procedures described above will be followed with one exception. Qualified bidders will be required to bring a cashier's check for the full amount of their upfront payment to the auction site. Bidders will be required to display their upfront payment check as a condition of being issued a bidder identification number and admittance to the bidder section of the auction site. After bidding closes on a particular license, the high bidder will be asked to tender its upfront payment and sign a bid confirmation form. If the high bidder declines to tender the upfront payment and/or refuses to sign the bid confirmation form, no penalty will be assessed because the license would be immediately re-auctioned. The only damage from such withdrawal would be delay. And in an oral sequential auction such delay may be minimal. The standard default penalty and the additional three percent penalty (described supra at ¶ 49) will be assessed, however, if the bidder defaults on the 20 percent down payment, fails to pay for the license or is disqualified after the close of an auction.

V. REGULATORY SAFEGUARDS

A. Unjust Enrichment Provisions

61. The Budget Act directs the Commission to "require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits." 47 U.S.C. § 309(j)(4)(E). In the Second Report and Order, the Commission adopted safeguards designed to ensure that the requirements of Section 309(j)(4)(E) are satisfied.

62. In this Order we adopt specific rules governing unjust enrichment by designated entities, which are discussed below in Section VI. In addition, the transfer disclosure requirements contained in Section 1.2111 (a) of our rules will apply to all narrowband PCS licenses obtained through the competitive bidding process. Generally, applicants transferring their licenses within three years after the initial license grant will be required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license. As we indicated in the Second Report and Order we will give particular scrutiny to auction winners who have not yet begun commercial service and who seek approval for a transfer of control or assignment of their licenses after the initial license grant, in order to determine if any unforeseen problems relating to unjust enrichment have arisen outside the designated entity context. In addition, this reporting requirement will provide the Commission with valuable information that will enable us to evaluate how well the various auction methods have achieved our objectives.

B. Performance Requirements

63. The Budget Act required the Commission to "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by

licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."[38] In the Second Report and Order we decided that it was unnecessary and undesirable to impose additional performance requirements, beyond those already provided in the service rules, for all auctionable services. The narrowband PCS service rules already contain specific performance requirements, such as the requirement to construct within a specified period of time. See, e.g., 47 C.F.R. § 24.103 Failure to satisfy these construction requirements will result in forfeiture of the license. Accordingly, we do not adopt any additional performance requirements in this order.

C. Rules Prohibiting Collusion

64. In the Second Report and Order we adopted special rules prohibiting collusive conduct in the context of competitive bidding. See 47 C.F.R. § 1.2105 (c) We indicated that such rules would serve the objectives of the Budget Act by preventing parties, especially the largest firms, from agreeing in advance to bidding strategies that divide the market according to their strategic interests and disadvantage other bidders. These rules are applicable to all auctionable services including narrowband PCS. Generally, bidders will be required to identify on their Form 175 applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. Bidders will also be required to certify that they have not entered into any explicit or implicit agreements, arrangements or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid. After the short-form applications are filed and prior to the time that the winning bidder has made its required down payment, all bidders will be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application.

65. Winning bidders are required to attach as an exhibit to the Form 401 application a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement they had entered into relating to the competitive bidding process prior to the close of bidding. All such arrangements must have been entered into prior to the filing of short-form applications. Where specific instances of collusion in the competitive bidding process are alleged during the petition to deny process, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with participation in the auction process may be subject to forfeiture of their down payment or their full bid amount, revocation of their license(s), and may be prohibited from participating in future auctions.

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[38] See Section 309(j)(4)(B) of the Communications Act, as amended.

VI. DESIGNATED ENTITY PREFERENCES

A. Introduction

66. As discussed in the Second Report and Order, Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." 47 U.S.C. § 309(j)(4)(D). The statute requires the FCC to "consider the use of tax certificates, bidding preferences, and other procedures" in order to achieve this congressional goal. In addition, Section 309(j)(3)(B) provides that in establishing eligibility criteria and bidding methodologies the Commission shall promote "economic opportunity and competition . . . 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." 47 U.S.C. § 309(j)(3)(B). Finally, Section 309(j)(4)(A) provides that to promote these objectives the Commission shall consider alternative payment schedules including lump sums or guaranteed installment payments.

67. In the Second Report and Order we established the eligibility criteria and general rules that would govern the award of preferences for designated entities. We also established a menu of preferences, including installment payments, set-asides and bidding preferences that we could choose from in selecting the preferences that will be applicable to a particular service, and specified the circumstances under which a tax certificate program would be established. In addition, we set forth rules to prevent unjust enrichment by designated entities seeking to transfer licenses obtained through use of one of the preferences.

68. In this Report and Order we adopt specific preferences for narrowband PCS designed to ensure that designated entities are given the opportunity to participate both in the competitive bidding process and in the provision of narrowband PCS services. In particular, we adopt the following preferences:

(1) Businesses owned by women and minorities will be entitled to a 25 percent bidding credit applicable to three specified nationwide licenses (one 50/50 kHz paired, one 50/12.5 kHz paired, and one 50 kHz unpaired); ten specified regional licenses (one 50/50 kHz paired and one 50/12.5 kHz paired license in each region); and 153 specified MTA licenses (one 50/50 kHz paired, one 50/12.5 kHz paired, and one 50 kHz unpaired license in each MTA).

(2) Tax certificates will be issued to initial investors in minority and female-owned enterprises upon divestiture of their interests, and to licensees who transfer their authorizations to minority and female-owned businesses.

(3) Installment payments will be made available to small businesses for any of the

BTA, MTA or regional narrowband licenses.

