

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

In the Matter of
Updating Part 1 Competitive Bidding Rules
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions
Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission's Rules and/or for Interim Conditional Waiver
Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures

ERRATUM

Released: August 25, 2015

By the Chief, Wireless Telecommunications Bureau:

On July 21, 2015, the Commission released a Report and Order, FCC 15-80, in the above-captioned proceeding. Pursuant to its delegated authority under section 0.331(d), the Bureau issues this Erratum to correct typographical errors in the text of the Report and Order and to make ministerial conforming amendments to the rules attached as APPENDIX A to the Report and Order that correct typographical errors and update cross-references within the Part 1 rules and cross-references to those Part 1 rules in other service-specific rule parts.

- 1. In paragraph 16, in the second sentence, add "the" between "participation in" and "Commission's" and replace "has" with "have."
2. In paragraph 23, in the fourth sentence, add "test" after "bright-line."
3. In paragraph 52, in the first sentence, replace "attempt" with "attempts."
4. In paragraph 55, in the third sentence, add "an" between "created" and "exception."
5. In paragraph 197, in the first sentence, add "solely" between "is" and "operational."
6. In paragraph 199, in the fifth sentence, replace "applicant(s)" with "applicant."
7. In paragraph 209, in the second sentence, replace "partnership" with "partnerships."
8. In paragraph 210, in the second sentence, delete the comma after "85-388" and insert "in which" between "85-388" and "no nationwide."
9. In paragraph 210, in the second sentence, replace the semicolon with a comma between "committee" and "and."

10. In paragraph 210, in the third sentence, delete the comma and insert “that” between “partnership” and “does.”
11. In paragraph 210, in the third sentence, replace the semicolon with a comma between “interest” and “and.”
12. In paragraph 232, in the fifth sentence, delete “itself,” between “requirement,” and “we.”
13. In paragraph 242, in the first sentence, replace “complied” with “compiled.”
14. In footnote 54, correct “*see also* 47 C.F.R. § 1.9020(d)(4)” to read “*see also* 47 C.F.R. § 1.9020(d)(4), as amended herein.”
15. In footnote 110, replace “proposal” with “new standard.”
16. In footnote 136, correct “47 C.F.R. § 1.2110” to read “47 C.F.R. § 1.2110(c)(2)(ii)(J), as adopted herein.”
17. In footnote 304, replace “20” with “29.”
18. In footnote 328, correct “47 C.F.R. § 1.2110(c)” to read “47 C.F.R. § 1.2110(f)(4)(i)(C), as adopted herein.”
19. In footnote 387, correct “*infra* para. 15” to read “*supra* para. 115.”
20. In footnote 414, correct “Seciton” to read “Section.”
21. In footnote 485, in the third line, correct “deploy scare spectrum” to read “deploy scarce spectrum.”
22. In footnote 530, correct “1.2112(b)(2)(iii)” to read “1.2112(b).”
23. In footnote 532, in the last line, correct “*See infra* paras. 146, 150” to read “*See supra* paras. 145, 150.”
24. In footnote 538, correct “1.2112(b)(2)(iii)-(iv)” to read “1.2112(b).”
25. In footnote 570, correct “47 C.F.R. § 1.2105(a)(4), as adopted herein” to read “47 C.F.R. § 1.2105(a)(4)(i), as adopted herein.”
26. In footnote 626, correct “para. 206” to read “para. 201.”
27. In footnote 630, correct “47 C.F.R. § 1.2105(a)(2), as adopted herein” to read “47 C.F.R. § 1.2105(a)(2)(iii), as amended herein”
28. In footnote 631, correct “47 C.F.R. § 1.2105(c)(2)” to read “47 C.F.R. § 1.2105(a)(2)(x).”
29. In footnote 655, correct “47 C.F.R. § 1.2105(a)(4), as adopted herein” to read “47 C.F.R. § 1.2105(a)(4)(i), as adopted herein.”
30. In footnote 725, replace “60-63” with “59-62.”
31. In footnote 726, replace “59” with “59-60.”

The changes to the text of the rules attached as APPENDIX A to the *Report and Order*—correcting typographical errors and updating cross-references in the rules—are reflected in APPENDIX A to this Erratum, a copy of which has been sent to the Office of the Federal Register for publication.

This Erratum also amends APPENDIX B of the *Report and Order* as indicated below:

32. In paragraph 2, correct “this Order” in the last sentence to read “this *Part I Report and Order*.”
33. In paragraph 3, in the first sentence, insert “*Part I Report and Order*” between “this” and “adopts.”

34. In paragraph 4, correct the third bullet point to read as follows:
- “Implement a cap on the overall amount of bidding credits available for eligible designated entities in any one auction;
 - Strengthen and target attribution rules to prevent the unjust enrichment of ineligible entities;”
35. In paragraph 32, in the first sentence, delete the phrase “balance concerns that.”
36. In paragraph 33, in the last sentence, correct “arrangements that is” to read “arrangements that are,” and correct “is disclosed” to read “are disclosed.”

