

## § 27.502

competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

[65 FR 17065, Apr. 4, 2000]

### § 27.502 Designated entities.

(a) Eligibility for small business provisions. (1) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$40 million for the preceding three years.

(2) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding \$15 million for the preceding three years.

(3) For purposes of determining whether an entity meets either of the definitions set forth in paragraphs (a)(1) and (a)(2) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered on a cumulative basis and aggregated. An applicant seeking status as a small business or very small business under this section must disclose on its short-and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and affiliates for each of the previous three years.

(4) Persons or entities that hold interests in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(b)(4)(iii) of this chapter will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

(5) Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(6) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (a)(1) of this section (or each of which individ-

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ually satisfies the definition in paragraph (a)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(7) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, establishing, as applicable, *de facto* or *de jure* control of the entity. Such information must be maintained at the licensee's facilities or by its designated agent for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

(b) *Controlling interest.* (1) For purposes of this section, a controlling interest includes individuals or entities with either *de jure* or *de facto* control of the applicant. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) The entity plays an integral role in management decisions.

(2) The following rules apply for the calculation of certain interests. (i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options, and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

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(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock or outstanding voting stock shall be attributed as specified below.

(iii) Stock interests held in trust shall be attributed to 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. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be attributed to the grantor or beneficiary, as appropriate.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling interest in such applicant or licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have a controlling interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or the prices charged for such services.

(c) *Bidding credits.* A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in §1.2110(e)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in §1.2110(e)(2)(ii) of this chapter.

### Subpart G—Guard Band Managers

SOURCE: 65 FR 17605, Apr. 4, 2000, unless otherwise noted.

#### § 27.601 Guard Band Manager authority and coordination requirements.

(a) Subject to the provisions of §27.2(b) and paragraphs (c) and (d) of this section, a Guard Band Manager may allow a spectrum user, pursuant to a written agreement, to construct and operate stations at any available site within the licensed area and on any channel for which the Guard Band Manager is licensed, provided such stations comply with Commission Rules and coordination requirements.

(b) Subject to the provisions of §27.2(b) and paragraphs (c) and (d) of this section, a Guard Band Manager may allow a spectrum user, pursuant to a written agreement, to delete,