

does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: September 10, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.527, by adding paragraph (d) to read as follows:

§ 180.527 N-(4-fluorophenyl)-N-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide; tolerances for residues.

* * * * *

(d) *Indirect or inadvertent residues.*
(1) Time-limited tolerances are established for indirect or inadvertent residues of the herbicide, *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the following raw agricultural commodities from application of this herbicide to the raw agricultural commodities listed in paragraph (a)(1) of this section:

Commodity	Parts per million	Expiration/Revocation Date
Alfalfa, forage	0.1	4/30/03
Alfalfa, hay	0.1	4/30/03
Alfalfa, seed	0.1	4/30/03

Commodity	Parts per million	Expiration/Revocation Date
Clover, forage	0.1	4/30/03
Clover, hay	0.1	4/30/03
Crop Group 15 (cereal grains)	0.1	4/30/03
Crop Group 16 (forage, stover and hay of cereal grains)	0.1	4/30/03
Crop Group 17 (grass forage, and grass hay)	0.1	4/30/03

(2) Residues in these commodities not in excess of the established tolerance resulting from the use described in paragraph (d)(1) of this section remaining after expiration of the time-limited tolerance will not be considered to be actionable if the herbicide is applied during the term of and in accordance with the provisions of the above regulation.

[FR Doc. 98-25451 Filed 9-22-98; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 24

[WT Docket No. 97-82; FCC 98-176]

Installment Payment Financing for Personal Communications Services (PCS) Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses. In this *C Block Fourth Report and Order*, the Commission resolves its proposals in its *C Block Further Notice of Proposed Rule Making*. In so doing, the Commission sets forth the rules that will govern reauctions of C block spectrum surrendered to the Commission pursuant to the *C Block Second Report and Order* and the *C Block Order on Reconsideration of the Second Report and Order*, as well as any other C block spectrum available for reauction.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin at (202) 418-0660.

SUPPLEMENTARY INFORMATION: This *Fourth Report and Order*, in WT Docket No. 97-82, adopted July 27, 1998 and released August 19, 1998, is available for inspection and copying during

normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857-3800.

Synopsis of Fourth Report and Order

I. Background

A. C. Block Proceedings

1. Consistent with Congress' mandate to promote the participation of small business and other "designated entities" in the provision of spectrum-based services, the Commission limited eligibility in the initial C block auctions to entrepreneurs and small businesses. The C block auction concluded on May 6, 1996, and the subsequent reauction of defaulted licenses concluded on July 16, 1996, with a total of 90 bidders winning 493 licenses. The winning bidders were permitted to pay 90 percent of their net bid price over the ten-year license term.

2. The Commission decided in the *C Block Second Report and Order*, 62 FR 55348 (October 24, 1997) (as modified by the *C Block Order on Reconsideration of the Second Report and Order* ("C Block Reconsideration Order"), 63 FR 17111 (April 8, 1998)) to allow each C block licensee to elect one of four options for each of its licenses: resumption of payments under the licensee's original installment payment plan, disaggregation, amnesty, or prepayment. The array of choices was intended to provide limited relief to financially troubled licensees without harming the integrity of the auction process. The Commission required C block licensees to file a written election notice, specifying whether they would resume payments under the terms of the original installment payment plan or would proceed under one of the alternative options. Included with the *C Block Second Report and Order* was the *C Block Further Notice of Proposed Rule Making* ("C Block Further Notice"), 62 FR 55375 (October 24, 1997), in which the Commission sought comment on proposed changes to the C block rules to govern the reauction of surrendered spectrum in the C block. The Wireless Telecommunications Bureau (the "Bureau") announced by public notice on April 17, 1998 an election date of June 8, 1998 and a payment resumption date for C block licensees of July 31, 1998.

B. Part 1 Proceedings

3. On December 31, 1997, the Commission released a *Third Report*

and *Order and Second Further Notice of Proposed Rule Making*, 63 FR 2315 (January 15, 1998), (*Part 1 Third Report and Order*), which adopts general competitive bidding rules to supplant, wherever practicable, auction rules that were specific to each auctionable service or class of service. The Commission's purpose was to streamline competitive bidding regulations, eliminate unnecessary rules, and increase the overall efficiency and consistency of the auction process. In the process, the Commission resolves many of the issues that had been raised in the *C Block Further Notice*. Accordingly, future C block reauctions will adhere to Part 1 rules, as amended, to the extent applicable. Where the Commission's rules in Part 1 are not determinative, bidders will continue to look to Part 24 rules, as amended in this *C Block Fourth Report and Order*.

II. Licenses to be Reauctioned

A. Background

4. In the *C Block Further Notice*, the Commission proposed that it reauction: (1) all licenses representing C block spectrum returned pursuant to the disaggregation, prepayment, or amnesty options; and (2) all C block licenses held as a result of defaults. The Commission believed that including all available licenses in a reauction would allow it fairly and efficiently to facilitate the rapid provision of service to the public and also would allow for the most efficient aggregation of licenses.

B. Discussion

5. The Commission adopts its proposal in the *C Block Further Notice* to reauction all available C block licenses held by the Commission. Several commenters agree, and no commenter disagrees, with this proposal. The Commission's recent modifications to the C block payment options in the *C Block Reconsideration Order* provide no reason to deviate from this basic approach. Any C block license that becomes available for reauction after the next C block reauction will be reauctioned in a subsequent reauction as soon as practicable.

6. Some Commenters argue that the next reauction should include licenses owned by entities that have filed for bankruptcy protection. One commenter maintains that if licenses held by C block bankruptcy petitioners are excluded from the next reauction, the uncertainty surrounding the fate of those licenses will make business planning difficult for other C block entities. Another commenter urges the Commission to amend its rules in order

to be able to revoke automatically the licenses of licensees that have declared bankruptcy.

7. In the *Part 1 Third Report and Order*, the Commission addressed the issue of whether it can immediately reclaim and reauction licenses held by a licensee that declares bankruptcy. As the Commission stated there, it is confident of its position that the Commission can reclaim licenses quickly since the Commission conditions licenses upon payment and requires automatic cancellation in the event of nonpayment. Nevertheless, until controlling precedent is established by the courts, or legislation addressing conflicting rights is enacted, a delay in the reauction of licenses in bankruptcy litigation may occur. The pendency of bankruptcy proceedings involving certain C block licenses makes it impossible for the Commission to resolve at this time whether those licenses will be available in the next C block reauction. The Commission does not intend, however, to delay a reauction of other available C block licenses because of such litigation. Such a delay easily could become the first in an interminable series of delays, undermining the Commission's primary goal of getting licenses into the hands of parties that will provide service to the public and competition in the market. For this reason, the Commission believes that the public will realize a greater benefit if the Commission auctions all available C block spectrum as soon as practicable than the public will realize if the Commission postpones a reauction until it has resolved all issues connected with every bankruptcy proceeding. Licenses made available in any bankruptcy proceeding will be included in the next appropriate reauction.

