



# NEWS

**Federal Communications Commission**  
**445 12<sup>th</sup> Street, S.W.**  
**Washington, D. C. 20554**

**News Media Information 202 / 418-0500**  
**Internet: <http://www.fcc.gov>**  
**TTY: 1-888-835-5322**

---

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.  
See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

---

FOR IMMEDIATE RELEASE:  
April 25, 2006

NEWS MEDIA CONTACT:  
Chelsea Fallon: (202) 418-7991

## **FCC MODIFIES ITS “DESIGNATED ENTITY” ELIGIBILITY RULES IN ADVANCE OF THE UPCOMING ADVANCED WIRELESS SERVICES AUCTION**

Washington, D.C. – Today, the Federal Communications Commission (FCC) adopted a Second Report and Order and Second Further Notice of Proposed Rule Making (Order) that addresses certain rules governing the benefits reserved for businesses that qualify as “designated entities.” The rules adopted today affect how the FCC determines which entities qualify for designated entity benefits, and will apply to the Advanced Wireless Services (AWS) auction scheduled to begin June 29, 2006.

Since the inception of its auctions program, the FCC has sought to facilitate the participation of small businesses in competitive bidding for spectrum licenses. To achieve this objective, the FCC has instituted various measures, including bidding credits reserved for small businesses. A designated entity must meet specified financial criteria – based on its gross revenues as well as those of its controlling interests, its affiliates, and the affiliates of its controlling interests (and in certain circumstances their total assets) – in order to be eligible for such benefits. With the rule modifications adopted today, the FCC seeks to enhance its ability to ensure that companies that are ineligible for designated entity benefits cannot circumvent the FCC’s rules in order to obtain those benefits indirectly.

In today’s Order, the FCC placed restrictions on the ability of applicants and licensees that have certain types of spectrum leasing or resale agreements to qualify for designated entity benefits. More specifically, the FCC determined that, except as specifically “grandfathered,” in cases in which an applicant or a licensee has agreements pursuant to which, on a cumulative basis, it may lease or resell (including under wholesale agreements) more than 50 percent of its spectrum capacity for any individual license, such applicant or licensee will be considered to have an “impermissible material relationship” and will therefore be ineligible for designated entity benefits in acquiring licenses in FCC auctions and the secondary market and, as applicable, will be subject to unjust enrichment payments on a license-by-license basis. In addition, except as specifically “grandfathered,” in cases in which an applicant or licensee has agreement(s), pursuant to which, on a cumulative basis, it may lease or resell (including under wholesale agreements) more than 25 percent of its spectrum capacity for any individual license to any individual entity, such applicant or licensee will be considered to have an “attributable material relationship” for purposes of determining its eligibility for designated entity benefits in acquiring licenses in FCC auctions and the secondary market, and determining whether there are unjust enrichment obligations on a license-by-license basis. These rules will apply prospectively

to all FCC auctions that begin on or after the effective date of the new rules and to all applications for a license, an authorization, an assignment or transfer of control, or a lease filed after the release date of the rules.

The FCC also adopted changes to its rules related to unjust enrichment payments in order to further ensure that designated entity benefits are awarded only to their intended beneficiaries. Specifically, for the first five years of its license term, if a designated entity loses its eligibility or seeks to transfer its license to or enter into a *de facto* lease with an entity that does not qualify for bidding credits, 100 percent of the bidding credit amount, plus interest, would be owed to the FCC. For years six and seven of the license term, 75 percent of the bidding credit, plus interest, would be owed. For years eight and nine, 50 percent of the bidding credit, plus interest, would be owed, and for year ten, 25 percent of the bidding credit, plus interest, would be owed. In addition, if a designated entity seeks to transfer a license with a bidding credit to an entity that does not qualify for bidding credits in advance of filing the construction notification for the license, then 100 percent of the bidding credit amount, plus interest, would be owed to the FCC.

Today's Order also provided clarification on how the FCC will implement its rules regarding audits of designated entities and refined the designated entity reporting requirements.

The Further Notice portion of today's Order seeks comment on whether the FCC should adopt additional restrictions to further safeguard the benefits reserved for designated entities.

Action by the Commission on April 25, 2006, by Second Report and Order and Second Further Notice of Proposed Rule Making (FCC 06-52). Chairman Martin and Commissioners Copps and Tate, with Commissioner Adelstein approving in part and dissenting in part. Separate statements issued by Chairman Martin and Commissioners Copps and Adelstein.

For additional information, contact Brian Carter, Wireless Telecommunications Bureau, at (202) 418-0660, or [Brian.Carter@fcc.gov](mailto:Brian.Carter@fcc.gov).

WT Docket No. 05-211.

– FCC –

News and other information about the Federal Communications Commission  
is available at [www.fcc.gov](http://www.fcc.gov).