6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[WT Docket Nos. 14-170, 05-211, GN Docket No. 12-268, RM-11395; FCC 15-49]

Request for Further Comment on Issues Related to Competitive Bidding Proceeding; Updating Competitive Bidding Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; comment request.

SUMMARY: In this Updating Part 1 Competitive Bidding Rules Additional Request for Comment, the Federal Communications Commission (Commission) seeks additional comment on changes to the Commission's Competitive Bidding rules suggested by commenters in response to the questions and proposals set forth in the Updating Part 1 Competitive Bidding Rules Notice of Proposed Rulemaking (Part 1 NPRM). This Updating Part 1 Competitive Bidding Rules Additional Request for Comment will be referred to as the Part 1 Request for Comment.

DATES: Comments are due on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments are due on or before **[INSERT DATE 28 DAYS AFTER THE PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested parties may submit comments to the Part 1 Request for Comment, WT Docket Nos. 14-170, 05-211, GN Docket No. 12-268, RM-11395, by any of the following methods:

- FCC's website: Federal Communication Commission's Electronic Comment Filing System (ECFS): http://fjallfoss.fcc.gov/ecfs2/. Follow the instructions for submitting comments.
- Mail: FCC Headquarters, 445 12th Street SW, Room TW-A325, Washington, DC 20554

- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, or audio format), send an e-mail to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

For detailed instructions for submitting comments, see the **SUPPLEMENTAL INFORMATION** section of this document.

Initial Paperwork Reduction Act of 1995 (PRA) Analysis:

This Part 1 Request for Comment contains proposed new or modified information collection requirements and seeks PRA comment. The Part 1 NPRM sought comment from the general public and the Office of Management and Budget on the information collection requirements contained therein, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it may "further reduce the information collection burden for small business concerns with fewer than 25 employees" in the light of the alternative proposals set forth in the Part 1 Request for Comment.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: Leslie Barnes at (202) 418-0660; Spectrum and Competition Policy Division (for questions related to joint bidding arrangements): Michael Janson at (202) 418-1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Part 1 Request for Comment in GN Docket No. 12-268, WT Docket Nos. 14-170, 05-211, FCC 15-49, released on April 17, 2015. The complete text of this document, including any attachment, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The Part 1 Request for Comment and related documents also are available on the Internet at the Commission's website: http://wireless.fcc.gov, or by using the search function for WT Docket No. 14-170 on the Commission's ECFS web page at http://www.fcc.gov/cgb/ecfs/.

All filings in response to the Part 1 Request for Comment must refer to GN Docket No. 12-268 and WT

Docket Nos. 14-170 and 05-211. The Commission strongly encourages parties to develop responses to the Part 1 Request for Comment that adhere to the organization and structure of the document.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Federal Communication Commission's Electronic Comments Filing System (ECFS): http://www.fcc.gov/cgb/ecfs/. Follow the instructions for submitting comments.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission (FCC). All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to the FCC Headquarters at 445 12th Street SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. ET. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

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I. INTRODUCTION

1. The Part 1 Request for Comment seeks additional comment on a number of proposed changes to the Commission's part 1 competitive bidding rules offered by commenters in response to the questions and proposals set forth in the Part 1 NPRM, 79 FR 68172, November 14, 2014. Specifically, the Commission seeks further, more detailed input on alternative proposals as well as questions posed and issues raised by commenters on how the Commission can meet its statutory obligation to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women (collectively, designated entities or DEs) have an opportunity to participate in the provision of spectrum-based services, while at the same time ensuring that there are adequate safeguards to protect against unjust enrichment to ineligible entities. The Commission also seeks further comment on commenters' other suggestions for amending the competitive bidding rules governing auction participation by former defaulters, commonly controlled entities, and entities with joint bidding arrangements in response to proposals advanced in the Part 1 NPRM. Soliciting further input on alternative proposals and exploring other issues raised in the record to date will provide a more complete record for the Commission to evaluate and act upon, as appropriate, the concerns raised in the Part 1 NPRM.

II. BACKGROUND

2. In the Part 1 NPRM, the Commission emphasized that "it remain mindful of its responsibility to ensure that benefits are provided only to qualifying entities," and asked whether its proposals "provide adequate safeguards against unjust enrichment to ensure that bidding credits are awarded only to qualifying small businesses." In discussing the Commission's proposed two-prong approach to evaluate attribution and establish eligibility for small business benefits, the Commission asked whether it should "take additional steps to assure that ineligible entities cannot exercise undue influence over a small business," and also asked commenters to "offer any other suggestions the Commission should consider to revise its rules and reform its small business policies."

3. After the Part 1 NPRM was released in October 2014, the Commission conducted an

auction for 1,614 Advanced Wireless Service licenses in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz bands (Auction 97), which closed on January 29, 2015. In order to allow interested parties an opportunity to take into account any "lessons learned" from Auction 97, the Wireless Telecommunications Bureau (WTB) extended the comment deadline for the Part 1 NPRM three times. Twenty-one parties submitted comments and fourteen parties submitted reply comments. Based on the issues raised in the Part 1 NPRM, several commenters offered alternative proposals, and suggested other policy considerations the Commission should weigh before amending its Part 1 rules. The Part 1 Request for Comment seeks additional comment on those proposals and suggestions.

III. ELIGIBILITY FOR BIDDING CREDITS

A. Attribution Rules and Small Business Policies

4. In the Part 1 NPRM, the Commission sought comment on "find[ing] a reasonable balance between the competing goals of affording [designated] entities reasonable flexibility to obtain the capital necessary to participate in the provision of spectrum-based services and effectively preventing the unjust enrichment of ineligible entities." The Part 1 NPRM proposed to modify the eligibility standard for small business benefits to provide small businesses greater opportunities to participate in a wide range of spectrum based services. Among other issues, the Part 1 NPRM sought comment on repealing the attributable material relationship (AMR) rule which, for the purposes of determining an entity's eligibility for small business benefits, attributes to the DE applicant the revenues of any entity with which it has one or more agreements for the lease or resale of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license it holds. Likewise, the Part 1 NPRM revisited the policy underlying the AMR rule. In lieu of a bright-line test, the Commission proposed a more focused two-pronged approach to evaluate an entity's eligibility for benefits using its longstanding controlling interest and affiliation rules to determine whether an applicant: (1) meets the applicable small business size standard, and (2) retains control over the spectrum associated with the licenses for which it seeks small business benefits. The Commission also proposed to modify the secondary market rules to make clear that DEs may fully benefit from the same de facto control standard for spectrum manager leasing as is applied to non-DE

lessors.

