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. This would have the effect of eviscerating our small business definition criteria and would not further the ability of bona fide small businesses to participate in PCS services.

54. Financial Benefits. To ensure that the control group has a substantial financial stake in the venture, we shall adopt certain additional requirements. As noted previously, we shall require that at least 50.1 percent of the voting stock and at least 25 percent (or 50.1 percent for the alternative option for minority and women-owned businesses) of the aggregate of all outstanding shares of stock to be unconditionally owned by the control group members. In addition, 50.1 percent of the annual distribution of dividends paid on the voting stock of a corporate applicant concern must be paid to these members. Also, in the event stock is sold, the control group members must be entitled to receive 100 percent of the value of each share of stock in his or her possession. Similarly, in the event of dissolution or liquidation of the corporation, the control group members must be entitled to receive at least 25 percent (or 50.1 percent, as the case may be) of the retained earnings of the concern and 100 percent of the value of each share of the stock in his or her possession, subject, of course, to any applicable laws requiring that debt be paid before distribution of equity.

55. Partnerships and other non-corporate entities will be subject to similar requirements. Indicia of ownership that we will consider in non-corporate cases include (but are not limited to) (a) the right to share in the profits and losses, and receive assets or liabilities upon liquidation, of the enterprise pro rata in relationship to the designated entity's ownership percentage and (b) the absence of opportunities to dilute the interest of the designated entity (through capital calls or otherwise) in the venture. As with corporations, our concern is ensuring that the economic opportunities and benefits provided through these rules flow to designated entities, as Congress directed.

56. Abuses. As stated above, we intend by these attribution rules to ensure that bidders and recipients of these licenses are bona fide in their eligibility, and we intend to conduct random audits both before the auctions and during the 10-year initial license period to ensure that our rules are complied with in letter and spirit. If we find that large firms or individuals exceeding our personal net worth caps are able to assume control of licensees that have received small business provisions or otherwise circumvent our rules, we will not hesitate to force divestiture of such improper interests or, in appropriate cases, issue forfeitures or revoke licenses. In this regard, we reiterate that it is our intent, and the intent of Congress, that women, minorities and small businesses be given an opportunity to participate in narrowband PCS services, not merely as fronts for other entities, but as active entrepreneurs.

57. In addition, in view of our new small business definition and the associated maximum investor limits, we are modifying our unjust enrichment rules to prevent any post-auction circumvention of our financial threshold, and to ensure that the ultimate licensees are bona fide designated entities. Accordingly, firms that received installment payments based on their small business status will be subject to repayment if, for example, another entity subsequently purchases an "attributable" interest or becomes a member of the control group and, as a result, the gross revenues of the firm would exceed the $40 million gross revenues cap, or the personal net worth of an individual investor exceeds the $40 million personal net worth threshold.

B. Bidding Credits in Regional Narrowband Auctions

58. In the Third Report and Order we established bidding credits of 25 percent for women-and minority-owned businesses on two of the six regional narrowband licenses.[93] In order to increase the opportunities for women and minorities to participate in the provision of narrowband service, we have decided to increase the bidding credit on the same two licenses for women-and minority-owned businesses in the upcoming regional narrowband auction from 25 percent to 40 percent. Our experience with the nationwide narrowband PCS auctions, where very high license values coupled with only a 25 percent bidding credit may have contributed to the failure of women-and minority-owned businesses to win licenses, suggests that a credit of this magnitude may be necessary to overcome the disadvantages of these groups in bidding for licenses representing large populations and large geographic areas.[94] In an ex parte filing, Essence Television Productions, Inc. one of the initial participants in the nationwide narrowband PCS auction, argues that designated entities should receive bidding credits of up to 40 percent when competing in auctions against non-designated entities.[95] The increased bidding credit combined with installment payments for firms that meet our revised small business definition should enable minority-and women-owned businesses to attract the capital necessary to compete. In addition, we seek comment on whether additional measures such as an entrepreneurs' block should be employed in future auctions (see infra.).

C. Rural Telephone Companies

59. In this docket, we established general rules and identified several measures, including installment payments, spectrum set-asides, bidding credits and tax certificates, that we would choose among in establishing rules for auctionable spectrum-based services, on a service-specific basis. In adopting service-specific rules, we have carefully selected provisions to meet the particular needs of each designated entity group, so as to "ensure," pursuant to the

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[93] Third Report and Order at ¶ 68.

[94] We have already adopted installment payments for small businesses on regional, MTA and BTA licenses. See Section 24.309 (A).

[95] Ex parte filing of Essence Television Productions, Inc., August 2, 1994.

statute, that each group has the opportunity to participate in providing spectrum-based services.

60. As we indicated above, it is occasionally necessary to do more to ensure that businesses owned by members of minority groups and women have a meaningful opportunity to participate in provision of personal communications services than is necessary to ensure that other designated entity groups have similar opportunities.[96] The major problem facing minorities and women who seek to offer PCS is lack of access to capital.[97] Small businesses also encounter serious funding problems.[98] In contrast rural telephone companies that are not small businesses (and are not owned by minorities or women) do not face the same difficulties in obtaining capital. Accordingly, we do not believe that any additional provisions for rural telephone companies are necessary or appropriate in the context of narrowband PCS. Moreover, as we stated in the Second Report and Order, limiting installment payments to smaller businesses, including those owned by minorities and women, best comports with the intent of Congress by avoiding auction procedures that tend to favor incumbents with established revenue streams over new companies and entrepreneurs.[99] Therefore, rural telephone companies that are not eligible as small businesses will not receive installment payment assistance.

61. Finally, we believe that special provisions for rural telephone companies that are not smaller entities are not necessary in this context to encourage service to rural areas.[100] Especially in regions where the lack of wireline service makes wireless alternatives desirable, paging service is provided to rural areas by paging companies as well as telephone companies. We therefore believe that many telecommunications companies, and not only rural telephone

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[96] Fifth Report and Order in PP Docket No. 93-253, FCC 94-178, adopted June 29, 1994, released July 15, 1994 (Fifth Report and Order) at ¶ 96.

[97] Id.; see also, e.g., Report of the FCC Small Business Advisory Committee to the FCC Regarding Gen. Docket No. 90-314 (Sept. 15, 1993), reprinted at 8 FCC Rcd 7820, 8727 (1993) (SBAC Report); Small Business Credit and Business Opportunity Enhancement Act of 1992, Sections 112(4), 331(a)(4), Pub. Law 102-366, Sept. 4, 1992 (Small Business Credit Act) (finding that minority- and woman-owned businesses encounter particular problems in obtaining capital, and minorities face "extraordinary" obstacles in this regard);

[98] See Fifth Report and Order ¶¶ 93-108.