III. Eligibility for Participation

A. Background

8. In the *C Block Second Report and Order*, the Commission decided that the public interest considerations mandated by Section 309(j) of the Communications Act, 47 U.S.C. 309(j), would be furthered by applying to a C block reauction the same eligibility rules that had been used for the original C block auction. The Commission, therefore, deemed eligible to participate in a C block reauction: (1) all applicants qualifying, as of the start of the reauction, as entrepreneurs under the Commission's rules; and (2) all entities that had filed a short-form application (FCC Form 175) to participate in, and had been eligible to participate in, the original C block auction. Accordingly,

the Commission decided that all entities that had participated in the original C block auction would be eligible to participate in the next reauction; however, the Commission prohibited C block licensees that return spectrum pursuant to the disaggregation or prepayment options from reacquiring their returned spectrum for a period of two years from the start date of the next C block reauction. This prohibition extended to qualifying members of the licensee's control group, and their affiliates.

9. In the *C Block Further Notice*, the Commission sought comment on whether it should restrict participation in the C block reauction to entities that have not defaulted on any payments owed the Commission. The Commission asked for comment on possible alternatives to excluding defaulters from participation in a reauction. One possibility was for the Commission to have an expedited hearing on a winning defaulter's financial qualifications, allowing the defaulter to attempt to rebut a presumption that it is not financially qualified. Another idea was for the Commission to require defaulters to submit either more detailed financial information at the application stage or a larger upfront payment. The Commission observed that C block licensees would not be in default simply by virtue of having elected the alternative payment options established in the *C Block Second Report and Order*.

10. In the *C Block Reconsideration Order*, the Commission modified the alternative payment options to, *inter alia*, divide the amnesty option into two categories: "pure amnesty" and "amnesty/prepayment." The Commission decided that, while licensees returning spectrum pursuant to the "pure amnesty" option would not be prohibited from reacquiring their returned spectrum, licensees returning spectrum pursuant to the "amnesty/prepayment" option would have to forgo, for a period of two years from the start date of next C block reauction, eligibility to reacquire their spectrum. This prohibition extends to qualifying members of a licensee's control group, and their affiliates. In addition, the Commission retained the two-year prohibition on the reacquisition of spectrum returned pursuant to the disaggregation or prepayment options established in the *C Block Second Report and Order*. The Commission also responded to petitions for reconsideration of the *C Block Second Report and Order* which disagreed with a comment filed in response to the *C Block Further Notice*, asking that the

Commission open eligibility for a reauction to "all qualified bidders." The Commission disagreed with that proposal, affirming its ruling in the *C Block Second Report and Order* to limit eligibility for participation in C block reauctions to applicants meeting the Commission's definition of entrepreneur.

B. Discussion

11. The Commission retains the C block eligibility parameters established in the *C Block Second Report and Order*. The following entities will be eligible for C block reauctions: (1) entities that filed an FCC Form 175 short-form application for, and were eligible for, the original C block auction and (2) entities qualifying as entrepreneurs under Section 24.709 of the Commission's rules, as of the deadline for the filing of short-form applications for the reauction. While, under these rules, entities that participated in the original C block reauction will be eligible for C block reauctions, the Commission retains the eligibility restriction established in the *C Block Second Report and Order*, as modified in the *C Block Reconsideration Order*, for licensees that surrender licenses pursuant to the disaggregation, prepayment, and/or "amnesty/prepayment" options. Such licensees will be ineligible to reacquire their surrendered licenses through reauction or by any other means for a period of two years from the start date of the next C block reauction.

12. The Commission's decision in the *C Block Second Report and Order* to impose a two-year bar on the eligibility of licensees to reacquire licenses they return pursuant to the disaggregation and prepayment options sparked comment. A commenter wants all licensees to be permitted to participate in a reauction, regardless of their election of an alternative payment option. Another commenter, on the other hand, urges the Commission to bar licensees electing the amnesty option from bidding on their surrendered spectrum in a reauction. The Commission dealt with both of these requests in the *C Block Reconsideration Order*. As the Commission stated there, it believes that the modified approach the Commission adopted in that order addresses the concerns of both of these parties. Therefore, the Commission affirms the decision it made in that order. Another commenter asks that the qualifications of licensees electing any of the alternative payment options be subjected to a higher level of scrutiny regarding their financial qualification to deal with the requirements of additional

licenses. The Commission believes that a higher level of scrutiny is not warranted. As noted above, C block licensees that have elected alternative payment options are not defaulters. Moreover, all applicants for C block reauctions will be required to pay a substantial upfront payment, which should help ensure that only serious, qualified bidders participate.

13. Because the Commission is not planning to include C block licenses that remain involved in bankruptcy proceedings in the next C block reauction, there likely will be more than one reauction for C block. Accordingly, the Commission must evaluate whether to allow applicants for and participants in the original C block auction to remain eligible to participate in all future C block reauctions, regardless of whether they still qualify as entrepreneurs under the Commission's rules at the deadline for filing a short-form application. While the Commission believes that flexibility in this regard is appropriate, it also believes that fairness to other future bidders prevents its providing an open eligibility standard indefinitely. Consequently, in order to be eligible for any C block reauction that begins more than two years from the start date of the next C block reauction, an applicant must qualify as an entrepreneur under the Commission's rules at the time of filing its short-form application.

14. Several parties commented on the eligibility rules established in *C Block Second Report and Order*, with most commenters supporting the Commission's decision. As mentioned, however, one commenter urges the Commission not to limit a reauction just to entrepreneurs but rather to allow "all qualified bidders" to participate. That commenter argues that a restricted auction skews the marketplace and that the increasing level of competition in the wireless arena makes it less likely that small business entrepreneurs can survive. According to the commenter, the Commission could enable small businesses to bid competitively by providing them bidding credits and permitting them to partition and disaggregate 30 MHz licenses after the auction. No other commenter supports these views, and several parties oppose them. As stated, the Commission recently denied this request in the *C Block Reconsideration Order*, and the record in this proceeding provides the Commission with no basis to alter its decision.

