(c) *Time Limits.* (1) Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Director (for first appeals) or Associate Director/Executive Associate Director (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Director or Associate Director/Executive Associate Director for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

(d) *Technical Advice.* In appeals involving highly technical issues, the Regional Director or Associate Director/Executive Associate Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal.

(e) *Transition.* (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.

(2) Appeals pending from a decision of an Associate Director/Executive Associate Director before May 8, 1998 may be appealed to the Director in accordance with 44 CFR 206.440 as it existed before May 8, 1998.

(3) The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

3. Section 206.440 is revised to read as follows:

§ 206.440 Appeals.

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures below.

(a) *Format and Content.* The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Director. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Director. The grantee may make grantee-related appeals to the Regional Director. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent..

(b) *Levels of Appeal.* (1) The Regional Director will consider first appeals for hazard mitigation grant program-related decisions under subparts M and N of this part.

(2) The Associate Director/Executive Associate Director for Mitigation will consider appeals of the Regional Director's decision on any first appeal under paragraph (b)(1) of this section.

(c) *Time Limits.* (1) Appellants must make appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Director (for first appeals) or Associate Director/Executive Associate Director (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Director or Associate Director/Executive Associate Director for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

(d) *Technical Advice.* In appeals involving highly technical issues, the Regional Director or Associate Director/Executive Associate Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal.

(e) *Transition.* (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.

(2) Appeals pending from a decision of an Associate Director/Executive Associate Director before May 8, 1998 may be appealed to the Director in accordance with 44 CFR 206.440 as it existed before May 8, 1998.

(3) The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

Dated: April 2, 1998.

James L. Witt,

Director.

[FR Doc. 98–9207 Filed 4–7–98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 24

[WT Docket No. 97–82; FCC 98–46]

Installment Payment Financing for Personal Communications Services (PCS) Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order on Reconsideration of the Second Report and Order, the Commission generally affirms the framework established in the Second Report and Order but allows elections among the four payment options—disaggregation, amnesty, prepayment, and resumption of payments—to be made on a Major Trading Area (MTA) basis and makes certain other modifications to the options in order to provide C block licensees greater flexibility in making their elections. The changes will allow more of the existing licensees to adjust their business plans and remain in the wireless market to compete against other providers, while also providing for the return of spectrum to the Commission so that other entrepreneurs will have opportunities to obtain broadband PCS licenses in a reauction.

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Rachel Kazan or Julie Buchanan at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This Order on Reconsideration of the Second Report and Order in WT Docket No. 97–82, adopted on March 23, 1998, and released on March 24, 1998, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (202) 857–3800. The complete Order on Reconsideration of the Second Report and Order also is available on the Commission's Internet home page (http://www.fcc.gov).

Summary of Action

I. Background

1. On September 25, 1997, the Commission adopted a Second Report and Order and Further Notice of Proposed Rule Making (Second Report and Order) and (Further Notice), 62 FR 55348 (October 24, 1997), establishing March 31, 1998, as the deadline for broadband Personal Communications Services (PCS) C and F block licensees to resume installment payments. In addition, the Commission offered C block licensees a choice of three alternative payment options in lieu of resuming payments under the terms of the original payment plan. The three options were intended to provide limited relief to C block licensees experiencing financial difficulties, while preserving the fairness and integrity of the auction process.

2. In response to the rulings in the Second Report and Order, the Commission received 37 petitions for reconsideration, 17 oppositions to the petitions, 16 replies to the oppositions, and 38 ex parte filings. After considering the arguments raised in those filings, the Commission generally affirmed the framework established in the Second Report and Order but made certain modifications designed to provide C block licensees greater flexibility in making their elections. These changes improve upon the Second Report and Order by allowing more of the existing licensees to adjust their business plans and remain in the wireless market to compete against other providers, while also providing for the return of spectrum to the Commission so that other entrepreneurs will have opportunities to obtain broadband PCS licenses in a reauction. In a forthcoming Order, the Commission will address comments filed in response to the Further Notice, which covers rules for the reauction of returned C block licenses.

3. Consistent with Congress' mandate in section 309(j)(4)(D) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j)(4)(D), to promote the participation of small businesses and other designated entities in the provision of spectrum-based services, the Commission limited eligibility in the initial C block auctions to entrepreneurs and small businesses. The C block auction concluded on May 6, 1996, and the subsequent reauction of defaulted licenses concluded on July 16, 1996, with a total of 90 bidders winning 493 licenses. The winning bidders were permitted to pay 90 percent of their net bid price over a period of ten years, paying only interest for the first six years and paying both interest and principal for the remaining four years. See 47 CFR 24.711(b)(3). The net bid price is equal to the winning bid less any bidding credits for which the licensee was eligible. See 47 CFR 24.712.

4. On March 31, 1997, the Wireless Telecommunications Bureau (the Bureau) suspended the deadline for payment of installment payments for all C block licensees. The suspension was implemented in response to a joint request from several C block licensees seeking modification of their installment payment obligations and because of other debt collection issues. 62 FR 55348, 55349. On April 28, 1997, the Bureau extended the suspension to F block licensees. Id. On September 25, 1997, the Commission ended this suspension and established March 31, 1998, as the deadline for C and F block licensees to resume their installment payments. Id.

5. The Commission decided in the Second Report and Order to allow each C block licensee to elect one of three options for all of its licenses in lieu of continuing payments under the licensee's original installment payment plan. 62 FR 55348. Each of the three options—disaggregation, amnesty, and prepayment—was intended to provide limited relief to financially troubled licensees without harming the integrity of the auction process. Id.

6. The Commission required C block licensees to file a written election notice on or before January 15, 1998, specifying whether they would resume payments under the terms of the original installment payment plan or would proceed under one of the alternative options. Id. at 55353. On January 7, 1998, the Commission postponed the election date until February 26, 1998, in order to resolve issues raised on reconsideration before licensees submitted their elections. 63 FR 2170. In addition, the Commission announced that the reauction of spectrum surrendered by C block licensees pursuant to their elections would begin on September 29, 1998. Id. On February 24, 1998, the Commission revised both the February 26, 1998, election date and the March 31, 1998, payment resumption date. 63 FR 10153. It changed the election date to 60 days from publication of this Order in the **Federal Register** and the payment resumption date to at least 30 days after the new election date. Id.

II. Overview

7. In this Order on Reconsideration of the Second Report and Order (Reconsideration Order), the Commission continues to believe that the relief provided C block licensees in the Second Report and Order will speed deployment of service to the public by easing lenders' and investors' concerns regarding regulatory uncertainty and by potentially making more capital available for investment and growth. Although the decision adopted in the Second Report and Order largely should be maintained, certain aspects of the adopted approach might constrain many C block licensees from making use of the relief measures offered. A few adjustments to the adopted approach will better allow the Commission to effectuate its intent to provide C block licensees a limited measure of relief under the unique but varied circumstances presented. The Commission therefore leaves the basic framework intact while altering it slightly to allow licensees to be more flexible in making their elections for licenses in different geographic areas, to use more of the down payments already on deposit, and to be more flexible in the use of those down payments.

8. The Commission eliminates the requirement that a licensee must make the same election for all its licenses. Instead, it allows a licensee to make different elections for the different MTAs in which it holds licenses. The election made for an MTA will apply to every Basic Trading Area (BTA) license held by the licensee in that MTA. As under the Second Report and Order, the possible elections will include resumption of payments, amnesty, prepayment, or disaggregation. As part of the modifications to the adopted approach, the Commission will also permit a combination of disaggregation and prepayment. Resumption of payments and prepayment of 30 MHz licenses remain essentially the same as

in the Second Report and Order. The amnesty and disaggregation options, however, are modified, as detailed below.

