commenters presented alternative proposals for consideration.[146] RTC wants to either (1) make the same bid credits available to all small businesses that qualify to participate in the C block auction or (2) maintain the existing differentials available to small businesses that meet the $40 million gross revenues test vis-a-vis other small businesses that qualify as "entrepreneurs."[147] O.N.E. proposes increasing the bidding credit for small businesses to 40 percent.[148]

47. Decision. We amend our rules to provide for a 25 percent small business bidding credit only. Restructuring our bidding credits in this manner is consistent with our post-*Adarand* concerns about the C block auction. While small businesses, in general, will benefit with a higher credit (*i.e.*, from 10 to 25 percent), this rule change will allow the Commission and prospective bidders to avoid litigation, allow the auction to proceed as close to its original schedule as possible and permit prospective bidders to maintain previously negotiated business arrangements and financial agreements.

48. We understand BET's and InTouch's concerns, but believe our proposals do not contradict our statutory obligations. Many commenters have noted that the elimination of minority- and gender-based preferences is necessary in light of recent court challenges to race-based statutes if the C block auction is to proceed without significant delay. Specifically, GO Communications comments that our bidding credit proposal strikes an appropriate balance by leveling benefits upward in a manner that mitigates potential harm to all affected parties.[149] Spectrum Resources contends that the proposal is reasonable and viable although a slight negative effect will result because of the additional competition into the bidding process and a diminishing number of successful minority and women bidders.[150] DCR Communications argues that the proposal is the most sensible and is necessary to ensure participation by designated entities in the auction for, and offering of, PCS.[151] We agree that we are striking an appropriate balance between varied interests to retain our statutory mandate to provide opportunities for designated entities.

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[146]RTC Comments at 2; O.N.E. Comments at 2.

[147]RTC Comments at 2.

[148] O.N.E. Comments at 2. O.N.E. also proposes a size standard of $5 million for small businesses from the present $40 million.

[149]GO Communications Comments at 3.

[150]Spectrum Resources Comments at 3-4.

[151]DCR Communications Comments at 5-6.

## F. Cellular PCS Cross-Ownership and CMRS Spectrum Aggregation Limit

49. Background. Our cellular-PCS cross-ownership rule prohibits entities with attributable interests in cellular licenses from holding more than 10 MHz of PCS spectrum in an overlapping PCS service area.[152] For purposes of this rule, a 20 percent or greater interest in a cellular license is considered to be attributable, except in the case of cellular interests held by designated entities. In the latter case, we permit small businesses, rural telephone companies, and businesses owned by minorities or women to hold up to a 40 percent non-controlling interest in a cellular licensee without being subject to the cellular-PCS cross-ownership restriction.[153] We also apply a 40 percent cellular attribution threshold to any entity with a non-controlling interest in a PCS license controlled by minorities or women.[154] The same attribution rules apply to our 45 MHz spectrum cap, which restricts any entity from holding interests in more than 45 MHz of broadband PCS, cellular, and SMR spectrum in the same geographic area.[155] Thus, while interests of 20 percent or more in a broadband PCS, cellular, or SMR license are generally attributable for purposes of the spectrum cap, small businesses, rural telephone companies, and businesses owned by minorities or women are subject to a 40 percent attribution threshold.[156]

50. In the *Further Notice*, we proposed to modify both the cellular-PCS cross-ownership and the PCS/cellular/SMR spectrum cap rule with respect to the C block by eliminating the use of the 40 percent attribution threshold on the basis of race or gender.[157] Thus, in the cellular-PCS context, we proposed to apply the 40 percent attribution threshold only to cellular interests held by small businesses and rural telephone companies, but to apply the 20 percent threshold to all other cellular interests, including those held by minority and women-controlled entities that are not small business or rural telephone companies. We further proposed to eliminate the rule allowing 40 percent cellular attribution for non-controlling investors in minority- or women-controlled PCS applicants or licensees and instead proposed to apply the 40 percent threshold to non-controlling investors in PCS applicants or licensees controlled by small businesses. In this regard, we noted that the

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[152] 47 CFR § 24.204(a).

[153] *Id.*, § 24.204(d)(2)(ii). *See Memorandum Opinion & Order,* GEN Docket No. 90-314, 9 FCC Rcd 4957, 5007 (*Broadband PCS Reconsideration Order*).

[154] *Id. See Broadband PCS Reconsideration Order*, 9 FCC Rcd at 5008.

[155] 47 CFR § 20.6. *See Third Report and Order*, GN Docket No. 93-252, PR Docket No. 93-144, PR Docket No. 89-553, 9 FCC Rcd 7988, (¶ 263) (1994) (*CMRS Third Report and Order*).

[156] *Id.*, § 20.6(d)(2).

