

#### 4. Emission Masks

42. As a protection against adjacent channel interference, we have subjected most mobile radio services to emission mask rules that restrict transmitter emissions on the spectrum adjacent to the licensee's assigned channel. In the *CMRS Third Report and Order*, we affirmed our out-of-band emission rules for CMRS services.<sup>71</sup> We did determine, however, that out-of-band emission rules should apply only where emissions have the potential to affect other licensees' operations.<sup>72</sup> Also, we concluded that where a licensee has exclusive use of a block of contiguous channels, such as in cellular and PCS, out-of-band emission rules would be applied only to the extent necessary to protect operations outside of the licensee's authorized spectrum. We indicated that we would extend this approach to channel blocks assigned to MTA-based SMR systems, except to the extent that MTA licensees would also be required to provide adjacent channel protection to "interior" channels used by incumbent licensees.<sup>73</sup>

43. In this connection, we propose to apply out-of-band emission rules only to the "outer" channels included in a MTA license and to spectrum adjacent to interior channels used by incumbents. We believe that these channels alone have the potential to affect operations outside of the MTA licensee's authorized bandwidth. Moreover, this approach is consistent with the action we took in the broadband PCS context. Our specific proposal for an 800 MHz SMR emission mask rule is that for any frequency outside an MTA licensee's frequency block, the power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus  $10 \log_{10}(P)$  decibels or 80 decibels, whichever is the lesser attenuation. We tentatively conclude that this emission mask would adequately protect other MTA licensees. This proposed emission mask rule is identical to that adopted for broadband PCS. We seek comment on this proposal. Specifically, we ask commenters to include a technical analysis of our proposal and discuss alternatives appropriate for any unique operational issues presented by MTA-based SMR systems.

#### C. **Construction Requirements**

44. In the *CMRS Third Report and Order*, we established a uniform 12-month period for constructing a standard base station in all CMRS services that are licensed on a channel-by-channel basis.<sup>74</sup> As a result, licensees of SMR systems are presumptively subject to this 12-month construction period. Although we eliminated the loading requirements applicable to SMR licensees, we indicated that we would protect against spectrum warehousing through

---

<sup>71</sup>*CMRS Third Report and Order*, *supra* note 3, ¶ 160.

<sup>72</sup>*Id.*, ¶ 161.

<sup>73</sup>*Id.*

<sup>74</sup>*Id.*, ¶ 177.

other measures. In particular, as discussed in Section IV(A)(3), *supra*, we propose to no longer permit extended implementation under § 90.629 on the "lower 80" channels. We also propose to require that licensees of local SMR systems commence service to subscribers by the end of their construction period. As adopted in the *CMRS Third Report and Order*, "service to subscribers" is defined to mean the provision of service to at least one party not affiliated with, controlled by, or related to the CMRS provider.<sup>75</sup> We seek comment on whether strict enforcement of this construction period will be an adequate protection against spectrum warehousing on frequencies occupied by local SMR systems.

45. With respect to CMRS systems licensed on an MTA basis, we determined that the record in the *CMRS* proceeding generally supported use of longer construction periods combined with interim coverage requirements to ensure that licensees begin providing service to portions of their service area before the construction period expires.<sup>76</sup> Notably, such an approach has been used for cellular service and recently adopted for both broadband and narrowband PCS. Consequently, we concluded in the *CMRS* docket that 800 MHz wide-area SMR systems should be subject to similar requirements noting that it would be necessary to tailor these requirements to reflect certain circumstances unique to the SMR service.

46. Based on the record in the *CMRS* proceeding and this docket, we tentatively conclude that MTA licensees should have five years to construct their systems. While this is shorter than the construction period for PCS systems, we believe it is the most appropriate time period in the 800 MHz SMR context. First, under our current rules, SMR licensees can request up to five years to construct a wide-area system in the 800 MHz band.<sup>77</sup> Second, considering the substantial construction of SMR systems (including wide-area systems) that has already occurred in the 800 MHz band, the ten-year construction period applicable to PCS appears excessive for the service.<sup>78</sup> Third, although a five-year construction period may give some MTA licensees more time to construct certain facilities than might otherwise have been allowed,<sup>79</sup> we believe that MTA licensees should have flexibility to adjust their construction plans to adapt to the requirements of constructing MTA-based systems. In fact, some pre-

---

<sup>75</sup>*CMRS Third Report and Order*, *supra* note 3, ¶ 178.

<sup>76</sup>*Id.*, ¶ 179.

<sup>77</sup>47 CFR § 90.629.

<sup>78</sup>We expect that several of the MTA licensees will be existing wide-area licensees who already have begun constructing systems under existing authorizations which will be folded into their MTA-based systems. Thus, an extremely lengthy construction period would not be necessary.

<sup>79</sup>For example, because the construction period for an MTA license would commence with the issuance of the license and apply to all of the licensee's stations on the MTA channel block (including stations that may have been subject to an earlier construction deadline arising from a pre-existing authorization), there is the potential that the MTA licensee would ultimately receive more than five years in which to construct their system as a result of our proposed rule changes.

existing wide-area licensees may need this additional time to modify their constructed systems so that they comply with our new technical and operational requirements. Fourth, we anticipate that MTA licensees with a built-in investment in existing systems will have incentive to construct facilities and provide service promptly to ensure a return on that investment. Finally, we believe that the use of competitive bidding to select MTA licensees should provide ample incentives for rapid system construction since to do otherwise would not allow them to recover their bidding expenses.

47. As noted above, some existing wide-area SMR licensees have been granted an extended implementation period of up to five years pursuant to either a waiver of our rules or § 90.629 of our Rules.<sup>80</sup> In light of our proposal of a five-year construction period for MTA licensees, we request comment on how existing licensees with extended implementation periods should be treated. Under our rules, any extended implementation period authorized pursuant to § 90.629 is "conditioned upon the licensee constructing and placing its system within the authorized implementation period and in accordance with an approved implementation plan of up to five years."<sup>81</sup> The licensee also is required to submit annual certifications of compliance with its yearly station construction commitments. In addition, if the Commission concludes, at any time, that the licensee has failed to meet such construction commitments, it may terminate extended implementation and give the licensee six months from the date of termination to complete construction of the system. We ask commenters to discuss whether existing licensees with extended implementation periods should be given that full period to construct their systems; or, in the alternative, if they should be given some shorter period unless they submit a detailed showing that the construction to date is consistent with their original implementation plan. We also ask commenters to address what is a reasonable timeframe for completing such systems given the technologies presently available in the SMR market. In addition, we seek comment on whether licensees who have received extended implementation should be treated differently depending upon whether they become an MTA licensee.

48. In the *CMRS Third Report and Order*, we also concluded that 800 MHz wide-area SMR licensees should be subject to interim coverage requirements that are similar to those in the cellular and PCS rules.<sup>82</sup> Our current PCS rules require 30 MHz broadband PCS licensees to provide coverage to one-third of the population of their service area within five years of initial license grant and to two-thirds of the population of their service area within ten years; while the 10 MHz licensees are required to provide coverage to one-fourth of the population of their service area within five years, or alternatively, to submit a showing to the

---

<sup>80</sup>See Fleet Call, Inc., *supra* note 9; 47 CFR § 90.629. Only those grants of extended implementation period that preceded our 1993 adoption of § 90.629 were given pursuant to a waiver of our rules.

<sup>81</sup>47 C.F.R. § 90.629(c).

<sup>82</sup>*CMRS Third Report and Order*, *supra* note 3, ¶ 180.