We also incorporate and adopt the unjust enrichment provisions adopted in the Second Report and Order applicable to installment payments and bidding credits, and we adopt unjust enrichment provisions for parties receiving licenses as a result of our tax certificate policy. Small businesses and businesses owned by women and minorities will also be defined according to the definitions and eligibility criteria established in the Second Report and Order.[39]

69. We believe that narrowband PCS will provide significant opportunities for all designated entities. Narrowband PCS will likely include a wide variety of services, including advanced paging, messaging, and advanced cordless telephones, which will have the capability to offer voice, facsimile, graphic and other imaging services. This should afford licensees flexibility to offer an array of innovative service offerings, particularly to smaller niche markets, thereby enhancing both customer choice and fostering competitive markets for products and services. Narrowband PCS also involves relatively low capital entry requirements, and is therefore well-suited to small entities, which lack access to large amounts of capital.[40]

70. We also find that the preferences we have selected for auctions in this service will fulfill the congressional directive that we provide meaningful opportunities for small businesses and businesses owned by minorities and/or women to participate in the provision of narrowband PCS services. As explained below, we have selected preferences that are tailored

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[39] See 47 C.F.R. § 1.2110. This section requires that for applicants that are limited partnerships, the general partner must be a minority and/or woman (or an entity 100 percent owned and controlled by minorities and/or women) who is a U.S. citizen and owns at least 50.1 percent of the partnership equity. We clarify that in the context of limited partnerships, we will regard a woman or minority general partner as having a 50.1 percent equity stake if it shares pro rata in 50.1 percent of the partnership's profits and losses or contributes at least 50.1 percent of the partnership's capital contribution..

[40] Although the record contains no direct evidence of the costs to build out narrowband PCS systems, we have estimated these costs based on the typical construction costs of existing paging systems. Accordingly, we estimate that the cost to construct a narrowband BTA facility would be approximately $50,000. The cost to construct a narrowband MTA facility, in accordance with the five-year build-out requirements, would be approximately $100,000 to meet the minimum population coverage requirements, and approximately $1.25 million (assuming 25 base stations) to meet the minimum geographic coverage requirements. Constructing a regional narrowband facility would cost approximately $1 million to cover the necessary population and $2.5 million to cover the minimum geographic area. Finally, we estimate that the build- out cost for a nationwide facility would be approximately $1.7 million for population coverage and $12.5 million for geographic area coverage.

to the unique characteristics of narrowband PCS and that should create meaningful incentives for small businesses and businesses owned by minorities and/or women to both bid successfully for available licenses and provide innovative and expeditious service to the public. We believe that installment payments provide a significant means for small businesses to overcome their main barrier to entry: lack of access to financing. And, a 25 percent bidding credit for minority and women-owned businesses together with a tax certificate program addresses the additional obstacles faced by those designated entities. The preferences adopted here reflect our desire to carefully balance the congressional mandate to ensure meaningful access for designated entities, with the goal of ensuring the expeditious delivery of new services and preventing abuses of our preference policies and procedures. We will continue to assess the effectiveness of the measures taken in this proceeding, and will apply any knowledge gained to subsequent auctions for other services.

71. We have decided not to provide bidding credits or other separate preferences for rural telephone companies bidding on narrowband PCS spectrum because we conclude that given the relatively modest build-out costs, such preferences are unnecessary to ensure the participation of rural telephone companies in the provision of this service to rural areas. Moreover, in view of the fact that rural telephone companies may use their existing infrastructure to provide integrated narrowband PCS services in their rural service areas, should they choose to do so, we believe that they will have ample opportunity to participate in narrowband PCS. Rural telephone companies will, however, be eligible for bidding credits if they are owned by women or minorities. They may also qualify for installment payments if they satisfy the eligibility criteria for small businesses.

1. Bidding Credits for Businesses Owned By Women And Minorities

72. In the Second Report and Order we stated that we would consider using bidding credits to encourage participation by designated entities in auctions. Upon consideration and review of the record on this subject, we believe that affording businesses owned by women and minorities a substantial bidding credit for certain specified narrowband PCS licenses is the most cost-effective and efficient means of achieving Congress' objective of "ensuring" the opportunity of these designated entities to participate in the provision of narrowband PCS services. Bidding credits will provide minority and female-owned firms with a significant advantage, which we believe is necessary to achieve this congressional goal, while preserving the advantages of open bidding competition. In effect, the bidding credit will function as a discount on the bid price a minority or female-owned firm will actually have to pay to obtain a license and, thus, will address directly the financing obstacles encountered by these entities. We also believe that a bidding credit in the amount of 25 percent is necessary to provide these designated entities with a significant enough advantage to ensure their ability to compete successfully for some narrowband PCS licenses. Thus, we will make a 25 percent bidding credit available to businesses owned by women and minorities bidding on the following licenses: (1) the nationwide licenses on Channel 5, Channel 8 and Channel 11; (2) all regional licenses on Channel 13 and Channel 17; and (3) all MTA licenses on Channel 22,

Channel 24, and Channel 26. See 47 C.F.R. § 24.129.

73. As discussed in the Second Report and Order, Congress mandated that the Commission "ensure" the opportunity for participation in spectrum-based services by each category of designated entity, including businesses owned by minorities and women. This plain language leads us to conclude that adequate measures must be taken to assure that minority and female-owned businesses have the ability to participate in the provision of services subject to competitive bidding. Moreover, in enacting this legislation, it is clear that Congress was concerned about disseminating licenses to a wide variety of applicants and wanted the Commission to take meaningful steps to accomplish this goal. Indeed, Congress included a requirement in the statute that the Commission report to it in 1997 about, among other things, whether competitive bidding facilitated the introduction of new companies into the telecommunications market and whether designated entities "were able to participate successfully in the competitive bidding process" 47 U.S.C. § 309 (j)(12)(iv).

