

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of the Commission’s Rules)	
Regarding Installment Payment Financing for)	WT Docket No. 97-82
Personal Communications Services (PCS))	
Licensees)	
)	
)	
)	

SIXTH REPORT AND ORDER AND ORDER ON RECONSIDERATION

Adopted: August 23, 2000

Released: August 29, 2000

By the Commission:

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I. INTRODUCTION AND EXECUTIVE SUMMARY

1. In this *Sixth Report and Order* (“*C/F Block Sixth Report and Order*”), we address the tentative conclusions and proposals in our recent Further Notice of Proposed Rulemaking in this docket (“*Further Notice*”).¹ We also resolve the petitions that precipitated the *Further Notice*.² The modifications to the Commission’s rules that we adopt in this order will apply to Auction No. 35, a C and F block auction currently scheduled to begin on November 29, 2000. The modifications also will apply to any subsequent auctions of C or F block licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future.

2. We conclude that it is in the public interest to modify our auction and service rules for C and F block broadband Personal Communications Services (PCS) licenses to achieve the various goals of Section 309(j) of the Communications Act.³ Specifically, in this *C/F Block Sixth Report and Order* we retain, clarify, and revise our rules, as follows:

- **Reconfiguration.** We will reconfigure each 30 MHz C block license available in Auction No. 35 and other future broadband PCS auctions into three 10 MHz C block licenses.

¹ See Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, *Further Notice of Proposed Rulemaking*, 15 FCC Rcd 9773 (2000) (“*Further Notice*”). The Commission received 38 comments, 27 reply comments, 28 *ex partes*, and one motion in response to the *Further Notice*. Appendices A-C contain a list of full and abbreviated names of commenting parties.

² See *Further Notice*, 15 FCC Rcd at 9774-76, ¶¶ 1, 3.

³ Section 309(j) of the Communications Act of 1934, as amended (“Communications Act”), 47 U.S.C. § 309(j).

- **Tiers.** We divide Basic Trading Areas (BTAs) into two tiers according to the population size of the BTA. “Tier 1” will comprise BTAs with populations equal to or greater than 2.5 million; “Tier 2” will comprise the remaining BTAs.
- **Eligibility restrictions.** We remove the entrepreneur auction eligibility restrictions – thereby establishing “open” bidding – for the following licenses:
 - two of the three reconfigured 10 MHz C block licenses in Tier 1;
 - one of the three reconfigured 10 MHz C block licenses in Tier 2;
 - all 15 MHz C block licenses in Tier 1;
 - all F block licenses;
 - all C block licenses available but unsold in Auction No. 22.⁴
- **License grouping.** We reject Nextel’s proposal to license by bulk bidding.
- **“Grandfather” exception.** We clarify an applicant’s eligibility for the Section 24.709(b)(9)(i) C block “grandfather” exception after it has been involved in a merger, acquisition, or other business combination, as follows:
 - When each of the combining entities is individually eligible for the “grandfather” exception, the exception will extend to the resulting entity.
 - When one or more of the combining entities is not individually eligible for the grandfather exception, the resulting entity will be eligible for the exception only so long as an originally eligible entity retains *de facto* and *de jure* control of the resulting entity.
- **Bidding credits.**
 - Licenses won in open bidding: We retain the existing bidding credits for small and very small businesses of 15 percent and 25 percent, respectively.
 - Licenses won in closed bidding: We eliminate bidding credits.
- **Transfer requirements.**
 - Licenses won in open bidding: We will not apply the entrepreneur eligibility restrictions to the assignment or transfer of control of C and F block licenses won in open bidding.
 - Licenses won in closed bidding: Upon satisfaction of the first construction benchmark for a license won in closed bidding, the control group of any eligible entrepreneur may assign or transfer control of C block licenses to a non-entrepreneur. We will continue to evaluate satisfaction of construction requirements on a license-by-license, rather than on a system-wide, basis.

⁴ In addition, for auctions subsequent to Auction No. 35, we remove the entrepreneur eligibility restrictions for all C and F block licenses available but unsold in Auction No. 35 or in any future auction. *See infra* ¶¶ 29-31.

- **Unjust enrichment:** A licensee that won a license in Auction No. 5 or 10 will not be subject to a bidding credit unjust enrichment payment upon assignment or transfer of the license, subject to the Commission's transfer requirements, to an entity not qualifying as a small business. Because all license winners in those auctions qualified for the available 25 percent bidding credit, there is no purpose in requiring the payment. Licenses won in other auctions using a bidding credit will be subject to a bidding credit unjust enrichment payment upon transfer or assignment in accordance with the Commission's transfer requirements.
- **License cap.** We eliminate the provision of our rules (Section 24.710) that prohibits any applicant from winning more than 98 of the licenses available in the C and F blocks.
- **Spectrum cap.** We will continue to apply the spectrum cap to C and F block licenses, including those won in Auction No. 35.

II. BACKGROUND

3. In the Omnibus Budget Reconciliation Act of 1993,⁵ Congress authorized the Commission to employ systems of competitive bidding to award spectrum licenses. This authorization, as amended, is codified as Section 309(j) of the Communications Act.⁶ Section 309(j)(3) directs the Commission to "seek to promote" a number of objectives, including:

- the development and rapid deployment of new services for the benefit of the public, including those residing in rural areas;
- promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the public by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, i.e., "designated entities;"
- recovery for the public of a portion of the value of the public spectrum resource made available for commercial use.⁷

4. Section 309(j)(4) directs the Commission, in prescribing regulations to implement the objectives of Section 309(j)(3), to, *inter alia*, (1) establish performance requirements to ensure prompt delivery of service to rural areas and prevent warehousing of spectrum by licensees; (2) prescribe area designations and bandwidth assignments that promote an equitable geographic distribution of licenses and services, economic opportunity for a wide variety of applicants, including designated entities, and rapid deployment of services; and (3) ensure that designated entities are given the opportunity to participate in the provision of spectrum-

⁵ Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312 (1993) (Omnibus Budget Reconciliation Act of 1993 ("OBRA-1993")).

⁶ Section 309(j) of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 309(j). The Balanced Budget Act of 1997 revised the auction authority granted in OBRA-1993.

⁷ We note that Section 309(j)(7) of the Communications Act limits the Commission's consideration of auction revenues in making public interest determinations about spectrum allocations. 47 U.S.C. § 309(j)(7).

based services, and, for such purposes, consider using bidding preferences and other procedures.⁸

5. The Commission outlined the original framework for C and F block auctions in the 1994 *Competitive Bidding Fifth Report and Order*, establishing the C and F blocks as “set-aside” licenses for “entrepreneurs” in which eligibility would be restricted to entities below a specified financial threshold.⁹ The initial C block licenses were awarded through two auctions, Auction No. 5, which ended on May 6, 1996, and Auction No. 10, which concluded on July 16, 1996. Auction No. 11, the initial F block auction, ended on January 14, 1997, and also included D and E block licenses. Auction No. 22, which concluded on April 15, 1999, made available C and F block licenses that had been returned to, or reclaimed by, the Commission.¹⁰

6. Since adoption of the 1994 *Competitive Bidding Fifth Report and Order*, the rules for auctions of C and F block licenses have steadily evolved in response to legislative changes, judicial decisions, the needs of licensees striving to succeed in a rapidly developing wireless market, and the demand of the public for greater access to wireless services. For example, in the 1997 *C Block Second Report and Order*,¹¹ as modified by the 1998 *C Block Reconsideration Order*,¹² the Commission created a package of financial restructuring options to be offered to C block licensees experiencing financial difficulties in the wake of Auctions No. 5 and No. 10. The Commission also decided in the *C Block Second Report and Order*, as modified by the 1998 *C Block Fourth Report and Order*, to allow, for a period of two years from the beginning of the first post-restructuring C block auction (Auction No. 22), participation in bidding for C block licenses by entities that had participated in Auctions No. 5 and 10,¹³ even if such entities had since become too large to qualify as entrepreneurs under the Commission’s rules.¹⁴

⁸ 47 U.S.C. § 309(j)(4).

⁹ The Commission required that in order to be eligible to bid, an applicant, including attributable investors and affiliates, must have had gross revenues of less than \$125 million in each of the last two years and must have less than \$500 million in total assets. See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581-82, ¶ 115 (1994) (“*Competitive Bidding Fifth Report and Order*”). Originally, there was a personal net worth test, but this test was eliminated. See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket 93-253, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 420-21 ¶¶ 28-30 (1994) (“*Competitive Bidding Fifth Memorandum Opinion and Order*”).

¹⁰ E block licenses were also included in Auction No. 22.

¹¹ Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Second Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 16,436 (1997) (“*C Block Second Report and Order*”).

¹² Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Order on Reconsideration of the Second Report and Order*, 13 FCC Rcd 8345 (1998) (“*C Block Reconsideration Order*”).

¹³ Every participant in Auction No. 10 had participated in Auction No. 5.

¹⁴ See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Fourth Report and Order*, 13 FCC Rcd 15,743, 15,749, ¶ 10, 15,751, ¶ 13, 15,752, ¶ 15 (1998) (“*C Block Fourth Report and Order*”); *C Block Second Report and Order*, 12 FCC Rcd 16,436, 16,448, ¶ 22. See also Amendment of the Commission's Rules Regarding Installment (continued....)

7. Prior to the start of Auction No. 22, three C block licensees, NextWave Personal Communications, Inc. (“NextWave”), GWI PCS Inc. (“GWI”), and DCR PCS, Inc. (“DCR”), filed for bankruptcy protection.¹⁵ Bankruptcy filings and payment defaults by C and F block licensees occurred, both before and after the auction; and, to date, a total of 232 C and F block licenses, covering a population (“pops”) of approximately 191 million,¹⁶ have been involved in bankruptcy proceedings and/or license payment defaults.

8. In January 2000, the Wireless Telecommunications Bureau (“Bureau”), pursuant to its delegated authority, announced the next C and F block auction, Auction No. 35.¹⁷ Auction No. 35 is slated to include both 30 MHz and 15 MHz C block licenses, as well as F block licenses (all 10 MHz each) for operation on frequencies for which previous licenses had automatically cancelled¹⁸ or had been returned to the Commission.¹⁹ The announcement of Auction No. 35 prompted petitions from SBC Communications Inc. (“SBC”), Nextel Communications, Inc. (“Nextel”), and other parties asking that we waive, modify, or eliminate our entrepreneur eligibility requirements for participation in the auction.²⁰ In response to those filings, several parties also proposed that we make other modifications to our C and F block rules.²¹ Additionally, US WEST Wireless, LLC (“US West”) and Sprint Spectrum L.P. dba Sprint PCS (“Sprint”) filed a joint petition for reconsideration of our Order on Reconsideration of the Fourth Report and Order in (Continued from previous page) _____

Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Order on Reconsideration of the Fourth Report and Order*, 15 FCC Rcd 4740, 4742-43, ¶¶ 6-8 (2000) (“*C Block Fourth Report and Order Reconsideration*”).

¹⁵ The proceedings of NextWave are jointly administered with those of NextWave Power Partners Inc., NextWave Partners Inc., NextWave Wireless Inc., and NextWave Telecom Inc. The proceedings of GWI are jointly administered with those of General Wireless, Inc.; GWI PCS California/Florida, Inc.; GWI PCS Georgia, Inc.; and GWI PCS Chico, Inc. (now known as Metro PCS, Inc.; Metro PCS Wireless, Inc.; Metro PCS California/Florida, Inc.; Metro PCS Georgia, Inc.; and Metro PCS Chico, Inc.). The DCR proceedings are jointly administered with those of DCR’s parent company, Pocket Communications, Inc.

¹⁶ This population figure is based upon the 1990 census.

¹⁷ “Auction of C and F Block Broadband PCS Licenses, Notice of Auction Scheduled for July 26, 2000,” *Public Notice*, 15 FCC Rcd 693 (2000).

¹⁸ See 47 C.F.R. § 1.2110(f)(4)(iii)-(iv). See also *NextWave Personal Communications, Inc. v. FCC*, 200 F.3d 43 (2nd Cir. 1999), *aff’d*, No. 99-5063 (2nd Cir. May 25, 2000).

¹⁹ See “C and F Block Broadband PCS Spectrum Auction Scheduled for July 26, 2000,” *Public Notice*, 15 FCC Rcd 4702, 4713-15, Att. A (2000).

²⁰ See *Further Notice*, 15 FCC Rcd at 9781 n.32.

²¹ See *id.*, 15 FCC Rcd at 9781 n.33.

WT Docket No. 97-82 (“*C Block Fourth Report and Order Reconsideration*”).²² The *C Block Fourth Report and Order Reconsideration* addressed certain of the rules governing auctions of C block licenses. Sprint and US West requested that the Commission eliminate its eligibility restrictions for participation in the upcoming auction as well as modify other C block rules. In addition, Verizon Wireless (“Verizon”) petitioned the Commission for clarification or reconsideration of our two-year C block auction eligibility “grandfather” rule, Section 24.709(b)(9)(i).²³ In response to these petitions, a number of parties argued that all, or at least some portion, of the C and F block spectrum should be open to all participants in order to satisfy the Commission’s obligations under 309(j)(4);²⁴ other parties opposed these arguments.²⁵

9. We also received petitions from Bell Atlantic Mobile, Inc. (“Bell Atlantic”), BellSouth Corporation (“BellSouth”), AT&T Wireless Services, Inc. (“AT&T”), and GTE Service Corporation (“GTE”) requesting that the Commission waive, forbear from applying, or declare inapplicable the Commercial Mobile Radio Services (“CMRS”) spectrum cap with respect to the spectrum available in Auction No. 35.²⁶

10. We addressed the issues raised and points made in the various petitions, comments, and other documents filed in this proceeding in a Further Notice of Proposed Rulemaking (the “*Further Notice*”), released on June 7, 2000, in which we set forth tentative conclusions and proposals concerning our C and F block rules. Also on June 7, 2000, the Bureau announced that Auction No. 35 would begin on November 29, 2000, in order to allow resolution of the issues in the *Further Notice* and implementation of any rule changes prior to the auction.²⁷ In this *C/F Block Sixth Report and Order*, we resolve the issues raised in the *Further Notice* and in the petitions and other filings in this proceeding by retaining, clarifying, and modifying our rules governing C and F block auctions and licenses.

²² See *id.*, 15 FCC Rcd at 9781 n.34. In the public notice announcing the filing of the US West/Sprint Petition as part of WT Docket No. 97-82, we stated that we were incorporating into WT Docket No. 97-82 the comments and other documents filed in response to the Nextel Petition and the SBC Petition regarding C and F block rules. “Wireless Telecommunications Bureau Sets Comment Schedule for Petitions for Reconsideration of the on Reconsideration of the Fourth Report and Order in WT Docket No. 97-82,” *Public Notice*, 15 FCC Rcd 6079, 6080 (2000). We clarify that we also incorporate into the docket the Nextel Petition, the SBC Petition, and similar petitions that prompted the comments and other responsive filings.

²³ Verizon Petition.

²⁴ See *Further Notice*, 15 FCC Rcd at 9782 n.37.

²⁵ See *Further Notice*, 15 FCC Rcd at 9782 n.38.

²⁶ See AT&T Wireless Services, Inc., Petition for Waiver and Expedited Action (February 15, 2000) (“AT&T Waiver Petition”); BellSouth Corporation, Petition for Waiver and Expedited Action (February 17, 2000) (“BellSouth Waiver Petition”); Bell Atlantic Mobile, Inc., Petition for Limited Forbearance (February 17, 2000) (“Bell Atlantic Forbearance Petition”); and, GTE Service Corporation, Petition for Declaratory Ruling and/or Waiver (March 8, 2000) (“GTE Declaratory Ruling Petition”). See also *Further Notice*, 15 FCC Rcd at 9782 nn.39-40.

²⁷ “Auction of Licenses for C and F Block Broadband PCS Spectrum Postponed Until November 29, 2000,” *Public Notice*, 15 FCC Rcd 9771 (2000).

III. DISCUSSION

A. Reconfiguration of C Block Spectrum License Size

11. **Background.** In the *Further Notice*, we tentatively concluded that each 30 MHz C block license available in Auction No. 35 should be reconfigured into three 10 MHz C block licenses.²⁸ We asserted that the increased number of licenses available as a result of this reconfiguration, along with elimination of certain of the Commission's C and F block eligibility requirements, would promote wider auction participation and license distribution in accordance with the goals of Section 309(j) of the Communications Act.²⁹ We tentatively concluded that a 10 MHz C block license is a viable minimum size for voice and some data services, including Internet access, and that it provides an appropriate building block for bidders that wish to acquire a larger amount of spectrum in particular markets.³⁰ We sought comment on these tentative conclusions, as well as on whether a different configuration, such as creation of 20 MHz C block licenses where possible, would be more appropriate to provide meaningful opportunities for potential bidders, including new entrants into particular markets.³¹ Additionally, in the *Further Notice*, we proposed to permit bidders to aggregate the 10 MHz C block licenses, subject only to the CMRS spectrum cap and the relevant remaining eligibility restrictions for these licenses.³²

12. **Discussion.** We adopt our tentative conclusions in the *Further Notice* to reconfigure each available 30 MHz C block license into three 10 MHz C block licenses and to permit bidders to aggregate the 10 MHz C block licenses, subject to the CMRS spectrum cap and the relevant remaining eligibility restrictions for these licenses. Each 30 MHz C block license that is available for inclusion in the Commission's license inventory for Auction No. 35 or any subsequent auction, will be reconfigured into three 10 MHz C block licenses.³³ Each of the newly reconfigured 10 MHz C block licenses will consist of two paired 5 MHz blocks: 1895 - 1900 MHz paired with 1975 - 1980 MHz; 1900 - 1905 MHz paired with 1980 - 1985 MHz; and 1905 MHz - 1910 MHz paired with 1985 - 1990 MHz. Accordingly, we deny the Nextel Petition insofar as it requests a different reconfiguration of available 30 MHz C block licenses; and we grant the US West/Sprint Petition to the extent that it requests the reconfiguration we adopt today.³⁴

13. The majority of the commenters support our proposal to divide each available 30 MHz C block license into three 10 MHz C block licenses.³⁵ They contend that dividing the spectrum into three 10 MHz C

²⁸ See *Further Notice*, 15 FCC Rcd at 9784, ¶ 16.

²⁹ See 47 U.S.C. § 309(j)(3)(B); *Further Notice*, 15 FCC Rcd at 9784, ¶ 16.

³⁰ See *Further Notice*, 15 FCC Rcd at 9784, ¶ 16.

³¹ *Id.*

³² See *id.* The CMRS spectrum cap is set forth at 47 C.F.R. § 20.6. The rule provides that for broadband PCS, cellular, or Specialized Mobile Radio services, a licensee is not permitted to hold more than 45 MHz of spectrum in a given market, except in rural areas where the cap is set at 55 MHz.