5. Several commenters support the Commission's proposal to modify the DE eligibility standard by eliminating the AMR rule, stating that it will allow small businesses the flexibility needed to obtain the capital necessary to participate in the provision of spectrum-based services. Those commenters note, among other things, that the proposal relies on well-established Commission standards to evaluate de jure and de facto control with which licensees are familiar, and is coupled with effective unjust enrichment provisions to safeguard against abuse of small business benefits. The Commission invites additional comment on this proposal and related concerns. Specifically, parties supporting the elimination of the AMR rule should explain how eliminating or loosening the restriction will promote competition and ensure small business participation in spectrum-based services, while guarding against ineligible entities' acquiring small business benefits. Several other parties oppose the Commission's proposal to eliminate the AMR rule to replace it with a two-pronged control analysis, arguing that doing so would increase the likelihood that DE benefits might unfairly flow to ineligible entities or spectrum "speculators" in contravention of Congressional intent. Commenters advocating for alternative rule amendments for the DE eligibility rules and the award of benefits should specifically address how the Commission should consider relationships with and investment in a DE applicant, particularly in connection with any use of spectrum acquired with benefits.

6. Other parties argue that the AMR rule should not only be retained, but strengthened. For instance, some advocate that a DE should be prohibited from leasing more than 25 percent of its spectrum in the aggregate across one or more licenses. Another commenter argues that, if the AMR rule is retained, a DE should not be allowed to lease more than 25 percent of its total spectrum to any one wireless operator. In light of these and similar comments, the Commission seeks further comment on how much of a DE's spectrum it should be able to lease or resell without having to attribute the revenues of its lessees or resellers. Is there a different percentage threshold, either higher or lower, that would better serve the Commission's statutory goals? Should the Commission instead reinstate an absolute limit on the percentage of a DE's spectrum that it may lease or resell? If so, what should that limit be and

why? Should any such limit affect DE eligibility as to any license, or only on a license-by-license basis? Should the Commission have different rules for licenses acquired by DEs without bidding credits? Should the Commission's rules regarding spectrum use agreements with DE's differ for those that have an equity interest in the DE? Commenters should also address how any proposed rule amendments for DE eligibility would impact the Commission's goal of providing small businesses with greater access to capital.

7. Further, some parties suggest that the Commission should consider whether to distinguish between pure spectrum leasing arrangements and network facilities-based wholesale arrangements when evaluating whether to retain the AMR rule. The Commission seeks further comment on this distinction and asks whether and how it should treat wholesale and resale agreements differently from lease arrangements for purposes of attributing revenues to a DE applicant. Commenters are also requested to discuss how the Commission should define "resale" and "wholesale agreements" for purposes of any such distinction, as well as for any other rule modifications it might consider, including if the Commission ultimately choose to retain the AMR rule, and the policy of requiring facilities-based service underlying the rule. Are there any potential advantages of distinguishing between agreements on the basis of the provision of facilities-based service? Are there any potential negative effects of such a distinction such that, on balance, it is preferable to retain the current AMR rule?

8. Some parties suggest that the AMR rule be retained, but modified to allow DEs to lease spectrum to rural carriers or other DEs without attribution and allow DEs that have acquired licenses without bidding credits to lease those licenses without attribution. In particular, Blooston Rural proposes that the AMR be retained with respect to spectrum licenses that are both acquired with bidding credits and leased to nationwide wireless providers. The Commission seeks comment on these proposals. Commenters are specifically invited to address how the proposed modifications will achieve the Commission's goals of facilitating small business participation in spectrum-based services and enhancing competition, while preventing ineligible entities from acquiring small business benefits and unjust enrichment. Is there a limit on the overall amount of spectrum that a DE should be permitted to lease to

another DE or rural carrier? Should any such limit affect DE eligibility as to any license, or only on a license-by-license basis? Commenters are also invited to address whether the proposals regarding modifications to the DE eligibility rules and award of DE bidding credits negatively or positively affect auction revenues, and the extent to which 47 USC 309(j) permits consideration of any such effects.

9. With regard to the policy underlying the AMR rule, a number of parties suggest, however, that the Commission should continue to encourage DEs to provide facilities-based service. For instance, one party supports the elimination of the AMR rule, but states that DEs should be required to be facilities-based providers. Some commenters contend that any rule changes related to eligibility for small business benefits must continue to require an applicant seeking to utilize those benefits to be primarily a facilities-based provider. Other commenters support the Commission's proposal to reconsider requiring DEs to primarily provide facilities-based service directly to the public, and favor the elimination of the policy. The Commission invites further comment on the proposed change to this policy, including whether such a change would comply with the statute's directive that the Commission prescribes "ensur[ing] that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." Commenters are requested to discuss how a policy favoring facilities-based service affects the Commission's ability to prevent warehousing and unjust enrichment, and ensure that small business benefits flow to eligible entities. For instance, should the Commission automatically treat an entity that manages a DE's spectrum license utilization for provisioning services as a controlling interest of the DE? Additionally, the Commission seeks comment as to ways in which the Commission can implement the policy that DEs provide facilities-based services if the AMR rule is eliminated.

10. The record also includes numerous additional proposals that expand or offer alternative proposals for evaluating DE eligibility. The Commission seeks comment on the specific suggestions raised in the record and set forth below, and asks interested parties to provide specific details on how any proposed rule amendment would further its policy objectives of providing small businesses opportunities and preventing unjust enrichment of ineligible entities: (1) Modify the applicable attribution, controlling

