## APPENDIX A

## HYPOTHETICAL HERFINDAHL-HIRSCHMAN INDICES

1. Industry Without Spectrum Caps

A: Pure Duopoly -- Two Cellulars @ 25 MHz.

**HHI is 5000**

| Competitor | MHz | Market Share | HHI |
|---|---|---|---|
| Cellular A | 25 | 50 | 2500 |
| Cellular B | 25 | 50 | 2500 |
| Total | 50 | 100 | 5000 |

B: Modified Duopoly -- Add One SMR @ 10 Mhz.

**HHI is 3750**

| Competitor | MHz | Market Share | HHI |
|---|---|---|---|
| Cellular A | 25 | 41.66666667 | 1736.111 |
| Cellular B | 25 | 41.66666667 | 1736.111 |
| Big SMR | 10 | 16.66666667 | 277.7778 |
| Total | 60 | 100 | 3750 |

C: Atomized Market -- Two cellulars @ 25 MHz, three PCS @ 30, three PCS @ 10, one SMR @ 10.

**HHI is 1343**

| Competitor | MHz | Market Share | HHI |
|---|---|---|---|
| Cellular A | 25 | 13.88888889 | 192.9012 |
| Cellular B | 25 | 13.88888889 | 192.9012 |
| PCS A | 30 | 16.66666667 | 277.7778 |
| PCS B | 30 | 16.66666667 | 277.7778 |
| PCS C | 30 | 16.66666667 | 277.7778 |
| PCS D | 10 | 5.555555556 | 30.8642 |
| PCS E | 10 | 5.555555556 | 30.8642 |
| PCS F | 10 | 5.555555556 | 30.8642 |
| Big SMR | 10 | 5.555555556 | 30.8642 |
| Total | 180 | 100 | 1342.593 |

D: Deployment of PCS Without Spectrum Caps: Scenario #1 -- Each Cellular Acquires 60 MHz of broadband PCS Spectrum.

**HHI is 4491**

| Competitor | MHz | Market Share | HHI |
|---|---|---|---|
| Cellular A | 85 | 47.22222222 | 2229.938 |
| Cellular B | 85 | 47.22222222 | 2229.938 |
| Big SMR | 10 | 5.555555556 | 30.8642 |
| Total | 180 | 100 | 4490.741 |

E: Deployment of PCS Without Spectrum Caps: Scenario #2 -- Each Cellular Acquires 40 MHz of broadband PCS Spectrum, a New Entrant Acquires 40 MHz, SMR @ 10 MHz.

**HHI is 3133**

| Competitor | MHz | Market Share | HHI |
|---|---|---|---|
| Cellular A | 65 | 36.11111111 | 1304.012 |
| Cellular B | 65 | 36.11111111 | 1304.012 |
| PCS A | 40 | 22.22222222 | 493.8272 |
| Big SMR | 10 | 5.555555556 | 30.8642 |
| Total | 180 | 100 | 3132.716 |

2. Concentrations Possible Under Three-Cap Regime

A: All Three 10 MHz PCS Blocks Go to One New PCS Licensee (Two cellulars @ 25, four PCS @ 30 MHz. one SMR @ 10).

**HHI is 1528**

| Competitor | MHz | Market Share | HHI |
|---|---|---|---|
| Cellular A | 25 | 13.88888889 | 192.9012 |
| Cellular B | 25 | 13.88888889 | 192.9012 |
| PCS A | 30 | 16.66666667 | 277.7778 |
| PCS B | 30 | 16.66666667 | 277.7778 |
| PCS C | 30 | 16.66666667 | 277.7778 |
| PCS D | 30 | 16.66666667 | 277.7778 |
| Big SMR | 10 | 5.555555556 | 30.8642 |
| Total | 180 | 100 | 1527.778 |

B: Each Cellular Gets One 10 MHz Block, the Third Remains Solo (Two cellulars @ 35, three PCS @ 30, one PCS @ 10, one SMR @ 10).