³³ We will not reconfigure available 15 MHz C block licenses.

³⁴ See *Further Notice*, 15 FCC Rcd at 9783-84, ¶ 15.

³⁵ See Advanced Comments at 4-5 (supports only if entrepreneur eligibility restrictions are maintained for all C and F block licenses); AirGate Comments at i, 1-2, 4 (supports provided that the Commission's entrepreneur eligibility proposals in the *Further Notice* are adopted); AirGate Reply at 1; ALLTEL Reply at 1-2; America (continued....)

block licenses will promote a wider dissemination of licenses; provide bidders with more flexibility to adapt their bidding strategies to meet their business plans; and make licenses more affordable, especially for entrepreneurs.³⁶ Some parties offer contingent support for reconfiguring the 30 MHz C block licenses, e.g., provided that entrepreneur eligibility restrictions are maintained in their current form,³⁷ are modified as proposed in the *Further Notice*,³⁸ or are eliminated for at most only a single 10 MHz C block license in each market.³⁹ Other parties oppose the Commission's proposal, arguing that such a proposal is contrary to statutory requirements, because it will reduce small business opportunity in the marketplace.⁴⁰ Additionally, some parties contend that 10 MHz of C block spectrum is insufficient to provide a full range of third generation ("3G") services.⁴¹

14. We believe that 10 MHz is a viable broadband PCS license size. Ten MHz has always been one of the principal license sizes used in broadband PCS. In fact, half of the original licenses representing one-fourth of the total broadband PCS spectrum were 10 MHz licenses. In Auction No. 11, we made available to bidders almost 1,500 D, E, and F block licenses, all of which were for 10 MHz of spectrum. Virtually all of those licenses were sold; and, with the exception of licenses won by entrepreneurs with substantial C block holdings, almost none of the them have been returned to, or reclaimed by, the Commission. Moreover, we believe that 10 MHz broadband PCS block licenses provide opportunities to applicants, such as smaller companies and new entrants, that might not be able to acquire 20 or 30 MHz PCS licenses. In our recent *700 MHz First Report and Order*, where we established both 20 MHz and 10 MHz block licenses for wireless use, we noted that 10 MHz block wireless licenses "should prove of interest to parties in the record who desire spectrum to deploy innovative wireless technologies, including high-speed Internet access, that do not require as much spectrum."⁴² Those entities that want to obtain more than 10

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Connect Comments at 3; AT&T Comments at 1, 10; AT&T Reply at 2-3; BellSouth Comments at ii, 2, 5; BellSouth Reply at 3; CTIA Comments at 2-3; CIRI Comments at 7-8; RK Communications Comments at 1-2; Sprint Reply at 4-6; US West Comments at 3-4; US West Reply at 1, 4; Verizon Comments at 4-5; VoiceStream Comments at 3-4; VoiceStream Reply at 2. *See also* Northcoast Comments at 4-5 (prefers no reconfiguration; however, the proposed reconfiguration is acceptable provided that 20 MHz remains set aside in each market).

³⁶ *See, e.g.*, ALLTEL Reply at 1-2; America Connect Comments at 3; AT&T Comments at 3-4; AT&T Reply at 2-4; BellSouth Comments at 2; BellSouth Reply at 3; CTIA Comments at 2-3; CIRI Comments at 7-8; RK Communications Comments at 2; Sprint Reply at 4; US West Comments at 3; Verizon Comments at 5; VoiceStream Comments at 4; VoiceStream Reply at 2.

³⁷ *See* Advanced Comments at 4-5.

³⁸ *See* AirGate Comments at i, 1-2, 4; AirGate Reply at 1.

³⁹ *See* Northcoast Comments at 4-5.

⁴⁰ *See* Alpine Comments at ii-iii, 1-15, 18; Alpine Reply at 1, 6; Leap Comments at 14-16, NTCA Comments at 2-3; OPM Comments at i, 2, 6-9; OPM Reply at i, 6-10, Declaration; PCIA Comments at 17-20; PCIA Reply at 2-3, 9-14; Powertel Comments at 7; Rainbow/Push Reply at 7-9; Twenty First Wireless Comments at 11; Twenty First Wireless Reply at 1-3, 5; U.S. AirWaves Comments at 5-6; Advocacy Comments at 5-6; NORTH COAST Reply at i, 3-4.

⁴¹ *See, e.g.*, Alpine Comments at ii-iii, 1-15; Alpine Reply at 1-2, 5-7.

⁴² *See* Service Rules for 746-764 MHz and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *First Report and Order*, 15 FCC Rcd 476, 478, ¶ 3 (2000) ("700 (continued....)")

MHz of C block spectrum where it is available in a BTA⁴³ retain the option of bidding on, or otherwise acquiring, as many of the available C block licenses as they are eligible for⁴⁴ and aggregating them, or aggregating one or more newly acquired licenses with existing licenses.

15. Accordingly, we conclude that, by dividing each available 30 MHz C block license into three 10 MHz licenses, we can best address the diverse needs of the potential participants in the next C and F block auction. Entrepreneurs that continue to favor smaller blocks will still be able to fulfill their business needs. Parties that desire more spectrum for services will be allowed to aggregate the 10 MHz C block licenses, subject to the CMRS spectrum cap. As more fully discussed below, we will continue to provide set-asides for some C block licenses to ensure that entrepreneurs are provided opportunities to acquire spectrum for their needs. We believe that this reconfiguration, along with the other rule modifications we make today, will ensure the best use of spectrum through the competitive bidding process while at the same time promoting wider auction participation and license distribution in accordance with the goals of Section 309(j) of the Communications Act.⁴⁵

B. Eligibility Restrictions Under a Tiered Approach

16. **Background.** In the *Further Notice*, we proposed to remove the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions.⁴⁶ We tentatively concluded that we should divide BTAs into two tiers according to population size of the BTA. “Tier 1” would comprise BTAs at and above a 2.5 million population threshold; “Tier 2” would comprise BTAs below that population threshold. We also sought comment on other population thresholds and on establishing a third tier.⁴⁷ We tentatively concluded that we would allow “open” bidding (i.e., bidding without eligibility restrictions) for two of the three newly reconfigured 10 MHz C block licenses in Tier 1 and one of the three newly reconfigured 10 MHz C block licenses in Tier 2.⁴⁸ We also sought comment on whether there should be “open” bidding for all three of the 10 MHz licenses in Tier 1 and two of the three in Tier 2.⁴⁹ With respect to available F block licenses,⁵⁰ we sought comment on eliminating the eligibility requirements, or, alternatively, applying a tiered approach or retaining the existing

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MHz First Report and Order). In our view, the advantages of reconfiguring 30 MHz C block licenses into three 10 MHz licenses outweigh the “exposure risk” that so concerns Nextel. *See* Nextel Reply at 15-16.

⁴³ *See* 47 C.F.R. § 24.202.

⁴⁴ As explained *infra*, entities that qualify as entrepreneurs under the Commission’s rules will be eligible to bid on all three 10 MHz C block licenses in each market; other entities will be eligible to bid on either one or two of such licenses depending on the population size of the market.

⁴⁵ *See* 47 U.S.C. § 309(j)(3)(B).

⁴⁶ *See Further Notice*, 15 FCC Rcd at 9789, ¶ 27.

⁴⁷ We stated that, in the absence of better data, we would rely on the 1990 census data for population numbers.

⁴⁸ *See Further Notice*, 15 FCC Rcd at 9789, ¶ 29.

⁴⁹ *Id.*

⁵⁰ All F block licenses are 10 MHz licenses.

eligibility rules.⁵¹ We tentatively concluded that we would allow “open” bidding for all available 15 MHz C block licenses, because they had not been sold in Auction No. 22.⁵² Finally, we sought comment on whether to establish a rule that lifts eligibility restrictions on any C or F block licenses that remain unsold after Auction No. 35 or after other future auctions.

17. **Discussion.** As described below, we adopt our tentative conclusions and other proposals to remove the entrepreneur eligibility restrictions for some, but not all, licenses available in Auction No. 35 and in future C and F block auctions, utilizing the tiered approach outlined in the *Further Notice*. In the *Further Notice*, we discussed at some length the rationale behind those tentative conclusions and other proposals. We find in general that those reasons continue to apply and that they support the actions we take today. We elaborate further on our reasoning below in light of the record we received in response to the *Further Notice*.

18. **Tiers.** Consistent with our tentative conclusion, we will divide all BTAs into two categories, “Tier 1” BTAs and “Tier 2” BTAs. Tier 1 will comprise BTAs with populations that, according to the 1990 census, are equal to or greater than 2.5 million;⁵³ and Tier 2 will comprise the remaining BTAs.⁵⁴ Commenters that support or oppose a tiered approach *per se* do so in the context of removing entrepreneur eligibility restrictions, and we will address their views in the section immediately below. Certain commenters take issue with our tentative conclusion to demarcate the two tiers at a population of 2.5 million. For example, AT&T, while opposing the tiering concept as too restrictive for large companies, suggests that, if the concept is adopted, the upper tier should be enlarged to include BTAs with populations of one million or greater, i.e., approximately the top ten percent of the BTAs in the United States.⁵⁵ In contrast, Leap argues that we should constrict Tier 1 to include only BTAs with populations over five million.⁵⁶

19. We believe that our decision to establish two tiers with a 2.5 million population demarcation represents the most reasonable balancing of the various competing public interest factors that bear on this issue. Both sides in this debate make credible arguments about their needs for additional spectrum. Because we have only a limited amount of spectrum to offer, we must respond with an approach to eligibility that necessarily will not fully satisfy all competing demands. Under these circumstances, we believe that the mid-course approach proposed in the *Further Notice*, which removes eligibility restrictions for some, but not all, of the available spectrum is the best course. The approach, in conjunction with the changes in entrepreneur eligibility restrictions described below, will make relatively more spectrum available for “open” bidding in the most populous markets where the demand for spectrum by existing CMRS carriers is the

⁵¹ See *Further Notice*, 15 FCC Rcd at 9790, ¶ 31.

⁵² See *id.* at 9790, ¶ 32.

⁵³ Tier 1 BTAs comprise approximately five percent of all BTAs.

⁵⁴ For auctions after Auction No. 35, we will base population figures on the most recent available decennial census.

⁵⁵ See AT&T Comments at 7-8; AT&T Reply at 4-5; Nextel Comments at ii, 12-13, 24; Nextel Reply at 6; SBC Comments at i, 2, 8; SBC Reply at 4-5; US West Comments at 4-5; US West Reply at 2, 4; VoiceStream Comments at 4-5; VoiceStream Reply at 3-4.

⁵⁶ Leap Comments at 4, 15-16; Leap Reply at 7-8.

greatest and the prospects of a spectrum shortage for these carriers is the most acute. At the same time, the modifications we make today will keep most of this spectrum (i.e., 20 MHz) closed in all but the very largest markets, while also retaining restricted eligibility for some spectrum (i.e., 10 MHz) even in those latter cases. Thus, entrepreneurs will have an opportunity to acquire additional spectrum on a set-aside basis in all available C block markets. We note that the tiering approach will split the C block spectrum available in Auction No. 35 almost equally, when weighted by population, between open and closed licenses. For these reasons, implementing our tentative conclusion provides an effective method of accommodating the conflicting goals of entrepreneurs and non-entrepreneurs and satisfies our objectives under Section 309(j).

20. **30 MHz and 15 MHz C block licenses.** For markets with available 30 MHz licenses, other than licenses that were available but unsold in Auction No. 22,⁵⁷ we adopt our tentative conclusion and establish open bidding (i.e., bidding without entrepreneur eligibility restrictions) for two of the three newly reconfigured 10 MHz C block licenses in Tier 1 and for one of the three newly reconfigured 10 MHz C block licenses in Tier 2. In Tier 1, the following two 10 MHz blocks will be open: 1900 - 1905 MHz paired with 1980 - 1985 MHz and 1905 MHz - 1910 MHz paired with 1985 - 1990 MHz. In Tier 2, the following 10 MHz block will be open: 1905 MHz - 1910 MHz paired with 1985 - 1990 MHz.⁵⁸ For available 15 MHz C block licenses, other than for licenses that were available but unsold in Auction No. 22,⁵⁹ we eliminate entrepreneur eligibility restrictions for licenses in Tier 1 but retain the restrictions for licenses in Tier 2.⁶⁰

21. A number of commenters oppose any relaxation of the Commission's entrepreneur eligibility restrictions.⁶¹ Some commenters argue that Section 309(j) compels the Commission to maintain the C and F block set-aside as is.⁶² On the other hand, SBC responds that nothing in Section 309(j) or its legislative

⁵⁷ As we explain *infra*, for 30 MHz C block licenses that were available but unsold in Auction No. 22, we will remove all entrepreneur eligibility restrictions for each of the three 10 MHz C block licenses.

⁵⁸ In each case, the closed band or bands will be adjacent to the F block spectrum. Because the bands will be contiguous, entrepreneurs that wish to aggregate newly acquired closed 10 MHz C block licenses with F block licenses may enjoy reduced base station facilities costs and simplified maintenance requirements.

⁵⁹ As we explain *infra*, we will remove all entrepreneur eligibility restrictions for 15 MHz C block licenses that were available but unsold in Auction No. 22.

⁶⁰ As a practical matter, all of the 15 MHz licenses that we expect to be available in Auction No. 35, that were not available but unsold in Auction No. 22, are in Tier 2 and therefore would be subject to closed bidding restricted to entrepreneurs.

⁶¹ *See, e.g.*, Advanced Comments at 1-2; Advocacy Comments at 15 n.15; OPM Comments at i, 2, 4-6, 8, 16; RK Communications Comments at 2; Telecorp and Tritel Comments at 3, 5; US West Comments at 4; US West Reply at 2,4; RCA Comments at 8-9, 11-14; RCA Reply at 1-3, 7; Twenty First Wireless Reply at 5. *See also* Advocacy Comments at 1-5, 8; Alaska/Poplar/Eldorado Comments at 2; Alpine Comments at ii, 4-15; Choice Comments at 1; Leap Comments at 1; NTCA Comments at 3; PCIA Comments at i, 4-5, 11-17; Polycell Comments at 1, 2-4; RTG/OPASTCO Comments at 5-6; Telecorp and Tritel Comments at 3, 5. *See generally* U.S. AirWaves Comments at 4-5.

⁶² *See, e.g.*, OPM Comments at 4 ("Removing DE eligibility restrictions would diminish meaningful participation of small businesses in the auction process. . . . [I]n light of the language of Section 309(j)(4) and its legislative history, OPM disagrees with the notion that meaningful participation of small businesses is a matter the Commission is free to purposely diminish without violating both the Act and the policy it is intended to implement. [citation omitted]"; Advanced at 2; AirGate Comments at 2-3; Alpine Comments at iii, 2, 15; (continued....)

history necessitates a C and F block set-aside for entrepreneurs.⁶³ Some parties that favor elimination of entrepreneur eligibility requirements believe that our tentative conclusion is too limited. These parties, which include most of the major, national carriers, would prefer that we remove entrepreneur eligibility restrictions from more – or all – of the available C and F block licenses.⁶⁴ Other commenters ask that the reduction be smaller.⁶⁵ CIRI, however, supports our tentative conclusion, provided that we also lift existing C and F block transfer restrictions.⁶⁶

22. Section 309(j)(3) directs the Commission to seek to promote a variety of sometimes competing objectives, including economic opportunity, competition, and the rapid deployment of new technologies and services by, *inter alia*, disseminating licenses among a wide variety of applicants, including small businesses. Section 309(j)(4) requires the Commission to ensure that small businesses and others “are given the opportunity to participate in the provision of spectrum based services” and directs the Commission to consider the use of mechanisms that will further that end. The statute accords the Commission wide latitude in determining how to achieve the stated objectives. For example, Section 309(j) does not mandate the use of set-asides, or any other particular method, to promote the participation of small businesses in spectrum auctions; and the Commission has conducted numerous auctions in recent years in which it has not provided an entrepreneurs’ block set-aside.⁶⁷ Similarly, Section 309(j)(3) does not require the Commission to promote the participation of small businesses in PCS auctions at the expense of other, potentially conflicting, objectives enumerated in the section, such as the promotion of competition and the rapid deployment of new technologies and services.⁶⁸ Finally, Section 309(j)(4)(D) does not require the Commission to ensure that licenses actually are granted to small businesses but, rather, requires only that these small businesses be given the *opportunity* to participate in the provision of spectrum-based services.⁶⁹

23. We believe that by implementing our tentative conclusion we give effect to, and reasonably balance, as many of the various and partially conflicting Section 309(j) objectives as possible. As discussed in the *Further Notice*,⁷⁰ circumstances in the PCS industry have changed dramatically, and continue to

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Northcoast at 8; NTCA at 2; PCIA Comments at i, 1-5; RCA Comments at 1-2 (cover letter); RCA Comments at 7-10; and RTG/OPASTCO Comments at 1-2, 3-4.

⁶³ See SBC Reply at 2-4.

⁶⁴ See, e.g., AT&T Comments at 1-2, 6-8, 10; BellSouth Comments at ii, 1, 9-10, 15; BellSouth Reply at 1,3; SBC Comments at i, 2-3, 10-11; SBC Reply at 4-6; US West Comments at 4-5; US West Reply at 1-4; Verizon Comments at 5-9; VoiceStream Comments at 5; VoiceStream Reply at 1-2, 8.

⁶⁵ See, e.g., Advocacy Comments at 5; ASCENT Comments at 4, 7.

⁶⁶ See CIRI Comments at 7-9; CIRI Reply at 2-3. See also *infra* Part III.H. (transfer requirements).

⁶⁷ In auctions of licenses in most other services, the Commission has used bidding credits, rather than a set-aside, to encourage auction participation by small businesses. To date, in open Commission auctions with small business bidding credits, a total of 79 percent of all winning bidders have been small businesses using a bidding credit. See *infra* Part III.G. (bidding credits).

⁶⁸ *Melcher v. FCC*, 134 F.3d 1143, 1154 (D.C. Cir. 1998), citing *Mobile Tel, Inc. v. FCC*, 107 F.3d 888, 895 (D.C. Cir. 1997); see *Fresno Mobile Radio*, 165 F.3d 965, 971 (D.C. Cir. 1999).

⁶⁹ *Melcher v. FCC*, 134 F.3d 1143, 1154-55 (D.C. Cir. 1998).