9. In addition, the Commission adopts the following limited modifications: (1) It extends to 90 days the 60-day non-delinquency period for payments not made on the payment resumption date, and it imposes a 5 percent late payment fee for payments made within this 90-day non-delinquency period; (2) it instructs the Bureau to modify the payment schedules of all C and F block licensees so that all payments will be due on the same date; (3) it eliminates as moot the build-out exception to the amnesty option; and (4) it clarifies that the affordability exception in context of the prepayment option means that a licensee electing prepayment that does not have sufficient funds to prepay all of its BTA licenses within an MTA is required to prepay only the BTA licenses within the MTA that it is able to prepay using only the amount of credit available to the licensee for prepayment.

III. MTA-by-MTA Elections

10. Licensees will be better able to take advantage of the options if they are allowed to make different elections for the different areas in which they hold licenses. Therefore, the Commission eliminates the requirement that a licensee must make the same election for all its licenses. Instead, it establishes the rule that each a licensee is permitted to make only one election for each MTA in which it holds licenses. In other words, the same election must be applied to each BTA license held in a given MTA, but different elections may be selected for different MTAs.

11. By allowing elections to be made on an MTA-by-MTA basis, the Commission enables licensees to make election decisions that are based not solely on the elements of each option, but rather on licensees' own business plans and financial situation. The Commission believes that MTA-by-MTA elections will promote rapid deployment of service to the public. See Communications Act § 309(j)(3)(A), 47 U.S.C. § 309(j)(3)(A). Licensees will have more opportunity to localize their business plans by surrendering licenses in markets where success now seems unlikely due to financial difficulties. As a result, they will be able to focus on providing service in those markets where they have retained their licenses. In addition, the surrendered licenses presumably will be reauctioned to entities better positioned to provide service in those license areas. The Commission anticipates that MTA-by-MTA elections will produce a more robust and competitive reauction. It expects more licenses to be returned for reauction because a licensee choosing disaggregation or resumption will now be free to surrender licenses it was reluctant to keep, but was forced to do so under the previous terms of those elections. Allowing those licenses to be reauctioned to entities that are more committed, or better able, to serve those markets will stimulate competition and benefit consumers. Furthermore, permitting elections on an MTA-by-MTA basis will not undermine the integrity of the auction process because licensees still must pay the full amount of their licenses.

IV. Resumption of Payments

12. The Commission denies requests for a longer deferral of the payment deadline and agrees with parties that urge it to reject any attempts to extend further the suspension of payments. By the time they must resume making payments, C and F block licensees will have enjoyed a respite from their payment obligations substantially longer than one year. A more extensive deferral would be unfair to unsuccessful bidders that might not have withdrawn from the auction had they known of deferral opportunities. As the Commission stated in the Second Report and Order, a further deferral would be a temporary solution that might only postpone licensees' financial difficulties and further prolong uncertainty.

13. Although the Commission will not grant the lengthy postponement requested by some parties, it will extend to 90 days the automatic 60-day non-delinquency period applicable to payments due on the payment resumption date. The Commission's rules allow a 90-day non-delinquency period for all other installment payments. 47 CFR 1.2110(f)(4)(i). Although the Commission stated in the Second Report and Order that a shorter non-delinquency period was justified in light of the one-year payment suspension, it now believes it preferable to make the length of the non-delinquency period consistent with its rule for all other payments. See 62 FR 55348, 55349. The Commission provides this 30-day extension to assist licensees that are experiencing last-minute delays in raising capital. By offering this additional time, the Commission believes that it will help these licensees complete their fund-raising efforts.

14. Consistent with its rule recently adopted for all other payments, payments made within this 90-day non-delinquency period will be assessed a 5 percent late payment fee. See 63 FR 2315, 2327; 47 CFR 1.2110(f)(4)(i). However, in light of the more than one-year suspension and this expanded non-delinquency period, there will be no subsequent automatic grace period for licensees that fail to make payment within the 90-day non-delinquency period. See 63 FR 2315, 2327; 47 CFR 1.2110(f)(4)(ii). Subsequent payments, due after the initial resumption payment, will be subject to the rules adopted in the Third Report and Order in the Commission's Competitive Bidding Proceeding. See 63 FR 2315.

15. Under this plan, the Suspension Period, which the Commission defined in the Second Report and Order as the period beginning with the date on which each license was conditionally granted through and including March 31, 1998, will still end on March 31, 1998. See 62 FR 55348, 55349. All interest accrued from the date of license grant through March 31, 1998, (i.e., Suspension Interest) will continue to be payable over eight equal payments. Interest accrued from April 1, 1998, through the payment resumption date will be due on the payment resumption date, in addition to one-eighth of the Suspension Interest. The Commission believes that this plan will require licensees continuing under an installment payment plan, either through resumption or disaggregation, to demonstrate their financial viability by making a reasonable payment on the payment resumption date. This payment will provide evidence of the ability of licensees to gain access to the capital necessary both to service their government debt obligations and to provide service to the public. In addition, the Commission instructs the Bureau to modify the payment schedule so that all C and F block installment payments will be due on a quarterly basis, beginning on the payment resumption date.

16. The Commission rejects a suggestion that Suspension Interest be forgiven, as well as alternative proposals that Suspension Interest be paid either in a balloon at the end of the ten-year installment payment period or over six years in conjunction with other interest payments. Because the Commission already has provided sufficient relief by granting the one-year suspension, it will neither forgive nor defer payment of the Suspension Interest. The Commission has accommodated licensees sufficiently by allowing payment of the Suspension Interest over eight equal payments.

17. The Commission also rejects requests from parties seeking a deviation from the payment schedule

and from amounts established by the licensees' Notes. The Commission is providing all C block licensees with an array of alternative payment options, designed to accommodate licensees' various needs. These options were developed and are now being modified in an effort to balance complex and competing interests, with the recognition that it is impossible to devise alternatives that satisfy every entity with an interest in this proceeding. The record before the Commission does not provide a sufficient basis for creating additional payment choices; indeed, there is opposition to the Commission's doing so. Retroactively changing the payment terms would be unfair to other applicants that might have bid differently under more relaxed payment terms. Moreover, the Commission has purposefully adopted an approach that does not significantly alter the amounts paid for individual licenses.

18. Finally, the Commission will not adopt the proposal made by one party that the Commission compensate in some way those licensees that timely made the March 31, 1997, payment and, as a consequence, did not benefit from a suspension of that payment obligation. Compensating licensees for complying with Commission rules would establish a precedent the Commission considers inadvisable. Furthermore, if a licensee opts to return all its licenses, the Commission will refund any installment payments previously submitted for those licenses. If a licensee returns some licenses and retains others, the licensee will be allowed to apply previously submitted installment payments toward the prepayment of retained licenses or toward the Suspension Interest for retained licenses which the licensee does not prepay. For example, if a licensee elects resumption of payments for an MTA, any installment payments previously submitted for a BTA license within that MTA will be applied toward the Suspension Interest owed for that license. The treatment of installment payments with respect to the disaggregation and prepayment options is specified below. Therefore, because installment payments will either be refunded or credited, the Commission believes that additional compensation is unnecessary.

V. Surrender of Licenses for Reauction (Amnesty)

19. In the Second Report and Order, the Commission adopted an amnesty option under which a C block licensee would be permitted to surrender all of its licenses in exchange for relief from its outstanding debt. 62 FR 55348, 55351. The Commission would waive any applicable default payments, subject to coordination with the Department of Justice pursuant to applicable federal claims collections standards. Id.; see also 4 CFR parts 101–105. Licensees electing this option would not have their down payments returned; however, neither would they be deemed in default or delinquent in meeting government debt obligations. 62 FR 55348, 55351. In addition, they would be eligible to bid for any and all licenses in the reauction and would not be restricted in making post-auction acquisitions. See id.

20. Subject to one exception, licensees availing themselves of the amnesty option would be required to surrender all of their licenses to the Commission. Id. The sole exception to this ''all-or-nothing'' rule allowed licensees that met or exceeded the five-year build-out requirement on September 25, 1997, the date of adoption of the Second Report and Order, to keep licenses for built-out markets. Id. Specifically, a licensee utilizing this exception would be allowed to retain any built-out BTA, on the condition that it also keep any additional BTAs in the MTA where the built-out BTA is located and that it pay for all of those retained licenses under the terms of their original notes. 62 FR 55348, 55351–52.

