comment on the specific nature of the types of relationships that should trigger any restriction. Council Tree’s initial proposal argued that the Commission should restrict a designated entity applicant’s “material relationships,” including both financial and operational agreements, in order to more carefully ensure that designated entity benefits are awarded only to bona fide eligible entities. In this regard, we sought comment on what might constitute a “material financial” or “material operational” relationship; whether restricting certain agreements as a “material relationship” would be too harsh or unnecessarily limit a designated entity applicant’s ability to gain access to capital or industry expertise; and whether there might be instances where the existence of either a “material financial agreement” or a “material operational agreement” might be appropriate and might not raise issues of undue influence. We also sought comment on the type of attribution standard that we should apply to any rule modification.

75. Comments. In the record developed in connection with the Further Notice, many commenters supported the general premise of Council Tree’s proposal to define “material relationships” to include even those agreements that would preserve a designated entity applicant’s de jure and de facto control under our existing rules. Several commenters argued that the Commission’s controlling interest standard does not, without more, sufficiently safeguard the award of designated entity benefits to their intended beneficiaries because it does not adequately insulate the designated entity from undue influence.

76. Commenters opposing rule modifications to consider such relationships; however, argued that there is insufficient evidence to support such rule changes, and maintain that there is no record of abuse of the Commission’s designated entity eligibility requirements. Moreover, opposing commenters

177 Further Notice, 21 FCC Red at 1760 ¶ 13.
178 Id.
179 Id.
180 Id. at 1761 ¶ 15.
181 Id.
182 Comments of Council Tree at 52; see also generally, Comments of Anates; Comments of Carroll Wireless; Comments of Doyon Communications, Bristol Bay Native Corp., Bethel Native Corp.; Comments of John Staurulakis, Inc.; Comments of Leap; Comments of MMTC; Comments of STX; Comments of Suncom; Comments of USCC; Comments of U.S. Wirefree.
183 See, e.g., Comments of Council Tree at 55-56 (“the Commission’s existing “controlling interest” standard and affiliation rules do not prevent the type of influence that should be addressed here.”); Comments of MobiPCS at 1 (“allowing the nation’s largest national wireless carriers to serve in those roles only serves to increase their already overwhelming influence.”); Comments of WBSPA at 4-5 ("WBPSA strongly supports the proposals put forth by CT to eliminate and prohibit any ability for any communications services provider whose services are regulated by the FCC or any state regulatory body to enter into any financial relationship with an otherwise eligible DE in which it has the ability to either directly or indirectly control or influence the management, operations or ownership of that entity. ... "). See Reply Comments of WBSPA at 2 (WBSPA refined and clarified its position to apply to “any communications service providers whose telecommunications activities are subject to state or federal telecommunications regulations and whose revenues exceed $1 billion in the last calendar year. ...”).
184 See, e.g., Comments of CTIA at 2 (“there is no evidence cited in the Notice that those policies have been abused, that they have not been effective, or that their reformation would achieve any stated goal.”); Comments of T-Mobile at 6 (“The Commission cites no evidence to demonstrate – indeed, it makes no allegations – that such wireless carriers have attempted to circumvent the letter or spirit of the Commission’s DE rules or have otherwise been responsible for ‘undermining’ the program.”); Comments of Verizon Wireless at 4 (the FNPRM “fails to cite evidence that any harm has resulted from strategic relationships between small businesses and large wireless carriers.”); Comments of Cook Inlet at i, 5 (“Cook Inlet is concerned by the absence of a factual record that justifies a rule change of the magnitude proposed in the Further Notice.”).
contended that if the Commission is compelled to amend its rules, adoption of its tentative conclusion will not be sufficient to accomplish its intended purpose.\footnote{See, e.g., Comments of CTIA at 2 ("the Notice proposes to embark on a path that does not address the problems it purports to fix."); Comments of Dobson at 3 ("there is nothing in the FNPRM that suggests that the concerns that Council Tree has expressed would be ameliorated by applying the proposed restriction only to one group of strategic investors and not another."); Comments of Verizon Wireless at 1-2 ("If the Commission feels compelled to make changes it should do so more broadly and effectively restrict investment from all companies that with revenues greater than $125 million."); Comments of U.S. Wirefree at 11 ("There is no rational basis for discriminating against carrier investment in a DE based solely on the size of the carrier. . . . If the Commission wants to restrain ownership in DEs by other wireless carriers it should apply this restraint uniformly."); Comments of Cook Inlet at 13 ("It is not clear how the incentives or practices of these carriers are any more detrimental to the program than the incentives of any investor in a designated entity, whether a large financial institution, venture capital fund, small wireless carrier or otherwise.").}

