

three years."¹⁶⁵ The Commission proposed in the *C Block Further Notice* to have two tiers of bidding credits for the next C block reaction, a twenty-five percent bidding credit for small businesses and a thirty-five percent bidding credit for very small businesses.¹⁶⁶

46. In order to provide continuity and certainty for auction participants, we adopted a schedule of bidding credits in the *Part 1 Third Report and Order* to be used in future auctions for all services.¹⁶⁷ The schedule sets the bidding credit percentage according to the average annual gross revenues of the designated entity.¹⁶⁸ Applying the Part 1 schedule to the gross revenue thresholds for small and very small businesses under our rules for C and F block auctions, we conclude that a small business will receive a fifteen percent bidding credit,¹⁶⁹ and a very small business will receive a bidding credit of twenty-five percent.¹⁷⁰ We recognize that the amount of bidding credits differs from the Commission's proposal in the *C Block Further Notice*; however, use of the Part 1 schedule benefits potential bidders by providing them with certainty about the size of available bidding credits well in advance of C block reactions. We will amend Sections 24.712 and 24.717 of the Commission's rules¹⁷¹ to reflect our application of the Part 1 bidding credits schedule to C and F block reactions.

47. Eligibility for bidding credits will be determined at the deadline for filing short-form applications. Thus, if an entity no longer qualifies as a small business as of the deadline for filing short-form applications, but is eligible to participate in the next C block reaction because it was eligible to participate in the original C block auction,¹⁷² it will *not* be eligible for bidding credits. Because of the complex issues involved in the original C block auction,¹⁷³ we are willing to allow former C block auction participants and eligible applicants to participate in the next reaction (and in reactions for the ensuing two years). However, we do not feel that it is in the best interests of the

¹⁶⁵ *Id.* § 24.720(b)(2); see Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, *Report and Order*, 11 FCC Rcd 7824 at para. 60 (1996).

¹⁶⁶ *C Block Further Notice*, 12 FCC Rcd at 16,481 paras. 100-101.

¹⁶⁷ *Part 1 Third Report and Order*, 13 FCC Rcd at 402-04 paras. 44-48.

¹⁶⁸ *Id.* at 388, 403 paras. 18, 46-47.

¹⁶⁹ See 47 C.F.R. § 1.2110(e)(2)(iii).

¹⁷⁰ See *Part 1 Third Report and Order*, 13 FCC Rcd at 403-04 para. 47; 47 C.F.R. §§ 1.2110(e)(2)(ii), 24.720.

¹⁷¹ 47 C.F.R. §§ 24.712, 24.717.

¹⁷² See *supra* para. 13.

¹⁷³ See *C Block Reconsideration Order*, 13 FCC Rcd 8348 at para. 7.

public and, in particular, of competing small business bidders and licensees to provide a discount to applicants that no longer meet the small business size standards.

48. We remind applicants that, under Section 1.2111(d) of our rules, as amended, C block licensees that utilize a bidding credit, and during their initial license term seek to make a change in the ownership or control of a license that would result in the license's being owned or controlled by an entity that does not meet the eligibility criteria for a bidding credit, or that is eligible for a lower bidding credit, will have to reimburse the U.S. Government for a percentage of the amount of the bidding credit.¹⁷⁴ This percentage, in some circumstances, will be as high as the full amount of the bidding credit plus interest.¹⁷⁵

11. Installment Payment Program

49. The Commission tentatively concluded in the *C Block Further Notice* that it would not provide an installment payment program in the next reauction.¹⁷⁶ Subsequently, in the *Part 1 Third Report and Order* we suspended the installment payment program for the immediate future.¹⁷⁷

50. We will apply our decision in the *Part 1 Third Report and Order* and not offer installment payments in the next reauction. It is our responsibility to balance the competing goals in Section 309(j) that require, *inter alia*, that the Commission promote the development and rapid deployment of new spectrum-based services, while ensuring that designated entities are given an opportunity to participate in the provision of such services.¹⁷⁸ We recognize that conditioning receipt of a license upon payment requires greater financial resources.¹⁷⁹ However, many C block licensees have requested relief from their installment payment obligations and three have sought bankruptcy protection.¹⁸⁰ The objective of Section 309(j) to speed service to the public cannot be achieved when

¹⁷⁴ See 47 C.F.R. § 1.2111(d).