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman
Chief
Wireless Telecommunications Bureau

ATTACHMENT

APPENDIX A

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 27 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

2. Section 1.1910 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 1.1910 Effect of insufficient fee payments, delinquent debts, or debarment.

* * * * *

(b) * * *

(3) * * *

(ii) The provisions of paragraphs (b)(2) and (b)(3) of this section will not apply where more restrictive rules govern treatment of delinquent debtors, such as 47 CFR 1.2105(a)(2)(xi) and (xii).

* * * * *

3. Section 1.2104 is amended by revising paragraph (j)(2) to read as follows:

§ 1.2104 Competitive bidding mechanisms

* * * * *

(j) * * *

(2) Apportioned package bid. The apportioned package bid on a license is an estimate of the price of an individual license included in a package of licenses in an auction with combinatorial (package) bidding. Apportioned package bids shall be determined by the Commission according to a methodology it establishes in advance of each auction with combinatorial bidding. The apportioned package bid on a license included in a package shall be used in place of the amount of an individual bid on that license

when the bid amount is needed to determine the size of a designated entity bidding credit (see § 1.2110(f)(1), (f)(2), and (f)(4)), a new entrant bidding credit (see § 73.5007 of this chapter), a bid withdrawal or default payment obligation (see § 1.2104(g)), a tribal land bidding credit limit (see § 1.2110(f)(3)), or a size-based bidding credit unjust enrichment payment obligation (see § 1.2111(b), (c)(2) and (c)(3)), or for any other determination required by the Commission's rules or procedures.

* * * * *

4. Section 1.2105 is revised to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of certain communications.

(a) Submission of Short-Form Application (FCC Form 175). In order to be eligible to bid, an applicant must timely submit a short-form application (FCC Form 175), together with any appropriate upfront payment set forth by Public Notice. All short-form applications must be filed electronically.

(1) All short-form applications will be due:

(i) On the date(s) specified by public notice; or

(ii) In the case of application filing dates which occur automatically by operation of law, on a date specified by public notice after the Commission has reviewed the applications that have been filed on those dates and determined that mutual exclusivity exists.

(2) The short-form application must contain the following information, and all information, statements, certifications and declarations submitted in the application shall be made under penalty of perjury:

(i) Identification of each license, or category of licenses, on which the applicant wishes to bid.

(ii) (A) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the name, citizenship and address of all general partners, and, if a partner is not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principals or other responsible persons; and

- (B) Applicant ownership and other information, as set forth in §1.2112.
- (iii) The identity of the person(s) authorized to make or withdraw a bid. No person may serve as an authorized bidder for more than one auction applicant;
- (iv) If the applicant applies as a designated entity, a certification that the applicant is qualified as a designated entity under §1.2110.
- (v) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to section 308(b) of the Communications Act of 1934, as amended;
- (vi) Certification that the applicant is in compliance with the foreign ownership provisions of section 310 of the Communications Act of 1934, as amended. The Commission will accept applications certifying that a request for waiver or other relief from the requirements of section 310 is pending;
- (vii) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the applicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;
- (viii) Certification that the applicant has provided in its application a brief description of, and identified each party to, any partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls as defined in paragraph (a)(4) of this section or is controlled by the applicant, is a party.
- (ix) Certification that the applicant (or any party that controls as defined in paragraph (a)(4) of this section or is controlled by the applicant) has not entered and will not enter into any partnerships, joint ventures, consortia or other agreements, arrangements, or understandings of any kind relating to the licenses being auctioned that address or communicate, directly or indirectly, bidding at auction (including specific prices

to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure with: any other applicant (or any party that controls or is controlled by another applicant); with a nationwide provider that is not an applicant (or any party that controls or is controlled by such a nationwide provider); or, if the applicant is a nationwide provider, with any non-nationwide provider that is not an applicant (or with any party that controls or is controlled by such a non-nationwide provider), other than:

(A) Agreements, arrangements, or understandings of any kind that are solely operational as defined under paragraph (a)(4) of this section;

(B) Agreements, arrangements, or understandings of any kind to form consortia or joint ventures as defined under paragraph (a)(4) of this section;

(C) Agreements, arrangements or understandings of any kind with respect to the transfer or assignment of licenses, provided that such agreements, arrangements or understandings do not both relate to the licenses at auction and address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid), or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure.

(x) Certification that if applicant has an interest disclosed pursuant to § 1.2112(a)(1) through (6) with respect to more than one short-form application for an auction, it will implement internal controls that preclude any individual acting on behalf of the applicant as defined in paragraph (c)(5) of this section from possessing information about the bids or bidding strategies (including post-auction market structure), of more than one party submitting a short-form application or communicating such information with respect to a party submitting a short-form application to anyone possessing such information regarding another party submitting a short-form application.

(xi) Certification that the applicant is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency.

