The ground water containment system has operated without interruption since June 1995, and no further construction is anticipated. U.S. EPA approved the Remedial Action Report submitted by the PRPs and issued the Certification of Completion of Remedial Construction required under the Order to the PRPs on August 10, 1995. U.S. EPA has also approved the Operation and Maintenance Plan and, as a result, only routine operating, maintenance, and monitoring are presently required.

Activities at the site were consistent with the ROD, and work plans were issued to contractors for design and construction of the RA, including sampling and analysis. The RD Report, including a Quality Assurance Project Plan, incorporated all U.S. EPA and State quality assurance and quality control (QA/QC) procedures and protocol. U.S. EPA analytical methods were used for all validation and monitoring samples during remedial action activities.

The QA/QC program utilized throughout this remedial action was rigorous and in conformance with U.S. EPA and State standards; therefore U.S. EPA and the State determined that all analytical results are accurate to the degree needed to assure satisfactory execution of the remedial action, and consistent with the ROD and RD plans and specifications.

Since 1983 the MPCA and the U.S. EPA have been involved in numerous community relations activities associated with the Waste Disposal Engineering Site. Numerous fact sheets and news releases were issued throughout the remedial investigation/feasibility study (RI/FS). Public meetings were held at the beginning of the project on the remedial investigation report and on the proposed remedy. The City of Andover and Anoka County officials were invited to participate in the discussions.

On September 3, 1987, the MPCA issued a news release on the proposed remedy and the public meeting. On September 8, 1987, U.S. EPA sponsored an ad in the Minneapolis daily paper announcing the beginning of the public comment period. On September 14, 1987, a public meeting was held in the Andover City Hall. On September 29, 1987, the public comment period was closed. On March 17, 1993, an Environmental News Release announced the operation schedule of the cleanup at the site.

All the components of the remedy have been fully implemented. On November 27, 1995, the site was issued a Notice of Compliance (NOC) from the State under the Minnesota Landfill Cleanup Law. The State has now assumed full responsibility for the remedy at this site, including achieving all cleanup levels for the remedy. Compliance with off-site surface water and ground water cleanup levels must still be demonstrated. U.S. EPA will proceed in deleting the site from the NPL.

EPA, with concurrence from the State of Minnesota, has determined that Responsible Parties and the State of Minnesota have implemented all appropriate response actions required at the Waste Disposal Engineering Inc. Superfund Site, and that no further CERCLA response is appropriate in order to provide protection of human health and the environment. Therefore, EPA proposes to delete the site from the NPL.

Dated: March 11, 1996.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

[FR Doc. 96–7163 Filed 3–25–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 24

[WT Docket No. 96–59; GN Docket No. 90–314; FCC 96–119]

Broadband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission has adopted a Notice of Proposed Rule Making (''*Notice*'') that proposes to resolve a number of issues relevant to the award of licenses for the broadband Personal Communications Services (''PCS'') D, E, and F blocks. The *Notice* begins the process of supplementing the record supporting the gender- and race-based competitive bidding rules in the wake of *Adarand Constructors, Inc.* v. *Pena,* but it also tentatively concludes that the Commission should not delay auctioning the remaining broadband PCS frequency blocks long enough to complete that process. Accordingly, the *Notice* proposes to modify the F block auction rules to make them gender- and race-neutral. The *Notice* also seeks comment on several other matters relating to designated entities and entrepreneurs, including the definitions of small business and rural telephone company, whether to extend installment payment plans to small businesses bidding on the D and E blocks, adjustments to the payment plans available to small businesses bidding on the D and E blocks, and adjustments to the benefits provided to entrepreneurs in the F block rules that might be warranted in light of the fact that 10 MHz licenses are expected to have lower values than the 30 MHz C block licenses. In addition, the *Notice* proposes changes to the F block license transfer restrictions.

The *Notice* also proposes to resolve the question whether, in light of *Cincinnati Bell Telephone Co.* v. *FCC,* the Commission should for all broadband PCS licensees, retain or relax the cellular/PCS cross-ownership rule and the attribution rules for cellular licensees interested in acquiring broadband PCS licenses. In addition, the *Notice* proposes to amend the ownership information disclosure requirements for broadband PCS auction applicants, and proposes to auction the D, E, and F block licenses in concurrent auctions.

This *Notice* contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

DATES: Comments must be submitted on or before April 15, 1996; reply comments must be submitted on or before April 25, 1996. Written comments by the public on the proposed and/or modified information collections are due April 15, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before May 28, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Mark Bollinger, Wireless

Telecommunications Bureau, (202) 418–0660. For additional information concerning the information collections contained in this *Notice,* contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in WT Docket No. 96–59; GN Docket No. 90–314; FCC 96–119, adopted March 20, 1996 and released March 20, 1996. The complete text of the Notice of Proposed Rule Making is available 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 Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

This *Notice* contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this *Notice,* as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this *Notice;* OMB notification of action is due 60 days from date of publication of this *Notice* in the Federal Register. Comments should address: (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.

OMB Approval Number: N/A.

Title: Amendment of Part 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular PCS Cross-Ownership Rule.

Form No.: Form 175 and Form 600.

Type of Review: New collection.

Respondents: Business or other for-profit; individuals or households; not-for-profit institutions; and state, local and tribal governments.

Number of Respondents: 6,000.

Estimated Time Per Response: 13 hours.

Total Annual Burden: 77,817 hours.

Estimated costs per respondent: 2,848 dollars.

Needs and Uses: The auction rules require broadband PCS applicants for the D, E, and F blocks to submit (1) ownership information, (2) terms of joint bidding agreements, (3) net asset (F block only) and gross revenues calculations, and (4) evidence of environmental impact. Furthermore, in case a licensee defaults or loses its license, the Commission retains the discretion to re-auction such licenses. If licenses are re-auctioned, the new license winners would be required at the close of the re-auction to comply with the same disclosure requirements explained above.

The information collected will be used by the Commission to determine whether the applicant is legally, technically, and financially qualified to bid in the broadband PCS auctions and hold a broadband PCS license. Without such information the Commission could not determine whether to issue the license to the successful applicant and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

SYNOPSIS OF THE NOTICE OF PROPOSED RULE MAKING

I. Introduction

In this *Notice,* the Commission seeks comment on a range of issues pertaining to the competitive bidding and ownership rules for the D, E, and F frequency blocks of the Personal Communications Services in the 2 GHz band (''broadband PCS''), and the Commission proposes modifications to these rules. A number of the issues the Commission addresses relate to the treatment of designated entities, *i.e.,* small businesses, rural telephone companies, and businesses owned by members of minority groups and women. In addition, on remand from the U.S. Circuit Court of Appeals for the Sixth Circuit, the Commission reexamines certain rules governing cellular licensees' ownership of broadband PCS licenses in all frequency bands.

II. Proposals

A. Treatment of Designated Entities

1. Meeting the Adarand Standard

2. In the *Competitive Bidding Fifth Report and Order,* 59 Fed Reg 37566 (July 22, 1994) the Commission adopted gender- and race-based provisions as part of the F block rules to encourage the participation of women- and minority-owned businesses in the provision of PCS. The standard of review applied to federal programs designed to enhance opportunities for racial minorities at the time the F block rules were adopted was an intermediate scrutiny standard.

3. In *Adarand v. Peña,* the Supreme Court invalidated the intermediate scrutiny standard for federal race-based programs. The Court held that all racial classifications, imposed by whatever federal, state or local government actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored to further a compelling governmental interest. Moreover, as the Court made clear in *Adarand,* a strict scrutiny standard of review will be applied even if the racial classifications are well motivated or ''benign.''

