

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 95-19

In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act -) PP Docket No. 93-253
Competitive Bidding)
)

ERRATUM

Released: January 10, 1995

1. This Erratum revises the *Fifth Memorandum Opinion and Order* in the above-captioned proceeding, FCC 94-285 (Rel. Nov. 23, 1994). The revisions set forth below have been made prior to publication in the FCC Record and thus will be incorporated into the published document.

2. Paragraph 64 is revised to read as follows:

64. Specifically, we will retain the 25 percent minimum equity requirement for the control group, but we will require only 15 percent (*i.e.*, 60 percent of the control group's 25 percent equity holdings) to be held by qualifying, controlling principals in the control group (*i.e.*, minorities, women or small/entrepreneurial business principals).¹⁵⁸ For example, if the applicant seeks minority or women-owned status, the 15 percent equity, as well as 50.1 percent of the voting stock of the control group and all of its general partnership interests, must be owned by control group members who are minorities and/or women. If the applicant seeks small business status, 15 percent of the equity, as well as 50.1 percent of the control group's voting stock and all of its general partnership interests, must be held by control group members who, in the aggregate, qualify as a small business.¹⁵⁹ With regard to

¹⁵⁸ See Media Communications Partners *ex parte* comments, filed Oct. 11, 1994, at 7-8.

¹⁵⁹ For instance, if a preexisting company wants to qualify as a small business control group, its gross revenues and total assets will be added to the gross revenues and assets of each of its controlling shareholders and to those of all affiliates. The resulting sum must be under \$40 million in gross revenues and \$500 million in total assets. The gross revenues and total assets of the company's preexisting, noncontrolling shareholders will be ignored, however.

establishing control of the applicant by qualified investors, where the control group is composed of both qualifying and nonqualifying members, the qualifying members in the control group must have 50.1 percent of the voting stock and all general partnership interests within the control group, and maintain *de facto* control of the control group. The control group, in turn, must hold 50.1 percent of the voting stock and all general partnership interests of the PCS applicant. Thus, qualifying members of the control group will have *de jure* and *de facto* control of both the control group and, indirectly, the applicant. The composition of the principals of the control group and their legal and active control of the applicant determines whether the applicant qualifies for bidding credits, installment payments and reduced upfront payments. The 15 percent minimum equity amount may be held in the form of options, provided these options are exercisable at any time, solely at the holder's discretion, and at an exercise price equal to or less than the current market valuation of the underlying shares at the time of short-form filing. The remaining 10 percent (*i.e.*, 40 percent of the control group's minimum equity holdings) may be held in the form of either stock options or shares, and we will allow certain investors that are not minorities, women, small businesses or entrepreneurs to hold interests in such shares or options. Specifically, we will allow the 10 percent portion to be held in the form of shares or stock options by qualifying investors or by any of the following entities which may not comply with the entrepreneurs' block requirements (*e.g.* investors who are not minorities or women or investors, and/or their affiliates, that exceed the entrepreneurs' block or small business size thresholds): (1) individuals who are members of an applicant's management team; (2) existing investors of businesses in the control group that were operating and earning revenues for two years prior to December 31, 1994; or (3) noncontrolling institutional investors.¹⁶⁰

3. Paragraph 65 is revised to read as follows:

65. As discussed *supra* at paragraph 59, the Commission also adopted an alternative to the 25 percent minimum equity requirement for minority and women-owned businesses, which permits a single investor to hold as much as 49.9 percent of its equity, provided the control group holds at least 50.1 percent. Several petitioners have expressed similar concerns with respect to the need to revise the 50.1 percent requirement.¹⁶¹ Therefore, in tandem with, and for the same reasons as, the modifications to the 25 percent equity requirement, we make similar modifications to the rules governing the 50.1 percent minimum equity requirement. Accordingly, where a minority or women-owned business uses the 50.1 percent minimum equity option, we will require only 30 percent of the total equity to be held by the principals of the control group that are minorities or women. The 30 percent may be held in the form of options, provided these options are exercisable at any time, solely at the holder's discretion, and at an exercise price equal to or less than the current market valuation

¹⁶⁰ See note 162 *infra* (explaining definition of institutional investors).