(xii) A certification indicating whether the applicant has ever been in default on any Commission license or has ever been delinquent on any non-tax debt owed to any Federal agency. For purposes of this

certification, an applicant may exclude from consideration as a former default any default on a Commission license or delinquency on a non-tax debt to any Federal agency that has been resolved and meets any of the following criteria:

- (A) The notice of the final payment deadline or delinquency was received more than seven years before the short-form application deadline;
- (B) The default or delinquency amounted to less than \$100,000;
- (C) 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
- (D) The default or delinquency was the subject of a legal or arbitration proceeding that was cured upon resolution of the proceeding.

(xiii) For auctions required to be conducted under Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96) or in which any spectrum usage rights for which licenses are being assigned were made available under 47 U.S.C. 309(j)(8)(G)(i), certification under penalty of perjury that the applicant and all of the person(s) disclosed under paragraph (a)(2)(ii) of this section are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant. For the purposes of this certification, the term “person” means an individual, partnership, association, joint-stock company, trust, or corporation, and the term “reasons of national security” means matters relating to the national defense and foreign relations of the United States.

(3) Limit on filing applications. In any auction, no individual or entity may file more than one short-form application or have a controlling interest in more than one short-form application. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium. In the event that applications for an auction are filed by applicants with overlapping controlling interests, pursuant to paragraph (b)(1)(ii) of this section, both applications will be deemed incomplete and only one such applicant may be deemed qualified to bid. This limit shall not apply to any qualifying rural wireless partnership and individual members of such partnerships. A qualifying rural

wireless partnership for purposes of this exception is one that was established as a result of the cellular B block settlement process established by the Commission in CC Docket No. 85-388 in which no nationwide provider is a managing partner or a managing member of the management committee, and partnership interests have not materially changed as of the effective date of the Report and Order in WT Docket No. 14-170, FCC 15-80. A partnership member for purposes of this exception is a partner or successor-in-interest to a partner in a qualifying partnership that does not have day-to-day management responsibilities in the partnership and holds 25% or less ownership interest, and provides a certification in its short-form application that it will implement internal controls to insulate itself from the bidding process of the cellular partnership and any other members of the partnership, except that it may, prior to the deadline for resubmission of short-form applications, express to the partnership the maximum it is willing to spend as a partner.

(4) Definitions—For purposes of the certifications required under paragraph (a)(2) of this section:

(i) The term controlling interest includes individuals or entities with positive or negative de jure or de facto control of the applicant. De jure control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. De facto control is determined on a case-by-case basis.

Examples of de facto control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or playing an integral role in management decisions. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium.

(ii) The term consortium means an entity formed to apply as a single applicant to bid at auction pursuant

to an agreement by two or more separate and distinct legal entities that individually are eligible to claim the same designated entity benefits under § 1.2110, provided that no member of the consortium may be a nationwide provider;

(iii) The term joint venture means a legally cognizable entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities, provided that no member of the joint venture may be a nationwide provider;

(iv) The term solely operational agreement means any agreement, arrangement, or understanding of any kind that addresses operational aspects of providing a mobile service, including but not limited to agreements for roaming, device acquisition, and spectrum leasing and other spectrum use arrangements, so long as the agreement does not both relate to the licenses at auction and address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure.

NOTE TO PARAGRAPH (a): The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) Modification and Dismissal of Short-Form Application (FCC Form 175). (1) (i) Any short-form application (FCC Form 175) that does not contain all of the certifications required pursuant to this section is unacceptable for filing and cannot be corrected subsequent to the applicable filing deadline. The application will be deemed incomplete, the applicant will not be found qualified to bid, and the upfront payment, if paid, will be returned.

(ii) If (A) an individual or entity submits multiple applications in a single auction; or

(B) Entities commonly controlled by the same individual or same set of individuals submit applications for any set of licenses in the same or overlapping geographic areas in a single auction; then only one of such applications may be deemed complete, and the other such application(s) will be deemed incomplete, such applicants will not be found qualified to bid, and the associated upfront payment(s), if paid, will be returned.

(2) The Commission will provide bidders a limited opportunity to cure defects specified herein (except

for failure to sign the application and to make certifications) and to resubmit a corrected application. During the resubmission period for curing defects, a short-form application may be amended or modified to cure defects identified by the Commission or to make minor amendments or modifications. After the resubmission period has ended, a short-form application may be amended or modified to make minor changes or correct minor errors in the application. Major amendments cannot be made to a short-form application after the initial filing deadline. Major amendments include changes in ownership of the applicant that would constitute an assignment or transfer of control, changes in an applicant's size which would affect eligibility for designated entity provisions, and changes in the license service areas identified on the short-form application on which the applicant intends to bid. Minor amendments include, but are not limited to, the correction of typographical errors and other minor defects not identified as major. An application will be considered to be newly filed if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

(3) Applicants who fail to correct defects in their applications in a timely manner as specified by public notice will have their applications dismissed with no opportunity for resubmission.