interest or affiliation rule to alter the types of equity arrangements available to a DE applicant, by: (i) "Attribut[ing] to a DE the revenues and spectrum of any spectrum holding entity that holds an interest, direct or indirect, equity or non-equity of more than 10 percent," consistent with the spectrum attribution rules used to consider spectrum aggregation, (ii) Restricting larger nationwide and regional carriers, entities with a certain number of end-user customers, and/or other large companies from providing a material portion of the total capitalization of DE applicants or otherwise exercising control over such applicants as part of the definition of 'material relationship;' (iii) "[A]dopting a rebuttable presumption that equity interests of 50 percent or more represent de facto control of the [DE] company;" (2) Adopt a 25 percent minimum equity requirement for DEs to "ensure that controlling interests are properly invested in their companies," and provide that "any loans to achieve minimum equity thresholds should be negotiated at arms-length;" (3) Limit the total dollar amount of DE benefits that any DE (or group of affiliated DEs) may claim during any given auction, based on some multiple of its annual revenues, or a set cap of $32.5 million to "ensure that DEs cannot acquire spectrum in a manner that is wildly disproportionate to the concept of a small business;" (4) Limit the overall amount that a small business can bid in order to ensure that a DE is not able to "bid at levels that undercut the purpose of the DE program" and base such cap on some multiple of a small business gross revenue threshold in the Part 1 schedule, such as ten times the annual gross revenues; (5) Rather than capping DE benefits, adopt another limiting metric such as population, to tie bidding credits more closely to a typical business plan of a small business. Under this proposal, a DE applicant bidding on licenses covering a relatively small number of pops, such as in rural areas, would not be subject to a cap, but nationwide licenses or licenses covering high-value, metropolitan areas would be limited; (6) Narrow the scope of the affiliation rules to exclude individuals and entities whose revenues are currently attributable to a DE, such as directors and certain family members, including in-laws, siblings, step-siblings, and half-siblings, if they are unlikely to exercise control over the applicant entity unless the applicant has more than incidental business relationships with a particular relation; and (7) "[C]larify the affiliation rules to prevent rural telephone companies from losing [DE] status because they hold a fractional interest in a cellular partnership," where the rural telephone company has no ability to control the partnership's day-to-day operations and/or

strategy in any significant way.

11. In addressing proposals proffered in the record, commenters are requested to provide specific comment about how the proposals could be implemented and whether there are any alternative thresholds that would better meet the Commission's goals. For example, commenters should address whether and how any relevant terms should be defined and how the proposals should apply to existing DEs and those that will apply for benefits in the future. Are the existing standards for disclosable interest holders and affiliates appropriate for evaluating DE eligibility consistent with the Commission's policy objectives, or should the Commission modify its rules to include other non-controlling interests in a DE that may potentially cause unjust enrichment of ineligible entities or enable ineligible entities to exercise undue influence over a DE? Should there be a cap on the overall amount of money that non-controlling interests can contribute to a DE? Should there be a cap on, or a prohibition of, a non-controlling interest holder's use of spectrum for a license that has been acquired with DE benefits? For attribution purposes, is the revenue information the Commission uses to determine DE eligibility appropriate, or should the Commission consider other revenues such as sources of personal income? To what extent should an interest holder's revenues be attributed to a DE, for instance, should the attribution of revenues be based on the correlating percentage of the interest holder's equity contribution to the DE rather than all gross revenues? In advocating for particular changes, commenters should discuss how such changes or any resulting disclosure requirements could be implemented in the auction process, including the short-form application stage. To the extent that the proposals recommend incorporating specific percentages, thresholds, or procedures into the Commission's DE eligibility rules, commenters should explain how these approaches, or any other alternatives, would improve the Commission's DE program and better serve its statutory goals. Additionally, how should the Commission factor in the rising cost of acquiring spectrum licenses into any rule amendments that it consider?

12. On February 26, 2015, United States Senator Claire McCaskill sent a letter to Chairman Wheeler requesting that the Commission eliminate the "preferential" treatment for Alaska Native Corporations (ANCs) that do not meet the standard definition of a small business under the Commission's attribution rules. Under 47 CFR 1.2110(c)(5)(xi), small businesses affiliated with Indian tribes or ANCs

are not required to include revenues of those Indian tribes or ANCs, other than gaming revenues, into their gross revenues for purposes of determining eligibility as a small business. In adopting this exemption, the Commission sought to ensure that its rules remained consistent with other Federal laws, policies, and regulations, and most notably the affiliation rules of the Small Business Administration. The Commission seeks comment on whether ANC revenues should be treated the same way as attributable revenues for purposes of DE eligibility. Additionally, the Commission seeks comment on whether its rules concerning Indian tribes or ANCs remain consistent with other Federal policies and practices, and whether and how to amend them. The Commission also seeks comment on whether its rules pertaining to ANCs increase the risk of unjust enrichment to some entities.

B. Unjust Enrichment

13. In the Part 1 NPRM, the Commission also sought comment on what safeguards it should consider to ensure that bidding credits are extended only to qualifying small businesses, noting that "[unjust enrichment] provisions will be as important as ever and that strong enforcement of [the Commission's] rules is critical." The Commission sought comment on whether any changes were needed to strengthen the unjust enrichment rules and how best it can continue to scrutinize applications and proposed transactions to ensure that only eligible entities receive benefits, while not undermining the statutory directive to ensure that DEs are given the opportunity to participate in the provision of spectrum-based services.

14. Commenters are divided on whether the existing rules provide a sufficient safeguard to protect against unjust enrichment, while ensuring that DEs have an opportunity to participate in the provision of spectrum-based services. Several parties urge the Commission to retain the existing rules, noting that a longer unjust enrichment period would "hamper or eliminate the ability of DEs to raise and retain capital or operate their businesses with flexibility comparable to businesses in the rest of the industry."

15. Other commenters urge the Commission to adopt stronger rules to provide a more meaningful deterrent to speculation and abuse. T-Mobile, for example, advocates that the unjust

enrichment rules should be adjusted to: "(1) encompass the entire license term; and (2) require licensees that profit from the sale of a license obtained at a discount to repay that windfall profit [the sales price of the licenses above and beyond the auction bid price], plus interest." T-Mobile further notes that, "in cases where spectrum is not available for use in the near term due to Federal Government or commercial incumbents, the Commission's existing holding periods . . . do not correspond with any rational benchmark for licensees to engage in a legitimate business." To ensure that spectrum resources are made available to the public in a timely manner, T-Mobile advocates that the Commission should require DEs to show some evidence of build-out activity within one year of acquiring the license or upon clearing spectrum incumbents. In addition, Taxpayer Advocates urges the Commission to require a DE to pay back all or part of its bidding credit if it chooses to "lease or sell a significant portion of spectrum within the first five years of ownership." Other commenters contend that more stringent requirements like these proposals will further impede small businesses' ability to acquire access to capital.