Commission that they are providing substantial service.<sup>83</sup> We tentatively conclude that MTA licensees in the wide-area SMR service should be held to a coverage standard comparable to that required of 30 MHz PCS licensees. We therefore propose that MTA-based SMR licensees be required to provide coverage to one-third of the population within their MTA within three years of initial license grant and to two-thirds of the population by the end of their five-year construction period. Because 10 MHz PCS licensees are licensed to serve smaller geographic areas, namely, BTAs, and designed primarily to provide a more limited array of services, we believe that it is more appropriate to adopt coverage requirements similar to those for MTA-based licensees. Although we impose the interim coverage requirements at three and five years rather than five and ten years, we nonetheless believe such requirements to be reasonable in light of pre-existing SMR construction as discussed above. We seek comment on this proposal and whether a specific definition of what constitutes coverage should be adopted for this service, *e.g.*, should we consider single channel coverage sufficient or should we impose a multi-channel coverage requirement, given the substantial licensing of the service.

49. In the *CMRS Third Report and Order*, we also noted that any interim coverage requirements for wide-area SMR systems must account for the fact that MTA licensees may be required to provide co-channel protection to incumbent systems within their service area.<sup>84</sup> We believe that when a licensee acquires an MTA license, it assumes the responsibility of obtaining the right to use sufficient spectrum to provide coverage if such spectrum is not already available. We contemplate that this could be achieved either directly (by utilizing available spectrum authorized to the MTA licensee or acquiring such spectrum through buy outs of incumbent licensees within its authorized MTA block) or indirectly (through resale or other similar types of agreements with incumbents). In light of the significant amount of spectrum licensed to the MTA licensee, we do not believe that it would be in the public interest to allow such spectrum not to be fully utilized for an extended period of time. Accordingly, we believe that an MTA licensee must satisfy its coverage requirements regardless of the extent of the presence of incumbents within its MTA block. As a practical matter, we believe this will also discourage applicants who have a limited ability to provide coverage within an MTA from seeking MTA licenses for anti-competitive reasons, *e.g.*, to block potential acquisition of the MTA license by an applicant who already provides substantial coverage. We ask commenters to address the advantages and disadvantages of these proposals and any alternatives.

50. Our imposition of interim coverage requirements also raises the issue of what happens in the event that an MTA licensee does not satisfy such requirements. In this regard, we tentatively conclude that an MTA licensee's failure to meet the coverage requirements imposed either at the third or fifth years of its construction period should result in forfeiture

---

<sup>83</sup>See Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd 5947 (1994), ¶ 155.

<sup>84</sup>*CMRS Third Report and Order*, *supra* note 3, ¶ 180.

of the license. This penalty for failure to comply with construction requirements is consistent with the penalties provided in our broadband PCS rules.<sup>85</sup> In addition, such action would allow the spectrum to be made available to other qualified applicants. We request comment on this proposal and its alternatives.

#### **D. SMRs on General Category Channels & Inter-category Sharing**

51. Currently, 800 MHz SMR licensees may be licensed on the 150 channels in the General Category<sup>86</sup> or licensed under our inter-category sharing rules on 100 channels in the Industrial/Land Transportation and Business Categories (collectively, "Pool Channels").<sup>87</sup> In the *Notice*, we sought comment on reuse of non-SMR Category channels by wide-area licensees. We also sought comment on whether the availability of inter-category sharing channels to SMR licensees should be limited because depletion of SMR Category frequencies by wide-area licensees might increase SMR demand for out-of-category assignments to otherwise unacceptable levels.

52. Although we believe that SMR licensees with existing operations on the General Category or Pool Channels should be allowed to continue their operations on such channels, we also believe that some restriction on future SMR applications on General Category and Pool Channels may be appropriate. General Category Channels are expressly designated for use not only by SMR licensees, but also by Public Safety licensees and PMRS providers in the Industrial/Land Transportation and Business service categories. Because we have allocated these channels for extensive PMRS as well as CMRS use, we determined in the *Competitive Bidding Second Report and Order* that these channels are not subject to competitive bidding.<sup>88</sup> Consequently, we are concerned that continuing to allow SMR applications for these channels could result in a scarcity of frequencies for PMRS uses. Similarly, the Pool Channels are intended for non-commercial internal use by Business and Industrial/Land Transportation licensees, and their availability for SMR licensees was intended to be on a limited basis only. Thus, if these channels remain available to SMR licensees and not subject to auctions, demand for the channels by SMR applicants seeking to avoid auctions may render them unavailable to other Part 90 services that need and are eligible for them.

---

<sup>85</sup>See Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd 7700, ¶ 134 (1993).

<sup>86</sup>47 CFR § 90.615(a). Pursuant to § 90.615 of our Rules, frequencies in the 806-809.750/851-854.750 MHz bands (Channels 1-150) are allocated to the General Category for conventional operations.

<sup>87</sup>47 CFR § 90.621(g)(2), (3). Pursuant to § 90.621 of our Rules, frequencies in the 806-821/851-866 MHz bands are available for inter-category sharing under certain specified conditions.

<sup>88</sup>Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, ¶ 47 (1994) (*Competitive Bidding Second Report and Order*), recon. *Second Memorandum Opinion and Order*, FCC 94-215, adopted August 12, 1994, released August 15, 1994 (*Competitive Bidding Reconsideration Order*).

53. In light of these concerns, we tentatively conclude that we should revise our eligibility rules for the General Category and Pool Channels to prohibit SMR and non-SMR applicants from applying for the same channels in the future. This would have the benefit of establishing a clear demarcation between our allocation of spectrum for SMR and for other Part 90 services and eliminating the risk of SMR encroachment on non-auctionable spectrum allocated for PMRS purposes. We seek comment, however, on how the spectrum should be allocated to address the relative demand for SMR and non-SMR services. One alternative would be to eliminate SMR eligibility for all future licensing on General Category and Pool Channels. Another alternative would be to prohibit future inter-category sharing by SMR applicants on Pool Channels, but to designate a portion of the General Category for SMR-only licensing while the remaining channels would be available only to non-SMR licensees. Finally, if we determine that the demand for additional spectrum by SMR providers is significantly greater than the demand by non-SMR services, a third alternative would be to designate the entire General Category for future licensing exclusively to SMR applicants. We seek comment on these alternatives, and particularly on whether the relative demand for General Category channels by SMR applicants as opposed to non-SMR applicants would justify reclassifying some or all of this spectrum for SMR-only use.

54. In light of our proposal to restrict future SMR use of Pool Channels, and possibly, General Category channels that are designated for non-SMR use, we also tentatively conclude that other Part 90 services should be restricted from future eligibility for licenses on SMR Category channels. We believe that this additional restriction is appropriate not only for purposes of equity but also to ensure that SMR licensees are not required to compete with non-SMR providers for scarce SMR Category channels. We seek comment on our proposal, including whether incumbent SMRs on the General Category or Pool Channels should be allowed to apply for more of these channels.

#### **E. Licensing Mechanism for 800 MHz SMR Service**

55. In the *CMRS Third Report and Order*, we adopted licensing rules and procedures for Part 90 services reclassified as CMRS that are comparable to our rules and procedures for Part 22 services. In the case of 800 MHz SMR service, we determined that we would apply public notice and petition to deny procedures to all applications, and that we would adopt notice and cut-off procedures for accepting applications.<sup>89</sup> In this Further Notice, we set forth proposals for specific application and licensing procedures based on these principles.