4. Application of the two-prong strict scrutiny standard of review to provisions designed to encourage minority participation in PCS requires the Commission to show (1) that a compelling governmental interest exists for taking race into account in adopting such provisions, and (2) that the provisions in question are narrowly tailored to further the compelling governmental interest established by the record and findings. *Richmond* v. *J.A. Croson Co.,* and other cases provide the Commission with some indications of the type of record it might be necessary to develop in order to meet the strict scrutiny standard.

5. In *Croson,* the Court held that remedying past discrimination constitutes a compelling interest, whether the discrimination was committed by the government or by private actors within its jurisdiction. Other courts have also held remedial measures—those intended to compensate for past discrimination—to be compelling governmental interests. In *Croson,* however, the Court makes clear that an interest in remedying general societal discrimination could not be considered compelling because a ''generalized assertion'' of past discrimination ''has no logical stopping point'' and would support unconstrained uses of racial classifications. Whether other objectives for race-based measures rise to the level of a compelling governmental interest is unclear. However, in a plurality opinion issued before *Adarand,* the Supreme Court indicated that non-remedial measures aimed at fostering ethnic diversity could satisfy the compelling interest requirement of strict scrutiny.

6. The Supreme Court in *Croson* noted the high standard of evidence required of the government to establish

a compelling interest. It stated that the government must demonstrate a ''strong basis in evidence for its conclusion that remedial action was necessary'' and that such evidence should approach ''a prima facie case of a constitutional or statutory violation of the rights of minorities.'' Other courts, in cases decided after *Croson*, have held that statistical evidence can be probative of discrimination in the remedial setting, and that anecdotal evidence can buttress statistical evidence.

7. As indicated above, even if a compelling governmental interest is established, the second prong of the strict scrutiny test, narrow tailoring, must also be shown. This requirement is intended to ensure ''that the means chosen 'fit' [the] compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype.'' Different factors have been used by courts to determine, under a strict scrutiny standard, whether a program is narrowly tailored. These include: (1) whether race-neutral measures were considered before adopting race-conscious measures; (2) the scope of the program and whether it contains a waiver mechanism that facilitates narrowing of that scope; (3) the comparison of any numerical target to the number of qualified minorities in the relevant sector; (4) the duration of the program and whether it is subject to periodic review; (5) the manner in which race is considered; and (6) the degree and type of burden on non-minorities.

8. An intermediate scrutiny standard of review currently applies to gender-based measures. Under this standard, a gender-based provision is constitutional if it serves an important governmental objective and is substantially related to achievement of that objective. The Supreme Court has not addressed constitutional challenges to federal gender-based programs since *Adarand*. However, the Court's refusal in *Adarand* to apply a less strict standard to benign race-based classifications than that applied to ''invidious'' race-based classifications suggests that the same standard should be applied to benign and invidious gender-based classifications.

9. In the *Competitive Bidding Sixth Report and Order*, 60 FR 37786 (July 21, 1995), in which it eliminated the race- and gender-based provisions in the C block rules, the Commission expressed its concern that the record would not adequately support the race- and gender-based provisions in the C block competitive bidding rules under a strict scrutiny standard of review. The evidence supporting the gender- and race-based provisions cited in the *Competitive Bidding Fifth Report and Order* primarily shows broad discrimination against racial groups and women by lenders and underrepresentation of these groups as owners and employees in the communications industry. Similar evidence has been submitted to the Commission since that time, including evidence supporting a petition for reconsideration of the *Competitive Bidding Sixth Report and Order.*

10. The Commission continues to believe that this evidence is insufficient to demonstrate a compelling interest under the strict scrutiny standard to support the race-based provisions of the F block because it reflects primarily generalized assertions of discrimination. *Adarand* and *Croson* make clear that only a record of discrimination against a particular racial group would support remedial measures designed to help that group. Therefore, the Commission believes that a record of discrimination against minorities in general is not sufficient. Specific evidence of discrimination against particular racial groups would be required to support a rule for any group. Commission Rules define minority group members to include Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders. Although the Commission has some general evidence of discrimination against certain racial groups, none of the evidence it has appears to satisfy strict scrutiny.

11. The Commission notes too that last year, the D.C. Circuit Court of Appeals stayed the C block auction in response to a constitutional equal protection challenge against women- and minority-based provisions, even though an intermediate level standard of review applied. Thus, the Commission tentatively concludes that the present record in support of race-based F block provisions is insufficient to satisfy strict scrutiny. The Commission seeks comment on this tentative conclusion. The Commission also requests comment on whether the F block provisions promote a compelling governmental interest and, more particularly, whether compensating for discrimination in lending practices and in practices in the communications industry constitutes such an interest. The Commission also asks interested parties to comment on nonremedial objectives that could be furthered by the minority-based provisions of the F block rules and whether they could be considered compelling governmental interests, such as increased diversity in ownership and employment in the communications industry or increased industry competition. In commenting, the Commission asks parties to submit statistical data, personal accounts, studies, or any other data relevant to the entry of specific racial groups into the field of telecommunications. Examples of relevant evidence could include discrimination against minorities trying to obtain FCC licenses for auctioned or non-auctioned spectrum; discrimination against minorities seeking positions of ownership or employment in communications or related businesses; discrimination against minorities attempting to obtain capital to start up or expand a telecommunications enterprise, including terms and conditions; and discrimination against minorities operating telecommunications businesses, including treatment by vendors, FCC licensees, and suppliers.

12. The Commission also asks those parties who conclude that the race-based provisions serve a compelling governmental interest to comment on whether the provisions are narrowly tailored to serve that interest. Are these provisions sufficiently narrow in scope? Do they unduly burden non-minorities? Would race-neutral measures further the same interests and achieve the same objectives as race-conscious measures?

13. In addition, the Commission also tentatively concludes that the present record in support of the gender-based F block rules may be insufficient to satisfy intermediate scrutiny. The Commission seeks comment on this tentative conclusion. The Commission also seeks comment on whether there are remedial or nonremedial goals that would satisfy the ''important governmental objective'' requirement of the intermediate scrutiny standard. Are the gender-based F block rules ''substantially related'' to the achievement of such objectives? Just as it requested for the F block race-based provisions, the Commission asks parties to submit statistical data, personal accounts studies or any other data relevant to the entry of women into the field of telecommunications.

14. The Commission also is interested in supplementing the current record to support race- and gender-based provisions in other rules. In this regard, the Commission plans shortly to issue a Notice of Inquiry that requests evidence of current and past discrimination experienced by small businesses and businesses owned by women and minorities or by individual women and minorities. The record outlined in response to this Notice will also be incorporated into that Docket.

15. The Commission undertakes this effort to support the auction rules because it is committed to fulfilling the Congressional mandate to provide opportunities for women- and minority-owned businesses through the competitive bidding process. The Commission believes, however, that marshaling sufficient evidence to satisfy the strict scrutiny standard of review now applicable to federal race-based programs may be a time-consuming process, and it is mindful that it may not fulfill its other obligations under Section 309(j) if it delayed the award of F block licenses until that process is complete.