**HHI is 1651**

| Competitor | MHz | Market Share | HHI |
|---|---|---|---|
| Cellular A | 35 | 19.44444444 | 378.0864 |
| Cellular B | 35 | 19.44444444 | 378.0864 |
| PCS A | 30 | 16.66666667 | 277.7778 |
| PCS B | 30 | 16.66666667 | 277.7778 |
| PCS C | 30 | 16.66666667 | 277.7778 |
| PCS D | 10 | 5.555555556 | 30.8642 |
| Big SMR | 10 | 5.555555556 | 30.8642 |
| Total | 180 | 100 | 1651.235 |

C: Each Cellular Gets One 10 MHz Block, a 30 MHz PCS Licensee Gets the Third (2 cellulars @ 35, one PCS @ 40, two PCS @ 30, one SMR @ 10).

**HHI is 1836**

| Competitor | MHz | Market Share | HHI |
|---|---|---|---|
| Cellular A | 35 | 19.44444444 | 378.0864 |
| Cellular B | 35 | 19.44444444 | 378.0864 |
| PCS A | 40 | 22.22222222 | 493.8272 |
| PCS B | 30 | 16.66666667 | 277.7778 |
| PCS C | 30 | 16.66666667 | 277.7778 |
| Big SMR | 10 | 5.555555556 | 30.8642 |
| Total | 180 | 100 | 1836.42 |

D: The Three 10 MHz PCS Blocks Go to One Cellular Carrier and Two of the PCS Carriers (One cellular @ 35, one cellular @ 25 MHz, two PCS @ 40 MHz, one PCS @ 30, one SMR @ 10).

**HHI is 1867**

| Competitor | MHz | Market Share | HHI |
|---|---|---|---|
| Cellular A | 35 | 19.44444444 | 378.0864 |
| Cellular B | 25 | 13.88888889 | 192.9012 |
| PCS A | 40 | 22.22222222 | 493.8272 |
| PCS B | 40 | 22.22222222 | 493.8272 |
| PCS C | 30 | 16.66666667 | 277.7778 |
| Big SMR | 10 | 5.555555556 | 30.8642 |
| Total | 180 | 100 | 1867.284 |

E: Each 30 MHz PCS Licensee Gets One of the 10 MHz Blocks (Two cellulars @ 25, three PCS @ 40, one SMR @ 10).

**HHI is 1898**

| Competitor | MHz | Market Share | HHI |
|---|---|---|---|
| Cellular A | 25 | 13.88888889 | 192.9012 |
| Cellular B | 25 | 13.88888889 | 192.9012 |
| PCS A | 40 | 22.22222222 | 493.8272 |
| PCS B | 40 | 22.22222222 | 493.8272 |
| PCS C | 40 | 22.22222222 | 493.8272 |
| Big SMR | 10 | 5.555555556 | 30.8642 |
| Total | 180 | 100 | 1898.148 |

3. Concentrations Possible Under Only the 45 MHz Cap

A: One Cellular Gets Two PCS 10 MHz Blocks, the Other Cellular Gets One (One cellular @ 45, one cellular @ 35, three PCS @ 30, one SMR @ 10).

**HHI is 1867**

| Competitor | MHz | Market Share | HHI |
|---|---|---|---|
| Cellular A | 45 | 25 | 625 |
| Cellular B | 35 | 19.44444444 | 378.0864 |
| PCS A | 30 | 16.66666667 | 277.7778 |
| PCS B | 30 | 16.66666667 | 277.7778 |
| PCS C | 30 | 16.66666667 | 277.7778 |
| Big SMR | 10 | 5.555555556 | 30.8642 |
| Total | 180 | 100 | 1867.284 |

B: One Cellular Gets Two PCS 10 MHz Blocks, the Other 10 MHz PCS Block Goes to One of the PCS 30 MHz Licensees (One cellular @ 45, one cellular @ 25, one PCS @ 40, two PCS @ 30, one SMR @ 10).