⁷⁰ *Further Notice*, 15 FCC Rcd at 9788, ¶ 25.

change, since the implementation of our rules in 1994. The introduction of wireless Internet, advanced data, and 3G services, and global competition within these services, has created a shortage of suitable available spectrum.⁷¹ Many carriers claim that obtaining additional spectrum to provide such services or satisfy capacity needs is crucial to their business plans.⁷² In addition, these carriers state that they require additional spectrum to “fill out” regional or national service areas.⁷³ Taking all of our statutory objectives into account, we believe that it is fair and appropriate to apportion the spectrum to accommodate these interests. Apportioning the 30 MHz C block licenses in the manner described will enable larger carriers to obtain additional spectrum, which, we find, will promote the further development of CMRS competition and innovation, especially in larger markets. At the same time, maintaining a significant set aside of C block spectrum for entrepreneurs will help smaller businesses in this band continue to achieve their business goals as well as providing meaningful opportunities for new entrepreneurial firms to enter the market. Entrepreneurs will retain exclusive eligibility to bid on 10 MHz of available C block spectrum in Tier 1 markets and on most of the first-time reaucted C block spectrum in Tier 2 markets. Entrepreneurs also will be eligible to participate, along with non-entrepreneurs, in all open bidding.⁷⁴

24. F block licenses. We adopt open bidding – bidding without entrepreneur eligibility restrictions – for F block licenses available in Auction No. 35 and in all future auctions. No commenter advocates a middle ground for the F block, such as disaggregating the F block spectrum into smaller spectrum blocks or applying a tier structure to the F block and removing eligibility restrictions for some of the available licenses. Commenters argue, instead, either for maintaining the entrepreneur restrictions for all F block licenses or for lifting these restrictions entirely.⁷⁵ Some parties that favor maintaining the set-aside contend

⁷¹ See Jill Carroll and Leslie Cauley, *Demand for Airwaves May Create Shortage*, *The Wall Street Journal*, Aug. 2, 2000, at A2 (The explosion in wireless communications and the emergence of 3G technology have resulted in a shortage of spectrum to satisfy the huge demand.); Susan Schmidt and Peter S. Goodman, *Spectrum Up for Grabs*, *The Washington Post*, July 11, 2000, at E1 (“[T]he 21st-century battle over the spectrum is a scramble for a highly valuable resource in increasingly short supply.”); Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Fifth Report*, FCC-00289, at Part II.A.1.h (rel. August 18, 2000).

⁷² See, e.g., SBC Petition at 3, 11, 15; Nextel Petition at 5-8; see also, e.g., the following comments and reply comments to the SBC and Nextel Petitions: AT&T Comments at 2-4; Bell Atlantic Comments at 9-10; GTE at 11-13 (re spectrum cap); Nextel Reply at 21-22; SBC Comments at 12-13.

⁷³ See *id.*

⁷⁴ We emphasize that entrepreneurs will remain eligible to bid for open as well as closed C and F block licenses. We note, moreover, that in Auction No. 11, where D and E block, as well as F block, broadband PCS licenses were available, small and very small businesses successfully bid against larger applicants for D and E block licenses. Even though the D and E block licenses were not set aside for entrepreneurs, and neither bidding credits nor installment financing was available for these licenses, small and very small businesses were the high bidders for more than 14 percent of the D and E block licenses won in that auction. We note also that, in the *Further Notice*, we failed to take into account the fact that no bidding credits were available for D and E block licenses in Auction No. 11 or any other auction. See *Further Notice*, 15 FCC Rcd 9793-94, ¶ 40.

⁷⁵ See, e.g., AirGate Comments at i, 1-2, 6-7; AirGate Reply at 4-6; Alaska/Poplar/Eldorado Comments at 3-4; ASCENT Comments at 2-9; Burst Comments at 3-5; Burst Reply at 4; Carolina Comments at 4; Carolina Reply at 4-5; Leap Comments at i, 4-5, 17-19; Leap Reply at 10; NTCA Comments at 6-7; Northcoast Comments at 5-9; Northcoast Reply at 9; PCIA at 20-21; RK Communications Comments at 2; Advocacy Comments at 7-8; ALLTEL Reply at 2; OPM Reply at 3-5; Telecorp and Tritel Reply at 3-10. *But see, e.g.,* Nextel Comments at i, iii, 14-17, 24; Nextel Reply at 6; RPCS Comments at 6-7; RPCS Reply at 2-4; US West Comments at 4-5; Verizon (continued....)

that entrepreneurs have made business plans in reliance on their ability to vie for additional F block licenses in future closed auctions.⁷⁶ Some argue that the Commission is constrained by Section 309(j) from eliminating the eligibility restrictions.⁷⁷ Others point out that the Commission's proposals for modifying eligibility restrictions for C block licenses represent a substantial reduction in the set-aside and contend that the Commission should go no further.⁷⁸ Finally, parties believe that, because the F block does not share the C block's history of financial difficulty, there is less, if any, justification for eliminating the F block set-aside.⁷⁹

25. Conversely, commenters supporting the lifting of F block entrepreneur eligibility restrictions argue that the lack of financial difficulties in the F block indicates no further need for continued protection in the form of a set-aside.⁸⁰ Other commenters assert that eliminating the F block set-aside would further the goals of Section 309(j) by alleviating spectrum congestion, promoting new services, and advancing competition.⁸¹ VoiceStream maintains that opening F block bidding will expedite the build-out of F block markets, where progress has been slow.⁸² SBC argues that because a 30 MHz C block license is already held by an entrepreneur in most markets where a 10 MHz F block license is now available, there is no need to maintain the set-aside for F block spectrum in the name of preserving entrepreneurial opportunity in these markets.⁸³

26. We believe that it is in the public interest, and consistent with Section 309(j), to remove the set-aside for all available F block licenses. As we stated in the *Further Notice*, and as some commenters underscore, the F block has evolved in a fashion largely distinct from that of the C block.⁸⁴ The two blocks have been subject to increasingly different regulatory requirements, reflecting in large part the different bidding and marketplace histories of the two blocks and the correspondingly different equity and reliance

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Comments at 14-15; VoiceStream Comments at 5; VoiceStream Reply at 1-2, 8. *See also* BellSouth Reply at 1-5; CIRI Reply at 2; SBC Reply at 7-8.

⁷⁶ *See, e.g.*, Alaska/Poplar/Eldorado Comments at 2,3-4; Burst Comments at 3-5; Burst Reply at 4. *See also* Northcoast Comments at 7-9; Northcoast Reply at 2-5, 9.

⁷⁷ As discussed above in paragraphs 23-25, we are not compelled to retain set-aside spectrum to fulfill the objectives of Section 309(j).

⁷⁸ *See, e.g.*, Leap Comments at 4-13, 17-18; Leap Reply at 10.

⁷⁹ *See, e.g.*, Advocacy Comments at 7-8; AirGate Comments at 6-7; AirGate Reply at 4-6.

⁸⁰ *See* Nextel Comments at 14-16, 24; Nextel Reply at 6. BellSouth explains that it is a fallacy to believe that Section 309(j) requires the entrepreneur eligibility restrictions. *See* BellSouth Reply at 3-5.

⁸¹ *See* RPCS Comments at 6-8; RPCS Reply at 1-7; US West Comments at 4-5.

⁸² *See* VoiceStream Comments at 5; VoiceStream Reply at 1-2.

⁸³ *See* SBC Reply at 8.

⁸⁴ *See Further Notice*, 15 FCC Rcd at 9785-86, ¶ 19, 9788, ¶ 25, 9790, ¶ 31.

concerns applicable to bidders and licensees in each of the blocks.⁸⁵ Accordingly, as we have recognized previously, there is no longer a rationale for attempting to treat the two blocks in an identical fashion.⁸⁶ Moreover, the need for additional open spectrum that exists in the C block markets, discussed above, also applies in the F block markets; and allowing open eligibility for all available F block licenses might lead to more expeditious provision of service to consumers. Moreover, as discussed in the *Further Notice*, almost every market with an available F block license already has a significant 30 MHz C block entrepreneur presence.⁸⁷ Thus, we can modify the F block eligibility rules while preserving the diversity of opportunity and service that are goals of Section 309(j).

27. *Unsold set-aside licenses.* For Auction No. 35, we eliminate entrepreneur eligibility requirements for all C block licenses that were available but not sold in Auction No. 22.⁸⁸ For all auctions after Auction No. 35, we eliminate the entrepreneur eligibility requirements for *any* C or F block license that was available, but not sold, in Auction No. 22 or any subsequent auction. In the *Further Notice*, we proposed removing eligibility restrictions for available 15 MHz C block licenses, reasoning that they remained unsold after having been offered in closed bidding in Auction No. 22. We similarly proposed to remove eligibility restrictions on all C and F block licenses that are available, but not sold, in Auction No. 35 as well as on *all* broadband PCS licenses that remain unsold after having been available for closed bidding in any auction after Auction No. 35.

28. Burst disagrees with the proposal to lift eligibility requirements for 15 MHz licenses being offered for the second time.⁸⁹ Nextel, however, supports our proposal for 15 MHz licenses, explaining that there is no reason to believe that these licenses, which were previously offered but not sold, will prove any more popular with entrepreneurs in yet another closed auction.⁹⁰ Furthermore, Nextel urges us to extend our proposal logically to include all available 30 MHz C block licenses that were available but not sold in Auction No. 22.⁹¹ CIRI supports our proposal to lift eligibility restrictions for all C or F block licenses that are available, but not sold, in Auction No. 35 or that remain unsold after having been available for closed bidding in any future auction. As CIRI states in its comments, “if entrepreneurs have been unable or unwilling to provide service in particular areas, then eligibility restrictions should be lifted to allow the introduction of service by any provider.”⁹² No commenter opposes adoption of this proposal.

⁸⁵ *See id.* As discussed in the *Further Notice*, there has been a lack of historical controversy regarding F block licenses. *Id.* Moreover, we note that, except for licenses won by licensees with substantial C block holdings, very few F block licenses have been reclaimed by the Commission as a result of default or bankruptcy.

⁸⁶ *See id.* at 9790, ¶ 31 and n. 81.

⁸⁷ *See id.* at 9790, ¶ 31.

⁸⁸ These licenses will include both 15 MHz C block licenses and 10 MHz C block licenses that have been reconfigured from the 30 MHz C block licenses that were available but not sold in Auction No. 22.

⁸⁹ *See* Burst Comments at 5; Burst Reply at 4-5. *See also* Northcoast Reply at 2-5, 9.

⁹⁰ *See* Nextel Comments at 6-7; Nextel Reply at 6. *See also* Carolina Reply at 5; CIRI Reply at 2; US West Comments at 4-5; Verizon Comments at 5-9.

⁹¹ *See* Nextel Comments at 16 (citations omitted).

⁹² *See* CIRI Comments at 8. *See also* AirGate Comments at 7; Nextel Comments at i-ii, 5-11, 14-17, 24; SBC Comments at 10-11.

29. The failure of certain 15 MHz C block licenses to sell in Auction No. 22 indicates that closed bidding for these licenses will not necessarily result in the acquisition and construction of these licenses and in service to the public. By lifting the eligibility restrictions for these unsold licenses now, we hope to prevent additional delays in their utilization. We find persuasive Nextel's argument that the same rationale that applies to 15 MHz C block licenses should apply to 30 MHz C block licenses, and we believe that the rationale is equally applicable to all C and F block licenses that have failed to sell in Auction No. 22 or any subsequent auction. We note that no commenter opposed Nextel's suggestion to extend our proposal. Accordingly, we will implement the rule change for all C or F block licenses that were available, but not sold, in Auction No. 22 or that remain unsold after having been available for closed bidding in Auction No. 35 or in any auction thereafter.⁹³

C. Determination of Entrepreneur Eligibility

30. **Background.** To qualify as an entrepreneur under current rules, a C or F block applicant (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) must have had gross revenues of less than \$125 million in each of the last two years and must have total assets of less than \$500 million at the short-form deadline.⁹⁴ Total assets are generally determined by the applicant's most recent audited financial statements.⁹⁵ As discussed below, the grandfather exception provides that, in addition to entities qualifying as entrepreneurs at the time of the short form filing deadline, any entity that was eligible for and participated in either of the first two C block auctions will be eligible to bid in any auction of C block spectrum that begins within two years of the March 23, 1999 start date of Auction No. 22.⁹⁶ Each C or F block licensee, whether its license was acquired at auction or by transfer or assignment, must maintain its entrepreneur eligibility during the five-year holding period, which begins on the date of the initial license grant, except that a licensee's increased gross revenues or increased total assets due to nonattributable equity investments, debt financing, revenue from operations or other investments, business development, or expanded service will not be considered.⁹⁷ With respect to applications for assignment or transfer of control of C or F block licenses during the five-year holding period, the proposed transferee or assignee must meet the entrepreneur eligibility criteria at the time the assignment or transfer application is filed or the proposed transferee or assignee must already hold other C or F block licenses and, at the time of receipt of such licenses, have met the entrepreneur eligibility criteria.⁹⁸

⁹³ We note that some 15 MHz C block licenses that were not available in Auction No. 22 may be included in our auction inventory for Auction No. 35. For Auction No. 35, bidding for such licenses in Tier 1 will be open; and bidding for such licenses in Tier 2 will be closed. *See supra* ¶ 22.

⁹⁴ 47 C.F.R. § 24.709(a)(1).

⁹⁵ *Id.* § 24.720(g).

⁹⁶ *Id.* § 24.709(b)(9)(i).

⁹⁷ *See Competitive Bidding Fifth Report and Order*, 9 FCC Rcd 5532, 5605, ¶ 167; *Competitive Bidding Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403, 419-20, ¶ 27 (the Commission has a strong interest in seeing entrepreneurs grow and succeed in the PCS marketplace and will under certain circumstances allow licensees to retain their eligibility during the holding period, even if the company has grown beyond the size limitations for the entrepreneur's block (i.e., "natural growth")).

⁹⁸ 47 C.F.R. § 24.839(a)(2).

31. **Discussion.** In its comments, Nextel asks that the Commission review its rules on reporting "total assets" for entrepreneur eligibility and require applicants to report total assets as of the short form filing deadline.⁹⁹ Nextel asserts that Leap may try to qualify for Auction No. 35 based on the unavailability, at the short-form filing deadline, of Leap's audited financial statement for its fiscal year ending August 31, 2000.¹⁰⁰ In reply, Leap states that departing from a clear, bright-line test that uses credible audited numbers could facilitate manipulation of the eligibility calculations.¹⁰¹ Leap states that there is no need for it to "slip in" under the asset cap since the current rules allow it to remain eligible to participate in future C and F block auctions, even if its assets exceed \$500 million due to growth allowable under Section 24.709(a)(3).¹⁰² In short, Leap claims that the natural growth exception which allows C or F block licensees to retain their entrepreneur eligibility during the holding period establishes its eligibility for the upcoming C block auction, Auction No. 35.¹⁰³

32. Leap confuses the concept of maintaining entrepreneur eligibility for the purpose of meeting the five-year holding period¹⁰⁴ with the concept of eligibility to participate as an entrepreneur in a C or F block auction.¹⁰⁵ By allowing licensees to maintain their eligibility despite growth beyond the financial caps, the Commission intended to encourage entrepreneurs to grow and succeed during the five-year holding period. Contrary to Leap's assertions, although the Commission intended to ignore natural growth for purposes of entrepreneur eligibility during the five-year holding period, it did not intend to ignore such growth in determining eligibility to participate in future C and F block auctions. In other words, Leap, which is not eligible for the grandfather exception,¹⁰⁶ would have us read the natural growth rule, that allows a licensee to

⁹⁹ See Nextel Comments at iii, 20-23; Nextel Reply at 8.

¹⁰⁰ *Id.*

¹⁰¹ See Leap Reply at 13.

¹⁰² See *id.* at 14.

¹⁰³ In doing so, Leap also states that the assignment and transfer rule, set forth in Section 24.839, and the *Competitive Bidding Fifth Memorandum Opinion and Order* support its interpretation of the rules. See *id.*, citing *Competitive Bidding Fifth Memorandum Opinion and Order*, 10 FCC Rcd at 419-20, ¶ 27.

¹⁰⁴ See 47 C.F.R. § 24.709(a)(3).

¹⁰⁵ Under the current rules, a C or F block applicant (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) must have had gross revenues of less than \$125 million in each of the last two years and must have total assets of less than \$500 million at the short-form deadline. See 47 C.F.R. § 24.709(a)(3). Total assets are generally determined by the applicant's most recent audited financial statements. See 47 C.F.R. § 24.720(g).

¹⁰⁶ Leap was not a participant in either Auction No. 5 or Auction No. 10 and therefore is not eligible for the grandfather exception. The grandfather exception, set forth in Section 24.709(b)(9)(i), provides that, in addition to entities qualifying as entrepreneurs at the time of the short form deadline, any entity that was eligible for and participated in either of the first two C block auctions (Auction No. 5 and Auction No. 10) will be eligible to bid in any auction of C block spectrum that begins within two years of the start date of Auction No. 22 (March 23, 1999). See 47 C.F.R. § 24.709(b)(9)(i). See also *In re Applications of AirGate Wireless, L.L.C., Assignor, and Cricket Holdings, Inc., Assignee and Application of Leap Wireless International, Inc., For Authorization to Construct and Operate 36 Broadband PCS C Block Licenses, Memorandum Opinion and Order*, 14 FCC Rcd 11,827 (CWD, 1999) ("*Leap Order*"), *aff'd*, FCC 00-269 (rel. July 27, 2000). In the *Leap Order*, the Commercial Wireless (continued....)

maintain eligibility for the holding period despite growth beyond the financial caps, as an alternative grandfathering exception. If the Commission had intended the natural growth rule to be read as Leap contends, then the two-year grandfather exception for Auction No. 5 and 10 participants would have been more narrowly drafted. Instead, the Commission applied the grandfather exception to all entities that had qualified for, and participated in, the first two C block auctions.¹⁰⁷

33. Nextel's comments raise the issue of whether eligibility for C block auctions is determined by an applicant's most recently available audited financial statements, even if those statements are then a year or more out of date, or whether eligibility should be based on the relevant financial data as of the most recently completed calendar/fiscal year, even if audited financial statements for the most recent year are not available as of the short-form filing deadline.¹⁰⁸ Under Section 24.720, an entrepreneurs' block applicant must evidence its gross revenues and total assets with its most recent audited financial statements, or, if the applicant does not otherwise use audited financial statements, a certification by the applicant's chief financial officer or its equivalent. We see no need to modify these rules. We note, however, that we expect an applicant to obtain financial statements within a reasonable period of time after the close of the applicable calendar or fiscal year and to base its claim to eligibility on those financial statements. If an applicant delays, or takes action that results in delay in, the generation and/or submission of current audited financial statements in order to capture entrepreneur eligibility to which the applicant would otherwise not be entitled, it will risk being declared ineligible for auction participation or license grant or jeopardize its continuing eligibility to hold its licenses.