16. The Commission notes that some representatives of the telecommunications industry have voiced a need to have the D, E, and F block licenses awarded quickly. With the completion of the C block auction, the Commission will have neared completion of awarding the 30 MHz A, B, and C block licenses. Any entity with plans to aggregate a 10 MHz F block license with a 30 MHz A, B, or C block PCS license or any cellular or Specialized Mobile Radio (''SMR'') licensee that plans to acquire a 10 MHz license for use in its service area, the Commission believes, will be interested in swift auctioning of D, E, and F block licenses. The Commission also believes that entities that were unable to win licenses in the previous PCS auctions may be interested in bidding on the D, E, and F blocks, and that it will be important to these entities to acquire licenses quickly so that they can compete at the earliest point possible with other providers of Commercial Mobile Radio Services (''CMRS''), and with wireline service providers. Further, the Commission believes that both Congress and consumers expect it to promote the rapid development of PCS. Balancing its obligation to provide opportunities for women- and minority-owned businesses to participate in spectrum-based services against its statutory duties to facilitate the rapid delivery of new services to the American consumer and promote efficient use of the spectrum, the Commission tentatively concludes that it should not delay the F block auction for the amount of time it would take to adduce sufficient evidence to support the race- and gender-based F block provisions. While the Commission could proceed with the F block auction under the current rules, it tentatively concludes that this course of action would not serve the public interest because it may likely result in litigation that would delay the auction, the dissemination of additional broadband PCS licenses, and ultimately the introduction of competition.

17. As a result, the Commission tentatively concludes that if it is unable to gather sufficient evidence to support the race- and gender-based provisions in the instant proceeding, it should eliminate these provisions from the rules and proceed as expeditiously as possible to auction the remaining broadband PCS licenses. The Commission seeks comment on these tentative conclusions.

18. In reaching these tentative conclusions, the Commission notes that of the 255 bidders that qualified to bid in the C block auction, 46 claimed minority-owned business status and 34 claimed women-owned business status. These statistics indicate that even without the women- and minority-owned business specific provisions in the C block rules, women- and minority-owned businesses were able to participate in the auction. However, one could also argue that the presence of race- and gender-based rules before the *Competitive Bidding Sixth Report and Order* encouraged the participation of minorities and women. It may have helped such companies open the door to discussions with investors that persisted even when the rules changed. Indeed, in the *Competitive Bidding Sixth Report and Order,* one of the Commission's primary objectives was to preserve the relationships and deals minority- and women-owned companies had made prior to the rule change. As discussed more fully below, the Commission seeks comment on whether, if it ultimately decides to make the F block rules race- and gender-neutral, it should do so by making these rules conform to the C block rules, or whether other approaches to amending the F block rules would be more appropriate. The Commission also seeks comment on how the Commission can meet its statutory requirement under Section 309(j) to ensure participation by minorities and women in the provision of service, if the rules are changed to be race- and gender-neutral.

a. Control Group Equity Structures

19. To be eligible to participate in the entrepreneurs' block auctions, an applicant, together with its affiliates and persons or entities that hold interests in the applicant, must have gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million. Under the Commission's current rules, the gross revenues and total assets of certain persons or entities holding interests in an applicant will not be considered for purposes of determining eligibility to participate in the F block auction if the applicant utilizes one of two equity structures. Use of either of these equity structures requires the applicant to form a ''control group,'' but one of these options is available only to minority- and women-owned businesses.

20. The first equity structure option, the *Control Group Minimum 25 Percent Equity Option,* is available to all applicants for the F block auction. Under this option, the control group must hold at least 25 percent of the applicant's total equity. Of that 25 percent, at least 15 percent must be held by ''qualifying investors.'' The remaining ten percent may be held by qualifying investors, certain institutional investors, non-controlling existing investors in any preexisting entity that is a member of the control group, or individuals that are members of the applicant's management. In addition, members of the control group must have *de facto* control of the control group and of the applicant, and hold at least 50.1 percent of the voting stock or all general partnership interests. If these requirements are met, the remaining 75 percent of the applicant's equity may be held by other non-controlling investors, and the gross revenues and total assets of any such investor will not be attributed to the applicant provided that the investor holds no more than 25 percent of the total equity of the applicant.

21. The second equity structure option, the *Control Group Minimum 50.1 Percent Equity Option,* is currently available only to minority- or women-owned applicants for the F block auction. Under this option, the control group must own at least 50.1 percent of the applicant's total equity. Of that 50.1 percent equity, at least 30 percent must be held by qualifying investors who are members of minority groups or women. The remaining 20.1 percent may be held by qualifying investors, certain institutional investors, non-controlling existing investors in any preexisting entity that is a member of the control group, or individuals who are members of the applicant's management. In addition, members of the control group must hold 50.1 percent of the voting stock or all general partnership interests, and have *de facto* control of both the control group and the applicant. If these requirements are met, the remaining 49.9 percent of the applicant's equity may be held by a single non-controlling investor, and the gross revenues and total assets of any such investor will not be attributed.

22. When the Commission adopted the *Control Group Minimum 50.1*

Percent Equity Option, it determined that making such a mechanism available to minority- and women-owned businesses would help them attract adequate financing. However, in light of the Supreme Court's holding in *Adarand,* the Commission tentatively concludes that, if it determines after reviewing the comments in this proceeding that it still does not have a sufficient record to support offering the 50.1/49.9 percent equity structure only to women- and minority-owned businesses, it should make the *Control Group Minimum 50.1 Percent Equity Option* available to small businesses and entrepreneurs as it did in the C block auction. In other words, if commenters in this proceeding are unable to supply sufficient evidence to meet the applicable standard of review, the Commission proposes to modify the rules to permit all F block applicants to avail themselves of the 50.1/49.9 percent equity structure. The Commission believes that such a rule change, which is identical to a rule change upheld in the C block by the D.C. Circuit, would facilitate the expeditious dissemination of the F block licenses by forestalling the legal challenges based on *Adarand* that would likely result if it moved forward with this rule in its current form. The Commission seeks comment on this proposal. Since this control group option was adopted to help minority- and women-owned businesses, in particular, attract capital, the Commission also seeks comment on whether it needs to extend this provision to all small businesses here.

23. As an alternative to adopting the above rule changes, the Commission could simplify or abandon both control group equity structure options currently offered to F block applicants. Should it, for example, provide that only the gross revenues and assets of controlling principals in the applicant, together with any affiliates of the applicant, be aggregated to determine eligibility? If the Commission were to modify the rules in this way, how should it determine who is a controlling principal? Alternatively, the Commission could aggregate the gross revenues and assets of controlling principals and any investor that has an interest in the applicant that exceeds a certain percentage. For example, the Commission could provide that only the gross revenues of investors with an ownership interest of 25 percent or more in the applicant will be aggregated with the assets of controlling principals. If the Commission were to adopt this modification, what percentage of interest in the applicant should it adopt as the threshold? The Commission seeks comment on these and other options that interested parties might wish to propose.

24. Finally, the Commission asks commenters to discuss whether there is any need to make adjustments to the financial eligibility threshold for the F block auction. Is there a concern, for example, that C block winners will be disqualified from acquiring F block licenses by virtue of the valuation of their C block licenses? Should the Commission simply allow any qualified C block bidder to bid on F block licenses?

b. Affiliation Rules

25. The Commission adopted affiliation rules for identifying all individuals and entities whose gross revenues and assets must be aggregated with those of the applicant to determine whether the applicant exceeds the financial caps for the entrepreneurs' blocks or for small business size status. The affiliation rules identify which individuals or entities will be found to control or be controlled by the applicant or an attributable investor in the applicant by specifying which ownership interests or other criteria will give rise to an affiliation.