[157] *Further Notice* at ¶ 30.

extension of the 40 percent threshold to non-controlling investors in small businesses might result in additional investment in small business PCS applicants. Similarly, with respect to the PCS/cellular/SMR spectrum cap, we proposed to use the 40 percent attribution threshold where PCS/cellular/SMR interests are held by small businesses and rural telephone companies, but to use the 20 percent threshold in all other cases.[158] Although we noted that the cellular-PCS and spectrum cap rules applied to more than just the C block, we proposed to change the rules with respect to the C block only.

51. Comments. The comments generally support our proposals for modifying the cellular-PCS cross-ownership and CMRS spectrum aggregation limit rules. Most of the comments mirror earlier comments concerning the commenters' desire to avoid delay;[159] to avoid *Adarand* and *TEC* type legal challenges;[160] and to minimize disruption.[161] DCR Communications notes that our proposal will promote investment.[162] Only two commenters object to our proposal. O.N.E. reasserts its argument that we should not eliminate all race- and gender-based preferences without proposing a race- and gender-neutral solution. [163] Radiofone challenges both the 40 percent cellular-PCS cross-ownership rule and our proposed amendment as unlawful and discriminatory.[164]

52. Decision. We will amend our cellular PCS cross-ownership and PCS/cellular/SMR spectrum aggregation limit rules with respect to C block as proposed in the *Further Notice*. These changes will help to avoid further delay or legal challenges to the C block auction and are strongly supported by the comments. We reject Radiofone's argument that the cellular-PCS cross-ownership rule should be eliminated. This argument has been

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[158]In the *Further Notice*, we inadvertently referenced Section 20.6(d)(2) as adopted in the *CMRS Third Report and Order* rather than Section 20.6(d)(2) as corrected by the *Erratum* of the*CMRS Third Report and Order* , which was released on November 30, 1994.

[159]GO Communications Comments at 3.

[160]Spectrum Resources Comments at 3; Central Alabama & Mobile Tri-States Comments at 5; Small Business PCS Comments at 1-2; Infocore Comments at 2-3.

[161]GO Communications Comments at 3; Spectrum Resources Comments at 3; DCR Communications Comments at 10-11; Airlink Comments at 4-5.

[162]DCR Communications Comments at 10-11.

[163]*See infra* at ¶¶ 37, 40.

[164]Radiofone Comments at 3.

fully addressed previously in the PCS docket and is not an issue raised in this proceeding.[165] Specifically, we modify Section 24.204(d)(2)(ii) with respect to the C block to eliminate the provision in the cellular-PCS cross-ownership rule that increases the attribution threshold to 40 percent on the basis of the race or gender of the holder of the ownership interest, but we will continue to apply the 40 percent threshold to cellular interests held by small businesses and rural telephone companies. We also modify Section 24.204(d)(2)(ii) to provide that non-controlling investors in C block PCS applicants or licensees controlled by small businesses may hold up to a 40 percent interest in a cellular licensee without being subject to the cellular-PCS cross-ownership restrictions. Finally, we make the same modification to the attribution provisions in our spectrum cap rule in Section 20.6(d)(2) that we have made to our cellular-PCS rule. Thus, small businesses or rural telephone companies may hold up to a 40 percent interest in broadband PCS, cellular, or SMR licenses without such interests being attributable under the 45 MHz spectrum cap, but minority- and women-controlled interest holders who are not small businesses or rural telephone companies will be subject to the 20 percent attribution rule for purposes of determining C block eligibility under the spectrum cap. To avoid any apparent inconsistency, Section 20.6(d)(2) will also reflect the modification with respect to non-controlling investors in C block PCS applicants and licensees that are small businesses.

## G. Miscellaneous Issues

53. *Information Collection.* With respect to our proposal to continue requesting information on the short-form applications (FCC Form 175) regarding minority- or women-owned status,[166] both Spectrum Resources and Central Alabama & Mobile Tri-States agree that we should continue to collect such information. Central Alabama & Mobile Tri-States believe that collection of the status data will enable the Commission to analyze the applicant pool and auction results to determine if small business provisions alone were sufficient to achieve the participation of all designated entities, including businesses owned by minorities or women.[167] Central Alabama & Mobile Tri-States further state that in the event that such participation is not obtained, then the collected information would be helpful in establishing a record supporting race- and gender-based preferences for future auctions.[168] Similarly, Spectrum Resources believes that such information could prove valuable in supporting the

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[165]*See Second Report and Order*, GEN 90-314, 8 FCC Rcd 7700, 7745; *Broadband PCS Reconsideration Order*, 9 FCC Rcd at 4998.

[166]*Further Notice* at ¶ 17.

[167]Central Alabama & Mobile Tri-States Comments at 7.

[168]Central Alabama & Mobile Tri-States Comments at 7.