15. The Commission's FCC Form 175 short-form application for all auctions requires applicants to certify that they are not in default on any Commission licenses and that they are not

delinquent on any non-tax debt owed to any Federal agency. The Commission believes that, in order to preserve the integrity of C block reauctions and to support its ongoing effort to streamline the licensing process, it is necessary to limit participation in C block reauctions to entities that can make the certification. Consequently, to be eligible to participate in any future C block reauction, an applicant must certify on its short-form application that it is not in default on any Commission licenses and not delinquent on any non-tax debt owed to any Federal agency. At the same time, the Commission believes that past business misfortunes do not inevitably preclude an entity from being able to meet its present and future responsibilities as a Commission licensee. Therefore, the Commission will allow "former defaulters," i.e., applicants that have defaulted or been delinquent in the past, but have since paid all of their outstanding non-Internal Revenue Service Federal debts and all associated charges or penalties, to be eligible to participate in C block reauctions, provided that they are otherwise qualified.

IV. Application of General Auction Rules to C Block

A. Background

16. The Commission tentatively concluded in the *C Block Further Notice* that the next reauction will be conducted in conformity with the general competitive bidding rules in Part 1, Subpart Q, of the Commission's rules, as revised, consistent with other auctions for wireless services. The Commission also proposed to use Part 24 rules to the extent they do not conflict with the Commission's Part 1 rules or with rules specifically adopted or proposed in the *C Block Second Report and Order* and *C Block Further Notice*. The Commission sought comment on the application of Part 1 rules to the following aspects of the C block reauction: competitive bidding mechanisms; bidding application and certification procedures and prohibition of collusion; submission of upfront payment, down payment and filing of long-form applications; procedures for filing long-form applications; and procedures regarding license grant, denial, and default.

17. Subsequently, in the *Part 1 Third Report and Order*, the Commission adopted general competitive bidding rules that apply to each auctionable service or class of service, including the C block of broadband personal communications services. In that order, the Commission addressed, and in some

cases completely or partly resolved, the issues raised in the *C Block Further Notice*, except for the two issues discussed above in this *C Block Fourth Report and Order*, i.e., licenses to be reaucted and eligibility for participation in C block reauctions. The Commission also clarified that specific auction procedures not established by its rules will be established by the Bureau in advance of each auction, pursuant to public notice and comment. However, the Commission received sufficient comment in response to the *C Block Further Notice* to make further comment unnecessary for many of the C block reauction procedures. Consequently, in the remainder of this *C Block Fourth Report and Order*, the Commission reviews the issues raised in the *C Block Further Notice* and addressed in the *Part 1 Third Report and Order*. Where necessary, the Commission clarifies the effect of the *Part 1 Third Report and Order* on the rules for future C block reauctions. In cases where C block auction rules are the same as or parallel to F block auction rules, the Commission also clarifies the effect of the *Part 1 Third Report and Order* on the rules for F block reauctions.

B. Discussion

1. Competitive Bidding Design

18. The Commission tentatively concluded in the *C Block Further Notice* that it would award all licenses and spectrum in the C block reauction by means of a simultaneous multiple-round electronic auction. This type of auction would facilitate any aggregation strategies of bidders and provide the most information about license values during the auction. The Commission further tentatively concluded that telephonic bidding (instead of electronic bidding) should be permitted only in exceptional circumstances, and that those circumstances would be determined by the Bureau in each instance. This tentative conclusion was prompted by the Commission's desire to conduct the reauction quickly, as well as by recent improvements in its electronic bidding software. In the *Part 1 Third Report and Order*, the Commission clarified that the Bureau, consistent with its existing delegated authority, would seek comment in advance of each auction on auction-specific issues, including the competitive bidding design of the auction. The Commission notes, as previously mentioned, that there likely will be more than one C block reauction.

19. Even though the Bureau normally would determine the bidding design of

an auction, because no commenter opposed the proposal for a simultaneous multiple-round auction, the Commission believes that the simultaneous multiple-round design is appropriate for the next C block reauction. If, however, in preparing for a C block reauction, the Bureau determines that another design might be warranted, it remains within the Bureau's authority to seek comment on, and to modify, the competitive bidding design of the reauction. The Commission received two comments addressing the subject of telephonic bidding, with one party supporting the proposal that telephonic bidding be permitted only in exceptional circumstances and the other party asking that telephonic bidding remain an option. The Commission has decided, on further consideration, to permit the use of telephonic bidding as an alternative to electronic bidding in the next C block reauction. In the recent local multipoint distribution service (LMDS) auction (Auction No. 17), telephonic bidding was a viable option; and telephonic bidding is being made available to bidders in the upcoming Phase II 220 MHz service auction (Auction No. 18). The Commission believes that allowing parties to use either electronic or telephonic bidding, as their circumstances dictate, will promote auction participation by as many qualified applicants as possible and is not inconsistent with the Commission decision to require that, beginning January 1, 1999, all short and long-form applications for auctionable services be filed electronically.

2. Activity Rules

20. In the *C Block Further Notice*, the Commission tentatively concluded that a reauction should be conducted in three stages, as the Commission has done in other simultaneous multiple-round auctions. The Commission proposed to use high activity requirements in C block reauctions, with bidders required to be more active in each subsequent stage than they had been in the last. These activity levels would be similar to those used in other auctions, such as requiring bidders to be active on eighty percent of their eligible licenses in Stage I, ninety percent in Stage II, and ninety-eight percent in Stage III. The Commission also proposed requiring the Bureau to use its delegated authority to schedule bidding rounds aggressively, to move quickly into the next stage of the auction when bidding activity falls, and to use higher minimum bid increments for very active licenses. In the *Part 1 Third Report and Order*, the Commission directed the

Bureau to seek comment prior to the start of each auction on activity requirements for each stage of the auction and activity rule waivers.

21. The Commission believes that the proposal to conduct reauctions in three stages is reasonable for the next C block reauction, particularly in the absence of opposing comment and in light of the general interest in beginning the reauction as soon as possible. The Bureau normally would determine this structure, however; and it remains within the Bureau's discretion to deviate from the proposed three-stage structure if, after appropriate notice and comment, it determines that a different structure would better serve the public interest. Given that the *C Block Further Notice* mentioned the eighty, ninety, and ninety-eight percent activity levels as an example, the Commission continues to delegate to the Bureau determination of the specific activity levels to employ for each C block reauction. As proposed, the Bureau will use its delegated authority to schedule bidding rounds aggressively, move quickly into the next stage of the auction when bidding activity falls, and use higher minimum bid increments for very active licenses.

