

that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *G. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

#### *H. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 21, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: September 3, 1998.

#### **A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

#### **Part 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **Subpart K—Florida**

2. Section 52.520, is amended by adding paragraph (c)(95) to as follows:

##### **§ 52.520 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(95) The maintenance plan for Southeast Florida submitted by the Florida Department of Environmental Protection on November 15, 1995, as part of the Florida SIP.

(i) Incorporation by reference. Revision of the Attainment/Maintenance Plan for the Southeast Florida Ozone Nonattainment Area (Dade, Broward, and Palm Beach Counties) effective on November 15, 1995.

(ii) Other material. None.

[FR Doc. 98-28232 Filed 10-21-98; 8:45 am]

BILLING CODE 6560-50-P

### **FEDERAL COMMUNICATIONS COMMISSION**

#### **47 CFR Part 26**

[ET Docket No. 94-32; FCC 98-213]

#### **Allocation of Spectrum Below 5 GHz Transferred From Federal Government Use 4660-4685 MHz**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this Fourth Report and Order in the matter of Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use 4660-4685 MHz, the Commission adopts its proposals to replace service-specific auction rules for the General Wireless Communications Service (GWCS) with the streamlined auction rules. (See Proposed Rules, 63 FR 770, January 7,

1998.) With regard to auction provisions for designated entities, we simplify the definition of "small business," eliminate installment payments, and increase the bidding credit. These actions will enable the Commission to run a more efficient GWCS auction.

**DATE:** December 21, 1998.

#### **FOR FURTHER INFORMATION CONTACT:**

Kathryn Garland, Bob Reagle, or Arthur Lechtman, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This Order was released on September 24, 1998, and is available in its entirety, including all appendices, for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, fax (202) 857-3805, 1231 20th Street, N.W., Washington, D.C. 20036. It is also available on the Commission's website at <http://www.fcc.gov>.

#### **Introduction**

1. The rules the Commission adopts herein will apply to the auction of GWCS and potentially any auction of adjacent spectrum in the 4635-4660 MHz band, after the rulemaking on that band is complete. The Commission notes that the Wireless Telecommunications Bureau ("Bureau") is currently working on a notice of proposed rulemaking for the 4.6 GHz band, including the adjacent band at 4635-4660 MHz. That item is likely to consider changes in allocations, service rules, and auction rules affecting the entire 50 megahertz of spectrum, such as combining the 4635-4660 MHz and 4660-4685 MHz bands together and adopting common service and auction rules. Upon the completion of this rulemaking proceeding, the Commission may then be in a position to commence an auction of the 50 megahertz of spectrum in the 4635-4685 MHz frequency band as a unit. The Commission postponed the GWCS auction on April 24, 1998. (See Wireless Telecommunications Bureau Announces Postponement of General Wireless Communications Service (GWCS) Auction, Public Notice, DA 98-792 (rel. April 24, 1998)).

#### **Competitive Bidding Issues**

##### *A. Competitive Bidding Design*

2. *Discussion.* The Commission continues to believe that the simultaneous multiple-round auction

methodology will allow bidders to better express the value of the interdependency among licenses than if they are auctioned separately, and thus reaffirm the decision to use this methodology.

3. However, the Commission will eliminate the reduced bid withdrawal payment rule and associated auction conduct procedures largely for administrative reasons. The only party to have expressed an interest in nationwide aggregations, In-Flight, did not file any comments in this proceeding. When the Commission adopted the Second Report and Order, it observed that the reduced bid withdrawal payment and modified auction activity rules were "somewhat complex" yet still "simpler and easier to administer than combinatorial bidding." Since then, the Commission has not yet devised a practical means of implementing combinatorial bidding, although the Commission has sought comment on the issue and secured the services of a private sector consultant to examine theoretical and applied combinatorial bidding approaches. The Balanced Budget Act of 1997 requires the Commission, for testing purposes, to design and conduct an auction in which a system of combinatorial bidding is used. Rather than implement untested and complex rules in the GWCS auction, especially in light of no apparent public interest in them, the Commission feels that the public interest will benefit from the use of the standard bid withdrawal rule that it adopted in the Part 1 Third Report and Order. Bidders who desire nationwide license aggregations may still pursue such a strategy, but reduced bid withdrawal payments will not be available to them in the event of withdrawal.