74. Apart from Congress' directive, we think that ensuring the opportunity for women and minorities to participate in narrowband PCS is important for the telecommunications industry. Companies owned by women and minorities can play a vital role in serving certain geographic areas and other niche markets that may be overlooked by other industry competitors, thus promoting our goal of universal access to telecommunications services. Not only will the industry become more diverse through the adoption of meaningful preferences, but we believe that a much wider customer base will obtain access to innovative technologies. Moreover, studies show that even when minority-owned firms do not locate within urban minority communities, they employ more minorities relative to other companies, thereby promoting our goals of equal employment opportunity, economic growth[41] and community economic development.[42]

75. The record reflects a severe underrepresentation of women and minorities in telecommunications. Indeed, the Commission's Small Business Advisory Committee (SBAC) found only 11 minority firms engaged in the delivery of cellular, specialized mobile radio,

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[41] See e.g., 47 C.F.R. § 21.307, 22.307 (equal employment opportunity rules for common carriers); Implementation of the Commission's Equal Employment Opportunity Rules (Notice of Inquiry)(released April 21, 1994) ("[O]ur EEO rules enhance access by minorities and women to increased employment opportunities, which are the foundation for increasing opportunities for minorities and women in all facets of the communications industry, including participation in ownership. Thus, the rules . . . promote the further development of the broader communications infrastructure.")

[42] See e.g., Banking on Black Enterprise at 3.

radio paging, or messaging services.[43] Likewise, American Women in Radio and Television (AWRT) found that only 24 percent of small communications businesses are owned by women (and when companies without paid employees are excluded, women own less than 15 percent of small communications firms). See Comments of AWRT at 5. Many commenters observe that the factors that preclude minorities and women from effective participation involve access to financing. With regard to women they note that no existing FCC policy provides an incentive for women to enter the communications business, and that access to capital remains the biggest obstacle women business owners must face. Similarly, the SBAC states that minorities frequently do not or cannot use traditional sources of financing. Citing the U.S. Senate amicus brief in Metro Broadcasting, Inc. v. FCC, 110 S.Ct. 2997 (1990), the SBAC further asserts that "spectrum for radio facilities was first allocated at a time when undisguised discrimination in education, employment opportunities, and access to capital excluded minorities from all but token participation.'" The SBAC concludes that minorities were impeded from successfully competing for licenses when they were first awarded and, due to systematic barriers to technical training and employment opportunities, this situation has continued over time.[44]

76. Given this history of underrepresentation of minorities and women in telecommunications and the inability of these groups to access financing, we find that the best way we can accomplish these statutory mandates is to provide bidding credits exclusively to minority and female-owned businesses. The record demonstrates that women and minorities face barriers to entry not encountered by other firms, including other designated entities, and it is, therefore, appropriate and necessary that we provide them with a substantial bidding advantage.[45] In other contexts, Congress has recognized that the use of preferences in the licensing process can be necessary to remedy underrepresentation by minorities. For example, in 1982, Congress mandated the grant of a "significant preference" to minority applicants participating in lotteries for spectrum-based services. 47 U.S.C. § 309(i)(3)(A). And, in 1988, Congress attached a provision to the FCC appropriations legislation, which precluded the Commission from spending any appropriated funds to examine or change its minority broadcast preference policies.[46] Absent such measures targeted specifically to women and minorities, it would be virtually impossible to assure that these groups achieve any meaningful

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[43] Report of the FCC Small Business Advisory Committee to the FCC Regarding Gen. Docket No. 99-314 (Sept. 15, 1993), reprinted at 8 FCC Rcd 7820, 7827 (1993) (SBAC Report).

[44] Id.

[45] See e.g., Comments of AWRT at 4-7; Call-Her at 5; Cook inlet at 38-39.

[46] Continuing Appropriations Act for Fiscal Year 1988, Pub.L. 100-102, 101 Stat. 1329-31.

measure of opportunity for actual participation in the provision of the services in question.[47]

77. We also agree with Call-Her that even comparatively large businesses owned by women and minorities face discriminatory lending practices and other discriminatory barriers to entry and, therefore, eligibility for bidding credits should not be limited to small firms. The narrowband auctions in question present a unique licensing opportunity that will allow these historically disadvantaged groups to gain a foot-hold in the communications industry.[48] ur goal is to encourage businesses owned by minorities and women to provide viable, sustained competition to incumbent providers and larger businesses. Therefore, we have accorded preferences to minority and women-owned firms regardless of their size. This approach is consistent with our auction rules and will further the statutory mandate to ensure participation by designated entities.[49]

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[47] In the Second Report and Order, we addressed the constitutionality of gender and race-based preferences and concluded that the proper standard of scrutiny to be employed in this context is the "intermediate scrutiny" standard used in the Metro case. 110 S. Ct. 2997. We further concluded that under such a standard, preferences for women and minority-owned businesses are constitutionally permissible. We recognize that Metro's standard of review applies to measures approved by Congress. 110 S. Ct. at 3008-09. As noted above, the bidding credits in question here were expressly approved and, indeed, are required to achieve the statutory goals. See 47 U.S.C. § 309(j)(4)(D) (The Commission must "consider the use of tax certificates, bidding preferences, and other procedures" to ensure the participation of "small businesses, rural telephone companies, and businesses owned by members of minority groups and women."). Moreover, a number of commenters have argued that PCS licensees will be able to control the content of the transmissions carried on their facilities and that such transmissions can be analogous to media of mass communications. See e.g., Comments of UCC at 10-12; AWCC at 7-8; and ex parte filing of Frank Washington, April 26, 1994. To the extent this control exists, or is later developed, with regard to narrowband PCS, the preferences we adopt for minorities and women would be consistent with the important governmental interest identified in Metro: increasing minority ownership to encourage diversity in the provision of content.