Commission's actions in any ensuing litigation.[169]

54. We agree that continuing to request information on the short-form applications (FCC Form 175) concerning the minority- or women-owned status of applicants will assist us in analyzing the applicant pool and the auction results to determine whether we have accomplished substantial participation by minorities and women through provisions available to small businesses as required by the Budget Act. We conclude that such information will be helpful and probative in two respects: (1) our preparation of a report to Congress on the participation of designated entities in the auctions and in the provision of spectrum-based services;[170] and, (2) our development of a supplemental record should we find that special provisions for small businesses in the C block PCS auctions prove unsuccessful in ensuring participation by businesses owned by members of minority groups and women in broadband PCS. In this connection, we emphasize that those applicants who indicate that they are minority- or women-owned must meet the applicable definitions as set forth in Section 24.720(c) of our rules.

55. *Other.* Several commenters addressed issues regarding the auctioning and licensing of the C block other than the specific rule changes proposed in the *Further Notice*. These issues included the following: (a) scheduled commencement of the C block auction;[171] (b) proposals of special provisions for entrepreneurs with gross revenues between $40 and $75 million;[172] (c) proposals of circumstances under which upfront payments and down payments can earn interest and be withdrawn;[173] (d) definition of small businesses;[174] (e) criteria for determining C block eligibility;[175] (f) the rebuttable presumption concerning Indian

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[169]Spectrum Resources Comments at 2.

[170]*See* 47 U.S.C. § 309(j)(12)(D).

[171]National Telecomm Comments 1-3 (seeking further delay of C block auction).

[172]Comtech Comments at 2-8 (proposes adoption of bidding credits and installment payment plans for these entrepreneurs).

[173]Michigan Telecommunications Comments at 2-4 (proposes establishment of interest bearing accounts for deposit of upfront payments and down payments).

[174]O.N.E. Comments at 2 (proposes size standard of $5 million); RTC Comments at 2-10 (argues that small business definition is not properly targeted).

[175]Allied Comments at 2-3 (urges reinstatement of personal net worth limitations).

gaming revenues;[176] and (g) effect of business growth and development on C block small business status.[177] We have adequately considered these issues previously and we find no basis to revisit them here in this narrowly-focused rule making. Therefore, we will not make the rule changes proposed by commenters pertaining to such issues.

56. On our own motion, however, we clarify the measurement of gross revenues. Section 24.720 (f) specifies that gross revenues shall be measured "for the relevant number of calendar years preceding January 1, 1994, or if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175)."[178] For purposes of qualifying for the C block, an entity, together with its affiliates and persons or entities that hold an attributable interest in such entity and their affiliates, must have gross revenues of less than $125 million in each of the last two years.[179] Therefore, such an entity would measure its annual gross revenues for the calendar years 1992 and 1993, or for its two most recently completed fiscal years. For purposes of qualifying as a small business, an entity, together with its affiliates and persons or entities that hold an attributable interest in such entity and their affiliates, must have average annual gross revenues of not more than $40 million for the preceding three years.[180] Therefore, such an entity would calculate its average annual gross revenues for the years 1991, 1992, and 1993, or for its three most recently completed fiscal years.

57. We note that this definition of gross revenues was adopted when the C block applications were to be filed in early 1995, when audited calendar year 1994 financial statements for most firms were not yet available and when it was unlikely that there would be a substantial difference between calendar and fiscal years for accounting purposes. If our rule's distinction between calendar years and fiscal years results in undue hardship due to a company's particular accounting practices, we will entertain waiver requests to use *either* a calendar-year or a fiscal-year measurement of gross revenues to determine compliance with

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[176]Oneida Tribe Comments at 6-15 (challenges propriety of rebuttable presumption applicable to Indian gaming revenues).

[177]MasTec Comments at 2-3 (seeks continued C block eligibility for small pre-existing companies that have experienced growth since January, 1994).

[178]47 CFR § 24.720(f).

[179]*Id.* § 24.709(a)(1).

[180]*Id.* § 24.720(b)(1).

the financial caps.[181] We did not intend to discriminate based upon a company's particular accounting practices. We delegate authority to the Wireless Telecommunications Bureau to decide such waivers on a case-by-case basis and to grant such upon an affirmative showing pursuant to Section 24.419 of the Commission's rules.

## IV. PROCEDURAL MATTERS AND ORDERING CLAUSES

58. The Final Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act,[182] is set forth in Appendix B.

59. IT IS ORDERED that the rule changes specified in Appendix A ARE ADOPTED.

60. IT IS FURTHER ORDERED that the rule changes set forth in Appendix A WILL BECOME EFFECTIVE upon publication in the Federal Register. Pursuant to 5 U.S.C. § 553(d)(3) we find "good cause" exists to have the rule amendments set forth herein take effect immediately upon publication in the Federal Register. The C block auction for broadband PCS is scheduled to commence on August 29, 1995, and initial short-form applications are due July 28, 1995. Our revised rules need to be effective prior to receipt of the short-form applications in order to avoid the delays and litigation risks associated with prior rules.

