40 CFR citation	OMB control No.
721.5687	2070–0012
721.5700	2070–0012
721.5708	2070–0012
721.5710	2070–0038
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721.5740	2070–0012
721.5760	2070–0012
721.5763	2070–0012
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721.5970	2070–0012
721.5980	2070–0012
721.5995	2070–0012
721.6000	2070–0038
721.6020	2070–0012
721.6045	2070–0012
721.6060	2070–0012
721.6070	2070–0012
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721.9840	2070–0012
721.9850	2070–0012
721.9892	2070–0012
721.9900	2070–0012
721.9920	2070–0012
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721.9928	2070–0012
721.9930	2070–0038
721.9957	2070–0038
721.9970	2070–0012

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[FR Doc. 98–20409 Filed 7-29-98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–61; FCC 98–157]

Vehicle Monitoring Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the *Second Report and Order*, the Commission adopts the general competitive bidding rules and procedures for the auction of multilateration Location and Monitoring

Service (LMS) licenses, provides small business definitions and adopts bidding credits for eligible small businesses. The effect will be to promote and facilitate the participation of small businesses in the Commission's auctions and in the provision of spectrum-based services. The *Second Report and Order* also adds rules to allow LMS licensees to partition their geographic licenses and disaggregate portions of their spectrum.

DATES: Effective September 28, 1998, except for § 90.365(d) which will become effective January 19, 1999. Public and agency comments concerning the information collections contained in the *Second Report and Order* are due September 28, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. For comments or inquiries regarding information collections, direct all correspondence to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via the Internet at lessmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Ken Burnley or Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second Report and Order* in PR Docket No. 93–61, FCC 98–157, which was adopted on July 9, 1998 and released on July 14, 1998. A copy of the complete item 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 *Second Report and Order* is available on the Commission's Internet home page (http://www.fcc.gov).

SUMMARY OF ACTION:

I. Introduction

1. The Federal Communications Commission (Commission) has adopted a *Second Report and Order* stating rules and procedures governing competitive bidding for multilateration Location and Monitoring Service (LMS) frequencies.

A. Competitive Bidding Design and Procedures

2. In Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making,* PR Docket No. 93–61, 62 FR 52078, October 6, 1997 (''*LMS Further Notice*''), the Commission proposed to use the general competitive bidding rules found in subpart Q of part 1 of the Commission's rules as the auction rules for LMS.

3. The Commission adopts the proposal to follow the competitive bidding procedures contained in Subpart Q of Part 1 of the Commission's Rules, including those adopted in Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, WT Docket No. 97–82, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94–32, *Third Report and Order and Second Further Notice of Proposed Rule Making,* 63 FR 2315, January 15, 1998 (''*Part 1 Third Report and Order*''). Consistent with this, matters such as the appropriate competitive bidding design for the auction of LMS licenses, as well as minimum opening bids and reserve prices, will be determined by the Wireless Telecommunications Bureau (''Bureau'') pursuant to its delegated authority.

B. Treatment of Designated Entities

4. In the *LMS Further Notice,* the Commission acknowledged that it has consistently established ''small business'' definitions on a service-by-service basis, and proposed to establish definitions for the multilateration LMS. For purposes of LMS, the Commission defines a ''small business'' as an entity with average annual gross revenues for the preceding three years not to exceed $15 million, and a ''very small business'' is an entity with average annual gross revenues for the preceding three years not to exceed $3 million. The bidding credits for these small business definitions will be consistent with levels adopted in the Part 1 proceeding. Accordingly, small businesses will receive a 25 percent bidding credit, and very small businesses will receive a 35 percent bidding credit. Bidding credits for small businesses are not cumulative.