16. The Commission seeks comment on these alternative viewpoints. Specifically, the Commission seeks additional comment on whether to extend the unjust enrichment period for a specified number of years (e.g., 10 years), the entire license term or to link it to an interim construction milestone. Are there other alternatives the Commission should consider? For example, should the Commission revisit the percentage amounts associated with its unjust enrichment repayment schedule? Alternatively, should the Commission enhance its unjust enrichment rules as T-Mobile suggests to address concerns that the current unjust enrichment repayment rules are viewed as a "mere cost of doing business" by requiring repayment of any profit or some multiple of the bidding credit received? Commenters are also invited to address whether the DE benefits associated with any and all of a DE's licenses should be forfeited if it loses DE eligibility as to any one license. Finally, the Commission seeks comment on whether it should consider the proposal in the record to impose additional build-out and reporting obligations on DEs by requiring them to demonstrate "tangible steps toward deployment" within one year of acquiring license(s) or clearing incumbent spectrum users. Is one year an appropriate timeframe or should the Commission require demonstrations at additional benchmarks? Are there any other options the Commission should

consider to prevent spectrum warehousing and promote expeditious build-out, e.g., require repayment of some percentage of a bidding credit if a DE fails to meet a benchmark? The Commission asks commenters to address any trade-offs related to these proposals, including the extent to which any implemented rule amendments would restrict a DE's ability to access capital, deter participation of ineligible entities in the DE program, and prevent unjust enrichment.

C. Bidding Credits

17. In the Part 1 NPRM, the Commission proposed to increase the gross revenues thresholds for defining the three tiers of small businesses, in order to reflect the changing nature of the wireless industry, including the overall increase in the size of wireless networks and the increasing capital costs to deploy them. Based upon the percentage increase in the Gross Domestic Product (GDP) price index from when the small business definitions were first adopted, the Commission proposed to adjust the three-year gross revenues thresholds from $3 million to $4 million for businesses potentially eligible for a 35 percent bidding credit; from $15 million to $20 million for business potentially eligible for a 25 percent bidding credit; and from $40 million to $55 million for businesses potentially eligible for a 15 percent bidding credit. The Commission also sought comment regarding the following: increasing the percentage amounts of bidding credits available to small businesses in 47 CFR 1.2110(f); adding additional small business definitions and associated tiers of bidding credit amounts; and offering bidding preferences based on criteria other than business size.

1. Small Business Bidding Credits

18. Many commenters support increasing the gross revenues thresholds by the proposed increments, citing the lack of DE participation in recent auctions, changes in capital markets, and the long period of time since the current thresholds were set. Some commenters further advocate that the Commission increase the revenue thresholds even more than proposed in the Part 1 NPRM. Several commenters support the continued use of gross revenues as the basis for analyzing business size, referring to the administrative workability of this metric. ARC proposes indexing the gross revenue tiers to the costs of auctioned spectrum on a MHz per pop basis. With respect to the credit percentages themselves, many commenters support increasing the credit percentages generally or across the board, and several

support specific increases for the lowest threshold tier (the largest credit). On the other hand, CAGW opposes increasing the bidding credit percentages, arguing that such an increase "could lead to even more questionable affiliations between large and small companies." Others suggest that bidding credit increases and expanding the eligibility for the DE program should not be implemented until the rules are revised and there is surety that ineligible entities will not benefit from bidding credits. How does this suggestion align with the Commission's proposals to address all issues at the same time in this proceeding?

19. The Commission invites comment on these views. Commenters should address implementation issues associated with any alternate approaches, and provide concrete data and analysis to demonstrate whether and how such approaches will better meet the Commission's statutory goals.

2. Other Bidding Preferences/Types of Credits

20. A number of commenters urge the Commission to consider bidding credits based on criteria other than business size. Several parties, for example, encourage the Commission to implement a bidding credit for rural telephone companies, ranging from 25 to 35 percent, to be awarded in addition to any small business bidding credit for which an applicant may qualify. Another commenter urged the Commission to re-examine its rules concerning the tribal land bidding credit. Other parties request that the Commission adopt bidding credits or other preference for parties that commit to serve rural, unserved and underserved areas. In addition at least one party advocates that the Commission's rules should remain focused on small businesses.

21. The Commission seeks specific, data-driven comment regarding these alternative suggestions, including associated implementation issues. Commenters are also requested to discuss how such proposals would advance the Commission's statutory objectives and why they would be preferable to other proposals.

22. The Commission specifically invites comment on the threshold percentages proposed with regard to the adoption of a bidding credit reserved for rural telephone companies, as well as the suggestion that such a bidding credit be cumulative with any small business bidding credit for which a

rural telephone company may also qualify, possibly exceeding 50 percent. To what extent would a rural telephone company bidding credit better enable these entities to compete successfully for licenses at auction? Are the higher costs of service and lower population densities already reflected in the winning bid price for rural markets? In addition to the data submitted by Blooston Rural, commenters are invited to provide additional analyses to demonstrate the need for a rural bidding credit. Does the possibility of cumulating small business and rural telephone company bidding credits increase the risk of unjust enrichment or cause concern regarding other statutory provisions? Commenters are requested to address the extent to which a rural bidding credit may be duplicative of other Commission and Federal government programs designed to facilitate network expansion into rural, unserved, and underserved communities. Is there any way to properly monitor any targeted program or other programs run by the Commission or other agencies to prevent potential abuse? Should the Commission consider any additional obligations or responsibilities for entities that benefit from both a small business and rural bidding credit?

D. Alternatives to Promote Small Business Participation in the Wireless Sector

23. In the Part 1 NPRM, the Commission sought comment on suggestions that would enable the DE program to remain a viable mechanism for small businesses to gain flexibility to access capital, compete in auctions, and participate in new and innovative ways to provision services in a mature wireless industry. Several commenters provided suggestions in response to the Commission's inquiry stating that a review of alternatives is necessary to ascertain whether the current DE program is helpful or harmful to its intended beneficiaries. Many parties advocate for alternatives they contend would facilitate small business access to benefits in both the auction and secondary market contexts. For instance, AT&T suggests that providing "incentives for secondary market transactions or virtual networks," may offer a more direct path for more valuable small businesses in the telecommunications industry and may be more effective than facilitating participation in auctions due to the cost of licenses and capital needed to build networks. Other incentives may include Blooston Rural's proposal which advocates for a change that would allow a winning bidder to deduct from the auction purchase price the pro rata portion of its winning bid payment of any area that is partitioned to a rural telephone company or cooperative. ARC

would expand Blooston Rural's proposal to DEs and argues that this change would "benefit DEs by providing incentives for partitioning and promoting secondary market transactions." Additionally, would strengthening the Commission's build-out requirements and improving processes to reclaim licenses provide opportunities for small businesses to gain access to spectrum and increase diversity of license holders? Interested parties should provide specific instances where they think improvements could be made and options the Commission could pursue.