¹⁷⁵ *Id.*

¹⁷⁶ *C Block Further Notice*, 12 FCC Rcd at 16,481 para. 101.

¹⁷⁷ *Part 1 Third Report and Order*, 13 FCC Rcd at 397-98 para. 38.

¹⁷⁸ 47 U.S.C. §§ 309(j)(3), (4).

¹⁷⁹ *C Block Further Notice*, 12 FCC Rcd at 16,481 para. 101.

¹⁸⁰ *Part 1 Third Report and Order*, 13 FCC Rcd at 396, 397-98 paras. 36, 38. See *In re GWI PCS1, Inc.*, No. 97-39676-SAF-11 (Bankr. N.D.Tex. April 24, 1998); *In re Pocket Communications, Inc.*, No. 97-5-4105(ESD) (Bankr. D.Md.); *In re NextWave Personal Communications, Inc.*, 98 21529 (ASH) (Bankr. S.D.N.Y.).

licenses are held in abeyance in bankruptcy court. Other financing alternatives, such as the provision of bidding credits,¹⁸¹ will help to ensure meaningful small business participation.¹⁸²

VII. PROCEDURAL MATTERS AND ORDERING CLAUSES

A. Final Regulatory Flexibility Analysis

51. The Final Regulatory Flexibility analysis, pursuant to the Regulatory Flexibility Act, *see* 5 U.S.C. § 604, is attached as Appendix D.

B. Paperwork Reduction Act Analysis

52. This Order contains a modified information collection that was submitted to the Office of Management and Budget requesting clearance under the Paperwork Reduction Act of 1995.

C. Ordering Clauses

53. Accordingly, IT IS ORDERED THAT, pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 155(b), 156(c)(1), 303(r), and 309(j), this *Fourth Report and Order* is hereby ADOPTED, and Sections 1.2105, 24.703, 24.704, 24.705, 24.706, 24.707, 24.709, 24.711, 24.712, 24.716, 24.717, 24.822 of the Commission's rules, 47 U.S.C. Sections 1.2105, 24.703, 24.704, 24.705, 24.706, 24.707, 24.709, 24.711, 24.712, 24.716, 24.717, 24.822, are amended as set forth in Appendix C, effective 60 days after publication in the Federal Register.

¹⁸¹ See Communications Act, § 309(j)(4)(D); 47 U.S.C. § 309(j)(4)(D).

¹⁸² See *Part 1 Third Report and Order*, 13 FCC Rcd at 397-98 para. 38.

54. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Fourth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

55. IT IS FURTHER ORDERED THAT, pursuant to 47 U.S.C. § 155(c) and 47 C.F.R. § 0.331, the Chief of the Wireless Telecommunications Bureau IS GRANTED DELEGATED AUTHORITY to prescribe and set forth procedures for the implementation of the provisions adopted herein.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

Appendix A**List of Parties Filing Comments and Reply Comments****Parties Filing Comments:**

1. Airgate Wireless, L.L.C. ("Airgate")
2. Alpine PCS, Inc. ("Alpine")
3. Carolina PCS I Limited Partnership ("CPCSI")
4. ClearComm., L.P. ("ClearComm")
5. Conestoga Wireless Company ("Conestoga")
6. Cook Inlet Region, Inc. ("CIRI")
7. DiGiPH PCS Inc. ("DiGiPH")
8. Duluth PCS, Inc., St. Joseph PCS, Inc. and West Virginia PCS, Inc ("Duluth")
9. MFRI Incorporated ("MFRI")
10. National Telecom PCS, Inc. ("NatTel")
11. Nextel Communications, Inc. ("Nextel")
12. NextWave Telecom. Inc. ("NextWave")
13. Omnipoint Corporation ("Omnipoint")
14. Starcom Telecommunications ("Starcom")

Parties Filing Reply Comments:

1. Airgate Wireless, L.L.C. ("Airgate")
2. Alpine PCS, Inc. ("Alpine")
3. AT&T Wireless Services, Inc. ("AT&T")
4. Carolina PCS I Limited Partnership ("CPCSI")
5. DiGiPH PCS Inc. ("DiGiPH")
6. Fidelity Capital ("Fidelity")
7. Meretel Communications, L.P. ("Meretel")
8. NextWave Telecom. Inc. ("NextWave")
9. Omnipoint Corporation ("Omnipoint")
10. PrimeCo Personal Communications, L.P. ("PrimeCo")
11. Sprint Corporation ("Sprint")

Ex Parte Filings:

1. NextWave Telecom. Inc. ("NextWave")

Appendix B

Comments on Issues Addressed in *Part 1 Third Report and Order*

- **Competitive Bidding Design**

Omnipoint supports the Commission's proposal to have a single simultaneous, multiple-round reauction.¹ Duluth also supports the proposal, provided that telephonic bidding remains as an option; whereas, NextWave asks for a requirement that all bids be submitted electronically with emergency telephone backup.²

- **Bidding Procedures**

Duluth suggests the initial C block competitive bidding rules contained in Part 24 would be appropriate for a reauction since both the initial auction and the next reauction involve the provision of only one frequency block.³

- **Activity Rules**

Parties commenting on activity rules for a reauction generally support the Commission's tentative conclusion and its proposal.⁴

- **Reserve Price, Minimum Opening Bid, and Minimum Bid Increments**

Conestoga asks that the Commission set neither a minimum opening bid nor a reserve price for any C block license or spectrum.⁵ Duluth opposes any minimum opening bid or reserve price that differs from that used in the original C block auction.⁶ Several parties disagree with setting the minimum opening bids for each market at 10 percent of the corresponding high bid for the market in

¹ Omnipoint Comments at 4.

² Duluth Comments at 1; NextWave Comments at 4-5.

³ Duluth Comments at 1.

⁴ See Duluth Comments at 2; NextWave Comments at 5 (asking that the Commission continue its practice of reviewing potential changes with bidders and soliciting online input).

⁵ Conestoga Comments at 2, 3-4.

⁶ Duluth Comments at 2. We note that no minimum opening bids or reserve prices were employed for the original C block auction.

the original C block auction.⁷ AT&T asks that the Commission set a reserve price of not less than fifty percent of the corresponding high bid in the original C block auction.⁸

- **Electronic Filing**

Only one commenter addressed this proposal, supporting mandatory electronic filing for short-form applications.⁹

- **Upfront Payment**

Several parties filed comments addressing this issue. While some commenters believe that \$.06 per MHz per pop is excessive,¹⁰ others agree that this upfront payment amount is appropriate.¹¹

- **Down Payment and Full Payment**

Two commenters oppose requiring full cash payment upon winning a license.¹²

- **Bid Withdrawal, Default, and Disqualification**

NextWave proposes to prohibit a bidder from rebidding on the same market from which it withdraws a bid, once overall auction activity falls below a certain level.¹³ ClearComm suggests that no withdrawal payment be imposed when an unintended bidding error is made.¹⁴

⁷ See Airgate Comments at 2, 7-9; CIRI Comments at ii, 10-13; Omnipoint Comments at 5-6; Starcom Comments at 2-5; Airgate Reply at 3-4; and Fidelity Reply at 4; *see also* NextWave Reply at 7-9.

⁸ AT&T Reply at 1-3.

⁹ Duluth Comments at 2.

¹⁰ Airgate Comments at 2, 7; Conestoga Comments at 4-5; NextWave Comments at 6-7; Airgate Reply at 4; and NextWave Reply at 2.

¹¹ Duluth Comments at 2; Omnipoint Comments at 5.

¹² Duluth Comments at 2; Alpine Comments at 5.

¹³ NextWave Comments at 7.

¹⁴ ClearComm Comments at 4-9; *see* Application for Review of PCS 2000, L.P. [now ClearComm, L.P.], filed January 21, 1997 (asking for a waiver of a \$3,273,374 bid withdrawal payment assessed against it); letter from Daniel B. Phythyon, FCC, to Tyrone Brown, ClearComm, L.P., DA 98-1074, June 12, 1998 (granting ClearComm's request for reduction of its bid withdrawal payment to \$425,000); In the Matter of ClearComm, L.P., *Order*, DA 98-1081, (released June 12, 1998) (granting ClearComm's request for dismissal of its Application for Review).