5. The Commission adopts, with a slight modification, our tentative conclusion to attribute the gross revenues of the applicant, its controlling principals and their affiliates. Specifically, the rule refers to ''controlling interests'' rather than ''controlling principals,'' and provides a definition of ''controlling interest'' to clarify the application of the attribution rule in determining whether an entity qualifies to bid as a small business. In calculating gross revenues for purposes of small business eligibility, applicants will be required to count the gross revenues of the controlling interests of the applicant and their affiliates. A ''controlling interest'' includes individuals or entities with *de jure* and *de facto* control of the applicant. *De jure* control is 50.1% of the voting stock of a corporation or, in the case of a partnership, the general partners. *De facto* control is determined on a case-by-case basis. The ''controlling interest'' definition also provides specific guidance on calculation of various types of ownership interests.

6. When an applicant cannot identify controlling interests under the definition, the revenues of all interest holders in the applicant and their affiliates will be counted. For example, if a company is owned by four entities, each of which has twenty-five percent voting equity and no shareholders' agreement or voting trust gives any one of them control of the company, the revenues of all four entities must be counted. This approach is consistent with our treatment of a general partnership—all general partners are considered to have a controlling interest. This rule looks to substance over form in assessing eligibility for small business status and will provide flexibility that will enable legitimate small businesses to attract passive financing in a highly competitive and evolving telecommunications marketplace. The Commission emphasizes that bidders will be subject to the ownership disclosure requirements set forth in 47 CFR 1.2112.

7. The Commission extends the amount of time for all LMS auction winners to satisfy their construction requirements. Multilateration LMS Economic Area (EA) licensees will be required to construct and place in operation a sufficient number of base stations that utilize multilateration technology to provide multilateration service to one-third of the EA's population within five years of initial license grant, and two thirds of the population within ten years. In demonstrating compliance with the construction and coverage requirements, licensees may individually determine an appropriate field strength for reliable service, taking into account the technologies employed in their system design and other relevant technical factors. At the five- and ten-year benchmarks, licensees will be required to file with the Commission a map and other supporting documentation showing compliance with the coverage requirements.

C. Partitioning and Disaggregation and Unjust Enrichment Provisions

8. The Commission has previously adopted or proposed to adopt partitioning and disaggregation rules for many of the Commercial Mobile Radio Services (CMRS), and now adopts rules to allow multilateration LMS licensees to partition their geographic license areas and disaggregate portions of their spectrum in the same general manner as in other CMRS services. Multilateration LMS licensees may partition or disaggregate to any party eligible to be a multilateration LMS licensee. Further, licensees may partition along any service area defined by the parties. These decisions will permit marketplace forces to determine the most suitable service areas, and will further the goal of regulatory parity among CMRS services. Partitioning and disaggregation will allow auction winners to customize their LMS systems in a manner that will best address their business plans and will help remove entry barriers for small businesses.

9. To ensure that partitioning and disaggregation do not result in circumvention of our LMS construction requirements, the Commission adopts the dual construction requirements for partitioning and the construction certification procedure for disaggregation used in the broadband Personal Communications Service (PCS). Under the first option for partitioning, the partitionee must certify that it will meet the same coverage requirements as the original licensee for its partitioned market. If the partitionee fails to meet its coverage requirement, the license for the partitioned area will automatically cancel without further Commission action. Under the second option, the original licensee must certify that it has already met or will meet its coverage requirement. Further, parties seeking Commission approval of an LMS disaggregation agreement must include a certification as to which party will be responsible for meeting the construction requirements.

10. In cases of partitioning, the Commission requires sufficient information to maintain our licensing records. Therefore, consistent with our treatment of the Wireless Communication Service (WCS) and the 800 MHz and 900 MHz Specialized Mobile Radio (SMR) services, partitioning applicants will be required to submit, as separate attachments to the partial assignment application, a description of the partitioned service area and a calculation of the population of the partitioned service area and licensed market. The partitioned service area must be defined by coordinate points at every three degrees along the partitioned service area agreed to by both parties, unless county lines are followed. These geographical coordinates must be specified in degrees, minutes and seconds to the nearest second of latitude and longitude, and must be based upon the 1927 North American Datum (NAD27). Applicants also may supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required based on NAD27. This coordinate data should be supplied as an attachment to the partial assignment application, and maps need not be supplied. In cases where county lines are being utilized, applicants need only list the counties that make up the newly partitioned area.