[99] See Second Report and Order, ¶¶ 234 & n.179 (citing H.R. Rep. No. 103-111 at 255), 237. We note, however, that many more rural telephone companies are considered small businesses under our revised small business definition than was the case previously.

[100] Congress did not instruct us to provide for every designated entity group in every service, and we believe that provisions for this particular group are not necessary for narrowband PCS.

companies, will pursue ordinary profit incentives to provide narrowband PCS service to outlying areas. Accordingly, we believe that installment payment plans are not necessary to encourage larger rural telephone companies to provide this relatively low-cost service in rural areas.

D. Other Designated Entity Decisions

62. We make two additional decisions concerning designated entities on our own motion. First, we clarify that, for a partnership to qualify for designated entity status, all general partners in the applicant and its "control group" must be eligible entities, consistent with our revised generic eligibility criteria in the Second Memorandum Opinion and Order in this proceeding. For the purposes of our rules, we presume that all general partners in a partnership have the power to bind the partnership, and therefore have de facto control.[101] Therefore, to ensure that designated entity provisions are made available only to legitimate eligible entities if the partnership is to receive designated entity benefits, all general partners will be required to be designated entities if the partnership is to obtain designated entity status.

63. In addition, we are adopting for narrowband PCS the requirement that all entities claiming a designated entity benefit must substantiate their eligibility for such benefits. In a related action reconsidering the Second Report and Order in this proceeding, we are requiring applicants that seek designated entity benefits to document their eligibility for such benefits.[102] For narrowband PCS we therefore require designated entity applicants to describe on their long-form applications how they meet the eligibility criteria for designated entity benefits. Applicants must list and summarize on their long-form application all agreements that affect designated entity status, such as all partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, which establish that the designated entity will have both de facto and de jure control of the entity. In addition, we will require that such information be maintained at the licensee's facilities, or by its designated agent, for the term of the license, and that the information be made available to Commission staff upon request. We believe that this provision will prove useful when the Commission conducts its random audits of designated entities providing narrowband PCS to ensure their continuing designated entity status.

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[101] See, e.g., Fifth Report and Order, ¶ 158 & n.134 (making such a presumption and therefore treating each general partner in a partnership applying for broadband PCS licenses as part of the partnership's control group).

[102] See Second Memorandum Opinion and Order at ¶ 134; Cook Inlet Petition for reconsideration of Second Report and Order at 16.

VI. PROPOSED DESIGNATED ENTITY PROVISIONS FOR MTA AND BTA AUCTIONS

A. Introduction

64. In the Budget Act, Congress recognized the novelty of auctions as a licensing method and encouraged us to experiment with a variety of techniques to ensure that small businesses and those owned by women and minorities have an opportunity to participate in spectrum-based services. While we believe that measures taken with respect to the regional narrowband PCS auctions will provide substantial opportunities for designated entities to participate in narrowband PCS, we seek comment on whether it may be necessary to adopt alternative provisions such as entrepreneurs' blocks or higher bidding credits to encourage investment in minority- and women-owned businesses in future auctions. As we have learned, narrowband PCS licenses may be auctioned for large sums of money in the competitive bidding process. It therefore may be necessary to do more to ensure that designated entities have the opportunity to participate in narrowband PCS than may be necessary in other, less costly spectrum-based services. In our view, we must consider whether these steps and any others we may adopt are required to fulfill Congress's mandate that designated entities have the opportunity to participate in the provision of PCS. We believe that the measures we propose today would increase the likelihood that designated entities will win licenses in the auctions and become strong competitors in the provision of narrowband PCS service. We also will review the results of the regional auction in making our decision on the rules proposed in this Further Notice.

65. As we noted in the Fifth Report and Order, by instructing the Commission to ensure the opportunity for designated entities to participate in auctions and spectrum-based services, Congress was well aware of the difficulties these groups encounter in accessing capital.[103] Indeed, less than two years ago, Congress made specific findings in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that "small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit."[104] Because of these problems, Congress resolved to consider carefully legislation and regulations "to ensure that small business concerns are not negatively impacted" and to give priority to passage of "legislation and regulations that enhance the viability of small business concerns."[105]

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[103] Fifth Report and Order in PP Docket No. 93-253, FCC 94-178, adopted June 29, 1994, released July 15, 1994 (Fifth Report and Order) at ¶ 97.

[104] Small Business Credit and Business Opportunity Enhancement Act of 1992, Section 331(a) (3), Pub. Law 102-366, Sept. 4, 1992.

[105] Id., Section 331(b)(2),(3).

66. Congress also recognized that these funding problems are even more severe for minority and women-owned businesses, who face discrimination in the private lending market. For example, Congress explicitly found that businesses owned by minorities and women have particular difficulties in obtaining capital and that problems encountered by minorities in this regard are "extraordinary."[106] A number of studies also amply support the existence of widespread discrimination against minorities in lending practices. As we noted in the Fifth Report and Order, in October, 1992, the year prior to passage of the auction law, the Federal Reserve Bank of Boston released an important and highly-publicized study demonstrating that a black or Hispanic applicant in the Boston area is roughly 60 percent more likely to be denied a mortgage loan than a similarly situated white applicant.[107] The researchers measured every variable mentioned as important in numerous conversations with lenders, underwriters, and examiners and found that minority applicants are more likely to be denied mortgages even where they have the same obligation ratios, credit history, loan to value and property characteristics as white applicants. The lending discrimination that occurs, the study found, does not involve the application of specific rules, but instead occurs where discretionary decisions are made. Based on the Boston study, we found that it is reasonable to expect that race will affect business loans that are based on more subjective criteria to an even greater extent than the mortgage loan process, which uses more standard rules.

67. Similarly, evidence presented in testimony before the House Minority Enterprise Subcommittee on May 20, 1994 indicates that African American business borrowers have difficulty raising capital mainly because they have less equity to invest, they receive fewer loan dollars per dollar of equity investment, and they are less likely to have alternate loan sources, such as affluent family or friends. Assuming two hypothetical college-educated, similarly situated male entrepreneurs, one black, one white, the testimony indicated that the white candidate would have access to $1.85 in bank loans for each dollar of owner equity invested, while the black candidate would have access to only $1.16. According to the testimony, the problems associated with lower incomes and intergenerational wealth, as well as the discriminatory treatment minorities receive from financial institutions, make it much more likely that minorities will be shut out of capital intensive industries, such as telecommunications. This testimony also noted that African American representation in communications is so low that it was not possible to generate meaningful summary statistics on underrepresentation.[108]

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[106] Id., Section 112(4); 331(a)(4).

[107] Mortgage Lending in Boston: Interpreting HMDA Data, Federal Reserve Bank of Boston, Working Paper 92-7 (October 1992).