- **Anti-Collusion Rules**

NextWave proposes the creation of a "safe harbor."¹⁵ Two commenters propose that the Commission clarify specific aspects of the anti-collusion rules.¹⁶

- **Bidding Credits**

CIRI supports the Commission's proposal in the *C Block Further Notice* to adopt a "very small business" definition, but urges the adoption of "heightened" bidding credits of 45 percent for very small businesses and 35 percent for small businesses.¹⁷ CIRI also suggests limiting eligibility for bidding credits to participants that are not delinquent on installment payments at the time short-form applications are filed for a reauction.¹⁸ AirGate suggests that eligibility for bidding credits be determined at the time the short-form is filed for a reauction, so that an entity that was initially eligible for bidding credits, but has grown beyond that classification, would not continue to receive that benefit.¹⁹ Omnipoint disagrees, arguing that if an entity received bidding credits in the initial auction, it should be awarded bidding credits in a reauction, even though it no longer meets our criteria for bidding credits.²⁰ Otherwise, according to Omnipoint, the Commission will be punishing such entities for their "financial progress."²¹ Omnipoint further argues that the Commission's *Competitive Bidding Fifth Memorandum Opinion and Order* states a licensee's increased gross revenues or total assets or that of its attributable entities should not be counted against that licensee's continuing eligibility as an entrepreneur.²²

¹⁵ NextWave Comments at 8 - 11.

¹⁶ AirGate Comments at 11 (seeking clarification as to prohibited "disclosures"); Duluth Comments at 2. (requesting a definition of collusion and its penalties).

¹⁷ See CIRI Comments at 13-15; *id.* at 6; DiGiPH Comments at 8-9; Nextel Comments at 10; 47 C.F.R. §1.2110(b)(1).

¹⁸ CIRI Comments at 5.

¹⁹ See AirGate Comments at 10-11; AirGate Reply Comments at 4; NextWave Reply Comments at 2-4 (requesting that the Commission clarify that those exceeding the revenue caps, and not qualified as small businesses, will not be able to take advantage of bidding credits).

²⁰ Omnipoint Comments at 2-3.

²¹ *Id.*

²² *Id.* at 3 (arguing that our *Fifth Memorandum Opinion and Order* states a licensee's increased gross revenues or total assets or that of its attributable entities should not be counted against that licensee's continuing eligibility as an entrepreneur); see also *Fifth Memorandum Opinion and Order* at 420 para. 27.

- **Installment Payment Program**

Several commenters favor continuation of the installment payment program.²³

²³ See AirGate Comments at 9-10; Alpine Comments at 5-6; CPCSI Comments at 3; DiGiPH Comments at 3-7; *see also* Duluth Comments at 2; NatTel Comments at 10; Airgate Reply Comments at 2 -3; DiGiPH Reply Comments at 2 -3, 5 - 6.

Appendix C

REVISED RULES

PART 1 - PRACTICE AND PROCEDURE

1. Section 1.2105 is revised by adding (a)(2)(xi) to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of collusion

* * * * *

(xi) For C block applicants, an attached statement made under penalty of perjury indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency.

PART 24 - PERSONAL COMMUNICATIONS SERVICES

2. Section 24.703 is removed.

§ 24.703 [Removed]

3. Section 24.704 is revised to read as follows:

§ 24.704 Withdrawal, default and disqualification penalties.

See § 1.2104 of this chapter.

4. Section 24.705 is removed.

§ 24.705 [Removed]

5. Section 24.706 is revised to read as follows:

§ 24.706 Submission of upfront payments and down payments.

(a) All auction participants are required to submit an upfront payment in accordance with § 1.2106 of this chapter. Any C block applicant that has previously been in default on any Commission licenses or has previously been delinquent on any non-tax debt owed to any Federal agency must submit an upfront payment equal to 50 percent more than that set for each particular license.