24. The Commission seeks comment on these proposals. In particular, commenters should address whether and how Blooston Rural's proposal could be implemented in light of the Commission's rules prohibiting certain communications and payment timeframes. Are there alternative frameworks that the Commission should consider to promote a diverse telecommunications ecosystem, including incentives for secondary market transactions or virtual networks that could provide a more direct path into the industry for all entities, including DEs? Pursuant to the Commission's statutory objectives, what role(s) can and should small businesses play in the "provision of spectrum-based services" in today's telecommunications industry?

IV. OTHER PART 1 CONSIDERATIONS

A. Former Defaulter Rule

25. The Part 1 NPRM proposed to tailor the former defaulter rule by balancing concerns that the current application of the rule is overbroad against the Commission's continued need to ensure that auction bidders are financially reliable. Specifically, consistent with the terms of a general waiver it granted for Auction 97, the Commission proposed to exclude any cured default on any Commission license or delinquency on any non-tax debt owed to any Federal agency for which any of the following criteria are met: (1) the notice of the final payment deadline or delinquency was received more than seven years before the relevant short-form application deadline; (2) the default or delinquency amounted to less than $100,000; (3) the default or delinquency was paid within two quarters (i.e., 6 months) after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.

26. Nearly all of the commenters support the Commission's proposal, some with modest

additions, noting that the proposed former defaulter rule strikes the right balance between ensuring that winning bidders are capable of meeting their financial obligations and limiting costly and overbroad application of the rule. AT&T suggests that the Commission should also "include an exemption based on an applicant's credit-rating," because "applicants with an investment grade credit rating pose no meaningful risk of defaulting on a Commission obligation and thus should not be required to submit an additional 50 percent upfront payment penalty." NTCH, however, suggests that the Commission eliminate the former defaulter rule altogether because it is ineffective, unneeded, and counterproductive. The Commission seeks comment on these alternative proposals. To the extent commenters support the proposal to eliminate the former defaulter rule altogether, the Commission seeks specific comment on how it can adequately ensure that bidders are capable of meeting their financial commitments.

B. Commonly Controlled Entities

27. The Part 1 NPRM proposed to codify the Commission's longstanding competitive bidding procedure that prohibits the same individual or entity from filing more than one short-form application, and to establish a new rule to prohibit entities that are exclusively controlled by a single individual or set of individuals from qualifying to bid on licenses in the same or overlapping geographic areas in a specific auction based on more than one short-form application. Commenters addressing this issue largely support the Commission's proposals, although some encourage the Commission to take a step further and consider whether to apply the proposals to entities with common, non-controlling interests. T-Mobile notes, for example, that "it is critical that the Commission also address the potential for coordinated bidding behavior by bidders that are linked by common attributable interests," noting that otherwise these entities would "have unfair advantages in an auction and [could] manipulate bidding to the detriment of other participants and the public." For example, Spectrum Financial implies that allowing an entity with ownership in more than one bidder which exceeds a certain percentage (e.g., 50% or more) to participate in an auction promotes collusion. To address this concern, one commenter recommends that the Commission "adopt a requirement in addition to its existing [47 CFR section 1.2105's] rules [prohibiting certain communications] that individuals or entities listed as disclosable interest[ ]holders on more than one short-form application certify that they are not, and will not be, privy

to, or involved in, the bidding strategy of more than one auction participant." AT&T proposes that "each applicant should certify that it has not entered into any agreements with [any] other applicant regarding their bids or bidding strategy, and that they are not privy to any other applicant's bids or bidding strategy" in lieu of the current disclosure requirements under the Commission's rules. Commenters also suggest that applicants be limited in holding ownership interests in multiple auction applicants. If the Commission were to set an ownership limit, what is the appropriate limit? Should entities be restricted from having an interest (direct or indirect) in more than one applicant for a license in a geographic license area? Alternatively, would establishing a limit on financial investments that an entity may make in other auction participants address commenters' concerns? Should such entities be restricted from directing or participating directly in the bidding of more than one applicant, regardless of whether there is common control? The Commission seeks comment on these concerns and suggestions and any alternatives. In particular, commenters are invited to address what attribution standards the Commission should use in the context of any such rule. Finally, the Commission observes that the adoption of some of the alternatives by commenters may directly or indirectly conflict with other Part 1 competitive bidding rules. For instance, one commenter proposed an additional certification on certain prohibited communications for disclosable interest holders, which may conflict with an exception in the Commission's current rules on prohibiting certain communications. The Commission seeks comment on these potential conflicts and how to harmonize the proposals with its competitive bidding rules, while fulfilling its statutory goals.

C. Joint Bidding Arrangements

28. In light of the evolution of the mobile wireless marketplace since the Commission last adopted joint bidding rules in 1994, the Part 1 NPRM proposed to prohibit joint bidding and other arrangements among nationwide providers, including agreements to participate in an auction through a newly formed joint entity. For purposes of the Commission's joint bidding rules, it proposed to distinguish nationwide providers from non-nationwide providers because of the increased likelihood that joint bidding arrangements between nationwide providers would lead to competitive harm or otherwise harm the public interest. In contrast, the Commission observed a reduced likelihood for competitive harm if non-nationwide providers entered into joint bidding agreements with other non-nationwide providers.

Accordingly, the Commission tentatively concluded that it should continue to permit joint bidding arrangements among non-nationwide providers and asked commenters proposing any changes to the joint bidding rules for arrangements among non-nationwide providers to discuss why such changes are necessary. Additionally, the Commission sought comment on the policies and procedures that should apply to bidding arrangements between nationwide and non-nationwide providers. Finally, the Commission also sought comment on its analysis of the harms and benefits of joint bidding arrangements generally, and on whether its proposals "provide an effective framework for addressing the[se] relative harms and benefits."