[48] Because of the discrimination suffered by minorities and women as contractors and subcontractors in the telecommunications industry, see MBELDEF Study, this unique chance to enter the field as primary telecommunications providers, competing with, rather than dependent upon, other providers, is especially important.

[49] In the Second Report and Order, we recognized that ensuring the participation of only bona fide, qualified bidders in our auctions is an important aspect of complying with the competitive bidding statute's requirement that we promote a competitive marketplace, See e.g., 47 U.S.C. sec. 309(j)(3)(B). Thus we adopted a requirement that auction participants tender a substantial upfront payment, and we declined to create a general exception to this rule for designated entities. See Second Report and Order at ¶¶171, 186. Likewise, in designing preferences for women and minority-owned businesses, we want to ensure that

78. Congress clearly intended that businesses owned by minorities and women must be given the opportunity to participate in the provision of spectrum-based services independent of their status as small businesses. The plain language of Section 309(j)(4)(D) states that the Commission "shall . . . ensure" the opportunity for participation by "small businesses . . . and businesses owned by members of minority groups and women . . .." (emphasis added). If Congress had intended to limit the directive of Section 309(j)(4)(D) only to small businesses, no need would have existed to mention separately minorities and women. Moreover, Section 309(j)(4)(D) was added at Conference, and the Conference Report does not offer any suggestion that, to come within the section's purview, businesses owned by minorities or women must be small businesses. In contrast, and as we discussed more fully in the Second Report and Order , the legislative history of Section 309(j)(4)(A), relating to installment payments, expressly indicates that the provision was intended only to promote financial assistance for small businesses.[50] Accordingly, we shall interpret Section 309(j)(4)(D) in accordance with its plain language and will not limit its application to small businesses.[51]

79. In determining the appropriate amount of the bidding credit we considered several factors. First, our analysis of the market shows that, because of existing infrastructure and economies of scope, incumbent providers will have the ability to bid more than first-time operators. This is because, in most cases, incumbent providers, including extant wireless operators, telephone companies and cable operators, are able to make use of their existing infrastructure to provide PCS services.[52] The record demonstrates that very few incumbent

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those companies that have the greatest ability to remain viable in the long run will have incentives to participate in the auction process. See Banking on Black Enterprise at 13 (government assistance should accrue to more capable black entrepreneurs, who are most likely to contribute to the goal of economic development).

[50] See Second Report and Order at ¶¶ 234-236.

[51] Even though small businesses are also mentioned in section 309(j)(4)(D), we do not believe bidding credits for small businesses are appropriate for narrowband PCS auctions. As a practical matter, due to the substantial capital necessary to construct a nationwide narrowband PCS system, most small businesses do not have the wherewithal to construct and operate the proposed systems. Accordingly, provisions designed to encourage participation by small entities in nationwide narrowband PCS service would be unlikely to result in the expeditious provision of new service to the public and therefore would be contrary to one of the principal objectives of the statutory auction provisions. Moreover, as to regional, MTA and BTA licenses, small businesses will be entitled to installment payments, which we believe will be sufficient to ensure their participation.

[52] Reed, David P., *Putting it all Together: The Cost Structure of Personal Communications Services*, OPP Working Paper 28, November 1992. Although this study examined the broadband PCS market, we expect that a similar incumbency advantage exists in

providers are minorities or women, so that a substantial discount is necessary to put these designated entities on equal footing with incumbents.[53] Several commenters indicate that a bidding credit of 25 percent or more was necessary to ensure the opportunity of businesses owned by women and minorities to participate in auctions.[54] Moreover, in the broadcast context, we held that licensees can transfer their stations to minorities in distress sales provided that the price is no more than 75 percent of market value.[55] This policy is based upon our finding that 25 percent is an appropriate discount to eliminate financial entry barriers for minority-owned companies seeking to become broadcast licensees. Likewise, we believe that a discount on the bid price in this amount will adequately ensure participation by a wide variety of minority and female-owned firms in narrowband PCS auctions and service provision. That being said, we note that this number is based also on our assessment of the capital entry requirements of the narrowband PCS service.[56] As discussed, we think that a 25 percent bidding credit is sufficient to ensure minority and female entry. It is not so substantial, however, as to foster participation by firms that are not otherwise financially capable of building-out a narrowband PCS network. In this regard, we emphasize that the financing requirements of other spectrum-based services may necessitate use of a different figure to provide the proper assurances. Therefore, we will continue to examine this issue on a service-by-service basis. We will also monitor carefully the effectiveness of the 25 percent bidding credit in the narrowband PCS auctions and continually assess whether it is achieving the goal of ensuring that minority and women-owned firms participate successfully in auctions for this service.

80. To prevent unjust enrichment by women and minorities trafficking in licenses acquired through the use of bidding credits, we will impose a forfeiture requirement on transfers of such licenses to entities that are not owned by women or minorities.[57] Female and minority-owned businesses seeking to transfer a license to an entity that is not owned by women or minorities will be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the

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the narrowband PCS market.

[53] See e.g., Comments of AWCC at 13-14; Cook Inlet at 10-15; and UCC at 7-10.

[54] See comments of AIDE at 7; Devsha at 5; NABOB at 10-11; and ex parte filing of Personal Communications Network Services of New York at 2-3, each suggesting a bidding credit of 25 percent. Rocky Mountain Telephone proposes a 50 percent bidding credit. Comments of Rocky Mountain Telephone at 16. And Richard Vega proposes a 100 percent bidding credit for certain designated entities. Comments of Richard Vega at 7.

[55] See Lee Broadcasting Corp., 76 FCC 2d 462 (1980).

See supra n. 40.