11. Consistent with our rules for broadband PCS, WCS and the 800 MHz and 900 MHz SMR services, disaggregating parties may negotiate channelization plans among themselves as a part of their disaggregation agreements. In addition, LMS licensees shall be permitted to disaggregate spectrum without limitation on the overall size of the disaggregation as long as such disaggregation is otherwise consistent with our rules.

12. Also consistent with the rules for broadband PCS, WCS and the 800 MHz and 900 MHz SMR services, LMS licensees may use combined partitioning and disaggregation. This will allow LMS licensees the flexibility to design the types of agreements they desire, encourage new market entrants and ensure quality service to the public. In the event that there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules shall prevail.

13. The Commission adopts its proposal to prevent possible unjust enrichment through partitioning or disaggregation. Accordingly, the Part 1 unjust enrichment provisions will apply for LMS. These rules are similar to unjust enrichment rules adopted for the 800 MHz SMR auction for determining the actual proportion of bidding credit to be refunded and reduce the amount of unjust enrichment payments due on transfer based upon the amount of time the initial license has been held. In addition, when a combination of partitioning and disaggregation is proposed, these *pro rata* calculations will be based on both the population of the partitioned area and the amount of spectrum disaggregated.

II. Regulatory Flexibility Act

14. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Memorandum Opinion and Order and Further Notice of Proposed Rule Making. See* Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, PR Docket No. 93–61, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making,* 62 FR 52078, October 6 , 1997 (''*Further Notice*''). The Commission sought written public comment on the proposals in the *Further Notice,* including comment on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

A. Need for, and Objectives of, the Second Report and Order in PR Docket 93–61

15. The adopted provisions are based on the competitive bidding authority of Section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 309(j), which authorized the Commission to use auctions to select from among mutually exclusive initial applications in certain services, including multilateration LMS.

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

16. There were no comments filed directly in response to the IRFA; however, the Commission received 2 comments in response to the *Further Notice*.

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

17. The applicable definition under SBA rules of a small entity is the definition under the rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. *1992 Census, Series UC92–S–1,* at Table 5, SIC code 4812. Therefore, using such data, even if all twelve of these firms were LMS companies, nearly all such carriers were small businesses under the SBA's definition.

18. In the *Second Report and Order,* the Commission has adopted more refined definitions for small business categories. The definition of a ''small business'' is an entity with average annual gross revenues for the preceding three years not to exceed $15 million. The definition of a ''very small

business'' is an entity with average annual gross revenues for the preceding three years not to exceed $3 million. The Commission is seeking SBA approval for these new LMS size standards. *See also Second Report and Order,* n. 47.

19. As noted in the *Second Report and Order,* there are 528 licenses to be awarded in the upcoming auction. New entrants could obtain multilateration LMS licenses through the competitive bidding procedure, and take the opportunity to partition and/or disaggregate a license or obtain an additional license through partitioning or disaggregation. Additionally, entities that are neither incumbent licensees nor geographic area licensees could enter the market by obtaining a multilateration LMS license through partitioning or disaggregation.

20. The Commission cannot estimate how many licensees or potential licensees could take the opportunity to partition and/or disaggregate a license or obtain a license through partitioning and/or disaggregation, because it has not yet determined the size or number of multilateration LMS licenses that will be granted in the future. Therefore, the number of small entities that will be affected is unknown. Given the fact that no reliable estimate of the total number of future multilateration LMS licensees can be made, the Commission assumes for purposes of this FRFA that all of the licenses will be awarded to small businesses.

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

21. The rules and provisions adopted in the *Second Report and Order* include the possibility of new reporting and recordkeeping requirements for a number of small business entities:

22. *Competitive Bidding Applications.* LMS license applicants will be subject to reporting and recordkeeping requirements to comply with the competitive bidding rules. Specifically, applicants will apply for LMS licenses by filing a short-form application (FCC Form 175), and will file a long-form application (FCC Form 601) at the conclusion of the auction. Additionally, entities seeking treatment as small businesses will need to submit information pertaining to the gross revenues of the small business applicant and its affiliates and certain investors in the applicant.

