

preceding years not in excess of \$2 million. 13 C.F.R. § 121.601.<sup>146</sup> In the Second Report and Order, we noted, however, that, in certain telecommunications industry sectors, this limit may not be high enough to encompass those entities that, while needing the assistance provided by installment payments, have the financial wherewithal to construct and operate the systems. Therefore we indicated that, on a service specific basis, we might adjust this definition upward to accommodate capital intensive telecommunications businesses. See Second Report and Order at ¶ 267.

173. Many commenters, including the Chief Counsel for Advocacy of the SBA, argue that the SBA net worth/net revenue definition is too restrictive and will exclude businesses of sufficient size to survive, much less succeed, in the competitive broadband PCS marketplace. The SBA's Chief Counsel for Advocacy and the Suite 12 Group advocate adoption of a gross 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 for Advocacy recommends that the revenue standard be raised to include firms that (together with affiliates) have less than \$40 million in gross revenues. Similarly, Suite 12 suggests a \$75 million in annual sales threshold.<sup>147</sup> As another option, the SBA's Chief Counsel for Advocacy suggests that the Commission consider a higher revenue ceiling or adopt different size standards for different telecommunications markets.<sup>148</sup>

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<sup>146</sup> The SBA has recently changed its net worth/net income standard as it applies to its Small Business Investment Company (SBIC) Program. See 59 Fed. Reg. 16953, 16956 (April 8, 1994). The new standard for determining eligibility for small business concerns applying for financial and/or management assistance under the SBIC program was increased to \$18 million net worth and \$6 million after-tax net income. 15 C.F.R. § 121.802(a)(3)(i). The change in this size standard was attributable to an adjustment for inflation and changes in the SBIC program "designed to strengthen and expand the capabilities of SBICs to finance small businesses so that they can increase their contribution to economic growth and job creation." 59 Fed. Reg. at 16955. However, Section 121.601, which was the SBA size standard cited in the Notice and the Second Report and Order, has not been modified by the SBA. For purposes of our generic competitive bidding rules, in consultation with the SBA, we will reexamine our \$6 million net worth/\$2 million annual profits definition in light of the SBA's recent action.

<sup>147</sup> Many other commenters set forth their recommendations on the appropriate small business definition for broadband PCS preferences. 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 million in annual revenues).

<sup>148</sup> Some parties recommend using the SBA's alternative 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, including the SBA's Chief Counsel for Advocacy, argue, however, that adoption of this alternative SBA definition would open up a huge loophole in the designated entity eligibility criteria.

174. We expect broadband PCS to be a highly capital intensive business requiring bidders to expend tens of millions of dollars to acquire a license and construct a system even in the smaller broadband PCS markets. Thus, we believe that our current small business definition is overly restrictive because it would exclude most businesses possessing the financial resources to compete successfully in the provision of broadband PCS services. Accordingly, we modify our small business definition for broadband PCS auctions to ensure the participation of small businesses with the financial resources to compete effectively in an auction and in the provision of broadband PCS services.

175. There is substantial support in the record for a \$40 million gross revenue standard. For example, the SBA recommends that for broadband PCS, a small business be defined as one whose average annual gross revenues for its past three years do not exceed \$40 million.<sup>149</sup> It states that this definition isolates those companies that have significantly greater difficulty in obtaining capital than larger enterprises. At the same time, the SBA contends that a company with \$40 million in revenue is sufficiently large that it could survive in a competitive wireless communications market.<sup>150</sup> Similarly, the SBA Chief Counsel for Advocacy asserts that a \$40 million threshold will allow participation by firms "of sufficient size to meet demands in almost all small markets and some medium-size markets without significant outside financial assistance."<sup>151</sup> For purposes of broadband PCS, we shall therefore define a small business as any firm, together with its attributable investors and affiliates, with average gross revenues for the three preceding years not in excess of \$40 million.<sup>152</sup> In

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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 mandated by Congress in the Budget Act. See, e.g., comments of SBA Chief Counsel for Advocacy at 8, LuxCel Group, Inc. at 4, Suite 12 Group at 10-11.

<sup>149</sup> Ex parte filing of U.S. Small Business Administration, June 24, 1994.

<sup>150</sup> Id.

<sup>151</sup> Comments of SBA Office of Advocacy at 10. Cf. comments of Iowa Network and Telephone Electronics Corporation (advocating a \$40 million annual revenue criterion for telephone companies) and reply comments of North American Interactive Partners and Kingwood Associates (advocating \$40 million gross-revenue criterion for applicants for the fifty most-populous BTAs, based on estimated average build-out cost).

<sup>152</sup> The establishment of small business size standards is generally governed by Section 3 of the Small Business Act of 1953, as amended, 15 U.S.C. § 642 (a). Recent amendments to that statute provide that small business size standards developed by Federal agencies must be based on the average gross revenues of such business over a period of not less than three years. See Pub. L. No. 102-366, Title II, § 222 (a), 106 Stat. 999 (1992); 15 U.S.C. § 632 (a) (2) (B) (ii).

addition, an applicant will not qualify as a small business if any one attributable investor in, or affiliate of, the entity has \$40 million or more in personal net worth.<sup>153</sup>

176. For purposes of determining whether an entity qualifies as a small business, we will follow the control group and attribution rules set forth with regard to eligibility to bid in the entrepreneurs' blocks. In particular, winning bidders are required to identify on their long-form applications a control group that holds at least 50.1 percent of the voting interests of the applicant (and otherwise has de facto control) and owns at least a 25 percent equity stake. The gross revenues of each member of the control group and each member's affiliates will be counted toward the \$40 million gross revenue threshold, regardless of the size of the member's total interest in the applicant. The \$40 million personal net worth limitation will also apply to each member of the control group. We will not consider the gross revenues or personal net worth of any other investor unless the investor holds 25 percent or more of the outstanding passive equity in the applicant, which, as defined above, includes as much as five percent of the voting stock in a corporate applicant.