3. Reserve Price, Minimum Opening Bid, and Minimum Bid Increments

22. The Balanced Budget Act of 1997 requires the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established, unless the Commission determines that neither is in the public interest. In the *C Block Further Notice*, the Commission stated that, in the C block reauction, employing a minimum opening bid would help make certain that the public is fairly compensated, the auction is expedited, and the Commission is able to make adjustments based on the competitiveness of the auction. The Commission sought comment on its proposal to use a minimum opening bid for a reauction, as well as on which methodology to employ and factors to consider in establishing minimum opening bids. The Commission proposed minimum opening bids for each market equal to ten percent of the corresponding net high bid for the market in the original C block auction. The Commission asked commenters to explain whether this proposal would be reasonable or would result in a substantial number of unsold licenses. The Commission asked further whether the amount of the minimum opening bid should be capped and whether the Commission should establish a different amount.

23. After requesting comment on minimum opening bids in the *C Block Further Notice*, the Commission clarified in the *Part 1 Third Report and Order* that the Bureau has the authority to seek comment on minimum opening bids and reserve prices and to establish such mechanisms for each auction, consistent with the Bureau's role in managing the auction process and setting valuations for other purposes. The Commission instructed the Bureau to consider such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands, and any other relevant factors that could reasonably affect valuation of the spectrum being auctioned.

24. For the next C block reauction, the Commission believes that the proposal of a minimum opening bid for each market equal to ten percent of the corresponding net high bid for the market in the original C block auction is appropriate. Because the Commission has already sought and received comment on this issue, and because there is a strong public interest in beginning the next C block reauction as soon as possible, the Bureau will not seek further comment on a specific amount for a minimum opening bid for the next reauction. Instead, the specific amount of the minimum opening bid for each market will be listed in a public notice to be released by the Bureau in advance of the next C block reauction. The Bureau may exercise its discretion to set forth a minimum opening bid smaller than ten percent if, based upon further evaluation, the Bureau believes that a smaller amount is warranted.

4. Electronic Filing

25. In the *C Block Further Notice*, the Commission sought comment on its tentative conclusion to require electronic filing of all short-form applications in a reauction. The Commission believed that electronic filing of applications would serve the best interests of auction participants and members of the public monitoring a reauction. Commission policies have consistently encouraged electronic filing. In the *Part 1 Third Report and Order*, the Commission pointed out that electronic filing helps ensure the accuracy and completeness of applications prior to submission, and the Commission required electronic filing of all short-form and long-form applications by January 1, 1999, unless operationally infeasible. More recently, the Commission proposed mandatory electronic filing of applications for all

wireless services, whether auctionable or non-auctionable. Accordingly, the Commission will require electronic filing of both short-form and long-form applications for C block reauctions.

5. Upfront Payment

26. In accordance with § 1.2106 of the Commission's rules, 47 CFR 1.2106, which requires submission of an upfront payment as a prerequisite to participation in spectrum auctions, the Commission proposed in the *C Block Further Notice* to set an upfront payment for the next C block reauction at \$.06 per MHz per pop. The Commission determined that this amount was appropriate to further its goal of allowing only serious, qualified applicants to participate in a reauction. The Commission noted that it had adopted the same upfront payment for its most recent broadband PCS auction, the D, E, and F block auction. The Commission explained that, in the *Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994), it had indicated that the upfront payment should be set using a formula based upon the amount of spectrum and population ("pops") covered by the license(s) for which the parties intend to bid. It had also concluded that the best approach would be to determine the amount of the upfront payment on an auction-by-auction basis. In the *C Block Further Notice*, the Commission sought comment on its \$.06 per MHz per pop proposal, as well as on alternative methods of establishing an upfront payment and, in particular, on how the Commission may estimate the present market value of the spectrum to be auctioned. Subsequently, in the *Part 1 Third Report and Order*, the Commission affirmed its reasoning in the *Competitive Bidding Second Report and Order*, stating the Commission's belief that it should maintain the current competitive bidding rules, which allow the amount of the upfront payment and the terms under which it is assessed to be determined on an auction-by-auction basis.

27. Deciding the amount and terms of the upfront payment amount on an auction-by-auction basis pursuant to the Part 1 rule is consistent with past auction procedure. The Bureau normally establishes the upfront payment after public notice and comment. The Commission, therefore, finds that specific provisions contained in Part 24 of the its rules addressing the upfront payment amount for C block (and F block) auctions are unnecessary. Accordingly, and consistent with its ongoing streamlining effort, the Commission removes those Part 24

provisions as of the effective date of this order.

28. There is support among the commenters for setting the upfront payment amount at the proposed \$.06 per MHz per pop, and the Commission believes that in the next C block reauction the upfront payment should be no higher than this amount. The Bureau may establish a lower upfront payment if it deems a lower amount to be reasonable. Because the Commission has already sought and received comment on this issue, and because there is a strong public interest in beginning the next C block reauction as soon as possible, there is no need for the Bureau to seek further comment on the upfront payment amount for the next reauction. Instead, the specific upfront payment amount for each market will be listed in a public notice to be released by the Bureau in advance of the next C block reauction.

29. While the Commission has decided not to prohibit "former defaulters" from participating in C block reauctions, it believes that the integrity of the auctions program and the licensing process dictates requiring a more stringent financial showing from applicants with a poor Federal financial track record. Consequently, the Commission amends its rules to require that the upfront payment amount for "former defaulters" be fifty percent more than the normal amount set by the Bureau for any given license in a C block reauction. So that the Bureau may implement this rule, the Commission will require applicants to make an additional certification on their short-form applications revealing whether they have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The Commission's policy here is analogous to the Congressional policy reflected in the Debt Collection Improvement Act, which bars delinquent Federal debtors from obtaining Federal loans, loan insurance, or guarantees.