##### **1. Application Procedures**

###### **a. *Initial Eligibility***

56. We propose that both existing licensees and new applicants should be eligible for MTA licenses as well as for local licenses in the 800 MHz SMR band. Although we

---

<sup>89</sup>*CMRS Third Report and Order*, *supra* note 3, ¶¶ 318, 341.

originally proposed in the *Notice* to restrict initial eligibility for wide-area licenses to applicants who were already licensed within the relevant BTA or MTA,<sup>90</sup> we concluded in the *CMRS Third Report and Order* that because of the intervening grant of authority to use competitive bidding procedures, the initial application process should be open to any qualified applicant.<sup>91</sup> We request comment on this proposal, including whether there is any need to restrict eligibility for MTA licenses to incumbent licensees (or to restrict eligibility based on other criteria) if competitive bidding procedures are used.

*b. Application Procedures for MTA Licenses*

57. For 800 MHz SMR MTA licenses, we propose to use application procedures similar to those used for licensing of PCS. Although MTA licensing in the SMR service may differ from PCS licensing because of the substantial number of pre-existing licensees in the 800 MHz band, we believe similar licensing procedures are appropriate based on the common use of Commission-defined geographic areas and spectrum blocks to define the scope of licenses in both services. We seek comment on this view, and on any alternative procedural approach that commenters may consider appropriate.

(1) Initial Applications

58. In the *CMRS Third Report and Order*, we determined that MTA-based applications in the 800 MHz SMR service would be deemed "initial" applications, even if an applicant is filing for a block that encompasses facilities previously licensed to the applicant.<sup>92</sup> We therefore propose to treat all MTA applicants as initial applicants for public notice, application processing, and competitive bidding purposes, regardless of whether they are already incumbent licensees in the 800 MHz SMR band.<sup>93</sup>

(2) Processing and Procedural Rules

59. As in the case of PCS, we propose to require applicants for MTA-based SMR licenses to file an initial "short-form" application in order to qualify for competitive bidding, after which the successful bidder files a "long form" application. We also propose to adopt rules analogous to our PCS rules with respect to application content, amendment and modification of applications, return of defective applications, waiver procedures, and petitions to deny. Under these proposed procedures, we would announce an initial filing window by

---

<sup>90</sup>*Notice, supra* note 1, ¶ 24.

<sup>91</sup>*CMRS Third Report and Order, supra* note 3, ¶ 341.

<sup>92</sup>*Id.*, ¶ 355.

<sup>93</sup>As discussed below, however, incumbent licensees whose existing operations continue to be regulated as PMRS until 1996 under the grandfathering provisions of the Budget Act will be entitled to similarly grandfather any MTA licenses they may obtain.

public notice for the submission of short-form applications (FCC Form 175) for MTA-block licenses. If only one application is received for an MTA block, the applicant would then file a long-form application (FCC Form 600), which would be placed on public notice for 30 days and would be grantable upon the expiration of the public notice period provided that a petition to deny has not been filed. If more than one short-form application for an MTA block is received, the applications would be considered mutually exclusive and competitive bidding procedures would be employed to select among the applicants. Following the auction, the successful bidder would then file a long-form application, which would be subject to the same 30-day public notice and petition to deny procedures as applications for MTA blocks for which no mutually exclusive application has been filed. We seek comment on these proposed procedures.

### (3) Amendments and Modification Applications

60. We propose to allow a limited opportunity for MTA applicants to cure minor defects in their short-form applications, but not to allow major amendments after the expiration of the short-form filing window. These proposals conform to our existing rules for amendment of PCS applications. We also propose to adopt rules regarding major and minor modification of MTA licenses that are consistent with our PCS rules. We note that because MTA-based licensing is based on blocks of spectrum rather than site-specific facilities, MTA licensees will generally not be required to seek major modification of their authorizations other than in the case of assignments or transfers of control. We seek comment on this proposal.

### (4) Petitions to Deny

61. As noted above, we concluded in the *CMRS Third Report and Order* that SMR applications would generally be subject to the public notice and petition to deny procedures applicable to Part 22 services.<sup>94</sup> We have also adopted similar procedures in our PCS rules. With respect to MTA-based SMR applications, therefore, we propose to adopt petition to deny procedures comparable to these existing rules. Specifically, any party filing a petition to deny against an SMR applicant will be required to demonstrate standing as a "party in interest" and meet all other applicable filing requirements or its petition will be summarily dismissed.<sup>95</sup> In addition, we intend to adopt "greenmail" restrictions in our SMR rules limiting payments that a petitioner may receive in exchange for agreeing to withdraw a petition. We believe that such restrictions will significantly deter frivolous protests filed primarily for anticompetitive or abusive reasons. We seek comment on these proposed procedures.

---

<sup>94</sup>See Communications Act, 47 U.S.C. § 309(d).

<sup>95</sup>See also Communications Act, 47 U.S.C. §§ 309(j)(5) and (i)(2) (provisions for expedited hearing procedures when substantial and material questions of fact exist regarding an applicant's qualifications).

(5) Subsequent Applications

62. In the event that an MTA block auction winner defaults or an MTA block license is otherwise terminated or revoked, we propose to open a new window for filing of applications for the block by any interested party, and to use competitive bidding in the event that mutually exclusive applications are filed. If a default occurs within five business days after bidding has closed, however, we propose to retain discretion to offer the license to the next highest bidder at its final bid level rather than conducting a new auction. These proposed procedures are consistent with our PCS licensing procedures. We seek comment on our proposal.

c. *Application Procedures for Local SMR Channels*

63. As discussed above, we seek comment on whether local SMR channels should be licensed on a site-specific or area-specific basis. If we adopt area-specific licensing, we believe it would be appropriate to use application procedures similar to those used for the licensing of MTA blocks as discussed *supra*. If, on the other hand, we adopt site-specific licensing for the 80 locally licensed SMR channels, we propose to use application procedures similar to those adopted for non-cellular Part 22 licensees in the *Part 22 Rewrite Order* and *CMRS Third Report and Order*.<sup>96</sup> We propose this approach because these classes of service are similarly licensed on a station-by-station, channel-by-channel basis, and because we determined in the *CMRS Third Report and Order* that they should be subject to comparable licensing procedures. We discuss this option in greater detail below.

(1) Initial Applications

64. To the extent that 800 MHz SMR channels continue to be licensed on a site-specific basis, we must adopt a definition of what constitutes an initial application for a new authorization as opposed to an amendment or a modification of an already-licensed facility. In the *CMRS Third Report and Order*, we stated that we would generally use the same definition of "initial" applications for station-by-station licensing of Part 90 CMRS services as is used in Part 22.<sup>97</sup> Under this definition, an initial application is any application that proposes: (a) a transmitter location anywhere on a new frequency (whether the application is for a new facility or for a new channel to be added to an existing facility), unless the additional channel is for paired two-way operation, is in the same frequency range as the existing channel, and will be operationally integrated with the existing channel; or (b) the location of a facility more than 2 kilometers (1.2 miles) from any existing facility licensed to

---

<sup>96</sup>See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115, *Report and Order*, released September 9, 1994 (*Part 22 Rewrite Order*), ¶¶ 11-17; *CMRS Third Report and Order*, *supra* note 3, ¶¶ 356-357.

<sup>97</sup>*CMRS Third Report and Order*, *supra* note 3, ¶ 356.

the applicant and operating on the same frequency.<sup>98</sup> Based on our decision in the *CMRS Third Report and Order*, if we adopt site specific rules for local 800 MHz SMR licensing we propose to apply this definition. Thus, all applications for new frequencies or for stations more than 2 kilometers from an existing facility using the same channel would be subject to initial application filing window and competitive bidding procedures as discussed below. We seek comment on this proposal.