177. We also adopt the more relaxed attribution standard set forth in the entrepreneurs' blocks section with regard to investors in minority and female-owned applicants. Specifically, we will not consider the gross revenues or personal net worth of a single passive investor in a minority or female-owned small business unless the investor holds in excess of a 49.9 percent passive interest (which includes as much as five percent of a corporate applicant's voting stock), provided the women or minority control group maintains at least 50.1 percent of the equity and, in the case of a corporate applicant, at least 50.1 percent of the voting stock.<sup>154</sup> We believe that such revenue attribution will ensure that only bona fide small businesses are able to take advantage of the special provisions we have adopted, but will allow those businesses to attract sufficient equity capital to be truly viable contenders in the PCS industry.

178. These financial eligibility rules will continue to apply throughout the license term. Thus, firms that received bidding credits and "enhanced" installment payments based on their small business status will be subject to the repayment penalties outlined above, if an investor subsequently purchases an "attributable" interest (e.g. 25 percent or more of the firm's equity) and, as a result, the gross revenues of the firm exceed the \$40 million gross

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<sup>153</sup> Unlike our eligibility criteria to bid in the entrepreneurs' blocks, we do not adopt a total assets standard here. We believe that the \$40 million gross revenue cap for small businesses, together with the \$500 million total asset threshold we set for entry into the entrepreneurs' blocks in the first instance, should be sufficient to ensure that only bona fide small businesses are able to take advantage of the measures intended for those designated entities.

<sup>154</sup> See supra ¶ 160.

revenues cap, or the personal net worth of the investor exceeds the \$40 million personal net worth threshold.

179. Finally, we will allow a consortium of small businesses to qualify for any of the measures adopted in this order applicable to individual small businesses. As used here, the term "consortium" means a conglomerate organization formed as a joint venture among mutually-independent business firms, each of which individually satisfies the definition of a small business.

180. Several commenters argue that a consortium should not qualify for special treatment unless the consortium itself meets the established definitional criteria.<sup>155</sup> They contend that the FCC should not allow consortia to be used as a means of circumventing the usual prerequisites for these special provisions. In the Second Report and Order, we concluded that consortia might be permitted to receive benefits based on participation in the consortium by one or more designated entities, but believed such a consortium should not be entitled to qualify for measures designed specifically for designated entities. As a general matter, we shall continue to adhere to that principle. We think, however, that in the broadband PCS service, allowing small businesses to pool their resources in this manner is necessary to help them overcome capital formation problems and thereby ensure their opportunity to participate in auctions and to become strong broadband PCS competitors. Because of the exceptionally large capital requirements in this service, we agree with the SBA Chief Counsel for Advocacy that, so long as individual members of the consortium satisfy the definition of a small business, the congressional objective of ensuring opportunities for small businesses will be fully met. Individual small entities that join to form consortia, as distinguished from a single entity with gross revenues in excess of \$40 million, still are likely to encounter capital access problems and, thus, should qualify for measures aimed at small businesses. We do not believe however, that this congressional goal will be satisfied if special measures are allowed for consortia that are "predominantly" or "significantly" owned and/or controlled by small businesses, as recommended by several commenters.<sup>156</sup> This would have the effect of eviscerating our small business definitional criteria and would not further the ability of bona fide small businesses to participate in PCS services.

### **3. Definition of Women and Minority-Owned Business**

181. As discussed above, we have taken steps in this order to address the special funding problems faced by minority and women-owned firms and thereby to ensure that these groups have the opportunity to participate and become strong competitors in the broadband

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<sup>155</sup> See comments of McCaw at 21 and Myers at 6.

<sup>156</sup> See, e.g., comments of Rural Cellular Corp. at 2, Bell Atlantic at 17, NAMTEC at 19, and AT& T at 25-26.

PCS service.<sup>157</sup> We thus have adopted a tax certificate program for women and minorities to allow more sources of potential funding, have relaxed the attribution standard used to determine eligibility to bid for licenses on frequency blocks C and F, and have adopted special measures for installment payments and bidding credits.

182. As also indicated above, for purposes of implementing these steps, we have departed from the definition of a minority and woman-owned firm that was adopted in the Second Report and Order. There, we found generally that to establish ownership by minorities and women, a strict eligibility standard should be adopted that required minorities or women to have at least a 50.1 percent equity stake and a 50.1 percent controlling interest in the designated entity. Second Report and Order at ¶ 277; 47 C.F.R. § 1.2110(b)(2). For the broadband PCS auctions, we retain the requirement that minorities and/or women control the applicant and hold at least 50.1 percent of a corporate applicant's voting stock. However, to establish their eligibility for certain benefits, summarized below, we shall impose an additional requirement that, even where minorities and women hold at least 50.1 percent of the applicant's equity, other investors in the applicant may own only passive interests, which, for corporate applicants, is defined to include as much as five percent of the voting stock. In addition, provided that certain restrictions are met, we shall also allow women and minority-owned firms the option to reduce to 25 percent the 50.1 percent minimum equity amount that must be held.

183. We emphasized in the Second Report and Order that we did not intend to restrict the use of various equity financing mechanisms and incentives to attract financing, provided that the minority and women principals continued to own 50.1 percent of the equity, calculated on a fully-diluted basis, and that their equity interest entitled them to a substantial stake in the profits and liquidation value of the venture relative to the non-controlling principals. We noted, however, that different standards that meet the same objectives may be appropriate in other contexts. Second Report and Order at ¶ 278. In view of the evidence of discriminatory lending experiences faced by minority and women entrepreneurs and the exceptionally great financial resources believed to be required by broadband PCS applicants, we conclude that it is appropriate to allow more flexibility with regard to the 50.1 percent equity requirements for this service in order to open doors to more sources of equity financing for women and minority-owned firms.