26. The Commission adopted two exceptions to the affiliation rules in the broadband PCS C and F block context. Under one exception, applicants affiliated with Indian tribes and Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.,* are generally exempted from the affiliation rules for purposes of determining eligibility to participate in bidding on C and F block licenses and to qualify as a small business. Under the second exception, as originally adopted, the gross revenues and assets of affiliates controlled by minority investors who are members of the applicant's control group are not attributed to the applicant for purposes of determining compliance with the eligibility standards for participation in the entrepreneurs' block auctions.

27. In the *Further Notice of Proposed Rule Making,* 60 FR 34201 (June 30, 1995), the Commission proposed elimination of the exception to the affiliation rules pertaining to minority investors for purposes of the C block auction. This exception was intended to permit minority investors who control other concerns to be members of an applicant's control group and to bring their management skills and financial resources to bear in its operation without the assets and revenues of those other concerns being counted as part of the applicant's total assets and revenues. The Commission further anticipated that such an exception would permit minority applicants to pool their resources with other minority-owned businesses and draw on the expertise of those who have faced similar barriers to raising capital in the past. The Commission tentatively concluded that it would be imprudent to extend such an exception to all entrepreneurs because to do so would frustrate the Commission's goals in establishing the entrepreneurs' blocks—namely, to ensure that broadband PCS licenses will be disseminated among a wide variety of applicants and to exclude large telecommunications companies from bidding on such blocks.

28. In the *Competitive Bidding Sixth Report and Order,* however, the Commission declined to eliminate the exception and adopted a modification to the minority affiliation rule for the C block which was suggested by commenters. The modified rule, 47 CFR § 24.720(l)(11)(ii), allows all small business applicants to exclude any affiliates who would otherwise qualify as entrepreneurs by having gross revenues under $125 million and total assets under $500 million and whose total assets and gross revenues, when considered on a cumulative basis and aggregated with each other, do not exceed these amounts. This rule change in the C block was affirmed by the D.C. Circuit Court of Appeals.

29. The Commission seeks comment on whether, if it determines that the record is insufficient to support an exception to the affiliation rule based on race, it should amend the affiliation rule for the F block to eliminate the exception pertaining to minority investors, as was originally proposed for the C block, or whether it should adopt the C block's modified exception. It has been alleged that the modification of the exception for minority investors for purposes of the C block auction could lead to abuse. The Commission believes that its experience with the C block auction may show whether this rule has had its intended effect of allowing small businesses to pool their resources to bid on capital-intensive services and draw on the expertise of those who have started small businesses. If information from the C block auction is relevant to whether the Commission should amend the rule, it proposes to incorporate it here. The Commission also seeks comment on whether this modified minority investors exception would serve the public interest given the fact that F block licenses are smaller than C

block licenses and are expected to have lower values.

30. The Commission does not propose to eliminate the affiliation exception for Indian tribes and Alaska Regional or Village Corporations. It tentatively concludes that the ''Indian Commerce Clause'' of the United States Constitution provides an independent basis for this exception that is not implicated by the holding in *Adarand*. The Commission requests comment on this tentative conclusion.

c. Installment Payments

31. As a general matter, entrepreneurs' block licensees are eligible for installment payment plans that afford them the opportunity to pay for their licenses over a period of time at favorable interest rates, rather than pay for the licenses in full at the time of grant.

32. Five different installment payment plans are currently available to F block applicants under Section 24.716 of the Commission's Rules. The first installment payment plan, which is available to entities with gross revenues in excess of $75 million, allows them to pay interest based on the ten-year U.S. Treasury rate plus 3.5 percent, with payment of principal and interest amortized over the term of the license. The second installment payment plan, which is available to entities with gross revenues between $40 and $75 million, provides for the payment of interest equal to the ten-year U.S. Treasury rate plus 2.5 percent. Entities eligible for this plan make interest-only payments for one year, with the principal and interest amortized over the remaining nine years of the license term.

33. The third installment payment plan is available only to entities that qualify as a small business or consortium of small businesses. This plan provides for the payment of interest at the ten-year U.S. Treasury rate plus 2.5 percent, but allows eligible entities to make interest-only payments for two years, with principal and interest amortized over the remaining eight years of the license term.

34. The fourth plan provides for interest-only payments for three years and payments of principal and interest over the remaining seven years of the license term and is only available to businesses owned by members of minority groups or women. The final and most favorable installment payment plan provides for interest-only payments for six years and payments of principal and interest amortized over the remaining four years of the license term. This plan is available only to small businesses owned by members of minority groups or women.

35. In the event the Commission finds after reviewing the comments in this proceeding that the record is insufficient to sustain the race- and gender-based provisions of the F block rules under the appropriate standard of review, the Commission proposes to modify Section 24.716 to eliminate the special provisions that are tied to an applicant's status as a minority- or women-owned business. The Commission seeks comment on whether it should provide for three installment payment plans based solely on financial size, as it did for the C block. Under this approach, the first two installment payments described above—those for eligible bidders with gross revenues exceeding $75 million and with gross revenues between $40 and $75 million—would remain unchanged. The most favorable installment payment plan—set forth in Section 24.716(b)(5) and previously available only to small minority- or women-owned firms—would be made available to all small businesses. Thus, all small businesses would be permitted to pay for their licenses in installments at the ten-year U.S. Treasury rate applicable on the date the license is granted, and would be permitted to make interest-only payments for the first six years, with payments of principal and interest amortized over the remaining four years of the license term. As discussed below, however, the Commission also seeks comment on whether such favorable payment terms are necessary for F block auction winners and, in particular, whether the 6-year interest only period serves the public interest given that the amounts bid for the 10 MHz licenses most likely would be lower than those bid for 30 MHz licenses in the C block.

d. Bidding Credits

36. A bidding credit acts as a discount on the winning bid amount that a bidder actually has to pay for the license. The current F block rules provide for three tiers of bidding credits ranging between 10 percent and 25 percent. Under these rules, a small business is granted a 10 percent bidding credit, a business that is owned by members of minority groups or women is granted a 15 percent bidding credit, and a small business owned by members of minority groups or women is allowed to aggregate the bidding credits for a 25 percent bidding credit.

37. If the Commission finds that they cannot withstand judicial review on the basis of the evidence adduced in this proceeding, it proposes to eliminate the race- and gender-based bidding credits in the F block rules. The Commission believe that this proposed rule change, like the other proposals for making the rules race- and gender-neutral, should allow it and prospective bidders to avoid litigation based on Adarand and thus will permit the auction to proceed without delay. The Commission seeks comment on this proposal. It also seeks comment on whether it should, in place of these bidding credits, extend a single bidding credit to all small businesses as it did for the C block. If the Commission chooses to adopt a single small business bidding credit for the F block, how big should the credit be? Should the Commission retain one of the three bidding credits currently provided—10, 15 or 25 percent—and make it available to all small businesses bidding in the F block? In the alternative, should the Commission offer tiered bidding credits, such as 15 percent for small businesses with aggregate gross revenues under $15 million and 10 percent for businesses with gross revenues between $15 million and $40 million? The Commission tentatively concludes that because the value of 10 MHz licenses may be lower than the value of 30 MHz licenses, a smaller bidding credit than was offered C block bidders may be appropriate for F block bidders. The Commission also tentatively concludes that these lower expected values may attract smaller businesses, thus justifying a tiered bidding credit. The Commission seeks comments on these tentative conclusions.

e. Information Collection

38. If the Commission eliminates the race- and gender-based provisions in the F block rules because it finds after reviewing the comments in this proceeding that it still does not have a record sufficient to withstand the appropriate standard of review, it intends nonetheless to continue to request that applicants provide information regarding minority- or women owned status in their short-form applications. The Commission notes that it has collected such information concerning participants in ongoing auctions, including the C block auction. The Commission believes that continuing to collect such information will assist it in analyzing applicant pools and auction results to determine whether it has promoted substantial participation in auctions by minorities and women, as Congress directed, through the special provisions it propose to make available to small businesses. This information will also assist the Commission in preparing a report to Congress on the participation of designated entities in the auctions

and in the provision of spectrum-based services. In addition, such information will be relevant in developing a supplemental record should the Commission find that special provisions for small businesses prove unsuccessful in encouraging the dissemination of licenses to a wide variety of applicants, including businesses owned by members of minority groups and women. The Commission seeks comment on this information collection proposal.

