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payment to the Commission in an amount sufficient to bring its total deposits up to 20 percent of its winning bid by a date and time to be specified by public notice, generally within ten business days following the close of bidding. Full payment of the balance of the winning bids shall be paid within ten days after public notice announcing that the Commission is prepared to award the license. The grant of the application is conditional upon receipt of full payment. The Commission generally will grant the license within a reasonable period of time after receiving full payment.

§ 101.1206 Long-form applications.

Each winning bidder will be required to submit a long-form application. Winning bidders must submit long-form applications within ten (10) business days after being notified by Public Notice that it is the winning bidder. Long-form applications shall be processed under the rules contained in parts 1 and 101 of the Commission's rules.

§ 101.1207 Procedures for filing petitions to deny against long-form applications.

The applicable procedures for the filing of petitions to deny the long-form applications of winning bidders contained in § 1.2108 of the Commission's rules shall be followed by the applicant (see 47 CFR 1.2108).

§ 101.1208 Bidding credits for small businesses.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 101.1209(b)(1)(i)) may use a bidding credit of 25 percent to lower the cost of its winning bid on any of the licenses in this part. A winning bidder that qualifies as a very small business or a consortium of very small businesses, (as defined in § 101.1209(b)(1)(ii)) may use a bidding credit of 35 percent to lower the cost of its winning bid on any of the licenses in this part.

(b) *Unjust enrichment.* (1) A small business seeking transfer or assignment of a license to an entity that is not a small business under the definitions in § 101.1209(b)(1)(i) and (ii), will

be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before transfer will be permitted. The amount of this penalty will be reduced over time as follows: 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; in year three of the license term the penalty will be 75 percent; in year four the penalty will be 50 percent and in year five the penalty will be 25 percent, after which there will be no penalty. These penalties must be paid back to the U.S. Treasury as a condition of approval of the assignment or transfer.

(2) If a small business that utilizes a bidding credit under this section seeks to assign or transfer control of its license to a small business meeting the eligibility standards for lower bidding credits or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee or licensee is eligible under this section as a condition of the approval of such assignment, transfer or other ownership change.

§ 101.1209 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 101.1201 through 101.1209, unless otherwise specified in those sections.

(b) *Small business and very small business.* (1)(i) A small business is an entity that together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, has average gross revenues that are not more than \$40 million for the preceding three years.

(ii) A very small business is an entity that together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, has average gross revenues that are not more than \$15 million for the preceding three years.

(2) For purposes of determining whether an entity meets either the small business or very small business definitions set forth in paragraph (b)(1) of this section, the gross revenues of the entity, its affiliates, persons or entities holding interests in the entity and their affiliates shall be considered on a cumulative basis and aggregated.

(3) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies either definition of a small business in paragraphs (b)(1) and (b)(2) of this section.

(c) *Rural telephone company.* A rural telephone company means a local exchange carrier operating entity to the extent that such entity—

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

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

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

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

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

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

(d) *Gross Revenues.* *Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited quarterly financial statements for the relevant number of calendar years preceding January 1, 1996, or, if audited financial statements were not prepared on a calendar-year basis, of the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For applications filed after December 31, 1995, gross revenues shall be evidenced

by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

(e) *Affiliate.* (1) *Basis for affiliation.* An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant (both referred to herein as "the applicant") if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(iv) Has an "identity of interest" with the applicant.

(2) *Nature of control in determining affiliation.*

(i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (e)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or

substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example for paragraph (e)(2)(iii). In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

Example 1. Two shareholders in Corporation Y each have attributable interests in the same application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity of interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

Example 2. One shareholder in Corporation Y, shareholder A, has an attributable interest in a SMR application. Another shareholder in Corporation Y, shareholder B, has a nonattributable interest in the same SMR application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. Through the common investment of shareholders A and B in the SMR application, Corporation Y would still be deemed an affiliate of the applicant.

(i) *Spousal affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation

recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father, or -mother, step-brother, or -sister, step-son, or -daughter, half brother or sister. This presumption may be rebutted by showing that

(A) The family members are estranged,

(B) The family ties are remote, or

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (e)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in an SMR application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.*

(i) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or

power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (e)(5). If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in an SMR application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (e)(5). If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in an SMR application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (e)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.* (i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be

deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.* (i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution

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to the business operation is a significant factor in determining whether the business option is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

(1) *Exclusion from affiliation coverage.* For purposes of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of this section, except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

[63 FR 6106, Feb. 6, 1998; 63 FR 10781, Mar. 5, 1998]

Subpart O—Multiple Address Systems

SOURCE: 65 FR 17450, Apr. 3, 2000, unless otherwise noted.

GENERAL PROVISIONS

§ 101.1301 Scope.

This subpart sets out the regulations governing the licensing and operation of Multiple Address Systems (MAS). The rules in this subpart are to be used in conjunction with applicable requirements contained elsewhere in the Commission's rules, such as those requirements contained in parts 1 and 22 of this chapter.

§ 101.1303 Eligibility.

Authorizations for stations in this service will be granted in cases where it is shown that:

(a) The applicant is legally, financially, technically and otherwise qualified to render the proposed service;

(b) There are frequencies available to enable the applicant to render a satisfactory service; and

(c) The public interest, convenience or necessity would be served by a grant thereof.

§ 101.1305 Private internal service.

A private internal service is a service where entities utilize frequencies purely for internal business purposes or public safety communications and not on a for-hire or for-profit basis.

§ 101.1307 Permissible communications.

MAS users may engage in terrestrial point-to-point and point-to-multi-point fixed and mobile operations.

§ 101.1309 Regulatory status.

(a) The Commission will rely on each applicant to specify on FCC Form 601 the type of service or services it intends to provide. Each application for authorization in the bands designated for private internal use must include a certification stating why the application satisfies the definition of private internal use.

(b) Any interested party may challenge the regulatory status granted an MAS licensee.

SYSTEM LICENSE REQUIREMENTS

§ 101.1311 Initial EA license authorization.

(a) Winning bidders must file an application (FCC Form 601) for an initial authorization in each market and frequency block.

(b) Blanket licenses are granted for each market and frequency block. Applications for individual sites are not required and will not be accepted, except as specified in § 101.1329.

§ 101.1313 License term.

The license term for stations authorized under this subpart is ten years from the date of original issuance or renewal.

§ 101.1315 Service areas.

In the frequency bands not licensed on a site-by-site basis, the geographic service areas for MAS are Economic