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<sup>157</sup> As noted in the Second Report and Order, the members of the following groups will be considered "minorities" for purposes of our rules: "[T]hose 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). Moreover, as adopted in the Second Report and Order, minority and women-owned businesses will be eligible for special measures only if the minority and women principals are also United States citizens.

184. We shall therefore allow women and minority-owned firms the following options. First, they may satisfy the general definition set forth in the Second Report and Order, which requires the minority and/or female principals to control the applicant, own at least 50.1 percent of its equity and, in the case of corporate applicants, hold at least 50.1 percent of the voting stock. Under this option, other investors may own as much as a 49.9 percent passive equity interest. As noted above regarding eligibility to bid in the entrepreneurs' blocks, passive equity in the corporate context means only non-voting stock may be held, or stock that includes no more than five percent of the voting interests.<sup>158</sup> For partnerships, the term means limited partnership interests that do not have the power to exercise control of the entity. In addition, as required in the Second Report and Order, all investor interests will be calculated on a fully-diluted basis, meaning that agreements such as stock options, warrants and convertible debentures generally will be considered to have a present effect and will be treated as if the rights thereunder already have been fully exercised.<sup>159</sup> We recognize that the requirement that other investors own only passive interests is a departure from the definition of a minority or women-owned business adopted in the Second Report and Order, but because of the very significant financial contribution that may be made by such other investors in designated entities, we believe that the passive equity requirement is appropriate as an additional safeguard to ensure that minorities and/or women retain control of the applicant.

185. As a second option, women and minority-owned firms may sell up to 75 percent of the company's equity, provided that no single investor may hold 25 percent or more of the firm's passive equity, which is defined in the same manner as above. For example, a corporation with 100 shares of voting stock and 100 shares of non-voting stock, with the 200 shares representing the total outstanding shares of the company, could qualify as a minority or women-owned business under the following circumstances. The minority or women principals would have to own at least 51 shares of voting stock, which satisfies the requirement that they have voting control and, in this case, also meets the requirement that

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<sup>158</sup> For example, under this option, a corporate applicant with two classes of issued and outstanding stock, 100 shares of voting stock and 100 shares of non-voting stock, could sell to a single non-eligible entity 49.9 percent of the applicant's equity, consisting of 5 shares of the corporation's voting stock and 94 shares of its non-voting stock. Under this scenario, eligible minorities or women, in order to retain at least 50.1 percent of the value of all outstanding shares of the corporation's stock, must own all of the corporation's remaining shares of stock; that is, 95 shares of voting stock and six shares of non-voting stock.

<sup>159</sup> As also noted in the Second Report and Order, we will consider departing from the requirement that the equity of investors in minority and women-owned businesses 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 women principals of a substantial financial stake in the venture or impair their rights to control the designated entity. See Second Report and Order at ¶ 277.

they hold at least 25 percent of the equity. Two other investors could each own 44 shares of non-voting stock and five shares of voting stock, which represents 24.5 percent of the company's equity for each of the shareholders. A third investor could own the remaining 12 shares of non-voting stock and five shares of the voting stock, or 8.5 percent of the equity. The remaining 34 shares of voting stock may be sold to other investors provided that no single investor owns more than five shares.

186. Whichever option is chosen, we will require establishment of a "control group" in much the same way we did for purposes of eligibility to bid in the entrepreneurs' blocks. Specifically, winning bidders, transferees or assignees must identify on their long-form applications a control group (consisting entirely of minorities and/or women or entities 100 percent owned and controlled by minorities and women) that has de jure and de facto control of the applicant and holds either at least 50.1 or 25 percent of the applicant's equity, depending upon which option is elected.

187. We believe that a modification of our 50.1 percent equity requirement will best achieve Congress' objective of providing effective and long-term economic opportunities for women and minority-owned firms in broadband PCS. At the same time, we shall maintain strict enforcement of the requirement that actual control reside with the qualified designated entities. Thus, to establish their eligibility for tax certificates, enhanced installment payments, bidding credits and relaxed cellular attribution rules, women and minority-owned applicants electing to use the 25 percent equity option may not in any instance allow an individual investor who is not in the control group to own more than a 25 percent passive equity interest. This restriction will apply even in circumstances in which allowing an investor to exceed these limitations would not result in the applicant's exceeding the gross revenues and other financial standards that apply to other bidders in the entrepreneurs' blocks and other situations involving financial caps. These structural safeguards, as well as the general requirement that other investors hold only passive interests in women and minority-owned applicants, will help to ensure that control truly remains with the women and minority designated entities.

188. For example, a women or minority-owned firm electing to use the 25 percent option may have a non-eligible investor with more than a 25 percent passive stake and still qualify to bid in the entrepreneurs' blocks or for benefits that apply to small businesses, as long as the attributable revenues of the investor do not cause the applicant to exceed the gross revenues/total assets caps. In these contexts, no additional restrictions are necessary, because women and minority-owned applicants, like other applicants, are eligible to bid in these blocks and to qualify as small businesses so long as they comply with the same restrictions on financial eligibility that apply to other applicants. Since the attribution rule itself operates to ensure compliance with size limitations, it is not necessary to impose additional restrictions on the size of interests held by investors with attributable interests. This firm will not qualify, however, for special measures applicable only to women and minority-owned businesses, such as "enhanced" installment payments or the 15 or 25 percent bidding credits, because it has a single non-eligible investor with more than a 25 percent passive interest. In

circumstances in which women and minorities are required to retain only 25 percent of the firm's equity, this additional structural restriction is appropriate because the objective in this context is to ensure not merely financial eligibility, but that women and minorities retain control of the license.