61. IT IS FURTHER ORDERED that the Wireless Telecommunications Bureau has delegated authority to decide waiver requests pertaining to our C block competitive bidding rules as specified in paragraph 57 of this *Sixth Report and Order*.

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[181]Audited financial statements are required of all applicants except for "start-up" companies where unaudited financials are permitted provided they are certified to be correct by an officer of the applicant. *See* 47 CFR § 24.720(f) and (g). The Wireless Telecommunications Bureau has previously indicated that the Commission will consider requests for waivers of this requirement in cases where applicants can show for good cause that they do not have audited financial statements prepared. In such cases, certified financial statements may be accepted if accompanied by an affidavit from a senior corporate officer certifying the accuracy of the information provided. *See Public Notice*, "Wireless Telecommunications Bureau Staff Responds to Questions About the Broadband PCS C Block Auction," June 8, 1995.

[182]5 U.S.C. § 604.

62. This action is taken pursuant to Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

## APPENDIX A

## FINAL RULES

Parts 20 and 24 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

### PART 20 - COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

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

2. Section 20.6 is amended by revising paragraph (d)(2) to read as follows:

**§ 20.6 CMRS spectrum aggregation limit.**

* * * * *

(d)* * *
(2) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular or SMR licensee shall be attributed, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to at least 40 percent of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular or SMR licensee if the ownership interest is held by a small business, a rural telephone company or a business owned by minorities and/or women, as these terms are defined in Sec. 1.2110 of this chapter or other related provisions of the Commission's rules, or if the ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a business owned by minorities and/or women. For purposes of broadband PCS licenses for frequency block C, the 40 percent attribution levels shall only apply to interests held by a small business or a rural telephone company and interests held by an entity with a non-controlling equity interest in a licensee or applicant that is a small business.

* * * * *

### PART 24 - PERSONAL COMMUNICATIONS SERVICES

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

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

2. Section 24.204 is amended by revising paragraph (d)(2)(ii) to read as follows:

**§ 24.204 Cellular eligibility.**

* * * * *

(d)* * *
(2)* * *

(ii) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee will be attributable, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to 40 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee if the ownership interest is held by a small business, a rural telephone company, or a business owned by minorities and/or women, as these terms are defined in Sec. 24.720, or if the ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a business owned by minorities and/or women. For purposes of broadband PCS licenses for frequency block C, the 40 percent attribution levels shall only apply to interests held by a small business or rural telephone company and interests held by an entity with a non-controlling equity interest in a licensee or applicant that is a small business.

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3. Section 24.709 is amended by revising the heading and paragraphs (a), (b)(6), (c)(1)(ii)(B), (c)(2), (c)(2)(ii) and (e) to read as follows:

**§ 24.709 Eligibility for licenses for frequency Block C.**

(a) *General Rule.*
(1) No application is acceptable for filing and no license shall be granted for frequency block C, unless the applicant, together with its *affiliates* and persons or entities that hold interests in the applicant and their *affiliates*, have *gross revenues* of less than $125 million in each of the last two years and *total assets* of less than $500 million at the time the applicant's short-form application (Form 175) is filed.
(2) The *gross revenues* and *total assets* of the applicant (or licensee), and its *affiliates*, and (except as provided in paragraph (b) of this section) of persons or entities that hold interests in the applicant (or licensee), and their *affiliates*, shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for a licensee for frequency block C under this section.
(3) Any licensee awarded a license pursuant to this section (or pursuant to § 24.839(d)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased *gross revenues* or increased

*total assets* due to *nonattributable equity* investments (i.e., from sources whose *gross revenues*, and *total assets* are not considered under paragraph (b) of this section), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered.

(b)* * *

(5)* * *

(C) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned, either unconditionally or in the form of stock options, by any of the following entities, which may not comply with § 24.720(n)(1):

(1) *Institutional investors*;

(2) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group*;

(3) Individuals that are members of the applicant's (or licenses's) management; or

(4) *Qualifying investors*, as specified in § 24.720(n)(4).

(6) *Control Group Minimum 50.1 Percent Equity Requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(4) of this section, an applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity*, as provided in paragraph (b)(6)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 50.1 percent of the applicant's (or licensee's) total equity as follows:

(A) at least 30 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors*, either unconditionally or in the form of options, exercisable at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group and must have *de facto* control of the control group and of the applicant;

(C) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors*, either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(6)(i)(A) of this section, or by any of the following entities which may not comply with § 24.720(n)(1):

(1) *Institutional investors*, either unconditionally or in the form of stock options;

(2) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group*, either unconditionally or in the form of stock options;

(3) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options; or

(4) *Qualifying investors*, as specified in § 24.720(n)(4).