#### *B. Application, Procedural, and Payment Issues*

4. *Discussion.* The Commission will adopt the Part 1 rules for GWCS. Thus, the Part 1 rules concerning short-form and long-form applications (including the anti-collusion rule), withdrawal and default payments, down payments, full payment, late payment fees, and unjust enrichment will now replace all analogous rules for GWCS. The Commission also will apply to GWCS the Part 1 rule allowing pre-license grant construction of systems. This decision eliminates the discrepancies between our current Part 1 rules and the older GWCS rules. Streamlining the rules increases the efficiency of the competitive bidding process and will provide more specific guidance to auction participants.

5. Consistent with the Part 1 Third Report and Order, the Commission directs the Bureau to establish day-to-day auction conduct procedures for the GWCS auction. These procedures include upfront payment determination, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension, or cancellation. The Commission notes that the Bureau recently sought comment on a proposed minimum opening bid for GWCS. The authority the Commission is delegating here is consistent with the authority that the Bureau has for all other auctionable services.

#### *C. Petitions To Deny*

6. *Discussion.* The Commission will not truncate the petition to deny period for GWCS licenses to five days because the statutory deadline has passed. As noted above in paragraph 1, the Commission postponed the GWCS auction on April 24, 1998, until further notice. Thus, once the Commission announces the long-form applications that have been accepted for filing, the time period for filing petitions to deny will be specified by Public Notice.

#### **Designated Entities**

##### *A. Small Business Definition*

7. *Discussion.* The Commission received no comments or replies specifically addressing the small business definition for GWCS. The Commission notes that the Small Business Administration recently approved this definition for GWCS. Therefore, the Commission will retain the \$40 million size standard for small businesses, without any tiers. However, the Commission will use the Part 1 definitions of gross revenues and affiliate for determining the small business status of GWCS applicants.

8. The Commission will simplify the GWCS size attribution rules and still enable small businesses to attract adequate financing. Consistent with our proposal in the Part 1 Third Report and Order, rather than an all-inclusive attribution rule with "control group" exceptions as used in broadband and narrowband PCS, the Commission will use a controlling interest threshold to determine whether an entity qualifies to bid as a small business. Thus, in calculating gross revenues for purposes of small business eligibility, applicants will be required to count the gross revenues of the controlling interests of

the applicant and its affiliates. The term "controlling interest" will include individuals or entities with both de jure and de facto control of the applicant. (See *Ellis Thompson Corp.*, 76 Rad. Reg. 2d (P&F) 1125, 1127-28 (1994) ("Ellis Thompson") (in which the Commission identified factors used to determine control of a business. Specifically, the Commission identified the following indicia of control:

- (1) use of facilities and equipment;
- (2) control of day-to-day operations;
- (3) control of policy decisions;
- (4) personnel responsibilities;
- (5) control of financial obligations; and
- (6) receipt of monies and profits.

*Ellis Thompson*, 76 Rad. Reg. 2d (P&F). See also *Intermountain Microwave*, 24 Rad. Reg. (P&F) 983 (1963). The Commission believes that this controlling interest threshold will function effectively to ensure that only those entities truly meriting small business status are eligible for small business provisions. In particular, the Commission believes that the de jure and de facto concept of control used to determine controlling interest in an applicant and the application of our affiliation rules will effectively prevent larger firms from seeking status as a small business illegitimately. This approach is consistent with attribution rules the Commission has employed for the recent LMDS and 800 MHz SMR auction proceedings.

9. The Commission will better encourage small business participation in the GWCS auction by adopting rules that provide for the greatest flexibility in business structuring. Therefore, in defining controlling interest, the Commission includes de facto as well as de jure control of the applicant. De jure control is 50.1 percent of the voting stock of a corporation or, in the case of a partnership, the general partners. De facto control includes the criteria set forth in *Ellis Thompson*. Thus, once principals or entities with a controlling interest are determined under these standards, only the revenues of those principals or entities and their affiliates will be counted for small business eligibility. When an applicant cannot identify controlling interests under these standards, the revenues of all interest holders in the applicant and their affiliates will be counted. For example, if a company is owned by four entities, each of which has 25 percent voting equity and no shareholders' agreement or voting trust gives any one of them control of the company, the revenues of all four entities must be counted. Treating such a corporation in this way is similar to our treatment of

a general partnership—all general partners are considered to have a controlling interest. The rule that the Commission adopts here, the Commission believes, looks to substance over form in assessing eligibility for small business status.