2. Definitions

a. Small Business

39. The proposal to extend to small businesses certain F block rule provisions previously applicable only to women- and minority-owned businesses highlights the importance of the definition of a small business. The current generic auction rules enable the Commission to establish a small business definition in the context of each particular service. Under the specific rule for the C and F blocks, a ''small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average gross revenues that are not more than $40 million for the preceding three years.

40. The Commission requests comment on whether the definition of small business continues to be appropriate. Is a threshold of average gross revenues of not more than $40 million too high or too low for entities bidding on 10 MHz licenses? How does the definition of small business in Section 24.720(b)(1) compare to the definition of small businesses for other services? Does the current service-by-service approach remain valid? In the alternative, would it be feasible to establish an appropriate small business size applicable to all CMRS services? The Commission proposes to keep the current small business definition for the F block—the same definition used for the C block—to allow C block small business licensees to benefit from the small business provisions of the F block. The Commission requests comment on this proposal. However, the Commission is concerned that by using this threshold, C block winners may not be able to acquire F block licenses given the value of their C block licenses. The Commission, therefore, requests comment on whether the value of a C block license should be part of the gross revenues calculation. The Commission also requests comment on whether it should define and adopt rules for very small businesses. If so, what should be the appropriate size standard for very small businesses and why? Instead of or in addition to modifying the small business definition, should the Commission modify or simplify the affiliation rules? The Commission notes that the Small Business Administration recently simplified the definition of ''affiliate'' in its rules.

b. Rural Telephone Company

41. In the *Competitive Bidding Fifth Report and Order*, the Commission established provisions to help rural telephone companies become meaningful participants in the PCS industry and defined a rural telephone company as ''a local exchange carrier having 100,000 or fewer access lines, including all affiliates.'' The impact of this definition was to identify entities that qualified for the partitioning system that the Commission adopted to allow rural telephone companies to obtain broadband PCS licenses that are geographically partitioned from large PCS service areas.

42. The Telecommunications Act of 1996 creates, for the first time, a statutory definition for rural telephone companies. The Commission requests comment on whether Congress intended to define the term rural telephone company used in Section 309(j) or whether it was only meant to define the term as used in new sections of the Communications Act, such as Section 251. In any event, should the Commission change the definition of a rural telephone company to this definition for purposes of the broadband PCS designated entity provisions. The Commission also asks commenters to discuss how adoption of this definition would affect the current rules allowing geographic partitioning of rural areas served by rural telephone companies.

3. Extending Small Business Provisions to the D and E Blocks

43. The rule modifications discussed above would extend greater bidding credits and more favorable installment payment plans to all small business bidders in the F block auction. The D and E blocks are not entrepreneurs' blocks, and current D and E block auction rules do not make special provision for small businesses. Members of the telecommunications industry, however, have expressed a desire for the Commission to extend the small business provisions of the F block auction rules to bidders for D and E block licenses.

44. The Commission requests comment on whether it should extend installment payment plans to small businesses bidding on the D and E blocks. From parties that believe the Commission should extend these provisions to the D and E blocks, the Commission also requests comment on the terms for these provisions for D and E block small businesses. For example, should small businesses bidding in the D and E blocks qualify for installment payments with the same terms as small businesses in the F block, or should D and E block small businesses receive less favorable payment terms? The Commission tentatively concludes that extension of installment payments could result in disseminating licenses in the D and E blocks to a wider variety of applicants in two ways. First, it could increase the chances for all small businesses, including those that are women- or minority-owned and that would have benefited from the F block provisions that it proposes to change, to win a D, E, or F block license. Second, it could increase opportunities for small businesses that are current PCS, cellular, or SMR licensees to obtain 10 MHz-licenses that they could aggregate with their current licenses. The Commission requests comment on this tentative conclusion.

4. Adjusting for Lower Values of 10 MHz Licenses

45. Notwithstanding the Commission's desire to increase opportunities for small businesses, including those that are women- and minority-owned, to acquire PCS licenses, the Commission is aware that winning bids for the D, E, and F block licenses, which authorize the use of 10 MHz, could be lower than those for the 30 MHz A, B, and C block licenses. Accordingly, it asks for comment on whether it should adjust the terms of the installment financing provisions to reflect the lower values of the 10 MHz license. Are the installment payment plans for small businesses too generous in light of the expected lower values of the 10 MHz licenses? In particular, is it in the public interest to offer a 6-year interest-only period for all small business F block licensees?

46. Similarly, the Commission seeks comment on whether the F block rules establishing discounted upfront payments and reduced down payments for entrepreneurs should be adjusted. Upfront payment requirements are designed to ensure that only serious and qualified bidders participate in the Commission's spectrum auctions, and to deter frivolous or insincere bidding. Upfront payments are also required to provide the Commission with a source of funds in the event that it becomes necessary to assess default or bid withdrawal payments. The

Commission's rules currently require participants in the F block auction to submit an upfront payment of $0.015 per MHz per pop (or per bidding unit) for the maximum number of licenses (in terms of bidding units) on which they intend to bid. This differs from the standard upfront payment formula originally set at $0.02 per MHz-pop for broadband PCS services, which was utilized in the A and B block auctions and will be required in the D and E blocks. The 25 percent discount on the upfront payment for the entrepreneurs' block auctions was intended to facilitate the participation of capital-constrained companies and permit them to conserve resources for infrastructure development after winning a license.

47. The Commission requests comment on whether a discounted upfront payment is necessary to encourage the participation of entrepreneurs and designated entities in the F block auction. It also requests comment on whether the discounted upfront payment is sufficient to ensure that only serious and qualified bidders participate in the F block auction. Is the discounted upfront payment amount an adequate measure of a bidder's ability to pay for the licenses it might win and to meet the Commission's build-out requirements? Or, should the Commission increase the required upfront payment to $0.02 per bidding unit or more in order to minimize the possibility of insincere or frivolous bidding and bidder default?

48. The F block rules also discount down payments for winning bidders. The primary purpose of the down payment requirement is to ensure that a winning bidder will be able to pay the full amount of its winning bid. In arriving at an appropriate level for the down payment, the Commission sought to ensure that auction winners would have the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system. At the same time, the Commission did not want to require a down payment so onerous as to hinder an applicant's growth and diminish its access to capital. The Commission decided to require winning bidders in broadband PCS auctions (except for those eligible for installment payments in the entrepreneurs' blocks) to supplement their upfront payment with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s). For winning bidders in the entrepreneurs' blocks auctions, the Commission agreed to require a reduced down payment of only ten percent of the winning bid. Currently, a winning bidder in the F block auction is required to make a down payment equal to ten percent of its net winning bid, with five percent due within five days of the close of the auction, and the remainder due within five days of the grant of the license.

