Consultants

- 98 Independent Cellular Network, Inc.
- 99 Industrial Telecommunications Association, Inc.
- 100 Intelligent Vehicle-Highway Society of America
- 101 Interdigital Communications Corporation (Interdigital)
- 102 Iowa Network Services, Inc. (Iowa Network)
- 103 IVHS America
- 104 JAJ Cellular
- 105 Thomas J. Jasien
- 106 JBS & Associates/Shrader Real Estate
- 107 JMP Telecom Systems, Inc.
- 108 Andrea J. Johnson
- 109 Edward M. Johnson
- 110 E.F. Johnson Company
- 111 Jeff Johnston
- 112 Clair Joyce
- 113 Abraham Kye, et al.
- 114 Ward Leber & Eroca Daniel
- 115 Michael Lewis
- 116 Liberty Cellular, Inc. d/b/a Kansas Cellular (Liberty Cellular)
- 117 Lightcom International, Inc. (Lightcom)
- 118 Daniel R. Lindemann
- 119 Loral Qualcomm Satellite Services, Inc. (Loral)
- 120 Robert Lutz, et al.
- 121 Walter Lowman
- 122 LuxCel Group, Inc. (LuxCel)
- 123 John J. Mandler
- 124 McCaw Cellular Communications, Inc. (McCaw)
- 125 MCI Telecommunications Corporation (MCI)
- 126 MEBTEL, Inc.
- 127 Mercury Communications, L.C. (Mercury)
- 128 Millin Publications, Inc. (Millin)
- 129 Minnesota Equal Access Network Services, Inc. (Minnesota Equal Access)
- 130 Minority Business Enterprise Legal Defense and Education Fund, Inc. (MBELDEF)
- 131 Minority PCS Coalition (Transworld Telecommunications Inc., Progressive Communications, Inc.,
Carl and Gail Davis and John Washington)
- 132 Motorola, Inc. (Motorola)
- 133 Motorola Satellite Communications, Inc. (Motorola Satcom)
- 134 George E. Murray
- 135 MW TV, Inc.
- 136 Law Offices of Richard S. Myers (Richard S. Myers)
- 137 National Association of Black-Owned Broadcasters, Inc. (NABOB)
- 138 National Association of Business and Educational Radio, Inc. (NABER)
- 139 National Association of Minority Telecommunications Executives and Companies (NAMTEC)
- 140 National Rural Telecom Association (NRTA)
- 141 National Telecommunications and Information Administration of the U.S. Department of Commerce (NTIA)
- 142 National Telephone Cooperative Association (NTCA)
- 143 Nextel Communications, Inc. (Nextel)
- 144 NYNEX Corporation (NYNEX)
- 145 M. Kathleen O'Conner
- 146 Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
- 147 Pacific Bell and Nevada Bell (PacBell)
- 148 Pacific Telecom Cellular, Inc. (Pacific Telecom Cellular)
- 149 PacTel Corporation (PacTel)

150 PacTel Paging and MidContinent Media (Joint Comments) (PacTel Paging)
151 PageMart, Inc. (PageMart)
152 Paging Network, Inc. (PageNet)
153 Palmer Communications, Inc. (Palmer)
154 Michael Pernecke
155 Raegene Pernecke
156 Personal Communications Network Services of New York
157 Jeffrey Peterson
158 Phase One Communications, Inc. (Phase One)
159 David Pines
160 PMN, Inc. (PMN)
161 PNC Cellular, Inc.
162 Point Communications Company (Point)
163 Primosphere Limited Partnership (Primosphere)
164 Quick Call Group (Quick Call)
165 Radio Telecom and Technology, Inc. (RTT)
166 RAM Mobile Data USA Limited Partnership (RAM)
167 RAY Communications, Inc.
168 Michael R. Rickman
169 Roamer One, Inc. (Roamer One)
170 Rochester Telephone Corp.
171 Rocky Mountain Telecommunications Association and Western Rural Telephone Association
172 Rural Cellular Association
173 Rural Cellular Corp.
174 Rural Electrification Administration, U.S. Department of Agriculture (REA)
175 Rural Telephone Company
176 Thomas Salmon
177 Santarelli, Smith & Carroccio
178 Michael Sauls
179 Securicor PMR Systems, Ltd. (Securicor)
180 Stephan C. Sloan
181 Small Business PCS Association
182 Small RSA Operators
183 Small Telephone Companies of Louisiana
184 Laquita Smallwood
185 Southwestern Bell Corporation (Southwestern Bell)
186 Sprint Corporation (Sprint)
187 Henry J. Staudinger
188 James F. Stern
189 Arlene F. Strege
190 Suite 12 Group
191 Systems Engineering, Inc.
192 Taxpayers Assets Project
193 Telephone and Data Systems, Inc. (TDS)
194 Telephone Association of Michigan (TAM)
195 Telephone Electronics Corp. (Telephone Electronics)
196 Telepoint Personal Communications, Inc (Telepoint).
197 The Telmarc Group and Telmarc Telecommunications, Inc. (Telmarc)
198 Telocator -- The Personal Communications Industry Association (Telocator)
199 Thumb Cellular Limited Partnership (Thumb)
200 Time Warner Telecommunications (Time Warner)
201 Tri-State Radio Company (Tri-State)
202 TRW, Inc. (TRW)