(b) * * *

6. Section 24.707 is removed.

§ 24.707 [Removed]

7. Section 24.709 is revised by adding paragraphs (a)(4) and (a)(5) and revising paragraphs (b)(9)(i) and (e) to read as follows:

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

(a) * * *

(4) In order to be eligible for participation in a C block auction, an applicant must certify that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. *See* § 24.706.

(5) An applicant for participation in a C block auction must state under penalty of perjury whether or not it has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency. *See* § 24.706.

(b) * * *

(9) * * *

(i) In addition to entities qualifying under this section, any entity that was eligible for and participated in the auction for frequency block C, which began on December 18, 1995, or the reaction for frequency block C, which began on July 3, 1996, will be eligible to bid in any reaction of block C spectrum that begins within two years of the start date of the first reaction of C block spectrum following the effective date of this rule.

* * * * *

(e) Definitions. The terms affiliate, business owned by members of minority groups and/or women, and gross revenues used in this section are defined in § 1.2110. The terms consortium of small businesses, control group, existing investor, institutional investor, 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.

8. Section 24.711 is amended by revising paragraphs (a)(1) and (a)(2) 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 subject to auction on frequency Block C shall pay an upfront payment as set forth in a Public Notice pursuant to the procedures in §1.2106 of this chapter.

(2) Each winning bidder shall make a down payment and the balance of its winning bids pursuant to § 1.2107 and § 1.2109 of this chapter.

* * * * *

9. Section 24.712 is revised to read as follows:

§ 24.712 Bidding credits for licenses for frequency Block C.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(4) may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii), 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 as defined in § 24.720(b)(2) or § 24.720(b)(5) may use a bidding credit of twenty-five percent as specified in § 1.2110(e)(2)(ii), to lower the cost of its winning bid.

(c) Unjust Enrichment. See § 1.2111 of this chapter.

10. Section 24.716 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 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 subject to auction on frequency Block F shall pay an upfront payment as set forth in a Public Notice pursuant to the procedures in § 1.2106 of this chapter.

(2) Each winning bidder shall make a down payment and the balance of its winning bids pursuant to § 1.2107 and § 1.2109 of this chapter.

* * * * *

11. Section 24.717 is revised 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 as defined in § 24.720(b)(1) or § 24.720(b)(4) may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii), 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 as defined in § 24.720(b)(2) or § 24.720(b)(5) may use a bidding credit of twenty-five percent, as specified in § 1.2110(e)(2)(ii), to lower the cost of its winning bid.

(c) Unjust Enrichment. See § 1.2111 of this chapter.

* * * * *

12. Section 24.822 is removed.

§ 24.822 [Removed]

APPENDIX D

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *C Block Further Notice of Proposed Rule Making* in WT Docket No. 97-82 ("*C Block Further Notice*").² The Commission sought written public comment on the proposals in the *C Block Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and objectives of, the *C Block Fourth Report and Order* in WT Docket No. 97-82

This *C Block Fourth Report and Order* sets forth the rules that will govern reauctions of C block spectrum surrendered to the Commission pursuant to the *C Block Second Report and Order*⁴ and the *C Block Order on Reconsideration of the Second Report and Order* ("*C Block Reconsideration Order*")⁵ as well as any other C block spectrum available for reauction. The *C Block Fourth Report and Order* also reflects the Commission's ongoing effort to streamline auction procedures by eliminating overlapping or redundant rules and simplifying procedures for auction participants.

B. Summary of significant issues raised by public comments in response to the IRFA

There were no comments filed directly in response to the IRFA. The Commission, however, has considered the economic impact on small businesses of the rules adopted herein. See section E, *infra*.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("*SBREFA*").

² See Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Second Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 16,436, 16,497 ("*C Block Second Report and Order*" and "*C Block Further Notice*").

³ See 5 U.S.C. § 604.

⁴ *C Block Second Report and Order*, 12 FCC Rcd 16,436.

⁵ Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications (PCS) Licensees, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345 (1988) ("*C Block Reconsideration Order*").