## (2) Processing and Procedural Rules

65. In the *CMRS Third Report and Order*, we stated that initial applications for site-specific CMRS licenses would be subject to 30-day notice and cutoff procedures for purposes of determining the grouping of mutually exclusive applications. If we adopt site-specific licensing, we therefore propose that all initial applications for the 80 locally licensed SMR channels received during a particular filing window will be reviewed to determine whether they are acceptable for filing, and accepted applications will be placed on public notice for 30 days. Applications would be grantable upon the expiration of the 30-day public notice period provided that (1) no petition to deny has been filed; and (2) the application is not "mutually exclusive" (as defined *infra*) with another pending application. If one or more mutually exclusive initial applications is filed within the public notice period, we propose to use competitive bidding procedures to select the licensee.<sup>99</sup> Following the auction, we would review the application of the auction winner and any petitions to deny filed against the winner's application, after which we would grant or deny the application.

66. In establishing application rules for local SMR licensing, it is particularly important that we develop procedures for identifying and grouping mutually exclusive applications that facilitate efficient processing and licensing. We note that site-specific licensing, unlike area-based licensing, creates particular difficulties in this regard because (1) competing applications for overlapping authorizations must be treated as mutually exclusive, and (2) the cumulative effect of such overlapping applications creates the potential for extended "daisy chains" of mutually exclusive applications.<sup>100</sup> In the *Part 22 Rewrite Order*, we took some steps to address these problems in the licensing of non-cellular Part 22 services. Specifically, we required an applicant who knowingly files a mutually exclusive

---

<sup>98</sup>*Id.* As discussed in Section IV(E)(1)(c)(3) *infra*, we seek comment on whether other facility modifications should be classified as major or minor modifications under our rules.

<sup>99</sup>An exception to this rule would occur if an applicant files a modification application that conflicts with the initial application. As we noted in the *CMRS Third Report and Order*, the presence of a modification application (*i.e.*, an application that does not come within the definition of an "initial" application) in the filing group precludes the use of competitive bidding and requires selection to be made by comparative consideration. *CMRS Third Report and Order*, *supra* note 3, ¶ 366.

<sup>100</sup>By "daisy chain" effect, we mean, for example, Licensee A seeks a license for proposed operations which overlap the service area created by Licensee B's proposed operations, which overlaps the service area created by Licensee C's proposed operations with overlapping service areas continuing *ad infinitum*.

application to limit the scope of the application to the particular channels or facilities that conflict with the competing application.<sup>101</sup> We also provided that the Commission has the discretion to split an application if it contains severable proposals.<sup>102</sup> We propose to adopt these rules for local SMR licensing as well if we adopt site-specific licensing. We seek comment, however, on whether additional measures are also necessary. For example, we ask commenters to address whether use of staggered filing windows for licensing of local channels within specified geographic areas (*e.g.*, in each MTA, BTA, or other specified area) would mitigate the potential daisy chain problem. Under this alternative, we would designate specific areas in which local applications would be accepted, mutually exclusive applications identified, and competitive selections made. Once this process was completed in a designated area, we would then repeat the procedure in adjacent areas. We seek comment on whether establishing separate filing windows for this purpose is practical or beneficial. If we were to adopt this alternative, we request specific comment on (1) what geographic areas should be used for this purpose, and (2) the timing and sequence for opening each such window.

### (3) Amendments and Modification Applications

67. In the *CMRS Third Report and Order*, we adopted a definition of what modifications and amendments should be deemed "major" in the context of CMRS services licensed on a site-specific basis.<sup>103</sup> Specifically, we indicated that major modifications include a change in frequency, an increase in the effective radiated power or antenna height above average terrain in any azimuth, or a change in location. We also stated that other changes might be deemed major in particular services depending on their technical and operational characteristics.<sup>104</sup> We seek comment on the applicability of the above definition to locally licensed SMR systems and whether there are other types of modifications that should be deemed major in this context.

68. We also propose to adopt filing window and cutoff procedures for modification applications for the 80 local SMR channels that are consistent with our decision on such procedures in the *CMRS Third Report and Order*. Under this proposal, major modification applications (as opposed to "initial" applications discussed above) would be processed on a first-come, first-served basis, except that (1) modification applications that are mutually exclusive with initial or modification applications filed on the same day would be classified as members of a "same day filing group," and (2) modification applications filed within the 30-day public notice period of a competing initial application would be considered part of the 30-day filing group. In both cases, the mutually exclusive group of applications would be

---

<sup>101</sup>47 CFR § 22.131(b).

<sup>102</sup>*Id.*, § 22.120(a).

<sup>103</sup>*CMRS Third Report and Order*, *supra* note 3, ¶¶ 356-357.

<sup>104</sup>*Id.*, ¶ 357.

designated for comparative hearing (unless the parties negotiate a legal settlement) because the Budget Act does not permit the use of competitive bidding procedures to determine whether a modification application should be granted. We ask commenters to address whether our proposed definitions and procedures for dealing with modification applications are appropriate for licensing of local SMR channels.

#### (4) Petitions to Deny

69. We propose to adopt petition to deny procedures with respect to local SMR licensing similar to those proposed above for MTA-based licensing. We seek comment, however, on whether petitions to deny locally licensed SMR applications should be filed within the initial 30-day public notice period following acceptance of such applications, or only after an auction winner has been determined, as is proposed in the case of MTA applications. In either case, we note that we intend to review only petitions filed against the auction winner. We seek comment on this proposed procedure.

### 2. Regulatory Classification of Licensees

70. In the *CMRS Second Report and Order*, we determined that SMR licensees would be classified as CMRS if they offered interconnected service and as PMRS if they did not offer such service. Under this definition, we anticipate that most if not all MTA licensees will be classified as CMRS because they are likely to provide interconnected service as part of their service offering. For this reason, we propose to classify all MTA licensees presumptively as CMRS providers. This is the same approach we have used with respect to licensing of PCS. Moreover, as in the case of PCS, we propose that MTA applicants or licensees who do not intend to provide CMRS service may overcome this presumption by demonstrating that their service does not fall within the CMRS definition. We also propose not to apply this presumption prior to August 10, 1996 in the case of any MTA licensee who was previously licensed in the SMR service as of August 10, 1993, and is therefore not subject to CMRS regulation for three years from the enactment date under the grandfathering provisions of the Budget Act.<sup>105</sup> We seek comment on the extent to which such regulatory treatment is consistent with the Budget Act, and with the congressional goal of regulatory parity for mobile services that compete with one another. We also seek comment on whether the presumption of CMRS status should apply to licensees authorized for the 80 locally licensed channels.

### F. **Competitive Bidding Issues**

71. In our *Competitive Bidding Second Report and Order* in PP Docket No. 93-253, we decided to use competitive bidding to choose among mutually exclusive initial applications

---

<sup>105</sup>See Budget Act, § 6002(c)(2)(B). See also *CMRS Second Report and Order*, *supra* note 3, ¶¶ 282-283.

in the CMRS services, including SMR.<sup>106</sup> Since release of our *Competitive Bidding Second Report and Order*, we have adopted competitive bidding procedures for broadband PCS, narrowband PCS, and Interactive Video and Data Service in subsequent orders. With respect to auction rules and procedures for 800 MHz SMR service, however, we believe it is appropriate to seek further public comment on our proposals because, unlike these other services, SMR is an already-existing service with a large number of incumbent licensees. We particularly seek public comment on how to structure competitive bidding procedures that will balance the interests of successful bidders and the operations of existing licensees.