10. The Commission notes that our intent here is to provide flexibility that will enable legitimate small businesses to attract passive financing in a highly competitive and evolving telecommunications marketplace. The Commission believes that by structuring our standard in this manner it will invite only legitimate small businesses. While this rule will not specify a minimum amount of equity that a small business controlling interest must hold, the absence of equity will raise an issue as to whether de facto control exists. For purposes of calculating equity held in an applicant, the Commission provides for full dilution of certain stock interests, warrants, and convertible debentures. The Commission also provides a means of determining the level of control that is held through indirect ownership. Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. Finally, the Commission requires detailed reporting of all ownership interests as part of the general application requirement adopted in the Third Report and Order, and under the controlling interest standard the Commission will apply the comprehensive affiliation rule to all investors in a GWCS applicant. Under this standard, all auction applicants will be required to disclose the real party or parties in interest by including as an exhibit to their short-form applications detailed ownership information. Applicants must list controlling interests as well as all parties holding a 10 percent or greater interest in the applicant and any affiliates of these interest holders. Thus, passive interests that were otherwise non-attributable will be attributed if they are affiliates under this rule. Applicants claiming small business status must disclose on their short-form applications the names of each controlling interest and affiliate, as these terms are defined herein, and provide gross revenues calculations for

each. On their long-form applications, such applicants will be required to disclose any additional gross revenues calculations, any agreements that support small business status, and any investor protection agreements. The Commission believes that this detailed reporting requirement, in combination with our comprehensive affiliation rules, permits us to determine the “real party or parties in interest” when parties apply to participate in an auction. Finally, the Commission reserves the right to conduct random audits of auction applicants and licensees in order to verify information provided regarding eligibility for small business provisions.

#### *B. Installment Payments*

11. *Discussion.* The Commission hereby eliminates the use of installment payments for GWCS. After careful review of the comments in response to the Part 1 proceeding, the comments in response to the Installment Payment Public Notice, and our recent decisions in the broadband PCS C block, LMDS and 800 MHz SMR services, the Commission has determined that installment payments should not be used in the immediate future as a means of financing small business participation in our auction program. As the Commission indicated in the Second Report and Order in the Part 1 docket, the Commission must balance competing objectives in Section 309(j) that require, inter alia, that it promote the development and rapid deployment of new spectrum-based services and ensure that designated entities are given the opportunity to participate in the provision of such services. While the Commission is not ruling out the possibility that installment payments may return as a means of assisting designated entities for other auctionable services, their use will be suspended for the foreseeable future until the Commission resolves all attendant issues. The Commission has found, for example, that obligating licensees to pay for their licenses as a condition of receipt requires greater financial accountability from applicants. To balance the impact on small businesses of our decision to discontinue the use of installment payments, the Commission is adopting a higher bidding credit than that adopted in the Second Report and Order, as discussed in paragraph 12 below.

#### *C. Bidding Credits*

12. *Discussion.* The Commission will offer a higher bidding credit than that adopted in the Second Report and Order

for small businesses. Although no commenters addressed this issue, the Commission believes a greater bidding credit is appropriate in the absence of installment payments, as discussed in Section V(B) above. Consistent with the schedule of bidding credits adopted in the Part 1 Third Report and Order, the bidding credit for small business applicants in the GWCS auction will be 15 percent.

#### **Conclusion**

13. Based on our auction experience, the Commission believes bidders in the GWCS auction will benefit from the use of the streamlined Part 1 rules. The Commission has adjusted its auction procedures for different services as it gained experience with the process, resulting in the adoption of different procedures for different auctionable services. Therefore, this Fourth Report and Order replaces the competitive bidding rules adopted for GWCS with Subpart Q of Part 1 of the Commission's rules (47 CFR 1.2101 *et seq.*) to reflect substantive amendments and modifications intended to simplify these regulations. The Commission believes that the rules it adopts today will benefit GWCS bidders and the GWCS auction process generally.

