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Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

News media Information 202 / 418-0500
TTY 202 / 418-2555
Fax-On-Demand 202 / 418-2830
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

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News Media Contact:
Meribeth McCarrick at (202) 418-0654
e-mail: mmccarri@fcc.gov

FCC REVISES RULES FOR UPCOMING C AND F BLOCK AUCTION: ACTION PRESERVES OPPORTUNITIES FOR SMALL BUSINESSES AND PROMOTES THE RAPID DEPLOYMENT OF WIRELESS SERVICES

Washington, DC – The Federal Communications Commission has adopted changes to its rules that preserve opportunities for small businesses and promote the rapid deployment of wireless services across the United States. The FCC concludes it is in the public interest to remove the financial eligibility restrictions for some C and F block Personal Communications Service (PCS) licenses to be auctioned in Auction 35 and in future C and F block auctions. The FCC also revises the service and auction rules for upcoming auctions of C and F block PCS licenses including: reconfiguring the size of C block licenses, modifying auction eligibility restrictions for certain licenses in both large and small markets, and retaining the spectrum cap.

Background on the FCC's C and F Block Auction Rules:

Under the FCC's prior eligibility rules, in order to bid on C or F block licenses an applicant needed to be considered an "entrepreneur." An "entrepreneur," together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, must have had gross revenues of less than \$125 million in each of the last two years and must have total assets of less than \$500 million.

In January 2000, the Wireless Telecommunications Bureau (Bureau) announced an auction (Auction 35) of broadband PCS C and F block licenses. Following the announcement, the FCC received several formal requests to waive or revise the C and F block auction and service rules in order to allow companies other than entrepreneurs to participate in the auction. The FCC issued public notices seeking comment on these requests and other proposed changes to its eligibility and bidding rules. A large volume of comments was received in this proceeding, with commenters presenting many arguments both supporting and opposing revisions to the entrepreneur eligibility rules. On June 7, 2000, the FCC issued a Further Notice of Proposed Rulemaking in which it set forth tentative conclusions and proposals to retain, clarify, and modify its rules related to C and F block auctions and licenses.

Specifics of Rules Changes:

In the adopted Sixth Report and Order, the FCC addresses the tentative conclusions and proposals raised in the Further Notice and resolves the petitions and other filings in this proceeding. The adopted modifications to the Commission's rules will apply to Auction No. 35, a C and F block auction currently scheduled to begin on November 29, 2000. However, in order to provide additional time between the effective date of the rules and the auction application filing deadline, there will be a short delay in the start date of the auction. The Wireless Bureau will announce a new date on or before Federal Register publication of the adopted item. The modifications also will apply to any subsequent auctions of C or F block licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future.

The FCC concludes it is in the public interest to modify the auction and service rules for C and F block broadband PCS licenses to achieve the various goals of Section 309(j) of the Communications Act.

The Sixth Report and Order retains, clarifies, and revises the FCC's rules, as follows:

- **Reconfiguration.** Reconfigures each 30 MHz C block license available in Auction 35 and future broadband PCS auctions into three 10 MHz C block licenses.
- **Tiers.** Divides Basic Trading Areas (BTAs) into two tiers according to the population size of the BTA. "Tier 1" will comprise BTAs with populations equal to or greater than 2.5 million; "Tier 2" will comprise the remaining BTAs.
- **Eligibility restrictions.** Removes the entrepreneur auction eligibility restrictions – thereby establishing "open" bidding – for the following licenses: two of the three reconfigured 10 MHz C block licenses in Tier 1; one of the three reconfigured 10 MHz C block licenses in Tier 2; all 15 MHz C block licenses in Tier 1; all F block licenses; all C block licenses available but unsold in Auction No. 22.
- **License grouping.** Rejects Nextel's proposal to license by bulk bidding.
- **"Grandfather" exception.** Clarifies an applicant's eligibility for the Section 24.709(b)(9)(i) C block "grandfather" exception after it has been involved in a merger, acquisition, or other business combination, as follows: (1) When each of the combining entities is individually eligible for the "grandfather" exception, the exception will extend to the resulting entity; (2) When one or more of the combining entities is not individually eligible for the grandfather exception, the resulting entity will be eligible for the exception only so long as an originally eligible entity retains *de facto* and *de jure* control of the resulting entity.
- **Bidding credits.** Retains the existing bidding credits for small and very small businesses of 15 percent and 25 percent for licenses won in open bidding. Eliminates bidding credits for licenses won in closed bidding
- **Transfer requirements.** The entrepreneur eligibility restrictions will not apply to the assignment or transfer of control of C and F block licenses won in open bidding. Upon satisfaction of the first construction benchmark for a license won in closed bidding, the control group of any eligible entrepreneur may assign or transfer control of C and F block licenses to a non-entrepreneur. The FCC will continue to evaluate satisfaction of construction requirements on a license-by-license, rather than on a system-wide, basis.
- **Unjust enrichment.** A licensee that won a license in Auction No. 5 or 10 will not be subject to a bidding credit unjust enrichment payment upon transfer and assignment of the license, subject to the FCC's transfer requirements, to an entity not qualifying as a small business. Because all license winners in those auctions qualified for the available 25 percent bidding credit, there is no purpose in requiring the payment. Licenses won in other auctions using a bidding credit will be subject to a bidding credit unjust enrichment payment upon transfer or assignment in accordance with the FCC's transfer requirements.
- **License cap.** Eliminates the provision of the Commission's Rules (Section 24.710) that prohibits any applicant from winning more than 98 of the licenses available in the C and F blocks.
- **Spectrum cap.** Continues to apply the spectrum cap to C and F block licenses, including those won in Auction No. 35.

Action by the Commission August 23, 2000 by Sixth Report and Order and Order on Reconsideration (FCC 00-313). Chairman Kennard, Commissioners Ness, Furchtgott-Roth, Powell and Tristani.

Wireless Bureau Contacts: (Auctions Division) Audrey Bashkin at (202) 418-0660, e-mail: abashkin@fcc.gov; Paul Murray (Commercial Wireless Division) at (202) 418-7240, e-mail: pmurray@fcc.gov; TTY at (202) 418-7233.