D. License Grouping for Bids and Competitive Bidding Design

34. **Background.** In the *Further Notice*, we tentatively concluded that we would take bids separately on each license in Auction No. 35 on a simultaneous multiple round basis as we have done in the past.¹⁰⁹ We agreed with commenters that Nextel's bulk bid proposal, under which the Commission would reconfigure the available 30 MHz C block licenses into separate 20 MHz and 10 MHz licenses and offer the newly created 20 MHz C block licenses and the available 15 MHz C block licenses together on a "bulk bid" (i.e., winner-take-all) basis, would exclude all but a very few competitors.¹¹⁰ We stated that small entities would be hard pressed to obtain the financing necessary to win and pay for the licenses and construct the systems included in the bulk bid proposal, while many other carriers would be constrained from participating by the CMRS spectrum cap.¹¹¹ We noted that our past auctions demonstrate that significant aggregations of licenses through the auction process are feasible and that bidding for each license separately is unlikely to preclude carriers from aggregating licenses on a nationwide or regional basis.¹¹²

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Division, after exhaustive evaluation of Leap's DE qualifications, found Leap to be qualified to hold the four F block (via assignment) and 36 C block licenses (won in Auction No. 22).

¹⁰⁷ See 47 C.F.R. § 24.709(b)(9)(i).

¹⁰⁸ See Nextel Comments at 20-23; Leap Reply at 12-14.

¹⁰⁹ See *Further Notice*, 15 FCC Rcd at 9791, ¶ 35.

¹¹⁰ See Nextel Petition at 18-23.

¹¹¹ See *Further Notice* at 15 FCC Rcd at 9791, ¶35.

¹¹² *Id.*

35. At the same time, we explained that we were considering implementation of a combinatorial, or package, bidding design for the auction of licenses in the 700 MHz bands in order to facilitate aggregations of complementary licenses into larger blocks. We invited parties to suggest ways in which bidders could efficiently aggregate licenses in Auction No. 35;¹¹³ although, we noted that it might be impractical to implement a package bidding design for that auction.¹¹⁴

36. **Discussion.** We reject Nextel's bulk bid proposal. Instead, we leave to the Wireless Telecommunications Bureau ("Bureau"), under its existing delegated authority, the final selection of a competitive bidding design and methodology for Auction No. 35, including the decision whether or not to implement a combinatorial bidding design for the auction.¹¹⁵ There is no support in the record for the Nextel bulk bid proposal.¹¹⁶ We continue to be concerned that, as argued by the bulk bid opponents, Nextel's suggested approach would unduly favor Nextel to the possible exclusion of most other potential applicants.¹¹⁷

37. Some of the parties that commented on ways to aggregate licenses in the auction process, argue against the use of package bidding for Auction No. 35, on the ground that such a design would be complex and impractical.¹¹⁸ Other commenters support implementation of package bidding as a way to enhance the ability of auction participants to acquire their targeted groups of licenses while reducing their exposure.¹¹⁹ In preparing for Auction No. 35, the Bureau, under its existing delegated authority and pursuant to public notice and comment, will determine the competitive bidding design most appropriate for the auction.¹²⁰ Following the Bureau's determination of the auction design, we will, if necessary, revisit the need for any rule modifications.

¹¹³ See *id.* at 9785, ¶ 17.

¹¹⁴ See *id.*

¹¹⁵ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-98, ¶16 (1997).

¹¹⁶ The comments submitted on this issue were opposed to Nextel's proposal. See Carolina Comments at 4; CTIA Comments at 3; RCA Comments at 9-10; US AirWaves Comments at 9; US AirWaves Reply Comments at 9; US West Comments at 6; US West Reply at 4; OPM Comments at i, 2, 9-10, 16; RK Communications Comments at 2.

¹¹⁷ We note that in establishing procedures for the Commission's upcoming auction of licenses in the 700 MHz bands, the first auction for which the Bureau established procedures to use a combinatorial or package bidding design, the Bureau declined to offer a limited number of packages designed by the Commission and instead allowed bidders to create their own grouping of licenses on which to make all-or-nothing bids. See "Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for September 6, 2000, Procedures Implementing Package Bidding for Auction No. 31," *Public Notice*, DA 00-1486 (rel. July 3, 2000) at 4-5.

¹¹⁸ See AT&T Comments at 4; SBC Comments at 10 n.13; VoiceStream Reply at 2-3.

¹¹⁹ See Nextel Comments at 17 n.31; PCIA Comments at 19; OPM Reply at 10-11.

¹²⁰ For a general discussion of the benefits of and difficulties with package bidding, see "Auction of Licenses in the 747-767 and 777-792 MHz Bands Scheduled for September 6, 2000, Procedures Implementing Package Bidding for Auction No. 31," *Public Notice*, DA 00-1486 (rel. July 3, 2000).

E. Grandfather Exception

38. **Background.** In the *Further Notice*, the Commission tentatively concluded that upon the merger of two entities, the grandfather exception contained in Section 24.709(b)(9)(i) should extend to the resulting entity when each of the two original entities is eligible for the exception, but not when only one of them is eligible for the exception.¹²¹ The Commission sought comment on how to determine C and F block eligibility when faced with more complex transactions.¹²² The Commission also sought comment on issues raised by Verizon in its petition for reconsideration or clarification of the *C Block Fourth Report and Order Reconsideration*.¹²³ Verizon asks us to reexamine the grandfather exception and limit resulting eligibility to those Auction No. 5 and 10 participants that won licenses in the auctions and then returned spectrum pursuant to the Commission's C block restructuring options.¹²⁴ Verizon also proposes that the entity claiming the grandfather exception must be the same company – having substantially the same ownership and control – as the one that acquired the entrepreneur status.¹²⁵

39. **Discussion.** We clarify an applicant's eligibility for the grandfather exception after it has been involved in a merger, acquisition, or other business combination, as follows. When each of the combining entities is individually eligible for the "grandfather" exception, the exception will extend to the resulting entity. When one or more of the entities are not individually eligible for the grandfather exception, the resulting entity will be eligible for the exception only so long as an originally eligible entity retains *de facto* and *de jure* control of the resulting entity.

40. We deny the Verizon petition to the extent that it asks that the exception be available only to Auction No. 5 and 10 participants that won licenses in those auctions and then returned spectrum. Despite its narrowly worded caption,¹²⁶ the rule codifying the grandfather exception is clear on its face. It applies not just to Auction No. 5 and 10 participants that returned spectrum to the Commission but also to participants in either of those auctions that either won no licenses or won licenses but did not disaggregate or return spectrum. We deny the remainder of the Verizon petition as moot in light of our clarification of the application of the grandfather exception to an auction applicant that has been involved in a business combination.

41. Alpine opposes the extension of the grandfather exception to merged entities, because merged entities have substantially different ownership than would the two entities if qualifying and bidding separately.¹²⁷ Carolina and Dobson support the Commission's proposal;¹²⁸ although, Dobson also urges the

¹²¹ See *Further Notice*, 15 FCC Rcd at 9792-93, ¶ 38; 47 C.F.R. § 24.709(b)(9)(i).

¹²² See *Further Notice*, 15 FCC Rcd at 9792-93, ¶ 38.

¹²³ Verizon Petition at 9-10.

¹²⁴ *Id.*

¹²⁵ *Id.* at 10.

¹²⁶ The caption to the grandfather exception, 47 C.F.R. § 24.709(b)(9)(i), reads, "Special rule for licensees disaggregating or returning certain spectrum in frequency block C."

¹²⁷ See Alpine Comments at 15-16. See also Nextel Comments at iii, 18-20 (a once-qualified "entrepreneur" should not be grandfathered if it has undergone ownership changes of more than 20% since its original license was issued).

Commission to extend the grandfather exception not only to the merger of entities that are each eligible for the exception, but also to the merger of entities only one of which is eligible for the exception.¹²⁹ Dobson asks the Commission to adopt a simple control analysis to extend the grandfather exception to a combination of entities only one of which is eligible for the exception if the transaction results in an entity over which the eligible entity retains control.¹³⁰ Telecorp and Tritel jointly assert that the exception should apply to the combined entity, as long as control remains in the same hands.¹³¹ Several parties support maintaining the grandfather exception in its current state,¹³² while others urge the Commission to eliminate the exception altogether.¹³³

42. We do not believe that, when entities eligible for the grandfather exception combine, the resulting entity should be penalized. Accordingly, we clarify that, under such circumstances, the grandfather exception will extend to the resulting entity. For situations where at least one of the entities is not individually eligible for the grandfather exception, we find persuasive Dobson's suggestion that we adopt a simple control analysis to determine whether an entity is "substantially the same" as the prior auction participant in Auction No. 5 or 10.¹³⁴ Pursuant to this reasoning, the grandfather exception should be available to the resulting entity, so long as at least one entity that was originally eligible for the grandfather exception retains *de facto* and *de jure* control over the resulting entity. Other than to make these clarifications, we see no need to modify the grandfather exception, which will apply to auctions of C block licenses that begin on or before March 23, 2001.

F. Bidding Credits

43. **Background.** In the *Further Notice*, we sought comment on whether we should make adjustments to the current C and F block bidding credits for future auctions based on whether such auctions are open to all bidders or subject to eligibility restrictions. More specifically, we sought comment on whether we should retain existing small and very small business bidding credits (15 percent and 25 percent, respectively) for licenses subject to open bidding or increase them to 25 percent and 40 percent, respectively.¹³⁵ For licenses subject to closed bidding, we sought comment on whether we should increase the

(Continued from previous page) _____

¹²⁸ See Carolina Comments at 5; Carolina PCS Reply at 7-8; Dobson Comments at 11-12.

¹²⁹ See Dobson Comments at 12.

¹³⁰ See *id.*

¹³¹ See Telecorp and Tritel Comments at 12.

¹³² See CTIA Comments at 3-4; RK Communications Comments at 2.

¹³³ See BellSouth Comments at ii, 10-11 (the grandfather exception should be eliminated in an open auction); Nextel Comments at iv, 4, 20; Nextel Reply at 6-7; Twenty First Wireless Comments at 11-12; Twenty First Wireless Reply at 5-6; Verizon Comments at 15-16 (the Commission should repeal the grandfather exception or, at a minimum, clarify the rule because entities that participated for the first C block auction, but did not win licenses, are eligible for the exception even though they have grown beyond the eligibility criteria); ALLTEL Reply at 3.

¹³⁴ See Dobson Comments at 12. See also Telecorp and Tritel Comments at 2-3, 11-12; PCIA Reply at 3 n.3

¹³⁵ See *Further Notice*, 15 FCC Rcd at 9794, ¶ 41.

bidding credits, retain them at the current level, or eliminate them entirely.¹³⁶

44. **Discussion.** For licenses subject to open bidding, we will maintain the current level of bidding credits for small and very small businesses, and consortia thereof, of 15 percent and 25 percent, respectively. For licenses subject to closed bidding, we will eliminate all bidding credits. While a number of commenters, primarily small and very small businesses, support an increase in bidding credits for licenses won in open bidding,¹³⁷ other parties contend that the existing bidding credits would enable small and very small businesses to compete successfully in open auctions.¹³⁸ We agree with the latter contingent that bidding credits of 15 and 25 percent will allow effective competition by small businesses in open C and F block bidding. We note that in our Specialized Mobile Radio (SMR) 900 MHz auction – using bidding credits of 10 percent and 15 percent – 75 percent of the winning bidders were small businesses, winning 26 percent of the licenses. Moreover, in Auction No. 11, the auction of D, E, and F block licenses, small and very small business were the high bidders for 141 of the 986 D and E block licenses won in that auction, even though bidding credits are not available for D and E block licenses.¹³⁹

45. With respect to closed bidding, we believe that the continued use of bidding credits in restricted auctions would not necessarily serve its intended purpose. As we explained in the *Further Notice*, among those eligible to participate in entrepreneurs' block auctions, some well capitalized new entities with small gross revenues qualify for bidding credits, while some older companies with small total assets and net revenues but high gross revenues do not. According to Dobson, bidding credits in set-aside auctions "simply skew these auctions in favor of well-capitalized applicants that are carefully structured to shield deep-pocketed investors from attribution."¹⁴⁰ For this reason, Dobson urges us to eliminate the use of bidding credits altogether in restricted auctions. We agree with Dobson and other commenters that support Dobson's position.¹⁴¹ Furthermore, the results of Auction No. 11 suggest that if small and very small

¹³⁶ See *id.* at 9794, ¶ 42.

¹³⁷ These commenters favor an increase in the bidding credits to 25 percent and 40 percent, respectively, for small and very small businesses. See AirGate Comments at i, 2, 7; ASCENT Comments at 4; Advanced Comments at 5; AT&T Comments at 7; Burst Comments at 5, 10; OPM Comments at 2, 5, 11-12, 16; Carolina Comments at 5-6 and Carolina Reply at 5-7; McBride Comments at 2; Telecorp and Tritel Comments at 15-16; Telecorp and Tritel Reply at 20-21; Alaska/Poplar/Eldorado Comments at 2, 6. See also Powertel Comments at 6; RK Communications at 3; OPM Reply at 11-12 (support an increase in bidding credits but do not suggest an amount). See generally Northcoast Comments at 10 (an increase in bidding credits should never be used as a substitute for eligibility restrictions in the context of a C and F block reauction); PCIA Comments at 1-3 (the availability of bidding credits in the absence of an entrepreneurs' block would have no measurable effect on entrepreneur participation); RTG/OPASTCO Comments at 6 (an increase in bidding credits will not make a difference when a small company is bidding against a large carrier). Other commenters support an increase of bidding credits of more than 25 percent and 40 percent, respectively, for small and very small businesses in "open" bidding. See Leap Comments at 4, 19; U.S. AirWaves Comments at 6-7 and U.S. AirWaves Reply at 7-8.

¹³⁸ See BellSouth Comments at ii, 11-12; VoiceStream Comments at 12; CTIA Comments at 4. See generally Nextel Comments at 14; Dobson Comments at 16. Three other parties offer alternative proposals. See Burst Comments at 5-7, 10; Carolina Reply at 5-7; Twenty First Wireless Comments at 12.

¹³⁹ See *supra* note 78.

¹⁴⁰ See Dobson Comments at 13-16; Dobson Reply at 5-6.

¹⁴¹ See AirGate Comments at i, 2; CIRI Comments at 9-10; CIRI Reply at 5; America Connect Comments at 4-5; Telecorp and Tritel Reply at 21.

businesses can compete effectively in open bidding without bidding credits, they can certainly compete effectively in closed bidding without bidding credits.

G. Transfer Requirements

1. Open bidding.

46. **Background.** In the *Further Notice*, we proposed to modify the transfer restrictions for C and F block licenses to correspond to our proposed changes in entrepreneur eligibility requirements and to encourage rapid construction of C and F block systems.¹⁴² We tentatively concluded that C and F block licenses won pursuant to open bidding at Auction No. 35, or in any future open auction for such spectrum, would not be subject to the restrictions against transfers to non-entrepreneurs.¹⁴³

47. **Discussion.** Pursuant to our tentative conclusion, we will not subject C and F block spectrum licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum, to a five-year holding and limited transfer rule. Thus, such licenses may be transferred or assigned at any time after grant to any qualified entity, entrepreneur or not. Several commenters support removing the transfer restrictions for C and F block licenses won pursuant to open bidding at Auction No. 35, or any future open auction for such spectrum.¹⁴⁴ OPM supports eliminating transfer restrictions on the basis that there is little justification for restricting the transfer of licenses to entrepreneurs when non-entrepreneurs are eligible to bid on the spectrum at auction.¹⁴⁵ BellSouth asserts that there is no need for a limitation on transfer or assignment for licenses won in an open auction because there is no unjust enrichment associated with such a license.¹⁴⁶ None of the commenters urge maintaining transfer restrictions on licenses won in open bidding. The only purpose for restricting the transfer of C and F block licenses to non-entrepreneurs is to ensure the integrity of the set-aside auction process. Because these licenses will now be subject to competitive bidding in open auctions, there is no longer a need to restrict their transfer and assignment solely to entrepreneurs.

2. Closed bidding.

48. **Background.** With respect to licenses won in closed bidding in any C or F block auction, past or future, we sought comment on tying the holding period to completion of build-out requirements.¹⁴⁷ Under our proposal, a licensee would be able to assign or transfer its license to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed by our rules.¹⁴⁸ In this way, we sought to minimize the trafficking of C and F block licenses

¹⁴² See *Further Notice*, 15 FCC Rcd at 9795, ¶ 44.

¹⁴³ *Id.*

¹⁴⁴ See BellSouth Comments at 13; CIRI Comments at 2-4, 8-9; OPM Comments at 13,16; SBC Comments at i, 2-3, 11; SBC Reply at 8-9; VoiceStream Comments at 6-7; VoiceStream Reply at 1, 5.

¹⁴⁵ See OPM Comments at 13.

¹⁴⁶ See BellSouth Comments at 13.

¹⁴⁷ See *Further Notice*, 15 FCC Rcd at 9795, ¶ 44.

¹⁴⁸ *Id.* See also 47 C.F.R. § 24.203.

won pursuant to closed bidding, while enhancing the likelihood of early build-out.¹⁴⁹

49. **Discussion.** We will allow a licensee to assign or transfer a license won in closed bidding to any qualified entity, entrepreneur or not, as soon as the licensee has satisfied its first construction benchmark. The decision to transfer a restricted license to a non-entrepreneur before the end of the five-year holding period in this manner must be made affirmatively by those in control of the entrepreneur.¹⁵⁰ As discussed below, even under our modified rule, an early transfer or assignment may be subject to unjust enrichment payment requirements.

50. Most commenters that addressed this issue support the elimination of transfer restrictions upon completion of the first construction benchmark for licenses won in closed bidding in any C or F block auction, past or future.¹⁵¹ VoiceStream supports eliminating transfer restrictions on C and F block licenses, but disagrees with the Commission's proposal that the elimination of transfer restrictions on licenses won in closed bidding should be tied to completion of build-out requirements.¹⁵² Other commenters advocate retention of the transfer restrictions in "closed" auctions.¹⁵³ In our estimation, permitting such assignments and transfers will encourage rapid build-out and service to the public, two objectives of Section 309(j), while at the same time providing C and F block licensees with the ability to access capital. The result should be increased competition and more efficient spectrum use.¹⁵⁴

¹⁴⁹ See *Further Notice*, 15 FCC Rcd at 9795, ¶ 44.

¹⁵⁰ See *Competitive Bidding Fifth Memorandum Opinion and Order*, 10 FCC Rcd at 454-56, ¶¶ 93-96 ("[A]greements between [entrepreneurs] and strategic investors that involve terms (such as management contracts combined with rights of first refusal, loans, puts, etc.) that cumulatively are designed financially to force the [entrepreneur] into a sale (or major refinancing) will constitute a transfer of control under our rules."). See also *Leap Order*, 14 FCC Rcd at 11,836, ¶ 20, *aff'd*, FCC 00-269 (rel. July 27, 2000).

