

this period of time to no less than five (5) days. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The time for filing such oppositions shall be at least five (5) days from the filing date for petitions to deny, and the time for filing replies shall be at least five (5) days from the filing date for oppositions. The Commission may grant a license based on any long-form application that has been accepted for filing. The Commission shall in no case grant licenses earlier than seven (7) days following issuance of a public notice announcing long-form applications have been accepted for filing.

(d) If the Commission determines that:

(1) An applicant is qualified and there is no substantial and material issue of fact concerning that determination, it will grant the application.

(2) An applicant is not qualified and that there is no substantial issue of fact concerning that determination, the Commission need not hold an evidentiary hearing and will deny the application.

(3) Substantial and material issues of fact require a hearing, it will conduct a hearing. The Commission may permit all or part of the evidence to be submitted in written form and may permit employees other than administrative law judges to preside at the taking of written evidence. Such hearing will be conducted on an expedited basis.

[59 FR 44293, Aug. 26, 1994, as amended at 63 FR 2343, Jan. 15, 1998; 65 FR 52345, Aug. 29, 2000]

§ 1.2109 License grant, denial, default, and disqualification.

(a) Unless otherwise specified by public notice, auction winners are required to pay the balance of their winning bids in a lump sum within ten (10) business days following the release of a public notice establishing the payment deadline. If a winning bidder fails to

pay the balance of its winning bids in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five percent of the amount due. When a winning bidder fails to pay the balance of its winning bid by the late payment deadline, it is considered to be in default on its license(s) and subject to the applicable default payments. Licenses will be awarded upon the full and timely payment of winning bids and any applicable late fees.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within ten (10) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in §§1.2104(g)(2) or 1.2104(g)(3), whichever is applicable. In such event, the Commission, at its discretion, may either re-auction the license(s) to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. If the license(s) is offered to the other highest bidders (in descending order), the down payment obligations set forth in §1.2107(b) will apply. However, in combinatorial bidding auctions, the Commission will only re-auction the license(s) to existing or new applicants. The Commission will not offer the package or licenses to the next highest bidder.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in §§1.2104(g)(2) or 1.2104(g)(3), whichever is applicable. In such event, the Commission may either re-auction the license(s) to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. However, in combinatorial bidding auctions, the Commission will

only re-auction the license(s) to existing or new applicants. The Commission will not offer the package or licenses to the next highest bidder.

(d) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

[59 FR 44293, Aug. 26, 1994, as amended at 62 FR 13544, Mar. 21, 1997; 63 FR 2343, Jan. 15, 1998; 68 FR 42996, July 21, 2003]

§ 1.2110 Designated entities.

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

(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, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship 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, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.

(ii) If applicable, pursuant to § 24.709 of this chapter, the total assets of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship 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, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.

(2) *Aggregation of affiliate interests.* Persons or entities that hold interests in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(c)(5)(iii) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

Example 1 to paragraph (b)(2): ABC Corp. is owned by individuals, A, B and C, each having an equal one-third voting interest in ABC Corp. A and B together, with two-thirds of the stock have the power to control ABC Corp. and have an identity of interest. If A&B invest in DE Corp., a broadband PCS applicant for block C, A and B's separate interests in DE Corp. must be aggregated because A and B are to be treated as one person or entity.

Example 2 to paragraph (b)(2): ABC Corp. has subsidiary BC Corp., of which it holds a controlling 51 percent of the stock. If ABC Corp. and BC Corp., both invest in DE Corp., their separate interests in DE Corp. must be aggregated because ABC Corp. and BC Corp. are affiliates of each other.

(3) *Exceptions*—(i) *Consortium.* Where an applicant to participate in bidding for Commission licenses or permits is a consortium either of entities eligible for size-based bidding credits and/or for 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. 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.