C. Description and estimate of the number of small entities to which the rules will apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules.⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁸ Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA").⁹

The rule changes effected by this *C Block Fourth Report and Order* affect all small businesses that participate in future reauctions of C block and F block spectrum, including small businesses currently holding C block and F block broadband personal communications services (PCS) licenses that choose to participate and other small businesses that may acquire licenses through reauction. The Commission grants C block and F block licenses only to applicants that, together with their affiliates and persons or entities that hold interests in the applicants 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.¹⁰ The Commission, with respect to broadband PCS, defines small businesses as entities that, together with their affiliates and persons or entities that hold interest in such entities and their affiliates, have average annual gross revenues that are not more than forty million dollars for the preceding three years.¹¹ This definition has been approved by the SBA.¹²

On May 6, 1996, the Commission concluded the broadband PCS C block auction. The broadband PCS D, E, and F block auction closed on January 14, 1997. Ninety bidders (including the C block reauction winners, prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in the C and F block auctions were eligible for bidding credits and installment payment plans. For purposes of our evaluations and

⁶ 5 U.S.C. §§ 603(b)(3), 604(a)(3).

⁷ *Id.* § 601(6).

⁸ *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

⁹ *Id.* § 632.

¹⁰ 47 C.F.R. § 24.709.

¹¹ *Id.* § 24.720(b)(1).

¹² See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd 175, 196 (1995); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Report and Order*, 9 FCC Rcd 5581-5584 (1994); 47 C.F.R. §§ 24.320(b) and 24.720(b).

conclusions in this RFA, we assume that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this *C Block Fourth Report and Order*, are small entities. In addition to the 178 current small business licensees that may participate at the reauction of C block licenses, a number of additional small business entities may seek to acquire licenses through reauction and would thus be affected by these rules.

In addition, the Commission will provide small business bidders and very small business bidders in C block and F block reauctions with bidding credits, with a greater discount given to very small businesses.¹³ Under Commission rules, very small businesses in the C block and F block are entities that, together with their affiliates and persons or entities that hold interest in such entities and their affiliates, have average annual gross revenues of not more than fifteen million for the preceding three years.¹⁴ As discussed below, small businesses will receive a fifteen percent bidding credit, and very small businesses will receive a bidding credit of twenty-five percent.

D. Description of reporting, recordkeeping, and other compliance requirements

As a result of the *C Block Fourth Report and Order*, each applicant for a C block reauction will be required to attach to its short-form application a statement indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency.¹⁵

E. Steps taken to minimize significant economic impact on small entities, and significant alternatives considered

The Commission will include in the next C block reauction all licenses representing C block spectrum returned to the Commission under the disaggregation, prepayment, or amnesty options established in the *C Block Second Report and Order*, as modified in the *C Block Reconsideration Order*, as well as all C block licenses held by the Commission as a result of defaults. While some commenters argue that the next reauction should include licenses that have filed for bankruptcy protection,¹⁶ the Commission believes that the public and C block reauction applicants will realize a greater benefit if the Commission auctions all available C block spectrum as soon as practicable than

¹³ In the C block auction, a winning bidder that qualified as a small business or a consortium of small businesses was able to use a bidding credit equal to 25 percent of its winning bid. For the reauction, the Commission proposes tiered bidding credits, as were offered for F block and, more recently, Local Multipoint Distribution Service (LMDS) small business bidders.

¹⁴ 47 C.F.R. § 24.720(b)(2).

¹⁵ See *C Block Fourth Report and Order*, *supra*, at para. 34.

¹⁶ Certain C block licensees have filed for bankruptcy protection. See *In re GWI PCSI, Inc.*, No. 397-39676-SAF-11 (Bankr. N.D.Tex. April 24, 1998); *In re Pocket Communications, Inc.*, No. 97-5-4105(ESD) (Bankr. D.Md.); *In re NextWave Personal Communications, Inc.*, 98 21529 (ASH) (Bankr. S.D.N.Y.).

they will if the Commission postpones a reauction until it has resolved all issues connected with ongoing bankruptcy proceedings.