1. Competitive Bidding Design

a. *General Competitive Bidding Principles*

72. The *Competitive Bidding Second Report and Order*, as modified by the *Competitive Bidding Reconsideration Order*, established the criteria to be used in selecting which auction design method to use for each particular auctionable service. Generally, we concluded that awarding licenses to those parties who value them most highly will foster Congress' policy objectives. In this regard, we noted that since a bidder's ability to introduce valuable new services and to deploy them quickly, intensively, and efficiently increases the value of a license to that bidder, an auction design that awards licenses to those bidders with the highest willingness to pay tends to promote the development and rapid deployment of new services and the efficient and intensive use of the spectrum.<sup>107</sup>

73. Based on the foregoing, we concluded that where the licenses to be auctioned are interdependent and their value is expected to be high, simultaneous multiple round auctions would best achieve the Commission's goals for competitive bidding.<sup>108</sup> We also noted, however, that simultaneous multiple round auctions may not be appropriate for all licenses. For example, where there is less interdependence among licenses, there is less benefit to auctioning them simultaneously. Similarly, we explained that when the values of particular licenses to be auctioned are low relative to the costs of conducting a simultaneous multiple round auction, we may consider auction designs that are relatively simple, with low administrative costs and minimal costs to the auction participants.<sup>109</sup>

b. *Competitive Bidding Methodology for 800 MHz SMR Licenses*

74. We believe that multiple bidding methodologies may be required for licensing of

---

<sup>106</sup>*Competitive Bidding Second Report and Order*, *supra* note 88, ¶¶ 59-66.

<sup>107</sup>*See Competitive Bidding Second Report and Order*, *supra* note 88, ¶ 70.

<sup>108</sup>*See id.*, ¶¶ 109-111.

<sup>109</sup>*See id.*, ¶¶ 112-113.

800 MHz SMR service. First, we anticipate that the two proposed categories of licenses (MTA-based and local) will vary significantly from one another in terms of expected value and interdependence; therefore, it is unlikely that a single competitive bidding design would be optimal for licensing of both categories. In addition, we believe that competitive bidding in the 800 MHz SMR service presents a number of variables that have not been presented in other services for which auction rules have been developed. In particular, the proposed licensing of local SMR channels on a site-specific basis requires us to examine how competitive bidding would work in a context where mutually exclusive applicants have applied for overlapping rather than identical authorizations. In addition to seeking comment on certain competitive bidding options today, therefore, we reserve the discretion to "design and test multiple alternative methodologies under appropriate circumstances," as Congress authorized us to do in conferring competitive bidding authority.<sup>110</sup>

#### (1) MTA Licenses

75. We believe that simultaneous multiple round bidding should be the preferred method for licensing of the proposed 800 MHz MTA blocks. Based on the record in the competitive bidding proceeding, as well as our analysis of the Office of Management and Budget and the Congressional Budget Office estimates of total SMR revenues, we expect the proposed MTA licenses to be of sufficient value to warrant the use of simultaneous auctions. We further believe that the value of these MTA licenses will be significantly interdependent because of the desirability of aggregation across spectrum blocks and geographic regions and because simultaneous multiple round bidding will allow bidders to express the full value of the interdependency among licenses. Moreover, simultaneous multiple round bidding will provide bidders with the opportunity to pursue back-up strategies that enable them most efficiently to obtain the license combinations which satisfy their service needs. Therefore, we tentatively conclude that simultaneous multiple round bidding is most likely to award MTA licenses to bidders who value them the most highly and who are most likely to deploy new 800 MHz SMR technologies and services rapidly, and promote the development of competition for the provision of those and other commercial mobile radio services. We ask commenters to address this tentative conclusion and whether any other competitive bidding designs might be more appropriate for the MTA-based licensing of 800 MHz SMR spectrum, particularly if the number of mutually exclusive applications actually received for MTA blocks suggests that the blocks are not substantially interdependent.

76. Assuming we use simultaneous multiple round auctions for MTA blocks, we also seek comment on which blocks should be auctioned together, the intervals between rounds in each auction, and the sequencing of each auction. The importance of the choice of license groupings increases with the degree of interdependence among the individual licenses or groups of licenses to be auctioned. Grouping interdependent licenses together and putting them up for bid at the same time will facilitate awarding licenses to bidders who value them the most highly by providing bidders with information about the prices of complementary and

---

<sup>110</sup>See Communications Act, 47 U.S.C. § 309(j)(3).

substitutable licenses during the course of an auction. Based on these principles, our tentative view is that all MTA licenses should be auctioned simultaneously because of the relatively high value and significant interdependence of the licenses. We seek comment on this tentative analysis and on possible alternatives for grouping of licenses.

## (2) Local Licenses

77. The use of competitive bidding to resolve mutually exclusive applications for local SMR licenses presents different variables than the use of auctions to select MTA-based licensees. For example, assuming that we license local SMR channels on a site-specific basis, it is likely that the operational costs and complexities of simultaneous multiple round auctions would outweigh their benefits in this context. Similarly, because of the non-contiguous nature of the channels, there does not appear to be a high degree of interdependency among them; and the limited geographic scope of the licenses is likely to make them less valuable than the licenses for the MTA blocks. We therefore tentatively conclude that a simpler and less costly auction method, such as single round sealed bid auctions, should be used for licensing the 80 local SMR channels. Single round sealed bidding has the principal advantage of being relatively simple for bidders to understand and inexpensive for the FCC to administer and also can generally be completed fairly rapidly. We ask commenters to address this analysis and to suggest alternative bidding designs that might also be appropriate.

78. We also seek comment on how our auction procedures should be structured to facilitate efficient licensing of local SMR channels. For example, if we license these channels on a site-specific basis, the grouping and sequencing of applications for auction purposes may be particularly important to bidders. One alternative would be to allow mutually exclusive applicants to use negotiated settlements or coordination to minimize the number of overlapping applications that would require resolution by competitive bidding. Another alternative would be to divide the local 80 SMR channels into defined geographic areas (*e.g.*, BTAs) and small blocks of channels (*e.g.*, five or ten channels) and conduct a series of separate auctions for mutually exclusive applications within each area/block combination. We seek comment on the practicality of these alternatives. In particular, we ask commenters to address whether these auctions for the local licenses should be conducted separately or simultaneously and how such licenses should be ordered for auction purposes. We also encourage commenters to propose other possible auction designs and procedures if they regard these alternatives as impractical.

### *c. Bidding Procedures*

79. We also seek comment on bidding procedures to be used in 800 MHz SMR auctions, including bid increments, duration of bidding rounds, stopping rules, and activity rules. Assuming that we use simultaneous multiple round auctions for MTA-based SMR licenses, we generally propose to use the same or similar bidding procedures to those used in simultaneous multiple round bidding for MTA-based PCS licenses. We seek comment, however, on whether any variations on these procedures should be adopted for MTA-based

licensing in the 800 MHz SMR service. In the case of locally licensed 800 MHz SMR channels, we seek comment on bidding procedures that would be appropriate depending on whether single round sealed bid auctions or an alternative auction methodology is used.