6. Down Payment and Full Payment

30. The Commission tentatively concluded in the *C Block Further Notice* that each winning bidder should be required to tender a down payment sufficient to bring its total amount on deposit with the Commission up to twenty percent of its winning bid within ten business days after issuance of a public notice announcing the winning bidder for the license. The Commission also proposed to require a winning bidder to file an FCC Form 600 long-form application (since renumbered FCC Form 601) with a timely down

payment, pursuant to Section 1.2107 of the Commission's rules, 47 CFR 1.2107. Upon review of the long-form applications and receipt of the down payments, the Commission would announce the applications that were accepted for filing, triggering the filing window for petitions to deny. If any or all petitions to deny were dismissed or denied, a public notice announcing that the Commission was prepared to grant the license conditioned upon final and full payment would be issued. The winning bidder would then have ten days following release of that public notice to submit the balance of its winning bid in order to be awarded its license(s). The *C Block Further Notice* proposed having a period of fifteen days, following the issuance of the public notice announcing that an application had been accepted for filing, in which to file petitions to deny.

31. The *Part 1 Third Report and Order* adopted a standard down payment of twenty percent of an applicant's high bids, which is similar to the proposal in the *C Block Further Notice*. It also amended Sections 1.2109(a) of the Commission's rules, 47 CFR 1.2109(a), to permit auction winners to make their final payments within ten business days after the designated deadline, provided that they also pay a late fee equal to five percent of the amount due. In accordance with the 1997 Balanced Budget Act, the *Part 1 Third Report and Order* amended §§ 1.2108(b) and (c), 47 CFR 1.2108(b), (c), to prohibit the Commission from granting a license earlier than seven days following issuance of the public notice announcing the application is accepted for filing. Additionally, the *Part 1 Third Report and Order* established that the filing periods for petitions to deny, oppositions, and replies are to be no shorter than five days.

32. The conclusions the Commission reached in the *Part 1 Third Report and Order* do not conflict with its proposals in the *C Block Further Notice*. Accordingly, the Commission will apply the Part 1 rules, as amended. The Bureau will announce by public notice the deadline for petitions to deny. As discussed in the *Part 1 Third Report and Order*, in order to preserve the integrity of the auction process, it is important to use an indicator of potential licensees' financial capability to attract capital to build out and operate systems. The Commission believes that the use of one substantial down payment is a necessary tool to gauge an applicant's financial viability, its seriousness in building its system, and the likelihood of default. For these reasons, the Commission repeals the Part 24 C block

rules on down payment and full payment. Pursuant to the same rationale, the Commission also repeals the Part 24 F block rules on down payment and full payment.

7. Amendments and Modifications of Applications

33. In the *C Block Further Notice*, the Commission proposed to allow applicants to amend or modify their short-form applications at any time before or during the auction, pursuant to Section 1.2105 of the Commission's rules, 47 CFR 1.2105. In the *Part 1 Third Report and Order*, the Commission created a uniform definition of minor and major amendments to an applicant's short-form application (FCC Form 175). The Commission also amended Section 1.2105 of the Commission's rules so that it would mirror the Part 24 rule, § 24.822, 47 CFR 24.822, and allow applicants, after the short-form filing deadline, to make minor amendments to their short-form applications both prior to and during the auction. The amendment to § 1.2105 of the Commission's rules has rendered § 24.822 unnecessary. Accordingly, the Commission repeals § 24.822 of the rules.

34. The Commission also proposed in the *C Block Further Notice* to create an exception to the general rule prohibiting major amendments and permit short-form amendments to reflect the departure of a consortium member. In the *Part 1 Third Report and Order*, the Commission determined that, under Part 1 of its rules, major amendments to the short-form include changes in license areas, ownership changes constituting a change in control, and the addition of members to a bidding consortium. Minor amendments include, *inter alia*, any amendment not identified as major. The Commission did not identify the deletion of members to a bidding consortium as a major amendment. Consequently, such a change would be a minor amendment under the Part 1 rules, as amended, and permitted after the short-form filing deadline. Accordingly, the Commission's proposal in the *C Block Further Notice* to allow short-form amendments reflecting the departure of a consortium member is no longer necessary.

8. Bid Withdrawal, Default, and Disqualification

35. The Commission tentatively concluded in the *C Block Further Notice* that the withdrawal, default, and disqualification rules for a reauction should be based upon the procedures established in the Commission's general

competitive bidding rules. In the *Part 1 Third Report and Order*, the Commission recognized that bidders sometimes improperly withdraw bids (e.g., to delay the close of an auction for strategic purposes), and the Commission suggested that the Bureau exercise its discretion to prevent such abuses of the auction process. The Commission is considering limiting the number of rounds in which bids may be withdrawn, thereby preventing any entities that violate the Commission's withdrawal procedures from continuing to bid on that particular market. The Bureau has announced that, in the upcoming Phase II 220 MHz service auction (Auction No. 18), it will limit the number of rounds in which bids may be withdrawn, and it has proposed such a limitation for the upcoming 156–162 MHz VHF public coast station spectrum auction. Similarly, the Bureau will seek comment in advance of the next C block reauction on limiting the number of rounds in that reauction in which bids may be withdrawn.

36. For bids submitted in error, the Commission proposed in the *C Block Further Notice* to follow the guidelines it had developed to provide relief from the bid withdrawal payment requirements under certain circumstances. In the *Part 1 Third Report and Order*, the Commission decided that when a winning bidder or licensee defaults, and its license has yet to be reauctioned, the Commission will assess an initial default payment of at least three percent, but not exceeding twenty percent, of the defaulted bid amount. Once the license has been reauctioned, when the total default payment can be determined, the Commission will either assess the balance of the remaining default payment or refund any amounts due. As a result of “click box bidding” and other mechanisms employed to reduce erroneous bids, the Commission concluded that a decreased bid withdrawal payment rule, meant to provide some bidders relief from full application of bid withdrawal payments, is not necessary. The Commission directs the Bureau to follow the Part 1 rule on bid withdrawal, default, and disqualification, § 1.2104(g), 47 CFR 1.2104(g), to the extent applicable.

9. Anti-Collusion Rules

37. The Commission proposed in the *C Block Further Notice* to apply the anti-collusion rules enumerated in the *Competitive Bidding Second Report and Order*. In the *Part 1 Third Report and Order*, the Commission created an exception to its general anti-collusion

rules. Under this exception, a non-controlling attributable interest holder in an applicant may obtain an ownership interest in, or enter into a consortium arrangement with, another applicant for a license in the same geographic area, provided that the original applicant has withdrawn from the auction, is no longer placing bids, and has no further eligibility. The exception provides flexibility for non-controlling investors to invest in other auction applicants if their original applicant fails to complete the auction.