The following two types of entities will be eligible to participate in C block reauctions: (1) entities that filed an FCC Form 175 short-form application for, and were eligible for, the original C block auction, and (2) entities qualifying under Section 24.709 of the Commission's rules¹⁷ as of the deadline for the filing of short-form applications for the reauction. All but two of the entities that applied for and were eligible to participate in the original C block auction qualified as small businesses under Section 24.720 of the Commissions rules.¹⁸ In order to ensure the integrity of C block reauctions, the Commission retains the eligibility restriction established in the *C Block Second Report and Order*, as modified in the *C Block Reconsideration Order*, for licensees that surrender licenses pursuant to the disaggregation, prepayment, and/or "amnesty/prepayment" options. Such licensees will be ineligible to reacquire their surrendered licenses through reauction or by any other means for a period of two years from the start date of the next C block reauction.¹⁹

To further ensure auction integrity for the benefit of applicants as well as the general public, the Commission will restrict C block reauctions to entities not in default on any Commission debt and not delinquent on any non-tax debt owed to any Federal agency. However, the Commission believes that past business misfortunes do not inevitably preclude an entity from being able to meet its present and future responsibilities as a Commission licensee. Therefore, the Commission will allow "former defaulters," i.e., applicants that have defaulted or been delinquent in the past, but have since paid all of their outstanding non-Internal Revenue Service Federal debts and all associated charges or penalties, to be eligible to participate in C block reauctions, provided that they are otherwise qualified.

In the *Part 1 Third Report and Order*,²⁰ the Commission adopted general competitive bidding rules to supplant, wherever practicable, specific auction rules for each auctionable service or class of service. Accordingly, future C block reauctions will adhere to Part 1 rules, insofar as applicable. Part 1 rules are determinative for the following aspects of C block reauctions: competitive bidding design; activity rules; reserve price, minimum opening bid, and minimum bid increments; electronic filing; upfront payment; down payment and full payment; amendments and modifications of applications; bid withdrawal, default, and disqualification; anti-collusion, and installment payment financing. Based

¹⁷ 47 C.F.R. § 24.709.

¹⁸ See FCC, Wireless Telecommunications Bureau, *Broadband PCS: C Block Auction, Fact Sheet* (last reviewed/updated April 17, 1998) <<http://www.fcc.gov/wtb/auctions/>>; see also 47 C.F.R. § 24.720.

¹⁹ *C Block Reconsideration Order*, 13 FCC Rcd at 8360 para. 37, 8360-61 para. 38, 8361-62 para. 41, and 8367 para. 50. Licensees that surrender licenses pursuant to the "pure amnesty" option will remain eligible to reacquire those surrendered licenses in a reauction or through a secondary market transaction. *Id.* at para. 37.

²⁰ Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374 (released December 31, 1997) ("*Part 1 Third Report and Order*" and "*Part 1 Further Notice*").

upon the record in this proceeding, the Commission sets a ceiling for minimum opening bids that is no more than ten percent of the amount of the net high bid for the corresponding market in the original C block auction. The Commission also sets the upfront payment amount for the next C block reauction at no higher than \$.06 per MHz per pop. The Commission will require that the upfront payment for "former defaulters" be 50 percent more than that required from applicants that do not have a history of default. This increased upfront payment formula reflects the increased risk associated with these parties.

In the *Part 1 Third Report and Order*, the Commission adopted a schedule of bidding credits to be used in future auctions for all services. Applying the Part 1 schedule to the gross revenue thresholds under the Part 24 rules for small and very small C block and F block businesses, gives small business applicants in C block reauctions a fifteen percent bidding credit and very small business applicants a twenty-five percent bidding credit. Eligibility for bidding credits will be determined by the size of the applicant as of the deadline for filing short-form applications.

Section 309(j) of the Communications Act of 1934, as amended, directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities.²¹ Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use.²² The Commission believes that the *C Block Fourth Report and Order* promotes these goals while maintaining the fair and efficient execution of the auctions program.

F. Report to Congress

The Commission will send a copy of the *C Block Fourth Report and Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. § 801(a)(1)(A). A copy of the *C Block Fourth Report and Order* and this FRFA (or summary thereof) will be published in the Federal Register. See 5 U.S.C. § 604(b). A copy of the *C Block Fourth Report and Order* and this FRFA will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

²¹ 47 U.S.C. § 309(j)(3)(B).

²² *Id.* § 309(j)(3)(A), (C).