[57] See Second Report and Order at ¶ 258.

license was awarded, before transfer will be permitted. The amount of the penalty will be reduced over time so that a transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit; in year three of the license term the penalty will be 75 percent; in year four the penalty will be 50 percent and in year five the penalty will be 25 percent, after which there will be no penalty. Furthermore, we have adopted strict eligibility criteria to ensure that only legitimate minority and women-owned firms are able to take advantage of bidding credits. See Second Report and Order at ¶¶ 277-278. In addition, to further ensure that our rules are as narrowly tailored as possible, while still fulfilling the statutory goal, we will prohibit publicly-traded companies from taking advantage of the bidding credits.

2. Tax Certificates

81. Congress instructed the Commission to consider the use of tax certificates to help ensure designated entity participation in spectrum-based services. See 47 U.S.C. § 309(j)(4)(D). In the Second Report and Order we observed that tax certificates could be useful as a means of attracting investors to designated entity enterprises and to encourage licensees to assign or transfer control of licenses to designated entities in post-auction transactions. We stated further that we would examine the feasibility of using this measure in subsequent service-specific auction rules. Second Report and Order at ¶ 251. After further consideration of this matter, we believe that tax certificates would be an appropriate tool to assist minority and female-owned businesses to attract start-up capital from non-controlling investors. In addition, we believe that tax certificates will give licensees the incentive to assign or transfer their authorizations to such entities in post-auction sales, thereby providing added assurance that minority and women-owned entities will have the opportunity to participate in narrowband PCS services. Accordingly, we will issue tax certificates to non-controlling initial investors in minority and female-owned narrowband PCS applicants, upon the sale of their non-controlling interests. We will also issue tax certificates to narrowband PCS licensees who assign or transfer control of their licenses to minority and women-owned entities.

82. As stated previously, the record reveals that women and minorities face barriers to entry not encountered by other designated entities. In particular, they have an especially difficult time accessing capital and, as a result, are severely underrepresented in the telecommunications industry. Together with the other preferences we adopt today, tax certificates should help to ensure the participation of minority and female-owned businesses in narrowband PCS services. This measure will make it easier for these designated entities to attract start-up capital because investors will know that they can defer taxes on any gains made when their interests are sold. In addition, tax certificates will provide incentives to licensees to seek out minority and female buyers in after-market sales because the licensees will be able to defer taxes on profits made in the sale.

83. We have used tax certificates over the years to encourage broadcast licensees and

cable television operators to transfer their stations and systems to minority buyers.[58] We also have granted tax certificates to shareholders in minority-controlled broadcast or cable entities who sell their shares, when such interests were acquired to assist in the financing of the acquisition of the facility.[59] These broadcast and cable tax certificates are issued pursuant to the Internal Revenue Code, 26 U.S.C. § 1071. While Congress' goal in authorizing tax certificates under Section 309(j)(4)(D) of the Act is somewhat different, and focuses on ensuring the opportunity for designated entities to participate in auctions and spectrum-based services, we think that it will be an equally valuable program. Issuance of tax certificates to investors and licensees that sell to minorities and women will augment the bidding credits preference, and together the measures should increase the ability of these entities to access financing, thus ensuring their opportunity to participate in narrowband PCS auctions and services.

84. In implementing this program, we will borrow from our existing tax certificate program and grant tax certificates, upon request, that will enable the licensees and investors meeting the criteria outlined here to defer the gain realized upon a sale either by: (1) treating it as an involuntary conversion under 26 U.S.C. § 1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property, or both. Tax certificates will be available to initial investors in minority and female-owned businesses who provide "start-up" financing, which allows these businesses to acquire licenses at auction or in the aftermarket, and those investors who purchase interests within the first year after license issuance, which allows for the stabilization of the designated entities' capital base. Also, in accordance with our existing policy, to be eligible for a tax certificate, such investor transactions must not reduce minority or female ownership or control in the entity below 50.1 percent. The definition of a minority or female-owned entity is set forth in the Second Report and Order and, with regard to our investor tax certificate policy, the entity in which the investment is made must satisfy that definition at the time of the original investment as well as after the investor's shares are sold. For after-market sales, tax certificates will only be issued to licensees who sell to entities that meet that definition. Tax certificates will be granted only upon completion of the sale, although parties can request a declaratory ruling from the Commission regarding the tax consequences of prospective transactions.

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[58] See Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982)("1982 Policy Statement"); see also Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978). We have also employed tax certificates as a means of encouraging fixed microwave operators to relocate from spectrum allocated to emerging technologies. See Third Report and Order and Memorandum Opinion and Order, ET Docket No. 92-9, 8 FCC Rcd 6589 (1993).

[59] 1982 Policy Statement, 92 FCC 2d at 855-58.

85. As with our other tax certificate policies, we are concerned about avoiding "sham" arrangements to obtain tax certificates and, pursuant to Section 309(j)(4)(E), thus adopt measures to prevent unjust enrichment. First, we intend to enforce strictly the definitions adopted in the Second Report and Order and will carefully review investment and purchase arrangements to ensure that 50.1 percent control and equity by minorities and women was, and will be, maintained. Second, like our existing tax certificate program,[60] we will impose a one-year holding requirement on the transfer or assignment of narrowband PCS licenses obtained through the benefit of tax certificates. We believe that the rapid resale of such licenses at a profit would subvert our goal of ensuring the opportunity to participate by minority and women-owned businesses, unless the buyer itself is a minority or female-owned business. The well-established one-year holding period would prevent this type of unjust enrichment. While this restriction will not be applied to assignments or transfers to qualified minority and female-owned businesses, assignees and transferees obtaining licenses pursuant to this exception will be subject to the one-year holding requirement.