189. We set forth previously rules defining more explicitly the term "control" for purposes of determining whether a "control group" maintains de facto as well as de jure control of an applicant.<sup>160</sup> Those rules apply equally to the minority and women principals of minority and women-owned applicants. Consistent with our general policies with regard to women-owned applicants for purposes of our multiple ownership and cross-ownership rules in this broadcast context, we shall not adopt, at this time, any special rules or presumptions to determine whether women-owned applicants exercise independent control of their firms. See In the Matter of Clarification of Commission Policies Regarding Spousal Attribution, 7 FCC Rcd. 1920 (1992)

190. Our requirement that control rest with minorities and/or women and the clarifications above ensure that parties do not attempt to evade the statutory requirement to provide economic opportunities and ensure participation by businesses owned by these groups. We reaffirm our commitment to investigate all allegations of fronts, shams or other methods used by those who try to obtain a benefit to which they are not lawfully entitled. In this vein, we again admonish parties that we will conduct random pre and post-auction audits to ensure that applicants receiving these benefits are bona fide designated entities.

191. We also note here that we are departing from the provision in the Second Report and Order that bars publicly traded companies from qualifying as minority and woman-owned businesses for purposes of participating in auctions. Most of the steps taken to assist these designated entities in this Order (e.g., bidding credits and installment payments) are confined to winning bidders in the entrepreneurs' blocks, where there is a financial limit on the size of participants. Because of the expected large capital entry costs of broadband PCS, we believe that even publicly traded companies owned by women and minorities that qualify to bid in blocks C and F require additional measures, such as bidding credits and installment payments, to be able to participate successfully. We emphasize, however, that the exception to the attribution rules for publicly traded companies to be eligible to bid in the entrepreneurs' blocks does not apply here.<sup>161</sup> To qualify for measures targeted exclusively to women and minority-owned businesses, a company must satisfy the definition set forth in this section.

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<sup>160</sup> See supra ¶ 164.

<sup>161</sup> With regard to qualifying to bid in the entrepreneurs' blocks, we stated that we would not attribute the revenues or assets of an investor that owns up to 15 percent of a publicly traded applicant's voting stock. For privately held companies, the voting stock threshold is five percent. See supra ¶¶ 158, 163.

192. As noted above, applicants owned by women and minorities must meet the limitations on gross revenues, total assets and personal net worth to qualify for entry into the entrepreneurs' blocks. The size limitations do not apply, however, to all measures designed to assist applicants owned by minorities and/or women. The tax certificate policy applies to all broadband PCS licenses and is not limited to licenses in the entrepreneurs' blocks. Therefore, businesses owned by minorities and women need not meet the gross revenue and other financial restrictions to qualify for tax certificates. Similarly, the relaxed cellular attribution threshold for minority and woman-owned firms adopted in the Broadband PCS Reconsideration Order is not limited to the entrepreneurs' blocks. Thus, minority and women-owned firms that do not meet the gross revenues, total assets and net worth restrictions may nevertheless qualify for the 40 percent cellular attribution rule. But minority and women-owned firms must satisfy the Commission's structural ownership requirements to receive the benefits of tax certificates and the relaxed cellular attribution rule; that is, they are subject to the limitation that interests held by investors who are not women and minorities must be passive.

#### **4. Definition of Rural Telephone Company**

193. As discussed above, we have adopted several measures to assist rural telephone companies in the broadband PCS service. We decide here the definition of rural telephone companies who are eligible for those benefits. As explained below, for this service, we shall depart from the definition adopted in the Second Report and Order and define rural telephone companies as local exchange carriers having 100,000 or fewer access lines, including all affiliates.

194. As we pointed out in the Second Report and Order,<sup>162</sup> most of those responding to our tentative conclusion in the Notice concerning the definition of a rural telephone company contended that the proposed definition, which was based on the standard contained in Section 63.58 of the Commission's Rules, was too restrictive. A variety of more inclusive definitions were recommended.<sup>163</sup> Some commenters advocated a definition in which a company would qualify if it satisfied either of two alternative criteria based on population of communities served or number of access lines.<sup>164</sup> Others advocated adoption of a definition

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<sup>162</sup> Second Report and Order at ¶¶ 279-282.

<sup>163</sup> See, e.g., comments of Saco River, Telephone Electronics, and Iowa Network (advocating amending the proposed definition merely by raising the population threshold to 10,000), and comments of Chickasaw (advocating definition including companies that predominantly, but not exclusively, serve customers in communities of less than 10,000 in non-urbanized areas).

<sup>164</sup> See, e.g., comments of Telocator, TDS, NYNEX, NOTA, NTCA and Saco River (recommending a definition including companies that either provide service only within communities of 10,000 or less in non-urbanized areas or provide 10,000 or fewer access lines

focusing simply on the number of access lines provided.<sup>165</sup> One commenter advocated a definition focusing exclusively on revenues rather than access lines, with the standard for rural telephone company status at annual revenues under \$100 million.<sup>166</sup> In addition, some advocated a somewhat more restrictive definition.<sup>167</sup>

195. Many commenters suggested limiting 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."<sup>168</sup> A number of other commenters supported a definition of rural telephone company that would include a limitation on the size of the company. OPASTCO, for example, asserted 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 competitive bidding arena" is as much a function of their size as of the rural character of their service areas."<sup>169</sup> NTCA similarly contended 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.<sup>170</sup> Other parties suggested that we look to the unenacted antecedent of the Budget Act, S.1134, in which a rural telephone company was defined as an entity that either (a) "provides telephone exchange service by wire in a rural area" (i.e., a non-urbanized area

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(and no more than 150,000 in conjunction with affiliates)); comments of OPASTCO (recommending defining rural telephone companies as those that either provide exchange service only within communities of 10,000 or less in non-urbanized areas or that provide 50,000 or fewer access lines; and comments of SBA Chief Counsel for Advocacy (recommending a definition including companies serving communities of 20,000 or less in non-urbanized areas or providing 50,000 or fewer access lines (including lines provided by affiliates)).