**HHI is 1898**

| Competitor | MHz | Market Share | HHI |
|---|---|---|---|
| Cellular A | 45 | 25 | 625 |
| Cellular B | 25 | 13.88888889 | 192.9012 |
| PCS A | 40 | 22.22222222 | 493.8272 |
| PCS B | 30 | 16.66666667 | 277.7778 |
| PCS C | 30 | 16.66666667 | 277.7778 |
| Big SMR | 10 | 5.555555556 | 30.8642 |
| Total | 180 | 100 | 1898.148 |

General Assumptions:

(1) the relevant product market is mobile two-way voice communications service. In this market, the competitors are the licensees for cellular service and broadband PCS, and the largest interconnected SMR.

(2) allocated spectrum is the measurement of competitive significance in the market, with no modifications to reflect efficient and inefficient uses or technologies (analog vs. digital, *etc.*).

## APPENDIX B

## 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 paragraphs (d)(2), (e), and note 1 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 or a rural telephone company, as these terms are defined in § 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 small business.

* * * * *

(e) Divestiture. (1) Any party holding controlling or attributable ownership interests in broadband PCS, cellular, and/or SMR licensees regulated as CMRS providers that would exceed the spectrum aggregation limitation defined in paragraph (a) of this section, if granted additional licenses, may be a party to a broadband PCS, cellular, or SMR application (i.e., have a controlling or attributable interest in the applicant), and such applicant will be eligible for licenses amounting to more than 45 MHz of broadband PCS, cellular, and/or SMR spectrum regulated as CMRS in a geographical area, pursuant to the divestiture procedures set forth in paragraphs (e)(2) through (e)(4) of this section; provided, however, that in the case of parties holding controlling or attributable ownership interests in broadband PCS, cellular, and/or SMR licensees, these divestiture procedures shall be available only to:

(i) Parties with controlling or attributable ownership interests in broadband PCS, cellular, and/or SMR licenses where the geographic license areas cover 20 percent or less of

the applicant's service area population;

(ii) Parties with attributable interests in broadband PCS, cellular, and/or SMR licenses solely due to management agreements or joint marketing agreements; and

(iii) Parties with non-controlling attributable interests in broadband PCS, cellular, and/or SMR licenses, regardless of the degree to which the geographic license areas cover the applicant's service area population. For purposes of this paragraph, a "non-controlling attributable interest" is one in which the holder has less than a fifty (50) percent voting interest and there is an unaffiliated single holder of a fifty (50) percent or greater voting interest.

(2) The applicant for a license that, if granted, would exceed the 45 MHz limitation shall certify on its application that it and all parties to the application will come into compliance with this limitation.

(3) If such an applicant is a successful bidder in an auction, it must submit with its long-form application a signed statement describing its efforts to date and future plans to come into compliance with the 45 MHz spectrum limitation. A similar statement must also be included with any application for assignment of licenses or transfer of control that, if granted, would exceed the spectrum aggregation limit.

(4) If such an applicant is otherwise qualified, its application will be granted subject to a condition that the licensee shall come into compliance with the 45 MHz spectrum limitation within ninety (90) days of final grant.

(i) Parties holding controlling interests in broadband PCS, cellular, and/or SMR licensees that conflict with the attribution threshold or geographic overlap limitations set forth in this section will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the conflicting licensee (see §§ 24.839 of this chapter (PCS), 22.39 of this chapter (cellular), 90.158 of this chapter (SMR)) by which, if granted, such parties no longer would have an attributable interest in the conflicting license. If no such assignment or transfer application is tendered to the Commission within ninety (90) days of final grant of the initial license, the Commission may consider the certification and the divestiture statement to be material, bad faith misrepresentations and shall invoke the condition on the initial license or the assignment or transfer, cancelling or rescinding it automatically, shall retain all monies paid to the Commission, and, based on the facts presented, shall take any other action it may deem appropriate. Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit.

(ii) Where parties to broadband PCS, cellular, or SMR applications hold less than controlling (but still attributable) interests in broadband PCS, cellular, or SMR licensee(s), they shall submit, within ninety (90) days of final grant, a certification that the applicant and all parties to the application have come into compliance with the limitations on spectrum aggregation set forth in this section.