[108] Testimony of Dr. Timothy Bates, Visiting Fellow, The Woodrow Wilson Center, before the U.S. House of Representatives Committee on Small Business, Subcommittee on Minority Enterprise, Finance, and Urban Development (House Minority Enterprise Subcommittee), May 20, 1994.

68. We also stated in the Fifth Report and Order that inability to access capital is also a major impediment to the successful participation of women in PCS auctions. In enacting the Women's Business Ownership Act in 1988, Congress made findings that women, as a group, are subject to discrimination that adversely affects their ability to raise or secure capital.[109] AWRT documents that these discriminatory barriers still exist today. Indeed, AWRT reports that while venture capital is an important source of funding for telecommunications companies, women-owned companies received only approximately one percent of the $3 billion invested by institutional venture capitalists in 1993. Citing a 1992 National Women's Business Council report, AWRT further argues that even successful women-owned companies did not overcome these financing obstacles after they had reached a level of funding and profitability adequate for most other businesses.[110]

69. A study prepared in 1993 by the National Foundation for Women Business Owners (NFWBO) further illustrates the barriers faced by women-owned businesses. For example, it finds that women-owned firms are 22 percent more likely to report problems dealing with their banks than are businesses at large. In addition, the NFWBO study finds that the largest single type of short-term financing used by women business owners is credit cards and that over half of women-owned firms use credit cards for such purposes, as compared to 18 percent of all small to medium-sized businesses, which generally use bank loans and vendor credit for short-term credit needs. With regard to long-term financing, the study states that a greater proportion of women-owned firms are turning, or are forced to turn, to private sources, and to a wider variety of sources, to fulfill their needs. Based on these findings, the NFWBO study concludes that removal of financial barriers would encourage stronger growth among women-owned businesses, resulting in much greater growth throughout the economy.[111]

70. If we are to meet the congressional goals of promoting economic opportunity and competition by disseminating licenses among a wide variety of providers, we must find ways to counteract effectively these barriers to entry. As chronicled in the Fifth Report and Order, both Congress and the Commission have tried various methods to enhance access to the broadcast and cable industries by minorities and women.[112] These efforts however, have met

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[109] Pub. L. 100-533 (1988). In 1991, Congress enacted the Women's Business Development Act of 1991 to further assist the development of small businesses owned by women. See Pub. L. 102-191 (1991).

[110] See Letter of AWRT to the Honorable Kweisi Mfume, Chairman, House Minority Enterprise Subcommittee, June 1, 1994.

[111] See The National Foundation for Women Business Owners, Financing the Business, A Report on Financial Issues from the 1992 Biennial Membership Survey of Women Business Owners, October 1993.

[112] See Fifth Report and Order at ¶¶ 103-106.

with limited success. The record shows that women and minorities have not gained substantial ownership representation in either the broadcast or non-broadcast telecommunications industries. For example, a 1993 report conducted by the National Telecommunications and Information Administration's (NTIA) Minority Telecommunications Development Program shows that, as of August 1993, only 2.7 percent of commercial broadcast stations were owned by minorities. Another study commissioned by the Commerce Department's Minority Business Development Agency in 1991 found that only one half of one percent of the telecommunications firms in the country were minority owned. The study also identified only 15 minority cable operators and 11 minority firms engaged in the delivery of cellular, specialized mobile radio, radio paging or messaging services in the United States.[113] And, according to the last available U.S. Census, only 24 percent of the communications firms in the country were owned by women, and these women-owned firms generated only approximately 8.7 percent of the revenues earned by communications companies.[114] When companies without paid employees are removed from the equation, firms with women owners represent only 14.5 percent of the communications companies in the country.[115] One result of these low numbers is that there are very few minority or women-owned businesses that bring experience or infrastructure to narrowband PCS. They thus face an additional barrier relative to many existing service providers.

71. Small businesses also have not become major participants in the telecommunications industry. For instance, one commenter asserts that ten large companies -- six Regional Bell Operating Companies (RBOCs), AirTouch (formerly owned by Pacific Telesis), McCaw, GTE and Sprint -- control nearly 86 percent of the cellular industry. This commenter further contends that nine of these ten companies control 95 percent of the cellular licenses and population in the 50 BTAs that have one million or more people.[116]

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[113] See Testimony of Larry Irving, Assistant Secretary for Communications and Information, U.S. Department of Commerce, before the House Minority Enterprise Subcommittee, May 20, 1994. In his testimony at this same hearing, FCC Chairman Reed Hundt cited some of these statistics and noted that in light of this serious underrepresentation, there remains "a fundamental obligation for both Congress and the FCC to examine new and creative ways to ensure minority opportunity." Testimony of Reed E. Hundt, Chairman, Federal Communications Commission, before the House Minority Enterprise Subcommittee, May 20, 1994.

[114] See Women-Owned Businesses, 1987 Economic Censuses, U.S. Department of Commerce, issued August 1990, at 7, 147. The census data includes sole proprietorships, partnerships, and subchapter S corporations. We have no statistics regarding women representation among owners of larger communications companies.

[115] Id.

[116] Ex parte filing of DCR Communications, May 31, 1994.

72. In the new auction law, Congress directed the Commission to remedy this serious imbalance in the participation by certain groups, especially minorities and women. The auction law itself contemplates that requiring payment for initial licenses through competitive bidding, unlike existing licensing methods such as comparative hearings or lotteries, may inhibit participation by those with limited access to capital and could further diminish opportunities for designated entities. The first nationwide auction demonstrated that a 25 percent bidding credit may not be sufficient to ensure that designated entities have the opportunity to participate where narrowband PCS values are high. The regional auctions will demonstrate whether a 40 percent bidding credit for women- and minority-owned firms combined with installment payments for eligible small businesses is sufficient to provide meaningful opportunities for designated entities at the regional level. We further propose to examine the use of measures we specified in the Fifth Report and Order to carry out Congress's directive to provide meaningful opportunities for small entities and businesses owned by women and minorities to provide PCS services. If, based on the results of the regional auction, we conclude that the 40 percent bidding credit is insufficient, we may decide that these measures, which are expressly designed to address the funding problems faced by these groups, may be necessary to achieve Congress's goals with respect to narrowband PCS.

B. Summary of Special Provisions for Designated Entities

73. While there was significant designated entity participation in the nationwide narrowband PCS auction, we are concerned that the high license values in that auction and the substantial involvement by large, incumbent firms with significant financial resources suggests that designated entities may have difficulties in competing in future narrowband PCS auctions. We recognize that larger incumbent firms are able to pay much higher license prices than smaller firms because of the significant infrastructure and cost of capital advantages these firms enjoy. Because of these factors, we believe that additional measures may be necessary to achieve Congress's mandate that we ensure the opportunity for designated entities to participate in the competitive bidding process and in the provision of spectrum-based services. In this regard, we propose additional provisions for businesses owned by woman and/or minorities and small businesses similar to those employed in the auction rules for broadband PCS.