49. The Commission now requests comment on whether this reduction in the down payment requirement is necessary to facilitate the participation of entrepreneurs and designated entities in providing service to the public as F block licensees. The Commission also requests comment on whether the reduced down payment is sufficient to demonstrate that a winning bidder has the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system. Should the Commission increase the required down payment to 20 percent of the winning bid in order to guard against the possibility of bidder default? Would a higher payment hinder growth and access to capital?

5. Rules Regarding the Holding of Licenses

50. In the *Competitive Bidding Fifth Report and Order*, the Commission adopted restrictions on the transfer or assignment of licenses won by bidders in the entrepreneurs' blocks. These restrictions were designed to ensure that licensees did not take unfair advantage of entrepreneurs' block special provisions by immediately assigning or transferring control of their licenses to other entities. The rules prohibit licensees in the entrepreneurs' block from voluntarily assigning or transferring control of their license during the three years after the date of the license grant. Two years thereafter, the licensee is permitted to assign or transfer control of its authorization only to an entity that satisfies the eligibility criteria for the entrepreneurs' blocks.

51. The Commission also adopted specific rules to prevent recipients of bidding credits and installment payment plans from realizing any unjust enrichment that they might gain from transfer or assignment that occurs during the full ten-year license term. With regard to bidding credits, the rules require that if a licensee applies to assign or transfer control of a license to an entity that is not eligible for as high a level of bidding credit, then the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify must be paid to the U.S. Treasury as a condition of approval of the transfer or assignment. If a licensee that was awarded installment payments seeks to assign or transfer control of its license during the term of the license to an entity not meeting the applicable eligibility standards, the rules require payment of the remaining principal and any interest accrued through the date of assignment as a condition of approval of the transfer or assignment.

52. The Commission tentatively concludes that, in addition to the changes that it proposes to the F block auction rules, some measure is still needed to discourage speculators or sham bidders in the entrepreneurs' block auction. The Commission also tentatively concludes that if it adopts the proposals to make the F block auction rules race- and gender-neutral, and extend small business provisions to bidders in all three 10 MHz broadband PCS blocks, the current transfer restrictions for F block licensees may be too restrictive. For example, under the proposed changes to the race- and gender-based provisions and the current transfer restriction, a small business cannot transfer its F block license in the first three years and, in the two years thereafter, may only transfer its license to another small business. An entrepreneur F block licensee, however, would be able to transfer its F block license in years four and five to any other entrepreneur, including a small business. Such a result goes farther than to merely discourage speculative bidding in the entrepreneurs' block auction. Therefore, the Commission proposes to amend the holding requirement to let all F block licensees transfer their licenses within the first three years to an entity that qualifies as an entrepreneur. The Commission also proposes to retain the unjust enrichment provisions. It seeks comment on this proposal and its tentative conclusions. It particularly seeks comment on whether entities participating in the C block auction may have had experiences that would influence the Commission's tentative conclusions here.

B. The Cincinnati Bell *Remand*

1. The Cellular/PCS Cross-ownership Rule

53. Under Section 24.204(a), no cellular licensee may be granted a license for more than 10 MHz of broadband PCS spectrum prior to the year 2000 if the grant will result in a significant overlap of the cellular licensee's Cellular Geographic Service Area (''CGSA'') and the PCS service area. After the year 2000, cellular licensees will be allowed to obtain a grant of 15 MHz of PCS spectrum in an area that overlaps significantly with their CGSA. ''Significant overlap'' occurs when ten percent or more of the

population of the PCS service area is contained within the CGSA. Thus, because cellular licenses authorize the use of 25 MHz of spectrum, cellular operators currently are limited to 35 MHz of aggregated cellular and PCS spectrum in any one geographic area.

54. In *Cincinnati Bell,* the Court concluded that the Commission's limitations on cellular operators' eligibility for PCS licenses are arbitrary because the FCC provided little or no support for its assertions that, without such restrictions, cellular providers might engage in anticompetitive practices or exert undue market power. The Court further explained that, while the Commission's stated goal of avoiding excessive concentration of licenses is a permissible objective under the Communications Act, the cellular eligibility rules are, without an economic rationale, an arbitrary solution to this problem. According to the Court, the FCC must supply more factual support for its belief that cellular operators might detrimentally affect the market if they were allowed to obtain licenses for larger amounts of PCS spectrum.

55. In light of the Sixth Circuit's ruling, the Commission seeks comment on whether the PCS/cellular cross-ownership rule should be relaxed or retained. Currently, the Commission's rules contain other spectrum caps that affect applicants for PCS licenses. The broadest limitation on wireless spectrum ownership is the 45 MHz cap on CMRS uses within three radio services: broadband PCS, cellular, and SMR. In addition, all PCS licensees are limited to a total of 40 MHz of spectrum in any one geographic area. This means that an entity may not own PCS licenses for any two or more spectrum blocks that will total more than 40 MHz in the same geographic area. Are there reasons for maintaining the separate 35 MHz spectrum cap on cellular providers' ownership of PCS spectrum in their service area or the 40 MHz PCS spectrum cap? Comments supporting retention of the current rules should provide facts showing that cellular operators will detrimentally affect the market if allowed to obtain immediately 10 MHz or more of PCS spectrum in their geographic service areas. The Commission also seeks comment on whether it should relax and simplify the ownership limitations by eliminating the PCS/cellular ownership limitations and the 40 MHz PCS spectrum cap in favor of the single 45 MHz CMRS spectrum cap. Under such a rule, cellular operators would be permitted to acquire licenses for two 10 MHz blocks of broadband PCS spectrum. The Commission asks commenters to discuss the impact on competition among CMRS providers, including the effect, if any, on the provision of PCS.

2. The 20 Percent Attribution Standard

56. For the purpose of determining whether an entity is a cellular operator and subject to the cellular/PCS cross-ownership rule, the Commission has developed attribution standards. Section 24.204(d)(2)(ii) of the Commission's Rules provides that partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee will be attributable. Thus, any entity owning such a 20 percent interest in a cellular licensee is precluded from obtaining a license for broadband PCS in excess of 10 MHz in a service area that overlaps the cellular licensee's CGSA.

57. Section 24.204(d)(2)(ii) also currently provides for a higher cellular ownership attribution threshold for small businesses, rural telephone companies, and businesses owned by minorities or women than for other entities. If cellular ownership interests are held by such types of businesses, their interests are not attributable until they reach at least 40 percent. Similarly, a cellular ownership interest held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant owned by minorities or women is attributable only if it reaches 40 percent or more.

58. The Court in *Cincinnati Bell* found the 20 percent cellular attribution standard to be arbitrary on the ground that it does not bear a reasonable relationship to whether a party with a minority interest in a cellular licensee actually has the ability to control that licensee. The Court rejected the FCC's argument that an entity with such an interest in a cellular licensee would have a reduced incentive to compete with the cellular company as a PCS provider, indicating that this argument is unsupported by either statistical data or a general economic theory and stating that the Commission must provide support for such predictive conclusions. In response to the FCC's argument that the Commission needs a bright-line rule to avoid delays in resolving PCS eligibility issues, the Court agreed with those challenging the 20 percent standard that the Commission should have supplied a reasoned basis for its decision not to adopt less restrictive alternatives.