23. *Construction Requirements.* The proposals in the *Second Report and Order* include reporting and recordkeeping requirements for new LMS licensees to establish compliance with the coverage requirements. *See Second Report and Order,* ¶ 30.

24. *Geographic Partitioning and Spectrum Disaggregation.* The proposals in the *Second Report and Order* include reporting and recordkeeping requirements for small businesses seeking licenses through the proposed partitioning and disaggregation rules. The information requirements would be used to determine whether the licensee is a qualifying entity to obtain partitioned or disaggregated spectrum. This information will be a one-time filing by any applicant requesting such a license.

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

25. The *Second Report and Order* adopts certain provisions for smaller entities designed to ensure that such entities have the opportunity to participate in the competitive bidding process and in the provision of multilateration LMS services. The Commission anticipates that most LMS licensees will fit the definition of small business or very small business.

26. *Small Business Definitions and Bidding Credits.* The Commission adopts two small business categories for the LMS auction: (1) a ''small business'' category, for businesses with average gross revenues of over $3 million but not to exceed $10 million; and (2) a ''very small business'' category, for businesses with average gross revenues not to exceed $3 million. These adopted categories will be based on the gross revenues of the business for the three years preceding the filing of the entity's application. The Commission will rely solely on gross revenues, and not the number of employees, for the purpose of determining an entity's eligibility for small incentives.

27. *Attribution of Gross Revenues and Affiliates.* The Commission adopted a ''controlling interest'' standard as the general attribution rule for all future auctions. The Commission believes that these definitions are consistent with its proposals in the *Part 1 Third Report and Order.* 63 FR at 2315.

28. *Partitioning and Disaggregation.* With respect to partitioning and disaggregation, the Commission concludes that unjust enrichment provisions should apply when a licensee has benefitted from the small business provisions in the auction rules and applies to partition or disaggregate a portion of the geographic license area to another entity that would not qualify for such benefits.

F. Report to Congress

29. The Commission shall send a copy of the *Second Report and Order,* including the 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). In addition, the Commission will send a copy of the *Second Report and Order,* including FRFA, to the Chief Counsel for advocacy of the Small Business Administration.

III. Ordering Clauses

30. Accordingly, it is ordered that part 90 of the Commission's Rules is amended and will become effective September 28, 1998. It is further ordered that 47 CFR 90.365(d) of the Commission's Rules is amended and will become effective January 19, 1999.

31. Authority for issuance of this *Second Report and Order* is contained in Sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

32. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Second Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act Analysis

33. The *Second Report and Order* contains an information collection. The Federal Communications Commissions, 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 information collection, 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 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 estimate; (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.

Supplementary information:

OMB Approval Number: 3060–XXXX.

Title: Construction requirements.

Form No.: N/A

Type of Review: New collection for construction period buildout requirements.

Respondents: Business and other for-profit entities, individuals or households, State, Federal or Tribal Governments, Not-for-profit entities.

Number of Respondents: 528.

Estimated Time for Response: Estimated total time for response would be 52 hours per respondent for analysis of license records, conducting the appropriate engineering surveys and studies, and preparation of maps displaying the service area contour of the licensee.

Frequency of Response: On occasion.

Total Annual Burden: 27,456 hours. 52 hours by 528 respondents.

Needs and Uses: Engineering surveys and prepared maps displaying the service area contour of the licensee. Surveys and maps will be used to evaluate licensee's service area boundary and coverage. Licensee's boundary and coverage will then be compared against the construction buildout requirements for the service.

DATES: Persons wishing to comment on this information collection should submit comments by September 28, 1998.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via the Internet at lessmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lessmith@fcc.gov. For all other questions contact Ken Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Chapter I of Title 47 of the Code of Federal Regulations, part 90, is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 251–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 332, unless otherwise noted.

2. Section 90.155 is amended by revising paragraph (d) to read as follows:

§ 90.155 Time in which station must be placed in operation.