21. The Commission directed the Bureau to refund any installment payments licensees had already made (whether due on or before March 31, 1997) on any license surrendered under the amnesty option and announced that it would forgive payment of any due, but unpaid, installment payments for any surrendered license. 62 FR 55348, 55352. Licensees retaining licenses under the build-out exception were to pay over eight equal payments (beginning with the payment due on March 31, 1998) all Suspension Interest applicable to the retained licenses. All installment payments previously made by the licensee on any of its licenses would be applied to reduce the Suspension Interest applicable to the retained licenses, and any amounts remaining would be refunded. Id.

22. In keeping with the Commission's decision on reconsideration to allow licensees to make elections on an MTA-by-MTA basis, the Commission modifies the amnesty option to permit licensees to select that option for as many of their MTAs as they choose. Because amnesty no longer requires an ''all-or-nothing'' choice, the Commission eliminates as moot the build-out exception.

23. The Commission originally adopted the ''all-or-nothing'' requirement for the amnesty option in order to prevent licensees from ''cherry-picking'' only the most desirable MTAs. 62 FR 55348, 55351. The Commission believed that facilitating a ''cherry-picking'' scheme would limit the potential for licenses to be aggregated, which would decrease their value to bidders in the reauction. Id. On reconsideration, the Commission finds persuasive the contention of one party that requiring licensees to keep or surrender entire MTAs, rather than BTAs, will sufficiently limit ''cherry-picking.'' The Commission also agrees with that party that applying the amnesty option on an MTA-by-MTA basis does not carry a risk of ''cherry-picking'' significantly different from that connected with the original disaggregation option.

24. Several parties object to the fact that a licensee does not receive any refund of its down payment under the amnesty option. As the Commission explained in the Second Report and Order, its intent in retaining the down payment was to ensure that licensees electing the amnesty option and participating in the reauction of their surrendered licenses do so without the undue advantage of having all of their original funds available to repurchase the same spectrum they surrendered. See id. The Commission further explained that licensees selecting amnesty would benefit substantially by avoiding being declared in default and thereby being freed from assessments of delinquencies and other collection costs associated with default payments. Id.; see also 47 CFR 1.2110(f)(4)(iii), (iv). This rationale continues to be valid. If the Commission were to allow C block licensees to return their licenses, receive a refund of their down payments, and participate in the reauction, it would undermine the integrity of the auction process by placing amnesty licensees in virtually the same position they would have occupied had the initial C block auction never taken place.

25. Nevertheless, the Commission recognizes that because all elections now are being applied on an MTA-by-MTA basis, licensees are permitted to return licenses in certain MTAs and retain licenses in other MTAs, as with the prepayment option under the Second Report and Order. Thus, licensees electing the amnesty option have the following choice. For licenses in each MTA returned under the amnesty option, the licensee may choose either to: (1) receive no credit for its down payment(s) but remain eligible to bid in the reauction on all its licenses in the returned MTA (pure amnesty), or (2) obtain credit for 70 percent of its down payment and forgo for a period of

two years from the start date of the reauction eligibility to reacquire the licenses it surrendered pursuant to this option through either reauction or any other secondary market transaction (amnesty/prepayment).

26. For purposes of this two-year eligibility restriction, a licensee includes qualifying members of the licensee's control group and their affiliates. If a licensee opts to return all its licenses, the Commission will refund any installment payments previously submitted for those licenses. The 70 percent credit must be applied toward prepayment of the entire principal owed for a retained MTA with 30 MHz licenses and/or toward prepayment of the entire principal owed for the retained 15 MHz licenses of an MTA that has been disaggregated. Providing an additional choice within the amnesty option substantially increases the level of flexibility available to licensees and enables them to formulate new business plans that may be more attractive to lenders and investors.

VI. Prepayment

27. In the Second Report and Order, the Commission offered C block licensees the option to prepay the outstanding principal debt obligations for any licenses, on an MTA basis, that they elected to retain, subject to the restriction described below. The remaining licenses were required to be surrendered to the Commission for reauction. 62 FR 55348, 55352. In exchange, the Commission would forgive the debt on the surrendered licenses, and any associated payments owed. Id. A licensee electing this option would make its prepayment by using 70 percent of the total of all down payments made on the licenses it surrendered to the Commission, plus 100 percent of any installment payments previously paid for all licenses (collectively, ''Available Down Payments''), plus any ''new money'' it was able to raise. Id. The remaining portion of the down payment applicable to the surrendered licenses would not be refunded or credited but simply would be retained by the Commission. Id. Licensees would be prohibited from bidding on their returned spectrum in the reauction or from reacquiring it in the secondary market for two years from the start of the reauction. 62 FR 55348, 55353. Licensees could, however, bid on spectrum or licenses surrendered by other licensees, provided such licensees were not affiliates.

28. The requirement that a licensee had to prepay all its BTA licenses within those MTAs that it selected for prepayment prevented ''cherry-picking'' because licensees could not prepay only the most desirable BTA licenses within a given MTA and then surrender the rest. Id. The one exception to this rule was that any licensee lacking sufficient funds to prepay every BTA license within a chosen MTA would be permitted to prepay only those BTA licenses within that MTA that it could afford. Id. The licenses for the remaining BTAs within that MTA which the licensee could not afford to prepay would be surrendered to the Commission.

29. In the Reconsideration Order, the Commission clarifies that the term ''Available Down Payments,'' as used in the Second Report and Order, was intended to include both 70 percent of the down payment made on surrendered licenses and any installment payments previously submitted for those licenses. See 62 FR 55348, 55352. The Commission also explains that under its modified approach, the prepayment option remains essentially the same as set forth in the Second Report and Order. For any 30 MHz licenses that are returned to the Commission, the licensee may continue to apply 70 percent of the down payment made on those licenses toward the prepayment of the entire outstanding principal owed in retained MTAs. The licensee may pool any down payment amounts that have been designated for prepayment, plus installment payments previously paid on any returned licenses. As described below, down payment amounts may also come from disaggregated licenses if the licensee uses the credit for prepayment. The Commission will refer to this pool of credit as a licensee's ''Prepayment Credit.'' The term ''Prepayment Credit'' is essentially a substitution for the term ''Available Down Payments,'' updated to account for the additional flexibility provided under the Commission's modified approach. Prepayment Credit may be used to prepay any retained MTAs with 30 MHz licenses. As discussed below, it also may be used to prepay the retained 15 MHz licenses of any MTAs that have been disaggregated.

30. As under the Second Report and Order, any ''new money'' that is used to make prepayment must be submitted on or before the election date. Unlike under the Second Report and Order, affiliated licensees will be allowed to combine their Prepayment Credits. See id. However, any affiliated licensees that choose to pool their Prepayment Credits will be considered one licensee for purposes of making elections. Accordingly, the elections made by those affiliates must be made in concert and must be made on an MTA-by-MTA basis, as is required of individual licensees. Therefore, if affiliated licensees decide to pool their credits, then all BTA licenses held by any of those affiliates must be surrendered for credit in any MTA where one of their BTA licenses is surrendered for credit. Similarly, those affiliated licensees must collectively select MTAs for prepayment, and all BTA licenses held by any of those affiliates in those selected MTAs must be prepaid, subject to the affordability exception. Likewise, if those affiliated licensees choose to disaggregate an MTA, then all BTA licenses held by any of those affiliates in that MTA must be disaggregated, and so on.

31. Credit pooling does not require the participation of all of a licensee's affiliates. Any affiliate that chooses not to pool its credit along with its other affiliates will be considered an individual licensee for purposes of making elections. Allowing this flexibility is consistent with the fact that, for purposes of the reauction, the Commission considers a licensee and its affiliates to be the same entity. This rule will also prevent licensees from being precluded from electing prepayment by virtue of the fact that they transferred BTA licenses to affiliates.