74. To fulfill Congress's mandate that we ensure that designated entities have the opportunity to participate in providing narrowband PCS, we propose to reserve up to four MTA frequency blocks --19, 21, 22 and 24 --, and both BTA frequency blocks -- 25 and 26 -- for bidding exclusively by entities with annual gross revenues of less than $125 million and total assets of less than $500 million ("entrepreneurs' blocks"). We believe that excluding large companies from bidding in the proposed entrepreneurs' blocks, and limiting the total number of licenses that one entity can obtain in these blocks, would significantly enhance opportunities for smaller entities to become PCS providers and thereby ensure that narrowband PCS licenses will be disseminated "among a wide variety of applicants," as required by Section 309(j)(3)(B).

75. We recognize, however, that reserving blocks for bidding only by relatively small companies may not, by itself, be sufficient to ensure that small businesses and businesses owned by members of minority groups and women have the opportunity to obtain narrowband PCS licenses. Businesses owned by members of minority groups and women face discrimination that poses additional obstacles for these firms. Accordingly, we propose a number of related steps to assist small businesses and businesses owned by woman and/or minorities in attracting the capital necessary to obtain a narrowband PCS license.

76. First, to encourage large companies to invest in designated entities and to assist designated entities without large investors to overcome the additional hurdle presented by auctions, we propose to make bidding credits available to designated entities within the entrepreneurs' blocks. More specifically, we propose to provide small businesses with a 10 percent bidding credit. Businesses owned by minorities and women would receive a 15 percent bidding credit to compensate for the substantial problems they face in attracting capital.[117] The credits would be cumulative, so that a business owned by minorities or women that also qualified as a small business would receive a 25 percent bidding credit. Second, we propose to allow most successful bidders within the entrepreneurs' blocks to pay for their licenses in installments and to "enhance" those installment payments for small businesses and businesses owned by minorities and women by varying the moratorium on principal and the interest rate. Third, we propose to continue to extend our tax certificate policies to promote participation by minorities and women in the provision of narrowband PCS. Fourth, we propose to reduce the upfront payment for all eligible bidders in the entrepreneurs' blocks from $0.02 per MHz per pop to $0.015 per MHz per pop.

77. Finally, we propose to redesignate the two BTA licenses as regional licenses organized in the same configuration set forth in Section 24.102 of the rules. We also seek comment on other means to achieve larger geographic license sizes such as designating these BTA licenses as nationwide licenses or by maintaining the BTA designation, but allowing combinatorial bidding for the designated regions. We also seek comment on whether some of the MTA and BTA response channels should be redesignated as larger license areas with bidding limited only to those entities eligible to bid for entrepreneurs' block licenses.

78. The following chart highlights the major provisions proposed for businesses bidding in the proposed entrepreneurs' blocks.[118]

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[117] Although this bidding credit would be less than the bidding credit available for selected nationwide and regional licenses (25 percent and 40 percent respectively), the 15 percent bidding credit would be available within the entrepreneurs' blocks rather than in a block where all companies could participate.

[118] This table is not comprehensive and therefore it does not present all the provisions established for designated entities, especially those available outside the entrepreneurs' blocks.

	Bidding Credits	Installment Payments	Tax Certificates for Investors
Entrepreneurial Businesses (in excess of $40 MM and less than or equal to $125 MM in revenue and less than $500 MM in total assets)	0	Interest only for 1 year; rate equal to 10-year Treasury note plus 2.5%; (for businesses with revenues greater than $75 MM, available only in regional and MTA markets)	No
Small Businesses (not in excess of $40 MM in revenues and less than $500 MM in total assets, see ¶ 45)	10%	Interest only for 2 years; rate equal to 10-year Treasury note plus 2.5%;	No
Businesses Owned by Minorities and/or Women (in excess of $40 MM and less than or equal to $125 MM in revenues and less than $500 MM in total assets)	15%	Interest only for 3 years; rate equal to 10-year Treasury note;	Yes
Small Businesses Owned by Minorities and/or Women (not in excess of $40 MM in revenues and less than $500 MM in total assets)	25%	Interest only for 5 years; rate equal to 10-year treasury note;	Yes

C. Summary of Eligibility Requirements and Definitions

1. Entrepreneurs' Blocks and Small Business Eligibility

79. The following points summarize the principal rules we propose regarding eligibility to bid in the entrepreneurs' blocks and have adopted above to qualify as a small business. In addition, they summarize the attribution rules we will propose to use to assess

whether an applicant satisfies the various financial thresholds. More precise details are discussed in the subsections that follow.

Proposed Financial Caps:

- Entrepreneurs' Blocks: To bid in the entrepreneurs' blocks, the applicant, including attributable investors and affiliates, must cumulatively have less than $125 million in gross revenues and less than $500 million in total assets. No individual attributable investor or affiliate may have $100 million or more in personal net worth.

- Small Business: To qualify for special measures accorded a small business, the applicant, including attributable investors and affiliates, must cumulatively have not in excess of $40 million in gross revenues. No individual attributable investor or affiliate may have in excess of $40 million in personal net worth. (Note: this is the small business definition we have adopted above). We seek comments on whether in an entrepreneur's block we should define small businesses differently.

Proposed Attribution Rules:

- Control Group. The gross revenues, total assets and personal net worth of certain investors are not considered so long as the applicant has a "control group" consisting of one or more individuals or entities that control the applicant, hold at least 25 percent of the equity and, for corporations, at least 50.1 percent of the voting stock.

- The gross revenues, total assets and personal net worth of each member of the control group are counted toward the financial caps.

- Other Investors. Where the applicant has a control group, the gross revenues, total assets and personal net worth of any other investor are not considered unless the investor holds 25 percent or more of the applicant's passive equity (which, for corporations, will include as much as 15 percent of the voting stock).

- Passive Equity. Passive equity is limited partnership or non-voting stock interests or voting stock interests of 15 percent or less of the issued and outstanding voting stock.

- Proposed Option for Minority or Woman-Owned Applicants. If the control group (consisting entirely of women and/or minorities) owns at least 50.1 percent of the equity and, for corporations, at least 50.1 percent of the voting stock, then the gross revenues, total assets and personal net worth of any other investor are not considered unless the investor holds more than 49.9 percent of the applicant's passive equity (which, for corporations, includes no more than as 15 percent of the voting stock).

- Affiliates. The gross revenues, assets and personal net worth of outside interests held by the applicant (and the attributable investors in the applicant) are counted toward the financial caps if the applicant (or the attributable investors in the applicant) control or have power to control the outside interests or if the applicant (or the attributable investors in the applicant) is under the control of the outside interests. The financial interests of spouses are also attributed to each other.