¹⁵¹ See AT&T Comments at 2, 9-10; Advanced Comments at 5; AirGate Comments at i, 2, 9; ALLTELL Reply at 3; BellSouth Comments at ii, 12-13; Carolina Reply at 8-9; OPM Comments at 13, 16; SBC Comments at i, 2-3. See also CIRI Comments at 6 (eliminate transfer restrictions on incumbent licensees but impose a one-year holding period for licenses won in "closed" auctions to ensure that qualified entrepreneurs are acquiring licenses for their own participation); STPCS Comments at 1, STPCS Reply at 1 (permit transfers to non-designated entities before the first construction benchmark, provided the licensee has already met the benchmark or can show "substantial service" throughout its system); Twenty First Comments at 9-10 (there should be no restrictions on very small Native American entrepreneurs); Telecorp and Tritel Reply at 22-23 (Telecorp and Tritel does not oppose lifting transfer restrictions but believes that any modification to existing transfer limitations must lie solely with the qualified entity component of the entrepreneurial licensee).

¹⁵² See VoiceStream Comments at 6; VoiceStream Reply at 5-6.

¹⁵³ See Alaska/Poplar/Digital Comments at 4; Alpine Comments at 16-17 (allowing entrepreneurs to sell to large carriers upon construction will undermine the establishment of stable, entrepreneur-based competition); Leap Comments at 20 (current transfer restrictions should be maintained because maintaining a restricted aftermarket in entrepreneur's block spectrum remains an important tool to ensure that entrepreneurs are able to acquire additional spectrum and to prevent large carriers from warehousing spectrum); RK Communications Comments at 3-4 (strongly opposes proposed changes to C and F block transfer restrictions).

¹⁵⁴ We note, moreover, that we are nearing the end of the five-year holding period for C block licenses won in Auction No. 5 and 10.

51. Normally, if a C or F block licensee that used a bidding credit assigns or transfers its license within the first five years after the initial license grant date to an entity not qualifying for a bidding credit, or as favorable a bidding credit, the licensee is subject to an unjust enrichment payment requirement.¹⁵⁵ In the case of early transfers or assignments of C block licenses won in Auctions No. 5 and 10, where virtually all bidders, and all license winners, qualified for a single 25 percent bidding credit, we see no purpose in requiring the payment. When all bidders are given the same bidding credit, the competitive effect is the same as if no bidder has a credit. Thus, bidding credits likely did not affect the outcome of those auctions in terms of who won or how much money was paid to the government. Accordingly, allowing the early sale of a C block license by an Auction No. 5 or 10 licensee would not constitute unjust enrichment.¹⁵⁶ When there is an early transfer or assignment of a license won in Auctions No. 11 or 22, or of any other license won in closed bidding, we will continue to require any applicable unjust enrichment payment. In Auctions No. 11 and 22, where two levels of bidding credits were used and a significant number of bidders and winners did not receive a bidding credit, the use of such credit by some bidders may well have influenced the results of the auction.

3. System-wide satisfaction of construction benchmark.

52. **Background.** In the *Further Notice*, we sought comment on whether we should, under certain circumstances, evaluate an incumbent licensee's compliance with construction requirements on a system-wide basis.¹⁵⁷ Noting that at least one carrier had argued that it needs the flexibility to sell and exchange licenses in order to restructure its business plans, we sought comment on whether we should allow a carrier to exchange and transfer licenses if the carrier can demonstrate "substantial service" throughout its system, rather than in a particular market.¹⁵⁸ We also sought comment on any other modifications to our transfer restrictions that would provide incumbent licensees with the flexibility to restructure their business plans without decreasing their incentive to rapidly construct systems and place them into operation.¹⁵⁹

53. **Discussion.** Although several commenters urge us to do so,¹⁶⁰ we do not believe that we should

¹⁵⁵ See 47 C.F.R. § 1.2111(d).

¹⁵⁶ Accordingly, we will not require a bidding credit unjust enrichment payment upon the transfer to an entrepreneur that is not a small business of a license won in Auction No. 5 or 10 within the first five years after the date of the initial license grant, even if the transferor or assignor has not yet satisfied its initial construction benchmark requirement. We are *not*, however, eliminating other unjust enrichment payment requirements for licenses won in Auction No. 5 and 10. See *id.* § 1.2111.

¹⁵⁷ See *Further Notice*, 15 FCC Rcd at 9795, ¶ 45.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ See AirGate Comments at 9 (recommends elimination of the transfer requirements upon completion of first construction benchmark on a system wide basis rather than a market-by-market basis); Carolina Comments at 8; Carolina Reply at 8-9; CIRI Comments at 4-5 (if the Commission requires any build-out before permitting license transfers, the only reasonable method for evaluating build-out is on a system-wide basis); CIRI Reply at 4-5; STPCS Comments at 4; STPCS Reply at 1 (urges the Commission to permit transfer and assignment of C and F block licenses to non-entrepreneurs prior to expiration of the first construction benchmark period, provided the licensee has already met the benchmark or can demonstrate "substantial service" throughout its system.); VoiceStream Comments at 11-12 (the Commission should allow an incumbent C or F block licensee that has not (continued....))

allow a carrier to exchange and transfer licenses where the carrier can demonstrate “substantial service” throughout its system, but not in the particular market that would be affected by the transfer. Although permitting such transfers might provide incumbent licensees with the flexibility to restructure their business plans, we believe that it would also remove an important incentive for carriers to construct systems rapidly and place them into operation in all markets where they are licensed. If we adopt a system-wide “substantial service” standard, carriers may choose to build out selectively in more populous markets at the expense of less populated areas in anticipation of transferring or exchanging licenses. Also, an entrepreneur could acquire a license in a closed auction and immediately sell the newly acquired – and wholly unconstructed – license on the open market so long as the entrepreneur satisfied the system-wide standard, even with the newly acquired license included in its “system.” We do not think that such a result is consistent with making licenses available for closed bidding by entrepreneurs.

H. License Cap

54. **Background.** In the *Further Notice*, we tentatively concluded that we would remove from the Commission’s rules Section 24.710, which prohibits an auction applicant from winning (but not from acquiring in the secondary market)¹⁶¹ more than 98 C and F block licenses.¹⁶²

55. **Discussion.** We adopt our proposal to remove Section 24.710 from the Commission’s rules. When established in 1994, this license cap was intended to facilitate a fair distribution of licenses within the C and F blocks by preventing an entity from winning more than approximately 10 percent of the then-total of 986 D and F block licenses.¹⁶³ In the *Further Notice*, we explained that the Commission has already achieved its objective of disseminating the C and F block licenses among a variety of entrepreneurs. While most commenters agree that the license cap has outlived its purpose,¹⁶⁴ a few believe that the cap is still necessary to prevent big applicants from acquiring large numbers of licenses.¹⁶⁵ We believe that the license cap is no longer necessary. Not only is there already substantial diversity among C and F block licensees, but our decision today to reconfigure each available 30 MHz C block license into three 10 MHz licenses – tripling the number of available C block licenses – and to eliminate the eligibility restrictions for many of the available C block licenses, and all of the available F block licenses, should enhance that diversity.

I. Spectrum Cap

56. **Background.** In the *Further Notice*, we tentatively concluded that we would continue to apply

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met the build-out benchmarks to assign or transfer licenses to any entity upon a showing of “substantial service” to 25 percent or more of the combined population in its system, rather than on a market-specific basis).

¹⁶¹ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5606, ¶ 171 (1994) (“*Competitive Bidding Fifth Report and Order*”).

¹⁶² See *Further Notice*, 15 FCC Rcd at 9796-97, ¶ 47; see 47 C.F.R. § 24.710.

¹⁶³ *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5606, ¶ 170.

¹⁶⁴ See AirGate Comments at i, 2, 9; BellSouth Comments at 13-14; Burst Comments at 8-9; Carolina Comments at 9; CTIA Comments at 5; CIRI Comments at 9; VoiceStream Comments at 12-13.

¹⁶⁵ See Alpine Comments at 17; OPM Comments at i, 3,14-15; RK Communications Comments at 4.

the CMRS spectrum cap, as set forth in Section 20.6 of the Commission's rules,¹⁶⁶ to the spectrum awarded in the upcoming C and F block auction. Almost a year ago, we determined in our *Biennial CMRS Spectrum Cap Order* that the CMRS spectrum cap, with some modification, continued to be an efficient means to promote competition and protect the public interest.¹⁶⁷ In addition, we established and clarified a process by which any carrier with a demonstrable need for additional spectrum to provide 3G or other advanced services in a particular geographic area could seek a waiver of the spectrum cap rule.¹⁶⁸ Finally, we stated that we would be reexamining whether to retain, modify, or eliminate the CMRS spectrum cap as part of our year 2000 biennial review.¹⁶⁹

57. **Discussion.** We conclude that we will continue to apply the CMRS spectrum cap to the C and F block licenses to be auctioned. Those parties requesting that the cap be eliminated with respect to this spectrum have not provided sufficient bases in the record to revise a rule or eliminate the cap in the context of this particular auction of initial licenses.

58. In the comments on this *Further Notice*, almost all of the commenters supported our tentative conclusion not to eliminate the CMRS spectrum cap with respect to these C and F block licenses. They agreed with our general conclusion that the parties requesting elimination of the cap have not provided the Commission sufficient bases for revising the CMRS spectrum cap.¹⁷⁰ Only four commenters, including three of the parties that petitioned the Commission earlier this year (discussed below), opposed our tentative conclusion; they did not, however, supply any additional substantive arguments¹⁷¹ to those raised in the petitions filed earlier this year.

59. As we indicated in the *Further Notice*, we did not find that those petitions requesting waiver, or

¹⁶⁶ See 47 C.F.R. § 20.6.

¹⁶⁷ See 1998 Biennial Regulatory Review – Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98-205, *Report and Order*, 15 FCC Rcd 9219, 9221-22, ¶¶ 1-2, 9222-23, ¶¶ 5-6, 9229-49, ¶¶ 20-65, 9253-57, ¶¶ 77-85 (1999) (“*Biennial CMRS Spectrum Cap Order*”). Specifically, we determined that the 45 MHz spectrum cap should remain in place except in rural areas, defined as rural service areas (RSAs), where we raised the cap to 55 MHz. *Id.* at 9253-57, ¶¶ 77-85. The Commission first instituted a CMRS spectrum cap in 1994, and reaffirmed the spectrum cap in 1996. See *id.* at 9224-25, ¶ 9, 9226-27, ¶¶ 11-13.

Two parties have filed petitions for reconsideration of the *Biennial CMRS Spectrum Cap Order*, while a third has filed a petition for clarification. We will address these petitions in a separate order.

¹⁶⁸ *Id.* at 9255-56, ¶ 82.

¹⁶⁹ *Id.* at 9232, ¶ 26.

¹⁷⁰ See Advanced Comments at 6; AirGate Comments at 9-10; Alpine Comments at 17; ASCENT Comments at 3-4; Carolina Comments at 9; Burst Comments at 7-8; Burst Reply at 5; Leap Comments at 8-9, 20-21; Northcoast Comments; OPM Comments at 15; OPM Reply at ii; VoiceStream Comments at 13; VoiceStream Reply at 7-8; US West Comments at 6-7; US West Reply at 2, 4; U.S. AirWaves Comments at 9-10, U.S. AirWaves Reply at 8-9; U.S. AirWaves *Ex Parte* Comments at 1; RK Communications Comments at 4; Powertel Comments at 3-4, 7; PCIA, Polycell, and CFW Reply at 14; Southern Reply at 1-8; Conestoga *Ex Parte* Comments at 3.

¹⁷¹ See AT&T Comments at 4-6; AT&T Reply at 1-2; BellSouth Comments at 14-15; Verizon Comments at 4, 20-24; CTIA Comments at 5-6.

limited forbearance from application, of the CMRS spectrum cap were persuasive.¹⁷² In requesting waiver or forbearance, AT&T, Bell Atlantic, BellSouth, and GTE only supplied very general assertions that, absent lifting of the cap, they would face considerable difficulty rolling out 3G and other advanced broadband services.¹⁷³ We agree with most of the commenters to the petitions¹⁷⁴ that the petitioners failed to satisfy the waiver standard set forth either in the *Biennial CMRS Spectrum Cap Order* or in Section 1.3 of the Commission's rules.¹⁷⁵ We also agree that Bell Atlantic failed to establish the basis for reversing our determination that the spectrum cap promoted the public interest, as would be necessary for granting a forbearance request.¹⁷⁶ Finally, we find unpersuasive GTE's argument that the CMRS spectrum cap does not apply to the C and F block spectrum in the upcoming auction, and therefore deny its request for a declaratory ruling.¹⁷⁷

60. As a practical matter, we believe that our decision to reconfigure the 30 MHz blocks of C block spectrum into 10 MHz blocks will better enable all carriers to obtain additional spectrum in the vast majority of markets without the need to exceed the CMRS spectrum cap. In only a few locations have carriers accumulated spectrum up to the CMRS spectrum cap limits, either the general 45 MHz cap or the 55 MHz cap that applies to rural areas. More particularly, in the upcoming C and F block auction, almost all carriers in every market could obtain additional spectrum in blocks of 10 MHz (or 15 MHz where applicable) and still comply with the spectrum cap without any need for disaggregation.¹⁷⁸ Finally, as we

¹⁷² See *Further Notice*, 15 FCC Rcd at 9797-98, ¶¶ 49-50.

¹⁷³ See AT&T Waiver Petition at 2-6; AT&T Reply at 3; Bell Atlantic Forbearance Petition at 8-13; BellSouth Waiver Petition at 2-5; GTE Declaratory Ruling Petition at 5-7; GTE Reply at 12.

¹⁷⁴ Three of these petitions were placed on public notice. See "Wireless Telecommunications Bureau Seeks Comment on AT&T Wireless Services, Inc., BellSouth Corporation and Bell Atlantic Mobile, Inc. Petitions Regarding CMRS Spectrum Cap Limits," *Public Notice*, DA 00-318 (rel. February 18, 2000). Petitioners and commenters are listed in Appendix C. Twenty-three of the twenty-five commenters to this public notice opposed petitioners' requests. See generally Alaska Digitel, Poplar, and Eldorado Comments; Alaska, Poplar, and Eldorado Reply; American Wireless Comments; American Wireless Reply; Carolina Comments; CIRI Comments; CT Comments; CT Reply; Georgetown Comments; Leap Comments; Leap Reply; NTCA Comments; Nextel Comments; NextWave and NextWave Power Comments; PCIA Comments; RCA Comments; RTG Comments; SBC Comments; SMR Comments; Sprint Comments; TeleCorp Comments; TeleCorp Reply; Tritel Comments; Tritel Reply; VoiceStream Comments; Alpine Reply; Northcoast Reply. Only CTIA and GTE supported the petitions. See generally CTIA Comments; GTE Comments; GTE Reply.

¹⁷⁵ 47 C.F.R. § 1.3.

¹⁷⁶ Under Section 10 of the Communications Act, the Commission can forbear from applying a regulation only if it determines, among other things, that forbearance is "consistent with the public interest." 47 U.S.C. § 160.

¹⁷⁷ See GTE Declaratory Ruling Petition at 2, 7-8. Since first instituting the CMRS spectrum cap in 1994, the cap has been applied to the entire 180 MHz of broadband CMRS spectrum, including the 40 MHz of C and F block spectrum. See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment Of Mobile Services, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd. 7988, 8109-10, ¶¶ 263-64 (1994); see also *Biennial CMRS Spectrum Cap Order*, 15 FCC Rcd at 9254-56, ¶¶ 78-83.

¹⁷⁸ For instance, in those markets in which the C block will be divided into 10 MHz blocks of spectrum, our analysis indicates that relatively few carriers currently have more than 35 MHz of spectrum in markets in which the 45 MHz cap applies.

noted above, we will shortly issue a Notice of Proposed Rulemaking as part of our year 2000 biennial review of the spectrum cap rule.¹⁷⁹ That proceeding will provide the Commission a better opportunity to revisit, in a more comprehensive manner than in this context, issues pertaining to the CMRS spectrum cap, taking into consideration existing competitive conditions and technological developments that could affect the continued need for the cap.

J. Late Filing

61. **Background.** The *Further Notice* established 7 p.m., July 12, 2000, as the time and date after which *ex parte* and other presentations regarding the *Further Notice* would be prohibited.¹⁸⁰ On July 7, 2000, we extended this deadline until 7 p.m., July 17, 2000.¹⁸¹

62. **Discussion.** The Personal Communications Industry Association (“PCIA”) requests that we accept its supplemental comments filed on July 21, 2000, arguing that the relevant information did not become public until publication of a July 19, 2000 newspaper article.¹⁸² Nextel opposes the PCIA request, pointing to the July 17, 2000 deadline. While the Commission does not often establish an *ex parte* presentation cut-off deadline, we did so in this proceeding in order to ensure sufficient time to consider the voluminous record.¹⁸³ Upon review of PCIA’s July 21, 2000 request, and in light of our deadline, we are not persuaded that consideration of PCIA’s late-filed supplemental comments is warranted. Accordingly, we deny PCIA’s request.

IV. PROCEDURAL MATTERS AND ORDERING CLAUSES

A. Final Regulatory Flexibility Analysis

63. Pursuant to the Regulatory Flexibility Act, the Final Regulatory Flexibility Analysis is attached as Appendix C. *See* 5 U.S.C. § 604.

B. Paperwork Reduction Act Analysis

64. This Order contains neither a new nor a modified information collection.

C. Ordering Clauses

65. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(r), and 309(j)

¹⁷⁹ The Commission reviews the CMRS spectrum cap biennially, pursuant to Section 11 of the Communications Act, as amended. 47 U.S.C. § 161.

¹⁸⁰ *Further Notice*, 15 FCC Rcd at 9773, 9800, ¶ 57. *See* 47 C.F.R. §§ 1.1200(a) and 1.1202(a).

¹⁸¹ “Deadline for Final *Ex Parte* and Other Presentations Responding to Issues Raised in Further Notice of Proposed Rulemaking in WT Docket No. 97-82 Extended to July 17, 2000,” *Public Notice*, DA 00-1531, (rel. July 7, 2000).

¹⁸² PCIA Petition (July 21, 2000).

¹⁸³ Since the filing of the SBC and Nextel Petitions, we have received approximately 300 filings in this proceeding. *See infra* Appendices A-C (in some cases, multiple *ex parte* presentations filed by the same party are represented in an appendix by a single entry).

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), the Petition for a Waiver of Section 24.709 and for Expedited Action filed by SBC Communications Inc. on January 21, 2000 IS DISMISSED in part as moot and DENIED in all other respects.

66. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(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), the Petition for Expedited Rulemaking or, in the Alternative, Waiver of the Commission's Rules by Nextel Communications, Inc. on January 31, 2000 IS DISMISSED in part as moot and DENIED in all other respects.

67. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(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), the Petition for Waiver and Expedited Action filed by AT&T Wireless Services, Inc. on February 15, 2000 IS DISMISSED in part as moot and DENIED in all other respects.

68. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(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), the Petition for Waiver and Expedited Action filed by BellSouth Corporation on February 17, 2000 IS DISMISSED in part as moot and DENIED in all other respects.

69. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(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), the Petition for Limited Forbearance filed by Bell Atlantic Mobile, Inc. on February 17, 2000, IS DENIED.

70. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(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), the Petition for Waiver by Sprint Spectrum L.P. dba Sprint PCS on February 22, 2000, IS DISMISSED as moot.

71. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(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), the Petition for Rulemaking by the Cellular Telecommunications Industry Association on February 22, 2000, IS GRANTED in part and DENIED in all other respects.

72. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(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), the Petition for Waiver by US WEST Wireless, LLC on March 1, 2000, IS DISMISSED as moot.

73. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(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), the Petition for Declaratory Ruling and/or Waiver filed by GTE Service Corporation on March 8, 2000, IS DISMISSED in part as moot and DENIED in all other respects.

74. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(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), the Petition for Reconsideration (Expedited Action Requested) by US WEST Wireless, LLC and Sprint Spectrum L.P. dba Sprint PCS on April 4, 2000, IS DISMISSED in part as moot and DENIED in all other respects.

75. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(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), the Petition for Clarification or Reconsideration by Verizon Wireless on April 17, 2000, IS DENIED in part and DISMISSED as moot in all other respects.

76. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(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), the Motion for Extension of Time by the Personal Communications Industry Association on June 19, 2000, IS DISMISSED as moot.

77. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(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), the Motion to Accept Late-Filed Supplemental Comments by the Personal Communications Industry Association on July 21, IS DENIED.

78. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 5(b), 5(c)(1), 309(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 *Sixth Report and Order* is hereby ADOPTED, and Sections 24.202, 24.203, 24.229, 24.709, 24.710, 24.712, 24.714, 24.717, 24.720, and 24.839 of the Commission's rules, 47 C.F.R. Sections 24.202, 24.203, 24.229, 24.709, 24.710, 24.712, 24.714, 24.717, 24.720, and 24.839, are amended as set forth in Appendix E, effective 60 days after publication in the Federal Register.

79. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Sixth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

80. 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

V. APPENDIX A - COMMENTS AND PETITIONS IN RESPONSE TO THE *FURTHER NOTICE***Comments**

1. Advanced Telecommunications Technology Inc. (“Advanced”)
2. AirGate Wireless (“AirGate”)
3. Alaska DigiTel, LLC (“Alaska”), Poplar PCS, LLC (“Poplar”), and Eldorado Communications, LLC (“Eldorado”)
4. Alpine PCS, Inc. (“Alpine”)
5. America Connect, Inc. (“America Connect”)
6. Association of Communications Enterprises (“ASCENT”)
7. AT&T Wireless Services, Inc. (“AT&T”)
8. BellSouth Corporation (“BellSouth”)
9. Burst Wireless, Inc. (“Burst”)
10. Carolina PCS I Limited Partnership (“Carolina”)
11. The Cellular Telecommunications Industry Association (“CTIA”)
12. Choice Wireless, LC (“Choice”)
13. ComScape Telecommunications (“ComScape”)
14. Cook Inlet Region, Inc. (“CIRI”)
15. Dobson Communications Corporation (“Dobson”)
16. Leap Wireless International, Inc. (“Leap”)
17. Vincent McBride (“McBride”)
18. National Telephone Cooperative Association (“NTCA”)
19. Nextel Communications, Inc. (“Nextel”)
20. NextWave Personal Communications, Inc. and NextWave Power Partners Inc. (collectively “NextWave”)
21. Northcoast Communications, LLC (“Northcoast”)
22. OPM Auction Co. (“OPM”)
23. Personal Communications Industry Association (“PCIA”)
24. Polycell Communications, Inc. (“Polycell”)
25. Powertel Inc. (“Powertel”)
26. Rahda Krushn Communications (“RK Communications”)
27. Roseville, PCS (“RPCS”)
28. Rural Cellular Association (“RCA”)
29. Rural Telecommunications Group (“RTG”) and Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”)
30. SBC Communications, Inc. (“SBC”)
31. STPCS Joint Venture, LLC (“STPCS”)
32. TeleCorp PCS, Inc and Tritel Communications, Inc. (collectively “Telecorp and Tritel”)
33. Twenty First Wireless, Inc. (“Twenty First Wireless”)

34. U.S. AirWaves, Inc. (“U.S. AirWaves”)
35. U.S. Small Business Administration, Office of Advocacy (“Advocacy”)
36. US West Wireless, LLC (“US West”)
37. Verizon Wireless (“Verizon”)
38. VoiceStream Wireless (“VoiceStream”)

Reply Comments

1. AirGate Wireless (“AirGate”)
2. ALLTEL Corporation (“ALLTEL”)
3. Alpine PCS, Inc. (“Alpine”)
4. AT&T Wireless Services, Inc. (“AT&T”)
5. BellSouth Corporation (“BellSouth”)
6. Burst Wireless, Inc. (“Burst”)
7. Carolina PCS I Limited Partnership (“Carolina”)
8. Cook Inlet Region, Inc. (“CIRI”)
9. Dobson Communications Corporation (“Dobson”)
10. Leap Wireless International, Inc. (“Leap”)
11. Nextel Communications, Inc. (“Nextel”)
12. Northcoast Communications, LLC (“Northcoast”)
13. North Coast Mobile Communications, Inc. (“North Coast”)
14. OPM Auction Co. (“OPM”)
15. Personal Communications Industry Association (“PCIA”), Polycell Communications, Inc. (“Polycell”) and CFW Communications (“CFW”)
16. Rainbow/Push Coalition (“Rainbow/Push”)
17. Roseville PCS, Inc. (“RPCS”)
18. Rural Cellular Association (“RCA”)
19. SBC Communications Inc. (“SBC”)
20. Southern LINC (“Southern”)
21. Sprint PCS (“Sprint”)
22. STPCS Joint Venture, LLC (“STPCS”)
23. TeleCorp PCS, Inc. and Tritel Communications, Inc. (“Telecorp and Tritel”)
24. Twenty First Wireless, Inc. (“Twenty First Wireless”)
25. U.S. AirWaves (“U.S. AirWaves”)
26. US West Wireless, LLC (“US West”)
27. VoiceStream Wireless Corporation (“VoiceStream”)

Ex Partes

1. ALLTEL Communications, Inc. (“ALLTEL”)
2. Alpine PCS, Inc. (“Alpine”)
3. AT&T Wireless Services, Inc. (“AT&T”)
4. Bell Atlantic Mobile (“Bell Atlantic”)
5. BellSouth Cellular Corporation (“BellSouth”)
6. Burst Wireless, Inc. (“Burst”)
7. Conestoga Wireless Company (“Conestoga”)
8. Dobson Communications Corporation (“Dobson”)
9. National Congress of American Indians (“NCAI”)
10. Nextel Communications, Inc. (“Nextel”)
11. Northcoast Communications (“Northcoast”)
12. Personal Communications Industry Association (“PCIA”)
13. Polycell Communications, Inc. (“Polycell”)
14. Qwest Wireless (“Qwest”), Sprint PCS (“Sprint”), and ALLTEL Corporation (“ALLTEL”)
15. Representative Eliot L. Engel and Charles V. Pickering
16. Representative John Linder
17. Representative Johnny Isakson
18. Rural Telecommunications Group (“RTG”)

19. SBC Telecommunications (“SBC”)
20. Senator Christopher S. Bond
21. Senator Thad Cochran
22. STPCS Joint Venture, LLC (“STPCS”)
23. TeleCorp PCS, Inc, and Tritel Communications, Inc. (“Telecorp and Tritel”)
24. Twenty First Wireless, Inc. (“Twenty First Wireless”)
25. U.S. AirWaves (“U.S. AirWaves”)
26. UTStarcom (“UTStarcom”)
27. Verizon Wireless (“Verizon”)
28. VoiceStream Wireless Corporation (“VoiceStream”)

Petitions

1. Personal Communications Industry Association (“PCIA”) (Motion to Accept Late-Filed Supplemental Comments) (filed July 21, 2000—**late-filed**)
2. Personal Communications Industry Association (“PCIA”) (Motion for Extension of Time) (filed June 19, 2000)

Opposition to Petitions

1. Nextel Communications, Inc. (“Nextel”) (filed July 31, 2000) (opposing PCIA Motion to Accept Late-Filed Supplemental Comments)

VI. APPENDIX B - ENTREPRENEUR ELIGIBILITY ISSUES**B-1. Comments Filed in Response to Public Notice, DA 00-145, 00-191 and 00-271 (Petitions of SBC Communications, Inc. and Nextel Communications, Inc.)****Comments**

1. Alaska Digitel, LLC (Alaska’), Poplar PCS, LLC (“Poplar”), and Eldorado Communications, LLC (“Eldorado”)
2. Alpine PCS, Inc. (“Alpine”)
3. American Wireless, LLC (“American Wireless”)
4. AT&T Wireless Services, Inc. (“AT&T”)
5. Bell Atlantic Mobile, Inc. (“Bell Atlantic”)
6. BellSouth Cellular Corporation (“BellSouth”)
7. Burst Networks, Inc. (“Burst”)
8. Carolina PCS I Limited Partnership (“Carolina”)
9. Cellular Telecommunications Industry Association (“CTIA”)
10. Cook Inlet Region, Inc. (“CIRI”)
11. Council Tree Communications, LLC (“Council Tree”)
12. CT Communications, Inc. (“CT”)
13. D&E Communications, Inc. (“D&E”)
14. Devon Mobile Communications, L.P. (“Devon”)
15. Ericsson, Inc. (“Ericsson”)
16. Georgetown Partners, LLC (“Georgetown”)
17. GTE Service Corporation (“GTE”)
18. Integrated Communications Group, Corp. (“ICG”)
19. Leap Wireless International, Inc. (“Leap”)
20. National Telephone Cooperative Association (“NTCA”)
21. NextWave Personal Communications Inc. (“NextWave”)
22. Northcoast Communications, LLC (“Northcoast”)
23. Office of Advocacy of the United States Small Business Administration (“Advocacy”)
24. Omnipoint Corporation (“Omnipoint”)
25. ONYX Telecommunications, LLC (“ONYX”)
26. OPM Auction Co. (“OPM”)
27. Rural Cellular Association (“RCA”)
28. Rural Telecommunications Group and the Organization for the Promotion and Advancement of Small Telephone Companies (“RTG”)
29. SBC Communications, Inc. (“SBC”)
30. SMR Group, LLC (“SMR”)
31. Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint”)
32. TeleCorp PCS, Inc. (“TeleCorp”)
33. Telephone and Data Systems, Inc. (“TDS”)
34. Tritel Communications, Inc. (“Tritel”)
35. US West Wireless, LLC (“US West”)
36. UTStarcom (“UTStarcom”)
37. VoiceStream Wireless Corporation (“VoiceStream”)
38. Wireless Operating Company, Inc (“WOC”)

Reply Comments

1. Alaska Digitel, LLC (“Alaska”), Poplar PCS, LLC (“Poplar”), and Eldorado Communications, LLC (“Eldorado”)
2. Alpine PCS, Inc. (“Alpine”)
3. American Wireless, LLC (“American Wireless”)
4. AT&T Wireless Services, Inc. (“AT&T”)
5. C Block Coalition (“Coalition”)
6. Carolina PCS I Limited Partnership (“Carolina”)
7. Chadmoore Wireless Group, Inc. (“Chadmoore”)
8. CLEAR TALK (“Cleartalk”)
9. CT Communications, Inc. (“CT”)
10. Entertainment Unlimited, Inc. (“Entertainment Unlimited”)
11. Georgetown Partners, LLC (“Georgetown”)
12. GTE Service Corporation (“GTE”)
13. Nextel Communications, Inc. (“Nextel”)
14. Northcoast Communications, LLC (“Northcoast”)
15. Noverr Publishing, Inc. (“NPI”)
16. Office of Advocacy of the United States Small Business Administration (“Advocacy”)
17. Official Committee of Unsecured Creditors of NextWave Telecom Inc. (“OCUC of NextWave”)
18. OPM Auction Co. (“OPM”)
19. Personal Communications Industry Association (“PCIA”)
20. Polycell Communications, Inc. (“Polycell”)
21. SBC Communications, Inc. (“SBC”)
22. TeleCorp PCS, Inc. (“TeleCorp”)
23. Tritel Communications, Inc. (“Tritel”)
24. US West Wireless, LLC (“US West”)
25. VoiceStream Wireless Corporation (“VoiceStream”)

B-2. Oppositions and Other Pleadings Filed in Response to Public Notice, DA 00-760 (US West/Sprint Spectrum Petition)**Oppositions**

1. Alaska Digitel, LLC (“Alaska”), Poplar PCS, LLC (“Poplar”), and Eldorado Communications, LLC (“Eldorado”) (comment)
2. Alpine PCS, Inc. (“Alpine”) (comment)
3. American Wireless Licensing Group, LLC (“American Wireless”)
4. AT&T Wireless Services, Inc. (“AT&T”) (comment)
5. Burst Networks, Inc. (“Burst”)
6. Carolina PCS I Limited Partnership (“Carolina”)
7. Cellular Telecommunications Industry Association (“CTIA”) (comment)
8. ComScape Telecommunications, Inc. (“ComScape”)
9. Cook Inlet Region, Inc. (“CIRI”)
10. GTE Service Corporation (“GTE”)
11. Leap Wireless International, Inc. (“Leap”)
12. Nextel Communications, Inc. (“Nextel”) (comment)

13. NextWave Personal Communications, Inc. and NextWave Power Partners, Inc.
(“NextWave”)
14. Northcoast Communications, LLC (“Northcoast”)
15. OPM Auction Co. (“OPM”)
16. Personal Communications Industry Association (“PCIA”)
17. TeleCorp PCS, Inc. (“TeleCorp”) and Tritel Communications, Inc. (“Tritel”)
(comment)
18. United States Small Business Administration Office of Advocacy (“Advocacy”)
(comment)
19. Verizon Wireless (“Verizon”) (comment)
20. VoiceStream Wireless Corporation (“VoiceStream”)

B-3. Petitions Filed in Response to Public Notice, DA 00-145, 00-191 and 00-271 (SBC Communications, Inc. and Nextel Communications, Inc. Petitions) and Public Notice, DA 00-760 (US West/Sprint Spectrum Petition)

Petitions Filed in Response to Public Notice, DA 00-145, 00-191 and 00-271

1. AT&T Wireless Services, Inc. (“AT&T”)
(Petition for Waiver and Expedited Action)*
2. Bell Atlantic Mobile, Inc. (“Bell Atlantic”)
(Petition for Limited Forbearance)*
3. BellSouth Corporation (“BellSouth”)
(Petition for Waiver and Expedited Action)*
4. Cellular Telecommunications Industry Association (“CTIA”)
(Petition for Rule Making)
5. GTE Service Corporation (“GTE”)
(Petition for Waiver and Declaratory Ruling)*
6. National Telephone Cooperative Association (“NTCA”)
(Expedited Request for Extension of Deadline)
7. Office of Advocacy of the United States Small Business Administration (“Advocacy”)
(Request for Additional Time to File Comments)
8. Rural Cellular Association (“RCA”)
(Request for Extension of Time)
9. Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint”)
(Petition for Waiver)
10. US West Wireless, LLC (“US West”)
(Petition for Waiver)

* Petition primarily concerns spectrum cap issues.

Petition Filed in Response to Public Notice, DA 00-760

1. Verizon Wireless (“Verizon”)
(Petition for Clarification or Reconsideration)

B-4. Ex Parte Communications and/or Late Filed Comments in Response to Public Notice, DA 00-145, 00-191 and 00-271 (SBC Communications, Inc. and Nextel Communications, Inc. Petitions) and Public Notice, DA 00-760 (US West/Sprint Spectrum Petition)

1. 3G Network Holdings (“3G Network”)
2. AirTouch Communications, Inc. (“AirTouch”)
3. Alpine PCS, Inc. (“Alpine”)
4. American Wireless, LLC (“American Wireless”)
5. AT&T Wireless Services, Inc. (“AT&T”)
6. Bell Atlantic Mobile, Inc. (“Bell Atlantic”)
7. BellSouth Cellular Corp. (“BellSouth”)
8. Burst Networks, Inc. (“Burst”)
9. Carolina PCS I Limited Partnership (“Carolina”)
10. Cook Inlet, Inc. (“CIRI”)
11. Dobson Communications Corporation (“DOBSON”)
12. GTE Wireless Inc. (“GTE”)
13. Integrated Communications Group (“ITG”)
14. Leap Wireless International, Inc. (“Leap”)
15. Media Access Project (“MAP”)
16. Michael Kurtis of Kurtis & Associates on Behalf of Edwards, Helms, Hollings, and Thurmond
17. Nextel Communications, Inc. (“Nextel”)
18. NextWave Telecom, Inc. (“NextWave”)
19. Northcoast Communications, LLC (“Northcoast”)
20. Paula Ford of the Minority Staff of the Senate Commerce Committee (“Ford”)
21. Personal Communications Industry Association (“PCIA”)
22. Representative Bart Stupak
23. Representative Bennie G. Thompson
24. Representative Bob Clement
25. Representative Bob Riley
26. Representative Bobby L. Rush
27. Representative Brian Bilbray
28. Representative Charles Pickering
29. Representative Ciro D. Rodriguez
30. Representative Diane DeGette
31. Representative Jay Dickey
32. Representative John J. Duncan
33. Representative John D. Dingell
34. Representative John R. Kasich
35. Representative Major R. Owens
36. Representative Ron Packard
37. Representative Ronnie Shows
38. Representative Tammy Baldwin
39. Representative Tom Udall
40. Representative W.J. “Billy” Tauzin
41. Representative William L. Clay
42. Representative Zach Wamp
43. Representatives, James E. Clyburn, William J. Jefferson, Stephanie Tubbs Jones, Barbara Lee, Juanita Millender-McDonald, Bobby L. Rush, Edolphus Towns, and Albert Russell Wynn
44. Representatives Randy Cunningham & Duncan L. Hunter