(D) Following termination of the three-year period specified in paragraph (b)(6)(i) of this section, *qualifying investors* must continue to own at least 20 percent of the applicant's (or licensee's) total equity, either unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(6)(i)(A) of this section. The restrictions specified in paragraph (b)(6)(i)(C)(1) through (4) of this section no longer apply to the remaining equity after

termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity*, the 50.1 percent minimum equity requirements set forth in paragraph (b)(6)(i) of this section shall apply, except that only 20 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors*, and that the remaining 30.1 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors*, or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 30.1 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(6)(i) of this section.

* * * * *

(c)* * *

(1) *Short-form Application.* In addition to certifications and disclosures required by Part 1, subpart Q of this Chapter and § 24.813, each applicant for a license for frequency Block C shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), and (if applicable) that it is eligible for designated entity status pursuant to this section and § 24.720, and shall append the following information as an exhibit to its Form 175:

* * * * *

(2) *Long-form Application.* In addition to the requirements in subpart I of this part and other applicable rules (e.g., §§ 24.204(f), 20.6(e) and 20.9(b) of this chapter), each applicant submitting a long-form application for a license(s) for frequency block C shall, in an exhibit to its long-form application:

* * * * *

(ii) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility for a license(s) for frequency Block C and its eligibility under §§ 24.711, 24.712, 24.714 and 24.720, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

* * * * *

(e) *Definitions.* The terms *affiliate, business owned by members of minority groups and women, consortium of small businesses, control group, existing investor, gross revenues,*

*institutional investor, members of minority groups, nonattributable equity, preexisting entity, publicly traded corporation with widely dispersed voting power, qualifying investor, small business and total assets* used in this section are defined in § 24.720.

4. Section 24.711 is amended by revising the heading and paragraphs (a) introductory text, (a)(1), (b) introductory text and (b)(3), and removing paragraphs (b)(4) and (5) to read as follows:

**§ 24.711 Upfront payments, down payments and installment payments for licenses for frequency Block C.**

(a) *Upfront Payments and Down Payments.*
(1) Each eligible bidder for licenses on frequency Block C subject to auction shall pay an upfront payment of $0.015 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid pursuant to § 1.2106 of this Chapter and procedures specified by Public Notice.

* * * * *

(b) *Installment Payments.* Each eligible licensee of frequency Block C may pay the remaining 90 percent of the net auction price for the license in installment payments pursuant to § 1.2110(e) of this Chapter and under the following terms:

* * * * *

(3) For an eligible licensee that qualifies as a small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first six years and payments of interest and principal amortized over the remaining four years of the license term.

* * * * *

5. Section 24.712 is amended by revising the heading and paragraph (a), removing paragraphs (b) and (c), and redesignating paragraph (d) as paragraph (b) to read as follows:

**§ 24.712 Bidding credits for licenses for frequency Block C.**

(a) A wining bidder that qualifies as a small business or a consortium of small businesses may use a bidding credit of twenty-five percent to lower the cost of its winning bid.

* * * * *

6. Section 24.713 is removed and reserved.

7. A new Section 24.715 is added to Subpart H to read as follows:

## § 24.715 Eligibility for licenses for frequency Block F.

(a) *General Rule.*

(1) No application is acceptable for filing and no license shall be granted for frequency block F, unless the applicant, together with its *affiliates* and persons or entities that hold interests in the applicant and their *affiliates*, have *gross revenues* of less than $125 million in each of the last two years and *total assets* of less than $500 million at the time the applicant's short-form application (Form 175) is filed.

(2) The *gross revenues* and *total assets* of the applicant (or licensee), and its *affiliates*, and (except as provided in paragraph (b) of this section) of persons or entities that hold interests in the applicant (or licensee), and their *affiliates*, shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for a license for frequency block F under this section.

(3) Any licensee awarded a license pursuant to this section (or pursuant to § 24.839(d)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased *gross revenues* or increased *total assets* due to *nonattributable equity* investments (i.e., from sources whose *gross revenues*, and *total assets* are not considered under paragraph (b) of this section), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered.

(b) *Exceptions to General Rule.*

(1) *Small Business Consortia.* Where an applicant (or licensee) is a *consortium of small businesses*, the *gross revenues* and *total assets* of each small business shall not be aggregated.

(2) *Publicly-Traded Corporations.* Where an applicant (or licensee) is a *publicly traded corporation with widely dispersed voting power*, the *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates,* shall not be considered.