32. On reconsideration, the Commission clarifies that, for purposes of its requirement that a licensee prepay all of those BTA licenses within an MTA ''that it can afford,'' a licensee can ''afford'' to prepay all of its BTA licenses within that MTA if it can prepay all BTA licenses using only its Prepayment Credit. See 62 FR 55348, 55352–53. If this amount is not enough to prepay all its BTA licenses within an MTA, the licensee must prepay as many BTA licenses in the MTA as this amount will allow and must surrender for reauction the remaining BTA licenses that it cannot afford to prepay. Only under these circumstances may a licensee choose, within the given MTA, which BTA licenses to prepay and which to surrender. Once a licensee adds any ''new money'' at all to make prepayment, the affordability exception does not apply, and the licensee must add sufficient ''new money'' that, when added to its Prepayment Credit, is adequate to prepay all its BTA licenses within its chosen MTAs. A licensee claiming the affordability exception may choose only one MTA in which it will apply, and the licensee must prepay all of its BTA licenses within all other MTAs that it has selected for prepayment. The Commission will not refund any unspent portion of the Prepayment Credit.

33. Not receiving a refund of any unspent portion of the Prepayment Credit is a reasonable price for being relieved of the requirement that all BTA licenses in all MTAs be prepaid. The affordability exception also will apply to disaggregated MTAs that the licensee wishes to prepay. This clarification provides an objective means for licensees to implement the affordability exception. It eliminates any doubt or confusion regarding the scope of the term ''afford,'' and it is an easy, bright-line test to administer. In addition, the restrictions the Commission imposes on the affordability exception minimize a licensee's ability to ''cherry-pick'' among BTAs.

34. In the Reconsideration Order, the Commission maintains its rule that licensees electing the prepayment option will receive no refund or credit for 30 percent of the down payment made on 30 MHz licenses they surrender to the Commission. The Commission believes that retention of this portion of the down payment is necessary to preserve the integrity of the auction process. See Communications Act § 309(j), 47 U.S.C. § 309(j). Furthermore, to return the entire down payment would undermine the purpose of the down payment—to help ensure performance on a licensee's debt obligation. See Communications Act § 309(j)(4)(B), 47 U.S.C. § 309(j)(4)(B); In the Matter of BDPCS, Inc., Order, 12 FCC Rcd 6606 (WTB 1997), application for review pending. The Commission disagrees with parties that characterize retention of a portion of the down payment as punitive, a penalty, or a forfeiture. Thirty percent of the down payment is the fair and reasonable price for receiving the benefits of this option. Moreover, the prepayment option provides licensees with more flexibility in using their down payments than is permitted under current rules.

35. The Commission disagrees with the claims of some parties that it should account for the net present value of forgoing installment payments or that it should otherwise discount the principal amount due under the installment payment plan. The Commission properly rejected this argument in the Second Report and Order. In the Second Report and Order, the Commission stated that a licensee should be required to pay the face value of its auction bid. 62 FR 55348, 55352. Accounting for the net present value of forgoing installment payments would rewrite the auction results because it would have the effect of changing the amounts bid for licenses. Therefore, to do so would be unfair to those bidders that withdrew from the auction under the assumption that the winning bid amounts represented the prices that would be paid for the licenses. Moreover, if the Commission were to discount the debt at a licensee's cost of capital it would be impossible to determine accurately a cost of capital for all licensees. The cost of capital varies for each licensee because it is based on a licensee's individual cost of debt and equity and on the ratio of debt to equity. Therefore, no single discount rate would be appropriate for every licensee.

36. Because the Commission continues to support the policy that auction bids should be paid at their face value, it will not discount the principal due. Although the Commission provides favorable terms for financing the bid price, the cost of an installment payment plan is the interest that accrues over time. The benefit to a licensee for early pay-off of its financial obligations is the savings in the amount of interest that otherwise would be owed. This trade-off provides a further reason for not discounting the principal.

37. The Commission declines to allow licensees choosing the prepayment option to use the five-year build-out exception provided under the amnesty option in the Second Report and Order. A build-out exception is not needed because, under the Reconsideration Order, licensees are permitted to retain any MTAs they wish, whether built-out or not. Moreover, even under the approach adopted in the Second Report and Order, a build-out exception was unnecessary because licensees had the discretion to choose which MTAs to prepay and which to surrender, as opposed to the ''all-or-nothing'' approach under the original amnesty option. 62 FR 55348, 55353. In addition, the Commission declines to allow licensees that hold both C and F block licenses to use their C block down payment to purchase for cash their F block licenses. Such flexibility is not warranted because the reduction of debt associated with prepayment will help those licensees address their capital needs in servicing their F block debt. Finally, the Commission rejects an argument that the requirement that prepaying licensees must purchase all BTA licenses held within an MTA is unfair to licensees that have licenses in only one MTA. The requirement is essential to prevent ''cherry-picking,'' and a licensee that cannot avail itself of the prepayment option can either choose another option or limit its purchases under the affordability exception, if applicable.

VII. Disaggregation of Spectrum for Reauction

38. In the Second Report and Order, the Commission offered C block licensees the option to disaggregate a portion of their spectrum and return it to the Commission for reauction. 62 FR 55348, 55350O51. Licensees electing the disaggregation option would return one-half (i.e., 15 MHz of 30 MHz) of their spectrum from each of their BTA licenses within the MTAs in which they chose to disaggregate spectrum. Id. In other words, licensees would not be required to disaggregate spectrum for all of the licenses they hold, but they would have to disaggregate spectrum for all of the licenses they hold in a given MTA if they disaggregated spectrum for one license in that MTA. The returned spectrum would have to be at 1895–1902.5 MHz paired with 1975–1982.5 MHz, which is spectrum contiguous to the F block. 62 FR 55348, 55350.

39. In exchange, the Commission would reduce by 50 percent the amount of debt that was owed on a 30 MHz license before it was disaggregated. Id. Fifty percent of the down payment made on the 30 MHz license would be considered the down payment for the retained 15 MHz of spectrum, but the Commission would not provide a refund or credit for the remaining 50 percent of the down payment. Id. Licensees were required to repay over eight equal payments (beginning with the payment due on March 31, 1998) all Suspension Interest, adjusted to reflect the reduction in debt obligation. Id. Any installment payments that were paid prior to the suspension would be credited in full against those amounts. Id. Licensees were prohibited from bidding on their returned spectrum in the reauction or from reacquiring it in the secondary market for two years from the start of the reauction. 62 FR 55348, 55350–51 Licensees could, however, bid on spectrum or licenses surrendered by other licensees, provided such licensees were not affiliates. Id.

40. As provided under the Second Report and Order, when a licensee disaggregates an MTA, it will receive full credit for the portion of the down payment applicable to the spectrum retained from a license (i.e., 50 percent of the down payment made on the original 30 MHz license). However, on reconsideration, the Commission modifies its decision that licensees electing the disaggregation option receive no refund or credit for the portion of the down payment applicable to the returned spectrum. For each disaggregated license for which the licensee elects to resume installment

payments, rather than prepay, the Commission will provide a credit of 40 percent of the down payment applicable to the 15 MHz of spectrum that is returned to the Commission. The 40 percent credit may only be used to reduce the amount owed on the 15 MHz of spectrum retained from the same BTA license that generated the credit. The credit, at the licensee's option, may be applied either to Suspension Interest and/or to reduce the principal outstanding. Any installment payments previously submitted for a disaggregated license for which the licensee elects to resume installment payments will be credited as described in the Second Report and Order (i.e., toward Suspension Interest). See 62 FR 55348, 55350.