#### **Ordering Clauses**

14. *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), 155(c)(1), 303(r), and 309(j), this Fourth Report and Order is hereby adopted, and Part 26, Subparts A, E, and F of the Commission's rules are revised as set forth, and become effective December 21, 1998.

15. *It is further ordered that* pursuant to 47 U.S.C. 155(c) and 47 CFR 0.131(c) and 0.331, the Chief of the Wireless Telecommunications Bureau is granted delegated authority to prescribe and set forth procedures as set forth herein, including mechanisms relating to the day-to-day conduct of the GWCS auction.

16. *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 at Attachment, to the Chief Counsel for Advocacy of the Small Business Administration.

## List of Subjects in 47 CFR Part 26

Competitive bidding procedures,  
Radio.

Attachment

### Final Regulatory Flexibility Analysis (Fourth Report and Order)

As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Second Further Notice of Proposed Rule Making in WT Docket No. 97-82 and ET Docket No. 94-32. The Commission sought written public comment on the proposals in the Second Further Notice of Proposed Rule Making, including comment on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") in this Fourth Report and Order (Order) conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 ("CWA"), Public Law No. 104-121, 110 Stat. 847 (1996). The Commission received no public comments on the IRFA.

*A. Need for, and objectives of, this Order.* The General Wireless Communications Service ("GWCS") was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660-4685 MHz band from the federal government to private sector use. This Order replaces most of the auction rules adopted in 1995 for GWCS with the streamlined Part 1 rules. With regard to auction provisions for designated entities, the Commission simplifies the definition of "small business," eliminates installment payments, and increases the bidding credit. While retaining the \$40 million definition of "small business," the Commission will use the Part 1 definitions of gross revenues and affiliate for determining the small business status of GWCS applicants. The Commission believes that these rule changes will further simplify and streamline the rules and regulations and increase the overall efficiency of the competitive bidding process for GWCS.

*B. Summary of significant issues raised by public comments in response to the IRFA.* The Commission received no comments in response to the IRFA.

*C. Description and estimate of the number of small entities to which the proposed rules will apply.* The Commission is required to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules here adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, there are 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were 85,006 such jurisdictions in the United States.

In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of 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 Commission sought and obtained SBA approval of a refined definition of "small business" for GWCS. According to this definition, a small business is any entity, together with its affiliates and entities holding controlling interests in the entity, that has average annual gross revenues over the three preceding years that are not more than \$40 million.

The Commission will offer 875 geographic area licenses, based on Economic Areas, for GWCS. In estimating the number of small entities that may participate in the GWCS auction, the Commission anticipates that the makeup of current wireless services licensees is representative of future auction winning bidders.

*D. Description of reporting, recordkeeping, and other compliance requirements.* The Order adopts no additional compliance requirements for auction participation. As noted previously in this docket, however, all GWCS license applicants will be subject to reporting and recordkeeping requirements to comply with the competitive bidding rules. Specifically, applicants will apply for the GWCS auction by filing a short-form application and will file a long-form application at the conclusion of the auction. Additionally, entities seeking treatment as "small businesses" will need to submit information pertaining to the gross revenues of the small business applicant, its affiliates, and certain investors in the applicant.

*E. Steps taken to minimize significant economic impact on small entities, and significant alternatives considered.* Among other goals, Section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. Section 309(j), directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. At the same time, Section 309(j) 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 received no comments with respect to the issue of eliminating installment payments for GWCS. The Commission has determined, consistent with its decision to suspend the use of installment payments for the immediate future, that installment payments should not be offered in the GWCS auction as a means of financing small businesses and other designated entities. The Commission notes that installment payments are not the only tool available to assist small businesses, and that section 3007 of the Balanced Budget Act requires that the Commission conduct certain future auctions in a manner that ensures that all proceeds from such bidding are deposited in the U.S. Treasury not later than September 30, 2002.