38. Although one commenter to the *C Block Further Notice* raised the issue of creating a “safe harbor” for discussions of non-auction related business matters between applicants in the same license area, the Commission determined in the *Part 1 Third Report and Order* that there was no need to create a “safe harbor.” Section 1.2105(c) of the Commission's rules, 47 CFR 1.2105(c), places significant limitations on applicants seeking business opportunities in geographic license areas where they plan to bid. The Commission concluded that interpretations of the anti-collusion rules provided by the Bureau instruct the public as to permissible non-auction discussions, obviating the need for a “safe harbor” in the auction process.

39. As the Commission noted in the *Third Report and Order*, however, auction applicants should be aware that communications concerning, but not limited to, issues such as management, resale, roaming, interconnection, partitioning and disaggregation may all raise impermissible subject matter for discussion because they may convey pricing information and bidding strategy. Because auction applicants should avoid all communication with each other that will likely affect bids or bidding strategies, the Commission believes that individual applicants, and not the Commission, are in the best position to determine in the first instance which communications are permissible and which are not. Bidders should familiarize themselves with Commission rules and rule interpretations regarding unauthorized communications in auction proceedings, and they should report any such communications to the Bureau. As always, the Commission retains the right to investigate possible instances of collusion or to refer any allegations of collusion to the United States Department of Justice for investigation.

10. Bidding Credits

40. The original C block auction offered winning bidders qualifying as a small business or a consortium of small businesses a bidding credit of twenty-

five percent of winning bids. The Commission's rules defined a small business as “an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than forty million dollars for the preceding three years.” Subsequent to that auction, the Commission amended its rules to define also a very small business in the C or F blocks as “an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than fifteen million dollars for the preceding three years.” The Commission proposed in the *C Block Further Notice* to have two tiers of bidding credits for the next C block reauction, a twenty-five percent bidding credit for small businesses and a thirty-five percent bidding credit for very small businesses.

41. In order to provide continuity and certainty for auction participants, the Commission adopted a schedule of bidding credits in the *Part 1 Third Report and Order* to be used in future auctions for all services. The schedule sets the bidding credit percentage according to the average annual gross revenues of the designated entity. Applying the Part 1 schedule to the gross revenue thresholds for small and very small businesses under its rules for C and F block auctions, the Commission concludes that a small business will receive a fifteen percent bidding credit, and a very small business will receive a bidding credit of twenty-five percent. The Commission recognizes that the amount of bidding credits differs from its proposal in the *C Block Further Notice*; however, use of the Part 1 schedule benefits potential bidders by providing them with certainty about the size of available bidding credits well in advance of C block reauctions. The Commission will amend §§ 24.712 and 24.717 of its rules, 47 CFR 24.712, 24.717, to reflect its application of the Part 1 bidding credits schedule to C and F block reauctions.

42. Eligibility for bidding credits will be determined at the deadline for filing short-form applications. Thus, if an entity no longer qualifies as a small business as of the deadline for filing short-form applications, but is eligible to participate in the next C block reauction because it was eligible to participate in the original C block auction, it will *not* be eligible for bidding credits. Because of the complex issues involved in the original C block auction, the Commission is willing to allow former C block auction participants and eligible applicants to

participate in the next reauction (and in reauctions for the ensuing two years). However, the Commission does not feel that it is in the best interests of the public and, in particular, of competing small business bidders and licensees to provide a discount to applicants that no longer meet the small business size standards.

43. The Commission reminds applicants that, under § 1.2111(d) of its rules, as amended, 47 CFR 1.2111(d), C block licensees that utilize a bidding credit, and during their initial license term seek to make a change in the ownership or control of a license that would result in the license's being owned or controlled by an entity that does not meet the eligibility criteria for a bidding credit, or that is eligible for a lower bidding credit, will have to reimburse the U.S. Government for a percentage of the amount of the bidding credit. This percentage, in some circumstances, will be as high as the full amount of the bidding credit plus interest.

11. Installment Payment Program

44. The Commission tentatively concluded in the *C Block Further Notice* that it would not provide an installment payment program in the next reauction. Subsequently, in the *Part 1 Third Report and Order*, the Commission suspended the installment payment program for the immediate future.

45. The Commission will apply its decision in the *Part 1 Third Report and Order* and not offer installment payments in the next reauction. It is the Commission's responsibility to balance the competing goals in Section 309(j) that require, *inter alia*, that it promote the development and rapid deployment of new spectrum-based services, while ensuring that designated entities are given an opportunity to participate in the provision of such services. The Commission recognizes that conditioning receipt of a license upon payment requires greater financial resources. However, many C block licensees have requested relief from their installment payment obligations and three have sought bankruptcy protection. The objective of Section 309(j) to speed service to the public cannot be achieved when licenses are held in abeyance in bankruptcy court. Other financing alternatives, such as the provision of bidding credits, will help to ensure meaningful small business participation.

VI. Procedural Matters and Ordering Clauses

A. Final Regulatory Flexibility Analysis

46. The Final Regulatory Flexibility analysis, pursuant to the Regulatory Flexibility Act, *see* 5 U.S.C. 604, is attached.

B. Paperwork Reduction Act Analysis

47. This Order contains a modified information collection that was submitted to the Office of Management and Budget requesting clearance under the Paperwork Reduction Act of 1995.

C. Ordering Clauses

48. Accordingly, it is ordered that, pursuant to Sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b), 156(c)(1), 303(r), and 309(j), this *Fourth Report and Order* is hereby adopted, and §§ 1.2105, 24.703, 24.704, 24.705, 24.706, 24.707, 24.709, 24.711, 24.712, 24.716, 24.717, 24.822 of the Commission's rules, 47 CFR 1.2105, 24.703, 24.704, 24.705, 24.706, 24.707, 24.709, 24.711, 24.712, 24.716, 24.717, 24.822, are amended as set forth in the rule changes, effective November 23, 1998.

49. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Fourth Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

50. It is further ordered that, pursuant to 47 U.S.C. 155(c) and 47 CFR 0.331, the Chief of the Wireless Telecommunications Bureau is granted delegated authority to prescribe and set forth procedures for the implementation of the provisions adopted herein.

Paperwork Reduction Act

Notice of Public Information Collections Submitted to the Office of Management and Budget for Emergency Review and Approval

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection

of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Please Note: The Commission is seeking emergency approval for these information collections by October 9, 1998, under the provisions of 5 CFR 1320.13.

DATES: Written comments should be submitted on or before October 7, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554, or via internet to jboley@fcc.gov, and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections, contact Judy Boley at 202-418-0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0801.