- 203 Unique Communications Concepts (Unique)
- 204 United Native American Telecommunications, Inc.
- 205 U.S. Intelco Networks, Inc.
- 206 U.S. Small Business Administration -- Chief Counsel for Advocacy (SBA)
- 207 U.S. Small Business Administration -- Associate Administrator for Procurement Assistance
- 208 U.S. Telephone Association (USTA)
- 209 Utilities Telecommunications Council (UTC)
- 210 Valley Management, Inc.
- 211 L. Brennan Van Dyke
- 212 Vanguard Cellular Systems, Inc. (Vanguard)
- 213 Richard L. Vega Group (Vega)
- 214 Venus Wireless, Inc. (Venus)
- 215 Leslie R. Walls
- 216 Western Wireless, Inc.
- 217 Windsong Communications, Inc. (Windsong)
- 218 Wireless Cable Association International, Inc.
- 219 Wireless Services Corporation (Wireless)
- 220 Wisconsin Wireless Communications Corporation (Wisconsin Wireless)
- 221 Ann Bradshaw Woods
- 222 William E. Zimsky

Reply Comments

- 1 Marlene Abe
- 2 Robert B. Adams (Commissioner, Office of General Services, State of New York)
- 3 Alcatel Network Systems, Inc.
- 4 AllCity Paging, Inc.
- 5 American Paging, Inc.
- 6 American Personal Communications
- 7 American Wireless Communication Corporation, Inc.
- 8 American 52 East
- 9 AMTECH Corporation (AMTECH)
- 10 John G. Andrikopoulos, Bent Elbow Corporation, et al.
- 11 Apex Welding, Inc. (Apex)
- 12 Arch Communications, Inc.
- 13 The Association of American Railroads
- 14 Association of Independent Designated Entities
- 15 AT&T
- 16 Bob Atkison
- 17 Bell Atlantic Personal Communications, Inc.
- 18 BellSouth Corporation
- 19 John L. Bergin
- 20 Kenneth B. Blair, Robert B. Blow, et al.
- 21 Town of Bridgewater, MA
- 22 Hayo Broeis
- 23 Cable & Wireless, Inc.
- 24 R. Jeffrey Cale
- 25 Robert R. Cale
- 26 Call-Her, L.L.C.
- 27 Capp Systems (IVDS) Inc.
- 28 Cellular Service, Inc.
- 29 Cellular Settlement Groups (Joint Comments)