45. Representatives Rick Boucher, Eliot L. Engel, Ralph M. Hall, Steve Largent, Charles Pickering, Ronnie Shows, and Bennie G. Thompson
46. Roseville PCS, Inc. (“Roseville”)
47. Rural Telecommunications Group (“RTG”)
48. Senator Barbara A. Mikulski and Paul S. Sarbanes
49. Senator Barbara Boxer
50. Senator Carl Levin
51. Senator Charles S. Robb
52. Senator Christopher S. Bond
53. Senator Daniel K. Inouye
54. Senator Judd Gregg
55. Senator Trent Lott
56. SBC Communications, Inc. (“SBC”)
57. Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint”)
58. TeleCorp PCS, Inc. (“TeleCorp”)
59. Telepak, Inc. (Telepak”)
60. Thomas Gutierrez of Lukas, Nace, Gutierrez & Sachs
61. TLA Spectrum, LLC (“TLA”)
62. Tritel Communications, Inc. (“Tritel”)
63. US West Wireless, LLC (“US West”)
64. Verizon Wireless (“Verizon”)
65. VoiceStream Wireless Corporation (“VoiceStream”)

VII. APPENDIX C - SPECTRUM CAP ISSUES**Comments and Petitions Filed in Response to Public Notice, DA 00-318
(Petitions of AT&T Wireless Services, Inc., BellSouth Corporation, and Bell Atlantic Mobile, Inc.)****Comments**

1. Alaska Digitel, LLC (“Alaska”)
2. American Wireless, LLC (“American Wireless”)
3. Carolina PCS I Limited Partnership (“Carolina”)
4. Cook Inlet Region, Inc. (“CIRI”)
5. CT Communications, Inc. (“CT”)
6. Cellular Telecommunications Industry Association (“CTIA”)
7. Eldorado Communications, LLC (“Eldorado”)
8. Georgetown Partners, LLC (“Georgetown”)
9. GTE Service Corporation (“GTE”)
10. Leap Wireless International, Inc. (“Leap”)
11. National Telephone Cooperative Association (“NTCA”)
12. Nextel Communications (“Nextel”)
13. NextWave Personal Communications, Inc. (“NextWave”) and NextWave Power Partners, Inc. (“NextWave Power”)
14. Personal Communications Industry Association (“PCIA”)
15. Poplar PCS, LLC (“Poplar”)
16. Rural Cellular Association (“RCA”)
17. Rural Telecommunications Group (“RTG”)
18. SBC Communications, Inc. (“SBC”)
19. SMR Group, L.C. (“SMR”)
20. Sprint Spectrum L.P. d/b/a Sprint PCS (“Sprint”)
21. TeleCorp PCS, Inc. (“TeleCorp”)
22. Tritel Communications, Inc. (“Tritel”)
23. VoiceStream Wireless Corporation (“VoiceStream”)

Reply Comments

1. Alaska Digitel, LLC (“Alaska”)
2. Alpine PCS, Inc. (“Alpine”)
3. American Wireless, LLC (“American Wireless”)
4. AT&T Wireless Services, Inc. (“AT&T”)
5. Bell Atlantic Mobile, Inc. (“Bell Atlantic”)
6. BellSouth Corporation (“BellSouth”)
7. CT Communications, Inc. (“CT”)
8. Eldorado Communications, LLC (“Eldorado”)
9. GTE Service Corporation (“GTE”)
10. Leap Wireless International (“Leap”)
11. Northcoast Communications, LLP (“Northcoast”)
12. Poplar PCS, LLC (“Poplar”)
13. TeleCorp PCS, Inc. (“TeleCorp”)
14. Tritel Communications, Inc. (“Tritel”)

Petitions

1. AT&T Wireless Services, Inc. (“AT&T”)
(Petition for Waiver)
2. Bell Atlantic Mobile, Inc. (“Bell Atlantic”)
(Petition for Limited Forbearance)
3. BellSouth Corporation (“BellSouth”)
(Petition for Waiver)
4. GTE Service Corporation (“GTE”)
(Petition for Waiver and Declaratory Ruling)

VIII. APPENDIX D - REVISED RULES**PART 24 - PERSONAL COMMUNICATIONS SERVICES**

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

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

2. Amend § 24.202 by revising the introductory text to read as follows:

§ 24.202 Service areas.

Broadband PCS service areas are Major Trading Areas (MTAs) and Basic Trading Areas (BTAs) as defined in this section. MTAs and BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38-39 ("BTA/MTA Map"). Rand McNally organizes the 50 states and the District of Columbia into 47 MTAs and 487 BTAs. The BTA/MTA Map is available for public inspection at the Office of Engineering and Technology's Technical Information Center, 445 12th Street, SW, Washington, DC 20554.

* * * * *

3. Amend § 24.203 by revising paragraph (b) to read as follows:

§ 24.203 Construction requirements.

* * * * *

(b) Licensees of 10 MHz blocks, including 10 MHz C block licenses reconfigured pursuant to Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, Sixth Report and Order, FCC 00—313, and 15 MHz blocks resulting from the disaggregation option as provided in the Commission's Rules Regarding Installment payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket 97-82, 12 FCC Rcd 16,436 (1997), as modified by Order on Reconsideration of the Second Report and Order, WT Docket 97-82, 13 FCC Rcd 8345 (1998), must serve with a signal level sufficient to provide adequate service to at least one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial

service in their licensed area within five years of being licensed. Population is defined as the 1990 population census. Licensees may elect to use the 2000 population census to determine the five-year construction requirement. Failure by any licensee to meet these requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

* * * * *

4. Amend § 24.229 by revising paragraph (b) to read as follows:

§ 24.229 Frequencies.

* * * * *

(b) The following frequency blocks are available for assignment on a BTA basis:

Block C: 1895-1910 MHz paired with 1975-1990 MHz;

Pursuant to Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, WT Docket No. 97-82, Sixth Report and Order, FCC 00—313, all 30 MHz Block C licenses available for auction in Auction No. 35 or any subsequent auction will be reconfigured into three 10 MHz C block licenses as follows:

1895-1900 MHz paired with 1975-1980 MHz,

1900-1905 MHz paired with 1980-1985 MHz,

1905-1910 MHz paired with 1985-1990 MHz;

Block D: 1865-1870 MHz paired with 1945-1950 MHz;

Block E: 1885-1890 MHz paired with 1965-1970 MHz;

Block F: 1890-1895 MHz paired with 1970-1975 MHz;

5. Amend § 24.709 by revising paragraphs (a), (a)(1), (a)(3), (b)(9)(i), redesignating paragraph (b)(9)(ii) as paragraph (b)(9)(iv), adding new paragraphs (b)(9)(ii), (b)(9)(iii), revising paragraph (d)(1), redesignating paragraph (e) as paragraph (g), and adding new paragraphs (e) and (f) to read as follows:

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

(a) General Rule for licenses offered for closed bidding.

(1) No application is acceptable for filing and no license shall be granted to a winning bidder in closed bidding 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 had 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.

* * * * *

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

(b) * * *

(9) * * *

(i) In addition to entities qualifying for closed bidding under paragraph (a)(1) of 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 reauction for frequency block C, which began on July 3, 1996, will be eligible to bid for C block licenses offered in closed bidding in any reauction of frequency block C spectrum that begins within two years of March 23, 1999.

(ii) In cases of merger, acquisition, or other business combination of entities, where each of the entities is eligible to bid for C block licenses offered in closed bidding in any reauction of C block spectrum on the basis of the eligibility exception set forth in paragraph (b)(9)(i) of this section, the resulting entity will also

be eligible for the exception specified in paragraph (b)(9)(i).

(iii) In cases of merger, acquisition, or other business combination of entities, where one or more of the entities are ineligible for the exception set forth in paragraph (b)(9)(i) of this section, the resulting entity will not be eligible pursuant to paragraph (b)(9)(i) unless an eligible entity possesses de jure and de facto control over the resulting entity.

* * * * *

(d) * * *

(1) Applicants and licensees claiming eligibility for closed bidding under this section or for other provisions under §§ 24.711 through 24.720 shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

* * * * *

(e) Tiers.

(1) For purposes of determining spectrum to which the eligibility requirements of this section are applicable, the BTA service areas (see § 24.202(b)) are divided into two tiers according to their population as follows:

Tier 1: BTA service areas with population equal to or greater than 2.5 million;

Tier 2: BTA service areas with population less than 2.5 million.

(2) For Auction No. 35, the population of individual BTA service areas will be based on the 1990 census. For auctions beginning after the start of Auction No. 35, the population of individual BTA service areas will be based on the most recent available decennial census.

(f) Application of eligibility requirements.

(1) The following categories of licenses will be subject to closed bidding pursuant to the eligibility requirements of this section in auctions that begin after the effective date of this paragraph.

For Tier 1 BTAs, one of the 10 MHz C block licenses (1895 – 1900 MHz paired with 1975 – 1980 MHz);

For Tier 2 BTAs, two of the 10 MHz C block licenses (1895 – 1900 MHz paired with 1975 – 1980 MHz; 1900 – 1905 MHz paired with 1980-1985 MHz) and all 15 MHz C block licenses.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, any C block license for operation on spectrum that has been offered, but not won by a bidder, in closed bidding in any auction beginning on or after March 23, 1999, will not be subject in a subsequent auction to closed bidding pursuant to the eligibility requirements of this section.

* * * * *

§ 24.710 [Removed and Reserved]

6. Remove and reserve § 24.710.

7. Revise § 24.712 to read as follows:

§ 24.712 Bidding credits for licenses for frequency Block C.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, 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) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, 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) of this chapter, to lower the cost of its winning bid.

(c) Unjust enrichment. See § 1.2111 of this chapter. The unjust enrichment provisions of § 1.2111(d) and (e)(2) shall not apply with respect to licenses acquired in either the auction for frequency block C that began on December 18, 1995, or the reauction of block C spectrum that began on July 3, 1996.

8. Amend § 24.714 by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 24.714 Partitioned licenses and disaggregated spectrum.

(a) * * *

(2) Broadband PCS licensees in spectrum blocks A, B, D, and E and broadband PCS C and F block licenses not subject to the eligibility requirements of § 24.709 may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(3) Broadband PCS licensees that acquired C or F block licenses in closed bidding subject to the eligibility requirements of § 24.709 may partition their licensed geographic service area or disaggregate their licensed spectrum at any time to an entity that meets the eligibility criteria set forth in § 24.709 at the time the request for partial assignment of license is filed or to an entity that holds license(s) for frequency blocks C and F that met the eligibility criteria set forth in § 24.709 at the time of receipt of such license(s). Partial assignment applications seeking partitioning or disaggregation of broadband PCS licenses in spectrum blocks C and F must include an attachment demonstrating compliance with this section.

* * * * *

9. Amend § 24.717 by revising paragraphs (a) and (b) to read as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, 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) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, 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) of this chapter, to lower the cost of its winning bid.

* * * * *

10. Amend § 24.720 by revising paragraph (i) to read as follows.

§ 24.720 Definitions.

* * * * *

(i) Members of Minority Groups. Members of minority groups include individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian, and Asian American extraction.

* * * * *

11. Amend § 24.839 by revising paragraphs (a) introductory text, (a)(2), (a)(3) and (a)(5) and by adding paragraph (a)(6) to read as follows:

§ 24.839 Transfer of control or assignment of license.

(a) Restrictions on Assignments and Transfers of Licenses for Frequency Blocks C and F won in closed bidding. No assignment or transfer of control of a license for frequency Block C or frequency Block F won in closed bidding pursuant to the eligibility requirements of § 24.709 will be granted unless:

* * * * *

(2) The proposed assignee or transferee meets the eligibility criteria set forth in § 24.709 of this part 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 of this part; or

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

* * * * *

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

(6) The application for assignment or transfer of control is filed on or after the date the licensee has notified the Commission pursuant to § 24.203(c) that its five-year construction requirement has been satisfied.

* * * * *

IX. APPENDIX E - FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (“RFA”),¹ an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated into the *Further Notice of Proposed Rule Making* in WT Docket 97-82 (“*Further Notice*”).² The Commission sought written public comment on the tentative conclusions, proposals, and alternatives in the *Further Notice*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (“FRFA”) conforms to the RFA.³

A. Need for, and objectives of, the C/F Block Sixth Report and Order in WT Docket No. 97-82:

This *Sixth Report and Order and Order on Reconsideration* (“*C/F Block Sixth Report and Order*”) addresses the tentative conclusions and proposals in our recent *Further Notice* and also resolves the petitions that precipitated the *Further Notice*.⁴ The modifications to the Commission’s rules that we adopt in this order will apply to Auction No. 35, a C and F block auction currently scheduled to begin on November 29, 2000. The modifications will also apply to any subsequent auctions of C or F block licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future.

We conclude that it is in the public interest to modify our auction and service rules for C and F block broadband Personal Communications Services (“PCS”) licenses to achieve the various goals of Section 309(j) of the Communications Act. In reaching this conclusion, we recognize that many carriers, including small and very small businesses, need additional spectrum to “fill out” their service areas or to satisfy capacity needs. Although our modifications to the rules include the elimination of entrepreneur eligibility requirements (allowing open bidding) for some C and F block licenses, our revised rules provide entrepreneurs with a significant set-aside of C block spectrum (for closed bidding) in order to assist them in achieving their business goals. Section 309(j) does not mandate the use of set-asides to promote the participation of small businesses in spectrum auctions. In fact, we note that there have been numerous auctions in recent years in which we have not included an entrepreneurs’ block set-aside. By maintaining a significant set aside for entrepreneurs, small and very small businesses will be given the opportunity to participate in the provision of spectrum-based services. Additionally, in open auctions, small and very small businesses will continue to be provided with bidding credits in order to ensure meaningful participation. This *C/F Block Sixth Report and Order* reflects the Commission’s continuing commitment to encouraging participation by small businesses while at the same time helping to ensure the best use of spectrum through the competitive bidding process.

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. However, a number of parties did submit general comments on the Commission’s tentative conclusions and proposals set forth in the *Further Notice*. The significant issues raised by small and very small businesses primarily concerned the removal

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, *Further Notice of Proposed Rulemaking*, 15 FCC Rcd 9773, 9808-14 (rel. June 7, 2000) (“*Further Notice*”).

³ See 5 U.S.C. § 604.

⁴ See *Further Notice*, 15 FCC Rcd at 9774-76, ¶¶ 1, 3.

of the entrepreneur eligibility restrictions for some licenses available in future C and F block auctions and the use of bidding credits. For example, some commenters opposed the Commission's proposal to reconfigure the available 30 MHz C block license into three 10 MHz C block licenses, arguing that such a proposal is contrary to statutory requirements, because it will reduce small business opportunity in the marketplace.⁵ Many of the commenters that opposed the reconfiguration, contended that 10 MHz of C block spectrum is insufficient to provide a full range of third generation ("3G") services.⁶ In addition, a number of commenters opposed any relaxation of the Commission's entrepreneur eligibility restrictions.⁷ Some commenters argued that Section 309(j) compels the Commission to maintain the C and F block set-aside as is.⁸ In addition, small and very small businesses supported an increase in bidding credits in open bidding.⁹

On the other hand, a number of larger entities, including most of the major national carriers,

⁵ See Alpine Comments at ii-iii, 1-15, 18; Alpine Reply at 1, 6; Leap Comments at 14-16, NTCA Comments at 2-3; OPM Comments at i, 2,6-9; OPM Reply at i, 6-10, Declaration; PCIA Comments at 17-20; PCIA Reply at 2-3, 9-14; Powertel Comments at 7; Rainbow/Push Reply at 7-9; Twenty First Wireless Comments at 11; Twenty First Wireless Reply at 1-3, 5; U.S. AirWaves Comments at 5-6; Advocacy Comments at 5-6; North Coast Reply at i, 3-4.

⁶ See, e.g., Alpine Comments at ii-iii, 1-15; Alpine Reply at 1-2, 5-7.

⁷ See, e.g., Advanced Comments at 1-2; Advocacy Comments at 15 n.15; OPM Comments at i, 2, 4-6, 8, 16; RK Communications Comments at 2; Telecorp and Tritel Comments at 3, 5; US West Comments at 4; US West Reply at 2,4; RCA Comments at 8-9, 11-14; RCA Reply at 1-3, 7; Twenty First Wireless Reply at 5. See also Advocacy Comments at 1-5, 8; Alaska/Poplar/Eldorado Comments at 2; Alpine Comments at ii, 4-15; Choice Comments at 1; Leap Comments at 1; NTCA Comments at 3; PCIA Comments at i, 4-5, 11-17; Polycell Comments at 1, 2-4; RTG/OPASTCO Comments at 5-6; Telecorp and Tritel Comments at 3, 5. See generally U.S. AirWaves Comments at 4-5.

⁸ See, e.g., OPM Comments at 4 ("Removing DE eligibility restrictions would diminish meaningful participation of small businesses in the auction process. . . [I]n light of the language of Section 309(j)(4) and its legislative history, OPM disagrees with the notion that meaningful participation of small businesses is a matter the Commission is free to purposely diminish without violating both the Act and the policy it is intended to implement. [citation omitted]"); Advanced at 2; AirGate Comments at 2-3; Alpine Comments at iii, 2, 15; Northcoast at 8; NTCA at 2; PCIA Comments at i, 1-5; RCA Comments at 1-2 (cover letter); RCA Comments at 7-10; and RTG/OPASTCO Comments at 1-2, 3-4.

⁹ These commenters favor an increase in the bidding credits to 25 percent and 40 percent, respectively, for small and very small businesses. See AirGate Comments at i, 2, 7; ASCENT Comments at 4; Advanced Comments at 5; AT&T Comments at 7; Burst Comments at 5, 10; OPM Comments at 2, 5, 11-12, 16; Carolina Comments at 5-6 and Carolina at 5-7; McBride Comments at 2; Telecorp and Tritel Comments at 15-16; Telecorp and Tritel Reply at 20-21; Alaska/Poplar/Eldorado Comments at 2, 6. See also Powertel Comments at 6; RK Communications at 3; OPM Reply at 11-12 (support an increase in bidding credits but do not suggest an amount). See generally Northcoast Comments at 10 (an increase in bidding credits should never be used as a substitute for eligibility restrictions in the context of a C and F block reauction); PCIA Comments at 1-3 (the availability of bidding credits in the absence of an entrepreneurs' block would have no measurable effect on entrepreneur participation); RTG/OPASTCO Comments at 6 (an increase in bidding credits will not make a difference when a small company is bidding against a large carrier). Other commenters support an increase of bidding credits of more than 25 percent and 40 percent, respectively, for small and very small businesses in "open" bidding. See Leap Comments at 4, 19; U.S. AirWaves Comments at 6-7 and U.S. AirWaves Reply at 7-8.

avored the elimination of eligibility restrictions from more, or all, of the available C and F block licenses.¹⁰ Many carriers claimed that obtaining additional spectrum to provide advanced telecommunications services and global competition within these services, or to satisfy capacity needs, was crucial to their business plans.¹¹ In addition, these carriers stated that they require additional spectrum to complete regional or national service areas.¹² As required by the RFA, and in light of the numerous comments received, the Commission considered the economic impact on small businesses of the rules adopted herein.¹³ *See* section E, *infra*.