Title: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees.

Type of Review: Emergency Revision.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 750.

Estimated Time for Response: 0.25 hours.

Total Annual Burden: 187.5 hours.

Total Cost to Respondents: \$0.

Needs and Uses: The *C Block Fourth Report and Order* requires each applicant for C block spectrum to attach to its short-form application a statement made under penalty of perjury indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to

any Federal agency. This information collection allows the Federal Communications Commission to ascertain whether or not applicants for C block PCS spectrum have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The information will allow the Commission to determine the amount of the upfront payment to be paid by each applicant and will help ensure that C block reactions are conducted fairly and efficiently, thereby speeding the flow of payments to the U.S. Treasury and accelerating the provision of PCS to the public.

List of Subjects

47 CFR Part 1

Practice and procedure, Competitive bidding proceedings, Telecommunications.

47 CFR Part 24

Personal communications services, Competitive bidding procedures for broadband PCS, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

Parts 1 and 24 of Title 47 of the Code of Federal Regulations are amended 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, 225, and 303(r), unless otherwise noted.

2. Section 1.2105 is amended by adding (a)(2)(xi) to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of collusion

(a) * * *

(2) * * *

(xi) For C block applicants, an attached statement made under penalty of perjury indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency.

* * * * *

PART 24—PERSONAL COMMUNICATIONS SERVICES

3. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332, unless otherwise noted.

§ 24.703 [Removed]

4. Section 24.703 is removed.

5. Section 24.704 is revised to read as follows:

§ 24.704 Withdrawal, default and disqualification penalties.

See § 1.2104 of this chapter.

§ 24.705 [Removed]

6. Section 24.705 is removed.

7. Section 24.706 is amended by revising paragraph (a) to read as follows:

§ 24.706 Submission of upfront payments and down payments.

(a) All auction participants are required to submit an upfront payment in accordance with § 1.2106 of this chapter. Any C block applicant that has previously been in default on any Commission licenses or has previously been delinquent on any non-tax debt owed to any Federal agency must submit an upfront payment equal to 50 percent more than that set for each particular license.

* * * * *

§ 24.707 [Removed]

8. Section 24.707 is removed.

9. Section 24.709 is amended by adding paragraphs (a)(4) and (a)(5) and revising paragraphs (b)(9)(i) and (e) to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

(a) * * *

(4) In order to be eligible for participation in a C block auction, an applicant must certify that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. See § 24.706 of this part.

(5) An applicant for participation in a C block auction must state under penalty of perjury whether or not it has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency. See § 24.706 of this part.

(b) * * *

(9) * * *

(i) In addition to entities qualifying under this section, any entity that was eligible for and participated in the auction for frequency block C, which began on December 18, 1995, or the reaction for frequency block C, which began on July 3, 1996, will be eligible to bid in any reaction of block C spectrum that begins within two years of the start date of the first reaction of C block spectrum following the effective date of this rule.

* * * * *

(e) *Definitions.* The terms affiliate, business owned by members of minority

groups and/or women, and gross revenues used in this section are defined in § 1.2110 of this chapter. The terms consortium of small businesses, control group, existing investor, institutional investor, nonattributable equity, preexisting entity, publicly traded corporation with widely dispersed voting power, qualifying investor, small business, and total assets used in this section are defined in § 24.720 of this chapter.

10. Section 24.711 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 24.711 Upfront payments, down payments and installment payments for licenses for frequency Block C.

(a) * * *

(1) Each eligible bidder for licenses subject to auction on frequency Block C shall pay an upfront payment as set forth in a Public Notice pursuant to the procedures in § 1.2106 of this chapter.

(2) Each winning bidder shall make a down payment and pay the balance of its winning bids pursuant to § 1.2107 and § 1.2109 of this chapter.

* * * * *

11. Section 24.712 is revised to read as follows:

§ 24.712 Bidding credits for licenses for frequency Block C.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(4) of this part may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(5) of this part may use a bidding credit of twenty-five percent as specified in § 1.2110(e)(2)(ii) of this chapter, to lower the cost of its winning bid.

(c) *Unjust enrichment.* See § 1.2111 of this chapter.

12. Section 24.716 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 24.716 Upfront payments, down payments and installment payments for licenses for frequency Block F.

(a) * * *

(1) Each eligible bidder for licenses subject to auction on frequency Block F shall pay an upfront payment as set forth in a Public Notice pursuant to the procedures in § 1.2106 of this chapter.

(2) Each winning bidder shall make a down payment and pay the balance of

its winning bids pursuant to § 1.2107 and § 1.2109 of this chapter.

* * * * *

13. Section 24.717 is revised to read as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 24.720(b)(1) or § 24.720(b)(4) of this part may use a bidding credit of fifteen percent, as specified in § 1.2110(e)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 24.720(b)(2) or § 24.720(b)(5) of this part may use a bidding credit of twenty-five percent, as specified in § 1.2110(e)(2)(ii) of this chapter, to lower the cost of its winning bid.

(c) *Unjust enrichment.* See § 1.2111 of this chapter.

§ 24.822 [Removed]

14. Section 24.822 is removed.

Note: This attachment will not appear in the Code of Federal Regulations.

Attachment—Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *C Block Further Notice of Proposed Rule Making in WT Docket No. 97-82* ("C Block Further Notice"). The Commission sought written public comment on the proposals in the *C Block Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the C Block Fourth Report and Order in WT Docket No. 97-82

This *C Block Fourth Report and Order* sets forth the rules that will govern reactions of C block spectrum surrendered to the Commission pursuant to the *C Block Second Report and Order* and the *C Block Order on Reconsideration of the Second Report and Order* ("C Block Reconsideration Order"), as well as any other C block spectrum available for reaction. The *C Block Fourth Report and Order* also reflects the Commission's ongoing effort to streamline auction procedures by eliminating overlapping or redundant rules and simplifying procedures for auction participants.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed directly in response to the IRFA. The Commission, however, has considered the economic impact on small businesses of the rules adopted herein. See section E, *infra*.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA").

The rule changes effected by this C Block Fourth Report and Order affect all small businesses that participate in future reactions of C block and F block spectrum, including small businesses currently holding C block and F block broadband personal communications services (PCS) licenses that choose to participate and other small businesses that may acquire licenses through reaction. The Commission grants C block and F block licenses only to applicants that, together with their affiliates and persons or entities that hold interests in the applicants and their affiliates, have gross revenues of less than \$125 million in each of the last two years and total assets of less than \$500 million. The Commission, with respect to broadband PCS, defines small businesses as entities that, together with their affiliates and persons or entities that hold interest in such entities and their affiliates, have average annual gross revenues that are not more than forty million dollars for the preceding three years. This definition has been approved by the SBA.