(4) Applicants shall have a continuing obligation to make any amendments or modifications that are necessary to maintain the accuracy and completeness of information furnished in pending applications. Such amendments or modifications shall be made as promptly as possible, and in no case more than five business days after applicants become aware of the need to make any amendment or modification, or five business days after the reportable event occurs, whichever is later. An applicant's obligation to make such amendments or modifications to a pending application continues until they are made.

(c) Prohibition of certain communications. (1) After the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment

deadline, unless such communications are within the scope of an agreement described in paragraphs (a)(2)(ix)(A) through (C) of this section that is disclosed pursuant to paragraph (a)(2)(viii) of this section.

(2) Any party submitting a short-form application that has an interest disclosed pursuant to § 1.2112(a)(1) through (6) with respect to more than one short-form application for an auction must implement internal controls that preclude any individual acting on behalf of the applicant as defined for purposes of this paragraph from possessing information about the bids or bidding strategies of more than one party submitting a short-form or communicating such information with respect to a party submitting a short-form application to anyone possessing such information regarding another party submitting a short-form application. Implementation of such internal controls will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.

(3) An applicant must modify its short-form application to reflect any changes in ownership or in membership of a consortium or a joint venture or agreements or understandings related to the licenses being auctioned.

(4) A party that makes or receives a communication prohibited under paragraphs (c)(1) or (6) of this section shall report such communication in writing immediately, and in any case no later than five business days after the communication occurs. A party's obligation to make such a report continues until the report has been made. Such reports shall be filed as directed in public notices detailing procedures for the bidding that was the subject of the reported communication. If no public notice provides direction, the party making the report shall do so in writing to the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available, including electronic transmission such as email.

(5) For purposes of this paragraph:

(i) The term applicant shall include all controlling interests in the entity submitting a short-form application to participate in an auction (FCC Form 175), as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding

stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity. In the case of a consortium, each member of the consortium shall be considered to have a controlling interest in the consortium; and

(ii) The term bids or bidding strategies shall include capital calls or requests for additional funds in support of bids or bidding strategies.

Example: Company A is an applicant in area 1. Company B and Company C each own 10 percent of Company A. Company D is an applicant in area 1, area 2, and area 3. Company C is an applicant in area 3. Without violating the Commission's Rules, Company B can enter into a consortium arrangement with Company D or acquire an ownership interest in Company D if Company B certifies either (1) that it has communicated with and will communicate neither with Company A or anyone else concerning Company A's bids or bidding strategy, nor with Company C or anyone else concerning Company C's bids or bidding strategy, or (2) that it has not communicated with and will not communicate with Company D or anyone else concerning Company D's bids or bidding strategy.

(6) Prohibition of certain communications for the broadcast television spectrum incentive auction conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96).

(i) For the purposes of the prohibition described in paragraphs (c)(6)(ii) and (iii) of this section, the term forward auction applicant is defined the same as the term applicant is defined in paragraph (c)(5) of this section, and the terms full power broadcast television licensee and Class A broadcast television licensee are defined the same as those terms are defined in §1.2205(a)(1).

(ii) Except as provided in paragraph (c)(6)(iii) of this section, in the broadcast television spectrum incentive auction conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96), beginning on the short-form application filing deadline for the forward auction and until the results of the incentive auction are announced by public notice, all forward auction applicants are prohibited from communicating directly or indirectly any incentive auction applicant's bids or bidding strategies to any full power or Class A broadcast television licensee.

(iii) The prohibition described in paragraph (c)(6)(ii) of this section does not apply to communications between a forward auction applicant and a full power or Class A broadcast television licensee if a controlling interest, director, officer, or holder of any 10 percent or greater ownership interest in the forward auction applicant, as of the deadline for submitting short-form applications to participate in the forward auction, is also a controlling interest, director, officer, or governing board member of the full power or Class A broadcast television licensee, as of the deadline for submitting applications to participate in the reverse auction.

NOTE 1 TO PARAGRAPH (c): For the purposes of paragraph (c), “controlling interests” include individuals or entities with positive or negative de jure or de facto control of the licensee. De jure control includes holding 50 percent or more of the voting stock of a corporation or holding a general partnership interest in a partnership. Ownership interests that are held indirectly by any party through one or more intervening corporations may be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain meets or exceeds 50 percent or represents actual control, it may be treated as if it were a 100 percent interest. De facto control is determined on a case-by-case basis. Examples of de facto control include constituting or appointing 50 percent or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or playing an integral role in management decisions.

NOTE 2 TO PARAGRAPH (c): The prohibition described in paragraph (c)(6)(ii) of this section applies to controlling interests, directors, officers, and holders of any 10 percent or greater ownership interest in the forward auction applicant as of the deadline for submitting short-form applications to participate in the forward auction, and any additional such parties at any subsequent point prior to the announcement by public notice of the results of the incentive auction. Thus, if, for example, a forward auction applicant appoints a new officer after the short-form application deadline, that new officer would be subject to the prohibition in paragraph (c)(6)(ii) of this section, but would not be included within the exception

described in paragraph (c)(6)(iii) of this section.