2. Definition of Women and/or Minority-Owned Business

80. The points below summarize the two structural options proposed to be available to firms that wish to qualify for the special provisions adopted for businesses owned by minorities and women. These options will be discussed in more detail in the text that follows.

50.1 Percent Equity Option:

- If women and/or minority principals control the applicant and own at least:
  - 50.1 percent of the equity, and
  - 50.1 percent of the voting stock, in the case of corporations
- Then any other investor may hold:
  - not more than 49.9 percent of the passive equity (which, for corporations, includes as much as 15 percent of the voting stock).

25 Percent Equity Option:

- If women and/or minority principals control the applicant and own at least:
  - 25 percent of the equity, and
  - 50.1 percent of the voting stock, in the case of corporations
- Then any other investor may hold:
  - 25 percent or less of the passive equity (which, for corporations,includes as much as 15 percent of the voting stock).

81. We also request comment on alternatives intended to deter shams and fronts and to prevent abuse of the incentives for designated entities. The Commission would enforce vigorously any requirements adopted. These proposals include a holding and limited transfer period for licensees in the entrepreneurs' blocks and repayment provisions associated with bidding credits and installment payments. These steps and our eligibility and affiliation rules are intended to ensure that the benefits of any measures we take flow to the entities Congress intended. Ultimately, we believe that we will best fulfill our statutory mandate by creating

powerful incentives for bona fide designated entities to attract the capital necessary to compete both in auctions for narrowband PCS and in the provision of service. We therefore specifically request that commenters address in detail the impact any of these alternatives would likely produce on the opportunity for designated entities to acquire narrowband PCS licenses.

D. The Entrepreneurs' Blocks

82. As discussed above, because the auction process itself requires additional expenditures of capital to acquire licenses, this new licensing procedure in many respects holds the potential to erect an additional barrier to entry that had not existed even under the Act's previous licensing methods, comparative hearings and lotteries. As reflected in the House Committee Report, Congress was well aware of that possibility and wanted to ensure that competitive bidding should not exclude smaller entities from obtaining licenses.[119] The inability of small businesses and businesses owned by women and minorities to obtain adequate private financing creates a serious imbalance between these companies and large businesses in their prospects for competing successfully in narrowband PCS auctions.

83. We anticipate that the results of the narrowband regional auctions as well as the comments we seek in this Notice will be relevant to our final conclusion of whether an entrepreneurs' block is appropriate in narrowband PCS. We seek comments on what results in the regional auction would or would not justify the use of an entrepreneurs' block in subsequent narrowband auctions. The $125 million gross revenue/$500 million asset caps have the effect of excluding the large companies that would easily be able to outbid designated entities and frustrate Congress's goal of disseminating licenses among a diversity of licensees. At the same time, this restriction does not exclude many firms that, while not large in comparison with other telecommunications companies, nevertheless are likely to have the financial ability to provide sustained competition for the PCS licensees. For example, the $125 million gross revenue figure corresponds roughly to the Commission's definition of a Tier 2, or medium-sized, local exchange carrier,[120] and would include virtually all of the

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[119] See H.R. Rep. No. 103-111 at 255.

[120] Local exchange carriers are categorized as Tier 1 and Tier 2 companies by applying the criterion that Sections 32.11(a) and 32.11(e) of the Commission's Rules use to distinguish Class A and Class B companies, respectively. Class A companies are those companies having annual revenues from regulated telecommunications operations of $100 million or more; Class B companies are those companies having annual revenues from regulated telecommunications operations of less than $100 million. The initial classification of a company is determined by its lowest annual operating revenues for the five immediately preceding years. A company's classification is changed when its annual operating revenue exceeds or is under the $100 million mark in each of five consecutive years. The Commission imposes more relaxed regulatory requirements on Tier 2 LECs than on Tier 1

independently owned rural telephone companies, while excluding the largest incumbent paging licensees. Limiting the personal net worth of any individual investor or affiliate of the applicant to $100 million would prevent a very wealthy individual from leveraging his or her personal assets to allow the applicant to circumvent the size limitations of the entrepreneurs' blocks.

84. In determining which of the blocks in each market should constitute the entrepreneurs' blocks, we seek to make sufficient opportunity available to businesses that would qualify for the entrepreneurs' blocks and to those that would not. We seek comment on whether it would be appropriate to include all of those remaining blocks designated for bidding credits and to add one additional MTA block and one additional BTA block if we decide to adopt the proposal. We seek comment on the choice of blocks and the number of blocks that should be included in the entrepreneurs' blocks. We want to choose blocks to provide adequate amounts of spectrum and geographic territory necessary to ensure that the eligible bidders will be able to compete effectively. We believe that designating a variety of frequency blocks as entrepreneurs' blocks would satisfy the needs of those parties who believe they must have larger amounts of spectrum to compete effectively as well as the needs of other designated entities who require smaller blocks. Finally, it would not foreclose opportunities for other parties.[121]

85. Holding and Limited Transfer Period. Because we interpret the congressional goal of giving designated entities the opportunity to provide spectrum-based services to extend beyond merely obtaining a license, we seek comment on whether we should prohibit licensees in the entrepreneurs' blocks from voluntarily assigning or transferring control of their licenses for a period of three years from the date of the license grant.[122] We further ask commenters

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LECs. See Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies, 2 FCC Rcd 5770, 5772 (1987), Commission Requirements for Cost Support Material to be Filed with 1994 Annual Access Tariffs and for Other Cost Support Material, 9 FCC Rcd 1060 n. 3 (Comm. Carr. Bur. 1994); Commission Requirements for Cost Support Material to be Filed with Access Tariffs on March 1, 1985, Public Notice, Mimeo No. 2133 (Comm. Carr. Bur. released Jan. 25, 1985).

[121] In addition, incumbent paging licensees would have the opportunity to bid on 2,176 MTA and BTA response channel licenses reserved for existing paging licensees.

[122] We propose considering exceptions to this three-year holding period rule on a case-by-case basis in the event of a judicial order decreeing bankruptcy or a judicial foreclosure if the licensee proposes to assign or transfer its authorization to an entity that meets the financial thresholds for bidding in the entrepreneurs' blocks. In addition, we note that a transfer is considered "involuntary" if it is made pursuant to a court decree requiring the sale or transfer of the licensee's stock or assets. Paramount Pictures, Inc., 43 FCC 453 (1949); Cf. William Penn Broadcasting, 16 FCC 2d 1050 (1969).

to address whether, for the next two to seven years of the license term, we should permit the licensee to assign or transfer control of its authorization only to an entity that satisfies the entrepreneurs' blocks entry criteria.[123] Comments should address whether any restrictions of this type would accurately balance the goal of promoting access to capital by designated entities with the need to assure the integrity of our process. During this limited transfer period, licensees would continue to be bound by the financial eligibility requirements, as set forth below.[124] In addition, a transferee or assignee who receives an entrepreneurs' block license during this period would remain subject to the transfer restrictions for the balance of the holding period.[125] Should any of these proposals be adopted, the Commission would conduct random pre- and post-auction audits to ensure that applicants receiving preferences are in compliance with the FCC's rules.