(3) *25 Percent Equity Exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates*, shall not be considered so long as:

(i) Such person or entity, together with its *affiliates*, holds only *nonattributable equity* equaling no more than 25 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(5) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group*; and

(iii) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(5) of this section, and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(4) *49.9 Percent Equity Exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates*, shall not be considered so long as:

(i) Such person or entity, together with its *affiliates*, holds only *nonattributable equity* equaling no more than 49.9 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(6) of this section, such person or entity is not a

member of the applicant's (or licensee's) *control group*; and

(iii) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(6) of this section and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(5) *Control Group Minimum 25 Percent Equity Requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(3) of this section, and applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity*, as provided in paragraph (b)(5)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 25 percent of the applicant's (or licensee's) total equity as follows:

(A) At least 15 percent of the applicant's (or licensee's) total equity must be held by qualifying investors, either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group, and must have *de facto* control of the control group and of the applicant;

(C) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors*, either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(5)(i)(A) of this section, or by any of the following entities, which may not comply with section 24.720(n)(1):

(1) *Institutional investors*, either unconditionally or in the form of stock options;

(2) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group*, either unconditionally or in the form of stock options;

(3) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options; or

(4) *Qualifying investors*, as specified in § 24.720(n)(4).

(D) Following termination of the three-year period specified in paragraph (b)(5)(i) of this section, *qualifying investors* must continue to own at least 10 percent of the applicant's (or licensee's) total equity, either unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(5)(i)(A) of this section. The restrictions specified in paragraph (b)(5)(i)(C)(1) through (4) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity*, the 25 percent minimum equity requirements set forth in paragraph (b)(5)(i) of this section shall apply, except that only 10 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors* and that the remaining 15 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors* or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 15 percent of the licensee's total equity no longer apply after termination of the

three-year period specified in paragraph (b)(5)(i) of this section.

(6) *Control Group Minimum 50.1 Percent Equity Requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(4) of this section, an applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity*, as provided in paragraph (b)(6)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 50.1 percent of the applicant's (or licensee's) total equity as follows:

(A) at least 30 percent of the applicant's (or licensee's) total equity must be held by *qualifying minority and/or women investors*, either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such *qualifying minority and/or women investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group and must have *de facto* control of the control group and of the applicant;

(C) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors*, either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(5)(i)(A) of this section, or by any of the following entities, which may not comply with section 24.720(n)(1):

(1) *Institutional investors*, either unconditionally or in the form of stock options;

(2) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the

**§ 24.716 Upfront payments, down payments, and installment payments for licenses for frequency Block F.**

(a) *Upfront Payments and Down Payments.*

(1) Each eligible bidder for licenses on frequency Block F subject to auction shall pay an upfront payment of $0.015 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid pursuant to § 1.2106 of this Chapter and procedures specified by Public Notice.

(2) Each winning bidder shall make a down payment equal to ten percent of its winning bid (less applicable bidding credits); a winning bidder shall bring its total amount on deposit with the Commission (including upfront payment) to five percent of its net winning bid within five business days after the auction closes, and the remainder of the down payment (five percent) shall be paid within five business days after the application required by § 24.809(b) is granted.

(b) *Installment Payments.* Each eligible licensee of frequency Block F may pay the remaining 90 percent of the net auction price for the license in installment payments pursuant to § 1.2110(e) of this Chapter and under the following terms:

(1) For an eligible licensee with *gross revenues* exceeding $75 million (calculated in accordance with § 24.709(a)(2) and (b)) in each of the two preceding years (calculated in accordance with 24.720(f)), interest shall be imposed based on the rate for ten-year U.S.

Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license.

(2) For an eligible licensee with *gross revenues* not exceeding $75 million (calculated in accordance with § 24.715(a)(2) and (b)) in each of the two preceding years, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term.

(3) For an eligible licensee that qualifies as a small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

(4) For an eligible licensee that qualifies as a business owned by members of minority groups and/or women, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first three years and payments of interest and principal amortized over the remaining seven years of the license term.

(5) For an eligible licensee that qualifies as a small business owned by members of minority groups and/or women or as a consortium of small business owned by members of minority groups and/or women, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first six years and payments of interest and principal amortized over the remaining four years of the license term.

(c) *Unjust Enrichment.*

(1) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment payments, the licensee must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval. A licensee's (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments (i.e., from sources whose gross revenues and total assets are not considered under § 24.715(b)), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered to result in the licensee losing eligibility for installment payments.

(3) If a licensee seeks to make any change in ownership that would result in the licensee qualifying for a less favorable installment plan under this section, the licensee shall seek Commission approval and must adjust its payment plan to reflect its new eligibility status. A licensee may not switch its payment plan to a more favorable plan.

9. A new Section 24.717 is added to Subpart H to read as follows:

**§ 24.717 Bidding credits for licenses for frequency Block F.**

(a) A winning bidder that qualifies as a small business or a consortium of small businesses may use a bidding credit of ten percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a business owned by members of minority groups and/or women may use a bidding credit of fifteen percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as a small business owned by members of minority groups and/or women or a consortium of small business owned by members of minority groups and/or women may use a bidding credit of twenty-five percent to lower the cost of its winning bid.