<sup>165</sup> See, e.g., comments of STCL, MEBTEL, CFW, Minnesota Equal Access Network, Rural Cellular Assn., Rural Cellular Corp., Rochester Tel. Corp, McCaw, DialPage, APC, TDS and Gulf Telephone Co. (suggesting caps between 25,000 and 150,000 access lines).

<sup>166</sup> Comments of PMN.

<sup>167</sup> See, e.g., comments of GTE (definition would apply only to companies that exclusively serve customers in communities of 10,000 or less in non-urbanized areas and that provide wireline exchange service to 10,000 or fewer customers).

<sup>168</sup> See, e.g., comments of OPASTCO, Iowa Network, Saco River and Telephone Electronics.

<sup>169</sup> Comments of OPASTCO at 5.

<sup>170</sup> Comments of NTCA at 7-8.

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."

196. In the Second Report and Order, we adopted a definition of "rural telephone company" that includes independently owned and operated local exchange carriers that (1) do not serve communities with more than 10,000 inhabitants in the licensed area, and (2) do not have more than 50,000 access lines, including all affiliates. 47 C.F.R. § 1.2110(b)(3). We stated our belief that a limitation on the size of eligible rural telephone companies is appropriate because Congress did not intend for us to give special treatment to large LECs that happen to serve small rural communities. See Second Report and Order at ¶ 282.

197. Several parties who filed petitions for reconsideration of the Second Report and Order argue that the definition adopted for rural telephone companies may be too restrictive given the capital intensive nature of broadband PCS.<sup>171</sup> We also note that NTCA argued in its comments in this proceeding that it is neither necessary nor appropriate to use the same criteria to define rural telephone companies in rules pertaining to different services, technologies, and industries.<sup>172</sup> Likewise, in an ex parte letter, OPASTCO states that by defining rural telephone company for purposes of broadband PCS as a local exchange carrier with less than \$100 million in revenue, the Commission will properly capture in the defined class locally-owned telephone companies who are truly interested in providing services to rural areas.<sup>173</sup> OPASTCO notes that the "same universe of companies" that would fall under such a revenue threshold would be captured by a definition that includes all telephone companies having 100,000 or fewer access lines.<sup>174</sup>

198. Our challenge in establishing a definition of a rural telephone company for broadband PCS is to achieve the congressional goal of promoting the rapid deployment of this new service in rural areas by targeting only those telephone companies whose service territories are predominantly rural in nature, and who are thus likely to be able to use on their existing wireline telephone networks to build broadband PCS infrastructures to serve rural America. For purposes of our rules governing broadband PCS licenses, we believe that this goal can best be achieved if we define rural telephone companies as those local exchange carriers having 100,000 or fewer access lines, including all affiliates. We agree with

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<sup>171</sup> See, e.g., petitions of South Dakota Network (SDN), U.S. Intelco, NTCA, Rural Cellular Association and TDS. We note that similar arguments have been made with respect to other services.

<sup>172</sup> See comments of NTCA at 4.

<sup>173</sup> Ex parte filing of filing of OPASTCO, June 2, 1994, at 2; see also comments of PMN at 7-8.

<sup>174</sup> Id.

OPASTCO that such a definition will include virtually all of the telephone companies who genuinely are interested in providing services to rural areas. This definition will encourage participation by legitimate rural telephone companies without providing special treatment to large LECs. Therefore, we will better achieve the congressional goal of providing service rapidly to rural areas without giving benefits to large companies that do not require such assistance. Rural telephone companies that satisfy this definition thus will be eligible for rural partitioning, as discussed above.<sup>175</sup>

199. Anchorage Telephone Company argues in a petition for reconsideration of the Second Report and Order that our definition of a rural telephone company should include telephone companies that are owned by governmental authorities. Anchorage contends that Congress meant to mandate special consideration not only for telephone carriers serving rural areas but also for all municipally-owned telcos, even those with wholly or predominantly urban service areas.<sup>176</sup> This argument is based on its interpretation of the Senate bill that was antecedent to the enacted Budget Act. Anchorage argues that the Senate bill containing the prototype of a mandate for special consideration for rural telephone companies directed the FCC to grant "rural program licenses" to "qualified" common carriers and explicitly said that the category of "qualified" carriers included all state-owned and municipally-owned telephone companies. Anchorage further states that the report of the conference committee that drafted the Budget Act declares that the Senate's "findings" are incorporated by reference.<sup>177</sup> Anchorage also asserts that without the aid of special assistance it and most other state-owned and municipal telcos won't be able to purchase spectrum licenses at auction because it is politically infeasible for them to generate and retain enough surplus revenue to fund such investments, due to popular aversion to increases in taxes or telephone rates.<sup>178</sup>

200. We find no merit in Anchorage's arguments. There is no specific evidence that Congress intended the term "rural telephone companies" to include all state or municipally-owned telephone companies. To the contrary, the fact that an antecedent bill contained an explicit mandate for preferential treatment of government-owned telephone companies that was deleted from the enacted bill could just as easily be interpreted as an indication that Congress rejected such a rule. Further, we disagree that state and municipal governments lack the means to participate successfully in auctions. Such governments have substantial capabilities to raise funds through private financing, bond offerings and taxation. Therefore, our definition of a rural telephone company will not encompass telephone companies that are owned by government authorities.

