

Federal Communications Commission

§ 1.2110, Nt.

§ 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) * * *

(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.

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(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.

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(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.

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(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.

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(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.

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(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.

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(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

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to the Commission pursuant to this paragraph and to § 1.2114.

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(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.

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§ 1.2111 Assignment or transfer of control: unjust enrichment.

(a) *Reporting requirement.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's rules) of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating

that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the local consideration that the applicant would receive in return for the transfer or assignment of its license (see § 1.948). This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below market financing).

(b) *Unjust enrichment payment: set-aside.* As specified in this paragraph an applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's rules) of, or for entry into a material relationship (see §§ 1.2110, 1.2114) (otherwise permitted under the Commission's rules) involving, a license acquired by the applicant pursuant to a set-aside for eligible designated entities under § 1.2110(c), or which proposes to take any other action relating to ownership or control that will result in loss of eligibility as a designated entity, must seek Commission approval and may be required to make an unjust enrichment payment (Payment) to the Commission by cashier's check or wire transfer before consent will be granted. The Payment will be based upon a schedule that will take account of the term of the license, any applicable construction benchmarks, and the estimated value of the set-aside benefit, which will be calculated as the difference between the amount paid by the designated entity for the license and the value of comparable non-set-aside license in the free market at the time of the auction. The Commission will establish the amount of the Payment and the burden will be on the applicants to disprove this amount. No Payment will be required if:

(1) The license is transferred or assigned more than five years after its initial issuance, unless otherwise specified; or

(2) The proposed transferee or assignee is an eligible designated entity under § 1.2110(c) or the service-specific