29. Commenters are divided on these proposals, with some offering additional recommendations. Sprint opposes prohibiting bidding arrangements between nationwide providers because such a rule would not account for differences in the relative market power of the four current nationwide providers. T-Mobile opposes instituting bright-line rules at all, advocating for adherence to the Commission's existing practice of addressing all bidding agreements on a case-by-case basis. RWA, ARC, and CCA support continuing to allow joint bidding by non-nationwide providers, with ARC arguing that such arrangements "can enable smaller companies to pool their resources and compete effectively for licenses that they would be unable to acquire on their own." Likewise, RWA contends that "joint bidding arrangements can provide some small and rural wireless carriers with opportunities that might otherwise be unavailable due to limited financial resources."

30. AT&T, Taxpayer Advocates, and T-Mobile contend that the Commission should place greater limitations on joint bidding than proposed in the Part 1 NPRM based upon perceived negative effects of non-nationwide providers using joint bidding arrangements in Auction 97. These commenters argue that certain bidders exploited the Commission's rules to the detriment of other bidders and the public interest. Accordingly, some of these commenters submit alternative proposals, which they believe are less likely to lead to competitive harm or otherwise harm the public interest. The Commission seeks comment on these alternative proposals: (1) Prohibit all joint bidding agreements between DEs and non-DEs; (2) Prohibit all joint bidding arrangements and require instead that entities seeking to coordinate

their bidding activities form a bidding consortium or joint venture and divide the licenses acquired after the auction is over; (3) Prohibit all joint bidding arrangements between commonly controlled or affiliated entities; (4) Generally prohibit parties that are privy to others' bidding information during the auction from placing multiple coordinated bids on a common license; (5) Prohibit an individual from serving as an authorized bidder for more than one auction participant; (6) Permit bidding agreements between all providers in rural Partial Economic Areas where the providers involved have less than 45 MHz*pops of below-1-GHz spectrum; (7) Modify the definition of "joint bidding and other arrangements" to include only arrangements that are directly related to the coordination of bidding strategies or mechanics; (8) Require a more comprehensive certification concerning bidding agreements and bidding strategies in addition to, or in lieu of, current disclosure requirements, such as a requirement that all disclosable interest holders on more than one application certify that they do not have knowledge of the bidding strategy of more than one applicant; and (9) Implement a prior approval process for joint bidding arrangements before the short-form deadline, including how to implement the process in an efficient manner.

31. In addition, the Commission seeks to expand the record and request comment on the following proposals: (1) Prohibit parties to a joint bidding agreement from bidding separately on licenses in the same market; (2) Prohibit communications among joint bidders when bidding on licenses in any of the same markets; and (3) Prohibit any individual or entity from serving on more than one bidding committee.

32. The Commission requests comment on whether and how all of the proposals offered above would better protect against anti-competitive behavior – such as preserving bidding eligibility, and limiting bid exposure and distortion of demand – or other harms to the public interest. Commenters are also requested to address specifically how such proposals could be implemented to preserve auction integrity.

IV. PROCEDURAL MATTERS

A. Ex Parte Presentations

33. Requests for Ex Parte Meetings. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the ex parte rules, as set forth in paragraph 145 of the Part 1 NPRM. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

B. Supplement to Initial Regulatory Flexibility Analysis

34. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Part 1 NPRM included an Initial Regulatory Flexibility Analysis (IRFA) exploring the potential impact on small entities of the Commission's proposals. 47 USC Section 309(j)(4)(D) of the Communications Act requires that when the Commission prescribes regulations in designing systems of competitive bidding, it shall "ensure that small businesses, rural telephone companies, and businesses owned by member of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." Consistent with this statutory objective, the Commission sought written public comment on the proposals in the Part 1 NPRM, including comment on the IRFA. Though numerous responses were directed at the small business aspects of the Part 1 NPRM, the Commission received no comments in direct response to the IRFA. This supplemental IRFA addresses the possible incremental significant economic impact on small entities of the alternative proposals in the Part 1 Request for Comment. Interested parties are invited to submit written public comments on this supplemental analysis. Any such comments must be filed in accordance with the same filing deadlines reflected in the "Dates" section of this publication and have a separate and distinct heading designating them as responses to this supplemental analysis. The Commission will send a copy of the Part 1 Request for Comment, including this supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Part 1 Request for Comment and supplemental IRFA (or summaries thereof) will be published in the Federal Register.

35. **Need for, and Objectives of, the Proposed Competitive Bidding Procedures.** The Part 1 Request for Comment seeks additional comment on a number of specific changes to the Commission's Part 1 competitive bidding rules suggested by commenters in response to the questions and proposals set forth in the Part 1 NPRM. Specifically, it seeks comment on alternative proposals for evaluating DE eligibility for bidding credits and for updating other Part 1 competitive bidding rules governing auction participation by former defaulters, commonly controlled entities, and entities with joint bidding arrangements. The Part 1 Request for Comment continues to advance the Commission's statutory directive to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women (collectively, DEs) are given the opportunity to participate in the provision of spectrum-based services, and fulfill the commitment made in the BIA Report & Order. Soliciting further input on these alternative proposals will provide a more complete record to evaluate and act upon the concerns raised in the Part 1 NPRM.

36. The Part 1 Request for Comment seeks comment on the following alternative proposals that would modify the Commission's rules concerning DE eligibility: (1) Modify the attributable material relationship (AMR) rule to distinguish between pure spectrum leasing arrangements and network-based wholesale arrangements and/or to allow DEs to lease spectrum to rural carriers or other DEs without attribution; (2) Retain or eliminate the AMR rule and continue to require DEs to provide facilities-based service; (3) Eliminate the requirement that DEs provide facilities-based service; (4) Strengthen the AMR rule by prohibiting DEs from leasing more than 25 percent of their spectrum in the aggregate, across one or more licenses or to any one wireless operator; (5) Modify the applicable attribution, controlling interest, or affiliation rule to alter the types of equity arrangements available to a DE applicant, by: (i) attributing to a DE the revenues and spectrum of any spectrum holding entity that holds an interest, direct or indirect, equity or non-equity of more than 10 percent; (ii) restricting larger nationwide and regional carriers, entities with a certain number of end-user customers, and/or other large companies from providing a material portion of the total capitalization of DE applicants or otherwise exercising control over such applicants as part of the definition of "material relationship;" and (iii) adopting a rebuttable presumption that equity interests of 50 percent or more represent de facto control of the DE company; (6)