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<sup>175</sup> Such companies also will be eligible for special treatment under our cellular attribution rules for broadband PCS. See 47 C.F.R. § 24.204(d)(2)(ii).

<sup>176</sup> Anchorage Petition at 2-3.

<sup>177</sup> Id.

<sup>178</sup> Id. at 4-5.

## 5. Definition of an Affiliate

201. Many of the eligibility criteria set forth above are based on the size of the entity applying for a broadband PCS license and/or seeking special treatment under our designated entity policies. Each of these size standards (\$125 million gross revenues/\$500 million total assets/\$100 million personal net worth, \$40 million gross revenues/\$40 million personal net worth, and 100,000 access lines) requires applicants to include, among other parties, "affiliates" when calculating their attributable gross revenues, total assets, net worth or access lines. This affiliation requirement is intended to prevent entities that, for all practical purposes, do not meet these size standards from receiving benefits targeted to smaller entities.<sup>179</sup> We adopt specific affiliation rules for purposes of applying these eligibility criteria based in part on the Small Business Administration's affiliation rules.<sup>180</sup>

202. In the Second Report and Order, we referenced the SBA's affiliation rules for purposes of defining generally whether an entity qualifies as a small business and gave examples of how the affiliation rules would be applied. We continue to believe that the SBA's affiliation rules provide a solid foundation on which to build our own affiliation rules for purposes of the small business definition for broadband PCS and for the other size standards adopted in this order.<sup>181</sup> Accordingly, for purposes of these eligibility restrictions, we will again borrow from the SBA's rules for outside affiliations. In addition, to ensure that applicants have clear guidance concerning these matters, we shall include in our rules more detailed information concerning the circumstances in which an entity will be deemed an affiliate of the applicant.

203. Like the eligibility rules we have adopted here governing size limitations for broadband PCS, the SBA's rules provide that size determinations shall include the applicant and all of its "affiliates."<sup>182</sup> At the outset, before considering in more detail all the types of affiliations that might exist when guided by the SBA rules, we review briefly our own rules described above, concerning attributable interests. Those rules provide that, so long as a control group is established, the gross revenues, assets or net worth of an investor in a PCS applicant or licensee will be attributed to the applicant or licensee only if the investor holds more than 25 percent of the applicant's passive equity or is part of a control group that

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<sup>179</sup> See, e.g., Second Report and Order at ¶ 272.

<sup>180</sup> See 13 C.F.R. § 121.401 (1993) (formerly at 13 C.F.R. § 121.3 (1989)).

<sup>181</sup> SBA's affiliation rules were promulgated under the authority in Section 3 of the Small Business Act of 1953, as amended, 15 U.S.C. § 632, which provides that, to be eligible for benefits provided by SBA and other agencies, a "small-business concern" must be "independently owned and operated." See Small Business Size Standards, 54 Fed. Reg. 52634 (December 21, 1989).

<sup>182</sup> See 13 C.F.R. § 121.401(a).

controls the applicant. Therefore, only where an investor has such attributable interests in the broadband PCS applicant or licensee do we need to examine whether the investor has a relationship with other persons or outside entities that rises to the level of an affiliation with the PCS applicant, and if so, whether the affiliate's revenues or net worth, when aggregated with the applicant's, exceed our size eligibility thresholds.

204. General Principles of Affiliation. When such an attributable interest exists, an affiliation under the SBA rules would arise, first, from "control" of an entity or the "power to control it." Thus, under the SBA rules, entities are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party or parties controls or has the power to control both. 13 C.F.R. § 121.401(a)(2)(i), (ii). In determining control, the SBA's rules provide generally that every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. The rules, in addition, provide specific examples of where control resides under various scenarios, such as through stock ownership or occupancy of director, officer or management positions. The rules also articulate general principles of control, and note, for example, that control may be affirmative or negative and that it is immaterial whether control is exercised so long as the power to control exists. Id. § 121.401(c)(1). Second, an affiliation, under SBA rules, may also arise out of an "identity of interest" between or among parties. Id. § 121.401(a)(2)(iii), (d). We shall adopt these same general provisions in our affiliation rules for broadband PCS.

205. In adopting these affiliation rules, we emphasize that these rules will not be applied in a manner that defeats the objectives of our attribution rules. Our attribution rules expressly permit applicants to disregard the gross revenues, total assets and net worth of passive investors, provided that an eligible control group has de facto and de jure control of the applicant. Our attribution rules are designed to preserve control of the applicant by eligible entities, yet allow investment in the applicant by entities that do not meet the size restrictions in our rules. Therefore, so long as the requirements of our attribution rules are met, the affiliation rules will not be used to defeat the underlying policy objectives of allowing such passive investors. More specifically, if a control group has de facto and de jure control of the applicant, we shall not construe the affiliation rules in a manner that causes the interests of passive investors to be attributed to the applicant.

206. Applying these SBA affiliation rules, an affiliation would arise, for example, where an entity with an attributable interest in a broadband PCS applicant is under the control of another entity. An affiliation would also arise where an entity with an attributable interest in a broadband PCS applicant controls, or has the power to control, another entity. For example, if a 10 percent voting shareholder of a PCS applicant is also a shareholder in a large Corporation X, when should Corporation X be deemed an affiliate of the PCS applicant as a result of the shareholder's ownership interest in both entities? Under the SBA rules and the rules we adopt here, Corporation X would be deemed an affiliate of the applicant if the shareholder controlled or had the power to control Corporation X, in which case, Corporation X's gross revenues must be included in determining the applicant's gross revenues.