(d) *Unjust Enrichment.*

(1) If during the term of the initial license grant (*see* § 24.15), a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for bidding credits or seeks to make any other change in ownership that would result in the licensee no longer qualifying for bidding credits under this section, the licensee must seek Commission approval and reimburse the government for the amount of the bidding credit as a condition of the approval of such assignment, transfer or other ownership change.

(2) If during the term of the initial license grant (*see* § 24.15), a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity meeting the eligibility standards for lower bidding credits or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee or licensee is eligible under this section as a condition of the approval of such assignment, transfer or other ownership change.

10. Section 24.720 is amended by revising paragraphs (a), (b)(2), (c)(2), (j)(2), (l)(11)(i), (l)(11)(ii), (n)(1), (n)(3) and adding paragraph (n)(4) to read as follows:

**§ 24.720 Definitions.**

(a) Scope. The definitions in this section apply to §§ 24.709 through 24.717, unless otherwise specified in those sections.

(b)* * *

(2) For purposes of determining whether an entity meets the $40 million average annual gross revenues size standard set forth in paragraph (b)(1) of this section, the gross revenues of the entity, its affiliates, persons or entities holding interests in the entity and their affiliates shall be considered on a cumulative basis and aggregated, subject to the exceptions set forth §§ 24.709(b) or 24.715(b).

* * * * *

(c)* * *

(2) That complies with the requirements of § 24.715(b)(3) and (b)(5) or § 24.715(b)(4) and (b)(6).

* * * * *

(j)* * *

(2) For purposes of assessing compliance with the equity limits in § 24.709(b)(3)(i) and (b)(4)(i) or § 24.715(b)(3)(i) and (b)(4)(i), where such interests are not held directly in the applicant, the total equity held by a person or entity shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(l)* * *

(11) * * *

(i) For purposes of §§ 24.709(a)(2), 24.715(a)(2) and paragraphs (b)(2) and (d) of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of § 24.709 (b)(3) and (b)(5) or § 24.709 (b)(4) and (b)(6) or § 24.715 (b)(3) and (b)(5) or § 24.715 (b)(4) and (b)(6) , except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of § 24.709(a) or § 24.715(a) and paragraphs (b) and (d) of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

(ii) For the C block, for purposes of § 24.709(a)(2) and paragraph (b)(2) of this section, an affiliate with gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million at the time the applicant's short-form application (Form 175) is filed will not be considered an affiliate of an applicant (or licensee) that qualifies as a small business under section 24.720(b)(2) (small business definition) provided the gross revenues and total assets of all such affiliates, when considered on a cumulative basis and aggregated with each other do not exceed the amounts specified in section 24.709(a)(1) (entrepreneurs' block caps).

* * * * *

(n) * * *

(1) A qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets, when aggregated with those of all other attributable investors and affiliates, do not exceed the gross revenues and total assets limits specified in § 24.709(a) or § 24.715(a) , or, in the case of an applicant (or licensee) that is a small business, do not exceed the gross revenues limit specified in paragraph (b) of this section.

* * * * *

(3) For purposes of assessing compliance with the minimum equity requirements of § 24.709(b)(5) and (6) or § 24.715(b)(5) and (6), where such equity interests are not held directly in the applicant, interests held by qualifying investors or qualifying minority and/or woman investors shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.
(4) For purposes of § 24.709(b)(5)(C) and (b)(6)(C) or § 24.715(b)(5)(C) and (b)(6)(C), a qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets do not exceed the gross revenues and total assets limits specified in § 24.709(a) or § 24.715(a).

* * * * *

## APPENDIX B

## FINAL REGULATORY FLEXIBILITY ANALYSIS

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 603, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the *Further Notice of Proposed Rule Making*. Written public comments on the IRFA were requested. The Commission's final regulatory flexibility analysis for this Sixth Report and Order in GN Docket No. 93-253 is as follows:

### A. NEED FOR AND PURPOSE OF RULES

1. This rule making proceeding was initiated to secure comment on proposals to eliminate all race- and gender-based provisions in our competitive bidding rules for our C block auction only. The proposals adopted herein are also designed to implement Congress's goal of giving small businesses, rural telephone companies, and businesses owned by members of minority groups and women the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. § 309(j)(4)(D).