¹⁶¹ See, *e.g.*, BET Petition at 16; Columbia PCS Petition at 2-3; Omnipoint Petition at 9.

of the underlying shares at the time of short-form filing. The remaining 20.1 percent may be made up of shares and/or options held by investors that are not women or minorities under similar criteria described in paragraph 64 above. That is, the 20.1 percent portion of the control group's equity may be held in the form of shares or stock options by qualifying investors or by any of the following entities which may not comply with the entrepreneurs' block requirements (e.g. investors who are not minorities or women or investors, and/or their affiliates, that exceed the entrepreneurs' block or small business size thresholds): (1) individuals who are members of an applicant's management team; (2) existing investors of businesses in the control group that were operating and earning revenues for two years prior to December 31, 1994; or (3) noncontrolling institutional investors.¹⁶²

4. Section 24.709(b)(5)(i)(B) is revised to read as follows:

(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;

5. Section 24.709(b)(5)(i)(C) is revised to read as follows:

(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):

¹⁶² For our purposes, we define institutional investors in a manner that is similar to the definition that is used by the Commission in the attribution rules applied to assess compliance with the broadcast multiple ownership rules. We modify that definition slightly, however, to fit this service. Specifically, we expect that investment companies will be important sources of capital formation for designated entities. Accordingly, we adopt a definition that specifically includes venture capital firms and other smaller investment companies that may not be included in the definition of investment companies found in 15 U.S.C. § 80a-3 (which is cited in our broadcast rules at 47 C.F.R. § 73.3555 Note 2(c)). Specifically, we define an *institutional investor* as an insurance company, a bank holding stock in trust accounts through its trust department, or an investment company as defined under 15 U.S.C. § 80a-3(a). We include in the definition any entity that would otherwise meet the definition of investment company under 15 U.S.C. § 80a-3(a), but is excluded by the exemptions set forth in 15 U.S.C. § 80a-3(b) and (c) and we do so without regard to whether the entity is an issuer of securities. However, if the investment company is owned, in whole or in part, by other entities, the investment company, other entities and *affiliates* of other entities, taken as a whole, must be primarily engaged in the business of investing, reinvesting or trading in securities or in distributing or providing investment management services for securities. See Section 24.720(h).

(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; or

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

6. Section 24.709(b)(6)(i)(B) is revised to read as follows:

(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;

7. Section 24.709(b)(6)(i)(C) is revised to read as follows:

(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 *control group*, either unconditionally or in the form of stock options; or

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

8. Sections 24.711(b)(1) and 24.711(b)(2) are revised to read as follows:

(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, 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.

9. Sections 24.712(d)(1) and 24.712(d)(2) are revised to read as follows:

(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(h) is revised to read as follows:

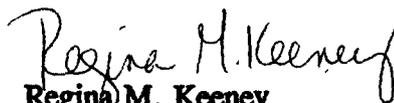
(h) *Institutional Investor*. An *institutional investor* is an insurance company, a bank holding stock in trust accounts through its trust department, or an investment company as defined in 15 U.S.C. § 80a-3(a), including within such definition any entity that would otherwise meet the definition of investment company under 15 U.S.C. § 80a-3(a) but is excluded by the exemptions set forth in 15 U.S.C. § 80a-3(b) and (c), without regard to whether such entity is an issuer of securities; provided that, if such investment company is owned, in whole or in part, by other entities, such investment company, such other entities and the *affiliates* of such other entities, taken as a whole, must be primarily engaged in the business of investing, reinvesting or trading in securities or in distributing or providing investment management services for securities.

11. Section 24.720(f) is revised to read as follows:

(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 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). For short-form applications filed after December 31, 1995, gross revenues shall be evidenced by audited financial statements for the

preceding relevant number of calendar or fiscal years. 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.

FEDERAL COMMUNICATIONS COMMISSION



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