86. Our goals are to create significant opportunities for entrepreneurs, small businesses, and businesses owned by minorities and women to compete in auctions for licenses and attract sufficient capital to build-out those licenses and provide service. We recognize the critical need to attract capital, which requires flexibility. We are very concerned, however, that such flexibility not undermine our more fundamental objective, which is to ensure that designated entities retain de facto and de jure control of their companies. The holding and limited transfer period upon which we seek comment, may help promote this objective. We seek comment on the effect that any rules of this sort are likely to have on the achievement of our goals of meaningful long-term participation by designated entities and how such a rule would impact the ability to raise capital.

E. Bidding Credits

87. In the Third Report and Order we adopted a 25 percent bidding credit for businesses owned by minorities and women. We concluded that the use of bidding credits would be an effective tool to ensure that women and minority-owned businesses have opportunities to participate in the provision of narrowband services.[126] And, in this Order, we

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[123] We note that a licensee assigning its authorization pursuant to this limited transfer period might be subject to the repayment provisions associated with installment payments and bidding credits. See infra ¶¶ 91, 98.

[124] See infra ¶¶ 101-106. In addition, for purposes of the installment payment and bidding credit provisions set forth below, licensees will continue to be bound by the financial eligibility requirements throughout the term of the license.

[125] For example, if an entrepreneurs' block authorization is assigned to an eligible business in year four of the license term, it would be required to hold that license until the original holding period expires, subject to the same exceptions that applied to the original licensee.

[126] See Third Report and Order at ¶ 72.

raised this bidding credit to 40 percent for the regional narrowband auctions. While we do not think that a bidding credit of this magnitude is required when used in conjunction with an insulated entrepreneurs' block, we continue to believe that a bidding credit is necessary to ensure that women and minority-owned businesses have the opportunity to participate in narrowband PCS. In addition, we believe that a small bidding credit is warranted to help small businesses overcome financing obstacles. Accordingly, we propose to continue to provide a bidding credits in the proposed entrepreneurs' blocks that would give small businesses a 10 percent credit, women and minority-owned businesses a 15 percent credit, and small businesses owned by women and minorities an aggregate credit of 25 percent.

88. In ex parte presentations to the Commission, many commenters have indicated that, without spectrum set-asides for narrowband PCS, bidding credits would not be sufficient to assist designated entities in outbidding very large entities who are likely to bid for licenses in this service. PCSD states, for example, that all of the existing large paging companies can justify much larger payments for licenses than could an individual entrepreneur, regardless of a bidder's credit. Therefore, it believes no entrepreneur will win a bid for any PCS market that is desirable to any of the large companies.[127] As described above, in order to afford designated entities a realistic opportunity to obtain licenses in the narrowband PCS service, we propose to exclude very large businesses from bidding for licenses in the entrepreneurs' blocks. These measures would enhance the value of the bidding credits for small businesses and businesses owned by minorities and women. In this context, we believe that bidding credits can have a significant effect on the ability of small businesses and businesses owned by women and minorities to participate successfully in auctions for licenses in entrepreneurs' blocks.

89. As explained above, the capital access problems faced by small firms and women and minority-owned firms make special provisions like bidding credits appropriate for these designated entities in narrowband PCS.[128] In effect, the bidding credit would function as a discount on the bid price a firm would actually have to pay to obtain a license and, thus, will address directly the financing obstacles encountered by these entities. Moreover, as noted previously, women and minorities face discrimination in lending and other barriers to entry not encountered by other firms, including other designated entities. Therefore, as one of the measures designed to counter these increased capital formation difficulties, we propose to provide them with a slightly higher bidding credit than small businesses. Thus, women and minorities would receive a 15 percent payment discount that is applied against the amounts they bid on licenses. Absent such measures targeted specifically to women and minorities, it

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[127] Ex parte filing of PCSD Development Corporation (PCSD), August 9, 1994.

[128] Although we did not previously grant bidding credits to small businesses in the Third Report and Order, we now believe that, given the exponentially greater expense likely to be incurred in acquiring broadband PCS licenses, bidding credits might be a proper means to ensure that these firms have the opportunity to participate in this service.

might be impossible to assure that these groups achieve any meaningful measure of opportunity for actual participation in the provision of narrowband PCS. Similarly, it is reasonable to assume that small firms owned by women and minorities suffer the problems endemic to both groups. Therefore, we propose a cumulative bidding credit of 25 percent for these groups. We believe that these measures will help women and minorities to attract the capital necessary for obtaining a license and constructing and operating a narrowband PCS system, consistent with the intent of Congress. We seek comments on these proposals.

90. As discussed below, we have also proposed to modify the definition of a minority and women-owned firm.[129] To receive a 10 percent bidding credit, we propose that a small business must satisfy the same gross revenue test adopted for installment payments. As explained more fully in the small business definition section, we propose that a consortium consisting entirely of small businesses also be eligible for a 10 percent bidding credit even if the combined gross revenues of the consortium exceed the small business gross revenues threshold. In addition, we propose that a small business that is owned by women and minorities must satisfy the definition of a business owned by minorities and women as well as the small business definition to receive a 25 percent bidding credit. Finally, we propose that a consortium of small firms owned by women and/or minorities is eligible for a 25 percent bidding credit, provided that each member of the consortium meets the definition of a small business and a minority and/or women-owned firm.

91. Repayment Policies Applicable to Bidding Credits To ensure that bidding credits benefit the parties to whom they are directed, we inquire whether we should adopt strict repayment policies: if, within the original 10-year term, a licensee applies to assign or transfer control of a license to for example, an entity that is not eligible for as a high a level of bidding credit, then the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify would have to be paid to the U.S. Treasury as a condition of approval of the transfer. Thus, an assignment of a license from a small minority-owned firm to a women-owned firm with revenues greater than $40 million would require repayment of 10 percent of the original bid price (25 percent less 15 percent) to the Treasury. A sale to an entity that would not qualify for bidding credits would entail full repayment of the original bidding credit as a condition of transfer. Small businesses also would be bound by the financial eligibility rules during the entire license term as set forth below. Thus, if after licensing an investor purchases an "attributable" interest in the business and, as a result, the gross revenues of the firm exceed the $40 million small business cap, this repayment provision would apply.[130] If such a proposal were to be adopted, we would envision that these repayment provisions apply throughout the original term of the license to help promote the long-term holding of licenses by those parties receiving bidding

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[129] See infra ¶¶ 107-117.