59. The 45 MHz CMRS spectrum aggregation limit, discussed above, includes an attribution rule that governs how ownership interests are measured. Under this rule, partnership and other ownership interests, and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular, or SMR licensee shall be attributed, except that those interests held by small businesses, rural telephone companies, or businesses owned by minorities or women will not be attributed unless they reach a threshold level of 40 percent. Similarly, a CMRS ownership interest held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant owned by minorities or women is attributable only if it reaches 40 percent or more. The Commission's 20 percent attribution level for the CMRS spectrum cap was chosen to be consistent with the attribution standard for the PCS/cellular cross-ownership rule. The Commission supported this standard with an opinion of the Federal Accounting Standards Board which explicitly states that ownership interests below 20 percent presumptively do not have control and above 20 percent they do unless evidence to the contrary is established.

60. In the *Competitive Bidding Sixth Report and Order,* the cellular/PCS cross-ownership attribution rule and the CMRS spectrum aggregation rules were amended for purposes of C block licenses to eliminate race- and gender-based provisions and make the 40 percent attribution standard applicable only to interests held by a small business or rural telephone company and interests held by an entity with a non-controlling equity interest in a licensee or applicant that is a small business.

61. The Commission seeks comment on whether it should retain the ownership attribution rule for cellular licensees interested in acquiring broadband PCS licenses. The 20 percent attribution rule was fashioned to strike a balance between maximizing competition and allowing cellular entities to bring their expertise to PCS. The Commission did not adopt a rule that required inquiry into whether a party has a controlling interest in a cellular licensee because it believed a bright-line rule would result in faster, less burdensome licensing. However, the Sixth Circuit found that the Commission did not adequately justify this decision. Accordingly, the Commission seeks comment on whether the 20 percent attribution rule should be modified. Should the attribution rule be changed to a controlling interest test? Is there some other bright-line test that

might be used to avoid burdening the licensing process? Should the Commission adopt a single majority shareholder exception? Should the approach depend on whether the Commission modifies the cellular/PCS cross-ownership rule or, in the alternative, eliminates this rule and retains only the 45 MHz CMRS spectrum cap? Should the Commission, in any case, modify the 20 percent attribution standard applicable to the 45 MHz CMRS spectrum cap in light of the Sixth Circuit's opinion regarding this type of standard in connection with the cellular/PCS cross-ownership rule? The Commission notes that the 20 percent attribution standard and the 40 percent exception are the highest ownership attribution rules the Commission has. The new Telecommunications Act, in the definition of ''affiliate'', defines ownership as a 10 percent interest.

62. The Commission proposes to modify the cellular/PCS cross-ownership and CMRS spectrum aggregation limit rules for F block purposes to comply with the requirements of *Adarand*. It proposes to remove the provisions in these rules which increase the cellular attribution threshold to 40 percent on the basis of the race or gender of the holder of the ownership interest or of the broadband PCS applicant in which such holder is an investor. Accordingly, the Commission proposes, for purposes of the F block auction, that the 40 percent cellular attribution threshold of the PCS/cellular cross-ownership rule will continue to apply if the ownership interest is held by a small business or a rural telephone company or if the cellular ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a small business. Similarly, the Commission proposes, for purposes of the F block auction, that the 40 percent cellular attribution threshold of the CMRS spectrum aggregation limit will continue to apply if the CMRS ownership interest is held by a small business or a rural telephone company (including those owned by minorities or women). These proposed changes mirror modifications that were made to the C block rules in the *Competitive Bidding Sixth Report and Order.* The Commission seeks comment on this proposal.

63. Finally, the Commission notes that the Court in *Cincinnati Bell* did not find Section 24.204(d)(2)(i) of the Commission's Rules to be arbitrary. Under this section, certain ownership interests of five percent or more in broadband PCS licensees and applicants are attributable for purposes of applying the 10 and 15 MHz spectrum limitations and the 40 MHz limit in the same geographic area, discussed above. The Commission does not propose to modify this rule.

C. Ownership Disclosure Provisions

64. The rules provide ''short-form'' (FCC Form 175) and ''long-form'' (FCC Form 600) application procedures for broadband PCS bidders. Short-form applications are submitted prior to the auction by entities seeking to qualify as bidders. Long-form applications are submitted by winning bidders in the auctions to obtain their licenses. The application procedures for broadband PCS require applicants to furnish detailed ownership information in both their short-form and long-form applications.

65. In addition to this information required of all PCS applicants, specific rules require F block applicants to submit more detailed ownership and financial information. An F block applicant must identify its affiliates and provide its gross revenues and total assets. On their short-form applications, all other F block applicants must disclose: (1) the identity of each member of their control group, including the citizenship and gender or minority group classification for each member; (2) the status of each control group member that is an institutional investor and existing investor and/or a member of the applicant's management; (3) the identity of each affiliate of the applicant and each affiliate of individuals in applicant's control group; (4) their gross revenues and total assets. Applicants must demonstrate their gross revenues and total assets using audited financial statements for the most recently completed calendar or fiscal years. Each F block applicant must also certify on its short-form application that it is eligible to bid for and obtain licenses, consistent with the Commission's Rules and, if appropriate, that it is eligible to bid as a designated entity.

66. Winning F block bidders' long-form applications must disclose, separately and in the aggregate, their gross revenues and total assets plus the gross revenues and total assets of their affiliates, their control group members, their attributable investors, and affiliates of their attributable investors. These applicants must also list and summarize all agreements that support their eligibility for an F block license and any investor protection agreements.

67. During the course of previous broadband PCS auctions, it became evident that certain ownership disclosure requirements found in the general PCS competitive bidding rules were burdensome and difficult to administer both at the short-form and long-form stages. For many large corporations, especially investment firms with diverse holdings, the requirements were very burdensome, particularly when they involved calculating indirect ownership interests in outside firms using the multiplier. Moreover, while identifying all businesses in which an attributable stockholder of the applicant held a five percent (or greater) interest generated significant amounts of information, the disclosures identified businesses that had no relation to the services for which licenses were being auctioned. In addition, requiring the submission of partnership agreements proved sensitive because such agreements often contained strategic bidding information and other confidential data. These provisions were waived by the Wireless Telecommunications Bureau for the short-form and long-form filings for PCS blocks A and B and for the short-form application for the C block.

68. In waiving ownership disclosure requirements for the A and B block short-form applications, the Wireless Telecommunications Bureau stated that the purpose of the disclosure rules contained in Section 24.813(a) of the Commission's Rules is ''to allow the Commission to determine who is the real party in interest, to determine compliance with anti-collusion rules and ownership restrictions such as the multiple- and cross-ownership rules and the alien ownership restrictions.'' The Bureau noted that the short-form application requires applicants to certify that they are in compliance with these regulations. The Wireless Telecommunications Bureau concluded that requiring information about all attributable stockholders' other interests does not serve the stated purposes of ownership disclosure. The Bureau also concluded that because partnership agreements often discuss strategic business objectives, submission of them would be detrimental to partnerships. Following the same rationale, the Wireless Telecommunications Bureau waived Section 24.813(a)(1), 24.813(a)(2) and 24.813(a)(4) of the rules for the A and B block long-form and the C block short-form applications.

69. At the short-form application stage in the C block PCS auction, the Commission received 36 waiver petitions from applicants requesting that they be permitted to demonstrate their gross revenues and total assets using methods other than audited financial statements. These waiver requests indicate that many smaller businesses do not use audited financial statements

in the normal course of business. Applicants in the C block auction also requested, and were granted, a waiver of the requirement that when financial information is supported by audited financial statements based on fiscal years, statements for the three most recent years must be used. Applicants were permitted to file statements for fiscal years 1991, 1992, and 1993, instead.