41. The Commission derived the 40 percent credit because when that credit is combined with the 100 percent credit associated with the retained spectrum, the licensee will receive a credit of 70 percent of the total down payment for the original 30 MHz license. The Commission has decided to allow this additional credit because it is persuaded by the argument of several parties that the credit permitted under the disaggregation option should be consistent with the 70 percent credit permitted under the prepayment option. The Commission believes that the disparity that existed under the Second Report and Order was unfair to licensees that were precluded from electing prepayment. Furthermore, allowing this additional credit will advance the purposes of the disaggregation option. Disaggregation benefits both licensees and consumers because it provides a means for licensees to remain in a market area at a significantly reduced cost. By having their outstanding debt decreased by 50 percent, licensees improve their ability to finance their retained spectrum and build out their networks. In addition, disaggregation is pro-competitive because it provides a means for other competitors to enter a market area. It also gives unsuccessful bidders an opportunity to rebid on spectrum in market areas in which they were initially outbid. The Commission believes that the additional 40 percent credit will promote these benefits of disaggregation and will help licensees that have expressed an interest in disaggregation to take advantage of this option and continue their plans to provide service in their license areas.

42. The Commission believes that a 40 percent credit is warranted when a licensee resumes installment payments on a disaggregated MTA because the licensee remains in the MTA and continues building out its network in order to serve those consumers. Accordingly, it will not provide such a 40 percent credit to licensees that resume installment payments on a license in a different MTA. In contrast to a licensee that uses the 40 percent credit to resume installments on the retained portion of the disaggregated license, a licensee that seeks to apply a 40 percent credit from down payments made on licenses returned under an amnesty election would have, under those circumstances, abandoned service to the entire licensed area affected by that election. The Commission believes that licensees that surrender licenses should not receive a credit for abandoning those markets unless they use the credit to prepay retained licenses. As discussed above, a licensee that selects the amnesty option and chooses to bid on its returned licenses in the reauction will not receive credit for any of its down payment made on its returned licenses. In such case, a licensee's opportunity to bid on its returned licenses is equitable compensation for not receiving any down payment credit.

43. The Commission also revises the approach adopted in the Second Report and Order to provide for a combination of disaggregation and prepayment. As discussed, there are many advantages to both prepayment and disaggregation. The Commission believes that a combination of the two should be encouraged because it offers the benefits of both options. For example, the licensee continues to build out its network in the market area; the Commission is relieved from its position of lender; and competing entities have the opportunity to bid on the returned spectrum. Therefore, if a licensee disaggregates an MTA and prepays the outstanding principal owed on the retained portion of the MTA, the Commission will provide the licensee with a higher percentage of credit as an incentive to choose both disaggregation and prepayment. Instead of receiving a 40 percent credit, a licensee that elects both disaggregation and prepayment will receive credit for 70 percent of the down payment applicable to the returned spectrum. (The portion of the down payment applicable to the returned spectrum is the equivalent of 50 percent of the down payment made on the original 30 MHz license.) This 70 percent credit will be added to the licensee's Prepayment Credit which, as explained above, may be used to prepay any retained MTAs with 30 MHz licenses and/or the retained portions of any MTAs that have been disaggregated. Allowing this 70 percent credit is consistent with the Commission's policy of providing a 70 percent credit for 30 MHz licenses that are returned to the Commission. In both cases, the credit is 70 percent of the down payment associated with the amount of spectrum that is returned. In addition, any installment payments previously submitted for the licenses in an MTA that is both disaggregated and prepaid will be added to the licensee's Prepayment Credit.

44. If a licensee elects both disaggregation and prepayment for an MTA, the licensee must prepay the principal owed on the 15 MHz of spectrum retained from each BTA license in the MTA. However, if a licensee's Prepayment Credit is insufficient to make full prepayment on the entire MTA, then the affordability exception will apply. Thus, the licensee will be required to prepay only what it can afford and must return the rest of the spectrum to the Commission for reauction. As with prepayment of full 30 MHz licenses, the exception will not apply if any ''new money'' is added to make prepayment, and the exception may be applied to only one MTA.

45. The Commission denies requests by several parties to allow licensees to receive credit for their entire down payment under the disaggregation option. The Commission believes that providing full credit would undermine the integrity of the auction process. See Communications Act § 309(j), 47 U.S.C. § 309(j). As the Commission concluded in the Second Report and Order, allowing licensees to use their entire down payment would be unfair to those C block licensees electing to continue under the existing installment payment plan and to bidders that were unsuccessful in the auction. See 62 FR 66348, 55352.

46. Because numerous benefits are conferred under the disaggregation option, the Commission disagrees with the claims of some parties that not providing a refund or credit for all of the down payment constitutes a penalty or forfeiture. Under disaggregation, the Commission forgives up to half of a licensee's outstanding debt, an action that will facilitate investment and growth by making more funds available to licensees for build-out. In addition, the Commission provides low-cost, long-term financing for the retained spectrum. Furthermore, the Commission renders a valuable service by providing an efficient and cost-effective mechanism for transferring spectrum that licensees otherwise might have been forced to resell in the secondary market at great risk. In exchange, the

Commission receives the disaggregated spectrum and retains a portion of the down payment applicable to that spectrum. Therefore, retention of part of the down payment is not a penalty; rather, it is the fair and reasonable price for receiving the benefits of disaggregation.

47. The Commission declines to adopt a suggestion to allow C block licensees to retain the 15 MHz of spectrum adjacent to the F block if they also hold the F block license for the same BTA. Allowing certain C block licensees to disaggregate a different portion of spectrum would create a patchwork pattern of spectrum blocks in the reauction and would limit the opportunity for F block licensees to aggregate larger spectrum blocks by bidding on contiguous spectrum in the reauction. To promote consistency and simplicity in the reauction, the Commission also rejects a request that to allow licensees the choice to disaggregate 10, 15, or 20 MHz of spectrum. Allowing licensees to disaggregate different pieces of spectrum would create inefficiency in the market and would limit the potential for aggregation, thereby decreasing the value of spectrum in the reauction and delaying service to the public. Finally, the Commission disagrees with the arguments of two parties that disaggregation should be permitted on a BTA-by-BTA basis, rather than on an MTA-by-MTA basis. Disaggregation on an MTA-by-MTA basis will promote participation in the reauction because licensees are prohibited from selectively retaining 30 MHz of spectrum in only the most desirable BTAs.

48. The Commission also declines to extend the build-out exception to licensees selecting the disaggregation option. Under the modified approach, a build-out exception is unnecessary because licensees have the flexibility to determine which MTAs to retain and which to surrender. Moreover, as stated in the Second Report and Order, a build-out exception was never needed under the disaggregation option because, unlike the original amnesty option, the disaggregation option was never an ''all-or-nothing'' proposition. 62 FR 55348, 55350. Under the original amnesty option, a licensee was required to surrender all licenses except for those in MTAs in which it satisfied the build-out requirement. By comparison, disaggregation was permitted on an MTA-by-MTA basis. Licensees were never compelled to disaggregate spectrum in all their MTAs.

49. The Commission affirms the statement in the Second Report and Order that upon acceptance of the election notice, the disaggregated spectrum will be deemed returned to the Commission. 62 FR 55348, 55353. Further, after disaggregation, notwithstanding the fact that a disaggregating licensee will continue to hold in its possession a 30 MHz license, that license will no longer authorize use of the 15 MHz of spectrum that is surrendered to the Commission. The license will continue to be valid with respect to the 15 MHz of spectrum that is retained.

VIII. Election Procedures

50. In the Second Report and Order, the Commission established January 15, 1998, as the deadline for C block licensees to elect to continue under the existing installment payment plan or to elect one of the three alternative options. Id. The Commission also required, inter alia, C block licensees whose elections would necessitate ongoing payments to execute any necessary financing documents pursuant to appropriate requirements and time frames established by the Bureau. The Commission specified procedures to be followed by licensees electing to continue under their existing notes or electing disaggregation, amnesty, or prepayment.

51. On January 7, 1998, the Commission changed the election date to February 26, 1998, in order to allow licensees to submit their elections after final disposition of arguments raised on reconsideration. 63 FR 2170. On February 24, 1998, the Commission issued an order changing the election date to 60 days after publication of the Reconsideration Order in the **Federal Register**. 63 FR 10153.