[130] See infra ¶¶ 102-106, for a discussion of which investor interests would be "attributable" for purposes of calculating the gross revenues caps.

credits. Nevertheless, as in the case of the holding period and transfer restrictions discussed at ¶¶88-89 above we seek comment on any effects such rules may have on the ability of designated entities to attract capital. We therefore ask commenters to address in detail whether this type of restriction would further the goal of increasing the number of designated entities participating in the provision of narrowband PCS services.

F. Installment Payments

92. A significant barrier for most businesses small enough to qualify to bid in the proposed entrepreneurs' blocks would be access to adequate private financing to ensure their ability to compete against larger firms in the PCS marketplace.[131] In the Third 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 small businesses at an interest rate equal to the rate for U.S. Treasury obligations.[132]

93. In light of the expected substantial capital required to acquire narrowband PCS licenses, we propose that installment payments be available to most businesses that obtain narrowband PCS licenses in the proposed entrepreneurs' blocks. By allowing payment in installments, the government would in effect be extending credit to licensees, thus reducing the amount of private financing needed prior to and after the auction. Such low cost government financing would promote long-term participation by these businesses, which, because of their smaller size, lack access to sufficient capital to compete effectively with larger PCS licensees. Under the rules we propose today, installment payments would be available to smaller entities that do not technically qualify as small businesses for purposes of other measures we have proposed, such as bidding credits. We believe, however, that, given the significant costs of narrowband PCS licenses and the likelihood of very large participants in the other blocks, this option would be fully consistent with the congressional intent in enacting Section 309(j)(4)(A) to avoid a competitive bidding program that has the effect of favoring incumbent providers of other communications services, with established revenue streams, over smaller entities.[133]

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[131] See e.g., comments of SBA Chief Counsel of Advocacy at 6, 20-21, NTIA at 27; SBAC Report at 2 (September 15, 1993).

[132] See Third Report and Order at ¶¶ 86-90.

[133] See H.R. Rep. No. 103-111 at 255 (Commission has the authority to design alternative payment schedules in order that the auction process does not inadvertently favor only those with "deep pockets" over new or small companies).

94. Under the plan we propose here, all licensees that satisfy the gross revenues, total assets and personal net worth criteria to bid in the entrepreneurs' blocks would be allowed to pay in installments for regional and MTA licenses granted in those blocks. With respect to the BTA licenses in those blocks, however, only businesses owned by women and minorities and those licensees with less than $75 million in gross revenues would be able to use installment payments.[134] This distinction is based on the expected lower costs to acquire licenses and construct systems in the BTAs. However, if we adopt our proposal to redesignate BTA licenses as nationwide or regional licenses, we propose extending installment payments on those blocks to all parties eligible for the entrepreneurs' blocks. Thus, with the exception of companies owned by women or minorities, which face additional problems accessing capital, we do not think that a firm with gross revenues exceeding $75 million would require government financing to be competitive for the BTA licenses.[135]

95. The installment payment option would enable qualified businesses to pay their winning bid over time. These businesses would still make the applicable upfront payment in full before the auction, but would be required to make a post-auction down payment equaling only ten percent of their winning bids, half of which will be due five business days after the auction closes. Payment of the other half of the down payment would be deferred until five business days after the license is granted. In general, the remaining 90 percent of the auction price would be paid in installments with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. Under this general rule, only payments of interest would be due for the first year with principal and interest payments amortized over the remaining nine years of the license. Timely payment of all installments would be a condition of the license grant and failure to make such timely payment would be grounds for revocation of the license.[136] We seek comment on this installment payment proposal.

96. Enhanced Installment Payments As explained previously, small businesses and businesses owned by minorities and women face capital access difficulties not encountered by other firms and, thus, require special measures to ensure their opportunity to participate in

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[134] We will apply the same $500 million total assets and $100 million personal net worth standards for purposes of determining eligibility for installment payments in the BTA entrepreneurs' blocks. The attribution rules set forth with regard to eligibility to bid will also apply in all of the BTA entrepreneurs' blocks.

[135] We note that a consortium of small businesses would be eligible for installment payments in any market so long as each member of the consortium satisfies the definition of a small business, as set forth in Section V.A., infra.

[136] 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 a licensee may seek a restructuring of the payment plan.

narrowband PCS. Accordingly, we propose an "enhanced" installment payment plan for these entities. Pursuant to this enhanced installment payment plan, small businesses who win licenses in the proposed entrepreneurs' blocks would be required to pay interest only for the first two years of the license term at the same interest rate as set forth in the general rule. Businesses owned by women and/or minorities would be able to make interest-only payments for three years. Interest would accrue at the Treasury note rate without the additional 2.5 percent.[137] And, finally, businesses that are both small and owned by women and/or minorities would be required to pay only interest for five years. Interest would accrue at the Treasury note rate.

97. These proposed enhanced installment payments are narrowly tailored to the needs of the various designated entities, as reflected in the record in this proceeding. We believe that varying the moratorium on principal in the early years of the loan and varying the interest rate based on these needs would allow small businesses and companies owned by women and/or minorities to bid higher in auctions, thereby increasing their chances for obtaining licenses. In addition, it would allow them to concentrate their resources on infrastructure build-out and, therefore, it would increase the likelihood that they become viable narrowband PCS competitors. We request comment on these proposed enhancements to the installment payment plan.

98. Unjust Enrichment Applicable to Installment Payments To ensure that large businesses do not become the unintended beneficiaries of measures meant for smaller firms, we propose to retain the unjust enrichment provisions adopted in the Third Report and Order applicable to installment payments. Specifically, if a licensee that was awarded installment payments seeks to assign or transfer control of its license to an entity not meeting the applicable eligibility standards set out above during the term of the license, we would require payment of the remaining principal and any interest accrued through the date of assignment as a condition of the license assignment or transfer.[138] Moreover, if an entity seeks to assign or transfer control of a license to an entity that does not qualify for as favorable an installment payment plan, the installment payment plan, if any, for which the acquiring entity qualifies would become effective immediately upon transfer. Thus, a higher interest rate and earlier payment of principal may begin to be applied. For example, a transfer of a license in the fourth year after license grant from a small minority-owned firm to a small non-minority owned firm would require that the firm begin principal payments and the balance would begin accruing interest at a rate 2.5 percent above the rate that had been in effect. Finally, if an investor subsequently purchases an "attributable" interest in the businesses and, as a result, the

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[137] To be eligible for these "enhanced" installment payments, a firm would have to satisfy either of the two alternative definitions of a woman or minority-owned business, as set forth in ¶¶107-117, infra, as well as the applicable financial caps.