In assessing the public interest, the Commission must try to ensure that all the

objectives of Section 309(j) are considered. In this Order, the Commission adopts the Part 1 uniform definitions of "gross revenues" and "affiliate" for GWCS; eliminates the use of installment payments for GWCS; provides for a higher bidding credit, in lieu of installment payments, to encourage and facilitate the participation of designated entities in future auctions; and adopts the Part 1 unjust enrichment rule. With respect to the attribution rules for GWCS, the Commission adopts a "controlling interest" standard. Under this standard, determination of eligibility for small business provisions would be made by attributing the gross revenues only of principals of the applicant who exercise both "de jure" and "de facto" control, and their affiliates. The Commission believes the standard is sufficient to calculate size so that only those entities truly meriting small business status qualify for bidding credits. The Commission chooses not to impose a minimum equity requirement for the GWCS auction. The Commission wants rules that provide for the greatest flexibility in business structuring.

By this Order, the Commission applies to GWCS the general auction rules contained in Part 1 of its rules. These rules include a uniform definition of major amendments to the short-form application; general ownership disclosure requirements; a provision to refund upfront payments before the end of an auction to bidders that lose eligibility; uniform default rules; a rule that permits auction winners who have submitted a timely down payment to submit final payments 10 business days after the applicable deadline, provided the appropriate late fee is paid; a rule that modifies the attributable investor threshold of the anti-collusion rule to include controlling interests and/or holders of a 10 percent or greater interest in the applicant and to permit an entity that has invested in an applicant that withdraws from an auction to invest in other applicants that have applied to bid in the same markets; and permits all auction winners to begin construction at their own risk upon issuance of a public notice announcing the auction winners.

The Balanced Budget Act of 1997 provides for shortened periods for the filing of petitions to deny and for the grant of licenses. Under this provision, the Commission is permitted to grant any application for authorization assigned under competitive bidding not earlier than seven days following public notice that an application has been accepted for filing, and may specify a period of not less than five days for filing petitions to deny. The Commission received no comments on its proposal to truncate the petition to deny period for GWCS. After the Commission announces that long form applications have been accepted for filing, it will announce by Public Notice the length of the period for filing petitions to deny. Finally, consistent with the Part 1 Third Report and Order, the Commission directs the Wireless

Telecommunications Bureau to establish day-to-day auction conduct procedures for the GWCS auction. These procedures include upfront payment determination, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension, or cancellation.

The Commission believes that the objectives of section 309(j) are met by the rule changes in this Order. In addition, this Order serves the public interest by simplifying regulations, eliminating unnecessary rules, increasing the efficiency of the competitive bidding process, and providing more specific guidance to auction participants while also giving them more flexibility.

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

#### Rule Changes

Part 26 of Title 47 of the Code of Federal Regulations is amended to read as follows:

#### PART 26—GENERAL WIRELESS COMMUNICATIONS SERVICE

1. The authority citation for Part 26 continues to read as follows:

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

2. Amend § 26.4 by adding the definitions of "Affiliate" and "Controlling interest" and revise the definitions of "Gross revenues," "Rural telephone company," and "Small business: consortium of small businesses," to read as follows.

##### § 26.4 Terms and definitions.

*Affiliate.* See § 1.2110(b)(4) of this chapter.

\* \* \* \* \*

*Controlling interest.* (a) For purposes of this section, controlling interest includes individuals or entities with both *De jure* and *De facto* control of the applicant. *De jure* control is greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, the general partner. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to

establish that it retains *De facto* control of the applicant:

(1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(2) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(3) The entity plays an integral role in management decisions.

(b) Calculation of certain interests.

(1) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(2) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified below.

(3) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(4) Non-voting stock shall be attributed as an interest in the issuing entity.

(5) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(6) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(7) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(8) Any person who manages the operations of an applicant or licensee

pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such person or its affiliate pursuant to § 1.2110(b)(4), has authority to make decisions or otherwise engages in practices or activities that determine, or significantly influence:

(i) The nature or types of services offered by such an applicant or licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(9) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have an attributable interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(i) The nature or types of services offered by such an applicant or licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

\* \* \* \* \*

*Gross Revenues.* See § 1.2110(m) of this chapter.