Adopt a 25 percent minimum equity requirement for DEs and ensure that any loans to achieve minimum equity thresholds should be negotiated at arms-length; (7) Limit the total dollar amount of DE benefits that any DE (or group of affiliated DEs) may claim during any given auction, based on some multiple of its annual revenues, or a set cap of $32.5 million; alternatively, base this limit on some multiple times the applicable small business definition in the Part 1 schedule, or another metric like population to tie bidding credits more closely to a typical small business plan; (8) Narrow the scope of affiliation rules to exclude individuals and entities whose revenues are currently attributable to a DE if they are unlikely to exercise control over the applicant entity, such as directors and certain family members, including in-laws, siblings, step-siblings, and half-siblings, unless the applicant has more than incidental business relationships with a particular relation; (9) Clarify the affiliation rules to prevent rural telephone companies from losing DE status by holding a fractional interest in a cellular partnership where the rural telephone company has no control over the partnership's day-to-day operations and/or strategy; (10) Treat the revenues of Alaska Native Corporations the same way as attributable revenues for purposes of DE eligibility under the Commission's rules; (11) Retain the existing unjust enrichment rules or strengthen the rules by: (i) changing the unjust enrichment period to encompass the entire license term, for a specified number of years, or linking it to an interim construction milestone; and (ii) requiring licensees that profit from the sale of a license obtained at a discount to repay that windfall profit, plus interest, in addition to the bidding credit discount; (12) Require DEs to show some evidence of build-out activity within one year of acquiring the license or upon clearing spectrum incumbents and require repayment of some percentage of its bidding credit discount if it fails to meet the build-out milestone; (13) Adjust the percentage amounts associated with the Commission's unjust enrichment repayment schedule; (14) Require DEs to pay back all or part of its bidding credit if it chooses to lease or sell a significant portion of spectrum within the first five years of ownership; (15) Adjust the percentage amounts associated with the Commission's unjust enrichment repayment schedule; (16) Decline to increase the Part 1 NPRM's proposed gross revenue thresholds defining the three tiers of small business bidding credits and to increase the scale of the DE program prior to reform; (17) Modify the definition of small business for acquiring bidding credits by: (i) increasing the gross revenue thresholds above the original proposed

amounts in the Part 1 NPRM; (ii) indexing the gross revenue tiers to the costs of auctioned spectrum on a MHz per pop basis (rather than using the Gross Domestic Product price index); and (iii) increasing the bidding credit percentages across all three tiers or solely for the lowest tier (the largest credit); (18) Consider the adoption or review of other bidding preferences/types of credits by: (i) adopting a bidding credit for rural telephone companies to be awarded in addition to any small business bidding credit for which an applicant may qualify; (ii) adopting a bidding credit for parties that commit to serve unserved and underserved areas; (iii) reviewing the tribal land biding credit; (iv) establishing a mechanism for a winning bidder to deduct from its auction purchase price the pro rata portion of its winning bid payment of any area partitioned to a rural telephone company or cooperative or any DE; and (v) adopting a "localism" bidding credit for any DE applicant with an 10% or greater interest holder that has been a resident of an unserved, underserved, or persistent poverty area for more than a year; and (19) Provide incentives for secondary market transactions or virtual networks.

37. The Part 1 Request for Comment also seeks comment on alternatives proposed for other Part 1 competitive bidding rules relating to former defaulters, commonly controlled entities, and entities with joint bidding arrangements. Specifically, these alternative proposals would: (1) Modify the former defaulter rule to include an exemption based on an applicant's investment grade rating or eliminate the former defaulter rule altogether; (2) Apply also, common, non-controlling entities to the Part 1 NPRM's proposed rule to prohibit commonly controlled entities from qualifying to bid on licenses in the same or overlapping geographic areas based on more than one short-form application; (3) Limit the ownership interests or financial investments an auction applicant may have in other auction applicants; (4) Adopt a requirement in addition to the Commission's existing 47 CFR 1.2105's rules that individuals or entities listed as disclosable interest holders on more than one short-form application certify that they are not, and will not be, privy to, or involved in, the bidding strategy of more than one auction participant; (5) Modify the Commission's rules governing the treatment of joint bidding arrangements by: (i) prohibiting all joint bidding agreements between DEs and non-DEs and between commonly controlled or affiliated entities; (ii) prohibiting all joint bidding arrangements and requiring instead that entities seeking to coordinate their bidding activities form a bidding consortium or a joint venture and divide the licenses acquired after

the auction is over; (iii) permitting bidding agreements between all providers in rural Partial Economic Areas where the providers involved have less than 45 MHz*pops of below-1-GHz spectrum; (iv) modifying the definition of "joint bidding and other arrangements" to include only arrangements that are directly related to the coordination of bidding strategies or mechanics; and (v) prohibiting parties to a joint bidding agreement from bidding separately on licenses in the same market and from communicating about bidding information when bidding on licenses in any of the same markets; (6) Prohibit parties that are privy to others' bidding information during the auction from placing multiple coordinated bids on a common license; (7) Prohibit an individual from serving as an authorized bidder for more than one auction participant; (8) Prohibit any individual or entity from serving on more than one bidding committee; and (9) Implement a prior approval process for joint bidding arrangements before the short-form deadline, including how to implement the process in an efficient manner.

38. **Legal Basis for Proposed Rules**. The Part 1 Request for Comment is adopted pursuant to sections 1, 4(i), 303(r), 309(j), 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(r), 309(j), 316.

39. **Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply.** The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by rules proposed in that rulemaking proceeding, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" 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) satisfies any additional criteria established by the SBA. If adopted, the alternative proposals in the Part 1 Request for Comment may, over time, affect small entities that are not easily categorized at present. However, the alternative proposals described in the Part 1 Request for Comment will affect the same individuals and entities described in paragraphs 7 through 17 of the IRFA associated with the underlying Part 1 NPRM.

40. **Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**. The Part 1 Request for Comment seeks additional comment on a number of rule changes proposed by commenters that will affect reporting, recordkeeping, and other compliance requirements for small entities. However, the majority of these alternatives are outgrowths of the Part 1 NPRM's proposals and policies in which a description was previously provided under paragraphs 19 through 33 of the IRFA. To the extent the alternative proposals discussed in the Part 1 Request for Comment differ from the Part 1 NPRM, the Commission discusses these changes.