30 Cellular Telecommunications Industry Association
31 CFW Communications Co., Denver and Ephrata Tel. and Tel. Co., and Lexington Tel. Co.
32 The Chillicothe Telephone Company
33 Citizens Utility Company
34 Edward Cline
35 Coalition for Equity in Licensing
36 Columbia Cellular Corporation
37 Comcast Corporation
38 Community Service Telephone Company
39 Cook Inlet Region, Inc.
40 DeKalb Telephone Cooperative, Inc.
41 Dell Telephone Cooperative, Inc.
42 Vernon L. Dennis
43 Dial Page, Inc.
44 Diversified Cellular Communications, Inc.
45 Michael J. Dowling
46 Ellipsat Corporation (Ellipsat)
47 Enakee Partnership
48 Marie S. Essex
49 Clemente S. Estrera, Jr.
50 Euro-Tech Enterprises, Inc.
51 Federal IVD
52 Fisher, Wayland, Cooper and Leader
53 Four Color Imports, Ltd. (Four Color)
54 Orren W. Fricke
55 Marguerite Geckler
56 General Communications, Inc. (GCI)
57 Genesis Investments
58 George Gower
59 GTE Service Corp.
60 Gulf Telephone Company
61 Mark D. Hafermann
62 Timothy Hartley
63 Dr. Renee Harwick
64 John G. Herd
65 Nathan D. Hodges
66 Troy Hodges
67 Home Box Office (HBO)
68 Adrian Hubbell
69 Hughes Communications Galaxy, Inc. and DirecTv, Inc.
70 Hughes Transportation Management Systems
71 Icon Communications Services
72 Independent Cellular Consultants (ICC)
73 Industrial Containers, Inc.
74 Industrial Telecommunications Association, Inc.
75 The Institute for Public Representation, Georgetown University Law Center, and Office of
Communication of the United Church of Christ (Joint Comments) (UCC)
76 The Interagency Group
77 Interior Telephone Co.
78 International Small Satellite Organization
79 Iowa Network Services, Inc.
80 Cecil W. King
81 Kingswood Associates

82 Bernd K. L. Klopfer
83 J. Koyasako
84 Kuruvilla M. Kurien
85 Mani A. Kurien
86 Sosa Kurien
87 J. Bruce Llwellyn
88 Local Area Telecommunications, Inc.
89 Long Lines, Ltd.
90 Loral Qualcomm Satellite Services, Inc.
91 Manti Telephone Company
92 McCaw Cellular Communications, Inc.
93 McElroy Electronics Corporation
94 MCI Telecommunications Corporation
95 Metricom, Inc.
96 Marshall L. Morgan
97 William G. Morgan
98 Motorola, Inc.
99 Motorola Satellite Communications, Inc.
100 Mountain Home Publishing
101 Mukluk Telephone Co.
102 George E. Murray
103 National Association of Business and Educational Radio, Inc.
104 National Cable Television Association, Inc.
105 National Public Radio
106 National Rural Telephone Association
107 National Telephone Cooperative Association
108 Nextel Communications, Inc.
109 North American Interactive Partners I-IV
110 NYNEX Corporation
111 J.W. Oakes
112 Omnipoint Communications, Inc. (Omnipoint)
113 Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
114 Joseph A. Orlando
115 P & P Investments
116 Pacific Bell and Nevada Bell
117 Pacific Traders Group
118 PacTel Corporation
119 PacTel Paging and Midcontinent Media
120 PageMart, Inc.
121 Paging Network, Inc.
122 Palmer Communications, Inc.
123 PAN, Inc.
124 William W. Perry
125 Personal Network Services Corporation
126 Sidney E. Pinkston
127 Emma M. Pinkston
128 Pinpoint Communications, Inc.
129 PN Cellular, Inc. and its affiliates
130 PNM, Inc.
131 Price Communications Cellular
132 Denis A. Radefeld
133 Radiofone, Inc.
134 RAM Mobile Data USA Limited Partnership

135 Recourse Spectrum
136 Roamer One, Inc.
137 Roberts County Telephone Cooperative Association
138 Rochester Telephone Corporation
139 Rural Cellular Association
140 Ryberg Properties
141 Saco River Telegraph and Telephone Company
142 James J. Schneider
143 H.M. Schwartz
144 John Sheppard
145 Crystal Smith
146 Southwestern Bell
147 Spacedrive, Inc.
148 Sprint Corporation
149 David G. Stanley
150 Harry Stevens, Jr.
151 Sonia Stuart
152 Suite 12 Group
153 David F. Swain & Co.
154 Telephone and Data Systems, Inc.
155 Telephone Electronics Corporation
156 Telocator -- The Personal Communications Industry Association
157 William W. Thorton
158 Randy A. Toyoshima
159 TRW, Inc. (TRW)
160 Unique Communications Concepts
161 U.S. Intelco Networks, Inc.
162 United States Telephone Association
163 US West
164 The University of Texas System
165 Utilities Telecommunications Council
166 WCC Cellular
167 Bob Weber
168 Greg Winters
169 Wunschel Law Firm