5. Section 1.2106 is amended by revising paragraph (a) to read as follows:

§ 1.2106 Submission of upfront payments.

(a) The Commission may require applicants for licenses subject to competitive bidding to submit an upfront payment. In that event, the amount of the upfront payment and the procedures for submitting it will be set forth in a Public Notice. Any auction applicant that, pursuant to § 1.2105(a)(2)(xii), certifies that it is a former defaulter must submit an upfront payment equal to 50 percent more than the amount that otherwise would be required. No interest will be paid on upfront payments.

* * * * *

6. Section 1.2107 is amended by revising the first sentence in paragraph (g)(1)(i) to read as follows:

§ 1.2107 Submission of down payment and filing of long-form applications.

* * * * *

(g) * * *

(1) * * *

(i) A consortium participating in competitive bidding pursuant to §1.2110(b)(4)(i) that is a winning bidder may not apply as a consortium for licenses covered by the winning bids. * * *

* * * * *

7. Section 1.2110 is amended by revising paragraphs (a), (b)(1)(i) and (ii), and (b)(3); adding paragraphs (b)(4) and (c)(2)(ii)(J); revising paragraphs (c)(6) and (f)(2); adding paragraph f(4); and revising paragraphs (j) and (n) to read as follows:

§ 1.2110 Designated entities.

(a) Designated entities are small businesses (including businesses owned by members of minority groups and/or women), rural telephone companies, and eligible rural service providers.

(b) Eligibility for small business and entrepreneur provisions—(1) Size attribution. (i) The gross revenues of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests shall be attributed to the applicant (or licensee) and considered on a cumulative basis and

aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules. An applicant seeking status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules, must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous three years of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests.

(ii) If applicable, pursuant to §24.709 of this chapter, the total assets of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as an entrepreneur. An applicant seeking status as an entrepreneur must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous two years of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests.

* * * * *

(3) Standard for evaluating eligibility for small business benefits. To be eligible for small business benefits:

(i) An applicant must meet the applicable small business size standard in paragraphs (b)(1) and(2) of this section, and

(ii) Must retain de jure and de facto control over the spectrum associated with the license(s) for which it seeks small business benefits. An applicant or licensee may lose eligibility for size-based benefits for one or more licenses without losing general eligibility for size-based benefits so long as it retains de jure and de facto control of its overall business.

* * * * *

(4) Exceptions—(i) Consortium. Where an applicant to participate in bidding for Commission licenses or permits is a consortium of entities eligible for size-based bidding credits and/or closed bidding based on gross revenues and/or total assets, the gross revenues and/or total assets of each consortium member shall

not be aggregated. Where an applicant to participate in bidding for Commission licenses or permits is a consortium of entities eligible for rural service provider bidding credits pursuant to paragraph (f)(4) of this section, the subscribers of each consortium member shall not be aggregated. Each consortium member must constitute a separate and distinct legal entity to qualify for this exception. Consortia that are winning bidders using this exception must comply with the requirements of §1.2107(g) of this chapter as a condition of license grant.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(J) In addition to the provisions of paragraphs (b)(1)(i) and (f)(4)(i)(C) of this section, for purposes of determining an applicant’s or licensee’s eligibility for bidding credits for designated entity benefits, the gross revenues (or, in the case of a rural service provider under paragraph (f)(4) of this section, the subscribers) of any disclosable interest holder of an applicant or licensee are also attributable to the applicant or licensee, on a license-by-license basis, if the disclosable interest holder uses, or has an agreement to use, more than 25 percent of the spectrum capacity of a license awarded with bidding credits. For purposes of this provision, a disclosable interest holder in a designated entity applicant or licensee is defined as any individual or entity holding a ten percent or greater interest of any kind in the designated entity, including but not limited to, a ten percent or greater interest in any class of stock, warrants, options or debt securities in the applicant or licensee. This rule, however, shall not cause a disclosable interest holder, which is not otherwise a controlling interest, affiliate, or an affiliate of a controlling interest of a rural service provider to have the disclosable interest holder’s subscribers become attributable to the rural service provider applicant or licensee when the disclosable interest holder has a spectrum use agreement to use more than 25 percent of the spectrum capacity of a license awarded with a rural service provider bidding credit, so long as

(1) The disclosable interest holder is independently eligible for a rural service provider bidding credit,

and;

(2) The disclosable interest holder's spectrum use and any spectrum use agreements are otherwise permissible under the Commission's rules.

* * * * *

(6) Consortium. A consortium of small businesses, very small businesses, entrepreneurs, or rural service providers is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business, very small business, entrepreneur, or rural service provider as those terms are defined in this section and in applicable service-specific rules. Each individual member must constitute a separate and distinct legal entity to qualify.

* * * * *

(f) * * *

(2) Small business bidding credits.