52. Moving the election date was an appropriate action given the large number of petitions for reconsideration filed in this proceeding. The revised deadline has provided sufficient time for the Commission to respond to arguments raised on reconsideration so that licensees can be assured of regulatory certainty before making their elections. The postponement satisfies the requests of several parties that the date be delayed. The Commission denies other requests for a still longer postponement. Licensees already have had several months in which to consider the options under the Second Report and Order, and the Commission believes that the additional 60 days they will have after publication in the **Federal Register** will provide sufficient time for any reevaluation that may be necessary in light of the modifications the Commission makes in the Reconsideration Order.

53. In the Second Report and Order, the Commission inadvertently omitted reference to the requirement that F block licensees execute fully and deliver timely all necessary financing documents. Consequently, it clarifies in the Reconsideration Order that F block licensees, as well as C block licensees, must execute and deliver all necessary financing documents pursuant to appropriate requirements and time frames as will be established by the Bureau in a forthcoming public notice on procedures. The Commission modifies the Second Report and Order to require both C and F block licensees that fail to execute fully and deliver timely to the Commission any required financing documents to pay on the payment resumption date all unpaid simple interest accruing from the date of license grant through the payment resumption date. See 62 FR 55348, 55353. The Bureau's forthcoming public notice also will set forth updated election procedures for C block licensees, reflecting the Commission's modifications to the Second Report and Order.

IX. Reauction

54. *Timing.* On January 7, 1998, the Commission announced that the C block reauction would begin on September 29, 1998. 63 FR 2170. In light of the postponement of both the election date and the payment resumption date, as discussed above, it will be necessary to establish a new reauction date. The Commission delegates to the Bureau the authority to establish the reauction date and instructs the Bureau to issue a public notice announcing the new date at least three months in advance of the start of the reauction.

55. *Eligibility.* The Second Report and Order specified that all entrepreneurs, all entities that had been eligible for and had participated in the original C block auction, and all current C block licensees would be eligible to bid in the reauction. 62 FR 55348, 55349; see also 62 FR 55375. The Commission, however, created an exception for incumbent licensees: for a period of two years from the start date of the reauction, C block licensees (defined as qualifying members of the licensee's control group, and their affiliates) that opted for the disaggregation or prepayment options would be prohibited from reacquiring, either through the reauction or through any secondary market transaction, any spectrum or licenses that they surrendered to the Commission under those options. 62 FR 55348, 55350, 55353. Such licensees, however, would be permitted to bid on spectrum or

licenses surrendered by other licensees, provided that such licensees were not affiliates. 62 FR 55348, 55350; see 62 FR 55348, 55353. Licensees electing the amnesty option would be eligible to bid for any and all licenses at the reauction, with no restrictions on post-auction acquisitions. 62 FR 55348, 55351.

56. The only reauction eligibility issues set forth in the Second Report and Order ripe for reconsideration in this phase of the proceeding are those related directly to whether and how a licensee's election of a particular payment option should affect its eligibility to participate in the reauction of, or reacquire an ownership interest in, surrendered spectrum. The Commission defers to other phases of WT Docket No. 97–82 additional eligibility issues, including the qualifications of entities that have defaulted on payments to participate in the reauction and the use of a ''controlling interest'' approach rather than ''control group'' structures to determine financial size in the C block, as well as in all auctionable services. See 47 CFR 24.709(b)(3)(i), (b)(5)(i)(C); 62 FR 2315. The Commission notes that, in its comments filed in response to the Further Notice, one party challenges the Commission's ruling in the Second Report and Order that participation in the C block reauction is limited to qualified entrepreneurs. In their petitions for reconsideration, other parties respond to this argument and urge the Commission not to reconsider its decision. The Commission addresses this issue here, notwithstanding the fact that the initial challenge was not filed as a petition for reconsideration of the Second Report and Order. The Commission concludes that no party has provided a convincing rationale for deviating from the public interest goals articulated by the Commission in the Second Report and Order. See 62 FR 55348, 55349. Consequently, the Commission affirms its ruling in the Second Report and Order to limit eligibility for participation in the reauction to applicants meeting the current definition of ''entrepreneur.'' Id.

57. On reconsideration, the Commission makes a change to the eligibility requirements, which already has been discussed above, and also a clarification. As stated, a licensee that elects the amnesty option for an MTA and opts to receive partial credit for down payments on its returned licenses in that MTA will not be eligible to reacquire those licenses through either reauction or any secondary market transaction for a period of two years from the start date of the reauction. This restriction also applies to the licensee's affiliates. Likewise, if a licensee disaggregates an MTA, neither it nor its affiliates may bid on the returned spectrum in the reauction or reacquire it through a secondary market transaction for two years after the start date of the reauction. Licensees that return licenses under the amnesty option or spectrum under the disaggregation option are not precluded from bidding in the reauction on licenses or spectrum returned by other non-affiliated licensees (or from later reacquiring those licenses or spectrum in post-auction transactions). The Commission clarifies that the term ''affiliate'' is defined by the competitive bidding rules in the Part 1 Third Report and Order. 47 CFR 1.2110(b)(4); 63 FR 2315, 2318.

58. Several parties believe that the Commission should revise the bidding eligibility requirements. One party, for example, agrees with the Commission's decision to exclude C block licensees that choose disaggregation or prepayment from bidding on their surrendered spectrum at reauction, but contends that the Commission undermines the integrity of the auction process by not similarly limiting the ability of licensees that select the amnesty option. This party contends that the lack of such a restriction will unjustly enrich licensees that select the amnesty option and then bid for the same spectrum at a likely discount. Other parties, on the other hand, claim that it is unreasonably discriminatory to preclude entities choosing disaggregation or prepayment from reacquiring their surrendered spectrum for two years while allowing entities choosing the amnesty option to reacquire their spectrum immediately either by reauction or through secondary markets.

59. The Commission's modified approach addresses both of these arguments. Licensees electing disaggregation and/or prepayment for one MTA now can choose to return licenses in other MTAs and bid on those licenses in the reauction. However, licensees electing amnesty for an MTA must forgo their entire down payment if they wish to bid on their returned licenses for that MTA. The Commission believes that this cost sufficiently mitigates any concern of unjust enrichment.

X. Miscellaneous Matters

60. *Cross Defaults.* The Second Report and Order provided that if a licensee defaulted on a C block license, the Commission would not pursue cross default remedies with regard to the licensee's other licenses in the C or F blocks. 62 FR 55348, 55353–54. In other words, if a licensee defaulted on a given C block license but was meeting its payment obligations on its other C or F block licenses, the Commission would not declare the licensee to be in default with respect to those other C or F block licenses. Id. The Commission does not believe that its decision encourages auction participants to bid speculatively and then ''cherry-pick'' among the licenses they ultimately decide to keep by simply defaulting on the ones they no longer desire. The Commission has implemented numerous procedures, described earlier, to safeguard against ''cherry-picking.'' Moreover, the Commission believes that by not imposing cross default remedies, it encourages regional financing. Even if a licensee's holdings in one region have proven unattractive to the financial market, the same licensee's holdings in other markets may be financially sound. Therefore, the Commission will not depart from the decision in the Second Report and Order. The Commission notes that licensees that ultimately default will continue to be subject to debt collection procedures. 47 CFR 1.2110(f)(4)(iv).

61. *No Extension of C Block Relief to Other Licensees.* The Commission rejects various requests to grant F block licensees the same relief provided to C block licensees, because C and F block licensees do not have the same need for financial relief. After careful review, the Commission determined in the Second Report and Order that the nature and extent of any financing difficulties faced by the C block licensees appeared to be different from any such problems facing entrepreneurs in the F block. C block prices were higher, on average, than F block prices. The Commission disagrees with several parties that argue that the Commission's explanation in the Second Report and Order fails to justify disparate treatment. The difficulties in financing the unexpectedly high prices bid in the C block auctions is a sufficiently distinguishing basis for limiting relief to C block licensees. The Commission agrees with the analysis of one party that the C block situation was the result of a unique set of mostly unpredictable events, including litigation and resulting licensing delays and the lack of a simultaneous non-entrepreneur auction that could have been used to ease price pressures.