207. For purposes of determining control, ownership interests will be calculated on a fully-diluted basis. Thus, for example, stock options, convertible debentures, and agreements to merge (including agreements in principle) will generally be considered to have a present effect on the power to control or own an interest in either an outside entity or the PCS applicant or licensee.<sup>183</sup> We will treat such options, debentures, and agreements generally as though the rights held thereunder had been exercised.<sup>184</sup> However, an affiliate cannot use such options and debentures to appear to terminate its control over or relationship with another concern before it actually does so.<sup>185</sup>

208. Voting and Other Trusts. In a similar vein, we also borrow from the SBA's rules and our own rules in other services to find affiliation under certain voting trusts in order to prevent a circumvention of eligibility rules. The SBA's rules provide that a voting trust, or similar agreement, cannot be used to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control an outside concern,

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<sup>183</sup> We recognize that we have adopted a different rule for purposes of our broadband PCS-cellular ownership rules. See 47 C.F.R § 24.204(d)(2)(v). In that context, however, our purpose was not to establish the financial position, or potential financial position, of applicants bidding in auctions.

<sup>184</sup> See 13 C.F.R § 121.401(f). SBA's rules provide the following examples to guide the application of this provision:

Example 1. If company "A" holds an option to purchase a controlling interest in company "B," the situation is treated as though company "A" had exercised its rights and had become owner of a controlling interest in company "B." The [annual revenues] of both concerns must be taken into account in determining size.

Example 2. If company "A" has entered into an agreement to merge with company "B" in the future, the situation is treated as though the merger has taken place. [A and B are affiliates of each other].

<sup>185</sup> Id. SBA's rules provide this example:

If large company "A" holds 70% (70 of 100 outstanding shares) of the voting stock of company "B" and gives a third party an option to purchase 66 of the 70 shares owned by A, company "B" will be deemed to be an affiliate of company "A" until the third party actually exercises its option to purchase such shares. In order to prevent large company "A" from circumventing the intent of the regulation which [gives] present effect to stock options, the option is not considered to have present effect in this case.

if the primary purpose of the trust is to meet size eligibility rules.<sup>186</sup> Similarly, under the Commission's broadcast multiple ownership rules, stock interests held in trust may be attributed to any person who holds or shares the power to vote such stock, has the sole power to sell such stock, has the right to revoke the trust at will or to replace the trustee at will.<sup>187</sup> Also, under the broadcast rules, if a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary of a trust, the stock interests held in trust will be considered assets of the grantor or beneficiary, as appropriate.<sup>188</sup> Because we believe the broadcast rules provide more definitive guidance in this particular area, we shall use them as a model for the affiliation rules adopted here. Thus, for example, if an investor with an attributable interest in a PCS applicant holds a beneficial interest in stock of another firm that amounts to a controlling interest in that other firm, depending on the identity of the trustee, the other firm may be considered an affiliate and its assets and gross revenues may be attributed to the PCS applicant.

209. Officers, Directors and Key Employees. Under the SBA's affiliation rules, affiliations also generally arise where persons serve as the officers, directors or key employees of another concern and they represent a majority or controlling element of that other concern's board of directors and/or management of the outside entity.<sup>189</sup> We shall adopt an identical rule. Thus, if a person with an attributable interest in a broadband PCS applicant, through his or her other key employment positions or positions on the board of another firm, controls that other firm, then the other firm will be considered an affiliate of the applicant. Such affiliations may or may not result in the applicant's exceeding our size limitations. As this rule reflects, for purposes of attributing the financial position of an outside entity in this context, officers and directors of an outside concern are not foreclosed entirely from holding attributable or non-attributable interests in a PCS applicant. Whether or not such persons control the outside entity, we also do not want to prohibit these persons, who may be experienced in the telecommunications, finance, or communications and equipment industries, from assisting start-up companies in PCS by serving as officers or directors of the applicant. Thus, under our general attribution rule, if such persons serving as officers or directors of the applicant do not control the applicant or otherwise have an attributable interest in the applicant, their outside affiliations (even if controlling) will not be considered at all for

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<sup>186</sup> 13 C.F.R. § 121.401(g).

<sup>187</sup> See 47 C.F.R. § 73.3555 note 2(e).

<sup>188</sup> Id.

<sup>189</sup> See 13 C.F.R. § 121.401(h). A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern. 13 C.F.R. § 121.405.

purposes of determining the applicant's eligibility under our rules.<sup>190</sup>

210. Affiliation Through Identity of Interest: Family and Spousal Relationships. As expressed in the SBA's rules, an affiliation may arise not only through control, but out of an "identity of interest" between or among parties. See 13 C.F.R. § 121.401(a)(2)(iii). For example, affiliation can arise between or among members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control an entity, persons with an identity of interest may be treated as though they were one person. *Id.* at § 121.401(d). For example, if two shareholders in Corporation X are both attributable shareholders in the PCS applicant, to the extent that together they have the power to control Corporation X, Corporation X may be deemed an affiliate of the applicant.

211. Similarly, as under the SBA rules, we must consider spousal and other family relationships in determining whether an affiliation exists. Under the SBA rules for determining small business status, for example, members of the same family may be treated as though they were one person because they have an "identity of interest." 13 C.F.R. § 121.401(d). Likewise, in order to determine whether individuals are economically disadvantaged, the SBA rules governing eligibility for participation in the government's "section 8(a)" program for socially and economically disadvantaged small businesses have special provisions for attributing spousal interests. The latter rules provide generally that half of the jointly-owned interests of an applicant and his or her spouse must be attributed to the applicant for purposes of determining the applicant's net worth. See 13 C.F.R. § 124.106(a)(2)(i)(A)(1).