(i) Size of bidding credits. A winning bidder that qualifies as a small business, and has not claimed a rural service provider bidding credit pursuant to paragraph (f)(4) of this section, may use the following bidding credits corresponding to its respective average gross revenues for the preceding 3 years:

(A) Businesses with average gross revenues for the preceding 3 years not exceeding \$4 million are eligible for bidding credits of 35 percent;

(B) Businesses with average gross revenues for the preceding 3 years not exceeding \$20 million are eligible for bidding credits of 25 percent; and

(C) Businesses with average gross revenues for the preceding 3 years not exceeding \$55 million are eligible for bidding credits of 15 percent.

(ii) Cap on winning bid discount. A maximum total discount that a winning bidder that is eligible for a small business bidding credit may receive will be established on an auction-by-auction basis. The limit on the discount that a winning bidder that is eligible for a small business bidding credit may receive in any particular auction will be no less than \$25 million. The Commission may adopt a market-based cap on an

auction-by-auction basis that would establish an overall limit on the discount that a small business may receive for certain license areas.

* * * * *

(4) Rural service provider bidding credit—(i) Eligibility. A winning bidder that qualifies as a rural service provider and has not claimed a small business bidding credit pursuant to paragraph (f)(2) of this section will be eligible to receive a 15 percent bidding credit. For the purposes of this paragraph, a rural service provider means a service provider that—

(A) Is in the business of providing commercial communications services and together with its controlling interests, affiliates, and the affiliates of its controlling interests as those terms are defined in paragraphs (c)(2) and (c)(5) of this section, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers as of the date of the short-form filing deadline; and

(B) Serves predominantly rural areas, defined as counties with a population density of 100 or fewer persons per square mile.

(C) Size attribution. (1) The combined wireless, wireline, broadband, and cable subscribers of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for the rural service provider bidding credit.

(2) Exception. For rural partnerships providing service as of July 16, 2015, the Commission will determine eligibility for the 15 percent rural service provider bidding credit by evaluating whether the individual members of the rural partnership individually have fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers, and for those types of rural partnerships, the subscribers will not be aggregated.

(ii) Cap on winning bid discount. A maximum total discount that a winning bidder that is eligible for a rural service provider bidding credit may receive will be established on an auction-by-auction basis. The limit on the discount that a winning bidder that is eligible for a rural service provider bidding credit may

receive in any particular auction will be no less than \$10 million. The Commission may adopt a market-based cap on an auction-by-auction basis that would establish an overall limit on the discount that a rural service provider may receive for certain license areas.

* * * * *

(j) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements, spectrum leasing arrangements, spectrum resale (including wholesale) arrangements, spectrum use agreements, and all other agreements including oral agreements, establishing as applicable, de facto or de jure control of the entity. Designated entities also must provide the date(s) on which they entered into each of the agreements listed. In addition, designated entities must file with their long-form applications a copy of each such agreement. In order to enable the Commission to audit designated entity eligibility on an ongoing basis, designated entities that are awarded eligibility must, for the term of the license, maintain at their facilities or with their designated agents the lists, summaries, dates and copies of agreements required to be identified and provided to the Commission pursuant to this paragraph and to §1.2114.

* * * * *

(n) Annual reports. (1) Each designated entity licensee must file with the Commission an annual report no later than September 30 of each year for each license it holds that was acquired using designated entity benefits and that, as of August 31 of the year in which the report is due (the “cut-off date”), remains subject to designated entity unjust enrichment requirements (a “designated entity license”). The annual report must provide the information described in paragraph (n)(2) of this section for the year ending on the cut-off date (the “reporting year”). If, during the reporting year, a designated entity has assigned or transferred a designated entity license to another designated entity, the designated entity that holds the designated entity license on September 30 of the year in which the application for the transaction is filed is responsible for filing the annual report.

(2) The annual report shall include, at a minimum, a list and summaries of all agreements and arrangements (including proposed agreements and arrangements) that relate to eligibility for designated entity benefits. In addition to a summary of each agreement or arrangement, this list must include the parties (including affiliates, controlling interests, and affiliates of controlling interests) to each agreement or arrangement, as well as the dates on which the parties entered into each agreement or arrangement.

(3) A designated entity need not list and summarize on its annual report the agreements and arrangements otherwise required to be included under paragraphs (n)(1) and (n)(2) of this section if it has already filed that information with the Commission, and the information on file remains current. In such a situation, the designated entity must instead include in its annual report both the ULS file number of the report or application containing the current information and the date on which that information was filed.

* * * * *

8. Section 1.2111 is amended by removing paragraphs (a) and (b); redesignating paragraphs (c), (d), and (e) as paragraphs (a), (b), and (c); and revising newly redesignated paragraphs (a)(2), (a)(3), and (b)(1) to read as follows:

§ 1.2111 Assignment or transfer of control: unjust enrichment.

(a) * * *

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval. A licensee's (or other attributable entity'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 shall not be considered to result in the licensee losing eligibility for installment payments.