3. Installment Payments

86. In this Report and Order, we adopt installment payments for small businesses bidding for any of the BTA, MTA or regional narrowband licenses. The record in this proceeding indicates that the most significant barrier for small business participation in the auctioning of narrowband PCS spectrum will be access to adequate private financing to ensure their ability to compete against larger firms in the competitive bidding process.[61] In the Second Report and Order, we concluded that installment payments are an effective means to address the inability of small businesses to obtain financing and will enable these entities to compete more effectively for the auctioned spectrum. We also determined that small businesses eligible for installment payments would only be required to pay half of the down payment (10 percent of the winning bid, as opposed to 20 percent) five days after the auction closes, with the remaining 10 percent payment deferred until five days after grant of the license. Finally, we indicated that installment payments should be made available to designated entities at an interest rate equal to the rate for U.S. Treasury obligations. See Second Report and Order at ¶¶ 236-240.

87. Based on our review of the record, we conclude that installment payments are an appropriate preference for small businesses bidding for the BTA, MTA or regional narrowband licenses. We have limited eligibility for installment payments to small businesses because we believe that our system of preferences should be designed to match the particular needs and characteristics of the eligible recipients. In this respect, installment payments will

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[60] See Amendment of Section 73.3597 of the Commission's Rules, Memorandum Opinion and Order, 99 FCC 2d 971, 974 (1985).

[61] See e.g., Comments of SBA at 10-23; Palmer Communications at 3; NTIA at 27.

provide financial assistance to all small businesses, including small businesses owned by women and minorities and rural telephone companies that meet the small business definition. By allowing payment in installments, the government is in effect extending credit to licensees, thus reducing the amount of private financing needed prior to the auction. Such low cost government financing will promote participation by small businesses, which, because of their size, lack access to capital needed to participate in new spectrum opportunities such as narrowband PCS. We have decided to limit installment payments to those small businesses bidding on smaller spectrum blocks, specifically the BTA, MTA and regional licenses. This will deter potential abuse of the installment payment option by large firms and ensure that the public receives the maximum value for the use of spectrum. BTA, MTA and regional narrowband licenses are appropriately sized for development by bona fide small businesses. We estimate that the cost to build-out these licenses to meet the minimum population coverage requirements will be between $50,000 and $1 million. See supra n. 40. By contrast, the nationwide narrowband licenses will require capital commitments that are more suitable to large firms. Accordingly, we believe that application of installment payments to bidding on nationwide narrowband licenses is inappropriate to promote economic opportunity for small businesses. Installment payments for licenses of this magnitude may create incentives for large firms to create small business "fronts" to take advantage of low cost government financing or may result in payment defaults, which would prevent recovery for the public of the value of the spectrum and would hinder rapid deployment of service to the public.

88. The installment payment option will enable all small businesses to pay the full amount of their winning bid in installments (less the upfront payment, which must be paid in full, and the down payment, half of which is due five days after the auction closes and the other half five days after the application is granted). Generally, the terms and conditions of the installment payments will be the same as those provided in the general rules -- interest charges will be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations. Payments of interest only will be due for the first two years. Principal and interest payments will be amortized over the remaining years of the license. Timely payment of all installments will be a condition of the license grant and failure to make such timely payment will be grounds for revocation of the license.[62]

89. To ensure that large businesses do not become the unintended beneficiaries of preferences meant for small firms, we will use the unjust enrichment provisions adopted in the Second Report and Order applicable to installment payments. Specifically, if a small business making installment payments seeks to transfer a license to a non-small business entity during the term of the license, we will require payment of the remaining principal balance as a condition of the license transfer. Second Report and Order at ¶ 263.

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[62] As described in the Second Report and Order, the Commission may, on a case-by-case basis permit a three to six month grace period within which the licensee may seek a restructuring of the payment plan.

VII. CONCLUSION

90. We believe that the competitive bidding rules we adopt for narrowband PCS, in conjunction with our spectrum allocation rules, will promote the public policy objectives set forth by Congress. Our rules will encourage economic growth and enhance access to narrowband PCS services for consumers, producers, and new entrants. Structuring our rules to promote opportunity and competition should result in the rapid implementation of new PCS services and encourage efficient spectrum use. The preferences we adopt for small businesses and businesses owned by women and minorities will help to promote access to narrowband PCS services by ensuring that these groups will genuine opportunities to participate in the auctions and in provision of service.

VIII. PROCEDURAL MATTERS AND ORDERING CLAUSES

A. Final Regulatory Flexibility Analysis

91. 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:

92. 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 narrowband PCS licenses. 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.

93. 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.

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

B. Ordering Clauses

95. Accordingly, IT IS ORDERED THAT Part 24 of the Commission's Rules is amended as set forth in the attached Appendix.

96. IT IS FURTHER ORDERED that the rules changes made herein WILL BECOME EFFECTIVE 30 days after their publication in the Federal Register. 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

William F. Caton
Acting Secretary

APPENDIX

RULES

Parts O and 24 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

Part O - Commission Organization

1. The authority citation for Part O continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.91 is amended by adding a new paragraph (n) to read as follows:

§ 0.91 Functions of the Bureau

*   *   *   *   *

(n) Develops, in coordination with the Office of Plans and Policy, policies for the selection of licenses from mutually exclusive applicants in the Common Carrier Service subject to competitive bidding; issues Public Notices announcing auctions for Common Carrier Service Licenses; specifies the licenses to be auctioned; the deadlines for filing short-form applications, filing fees, and submission of upfront payments; the time and place of the auction; the method of competitive bidding to be used; competitive bidding procedures including, but not limited to, designated entity preferences, applicable bid submission procedures, upfront payment requirements, activity rules, stopping rules, and bid withdrawal procedures.

3. The authority citation for Part 24 continues to read as follows:

AUTHORITY: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

4. Section 24.10 is amended to read as follows:

Section 24.10 Scope.

