

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Tarrant	City of Saginaw	April 27, 2000, May 4, 2000, <i>The Times Record</i> .	The Honorable Monte Nichols, Mayor, City of Saginaw, P.O. Box 79070, Saginaw, Texas 76179.	March 24, 2000	480610
Travis	Unincorporated Areas.	May 2, 2000, May 9, 2000, <i>Austin American Statesman</i> .	The Honorable Samuel T. Biscoe, Travis County Judge, P.O. Box 1748, Austin, Texas 78767-1748.	August 7, 2000	481026
Wichita	City of Wichita Falls.	March 17, 2000, March 24, 2000, <i>Wichita Falls Times Record News</i> .	The Honorable Kay Yeager, Mayor, City of Wichita Falls, 1300 Seventh Street, Wichita Falls, Texas 76301.	February 11, 2000	480662
Williamson	City of Round Rock.	March 23, 2000, March 30, 2000, <i>Round Rock Leader</i> .	The Honorable Charles Culpepper, Mayor, City of Round Rock, City Hall, 221 East Main Street, Round Rock, Texas 78664.	February 8, 2000	481048
Utah: Utah	City of Provo	March 17, 2000, March 24, 2000, <i>The Daily Herald</i> .	The Honorable Lewis Billings, Mayor, City of Provo, 351 West Center, Provo, Utah 84604.	June 22, 2000	490159
Washington: Chelan	Unincorporated Areas.	March 24, 2000, March 31, 2000, <i>Wenatchee World</i> .	The Honorable John Hunter, Chairperson, Chelan County Board of Commissioners, 350 Orando Avenue, Wenatchee, Washington 98801.	February 11, 2000	530015
Douglas	City of East Wenatchee.	May 11, 2000, May 18, 2000, <i>Wenatchee World</i> .	The Honorable Steve Lacy, Mayor, City of East Wenatchee, 215 Ninth Street Northeast, East Wenatchee, Washington 98802.	April 14, 2000	530038

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")
Dated: November 5, 2000.

Margaret E. Lawless,
Deputy Associate Director for Mitigation.
[FR Doc. 00-29128 Filed 11-14-00; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 97-82; FCC 00-274]

Competitive Bidding Procedures; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** of Tuesday, August 29, 2000, (65 FR 52323). The regulations related to the competitive bidding rules for all, auctionable services in section 1.2110 of the Commission's rules.

DATES: Effective November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Leora Hochstein, Auctions and Industry

Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 29, 2000 (65 FR 52323), the Commission published a summary of its Order on Reconsideration of the Third Report and Order, Fifth Report and Order (*Order on Reconsideration, Fifth Report and Order*) in WT Docket No. 97-82. That document clarified and amended the Commission's competitive bidding rules in an ongoing effort to establish a uniform and streamlined set of general competitive bidding rules for all auctionable services and to reduce the burden on both the Commission and the public of conducting service-specific auction rule makings.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements.

Accordingly, 47 CFR part 1 is corrected by making the following correcting amendments:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. In § 1.2110 revise paragraph (c) to read as follows:

§ 1.2110 Designated entities.

(c) Definitions.—(1) *Small businesses.* The Commission will establish the definition of a small business on a service-specific basis, taking into consideration the characteristics and capital requirements of the particular service.

(2) *Controlling interests.* (i) For purposes of this section, controlling interest includes individuals or entities with either *de jure* or *de facto* control of the applicant. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(A) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(B) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(C) The entity plays an integral role in management decisions.

(ii) *Calculation of certain interests.*

(A) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(B) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified.

(C) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(D) Non-voting stock shall be attributed as an interest in the issuing entity.

(E) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(F) Officers and directors of an entity shall be considered to have a controlling interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have a controlling interest in the licensee or applicant.

(G) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(H) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling interest in such applicant or licensee if

such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(1) The nature or types of services offered by such an applicant or licensee;

(2) The terms upon which such services are offered; or

(3) The prices charged for such services.

(I) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have a controlling interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(1) The nature or types of services offered by such an applicant or licensee;

(2) The terms upon which such services are offered; or

(3) The prices charged for such services.

(3) *Businesses owned by members of minority groups and/or women.* Unless otherwise provided in rules governing specific services, a business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens control the applicant, have at least greater than 50 percent equity ownership and, in the case of a corporate applicant, have a greater than 50 percent voting interest. For applicants that are partnerships, every general partner must be either a minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at least 50 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis. The term minority includes individuals of Black or African American, Hispanic or Latino, American Indian or Alaskan

Native, Asian, and Native Hawaiian or Pacific Islander extraction.

(4) *Rural telephone companies.* A rural telephone company is any local exchange carrier operating entity to the extent that such entity—

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

(A) 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

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

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

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

(iv) 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.