(3) If a licensee seeks to make any change in ownership that would result in the licensee qualifying for a less favorable installment plan under this section, the licensee shall seek Commission approval and must

adjust its payment plan to reflect its new eligibility status. A licensee may not switch its payment plan to a more favorable plan.

* * * * *

(b) Unjust enrichment payment: bidding credits. (1) A licensee that utilizes a bidding credit, and that during the initial term seeks to assign or transfer control of a license to an entity that does not meet the eligibility criteria for a bidding credit, will be required to reimburse the U.S. Government for the amount of the bidding credit, plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license was granted, as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to assign or transfer control of a license to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to make any ownership change that would result in the licensee losing eligibility for a bidding credit (or qualifying for a lower bidding credit), the amount of the bidding credit (or the difference between the bidding credit originally obtained and the bidding credit for which the licensee would qualify after restructuring), plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer or of a reportable eligibility event (see §1.2114).

* * * * *

9. Section 1.2112 is amended by revising paragraph (b) to read as follows:

§ 1.2112 Ownership disclosure requirements for applications.

(b) Designated entity status. In addition to the information required under paragraph (a) of this section, each applicant claiming eligibility for small business provisions or a rural service provider bidding credit shall disclose the following:

(1) On its application to participate in competitive bidding (i.e., short-form application (see 47 CFR 1.2105)):

(i) List the names, addresses, and citizenship of all officers, directors, affiliates, and other controlling interests of the applicant, as described in §1.2110, and, if a consortium of small businesses or consortium of very small businesses, the members of the conglomerate organization;

(ii) List any FCC-regulated entity or applicant for an FCC license, in which any controlling interest of the applicant owns a 10 percent or greater interest or a total of 10 percent or more of any class of stock, warrants, options or debt securities. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant;

(iii) List all parties with which the applicant has entered into agreements or arrangements for the use of any of the spectrum capacity of any of the applicant's spectrum;

(iv) List separately and in the aggregate the gross revenues, computed in accordance with §1.2110, for each of the following: The applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests; and if a consortium of small businesses, the members comprising the consortium;

(v) If claiming eligibility for a rural service provider bidding credit, provide all information to demonstrate that the applicant meets the criteria for such credit as set forth in §1.2110(f)(4); and

(vi) If applying as a consortium of designated entities, provide the information in paragraphs (b)(1)(i) through (v) of this section separately for each member of the consortium.

(2) As an exhibit to its application for a license, authorization, assignment, or transfer of control:

(i) List the names, addresses, and citizenship of all officers, directors, and other controlling interests of the applicant, as described in §1.2110;

(ii) List any FCC-regulated entity or applicant for an FCC license, in which any controlling interest of the applicant owns a 10 percent or greater interest or a total of 10 percent or more of any class of stock, warrants, options or debt securities. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant;

- (iii) List and summarize all agreements or instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business under the applicable designated entity provisions, including the establishment of de facto or de jure control. Such agreements and instruments include articles of incorporation and by-laws, partnership agreements, shareholder agreements, voting or other trust agreements, management agreements, franchise agreements, spectrum leasing arrangements, spectrum resale (including wholesale) arrangements, and any other relevant agreements (including letters of intent), oral or written;
- (iv) List and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees;
- (v) List separately and in the aggregate the gross revenues, computed in accordance with §1.2110, for each of the following: the applicant, its affiliates, its controlling interests, and affiliates of its controlling interests; and if a consortium of small businesses, the members comprising the consortium;
- (vi) List and summarize, if seeking the exemption for rural telephone cooperatives pursuant to §1.2110, all documentation to establish eligibility pursuant to the factors listed under §1.2110(b)(4)(iii)(A).
- (vii) List and summarize any agreements in which the applicant has entered into arrangements for the use of any of the spectrum capacity of the license that is the subject of the application; and
- (viii) If claiming eligibility for a rural service provider bidding credit, provide all information to demonstrate that the applicant meets the criteria for such credit as set forth in §1.2110(f)(4).

10. Section 1.2114 is amended by revising paragraph (a)(1) to read as follows:

§1.2114 Reporting of eligibility event.

* * * * *

(a) * * *

(1) Any spectrum lease (as defined in §1.9003) or any other type of spectrum use agreement with one entity or on a cumulative basis that might cause a licensee to lose eligibility for installment payments, a set-aside license, or a bidding credit (or for a particular level of bidding credit) under §1.2110 and

applicable service-specific rules.

* * * * *

11. Section 1.2205 is amended by revising paragraph (a)(2) to read as follows:

§ 1.2205 Prohibition of certain communications.

(a) * * *

(2) For the purposes of this section, the term forward auction applicant is defined the same as the term applicant is defined in §1.2105(c)(5).

* * * * *

12. Section 1.9020 is amended by revising paragraphs (d)(4) and (e) to read as follows:

§ 1.9020 Spectrum manager leasing arrangements.