2. Procedural, Payment, and Penalty Issues

80. In the *Competitive Bidding Second Report and Order*, as modified by the *Competitive Bidding Reconsideration Order*, the Commission established general procedural, payment, and penalty rules for auctions, but also that such rules may be modified on a service-specific basis. As discussed below, we generally propose to follow the procedural, payment, and penalty rules established in Subpart Q of Part 1 of the Commission's Rules,<sup>111</sup> but seek comment on whether any service-specific modifications of these rules are needed based on the particular characteristics of the 800 MHz SMR service.

a. *Upfront Payments*

81. As in the case of other auctionable services, we propose to require SMR auction participants to tender in advance to the Commission a substantial upfront payment as a condition of bidding in order to ensure that only serious, qualified bidders participate in auctions and to ensure payment of the penalty (discussed *infra*) in the event of bid withdrawal or default. We seek comment on whether the standard upfront payment formula of \$0.02 per pop per MHz for the largest combination of MHz-pops a bidder anticipates bidding on in any single round of bidding is appropriate for 800 MHz SMR services. We also seek comment on the appropriate minimum upfront payment for 800 SMR applications. In the *Competitive Bidding Second Report and Order*, we established a minimum upfront payment of \$2,500, but we also indicated that the minimum amount could be modified on a service-specific basis.<sup>112</sup> We seek comment on whether the standard or some alternative amount is appropriate for the 800 MHz SMR service and whether different amounts should be established for MTA and local licenses.

b. *Down Payment and Full Payment for Licenses Awarded by Competitive Bidding*

82. The *Competitive Bidding Second Report and Order* generally required successful bidders to tender a 20 percent down payment on their bids to discourage default between the auction and licensing and to ensure payment of the penalty if such default occurs.<sup>113</sup> We concluded that a 20 percent down payment was appropriate to ensure that auction winners have the necessary financial capabilities to complete payment for the license and to pay for

---

<sup>111</sup>47 CFR Part 1, Subpart Q.

<sup>112</sup>*Competitive Bidding Second Report and Order*, *supra* note 88, ¶ 180.

<sup>113</sup>*Competitive Bidding Second Report and Order*, *supra* note 88, ¶¶ 190-192.

the costs of constructing a system, while at the same time not being so onerous as to hinder growth and diminish access. We therefore propose to require that winning bidders for 800 MHz SMR licenses supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s). We seek comment on whether this is an appropriate requirement for licensing of this service, and whether 20 percent represents an appropriate level of payment. In addition, we ask commenters to address whether any special provisions, for example a reduced down payment, should be adopted for designated entities, and if so, for which specific categories of designated entities and why.<sup>114</sup>

*c. Bid Withdrawal, Default, and Disqualification*

83. We propose to adopt bid withdrawal, default, and disqualification rules for 800 MHz SMR licensing based on the procedures established in our general competitive bidding rules. Under these procedures, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed, or defaults by failing to remit the required down payment within the prescribed time, would be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if the subsequent winning bid is lower. A defaulting auction winner would be assessed an additional penalty of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. In the event that an auction winner defaults or is otherwise disqualified, we propose to re-auction the license either to existing or new applicants. The Commission would retain discretion, however, to offer the license to the next highest bidder at its final bid level if the default occurs within five business days of the close of bidding. We seek comment on these proposed procedures.

3. Regulatory Safeguards

*a. Unjust Enrichment Provisions*

84. The Budget Act directs the Commission to "require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits." We therefore propose to adopt the transfer disclosure requirements contained in Section 1.211(a) of our rules for all 800 MHz SMR licenses obtained through the competitive bidding process. In addition, we propose specific rules governing unjust enrichment by designated entities, which are discussed below. Generally, applicants transferring their licenses within three years after the initial license grant will be required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license. We seek comment on these proposals.

---

<sup>114</sup>See Section IV(F)(4) *infra*.

b. *Performance Requirements*

85. The Budget Act required the Commission to "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."<sup>115</sup> In the *Competitive Bidding Second Report and Order*, we decided that it was unnecessary and undesirable to impose additional performance requirements, beyond those already provided in the service rules, for all auctionable services. Our proposed 800 MHz SMR service rules already contain specific performance requirements, such as the requirement to construct within a specific period of time. Thus, we do not propose to adopt any additional performance requirements for competitive bidding purposes. We seek comment on this proposal.

c. *Rules Prohibiting Collusion*

86. In the *Competitive Bidding Second Report and Order*, as modified by the *Competitive Bidding Reconsideration Order*, we adopted special rules prohibiting collusive conduct in the context of competitive bidding.<sup>116</sup> We indicated that such rules would serve the objectives of the Budget Act by preventing parties, especially the largest firms, from agreeing in advance to bidding strategies that divide the market according to their strategic interests and disadvantage other bidders. We propose to apply these rules to the 800 MHz SMR service. Under these procedures, bidders will be required to identify on their applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships, or other agreements or understandings that relate to the competitive bidding process. Bidders will also be required to certify that they have not entered into any explicit or implicit agreements, arrangements, or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid. We seek comment on the proposal to continue to implement our rules in the *Competitive Bidding Second Report and Order*, as modified by the *Competitive Bidding Reconsideration Order*.

4. Treatment of Designated Entities

a. *Introduction*

87. In authorizing the Commission to use competitive bidding, Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in

---

<sup>115</sup>Communications Act, 47 U.S.C. § 309(j)(4)(B).

<sup>116</sup>*Competitive Bidding Second Report and Order*, *supra* note 88, ¶¶ 221-226; *Competitive Bidding Reconsideration Order*, *supra* note 88, ¶¶ 50-53.

the provision of spectrum-based services." The statute requires the Commission to "consider the use of tax certificates, bidding preferences, and other procedures" in order to achieve this congressional goal. In addition, Section 309(j)(3)(B) provides that in establishing eligibility criteria and bidding methodologies the Commission shall promote "economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." Finally, Section 309(j)(4)(A) provides that to promote these objectives, the Commission shall consider alternative payment schedules including lump sums or guaranteed installment payments.

88. In the *Competitive Bidding* docket, we established eligibility criteria and general rules that would govern the award of special provisions for small businesses, rural telephone companies, and minority- and women-owned businesses (collectively, "designated entities"). We also established a menu of possible special provisions that could be awarded to designated entities in particular services, including installment payments, spectrum set-asides, bidding credits, and tax certificates. In addition, we set forth rules to prevent unjust enrichment by designated entities seeking to transfer licenses obtained through use of one of these special provisions.

89. In this Further Notice, we propose specific measures and eligibility criteria for designated entities in the 800 MHz SMR service designed to ensure that such entities are given the opportunity to participate both in the competitive bidding process and in the provision of 800 MHz SMR. We seek comment on these proposals, and specifically on identifying special provisions that are tailored to the unique characteristics of the 800 MHz SMR service and will create meaningful incentives and opportunities in the service for small businesses and businesses owned by minorities and/or women.

*b. Businesses Owned by Women and Minorities*

(1) Specific Special Provisions

90. Based on the list of special provisions for designated entities established in the *Competitive Bidding Second Report and Order*, we propose to utilize bidding credits and a tax certificate program to encourage participation by businesses owned by women and minorities in auctions for the 800 MHz SMR service. Upon consideration and review of the record in the PR 93-144 and PP 93-253 dockets, we tentatively conclude that affording businesses owned by women and minorities bidding credits for 800 MHz SMR licenses is the most cost-effective and efficient means of achieving Congress' objective of ensuring an opportunity for these designated entities to participate in the provision of 800 MHz SMR services, while preserving the advantages of competitive open bidding.