Note 1 to paragraph (d): Waivers of Section 20.6(d) may be granted upon an affirmative showing:

(1) That the interest holder has less than a 50 percent voting interest in the licensee and there is an unaffiliated single holder of a 50 percent or greater voting interest;

(2) That the interest holder is not likely to affect the local market in an anticompetitive manner;

(3) That the interest holder is not involved in the operations of the licensee and does not have the ability to influence the licensee on a regular basis; and

(4) That grant of a waiver is in the public interest because the benefits to the public of common ownership outweigh any potential anticompetitive harm to the market.

* * * * *

## PART 24 - PERSONAL COMMUNICATIONS SERVICES

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

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

4. Section 24.204 is removed.

5. Section 24.229 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c) and revising it to read as follows

**§ 24.229 Frequencies.**

* * * * *

(c) After January 1, 2000, licensees that have met the 5-year construction requirement may assign portions of licensed PCS spectrum.

6. Section 24.704 is amended by adding paragraph (a)(3) to read as follows:

**§ 24.704 Withdrawal, default and disqualification penalties.**

(a) * * *

(3) Erroneous Bids. If at any point during an auction an erroneous bid is withdrawn in the same round in which it was submitted, the bid withdrawal payment will be the greater of

(i) The minimum bid increment for that license and round; and

(ii) The standard bid withdrawal payment, as defined in paragraph (a)(1) of this section.

calculated as if the bidder had made the minimum accepted bid. If an erroneous bid is withdrawn in the round immediately following the round in which it was submitted, and the auction is in Stage I or Stage II, the withdrawal payment will be the greater of
(A) Two times the minimum bid increment during the round in which the erroneous bid was submitted, and
(B) The standard withdrawal payment, as defined in paragraph (a)(1) of this section, calculated as if the bidder had made a bid one bid increment above the minimum accepted bid. If an erroneous bid is withdrawn two or more rounds following the round in which it was submitted, the bidder will not be eligible for any reduction in the bid withdrawal payment as defined in paragraph (a)(1) of this section. During Stage III of an auction, if an erroneous bid is not withdrawn during the round in which it was submitted, the bidder will not be eligible for any reduction in the bid withdrawal payment as defined in paragraph (a)(1) of this section.

* * * * *

7. Section 24.706 is revised to read as follows:

**§ 24.706 Submission of upfront payments and down payments.**

(a) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions, bidders will be required to submit an upfront payment in accordance with § 1.2106 of this chapter, paragraph (c) of this section, and §§ 24.711(a)(1) and 24.716(a)(1).

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with § 1.2107(b) of this chapter and §§ 24.711(a)(2) and 24.716(a)(2).

(c) Each eligible bidder for licenses on frequency Blocks D and E subject to auction shall pay an upfront payment of $0.06 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

8. Section 24.709 is amended by revising the section heading and amending paragraphs (a)(1), (a)(2), (c)(1) and (c)(2) to read as follows:

**§ 24.709 Eligibility for licenses for frequency Blocks C and F.**

(a) *General Rule.*

(1) No application is acceptable for filing and no license shall be granted for frequency block C or 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 C or frequency block F under 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 or frequency block F 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., §§ 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 or frequency block F 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 or frequency block F 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

* * * * *

9. Section 24.715 is removed.

10. Section 24.716 is amended by revising paragraphs (a)(1), (a)(2), (b), redesignating paragraph (c) as paragraph (d); revising newly-redesignated paragraph (d)(2); and adding a new paragraph (c) to read as follows:

**§ 24.716 Upfront payments, down payments, and installment payments for licenses for**

**frequency Block F.**

(a) * * *

(1) Each eligible bidder for licenses on frequency Block F subject to auction shall pay an upfront payment of $0.06 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 20 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 10 percent of its net winning bid within five business days after the auction closes, and the remainder of the down payment (10 percent) shall be paid within five business days after the application required by § 24.809(b) is granted; and

(b) Installment Payments. Each eligible licensee of frequency Block F may pay the remaining 80 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 § 24.709(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 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; 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.

(c) Late Installment Payments. Any licensee that submits a scheduled installment payment more than 15 days late will be charged a late payment fee equal to 5 percent of the amount of the past due payment. Payments will be applied in the following order: late charges, interest charges, principal payments.

(d) * * *

(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 §

24.709(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.