62. The need for C block relief was due to exceptional and urgent circumstances, and because it is essential to maintain the integrity of the auction process, only the most exigent situation would cause the Commission to offer such relief. Even in addressing

the C block financing situation, the Commission provided options that offered only limited relief so as to be fair to bidders that withdrew from the auction. The Commission therefore is not persuaded by one party's claim that F block licensees should be granted relief because A, B, and C block licensees have a competitive advantage given their earlier licensing date and their larger amounts of spectrum. The Commission also rejects another party's argument that C block options should be available to entrepreneurs with D, E, and F block licenses because C block relief will change the relative values of those licenses. These arguments do not present sufficiently compelling reasons to apply the extraordinary procedures we adopted for C block licensees to D, E, and F block licensees. One party argues that narrowband PCS entities should receive relief comparable to that afforded C block licensees because they compete in the same consumer and financial markets and face similar circumstances. The record in this reconsideration proceeding is insufficient to adopt global changes affecting narrowband PCS entities, but the Commission notes that payment matters for these entities are currently being examined in another proceeding before the Commission. 62 FR 27563.

63. *Issues Addressed in Other Proceedings or Requiring Action by Congress.* A number of parties make requests involving issues either that will be, or have been, addressed in other proceedings or that require action by Congress. For example, several petitioners urge the Commission to reduce the interest rate for C block installment payments. The Bureau will address this issue in a forthcoming order. With respect to a request that the Commission allow commercial lenders to acquire a security interest in licenses, the Commission notes that it previously resolved the issue in another proceeding. 62 FR 13540, 13542.

64. Other parties encourage the Commission to seek Congressional authority to award tax certificates to entities that provide investment capital to C block licensees. Section 309(j)(4)(D) of the Communications Act mandates that, in seeking to ensure that designated entities are ''given the opportunity to participate in the provision of spectrum-based services,'' the Commission shall ''consider the use of tax certificates.'' 47 U.S.C. § 309(j)(4)(D). By allowing a tax deferral of the gain realized on an investment, tax certificates provide a significant means of enhancing the value of an investment in an enterprise, and the Commission believes that a tax certificate program for spectrum-based services would be as beneficial to the wireless industry as the Commission's tax certificate programs were for the broadcast and cable industries. However, in view of Congress' repeal in 1995 of Section 1071 of the IRS Code, which granted the Commission authority to use tax certificates to promote Commission policies, the Commission believes that legislative action would be necessary before the Commission could provide such tax relief. See Pub. L. 104–7, § 2, 109 Stat. 93, 93–94 (1995). Accordingly, the Commission urges Congress to review the positive impact of the Commission's previous tax certificate programs and to grant the Commission the authority to establish a similar program for wireless enterprises, which the Commission believes would promote competition in the telecommunications industry by encouraging investment in new services.

XII. Supplemental Final Regulatory Flexibility Analysis

65. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 604, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking (Notice) in WT Docket No. 97–82. Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, WT Docket No. 97–82, Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 97–60 (released February 28, 1997). The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was incorporated into the Second Report and Order. The Commission received 37 petitions for reconsideration in response to the Second Report and Order. This FRFA analyzes the modifications adopted in response to those petitions for reconsideration.

A. Need for, and Objectives of, this Reconsideration Order

66. This Reconsideration Order is designed to assist C block broadband PCS licensees to meet their financial obligations to the Commission while at the same time helping the Commission meet its goal of ensuring rapid provision of PCS service to the public. The Reconsideration Order provides a variety of relief mechanisms to assist C block licensees that are experiencing difficulties in meeting the financial obligations under the installment payment plan. The relief provided to C block licensees will speed deployment of service to the public by easing lenders' concerns regarding regulatory uncertainty and by potentially making more capital available for investment and growth. By facilitating the provision of service to consumers, the Commission advances Congress' objective to promote ''the development and rapid deployment of new technologies, products, and services for the benefit of the public.'' Communications Act § 309(j)(3)(A), 47 U.S.C. § 309(j)(3)(A).

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

67. There were no comments filed in response to the IRFA; however, in this proceeding the Commission has considered the economic impact on small businesses of the modifications the Commission has adopted. See Section E of this Supplemental FRFA, infra.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

68. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. 5 U.S.C. §§ 603(b)(3), 604(a)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. § 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act. 5 U.S.C. § 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. § 632). Under the Small Business Act, a ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. § 632.

69. This Reconsideration Order applies to broadband PCS C and F block licensees. The Commission, with respect to broadband PCS, defines small entities to mean those having gross revenues of not more than $40 million in each of the preceding three calendar years. See 47 CFR 24.720(b)(1). This definition has been approved by the SBA. See Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 59 FR 44058 (1994); Implementation of Section 309(j) of the Communications

Act—Competitive Bidding, Fifth Report and Order, 59 FR 37566 (1994); 47 CFR 24.320(b), 24.720(b). On May 6, 1996, the Commission concluded the broadband PCS C block auction. The broadband PCS D, E, and F block auction closed on January 14, 1997. Ninety bidders (including the C block reauction winners, prior to any defaults by winning bidders) won 493 C block licenses and 88 bidders won 491 F block licenses. Small businesses placing high bids in the C and F block auctions were eligible for bidding credits and installment payment plans. For purposes of the evaluations and conclusion in this FRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees potentially affected by this Reconsideration Order, are small entities.

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

70. C block licensees must file notice of their elections with the Wireless Telecommunications Bureau no later than the election date. The election date will be 60 days after publication of the Reconsideration Order in the **Federal Register**. The Reconsideration Order increases the reporting requirements of the Second Report and Order to the extent that elections now may be made for each MTA. See Second Report and Order, supra. Formerly, licensees were required to make the same election for all their licenses.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

71. As noted in the FRFA of the Second Report and Order, the Commission analyzed the significant economic impact on small entities and considered significant alternatives. Id. The modifications adopted on reconsideration will further reduce the burden on C block licensees, which are small businesses. These modifications include:

(1) Elections on an MTA-by-MTA basis. Licensees now will have the flexibility to make elections on an MTA-by-MTA basis, and so are not compelled to make the same election for all their licenses. This modification will afford C block licensees greater flexibility in fashioning a restructuring plan.

(2) Additional flexibility for licensees. The Commission added flexibility to the amnesty option by offering licensees the choice between receiving a credit for their returned licenses or having the opportunity to bid on their return licenses in the reauction. The Commission also provided additional flexibility by allowing licensees to combine disaggregation with prepayment.

(3) Higher percentage of down payment credit. By crediting a higher percentage of the down payment under disaggregation, the Commission better enables these small businesses to remain in the wireless market. The Commission provides even more credit to licensees choosing a combination of disaggregation and prepayment in order to encourage licensees to take advantage of the benefits of both these options.

(4) Thirty-day extension of the non-delinquency period for payments not made on the resumption date. The Commission's 30-day extension is intended to help licensees that are experiencing last-minute delays in raising capital by providing them additional time to complete their fund-raising efforts.

(5) Clarification of the Affordability Exception. The Commission's clarification of the affordability exception provides an objective means for licensees to implement the exception. It eliminates any doubt or confusion regarding the scope of the term ''afford,'' and it is an easy, bright-line test to administer.

72. The Commission believes that it is in the public interest to adopt the above modifications in order to facilitate rapid introduction of service to the public without further regulatory or marketplace delay. The Commission's decision minimizes the potential significant economic impact on small entities by permitting C block licensees to choose among a variety of alternative solutions to reduce their debt to the Commission. The intent of this Reconsideration Order is to alleviate to some extent the financial difficulties faced by these small entities by providing options that: (1) achieve a degree of fairness to all parties, including losing bidders in the C block auction; (2) continue to promote competition and participation by smaller businesses in providing broadband PCS service; and (3) avoid solutions that merely prolong uncertainty.