\* \* \* \* \*

*Rural telephone companies.* A rural telephone company is any local exchange carrier operating entity to the extent that such entity—

(a) Provides common carrier service to any local exchange carrier study area that does not include either

(1) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census, or

(2) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(b) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(d) Has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

Small business: consortium of small businesses.

(a) A small business is an entity that, together with its affiliates and entities holding controlling interests in the entity, has average annual gross revenues that are not more than \$40 million for the preceding three years.

(b) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a small business. Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each business shall not be aggregated.

(c) Applicants without identifiable controlling interests. Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

\* \* \* \* \*

3. Revise § 26.203 to read as follows:

**§ 26.203 Competitive bidding mechanisms.**

See § 1.2104 of this chapter.

4. Remove and reserve section 26.204.

5. Revise § 26.205 to read as follows:

**§ 26.205 Bidding application (FCC form 175 and 175-S short-form).**

See § 1.2105 of this chapter.

6. Revise § 26.206 to read as follows:

**§ 26.206 Submission of upfront payments and down payments.**

See § 1.2106 of this chapter.

7. Revise § 26.207 to read as follows:

**§ 26.207 Long form applications.**

See § 1.2107 of this chapter.

8. Revise § 26.208 to read as follows:

**§ 26.208 License grant, denial, default, and disqualification.**

See § 1.2109 of this chapter.

9. Revise § 26.210 to read as follows:

**§ 26.210 Provisions for small businesses.**

(a) Bidding credits. A winning bidder that qualifies as a small business or a consortium of small businesses may use the bidding credit specified in § 1.2110(e)(2)(iii) of this chapter.

(b) Demonstrating small business qualifications. See § 1.2110(i) of this chapter.

(c) Audits.

See § 1.2110(l) of this chapter.

(d) Unjust enrichment.

See § 1.2111 of this chapter.

10. Amend § 26.307 by revising paragraphs (a) to read as follows:

**§ 26.307 General application requirements.**

(a) See § 1.2112 of this chapter.

\* \* \* \* \*

**§ 26.313 [Removed]**

11. Remove and reserve section 26.313.

12. Amend § 26.317 by revising paragraph (b) to read as follows:

**§ 26.317 Public notice period.**

\* \* \* \* \*

(b) The Commission will not grant an application filed on Form 601 filed either by a winning bidder or by an applicant whose Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of not less than seven (7) days following the issuance of a public notice listing the application, or any major amendments thereto, as acceptable for filing. See also § 1.2108 of this chapter.

\* \* \* \* \*

13. Revise § 26.320 to read as follows:

**§ 26.320 Opposition to applications.**

See § 1.2108 of this chapter.

[FR Doc. 98-28132 Filed 10-21-98; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[MM Docket No. 97-138, RM-8855, 8856, 8857, 8858, 8872; FCC 98-175]

**Main Studio and Public Inspection File of Broadcast Stations**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** This rule announces the effective date of the rules published on September 16, 1998. Those rules amended the Commission's rules governing main studio and local public inspection file requirements for broadcast licensees. The Commission relaxed the standard governing the location of the main studio to allow a station to locate within the principal community contour of any station licensed to the community of license, and required the local public inspection file to be located at the broadcast station's main studio, wherever located. The Commission also amended the public inspection file rules to streamline the contents of the public inspection file.

**DATES:** Sections 73.1125 and 73.3526 and 73.3527 published at 63 FR 49487 (September 16, 1998) are effective on October 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley or Kim Matthews, Mass Media Bureau, (202) 418-2130.

**SUPPLEMENTARY INFORMATION:** On October 7, 1998 the Office of Management and Budget ("OMB") approved the amendments to the main studio rule pursuant to OMB Control No. 3060-0171, and on October 13, 1998, OMB approved the amendments to the public file rules pursuant to OMB Control Nos. 3060-0214 and 3060-0215. Accordingly, the rules in Sections 73.1125, 73.3526 and 73.3527 will be effective on October 30, 1998.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

[FR Doc. 98-28405 Filed 10-21-98; 8:45 am]

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