91. Apart from Congress' directive, we believe that ensuring the opportunity for women and minorities to participate in 800 MHz SMR is important for the telecommunications industry. The record in the *Competitive Bidding* docket reflects a severe

underrepresentation of women and minorities in telecommunications.<sup>117</sup> The record in the docket also shows that women and minorities have particular difficulties obtaining capital.<sup>118</sup> Given this history of underrepresentation of minorities and women in telecommunications and the inability of these groups to access financing, we find that the best way we can accomplish the statutory mandate is to provide bidding credits exclusively to minority- and women-owned businesses.

92. In determining the appropriate amount of the bidding credit, we propose to consider several factors. First, our analysis of the market suggests that, because of existing infrastructure and economies of scope, incumbent SMR providers will have the ability to bid more than first-time operators because, in most cases, incumbent providers are able to make use of their existing infrastructure to provide 800 MHz SMR services. Second, we note that very few incumbent SMR providers are minorities or women, so that a substantial discount may be necessary to put these designated entities on equal footing with incumbents. Finally, we consider the bidding credits established for businesses owned by minorities and women in other contexts. For the Interactive Video and Data Service and the nationwide narrowband PCS licenses, the bidding credit afforded to minority- and/or women-owned businesses was 25 percent. For the regional narrowband PCS licenses, we have established a higher bidding credit of 40 percent based on our belief that a 25 percent bidding credit may not provide sufficient opportunity for women- and minority-owned businesses to participate in auctions where the license values are expected to be very high. We seek comment on whether MTA-based SMR licensees are likely to have a similarly high value that would support a 40 percent bidding credit for minority- and women-controlled firms. For the "lower 80" channel licenses, however, given their expected lower value, we propose a bidding credit of 25 percent. We seek comment on the appropriateness of the proposed bidding credits and on whether higher or lower credit amounts should be adopted.

93. To prevent unjust enrichment by women and minorities trafficking in licenses acquired through the use of bidding credits, we propose imposition of a forfeiture requirement on transfers of such licenses to entities that are not owned by women or minorities. Female and minority-owned businesses seeking to transfer a license to an entity that is not owned by women or minorities would be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before the transfer will be permitted. The amount of the penalty would be reduced over time so that a transfer in the first two years of the license term would result in a forfeiture of 100 percent of the value of the bidding credit; in year three of the license term the penalty would be 75 percent; in year four the penalty would be 50 percent and in

---

<sup>117</sup>See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, adopted June 29, 1994, released July 15, 1994, ¶¶ 103-107 (*Competitive Bidding Fifth Report and Order*).

<sup>118</sup>*Id.* at ¶¶ 98-102. The findings made and discussion in the *Fifth Report and Order* in the *Competitive Bidding* docket on this subject are incorporated here by reference.

year five the penalty would be 25 percent, after which there would be no penalty.

94. We also propose to establish a tax certificate program under which tax certificates would be issued to: (a) non-controlling initial investors in minority and female-owned 800 MHz SMR applicants and licensees, upon the sale of their non-controlling interests; and, (b) 800 MHz SMR licensees who assign or transfer control of their licenses to minority and women-owned entities. In the *Competitive Bidding Second Report and Order*, we observed that tax certificates could be useful as a means of attracting investors to designated entity enterprises and to encourage licensees to assign or transfer control of licenses to designated entities in post-auction transactions. Together with our proposed bidding credits, we believe tax certificates could help to ensure the participation of minority and women-owned businesses in 800 MHz SMR services. By making tax certificates available to non-controlling investors, we anticipate that it will be easier for these designated entities to attract start-up capital because investors will know that they can defer taxes on any gains made when their interests are sold. Similarly, tax certificates can provide incentives to licensees to seek out minority and female buyers in after-market sales because the licensees will be able to defer taxes on profits made in the sale. We seek comment on this proposal as well as on any additional special provisions which may be appropriate for businesses owned by minorities or women in the 800 MHz SMR service.

95. We also propose to impose a one-year holding requirement on the transfer or assignment of 800 MHz SMR licenses obtained through the benefit of tax certificates. As we have noted in other contexts, we believe that rapid resale of such licenses at a profit would subvert our goal of ensuring the opportunity to participate by minority and women-owned businesses, unless the buyer itself is a minority- or women-owned business. Although we do not propose to apply such holding period to assignments or transfers to qualified minority- and women-owned businesses, assignees and transferees obtaining licenses pursuant to this exception would be subject to the one-year holding requirement. We seek comment on the appropriateness and duration of the proposed holding period. In addition, we ask commenters to address whether there should be a different holding period applicable to MTA licenses.

## (2) Eligibility Criteria

96. In the *Competitive Bidding Second Report and Order*, we adopted eligibility criteria for businesses desiring to benefit from the established special provisions for designated entities. Specifically, we determined that in order to be deemed a business owned by minorities and/or women, minorities or women must have at least 50.1 percent equity ownership and a 50.1 controlling interest in the designated entity. For limited partnerships, we determined that the general partner must be a minority and/or a woman (or an entity 100 percent owned and controlled by minorities and/or women) that owns at least 50.1 percent of the partnership equity. We also indicated that, for the most part, the interests of minorities and women in designated entities would be calculated on a fully-diluted basis.<sup>119</sup> In the PCS

---

<sup>119</sup>*Competitive Bidding Second Report and Order*, *supra* note 88, ¶ 277.

context, we established an alternative definition for minority- and female-owned businesses whereby 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).<sup>120</sup> We seek comment on which of these definitions is most appropriate for purposes of determining designated entity eligibility in the 800 MHz SMR service, or whether we should adopt both definitions in the alternative. We also propose to apply to the 800 MHz SMR applicants the same affiliation and attribution rules for calculating equity and stock ownership that we have previously adopted in the PCS context. We seek comment on this proposal.

*c. Small Businesses*

(1) Specific Special Provisions

97. Based on the list of special provisions for designated entities established in the *Competitive Bidding Second Report and Order*, we seek comment on whether to adopt installment payments for small businesses bidding for 800 MHz SMR licenses. The record in the *Competitive Bidding* proceeding suggests that the most significant barrier for small business participation in the auctioning of 800 MHz SMR spectrum will be access to adequate private financing to ensure their ability to compete against larger firms in the competitive bidding process. In the *Competitive Bidding Second Report and Order*, we concluded that a reduced down payment requirement coupled with installment payments is 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.<sup>121</sup> We seek comment on whether such a mechanism would be an appropriate special provision for small businesses bidding for 800 MHz SMR licenses, and on whether any additional or alternative special provisions should be provided for small businesses in the 800 MHz SMR context.

98. To ensure that large businesses do not become the unintended beneficiaries of installment payment provisions meant for small businesses, we also propose to make the unjust enrichment provisions adopted in the *Competitive Bidding Second Report and Order* applicable to installment payments by SMR applicants. Specifically, if a small business making installment payments seeks to transfer a license to a non-small business entity during the term of the license, we will require payment of the remaining principal balance as a condition of the license transfer. We seek comment on this proposal including whether additional unjust enrichment provisions are necessary for the 800 MHz SMR service.

(2) Eligibility Criteria

99. In the *Competitive Bidding Second Report and Order*, we adopted the existing

---

<sup>120</sup>See *Competitive Bidding Fifth Report and Order*, *supra* note 116, ¶ 116.

<sup>121</sup>See *Competitive Bidding Second Report and Order*, *supra* note 88, ¶ 238.