This subpart contains some of the procedures and requirements for filing applications for licenses in the personal communications services. You should also consult Subparts F and G. Other Commission rule parts of importance that may be referred to with respect to licensing and operation of radio services governed under this part include Parts 0, 1, 2, 5, 15, 17 and 20.

5. Section 24.129 is amended to read as follows:

Section 24.129 Frequencies.*

The following frequencies are available for narrowband PCS. All licenses on channels indicated with an (**) will be eligible for bidding credits as set forth in Section 24.309(b) of this Part if competitive bidding is used to award such licenses.

(a) Eleven frequencies are available for assignment on a nationwide basis as follows:
(1) Five 50 kHz channels paired with 50 kHz channels:

Channel 1:	940.00-940.05 and 901.00-901.05 MHz;
Channel 2:	940.05-940.10 and 901.05-901.10 MHz;
Channel 3:	940.10-940.15 and 901.10-901.15 MHz;
Channel 4:	940.15-940.20 and 901.15-901.20 MHz; and,
Channel 5:	940.20-940.25 and 901.20-901.25 MHz.**

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 6:	930.40-930.45 and 901.7500-901.7625 MHz;
Channel 7:	930.45-930.50 and 901.7625-901.7750 MHz; and,
Channel 8:	930.50-930.55 and 901.7750-901.7875 MHz;**

(3) Three 50 kHz unpaired channels:

Channel 9:	940.75-940.80 MHz;
Channel 10:	940.80-940.85 MHz; and,
Channel 11:	940.85-940.90 MHz.**

(b) Six frequencies are available for assignment on a regional basis as follows:
(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 12:	940.25-940.30 and 901.25-901.30 MHz; and,
Channel 13:	940.30-940.35 and 901.30-901.35 MHz.**

(2) Four 50 kHz channels paired with 12.5 kHz channels:

Channel 14:	930.55-930.60 and 901.7875-901.8000 MHz;
Channel 15:	930.60-930.65 and 901.8000-901.8125 MHz;
Channel 16:	930.65-930.70 and 901.8125-901.8250 MHz; and,
Channel 17:	930.70-930.75 and 901.8250-901.8375 MHz.**

(c) Seven frequencies are available for assignment on a MTA basis as follows:
(1) Two 50 kHz channels paired with 50 kHz channels:

Channel 18:	940.35-940.40 and 901.35-901.40 MHz; and,
Channel 19:	940.40-940.45 and 901.40 -901.45 MHz.**

(2) Three 50 kHz channels paired with 12.5 kHz channels:

Channel 20:	930.75-930.80 and 901.8375-901.8500 MHz;
Channel 21:	930.80-930.85 and 901.8500-901.8625 MHz; and,
Channel 22:	930.85-930.90 and 901.8625-901.8750 MHz.**

(3) Two 50 kHz unpaired channels:

Channel 23:	940.90-940.95 MHz; and,
Channel 24:	940.95-941.00 MHz.**

(d) Two 50 kHz channels paired with 12.5 kHz channels are available for assignment on a BTA basis:

Channel 25:	930.90-930.95 and 901.8750-901.8875 MHz; and,
Channel 26:	930.95-931.00 and 901.8875-901.9000 MHz.

*Operations in markets or portions of markets which border other countries, such as Canada and Mexico, will be subject to on-going coordination arrangements with neighboring countries.

6. Section 24.130 is amended to read as follows:

* * * * *

(b) The following four 12.5 kHz unpaired channels are available for assignment on a MTA basis:

A: 901.9000-901.9125 MHz;
B: 901.9125-901.9250 MHz;

C: 901.9250-901.9375 MHz; and
D: 901.9375-901.9500 MHz.

(c) The following four 12.5 kHz unpaired channels are available for assignment on a BTA basis:

E: 901.9500-901.9625 MHz;
F: 901.9625-901.9750 MHz;
G: 901.9750-901.9875 MHz; and
H: 901.9875-902.0000 MHz.

7. Part 24 is amended by adding a new Subpart F to read as follows:

Subpart F - Competitive Bidding Procedures for Narrowband PCS

24.301 Narrowband PCS Subject to Competitive Bidding. Mutually exclusive initial applications to provide narrowband PCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 C.F.R. Part 1, Subpart Q, will apply unless otherwise provided in this part.

24.302 Competitive Bidding Design for Narrowband PCS Licensing. (1) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide narrowband PCS service:

(A) Single round sealed bid auctions (either sequential or simultaneous)

(B) Sequential oral auctions

(C) Simultaneous multiple round auctions

The Commission may design and test alternative procedures. The Commission will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(2) The Commission may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of licenses, in addition to bids on individual licenses. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount. Combinatorial bidding may be used with any type of auction design.

(3) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

24.303 Competitive Bidding Mechanisms.

(1) Sequencing. The Commission will establish and may vary the sequence in which narrowband PCS licenses will be auctioned.

(2) Grouping. In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(3) Reservation Price. The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(4) Minimum Bid Increments. The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(5) Stopping Rules. The Commission may establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(6) Activity Rules. The Commission may establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted five (5) waivers of such rule during the course of a single auction.

24.304 Withdrawal, Default and Disqualification Penalties. (1) When the Commission conducts a simultaneous multiple round auction pursuant to § 24.104 (b)(1)(C), the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(A) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(B) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in subsection (1) plus an additional penalty equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(2) When the Commission conducts single round sealed bid auctions or sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(3) In the case of single round bidding for narrowband PCS licenses:

(a) If a bid is withdrawn before the Commission releases the initial Public Notice announcing the winning bidder(s), no bid withdrawal penalty will be assessed.