* * * * *

11. Section 24.717 is amended by revising paragraphs (a) and (b), removing paragraph (c), and redesignating paragraph (d) as paragraph (c) 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 15 percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a very small business or a consortium of very small businesses may use a bidding credit of 25 percent to lower the cost of its winning bid.

(c) Unjust Enrichment. * * *

* * * * *

12. Section 24.720 is amended by revising paragraph (b) introductory text; redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4) and revising them; adding new paragraphs (b)(2) and (b)(5); and revising paragraphs (c)(2), (e), (f), (g), (j)(2), (l)(11)(i), (n)(1), (n)(3) and (n)(4) to read as follows:

**§ 24.720 Definitions.**

* * * * *

(b) Small Business; Very Small Business; Consortia.

(1) * * *

(2) A very small business is an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average annual gross revenues that are not more than $15 million for the preceding three years.

(3) 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 or the $15 million average annual gross revenues size standard set forth in paragraph (b)(2) 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 in § 24.709(b).

(4) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a small business in paragraphs (b)(1) and (b)(3) of this section.

(5) A very small business consortium is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually

satisfies the definition of a very small business in paragraphs (b)(2) and (b)(3) of this section.

(c)* * *

(2) That complies with the requirements of § 24.709(b)(3) and (b)(5) or § 24.709(b)(4) and (b)(6).

* * * * *

(e) Rural Telephone Company. A rural telephone company is a local exchange carrier operating entity to the extent that such entity:

(1) Provides common carrier service to any local exchange carrier study area that does not include either;

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(2) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(3) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(4) Has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

(f) Gross Revenues. Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years, 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). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(g) Total Assets. Total assets shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements or certified by the applicant's chief financial officer or its equivalent if the applicant does not otherwise use audited financial statements.

* * * * *

(j)* * *

(2) For purposes of assessing compliance with the equity limits in § 24.709(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) 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), 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) 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.

* * * * *

(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, 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), 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)(i)(C) and (b)(6)(i)(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).

* * * * *

13. Section 24.813 is amended by revising paragraphs (a)(1), (a)(2) and (a)(4) to read as follows:

**§ 24.813 General application requirements.**

(a) * * *
(1) A list of any business, holding or applying for CMRS or PMRS licenses, five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, attributable stockholder or key management personnel of the applicant. This list must include a description of each such business's principal business and a description of each such business's relationship to the applicant.
(2) A list of any party which holds a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) in the applicant, or any entity holding or applying for CMRS or PMRS licenses in which a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) is held by another party which holds a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) in the applicant (e.g. If Company A owns 5% of Company B (the applicant) and 5% of Company C, a company holding or applying for CMRS or PMRS licenses, then Companies A and C must be listed on Company B's applications.)

* * * * *

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interest in the partnership.

* * * * *

14. Section 24.839 is amended by revising paragraphs (a), (d)(1), and (d)(2) and adding paragraphs (d)(3), (d)(4), and (d)(5) to read as follows:

**§ 24.839 Transfer of control or assignment of license.**

(a) Approval required. Authorization shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the broadband Personal Communications Service is also subject to §§ 24.711(e), 24.712(d), 24.713(b), 24.717(c) (unjust enrichment) and 1.2111(a) (reporting requirement).

* * * * *

(d) * * *
(1) The application for assignment or transfer of control is filed after five years from the date of the initial license grant; or
(2) The proposed assignee or transferee meets the eligibility criteria set forth in § 24.709 at

the time the application for assignment or transfer of control is filed, or the proposed assignee or transferee holds other license(s) for frequency blocks C and F and, at the time of receipt of such license(s), met the eligibility criteria set forth in § 24.709;

(3) The application is for partial assignment of a partitioned service area to a rural telephone company pursuant to § 24.714 and the proposed assignee meets the eligibility criteria set forth in § 24.709;

(4) The application is for an involuntary assignment or transfer of control to a bankruptcy trustee appointed under involuntary bankruptcy, an independent receiver appointed by a court of competent jurisdiction in a foreclosure action, or, in the event of death or disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; provided that, the applicant requests a waiver pursuant to this paragraph; or

(5) The assignment or transfer of control is pro forma.

