

their licensed spectrum after constructing at least 40 percent of the geographic areas designated in their applications in accordance with the provisions in §90.725(a) of this part.

(3) Phase II licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(4) Phase I and Phase II licensees authorized to operate on Channels 161 through 170 or Channels 181 through 185 are not eligible to partition their geographic service area or disaggregate their licensed spectrum.

(b) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to §1.948 and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83). In the case where an FCC-recognized service area or county lines are utilized, applicants need only list the specific area(s) through use of FCC designations or county names that constitute the partitioned area.

(c) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term.

(d) *Construction requirements.* (1) Requirements for partitioning. Parties seeking authority to partition must meet one of the following construction requirements:

(i) The partitionee may certify that it will satisfy the applicable construction requirements set forth in §§90.767 or 90.769 of this part, as applicable, for the partitioned license area; or

(ii) The original licensee may certify that it has or will meet its five-year construction requirement and will meet the ten-year construction requirement, as set forth in §§90.767 or 90.769 of this part, as applicable, for the entire license area. In that case, the partitionee must only satisfy the requirements for "substantial service," as set forth in §90.743(a)(1) of this part, for the partitioned license area by the

end of the original ten-year license term of the licensee.

(iii) Failure by any partitionee to meet its respective construction requirements will result in the automatic cancellation of the partitioned license without further Commission action (*see* §1.946).

(2) *Requirements for disaggregation.* Parties seeking authority to disaggregate spectrum must certify in FCC Form 601 which of the parties will be responsible for meeting the five-year and ten-year construction requirements for the particular market as set forth in §90.767 or §90.769, as applicable. Parties may agree to share responsibility for meeting the construction requirements. If one party accepts responsibility for meeting the construction requirements and later fails to do so, then its license will cancel automatically without further Commission action. If both parties accept responsibility for meeting the construction requirements and later fail to do so, then both their licenses will cancel automatically without further Commission action.

[63 FR 49295, Sept. 15, 1998, as amended at 63 FR 68973, Dec. 14, 1998; 65 FR 39560, June 27, 2000]

#### §90.1021 Definitions concerning competitive bidding process.

(a) *Scope.* The definitions in this section apply to §§90.1001 through 90.1025, unless otherwise specified in those sections.

(b) *Small and very small business.* (1) A *small business* is an entity that, together with its affiliates and controlling interests, has average gross revenues that are not more than \$15 million for the preceding three years.

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

[62 FR 15999, Apr. 3, 1997, as amended at 67 FR 46376, July 9, 2002; 68 FR 43001, July 21, 2003]

#### §90.1023 Records maintenance and definitions.

(a) *Records maintenance.* All winning bidders qualifying as small or very small businesses shall maintain at

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their principal place of business an updated file of ownership, revenue, and asset information, including any documents necessary to establish eligibility as a small business or very small business, as defined in § 90.1021, and/or consortium of small businesses (or consortium of very small businesses). Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

(b) *Definitions.* The terms small and very small business used in this section are defined in § 90.1021.

[68 FR 43001, July 21, 2003]

### § 90.1025 Limitations on settlements.

The consideration that an individual or an entity will be permitted to receive for agreeing to withdraw an application or a petition to deny will be limited by the provisions set forth in § 1.2105(c) of this chapter.

[67 FR 46378, July 9, 2002]

## Subpart X—Competitive Bidding Procedures for Location and Monitoring Service

SOURCE: 63 FR 40664, July 30, 1998, unless otherwise noted.

### § 90.1101 Location and Monitoring Service subject to competitive bidding.

Mutually exclusive initial applications for multilateration Location and Monitoring Service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

[67 FR 45378, July 9, 2002]

### § 90.1103 Designated entities.

(a) This section addresses certain issues concerning designated entities in the Location and Monitoring Service (LMS) subject to competitive bidding.

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(b) *Eligibility for small business provisions.* (1) A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed \$15 million for the preceding three years.

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

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

[63 FR 40664, July 30, 1998, as amended at 67 FR 45379, July 9, 2002; 68 FR 43001, July 21, 2003]

## Subpart Y—Regulations Governing Licensing and Use of Frequencies in the 4940–4990 MHz Band

SOURCE: 68 FR 38639, June 30, 2003, unless otherwise noted.

### § 90.1201 Scope.

This subpart sets out the regulations governing use of the 4940–4990 MHz (4.9 GHz) band. It includes eligibility requirements, and specific operational and technical standards for stations licensed in this band. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in this band.

### § 90.1203 Eligibility.

(a) Entities providing public safety services as defined under section 90.523 are eligible to hold a Commission license for systems operating in the 4940–4990 MHz band. All of the requirements and conditions set forth in that section also govern authorizations in the 4940–4990 MHz band.