(5) *Affiliate.* (i) An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant if such individual or entity—

(A) Directly or indirectly controls or has the power to control the applicant, or

(B) Is directly or indirectly controlled by the applicant, or

(C) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(D) Has an “identity of interest” with the applicant.

(ii) Nature of control in determining affiliation.

(A) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power to control.

(B) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(C) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example. In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(iii) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or has the power to control a concern, persons with an identity of interest will be treated as though they were one person.

Example. Two shareholders in Corporation Y each have attributable interests in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity in interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

(A) *Spousal affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States. In calculating their net worth, investors who are legally separated must include their share of interests in property held jointly with a spouse.

(B) *Kinship affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother,

sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half brother or sister. This presumption may be rebutted by showing that the family members are estranged, the family ties are remote, or the family members are not closely involved with each other in business matters.

Example. A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in a PCS application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation Y is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(iv) *Affiliation through stock ownership.* (A) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(B) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(C) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(v) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1. If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in a PCS application, the situation is treated as though company B had exercised its rights and had come owner of a controlling interest in

company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2. If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in a PCS application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its option to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3. If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(vi) *Affiliation under voting trusts.* (A) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(B) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(C) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(vii) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(viii) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(ix) *Affiliation through contractual relationships.* Affiliation generally

arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(x) *Affiliation under joint venture arrangements.* (A) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(B) The parties to a joint venture are considered to be affiliated with each other. Nothing in this subsection shall be construed to define a small business consortium, for purposes of determining status as a designated entity, as a joint venture under attribution standards provided in this section.

(xi) *Exclusion from affiliation coverage.* For purposes 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 this section, except that gross revenues derived from gaming activities conducted by affiliate 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 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.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 00-29094 Filed 11-14-00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[PP Docket No. 93-253; FCC 00-299]

Broadband Personal Communications Services (PCS) Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies various petitioners' requests to alter the Commission's C and F block competitive bidding rules. It does not change the rules except to reinstate provisions that had been inadvertently eliminated from the rules in a previous order. The Commission's determination with respect to these requests promotes the goals of the Communications Act.

DATES: Effective November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin, Attorney, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660.

SUPPLEMENTARY INFORMATION: This is a summary of an *Order on Reconsideration* in the Amendment of the Commission's Rules Regarding Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap. The complete text of the *Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857-3800. It is also available on the Commission's web site at <http://www.fcc.gov/wtb/auctions>.

I. Introduction

1. In this *Order on Reconsideration*, we first address three petitions for reconsideration of the Commission's Fifth Memorandum Opinion and Order in PP Docket No. 93-253 ("*Competitive Bidding Fifth Memorandum Opinion and Order*") in which the Commission resolved petitions for reconsideration or clarification of its rules governing competitive bidding for "entrepreneurs' block" (C and F block) Personal Communications Services licenses in the 2 GHz band ("broadband PCS"), See 59 FR 63210 (December 7, 1994). We next address nine petitions for

reconsideration of the Commission's Report and Order in WT Docket No. 96-59 and GN Docket No. 90-314 ("*DEF Report and Order*") in which the Commission modified its competitive bidding and ownership rules for broadband PCS. See 61 FR 33859 (July 1, 1996). Finally, we reinstate provisions which, in the *Competitive Bidding Sixth Report and Order*, were inadvertently eliminated from one of the Commission's competitive bidding rules. See 60 FR 37786 (July 21, 1995).

II. Background

2. Consistent with Congress' mandate to promote the participation of small businesses, rural telephone companies, and businesses owned by members of minority groups and women (collectively, "designated entities") in the provision of spectrum-based services, the Commission originally limited eligibility for C and F block PCS licenses to "entrepreneurs" and adopted special provisions for those blocks to assist small and women- and minority-owned businesses. The Commission considers entrepreneurs, with regard to the C and F blocks, to be those entities that can meet the auction and licensing eligibility requirements of § 24.709 of the Commission's rules. The principal requirement is set forth in § 24.709(a)(1), as follows:

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.

Under § 24.709, C and F block licensees are required to maintain their eligibility until at least five years from the date of the initial license grant. Licensees, however, are permitted to grow beyond the gross revenue and total assets caps through equity investment by non-attributable investors, debt financing, revenue from operations, business development, or expanded service.

3. The Commission has held four entrepreneurs' block PCS auctions to date, Auction No. 5, the first auction of C block spectrum, ended on May 6, 1996 and was followed quickly by Auction No. 10, another C block auction, which concluded on July 16, 1996. Auction No. 11, the first F block auction, ended on January 14, 1997, and also included D and E block spectrum. The fourth auction, Auction No. 22, made available additional C and F block, as well as E block, spectrum and concluded on April 15, 1999.