

paid to the U.S. Government as a condition of Commission approval of the assignment or transfer. If, within the initial license term, a licensee that utilizes a bidding credit seeks to make any ownership change that would result in the licensee losing eligibility for a bidding credit (or qualifying for a lower bidding credit), the amount of the bidding credit (or the difference between the bidding credit originally obtained and the bidding credit for which the restructured licensee would qualify), plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the ownership change.

(2) The amount of payments made pursuant to paragraph (e)(1) of this section will be reduced over time as follows:

(i) A transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or the difference between the bidding credit obtained by the original licensee and the bidding credit for which the post-transfer licensee is eligible);

(ii) In year three of the license term the payment will be 75 percent;

(iii) In year four of the license term the payment will be 50 percent; and

(iv) In year five of the license term the payment will be 25 percent, after which there will be no required payment.

[62 FR 48794, Sept. 17, 1997]

§ 101.1109 Certifications, disclosures, records maintenance and audits.

(a) *Short-form applications: Certifications and disclosure.* In addition to certifications and disclosures required in part 1, subpart Q, of this chapter, each applicant for an LMDS license which qualifies as a very small business, small business or entrepreneurs pursuant to §101.1112 shall append the following information as an exhibit to its short-form applications (FCC Form 175):

(1) The identities of the applicant's affiliates and controlling principals; and

(2) The applicant's gross revenues, computed in accordance with §101.1112.

(b) *Long-form applications: Certifications and disclosure.* In addition to the requirements in §1.2107 of this chapter, each applicant submitting a long-form application for an LMDS license and qualifying as a very small business, small business or entrepreneur pursuant to §101.1112 shall, in an exhibit to its long-form application:

(1) Disclose separately and in the aggregate the gross revenues, computed in accordance with §101.1112, for each of the following: the applicant, the applicant's affiliates, the applicant's controlling principals, and, if a consortium of very small businesses, small businesses or entrepreneurs, the members of the consortium;

(2) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a very small business, small business or entrepreneur, including the establishment of de facto and de jure control; such agreements and instruments include, but are not limited to, articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, franchise agreements, and any other relevant agreements including letters of intent, oral or written; and

(3) List and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(c) *Records maintenance.* All winning bidders qualifying as very small businesses, small businesses or entrepreneurs shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any document necessary to establish eligibility as a very small business, small business or entrepreneur. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form

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application (FCC Form 175), whichever is earlier.

(d) *Audits.* (1) Applicants and licensees claiming eligibility as a very small business, small business or entrepreneur pursuant to §101.1112 shall be subject to audits by the Commission. Selection for audit may be random, on information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (FCC Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed LMDS service, and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

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§ 101.1110 Petitions to deny.

Procedures regarding petitions to deny long-form applications in the LMDS service will be governed by §1.2108 (b) through (d) of this chapter.

§ 101.1111 Partitioning and disaggregation.

(a) *Definitions.—Disaggregation.* The assignment of discrete portions or "blocks" of spectrum licensed to a geographic licensee or qualifying entity.

Partitioning. The assignment of geographic portions of a licensee's authorized service area along geopolitical or other boundaries.

(b) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to §101.53. Parties shall submit the forms set forth in §101.15(e).

(2) Licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

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(c) *Technical Standards.—(1) Partitioning.* In the case of partitioning, requests for authorization for partial assignment of a license must include, as an attachment, a description of the partitioned service area. The partitioned service area shall be defined by coordinate points at every 3 degrees along the partitioned service area unless an FCC recognized service area is utilized (*i.e.*, Major Trading Area, Basic Trading Area, Metropolitan Service Area, Rural Service Area or Economic Area) or county lines are followed. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83). In the case where an FCC recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area. In such partitioning cases where an unjust enrichment payment is owed the Commission, the request for authorization for partial assignment of a license must include, as an attachment, a calculation of the population of the partitioned service area and the licensed geographic service area.

(2) *Disaggregation.* Spectrum may be disaggregated in any amount.

(3) *Combined Partitioning and Disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(d) *License Term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in §101.67 of this chapter.

(e) *Construction Requirements.* Applications requesting approval for partitioning or disaggregation must include a certification by each party that it will satisfy the construction requirement set forth in §101.1011 of this chapter. Failure by a party to meet its respective construction requirement will result in the automatic cancellation of its license without further Commission action.

[63 FR 26507, May 13, 1998]