[138] See Third Report and Order at ¶ 89.

gross revenues or total assets of the business exceed the applicable financial caps, this unjust enrichment provision would also apply.[139] We seek comment on these proposals.

G. Upfront Payments

99. As previously indicated in the Third Report and Order, the upfront payment requirement was designed to ensure that bidders are qualified and serious and to provide the Commission with a source of funds in the event that it becomes necessary to assess default or bid withdrawal penalties.[140] The upfront payment ensures that bids during the course of the auction are bona fide and convey information about the value of the underlying licenses. Our standard upfront payment for narrowband PCS is $0.02 per MHz per pop. As an additional means of enhancing the opportunity of designated entities to participate in competitive bidding we propose to reduce the required upfront payment for those applicants. As we concluded in the Fifth Report and Order, we are concerned that the $0.02 per MHz per pop upfront payment requirement might impose a barrier for smaller entities wishing to participate in the auctions. Moreover, we note that most bidders in the proposed entrepreneurs' blocks would be entitled to pay for their licenses in installments, which would require a down payment of only five percent of the winning bid. We are concerned that requiring an upfront payment that may be larger than the down payment that the winning bidder is required to tender could discourage auction participation.

100. For these reasons, we propose to reduce the upfront payment requirement to $0.015 per MHz per pop for bidders in the entrepreneurs' blocks. This 25 percent discount should facilitate auction participation by capital-constrained companies and would permit them to conserve resources for infrastructure development after winning a license. Moreover, since the upfront payment is still substantial, we believe that insincere bidding would be discouraged and the Commission would have access to funds if it must collect default or bid withdrawal penalty payments.

H. Definitions and Eligibility

1. Eligibility to Bid in the Proposed Entrepreneurs' Blocks

101. As noted previously, eligibility to bid in the proposed entrepreneurs' blocks would be limited to companies that, together with their affiliates and investors, had gross revenues of less than $125 million in each of the last two years and have total assets of less than $500 million at the time their short form applications are filed. In addition, we propose to prohibit an applicant from bidding in these blocks if any one attributable individual

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[139] See infra ¶¶ 102-106, for a discussion of which investor interests would be "attributable" for purposes of calculating the gross revenues and total assets thresholds.

[140] Third Report and Order, ¶¶ 41-45.

investor or principal in the applicant has $100 million or greater in personal net worth at the short form application filing date.

2. Attribution Rules for the Proposed Entrepreneurs' Blocks

102. For purposes of determining whether an entity qualifies to bid in the entrepreneurs' blocks, we propose to follow the control group and attribution rules set forth with regard to eligibility to bid as a small business.[141] In particular, winning bidders would be required to identify on their long-form applications a control group that controls the applicant, owns at least 25 percent of the equity, and in the case of a corporation, holds at least 50.1 percent of the voting stock. For partnership applicants, we propose that every general partner be considered part of the group. The gross revenues and total assets of each member of the control group and each member's affiliates would be counted toward the $125 million/$500 million thresholds, regardless of the size of the member's total interest in the applicant. The $100 million personal net worth limitation would also apply to each member of the control group. We would 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 fifteen percent of the voting stock in a corporate applicant.

103. We also propose the more relaxed attribution standard set forth in ¶¶ 49-51 with regard to investors in small businesses owned by minorities and women. Specifically, we would 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 fifteen 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. We believe that such revenue attribution would ensure that only bona fide small businesses are able to take advantage of the special provisions we have proposed, but would allow those businesses to attract sufficient equity capital to be truly viable contenders in the PCS industry.

104. In addition, we propose to allow a consortium of small businesses to qualify for any of the measures adopted in this order applicable to individual small businesses including the ability to bid in the entrepreneurs' block. 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.

105. We explain how these attribution rules would apply with regard to any holding and limited transfer period for entrepreneurs' block licensees should such rules ultimately be adopted. During this holding period, an entrepreneurs' block licensee could not sell more than 25 percent of its passive equity to a single investor if the resulting attribution of that

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[141] See supra ¶¶ 41-47.

investor's gross revenues or total assets would bring the company over the $125 million gross revenues/$500 million total assets thresholds, or if that investor's personal net worth exceeds the $100 million personal net worth cap. Similarly, while individual members of the control group could change (if it would not result in a transfer of control of the company), the control group would have to maintain control and at least 25 percent of the equity and 50.1 percent of the voting stock.[142] A company would be permitted to grow beyond these gross revenues/total assets caps, however, through equity investment by non-attributable (i.e. passive) investors, debt financing, revenue from operations, business development or expanded service.[143]

106. We seek comment on these proposed eligibility requirements for the entrepreneurs' blocks. In particular, parties should discuss the equity and control requirements for the control group and investors in both the corporate and partnership context. In addition, commenters should discuss the alternative option for women and minority-owned companies and the ability of small businesses to form consortia. With regard to all of these issues, parties are asked to comment on the proposals' impact on the ability of entities to obtain financing as well as on the Commission's goals of deterring shams and fronts.

3. Definition of Women and Minority-Owned Business

107. As discussed above, we have proposed 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 narrowband PCS service.[144] We previously adopted a tax certificate program for women and minorities to allow more sources of potential funding, and in this Order have relaxed the attribution standard used to determine eligibility as a qualified small business.

108. For purposes of implementing these steps, we propose to depart from the definition of a minority and woman-owned firm that was adopted in the Third Report and

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[142] A minority or woman-owned company would have to continue to adhere to the attribution rules applicable to it, set out above.

[143] These rules would continue to apply in this manner throughout the license term with regard to a firm's continuing eligibility for installment payments, "enhanced" installment payments and bidding credits.

[144] We propose to use the same criteria set forth in the Second Report and Order, and consider the members of the following groups "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 would be eligible for special measures only if the minority and women principals are also United States citizens.

Order. We have adopted relaxed attribution standards for businesses owned by women and minorities for purposes of qualifying for small business provisions (¶ 46). We are proposing relaxed standards for businesses owned by women and minorities to qualify for the entrepreneurs' blocks. In the Third Report and Order, 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. Third Report and Order at ¶68; 47 C.F.R. § 1.2110(b)(2). For future narrowband PCS auctions, we propose to 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 propose 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 fifteen percent of the voting stock. In addition, provided that certain restrictions are met, we propose to allow women and minority-owned firms the option to reduce to 25 percent the 50.1 percent minimum equity amount that must be held.

109. We emphasized in the Third 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, in the Second Report and Order 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 narrowband PCS applicants, we conclude that it may be 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.

110. We propose therefore to 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 fifteen percent of the voting interests.[145] For

[145] 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,