212. In the context of the auction eligibility rules at issue here, we begin by clarifying that our reason for considering spousal and kinship relationships is not to determine whether the spouse or other kin of a woman-owned applicant actually is controlling the applicant, thereby violating our eligibility rules for woman-owned businesses. As discussed above, our rules do not embody any presumptions concerning spousal control in that context.<sup>191</sup> Rather, our objective here is to ensure both that entities permitted to bid in the entrepreneurs' blocks are actually in need of special financial assistance and that otherwise ineligible entities do not circumvent the rules prohibiting entry by funding family members that purport to be eligible

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<sup>190</sup> SBA's size standard affiliation rules also provide that affiliations can arise in a variety of other scenarios, such as where one concern is dependent upon another for contracts and business, where firms share joint facilities, or have joint venture or franchise license agreements. To the extent we believe these rules may have general applicability in the context of our policies for broadband PCS, we shall codify them in our affiliate rules. We caution parties that issues relating to de facto control of the applicant (or parties with attributable interests in the applicant) could also arise under arrangements not expressly codified in the rules.

<sup>191</sup> See supra ¶ 189.

applicants.

213. In formulating these rules, we need to consider also that, as a practical matter, it will not be possible for us prior to the auctions to resolve all questions that pertain to the individual circumstances of particular applicants. Furthermore, if we determine subsequent to an auction that a winning bidder in fact was ineligible to bid because of spousal or kinship relationships, not only will authorization of service be delayed but, as discussed above, disqualified applicants may be subject to substantial penalties. In these circumstances, we think that the public interest requires that we endeavor, insofar as possible, to establish bright-line tests for determining when the financial interests of spouses and other kin should be attributed to the applicant.

214. We have decided that, for purposes of determining whether the financial limitations in our eligibility rules have been met, we will in every instance attribute the financial interests of an applicant's spouse to the applicant. This will resolve any concern that an applicant might transfer his or her assets to a spouse in order to satisfy the personal net worth or control restrictions that apply to eligible entities. For example, an applicant could not transfer stock or other assets to his or her spouse and thereby dispose of interests that, if held by the applicant, would render the applicant ineligible. Just as importantly, this approach will resolve any concern that an applicant might participate in bidding in the entrepreneurs' blocks by using the personal assets of an ineligible spouse, which would defeat entirely the objective of excluding very large entities from bidding in these blocks.

215. In adopting this rule, we fully recognize that instances could arise in which, if all factors were considered, attributing a spouse's financial interests to the applicant could lead to harsh results. As a general matter, however, we think it provides a workable bright-line standard that resolves fully our policy concerns and avoids undesirable ambiguity concerning the nature of our requirements. As in the SBA rules, however, one exception is clearly warranted; this affiliation standard would not apply if the applicant and his or her spouse are subject to a legal separation recognized by a court of competent jurisdiction. In calculating their personal net worth, investors in the applicant who are legally separated must, of course, still include their share of interests in community property held with a spouse.

216. As indicated above, circumstances could also arise in which other kinship relationships are used as a means to evade our eligibility requirements. Because we believe kinship relationships in many cases do not present the same potential for abuse that exists with spousal relationships, particularly in terms of the "identity of interests" that are likely to exist between the persons involved, we shall adopt a more relaxed standard for determining when kinship interests must be attributed to applicants. In this area, we shall follow the same standard that is applied by the SBA when interpreting its "identity of interest" rule described above. Specifically, an identity of interests between family members and applicants will be presumed to exist, but the presumption can be rebutted by showing that the family members are estranged, or that their family ties are remote, or that the family members are not closely related in business matters. See generally Texas-Capital Contractors, Inc. v. Abdnor, 933 F.2d

261 (5th Cir. 1990). For purposes of determining who is a family member under this rule, we shall use a definition that is identical to the definition of "immediate family member" in the SBA's rules, 13 C.F.R. § 124.100.

217. In appropriate cases, an applicant should be able to rebut the presumption regarding kinship affiliations with relative ease, simply by demonstrating that the applicant has no close relationship in business matters with the relevant family members. Of course, should such business relationships arise with a winning applicant after the auction, we might need to consider whether the applicant intended to circumvent the requirements of our eligibility rules. Our holding period rule, which, as discussed above, requires that winning bidders in the entrepreneurs' blocks maintain an ownership structure meeting our eligibility requirements for five years, will serve as an additional safeguard against possible abuses arising from kinship relationships.

## **VIII. CONCLUSION, PROCEDURAL MATTERS AND ORDERING CLAUSES**

### **A. Conclusion**

218. In fashioning rules for competitive bidding for broadband PCS licenses, we seek to promote the public policy goals set forth for us by Congress. We believe that the rules adopted in this Fifth Report and Order satisfy this objective. These rules should facilitate the rapid implementation of new broadband communications services through advanced technologies and efficient spectrum use, thus advancing the public interest by providing consumers with competitive and innovative wireless voice and data services and also fostering economic growth. The rules will allow for the public to recover a portion of the value of the public spectrum, and will promote access to broadband PCS services by consumers, producers and new entrants by ensuring that small businesses, rural telephone companies and businesses owned by minorities and women will have genuine opportunities to participate in the auctions and in the provision of service. We expect that the advent of PCS will benefit consumers by raising the overall level of competition in many already competitive segments of the telecommunications industry and providing competition in others for the first time, promote job creation in the communications and information sector of the domestic economy, and enhance productivity and efficiency in industry as a whole.

### **B. Final Regulatory Flexibility Analysis**

219. 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:

220. Need for and purpose of the action. This rule making 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 broadband 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.

221. 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.

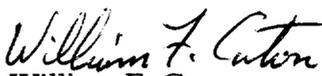
222. Significant alternatives considered and rejected. All significant alternatives have been addressed in the Fifth Report and Order.

### **C. Ordering Clauses**

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

224. 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  
Acting Secretary

## 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. (U.S. Intelco)  
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)