* * * * *

## APPENDIX C

## 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 *Notice of Proposed Rule Making*. Written public comments on the IRFA were requested. The Commission's final regulatory flexibility analysis for this Report and Order in WT Docket No. 96-59 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 F block auction and proposals for streamlining our broadband PCS auction rules. It also sought comment on issues raised by the Sixth Circuit Court of Appeals when it remanded our PCS/cellular cross-ownership rule and related attribution rule. 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).

### 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 *Notice of Proposed Rule Making* in this proceeding offered numerous proposals. All significant alternatives have been addressed in the *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 D, E, and F 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 that applicants indicate their 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-based services.

## APPENDIX D

**Commenters**

1. Ad Hoc Rural PCS Coalition
2. AirLink, L.L.C.
3. ALLTEL Corporation
4. American Women in Radio and Television
5. Antigone Communications Limited Partnership
6. AT&T Wireless Service, Inc.
7. BellSouth
8. Cellular Telecommunications Industry Association
9. Cellular Communications of Puerto Rico, Inc.
10. Cincinnati Bell Telephone Company
11. Coalition of New York Rural Telephone Companies
12. Community Service Communications, Inc.
13. Conestoga Wireless Company
14. Cook Inlet Region, Inc.
15. DCR Communications, Inc.
16. Devon Mobile Communications, L.P.
17. General Wireless, Inc.
18. Go Communications Corporation
19. GTE Service Corporation
20. Gulfstream Communications, Inc.
21. Iowa L.P. 136
22. Ken W. Bray
23. KMTel, L.L.C.
24. Leong, Harvey
25. Liberty Cellular, Inc.
26. Mid-Plains Telephone, Inc.
27. Mountain Solutions
28. National Telecom PCS, Inc.
29. National Telephone Cooperative Association
30. New Dakota Investment Trust
31. NextWave Telecom, Inc.
32. North Coast Mobile Communications, Inc.
33. Omnipoint Corporation
34. Ondas Communications Service, Inc.
35. PCS Development Corporation
36. Personal Communications Industry Association
37. PersonalConnect Communications, L.L.C.
38. Peter Cramton
39. Phoenix, L.L.C.
40. Point Enterprises, Inc.
41. Radiofone, Inc.

42. Rendall and Associates
43. Roseville Telephone Company
44. Spectrum Resources, Inc.
45. Sprint Corporation
46. Telephone and Data Systems, Inc.
47. Telephone Electronics Corporation
48. U S West, Inc.
49. U.S. Intelco Wireless Communications, Inc.
50. Vanguard Cellular Systems, Inc.
51. Virginia PCS Alliance, L.C.
52. Western Wireless Corporation
53. Wireless Interactive Data Systems, Inc.
54. WPCS, Inc.

**Late Filed or Ex Parte Comments**

1. Advanced Telecommunications Technology, Inc.
2. Allied Communications Group, Inc.
3. Columbia Cellular, Inc.
4. Integrated Communications Group Corporation
5. Integrated Voice Sys
6. Opportunities Now Enterprised (ONE) Inc.
7. PCS One, Inc.
8. Thompson PCS Systems, Inc.
9. Wireless 2000, Inc.

**Reply Comments**

1. AirLink, L.L.C.
2. Ameritech
3. AT&T Wireless Services, Inc.
4. Bear Stearns & Co. Inc.
5. BellSouth
6. Cincinnati Bell Telephone Company
7. Cook Inlet Region, Inc.
8. Cox Communications, Inc.
9. DCR Communications, Inc.
10. National Telephone Cooperative Association
11. NextWave Telecom, Inc.
12. North Coast Mobile Communications, Inc
13. Omnipoint Corporation
14. Personal Communications Industry Association
15. PersonalConnect Communications, L.L.C
16. Radiofone, Inc.
17. Rendall and Associates
18. Sprint Corporation
19. Sprint Spectrum & American Personal Communications
20. Telephone and Data Systems, Inc.
21. U S West, Inc.
22. Western Wireless Corporation