C. Description and estimate of the number of small entities to which the rules 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 the proposed rules, if adopted.¹⁴ Generally, the RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁵ The term “small business” has the same meaning as the term “small business concern” under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.¹⁶ 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”).¹⁷ A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁸ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹⁹ “Small governmental jurisdiction” generally means “governments of cities,

¹⁰ *See, e.g.*, AT&T Comments at 1-2, 6-8, 10; BellSouth Comments at ii, 1, 9-10, 15; BellSouth Reply at 1,3; SBC Comments at i, 2-3, 10-11; SBC Reply at 4-6; US West Comments at 4-5; US West Reply at 1-4; Verizon Comments at 5-9; VoiceStream Comments at 5; VoiceStream Reply at 1-2, 8.

¹¹ *See, e.g.*, the following comments and reply comments to the SBC and Nextel Petitions: AT&T Comments at 2-4; Bell Atlantic Comments at 9-10; GTE at 11-13 (re spectrum cap); Nextel Reply at 21-22; SBC Comments at 12-13.

¹² *See id.*

¹³ *See* 5 U.S.C. §§ 601-612.

¹⁴ *Id.*

¹⁵ *Id.* § 601(6).

¹⁶ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.

¹⁷ *Id.* § 632.

¹⁸ *Id.* § 601(4).

¹⁹ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation data under contract to the Office of Advocacy of the U.S. Small Business Administration).

counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."²⁰ As of 1992, there were approximately 85,006 local governments in the United States.²¹ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.²² The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992.²³

The rule changes effected by this *C/F Block Sixth Report and Order* affect all small entities that choose to participate in the upcoming auction of C and F block spectrum and other future auctions of C and F block spectrum, including small businesses currently holding C and F block licenses, and other small businesses that may participate in, and/or acquire licenses through, the auction. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has auctioned licenses in each block. Frequency blocks C and F were originally designated by the Commission as "entrepreneurs' blocks," and participation in past auctions of C and F block licenses was limited to entities qualifying under the Commission's rules as entrepreneurs. The Commission's rules define an entrepreneur as an entity (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) that had 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 FCC Form 175 application was filed. For blocks C and F, the Commission has defined "small business" as a firm, together with its affiliates, that had average gross revenues of not more than \$40 million in the three previous calendar years,²⁴ and "very small business" has been defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.²⁵ These definitions have been approved by the SBA.²⁶

On May 6, 1996, the Commission concluded the first broadband PCS C block auction.²⁷ On July 16, 1996, the second C block auction closed.²⁸ On January 14, 1997, the broadband PCS D, E, and F block auction closed.²⁹ Ninety (90) bidders (prior to any defaults by winning bidders) won 493 C block licenses

²⁰ 5 U.S.C. § 601(5).

²¹ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

²² *Id.*

²³ *See supra* note 16.

²⁴ *See* 47 C.F.R. § 24.720(b)(1).

²⁵ *See id.* § 24.720(b)(2).

²⁶ *See* Letter to Amy J. Zoslov, Chief, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, U.S. Small Business Administration, dated December 2, 1998. *See also Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5581-5584; 47 C.F.R. § 24.720(b).

²⁷ "Entrepreneurs' C Block Auction Closes," *Public Notice*, DA 96-716 (rel. May 8, 1996).

²⁸ "Entrepreneurs' C Block Reauction Closes," *Public Notice*, DA 96-1153 (rel. July 17, 1996).

²⁹ FCC News, Broadband PCS, D, E, and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997).

and 88 bidders won 491 F block licenses. Small businesses placing high bids in these C and F block auctions were eligible for bidding credits and installment payment plans. On April 15, 1999, Auction No. 22, which included 347 C and F block licenses, closed.³⁰

On January 12, 2000, the Wireless Telecommunications Bureau (“Bureau”) announced an auction of broadband PCS C and F block licenses scheduled for July 26, 2000 (Auction No. 35). At that time, under the Commission’s eligibility rules, in order to participate in an entrepreneur auction, a C or F block applicant (together with its affiliates and persons or entities that hold interests in the applicant and their affiliates) must have had gross revenues of less than \$125 million in each of the last two years and must have total assets of less than \$500 million. Following the announcement of Auction No. 35, the Commission received several formal requests to waive, modify, or eliminate the C and F block auction and service rules in order to allow companies other than entrepreneurs to participate in the upcoming PCS auction.³¹ The Commission addressed the issues raised in the various petitions, comments, and other documents filed in this proceeding in a Further Notice of Proposed Rulemaking (“*Further Notice*”), released on June 7, 2000, in which we set forth tentative conclusions and proposals to retain, clarify, and modify our rules related to the C and F block auctions and service. In addition, on June 7, 2000, the Bureau announced that Auction No. 35 would begin on November 29, 2000, in order to allow resolution of the issues in the *Further Notice* and implementation of any rule changes prior to the auction.³² In this *C/F Block Sixth Report and Order*, we resolve the issues raised in the *Further Notice* and in the petitions and other filings in this proceeding by retaining, clarifying, and modifying our rules governing C and F block auctions and licenses.

Auction No. 35 is slated to include C block licenses as well as F block licenses for operation on frequencies for which previous licenses had automatically cancelled or had been returned to the Commission. For purposes of our evaluations and conclusions in this IRFA, we assume that all of the original 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this *C/F Block Sixth Report and Order* are small entities. In addition to the 178 original small business licensees that may participate in the auction of the C block licenses, a number of additional small business entities may seek to acquire licenses through auction; thus, these business entities would be affected by these rules.

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

This *C/F Block Sixth Report and Order* does not impose new reporting, recordkeeping, or other compliance requirements upon auction participants. As customary, auction participants will need to follow the standard procedural rules used for broadband PCS spectrum auctions, including application and payment rules.³³

³⁰ “C, D, E, and F Block Broadband PCS License Auction Closes,” *Public Notice*, DA 99-757 (rel. April 20, 1999).

³¹ See *Further Notice*, 15 FCC Rcd at 9781 n.32.

³² “Auction of Licenses for C and F Block Broadband PCS Spectrum Postponed Until November 29, 2000,” *Public Notice*, DA 00-1246 (rel. June 7, 2000).

³³ See generally 47 C.F.R. Part 1, Subpart Q; Part 24.

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

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. § 603.

The Commission concludes that it is in the public interest to modify our auction and service rules for C and F block broadband Personal Communications Services (PCS) licenses to achieve the various goals of Section 309(j) of the Communications Act.³⁴ Specifically, in this *C/F Block Sixth Report and Order* we retain, clarify, and revise our rules, as follows:

Reconfiguration of C Block License Size: The Commission will reconfigure each 30 MHz C block license available in future broadband PCS auctions into three 10 MHz C block licenses. By increasing the number of available licenses through this reconfiguration, rather than retaining the larger spectrum blocks (with fewer licenses), taken together with lifting certain of our eligibility requirements, providing set-asides, and providing small and very small business bidding credits to small entities for licenses offered in open bidding, the Commission will promote wider auction participation and license distribution in accordance with the goals of Section 309(j) of the Communications Act.³⁵ Under this alternative, small bidders be able to fulfill their business needs, while large bidders should enjoy greater flexibility in tailoring their bidding to their business plans without running afoul of the spectrum cap.

Utilization of a Tiered Approach: The Commission will remove the entrepreneur eligibility restrictions for some, but not all, licenses available in future C and F block auctions. Based on the demand for spectrum to satisfy congestion, new technology and competitive needs, the Commission has considered the alternatives and determined that it would serve the public interest to make some additional spectrum available to all interested bidders, not just entrepreneurs. The Commission will divide Basic Trading Areas (“BTAs”)³⁶ into two tiers according to population size of the BTA. “Tier 1” would comprise BTAs at and above a 2.5 million population threshold; “Tier 2” would comprise BTAs below that population threshold. The Commission believes that by dividing BTAs into two tiers, according to population, the Commission has greater flexibility to eliminate the entrepreneur eligibility restrictions in some of the largest markets while retaining the restrictions in many mid-sized and smaller markets, where smaller entities have proven more successful.

Eligibility Restrictions Under a Tiered Approach: For markets with available 30 MHz licenses, other than licenses that were available but unsold in Auction No. 22, the Commission will allow open bidding for two of the three newly reconfigured 10 MHz C block licenses in Tier 1 and for one of the three newly

³⁴ Section 309(j) of the Communications Act of 1934, as amended (“Communications Act”), 47 U.S.C. § 309(j).

³⁵ See 47 U.S.C. § 309(j)(3)(B).

³⁶ See *id.* § 24.202.

reconfigured 10 MHz C block licenses in Tier 2. Specifically, in Tier 1, the Commission will allow open bidding for two 10 MHz blocks, 1900 - 1905 MHz paired with 1980 - 1985 MHz and 1905 MHz - 1910 MHz paired with 1985 - 1990 MHz. In Tier 2, the Commission will allow open bidding for one 10 MHz block, 1905 MHz - 1910 MHz paired with 1985 - 1990 MHz. The Commission believes this approach will split the C block spectrum available in Auction No. 35 almost equally, when weighted by population, between open and closed licenses. Moreover, in light of the alternatives, this approach, in conjunction with the other revisions to the entrepreneur eligibility restrictions, will make relatively more spectrum available for open bidding in the most populous markets where the demand for spectrum by the large Commercial Mobile Radio Service (“CMRS”) carriers is the greatest and the prospects of a spectrum shortage for these carriers is the most acute. For available 15 MHz C block licenses, other than licenses that were available but unsold in Auction No. 22, the Commission will eliminate entrepreneur eligibility restrictions in Tier 1 but retain the restrictions in Tier 2. The Commission believes that in this way we give effect to as many of the Section 309(j) objectives as possible. Balancing all of our statutory objectives and considering alternative possibilities, we believe that it is fair and appropriate to apportion the spectrum to accommodate the interests of many carriers that need additional spectrum to “fill out” their service areas or to satisfy capacity needs. Apportioning the 30 MHz C block licenses in the manner described will enable larger carriers to obtain spectrum crucial to their business plans. At the same time, maintaining a significant set aside of C block spectrum for entrepreneurs will help smaller businesses in this band continue to achieve their business goals as well as providing meaningful opportunities for new entrepreneurial firms to enter the market.

In addition, the Commission will allow open bidding for all F block licenses available in Auction No. 35 and in all future auctions. The Commission believes that it is in the public interest and consistent with Section 309(j), to remove the set-aside for all available F block licenses. The F block has evolved in a fashion largely distinct from that of the C block; thus, the two blocks have been subject to increasingly different regulatory requirements, reflecting the separate equity and reliance concerns applicable to each of the blocks. Therefore, there is no longer a rationale for attempting to treat the two blocks in an identical or a substantially similar fashion.

Lastly, the Commission will establish open bidding for all broadband PCS C and F block licenses available but unsold in Auction No. 35 or in any other future auction and for all C block licenses, 15 MHz or 30 MHz (reconfigured into 10 MHz), that were available but not sold in Auction No. 22. Bidding to date has failed to result in construction of these licenses and service to the public. By lifting the eligibility restrictions for these unsold licenses now, the Commission hopes to prevent additional delays in their utilization.

Entrepreneur Eligibility: The Commission will not apply the natural growth exception, which allows C and F block licensees to retain their entrepreneur eligibility during the five-year holding period, to determinations of entrepreneur eligibility for Auction No. 35. Although the Commission intended to ignore natural growth for purposes of entrepreneur eligibility during the five-year holding period, it did not intend to ignore such growth in determining eligibility to participate in future C and F block auctions. In addition, the Commission does not see a need to modify Section 24.720 which states that an entrepreneurs’ block applicant must substantiate its gross revenues and total assets with its most recent audited financial statements, or, if the applicant does not otherwise use audited financial statements, a certification by the applicant’s chief financial officer or its equivalent. However, the Commission expects applicants to obtain audited financial statements within a reasonable period of time after the close of the applicable calendar or fiscal year and to base its claim to eligibility on those financial statements.

License Grouping for Bids and Competitive Design: The Commission will not license by bulk bidding. As stated in the *Further Notice*, the Commission is concerned that small entities may be hard

pressed to obtain the financing necessary to win and pay for licenses and construct systems included in the bulk bid proposal, while many other carriers may be constrained from participating by the CMRS spectrum cap.³⁷ Some of the parties that commented on ways to aggregate licenses in the auction process, argued against the use of package bidding for Auction No. 35, on the ground that such a design would be complex and impractical.³⁸ Other commenters support implementation of package bidding as a way to enhance the ability of auction participants to acquire their targeted groups of licenses while reducing their exposure.³⁹ The Bureau has discretion, under its existing delegated authority and pursuant to public notice and comment, to determine the competitive bidding design most appropriate for the auction.

“Grandfather” Exception: The Commission will not eliminate the “grandfather” exception contained in Section 24.709(b)(9)(i). Instead, the Commission will clarify an applicant’s eligibility for the “grandfather” exception after it has been involved in a merger, acquisition, or other business combination, as follows. When each of the merging entities is individually eligible for the “grandfather” exception, the exception will extend to the resulting entity. When one or more of the entities is not individually eligible for the “grandfather” exception, the resulting entity will be eligible for the exception only so long as an originally eligible entity retains *de facto* and *de jure* control of the resulting entity. The Commission does not believe that, when entities eligible for the “grandfather” exception combine, the resulting entity should be penalized. This revision to the Commission’s rules will provide spectrum opportunities for entrepreneurs while at the same time maintaining a fair implementation of the auctions program.

Bidding Credits: The Commission will maintain the current level of bidding credits for small and very small businesses, and consortia thereof, of 15 percent and 25 percent, respectively, for licenses subject to “open” bidding. After considering the alternatives, the Commission believes that bidding credits of 15 and 25 percent will allow effective competition by small businesses in open C and F block bidding. In our Specialized Mobile Radio (SMR) 900 MHz auction – using bidding credits of 10 percent and 15 percent – 75 percent of the winning bidders were small businesses, winning 26 percent of the licenses. Moreover, in Auction No. 11, the auction of D, E, and F block licenses, small and very small business were the high bidders for 141 of the 986 D and E block licenses won in that auction, even though bidding credits are not available for D and E block licenses. The current level of bidding credits for broadband PCS C and F blocks seems to allow significant participation of small and very small entities; therefore, we do not see a need to increase the current level of bidding credits.

For licenses subject to “closed” bidding, the Commission will eliminate all bidding credits. After considering the alternatives, the Commission believes that the continued use of bidding credits in restricted auctions would not necessarily serve its intended purpose. As explained in the *Further Notice*, some well-capitalized new entities with small gross revenues qualify for bidding credits, while some older companies with small total assets and net revenues but high gross revenues do not.⁴⁰ Eliminating bidding credits in a closed auction will remove this anomaly while at the same time continuing to provide small and very small businesses with a meaningful opportunity to compete in Auction No. 35.

Transfer Requirements for Certain Licenses: The Commission will modify its transfer requirements

³⁷ See *Further Notice*, 15 FCC Rcd at 9791, ¶ 35.

³⁸ See AT&T Comments at 4; SBC Comments at 10 n.13, VoiceStream Reply at 2-3.

³⁹ See Nextel Comments at 17 n.31; PCIA Comments at 19; OPM Reply at 10-11.

⁴⁰ See *Further Notice*, 15 FCC Rcd at 9795, ¶ 45.

to correspond to the Commission's changes in the eligibility requirements, and to encourage rapid construction of C and F block systems. Specifically, C and F block licenses won pursuant to "open" bidding at Auction No. 35, or any future open auction for such spectrum, will not be subject to a holding rule. For C and F block licenses won pursuant to "closed" bidding, the Commission will permit a licensee to assign or transfer its licenses to any qualified entity, entrepreneur or not, upon the licensee's completion of its first construction benchmark, whether or not it takes the full five years allowed by our rules. This will encourage rapid build-out and service to the public while at the same time providing C and F block licensees with the ability to access capital; thus, resulting in a more efficient use of spectrum. The Commission will continue to evaluate satisfaction of construction requirements on a license-by-license, rather than on a system-wide, basis.

Additionally, a licensee that won a license in Auction No. 5 or 10 will not be subject to a bidding credit unjust enrichment payment upon transfer and assignment of the license to an entity not qualifying as a small business, subject to the Commission's transfer requirements. Because all license winners in those auctions qualified for the available 25 percent bidding credit, there is no purpose in requiring the payment. However, licenses won in other auctions using a bidding credit will be subject to a bidding credit unjust enrichment payment upon transfer or assignment in accordance with the Commission's transfer requirements.

License Cap: The Commission will remove Section 24.710, which prohibits an auction applicant from winning more than 98 C and F block licenses, from the Commission's rules. When this rule was established, the license cap was intended to facilitate a fair distribution of licenses within the C and F blocks. The Commission has achieved this objective; moreover, the reconfiguration of the available 30 MHz C block licenses will create additional C block licenses, while the elimination of the eligibility restrictions will increase the chances of C and F block licenses being won by a variety of entities.

Spectrum Cap: The Commission will continue to apply the CMRS spectrum cap to PCS C and F block licenses to be auctioned. In September 1999, the Commission decided that the spectrum cap, with some modification, continued to promote competition, efficient spectrum use, innovation, and a wide dissemination of licenses. The Commission believes that implementation of the C and F block auction and service rule changes will ease the impact of the spectrum cap for Auction No. 35, making the alternative of spectrum cap relief unnecessary with respect to licenses in this auction.⁴¹ Moreover, the Commission will soon begin its year 2000 biennial review of the spectrum cap rules, providing another opportunity for a comprehensive review of related issues.

Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities.⁴² Section 309(j) also requires that the Commission ensures 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.⁴³ The Commission believes that these revisions to

⁴¹ In the Commission's recent *700 MHz Band Order*, issued in January 2000, the Commission determined not to apply a spectrum cap to the 700 MHz band spectrum in large measure because the Commission determined that the CMRS spectrum cap helped ensure that a competitive structure in the CMRS marketplace was being maintained. *See* Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *First Report and Order*, 15 FCC Rcd 476, 498, ¶ 53 (2000).

⁴² 47 U.S.C. § 309(j)(3)(B).

⁴³ *Id.* §§ 309(j)(3)(A), (C).

the C and F block auction and service rules as set forth in the *C/F Block Sixth Report and Order* promote these goals while maintaining the fair and efficient execution of the auctions program.

Report to Congress: The Commission will send a copy of the *C/F Block Sixth Report and Order*, including this FRFA, in report to be sent to Congress pursuant to the SBREFA, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *C/F Block Sixth Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *C/F Block Sixth Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).