### B. ISSUES RAISED BY THE PUBLIC IN RESPONSE TO THE INITIAL ANALYSIS

2. No comments were submitted specifically in response to the Initial Regulatory Flexibility Analysis.

### C. SIGNIFICANT ALTERNATIVES CONSIDERED

3. The *Further Notice of Proposed Rule Making* in this proceeding offered numerous proposals. All significant alternatives have been addressed in the *Sixth Report and Order*. The majority of the commenters supported the major tenets of the proposed changes and some commenters suggested changes to some of the Commission's proposals. The regulatory burdens we have retained for C block applicants, including small entities, are necessary to carry out our duties under the Communications Act of 1934, as amended and the Omnibus Budget Reconciliation Act of 1993. For example, although we developed race- and gender-neutral rules, we retained the requirement for applicants claiming status as a business owned by members of minority groups and/or women. This requirement will allow the Commission to submit its report to Congress concerning the participation of minorities and women in the provision of spectrum.

## APPENDIX C

## COMMENTS FILED IN PP DOCKET No. 93-253

## IN RESPONSE TO THE *FURTHER NOTICE OF PROPOSED RULE MAKING*

1. Airlink
2. Allied Communications Group, Inc. (Allied)
3. Asian Business Association of San Diego
4. Association of Public Safety-Communications Officials-International, Inc. (APCO)
5. Black Entertainment Television Holdings, Inc. (BET)
6. Cellular Service, Inc. (CSI)
7. Central Alabama Partnership L.P. 132 and Mobile Tri-States L.P. 130 (Central Alabama & Mobile Tri-States)
8. Century Communications, Inc. (Century)
9. Chase Telecommunications L.P. (Chase Telecommunications)
10. Chicano Federation of San Diego County, Inc. (Chicano Federation)
11. Comtech, Inc. (Comtech)
12. Cook Inlet Region, Inc. (CIRI)
13. DCR Communications, Inc. (DCR Communications)
14. General Wireless, Inc. (General Wireless)
15. Giles Television, Inc. (Giles)
16. GO Communications Corporation (GO Communications)
17. Infocore, Inc. (Infocore)
18. InTouch PCS, Inc. (InTouch)
19. Jackmont Telecom, Inc.
20. K&M Engineering and Consulting Corporation (K&M)
21. MasTec, Inc. (MasTec)
22. Michigan Telecommunications Group, Inc. (Michigan Telecommunications)
23. Minority Business Enterprise Legal Defense and Education Fund, Inc. (Minority Business Enterprise)
24. Minority Media and Telecommunications Council, Communications Task Force, National Paging and Personal Communications Association, and National Institute of Communication and Education (Minority Media *et al.*)
25. National Association of Black Owned Broadcasters, Inc. (NABOB)
26. National Telecomm
27. Omnipoint Corporation (Omnipoint)
28. Ondas Communications Services, Inc. (Ondas)
29. O.N.E., Inc. (O.N.E.)
30. Oneida Tribe of Indians of Wisconsin, Sovereign Nation of (Oneida Tribe)
31. Prairie Island Dakota Community (Prairie Island)
32. Radiofone, Inc. (Radiofone)

33. Roseville Telephone Company (RTC)
34. Santarelli, Smith & Carroccio
35. Silverman, Joel (Silverman)
36. The Small Business PCS Association (Small Business PCS)
37. Smart Box Systems Group, Inc. (Smart Box)
38. Spectrum Resources, Inc. (Spectrum Resources)
39. Sprint Telecommunications Venture (Sprint)
40. Telecorp, Inc. (Telecorp)
41. Unicomm PCS (Unicomm)
42. United Church of Christ
43. Unitel Cellular Communications Systems, Inc. (Unitel)
44. U.S. Airwaves, Inc. (U.S. Airwaves)
45. The Richard L. Vega Group (Vega Group)

## APPENDIX D

## LETTERS FILED IN PP DOCKET No. 93-253

1. Adams, Gerard G.
2. Barnes, Stephen Y.
3. Blanchard, Elizabeth L.
4. Borland, Gloria
5. Camarillo, Mateo
6. Carroccio, A. Thomas
7. Casey, James A.
8. Chambers, Jonathan
9. Dickerson, Terri
10. Eckert, Patricia
11. Erikson, Mark R.
12. Guinta, Tara Kalagher
13. Greenwald, Eliot J.
14. Hart, Thomas A. Jr.
15. Honig, David
16. Huhndorf, Roy M.
17. Ireland, James F.
18. Jackson, Henry O.
19. Johnson, Robert L.
20. Jones, Terry L.
21. Kappaz, Michael Hegel
22. King, Bruce
23. Kyle, Robert H.
24. Leong, Harvey
25. Lucero, C. Steven
26. Marshall, Sherrie
27. Martis, Sandra Goeken
28. McDermott, Martin F. III
29. Moy, Celeste M.
30. Peterson, Charles M.
31. Rivera, Henry
32. Robinson, Anthony W.
33. Robinson, Jack E.
34. Symons, Howard
35. Sidman, Lawrence
36. Spencer, Shelley L.
37. Tauber, Mark J.
38. Telecommunications Development Fund
39. Walker, Micheal

40. White, Curtis T.
41. Winston, James L.
42. Zecola, Steve A.