73. The Commission rejected proposals for a further deferral of the payment resumption deadline because licensees already have had a sufficient deferral period. In addition, the Commission does not wish to adopt temporary solutions that might only postpone the difficulties faced by the C block licensees and further prolong uncertainty. There is no guarantee that an extended deferral period would improve the long term financial outlook facing many licensees. The Commission also rejected arguments that licensees should receive full credit for down payments made on licenses or spectrum returned to the Commission for reauction. The Commission already provides substantial use of a licensee's down payment. Moreover, providing full credit would be unfair to unsuccessful bidders that withdrew from the C block auction.

F. Report to Congress

74. The Commission shall send a copy of the Reconsideration Order, including this Supplemental FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. § 801(a)(1)(A). A copy of the Reconsideration Order and this FRFA (or summary thereof) will be published in the **Federal Register**. See 5 U.S.C. § 604(b). A copy of the Reconsideration Order and this FRFA will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

XIII. Ordering Clauses

75. Accordingly, it is ordered that, pursuant to the authority granted in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j), the petitions for reconsideration filed in response to the Second Report and Order are granted in part and denied in part, as provided herein.

76. It is further ordered that, pursuant to the authority granted in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j), the modifications to the Commission's rules, as described herein and in Appendix B, are hereby adopted. These modifications shall become effective 60 days after publication of this Order on Reconsideration of the Second Report and Order in the **Federal Register**.

77. It is further ordered that, pursuant to 47 U.S.C. § 155(c) and 47 CFR 0.331, the Chief of the Wireless Telecommunications Bureau is granted delegated authority to prescribe and set forth procedures for the implementation of the provisions adopted herein.

78. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order on Reconsideration of the Second Report and Order, including the Supplemental Final Regulatory Flexibility Analysis, to

the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

Notice of Public Information Collections Submitted to the Office of Management and Budget for Emergency Review and Approval

Summary

The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Please Note: The Commission is seeking emergency approval for these information collections by April 30, 1998, under the provisions of 5 CFR 1320.13.

Dates: Written comments should be submitted on or before April 27, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

Addresses: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain__t@a1.eop.gov.

For Further Information Contact: For additional information or copies of the information collections, contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

Supplementary Information:

OMB Control Number: 3060–0801.

Title: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees.

Type of Review: Emergency Revision.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 345.

Estimated Time for Response: 0.5–4.89 hours.

Total Annual Burden: 1,687.50 hours.

Total Cost to Respondents: $69,592.

Needs and Uses: This information collection allows the Federal Communications Commission to offer C block PCS licensees various options regarding their existing installment payment obligations. The information is necessary in order to enable the licensees to meet their financial obligations and to ensure rapid provision of PCS to the public.

List of Subjects

47 CFR Part 1

Practice and Procedure.

47 CFR Part 24

Personal Communications Services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 1 and 24 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r), unless otherwise noted.

2. Section 1.2110 is amended by revising paragraphs (f)(4)(ii), (iii), (iv) to read as follows:

§ 1.2110 Designated entities.

* * * * *

(f) * * *

(4) * * *

(ii) If any licensee fails to make the required payment at the close of the 90-day period set forth in paragraph (i) of this section, the licensee will automatically be provided with a subsequent 90-day grace period, except that no subsequent automatic grace period will be provided for payments from C or F block licensees that are not made within 90 days of the payment resumption date for those licensees, as explained in Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Order on Reconsideration of the Second Report and Order, WT Docket No. 97–82, FCC 98–46 (rel. Mar. 24, 1998). Any licensee making a required payment during this subsequent period will be assessed a late payment fee equal to ten percent (10%) of the amount of the past due payment. Licensees shall not be required to submit any form of request in order to take advantage of the initial 90-day non-delinquency period and subsequent automatic 90-day grace period. All licensees that avail themselves of the automatic grace period must pay the required late fee(s), all interest accrued during the non-delinquency and grace periods, and the appropriate scheduled payment with the first payment made following the conclusion of the grace period.

(iii) If an eligible entity making installment payments is more than one hundred and eighty (180) days delinquent in any payment, it shall be in default, except that C and F block licensees shall be in default if their payment due on the payment resumption date, referenced in paragraph (f)(4)(ii) of this section, is more than ninety (90) days delinquent.

(iv) Any eligible entity that submits an installment payment after the due date but fails to pay any late fee, interest or principal at the close of the 90-day non-delinquency period and subsequent automatic grace period, if such a grace period is available, will be declared in default, its license will automatically cancel, and will be subject to debt collection procedures.

* * * * *

PART 24—PERSONAL COMMUNICATIONS SERVICES

3. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332, unless otherwise noted.

4. Section 24.709 is amended by revising paragraph (b)(9) to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

* * * * *

(b) * * *

(9) *Special rule for licensees disaggregating or returning certain spectrum in frequency block C.* (i) In addition to entities qualifying under this section, any entity that was eligible for and participated in the auctions for frequency block C, which began on December 18, 1995, and July 3, 1996, will be eligible to bid in a reauction of

block C spectrum surrendered pursuant to Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 97–82, 12 FCC Rcd 16,436 (1997), as modified by the Order on Reconsideration of the Second Report and Order, WT Docket No. 97–82, FCC 98–46 (rel. Mar. 24, 1998).

(ii) The following restrictions will apply for any reauction of frequency block C spectrum conducted after March 24, 1998:

(A) Applicants that elected to disaggregate and surrender to the Commission 15 MHz of spectrum from any or all of their frequency block C licenses, as provided in Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 97–82, 12 FCC Rcd 16,436 (1997), as modified by the Order on Reconsideration of the Second Report and Order, WT Docket No. 97–82, FCC 98–46 (rel. Mar. 24, 1998), will not be eligible to apply for such disaggregated spectrum until 2 years from the start of the reauction of that spectrum.

(B) Applicants that surrendered to the Commission any of their frequency block C licenses, as provided in Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Second Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 97–82, 12 FCC Rcd 16,436 (1997), as modified by the Order on Reconsideration of the Second Report and Order, WT Docket No. 97–82, FCC 98–46 (rel. Mar. 24, 1998), will not be eligible to apply for the licenses that they surrendered to the Commission until 2 years from the start of the reauction of those licenses if they elected to apply a credit of 70% of the down payment they made on those licenses toward the prepayment of licenses they did not surrender.

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[FR Doc. 98–9352 Filed 4–7–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–220; RM–9179]

Radio Broadcasting Services; Dallas, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Michael Mattson, allots Channel 252C3 to Dallas, OR, as the community's first local FM service. *See* 62 FR 58935, October 31, 1997. Channel 252C3 can be allotted to Dallas in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 44–55–06 North Latitude and 123–19–00 West Longitude. With this action, this proceeding is terminated.

DATES: Effective May 4, 1998. A filing window for Channel 252C3 at Dallas, OR, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–220, adopted March 11, 1998, and released March 20, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Dallas, Channel 252C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–9106 Filed 4–7–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–260; RM–8965, RM–9034, RM–9035, RM–9036 and RM–9037]

Radio Broadcasting Services; Lake Crystal, Madelia, Mankato and Vernon Center, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 239A at Lake Crystal, Minnesota, and Channel 231A to Vernon Center, Minnesota, in response to a Notice of Proposed Rule Making issued in response to a petition filed by Mid-Minnesota Broadcasting Company requesting an allotment at Mankato, Minnesota. *See* 62 FR 373, January 3, 1997. The coordinates for Channel 239A at Lake Crystal are 44–09–27 and 94–22–32. There is a site restriction 14.1 kilometeres (8.6 miles) west of the community. The coordinates for Channel 231A at Vernon Center, Minnesota, are 44–01–15 and 94–15–00. There is a site restriction 9.2 kilometers (5.7 miles) northwest of the community. With this action this proceeding is terminated. A filing window for Channel 239A, Lake Crystal, and Channel 231A, Vernon Center, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 96–260, adopted March 11, 1998, and released March 20, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.