* * * * *

(d) * * *

(4) Designated entity/entrepreneur rules. A licensee that holds a license pursuant to small business, rural service provider, and/or entrepreneur provisions (see §1.2110 and §24.709 of this chapter) and continues to be subject to unjust enrichment requirements (see §1.2111 and §24.714 of this chapter) and/or transfer restrictions (see §24.839 of this chapter) may enter into a spectrum manager leasing arrangement with a spectrum lessee, regardless of whether the spectrum lessee meets the Commission's designated entity eligibility requirements (see §1.2110 of this chapter) or its entrepreneur eligibility requirements to hold certain C and F block licenses in the broadband personal communications services (see §1.2110 and §24.709 of this chapter), so long as the spectrum manager leasing arrangement does not result in the spectrum lessee's becoming a "controlling interest" or "affiliate" (see §1.2110 of this chapter) of the licensee such that the licensee would lose its eligibility as a designated entity or entrepreneur.

* * * * *

(e) Notifications regarding spectrum manager leasing arrangements. A licensee that seeks to enter into a spectrum manager leasing arrangement must notify the Commission of the arrangement in advance of the spectrum lessee's commencement of operations under the lease. Unless the license covering the spectrum

to be leased is held pursuant to the Commission's designated entity rules and continues to be subject to unjust enrichment requirements and/or transfer restrictions (see §§ 1.2110 and 1.2111, and §§ 24.709, 24.714, and 24.839 of this chapter), the spectrum manager lease notification will be processed pursuant to either the general notification procedures or the immediate processing procedures, as set forth herein. The licensee must submit the notification to the Commission by electronic filing using the Universal Licensing System (ULS) and FCC Form 608, except that a licensee falling within the provisions of § 1.913(d) of this chapter may file the notification either electronically or manually. If the license covering the spectrum to be leased is held pursuant to the Commission's designated entity rules, the spectrum manager lease will require Commission acceptance of the spectrum manager lease notification prior to the commencement of operations under the lease.

* * * * *

13. Section 1.9030 is amended by revising the second sentences in paragraphs (d)(4)(iii) and (iv) to read as follows:

§ 1.9030 Long-term de facto transfer leasing arrangements.

* * * * *

(d) * * *

(4) * * *

(iii) The amount of any unjust enrichment payment will be determined by the Commission as part of its review of the application under the same rules that apply in the context of a license assignment or transfer of control (see § 1.2111 and § 24.714 of this chapter). If the spectrum leasing arrangement involves only part of the license area and/or part of the bandwidth covered by the license, the unjust enrichment obligation will be apportioned as though the license were being partitioned and/or disaggregated (see § 1.2111(c) and § 24.714(c) of this chapter). * * *

(iv) A licensee that participates in the Commission's installment payment program (see § 1.2110(g)) may enter into a long-term de facto transfer leasing arrangement without triggering unjust enrichment obligations provided that the lessee would qualify for as favorable a category of installment payments. A

licensee using installment payment financing that seeks to lease to an entity not meeting the eligibility standards for as favorable a category of installment payments must make full payment of the remaining unpaid principal and any unpaid interest accrued through the effective date of the spectrum leasing arrangement (see § 1.2111(a)). * * *

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

14. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

15. Section 27.1002 is amended by revising paragraph (a) to read as follows:

§27.1002 Designated entities in the 1915-1920 MHz and 1995-2000 MHz bands.

* * * * *

(a)(1) A small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding \$15 million for the preceding three years.

* * * * *

16. Section 27.1104 is amended by revising paragraph (a) to read as follows:

§27.1104 Designated Entities in the 2000-2020 MHz and 2180-2200 MHz bands.

* * * * *

(a) Small business. (1) A small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates, its controlling interests, and the

affiliates of its controlling interests, has average gross revenues not exceeding \$15 million for the preceding three years.

* * * * *

17. Section 27.1106 is amended by revising paragraph (a) to read as follows:

§27.1106 Designated Entities in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz bands.

* * * * *

(a) Small business. (1) A small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding \$40 million for the preceding three (3) years.

(2) A very small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding \$15 million for the preceding three (3) years.

* * * * *

18. Revise § 27.1301 to read as follows:

§ 27.1301 Designated entities in the 600 MHz band.

* * * * *

(a) Small business. (1) A small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding \$55 million for the preceding three (3) years.

(2) A very small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding \$20 million for the preceding three (3) years.

(b) Eligible rural service provider. For purposes of this section, an eligible rural service provider is an entity that meets the criteria specified in § 1.2110(f)(4) of this chapter.

(c) Bidding credits. (1) A winning bidder that qualifies as a small business as defined in this section or a consortium of small businesses may use the bidding credit specified in §1.2110(f)(2)(i)(C) of this chapter.

A winning bidder that qualifies as a very small business as defined in this section or a consortium of very small businesses may use the bidding credit specified in §1.2110(f)(2)(i)(B) of this chapter.

(2) An entity that qualifies as eligible rural service provider or a consortium of rural service providers may use the bidding credit specified in § 1.2110(f)(4) of this chapter.

* * * * *