SBA net worth/net income size standard as the generic eligibility criteria for small businesses.<sup>122</sup> Under this definition, an entity would qualify as a small business if its net worth is not in excess of \$6 million with average net income after Federal income taxes for the two preceding years not in excess of \$2 million. For broadband PCS, however, we defined 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, and which does not have an attributable investor or affiliate with a personal net worth of \$40 million or more. In the *Competitive Bidding Reconsideration Order*, we concluded that it was more appropriate to define the eligibility requirements for small businesses on a service-specific basis because of the diversity of services that may be subject to competitive bidding and the varied spectrum costs and build-out requirements associated with each service.<sup>123</sup> We contemplated that such an approach would allow us to take into account the capital requirements of each particular service in establishing the appropriate threshold. We therefore seek comment on whether we should utilize the SBA definition initially adopted in the *Competitive Bidding Second Report and Order* or, in the alternative, adopt a gross revenue standard like that used in the broadband PCS context. We ask commenters who believe that a gross revenue standard should be used as the eligibility criteria for small businesses to address the gross revenue threshold appropriate for the 800 MHz SMR context along with any estimates of costs associated with build-out requirements. Based on our past experience with the build-out requirements associated with the 800 MHz SMR service and the already extensive licensing of the service, we believe that the appropriate threshold for the service should be set at a lower level than in broadband PCS. We also propose to apply to the 800 MHz SMR applicants the same affiliation and attribution rules for calculating revenues that we have previously adopted in the PCS context. We seek comment on this proposal.

*d. Rural Telephone Companies*

100. We seek comment on whether we should provide bidding credits or other special provisions for rural telephone companies, but do not propose to adopt such special provisions at this time. First, we note that rural telephone companies, like other wireline carriers, are currently ineligible to hold SMR licenses, although we have proposed to eliminate this restriction.<sup>124</sup> Second, assuming we allow wireline entry into SMR, we question whether special bidding provisions are necessary to ensure the participation of rural telephone companies in the provision of SMR service because of the relatively modest build-out costs involved to serve rural areas. Moreover, in view of the fact that rural telephone companies may use their existing infrastructure to support integrated 800 MHz SMR service in their rural service areas, we anticipate that they will have ample opportunity to participate in 800 MHz

---

<sup>122</sup>*Id.*, ¶ 271.

<sup>123</sup>*Competitive Bidding Reconsideration Order*, *supra* note 88, ¶ 145.

<sup>124</sup>*See* Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, GN Docket No. 94-90, *Notice of Proposed Rule Making*, FCC 94-202, adopted August 2, 1994, released August 11, 1994.

SMR. We seek comment on this analysis.

*e. Additional Special Provisions*

101. In addition to the special provisions proposed above for the various classes of designated entities, we seek comment on whether additional special provisions should be adopted that would enhance our goal of ensuring their participation in the competitive bidding process for the 800 MHz SMR service. We request that commenters give particular attention to the alternatives described below.

102. Installment Payments. In the *Competitive Bidding Reconsideration Order*, we indicated that in the future we would not necessarily limit the availability of installment payments to small businesses, but would consider offering the installment option (with varying rates and payment schedules) to other classes of designated entities.<sup>125</sup> We therefore seek comment on whether we should expand eligibility for installment payments to designated entities other than small businesses in the 800 MHz SMR context. Our goal is to ensure that our system of special provisions is designed to match the particular needs and characteristics of eligible recipients. In this respect, it is arguably sufficient to provide installment payments as financial assistance solely to small businesses, which will include small businesses owned by women and minorities and rural telephone companies that meet the small business definition. We seek comment on this analysis.

103. Reduced Upfront Payments. In the *Competitive Bidding Second Report and Order*, we concluded that upfront payment requirements would ensure that bidders are qualified and serious and would provide the Commission with a source of funds in the event of default or bid withdrawal.<sup>126</sup> We also noted that reduced upfront payments may be particularly appropriate for auctions of spectrum specifically set aside for designated entities as a means of encouraging participation in the auction, particularly by all eligible designated entities. As a result, in adopting competitive bidding procedures for broadband PCS, we reduced the upfront payment requirement in the case of designated entities in the entrepreneurs' blocks, observing that requiring full compliance with the upfront payment requirement could discourage auction participation by designated entities. We seek comment on whether there should be a similar reduction in upfront payment for any class of designated entities for any licenses auctioned in the 800 MHz SMR service. We also ask commenters to address whether such reduction should apply to MTA licenses, "lower 80" licenses, or both. In addition, we ask commenters to address the costs and benefits with respect to auction administration and designated entity participation associated with a reduced upfront payment in the 800 SMR service in the absence of a spectrum set-aside.

104. Entrepreneurs' Block. Finally, we seek comment on whether to facilitate

---

<sup>125</sup>*Competitive Bidding Reconsideration Order*, *supra* note 88, ¶ 128.

<sup>126</sup>*Competitive Bidding Second Report and Order*, *supra* note 88, ¶¶ 169, 176.

designated entities' participation in the 800 MHz SMR service, we should designate the "lower 80" channels as an "entrepreneurs' block." Even considering the special provisions for designated entities discussed above, we remain concerned in light of our experience with PCS that designated entities may have difficulties competing for 800 MHz SMR licenses against large firms with significant financial resources. We tentatively conclude, however, that it would not be feasible to designate an MTA channel block as an entrepreneur's block because the large number of incumbents already licensed throughout the proposed MTA band make it virtually impossible to identify a particular block that would be suitable. On the other hand, an entrepreneurs' block approach could be more feasible for the "lower 80" channels, which we contemplate will be used primarily, if not exclusively, for operation of local SMR systems. Significantly, these are the type of systems generally operated by smaller companies and, due to their lower build-out requirements, might be more amenable to first-time SMR operators. We seek comment on this analysis. We also ask commenters to address whether some portion of the "lower 80" channels rather than all of them could be designated as an entrepreneurs' block.

105. If we adopt an entrepreneurs' block approach, we also seek comment on how eligibility for the block should be defined. In the first instance, we ask commenters to address whether applicants other than designated entities should be eligible to bid for entrepreneurs' block licenses. In our broadband PCS rules, we required entrepreneurs to comply with financial caps on the assets and gross revenues of the applicant, its affiliates, and major investors. These caps were set at a higher level than the caps for designated entity small businesses, but were nevertheless intended to exclude large, well-financed entities from eligibility. We seek comment on whether the same financial caps should be applied for determining eligibility for SMR entrepreneurs' block licenses. As in the case of our proposed small business definition, we believe that the appropriate threshold for defining entrepreneur eligibility should be set at a lower level than in broadband PCS because of the lower costs associated with SMR development.

106. We also seek comment on how designated entities should be treated within the entrepreneurs' block in terms of eligibility criteria and special provisions. Specifically, we ask commenters to address whether the definitions for small businesses and businesses owned by minorities and/or women should be different for purposes of determining eligibility for the entrepreneurs' block, what specific special provisions should be afforded to designated entities within the entrepreneurs' block, what type of attribution and affiliation rules should apply, and what additional measures are needed to protect against unjust enrichment. We also seek comment on what special provisions designated entities should receive within an entrepreneurs' block. For example, one alternative would be to provide bidding credits to designated entities within the block along the lines of those adopted for PCS, *i.e.*, (a) small businesses receive a 10 percent bidding credit; (b) businesses owned by minorities and women receive a 15 percent bidding credit; and, (c) businesses owned by minorities and women that also qualify as a small business receive a 25 percent bidding credit. In addition, small businesses and minority- and women-owned businesses within an entrepreneurs' block could be afforded an installment payment option combined with reduced upfront payments. We