70. In light of its experience to date, the Commission proposes to amend Section 24.813(a)(1) and Section 24.813(a)(2) of the rules to limit the information disclosure requirement with respect to outside ownership interests of applicants' attributable stockholders. More specifically, it proposes to require only the disclosure of attributable stockholders' direct, attributable ownership in other businesses holding or applying for CMRS or Private Mobile Radio Services (''PMRS'') licenses. Moreover, the Commission proposes to amend Section 24.813(a)(4) to delete the requirement that partnerships file a signed and dated copy of the partnership agreement with their short-form and long-form applications. The Commission requests comment on these proposed changes. The Commission also seeks comment on whether it should further reduce the scope of information required by the general PCS rules at either the short-form or long-form filing stages. In addition, it requests comment on the alternative approach of requiring applicants to make their ownership documentation available upon request to other applicants during or after the auction. The Commission also requests comment on whether the proposed changes would provide bidders with sufficient information on their competitors in the auction.

71. The number of waivers requesting permission to demonstrate gross revenues and total assets without audited financial statements in the C block auction leads the Commission to propose changes to Section 24.720(f) and Section 24.720(g) of its rules. The Commission proposes to permit each applicant that does not otherwise use audited financial statements to provide a certification from its chief financial officer that the gross revenue and total asset figures that it provides in its short-form and long-form applications are true, full, and accurate; and that the applicant does not have the audited financial statements that are otherwise required under the rules. The Commission believes that such a modification to the rules would be the most effective way to amend the rules so that small businesses are not overly burdened by auditing their finances when they would not otherwise do so. The Commission seeks comment on this proposal. It also asks interested parties to suggest other alternatives to the audited financial statement requirement, and it seeks comment on whether an alternative—the one it proposes or any other—should be available to all F block applicants (or D and E block applicants if small business provisions are extended to these blocks), or only to applicants that do not otherwise use audited financial statements. The Commission also requests comment on whether applicants should continue to be allowed to rely on either fiscal years or calendar years in providing their gross revenues. Should they instead be required to base their size calculations on the most recent four quarters so that the Commission receives the most current information available?

D. Auction Schedule

72. While the rules do not establish a specific schedule for awarding the D, E, and F block broadband PCS licenses by competitive bidding, the Commission's reasons for creating these 10 MHz licenses and the communications industry's plans for using them directly affect when they should be auctioned. The Commission created the 10 MHz licenses to promote the provision of services that might not require a full 30 MHz of spectrum, or for aggregation with a 30 MHz PCS license or an existing cellular license.

73. On December 23, 1994, the Commission sought comment on whether to auction the 10 MHz F block licenses together with the other 10 MHz D and E block licenses. Of the six comments received, the majority favored a single auction for all three blocks. Arguments in favor of a single auction included efficiency advantages for bidders, administrative and cost savings, and an equal timeline for start-up and deployment of all 10 MHz licensees. Commenters also noted a substantial need in broadband PCS for licensees to aggregate spectrum up to the limits set by the Commission and observed that a single auction would allow bidders to obtain 20–MHz licenses to meet unique service needs. Arguments opposing a single auction were that separate auctions would expedite auction administration and promote opportunities for designated entities by awarding them the first 10 MHz licenses.

74. The Commission tentatively concludes that it should auction the D, E, and F frequency blocks concurrently in simultaneous multiple round auctions. The comments in response to the initial inquiry into this issue indicate that simultaneous access to all the 10 MHz licenses is important to the plans of some prospective PCS providers, and the Commission finds their arguments persuasive. The Commission seeks comment on this tentative conclusion. It also seeks comment on specific services that are planned for the D, E, and F licenses and how, if at all, auctioning all the licenses simultaneously would affect those planned services. The Commission is also interested in other factors that commenters believe would justify combining the auction of the D, E, and F block licenses, or that would argue against doing so.

75. If the Commission auctions the D, E, and F blocks concurrently, it also seeks comment on the option of auctioning the D and E licenses together in one auction and the F block licenses in a separate auction. This approach would accommodate the difference in eligibility requirements for the F block auction. The Commission seeks comment on whether it should adopt this approach. It also requests comment on whether the auction rules for these three blocks should be modified in any way if it implements this proposal.

III. Procedural Matters

A. Regulatory Flexibility Act

76. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of the *Notice*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

B. Ex Parte Rules—Non-Restricted Proceeding

77. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided

in Commission Rules. *See generally* 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

C. Initial Paperwork Reduction Act of 1995 Analysis

78. This *Notice* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collections contained in this *Notice* as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this *Notice*; OMB comments are due 60 days from the date of publication of this *Notice* in the Federal Register. Comments should address: (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.

D. Comment Dates

79. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before April 15, 1996 and reply comments on or before April 25, 1996. To file formally in this proceeding you must file an original and four copies of all comments and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send your comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

80. Written comments by the public on the proposed and/or modified information collections are due on or before April 15, 1996. Written comments must be submitted by the Office of Management and Budget on the proposed and/or modified information collections on or before 60 days after the date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain—t@al.eop.gov.

E. Contact Persons

81. For further information concerning this proceeding, contact Mark Bollinger at 418–0660 (Auctions Division, Wireless Telecommunications Bureau).

IV. Ordering Clauses

82. Accordingly, it is ordered that, pursuant to Sections 1, 4(i), 4(j), 7, 303(r), 308(b), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157, 303(r), 308(b), and 309(j), notice is hereby given of the proposed amendments to Parts 20 and 24 of the Commission's Rules, 47 CFR Parts 20 and 24, in accordance with the proposals in this Notice of Proposed Rule Making, and that COMMENT IS SOUGHT regarding such proposals.

83. It is further ordered that the Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*.

List of Subjects

47 CFR Part 20

Commercial mobile radio services, Cellular/PCS cross-ownership.

47 CFR Part 24

Broadband personal communications services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–7315 Filed 3–25–96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket PS–140(c), Notice 5]

RIN 2137–AC34

Areas Unusually Sensitive to Environmental Damage

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public workshop.

SUMMARY: RSPA invites industry, government agencies, and the public to the fourth workshop on unusually sensitive areas (USAs). The purpose of this workshop is to openly discuss the terms to be used in describing USAs, and the scope and objectives of the additional USA workshops. This workshop is a continuation of the USA workshops held June 15–16, 1995; October 17, 1995; and January 18, 1996.

DATES: The workshop will be held on April 10–11, 1996 from 8:30 a.m. to 4:00 p.m. Persons who are unable to attend may submit written comments in duplicate by May 28, 1996. However, persons submitting comments to be considered at the April 10–11 workshop must do so by April 3, 1996. Interested persons should submit as part of their written comments all material that is relevant to a statement of fact or argument. Late filed comments will be considered so far as practicable.

ADDRESSES: The workshop will be held at the U.S. DOT, Nassif Building, 400 Seventh Street SW., Room 8236–40, Washington, DC. Non-federal employee visitors are admitted into the DOT building through the southwest entrance at Seventh and E Streets, SW. Persons who want to participate in the workshop should call (202) 366–2392 or e-mail their name, affiliation, and phone number to samesc@rspa.dot.gov before close of business April 3, 1996.

Send written comments in duplicate to the Dockets Unit, Room 8421, RSPA, U.S. DOT, 400 Seventh Street SW., Washington, DC 20590–0001. Identify the docket and notice numbers stated in the heading of this notice.

All comments and docketed materials will be available for inspection and copying in Room 8421 between 8:30 a.m. and 4:30 p.m. each business day. A summary of the workshop will be available from the Dockets Unit about three weeks after the workshop.

FOR FURTHER INFORMATION CONTACT: Christina Sames, (202) 366–4561, about this document, or the Dockets Unit,