* * * * *

(d) Multilateration LMS EA-licensees, authorized in accordance with § 90.353, must construct and place in operation a sufficient number of base stations that utilize multilateration technology (see paragraph (e) of this section) to provide multilateration location service to one-third of the EA's population within five years of initial license grant, and two-thirds of the population within ten years. In demonstrating compliance with the construction and coverage requirements, the Commission will allow licensees to individually determine an appropriate field strength for reliable service, taking into account the technologies employed in their system design and other relevant technical factors. At the five and ten year benchmarks, licensees will be required to file a map and other supporting documentation showing compliance with the coverage requirements.

* * * * *

3. Section 90.365 is added to subpart M to read as follows:

§ 90.365 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility*—(1) Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment of a license pursuant to § 90.153.

(2) Multilateration LMS licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses. Multilateration LMS licensees may partition or disaggregate to any party that is also eligible to be a multilateration LMS licensee. Partitioning is permitted along any service area defined by the parties, and spectrum may be disaggregated in any amount. The Commission will also consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(b) *Technical Requirements*—In the case of partitioning, requests for authorization for partial assignment of a license must include, as attachments, a description of the partitioned service area, and a calculation of the population of the partitioned service area and the licensed geographic service area. The partitioned service area shall be defined by coordinate points at every three degrees along the partitioned service area unless county lines are followed. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1927 North American Datum (NAD27). Applicants may supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required based on NAD27. In the case where county lines are utilized, applicants need only list the specific area(s) (through use of county names) that constitute the partitioned area.

(c) *License term*. The license term for a partitioned license area, and for disaggregated spectrum shall be the remainder of the original licensee's license term.

(d) *Construction requirements*—(1) R*equirements for partitioning.*

(i) Parties seeking authority to partition must meet one of the following construction requirements:

(A) The partitionee may certify that it will satisfy the applicable construction requirements for the partitioned license area; or

(B) The original licensee may certify that it has or will meet the construction requirement for the entire license area.

(ii) Applications requesting authority to partition must include a certification by each party as to which of the above construction options they select.

(iii) Failure by any partitionee to meet its respective construction requirements will result in the automatic cancellation of the partitioned or disaggregated license without further Commission action.

(2) *Requirements for disaggregation*. Parties seeking authority to disaggregate must submit with their partial assignment application a certification signed by both parties stating which of the parties will be responsible for meeting the construction requirement for the licensed market. Parties may agree to share responsibility for meeting the construction requirements. Parties that accept responsibility for meeting the construction requirements and later fail to do so will be subject to license forfeiture without further Commission action.

4. Add a new subpart X to read as follows:

Subpart X—Competitive Bidding Procedures for Location and Monitoring Service

Sec.

90.1101 Location and Monitoring Service subject to competitive bidding.

90.1103 Designated entities.

Subpart X—Competitive Bidding Procedures for Location and Monitoring Service

§ 90.1101 Location and Monitoring Service subject to competitive bidding.

Mutually exclusive initial applications for multilateration Location and Monitoring Service licenses are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

§ 90.1103 Designated entities.

(a) This section addresses certain issues concerning designated entities in the Location and Monitoring Service (LMS) subject to competitive bidding. Issues that are not addressed in this section are governed by the designated entity provisions in part 1, subpart Q of this chapter.

(b) *Eligibility for small business provisions.*

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

(2) A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed $3 million for the preceding three years.

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

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

(5) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (b)(1) of this section (or each of which individually satisfies the definition in paragraph (b)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

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

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

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

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

(2) *Calculation of certain interests.*

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

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

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

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

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

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

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

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such person, or its affiliate pursuant to § 1.2110(b)(4) of this chapter, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

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

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

(C) The prices charged for such services.

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

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

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

(C) The prices charged for such services.

(d) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in paragraph (b)(1) or (b)(5) of this section may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in paragraph (b)(2) or (b)(5) of this section may use the bidding credit specified in § 1.2110(e)(2)(i) of this chapter.

[FR Doc. 98–20460 Filed 7–29–98; 8:45 am]

BILLING CODE 6712–01–P