(b) If a bid is withdrawn after the Commission releases the initial Public Notice announcing the winning bidder(s), the bid withdrawal penalty will be equal to the difference between the high bid amount and the amount of the next highest valid bid. A bid will be considered valid for this purpose if the bidder has not already been designated the winning bidder on more licenses than it is permitted to be awarded. Losing bidders will only be subject to this bid withdrawal penalty for a period of 30 days after the Commission releases the initial Public Notice announcing the winning bidders.

(4) In the case of oral sequential bidding for narrowband PCS licenses:

(a) If a bid is withdrawn before the Commission has declared the bidding to be closed for the license bid on, no bid withdrawal penalty will be assessed.

(b) If a bid is withdrawn after the Commission has declared the bidding to be closed for the license bid on, the bid withdrawal penalty of section 1.2104(g) and subsections (1)(B) and (2) will apply.

24.305 Bidding Application (FCC Form 175 and 175-S Short-Form). (1) All applicants for initial provision of narrowband PCS service must submit applications on FCC Forms 175 and 175-S pursuant to the procedures set forth in § 1.2105 of part 1 of this Chapter. The Commission will issue a Public Notice announcing the date of a narrowband PCS auction, the licenses which are to be auctioned, and the date on or before which applicants intending to participate in an upcoming narrowband PCS auction must file their applications in order to be eligible for that auction. The Public Notice will also contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed.

24.306 Submission of Upfront Payments and Down Payments. (1) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions bidders will be required to submit an upfront payment pursuant to the procedures set forth in Section 1.2106 of part 1 of this Chapter. (2) winning bidders in an auction must submit a down payment to the Commission in accordance with the procedures set forth in Section 1.2107 (a) and (b) of part 1 of this Chapter.

24.307 Long Form Applications. Winning bidders will be required to submit long form applications on FCC form 401, as modified, within ten (10) business days after being notified that they are the winning bidder. Applications on FCC Form 401 shall be submitted pursuant to the procedures set forth in Subpart G and Section 1.2107 (c) and (d) of part 1 this Chapter and any associated Public Notices. Only auction winners will be eligible to file applications on FCC Form 401 for initial narrowband PCS licenses in the event of mutual exclusivity between applicants filing Form 175. Winning bidders need not complete Schedule B to Form 401.

24.308 License Grant, Denial, Default, and Disqualification. (1) Winning Bidders are required to pay the balance of their winning bid in a lump sum payment within five (5) businesses days following the following the award of the license. Grant of the license will be conditioned upon full an timely payment of the winning bid amount. (2) A bidder who withdraws its bid, defaults on a payment or is disqualified will be subject to the penalties specified in Section 1.2109 of this Section.

24.309 Designated Entities (1) Designated entities. Designated entities entitled to preferences in the narrowband PCS service are small businesses and businesses owned by members of minority groups and/or women as defined in Section 1.2110 (b) of this Chapter.

(A) Installment payments. Small businesses, including small businesses owned by women and/or minorities, will be eligible to pay the full amount of their winning bid on any regional, MTA or BTA license in installments over the term of the license pursuant to the terms set forth in Section 1.2110(d) of this Chapter.

(B) Bidding Credits. Businesses owned by women and minorities, including small businesses owned by women and/or minorities will be eligible for a twenty-five percent (25) bidding credit when bidding on the following licenses: the nationwide licenses on Channel 5, Channel 8 and Channel 11; (2) all regional licenses on Channel 13 and Channel 17; and (3) all MTA licenses on Channel 22, Channel 24, and Channel 26. See 47 C.F.R. § 24.129. The bidding credit will reduce by 25 percent the bid price that businesses owned by women and/or minorities will be required to pay to obtain a license. The licenses that will be eligible for bidding credits are indicated by an (**) in section 24.129 above.

(C) Tax Certificates. Any initial investor in a business owned by minorities and/or women and who provides "start-up" financing, which allows such business to acquire a narrowband PCS license(s), and any investor who purchases an ownership interest in a narrowband PCS licensee owned by minorities and/or women within the first year after license issuance, which allows for the stabilization of the entity's capital base, may, upon the sale of such investment or interest, request from the Commission a tax certificate, so long as such investor transaction does not reduce minority or female ownership or control in the entity below 50.1 percent. Any narrowband PCS licensee who assigns or transfers control of its license to a business owned by minorities and/or women may request that the Commission issue it a tax certificate.

(D) Unjust Enrichment. Designated entities using installment payments, bidding credits or tax certificates to obtain a narrowband PCS license will be subject to the following unjust enrichment provisions:

(1) If a small business paying for a narrowband PCS license in installment payments seeks to transfer a license to a non-small business entity during the term of the license, the remaining principal balance must be repaid as a condition of the license transfer.

(2) Female and minority-owned businesses seeking to transfer a license to an entity that is not owned by women or minorities will be required 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 will be permitted. The amount of this penalty will be reduced over time as follows: a transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit; in year three of the licenses term the penalty will be 75 percent; in year four the penalty will be 50 percent and in year five the penalty will be 25 percent, after which there will be no penalty.

(3) Any business owned by minorities and or women that obtains a narrowband PCS license through the benefit of tax certificates shall not assign or transfer control of its license within one year of its license grant date. If the assignee or transferee is a business owned by minorities and or women, this paragraph shall not apply; Provided, however, that the assignee or transferee shall not assign or transfer control of the license within one year of the grant date of the assignment or transfer.

8. Part 24 is amended by adding a new Subpart G to read as follows:

SUBPART G-Interim Application, Licensing and Processing Rules for Narrowband PCS

Sec. 24.403 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

Sec. 24.404 Eligibility.

(a) General. Authorizations will be granted upon proper application if:

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under those laws, including Sections 24.101 and 24.12;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien ownership.

A narrowband PCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any corporation organized under the laws of any foreign government.

(3) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

A Narrowband PCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.