41. Eligibility for Bidding Credits. The proposals advanced by commenters in the proceeding would distinguish for purposes of establishing DE qualifications between pure spectrum leasing and network-based wholesale arrangements. Other new proposals would modify the attribution rules to restrict the types of equity arrangements available to a DE applicant, limit the amount of DE benefits that a DE may claim or the overall amount that a small business can bid, narrow the entities whose revenues are attributable to a DE, prevent certain rural telephone companies from losing DE status, treat ANC revenues the same way as attributable revenues, lengthen the unjust enrichment period, require licensees that profit from the sale of a DE license to repay such profit with interest, require forfeiture of DE benefits for all licenses if a DE forfeits DE eligibility for one license, and require DEs to show some evidence of build-out under the DE annual reporting requirement within one year of acquiring the license or upon clearing spectrum incumbents.

42. Bidding Credits. The Part 1 Request for Comment also seeks comments on alternative proposals that would include additional bidding credits for rural telephone companies, for companies committed to providing service to unserved or underserved areas, and for any DE applicant with a 10 percent or greater interest holder that has been a resident of an unserved, underserved, or persistent poverty area for more than a year. Another suggestion would establish an auction mechanism which would allow a winning bidder to deduct from its auction purchase price the pro rata portion of its winning bid payment of any area partitioned to a rural telephone company or cooperative, or any DE.

43. Other Part 1 Rules. In the Part 1 Request for Comment the Commission seeks comment

on alternative suggestions to modify other Part 1 competitive bidding rules concerning former defaulters, commonly controlled entities, and entities with joint bidding agreements. With respect to the former defaulter rule, one commenter suggested that the Commission adopt an exemption based on an applicant's investment grade rating, while another commenter suggested eliminating the former defaulter rule altogether. In regards to the Part 1 NPRM's proposal concerning commonly controlled entities, several commenters urged the Commission to apply its proposal to entities with common, non-controlling interests as well. One commenter proposed that the Commission adopt a certification to prohibit certain communications on the Commission's short-form application, while another commenter submitted a similar proposal but would use the certification in lieu of the Commission's disclosure requirements.

44. The Commission received several alternative suggestions concerning joint bidding agreements and other arrangements. Several commenters opposed the Commission's proposal to prohibit bidding arrangements between nationwide providers; instead, these commenters advocated for adherence to the Commission's existing practice of analyzing bidding arrangements on a case-by-case basis. Other commenters urged the Commission to adopt proposals that would: (1) prohibit joint bidding agreements between DEs and non-DEs and between commonly controlled or affiliated entities; (2) prohibit all joint bidding arrangements and require instead the formation of a bidding consortium or a joint venture which would divide the licenses acquired after the auction is over; (3) permitting bidding agreements between all providers in rural PEAs where the providers involved have less than 45 MHz*pops of below-1-GHz spectrum; (4) narrow the definition of "joint bidding agreement and other arrangements" to arrangements directly related to coordination of bidding strategies or mechanics; (5) prohibit parties to a joint bidding agreement from bidding separately on licenses in the same market and from communicating about bidding information when bidding on licenses in any of the same markets; (6) prohibit parties that are privy to others' bidding information during the auction from placing multiple coordinated bids on a common license; (7) prohibit an individual from serving as an authorized bidder for more than one auction participant; (8) prohibit any individual or entity from serving on more than one bidding committee; (9) implement a prior approval process for joint bidding arrangements before the short-form

deadline, including how to implement the process in an efficient manner; and (10) limit an auction applicant's ownership interest or financial investment in other auction applicants.

45. **Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**. The RFA requires an agency to describe any significant alternatives beneficial to small entities considered in reaching a proposed approach, which may include the following four alternatives (among others): (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification for small entities of compliance and reporting requirements; (3) use of performance, rather than design, standards; and (4) an exemption for small entities.

46. Most of the alternative proposals in Part 1 Request for Comment correlate to the Part 1 NPRM's proposals and policies for modifying the Commission's Part 1 competitive bidding rules. As such, a description of the steps taken to minimize the significant economic impact and the alternatives considered for these proposals can be found under paragraphs 34 through 38 of the Part 1 NPRM's IRFA. To the extent that some of the alternative proposals may be distinguishable from the Part 1 NPRM, the Commission seeks additional comment on these suggestions to fully evaluate the alternatives raised in the record to date. In doing so, the Commission remains mindful of its statutory obligations which require the Commission to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." The statute also directs the Commission to promote "economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses."

47. In Part 1 Request for Comment the Commission continues to explore alternative proposals for establishing DE eligibility and modifying other Part 1 competitive bidding rules. With respect to the DE rules concerning attribution and unjust enrichment, the Commission seeks to provide small businesses with the flexibility to engage in business ventures that include increased forms of leasing and other spectrum use agreements. In pursuing these goals, however, the Commission also remains

mindful of its responsibility to ensure that DE benefits are provided only to qualifying entities. Accordingly, the Commission also aims to employ adequate safeguards against unjust enrichment.

48. As part of this proceeding, the Commissions took a fresh look at its bidding credit program since its inception in 1997 to ensure that it continues to be a viable mechanism for small businesses in light of the current wireless marketplace. The Commission's bidding credit program is the primary way it facilitates participation by small businesses at auction. As a general matter, most of the alternative proposals would provide small businesses with an economic benefit by providing a percentage discount on auction winning bids and therefore make it easier for small businesses to compete in auction and acquire spectrum licenses.

49. To clarify and streamline the Commission competitive bidding rules in advance of BIA, the Commission also explored the need for other revisions to its Part 1 competitive bidding rules to improve transparency and efficiency of the auction process. As noted in the Part 1 NPRM, most of the proposed changes to the Part 1 rules would apply to all entities in the same manner as the Commission would apply these changes uniformly to all entities that choose to participate in spectrum license auctions. Applying the same rules equally in this context provides consistently and predictability to the auction process, and minimizes administrative burdens for all auction participants including small businesses. In fact, many of the proposed rule revisions clarify the Commission's competitive bidding rules, including short-form application requirements. For instance, nearly all commenters supported the Commission's proposal to modify the former defaulter rule by balancing concerns that the current application of the rule is overbroad with the Commission's continued need to ensure that auction bidders are financially responsible. Finally, the Commission continues to focus its attention on joint bidding agreements and other arrangements to preserve and promote robust competition in the mobile wireless marketplace and facilitate competition among bidders at auction, including small entities.

50. **Federal Rules Which Duplicate, Overlap, or Conflict With the Proposed Rules**. None.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.

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