On May 6, 1996, the Commission concluded the broadband PCS C block auction. The broadband PCS D, E, and F block auction closed on January 14, 1997. Ninety bidders (including the C block reaction winners, prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in the C and F block auctions were eligible for bidding credits and installment payment plans. For purposes of its evaluations and conclusions in this RFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this *C Block Fourth Report and Order*, are small entities. In addition to the 178 current small business licensees that may participate at the reaction of C block licenses, a number of additional small business entities may seek to acquire licenses through reaction and would thus be affected by these rules.

In addition, the Commission will provide small business bidders and very small business bidders in C block and F block reactions with bidding credits, with a greater discount given to very small businesses. Under Commission rules, very small businesses in the C block and F block

are entities that, together with their affiliates and persons or entities that hold interest in such entities and their affiliates, have average annual gross revenues of not more than fifteen million for the preceding three years. As discussed below, small businesses will receive a fifteen percent bidding credit, and very small businesses will receive a bidding credit of twenty-five percent.

D. Description of Reporting, Recordkeeping, and Other Compliance Requirements

As a result of the *C Block Fourth Report and Order*, each applicant for a C block reaction will be required to attach to its short-form application a statement indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The Commission will include in the next C block reaction all licenses representing C block spectrum returned to the Commission under the disaggregation, prepayment, or amnesty options established in the *C Block Second Report and Order*, as modified in the *C Block Reconsideration Order*, as well as all C block licenses held by the Commission as a result of defaults. While some commenters argue that the next reaction should include licenses that have filed for bankruptcy protection, the Commission believes that the public and C block reaction applicants will realize a greater benefit if the Commission auctions all available C block spectrum as soon as practicable than they will if the Commission postpones a reaction until it has resolved all issues connected with ongoing bankruptcy proceedings.

The following two types of entities will be eligible to participate in C block reactions: (1) Entities that filed an FCC Form 175 short-form application for, and were eligible for, the original C block auction, and (2) entities qualifying under Section 24.709 of the Commission's rules, 47 CFR 24.709, as of the deadline for the filing of short-form applications for the reaction. All but two of the entities that applied for and were eligible to participate in the original C block auction qualified as small businesses under Section 24.720 of the Commission's rules, 47 CFR 24.720. In order to ensure the integrity of C block reactions, the Commission retains the eligibility restriction established in the *C Block Second Report and Order*, as modified in the *C Block Reconsideration Order*, for licensees that surrender licenses pursuant to the disaggregation, prepayment, and/or "amnesty/prepayment" options. Such licensees will be ineligible to reacquire their surrendered licenses through reaction or by any other means for a period of two years from the start date of the next C block reaction.

To further ensure auction integrity for the benefit of applicants as well as the general public, the Commission will restrict C block reactions to entities not in default on any Commission debt and not delinquent on any non-tax debt owed to any Federal agency.

However, the Commission believes that past business misfortunes do not inevitably preclude an entity from being able to meet its present and future responsibilities as a Commission licensee. Therefore, the Commission will allow "former defaulters," i.e., applicants that have defaulted or been delinquent in the past, but have since paid all of their outstanding non-Internal Revenue Service Federal debts and all associated charges or penalties, to be eligible to participate in C block reauctions, provided that they are otherwise qualified.

In the *Part 1 Third Report and Order*, the Commission adopted general competitive bidding rules to supplant, wherever practicable, specific auction rules for each auctionable service or class of service. Accordingly, future C block reauctions will adhere to Part 1 rules, insofar as applicable. Part 1 rules are determinative for the following aspects of C block reauctions: competitive bidding design; activity rules; reserve price, minimum opening bid, and minimum bid increments; electronic filing; upfront payment; down payment and full payment; amendments and modifications of applications; bid withdrawal, default, and disqualification; anti-collusion, and installment payment financing. Based upon the record in this proceeding, the Commission sets a ceiling for minimum opening bids that is no more than ten percent of the amount of the net high bid for the corresponding market in the original C block auction. The Commission also sets the upfront payment amount for the next C block reauction at no higher than \$.06 per MHz per pop. The Commission will require that the upfront payment for "former defaulters" be 50 percent more than that required from applicants that do not have a history of default. This increased upfront payment formula reflects the increased risk associated with these parties.

In the *Part 1 Third Report and Order*, the Commission adopted a schedule of bidding credits to be used in future auctions for all services. Applying the Part 1 schedule to the gross revenue thresholds under the Part 24 rules for small and very small C block and F block businesses, gives small business applicants in C block reauctions a fifteen percent bidding credit and very small business applicants a twenty-five percent bidding credit. Eligibility for bidding credits will be determined by the size of the

applicant as of the deadline for filing short-form applications.

Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j), as amended, directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. The Commission believes that the *C Block Fourth Report and Order* promotes these goals while maintaining the fair and efficient execution of the auctions program.

F. Report to Congress

The Commission will send a copy of the *C Block Fourth Report and Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 801(a)(1)(A). A copy of the *C Block Fourth Report and Order* and this FRFA (or summary thereof) will be published in the **Federal Register**. See 5 U.S.C. 604(b). A copy of the *C Block Fourth Report and Order* and this FRFA will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket no. 971112269-8047-02; I.D. 102997A]

RIN 0648-AK13

Fisheries of the Exclusive Economic Zone Off Alaska; Management Authority for Black and Blue Rockfish; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule pertaining to Fisheries of the Exclusive Economic Zone Off Alaska published in the **Federal Register** on March 6, 1998.

DATES: This action becomes effective September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on March 6, 1998, that implemented Amendment 46 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) by removing black and blue rockfish from the complex of species managed under the FMP (63 FR 11167). That document contained an error.

Correction

In rule FR Doc. 98-5839 published on March 6, 1998 (63 FR 11167), make the following correction. On page 11168, in the second column, in amendatory instruction 3., "In § 679.21, paragraph (e)(3)(iv)(D) is revised to read as follows:" is corrected to read "In § 679.21, paragraph (e)(4)(iv)(D) is revised to read as follows:".

Dated: September 17, 1998.

Rolland A. Schmitten,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 98-25460 Filed 9-22-98; 8:45 am]

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