77. Both sides offered general comments regarding whether the Commission should take non-controlling relationships into consideration as part of its determination of an applicant’s or licensee’s eligibility for designated entity purposes, but few offered specifics on how the Commission should precisely define material relationships. As discussed above, we have adopted two definitions of material relationships. The first are “impermissible material relationships” that, when entered into by an applicant or licensee, will render it wholly ineligible for designated entity benefits. The second are “attributable material relationships.” These relationships become attributable for the purposes of calculating the applicant or licensee’s eligibility for benefits in accordance with section 1.2110 of the Commission’s rules.

78. \textit{Discussion.} We seek comment on whether there is a need, in addition to the rules we adopt today, to further modify our Part 1 designated entity eligibility rules to include other types of agreements in our definitions of “impermissible material relationships” or “attributable material relationships.” Will broadening these newly adopted definitions of material relationships to include other types of financial or operational agreements further enhance the Commission’s ability to achieve the statutory goals intended by Congress — namely ensuring that designated entities participate in the provision of spectrum-based services, and preventing unjust enrichment as a result of the methods employed to issue licenses?\footnote{47 U.S.C. §§ 309(j)(3)(B), 309(j)(4)(D)-(E).} If commenters support broadening the definitions of material relationships to include additional agreements, they should provide specific examples of the types of agreements or combinations of agreements that should fall within each definition as well as explanation of how including such agreements will achieve the Commission’s statutory mandates. To the extent we decide to broaden the definitions of material relationships to include other types of agreements, should there be any difference in our assessment of such agreements when entered into by the designated entity with different classes of entities? For example, should our rules treat a designated entity’s agreements with an existing licensee of CMRS spectrum differently than similar agreements with an investor that does not currently hold any licenses for CMRS spectrum? To the extent that commenters support such differential treatment, we request that they provide evidence supporting such action, including its relation to the designated entity program.

79. Should our concern regarding relationships between designated entity applicants or licensees and other entities differ depending upon the type of entity at issue and the circumstances surrounding the relationship? Should we reconsider adopting a minimum equity requirement for designated entity applicants or define material relationship in a way that would prohibit a designated entity applicant from securing all of its capitalization from outside sources? Should we adopt commenters’ suggestions to include additional operational agreements in our definitions of material relationship or does doing so create technological and practical restrictions that could hinder a designated entity licensee’s ability to become a provider of spectrum based services, as intended by Congress?
80. Based on the limited record developed in response to the Further Notice, and our extensive experience in administering the designated entity program, we are concerned that additional types of relationships could have the potential to confer significant influence over the actions of a designated entity licensee thereby allowing an ineligible entity the ability to gain undue advantages in the communications marketplace through the benefits offered to a designated entity applicant. We therefore seek comment on the specific types of additional agreements that should fall within our definitions of "impermissible material relationships" and "attributable material relationships" so that we may be better able to prevent the potential for this type of abuse of the designated entity program, thereby ensuring the award of our designated entity benefits only to legitimate small businesses. Are the new rules we adopt today sufficient to safeguard against many of these concerns?

81. We generally do not have the same concerns regarding relationships between designated entity applicants and those who do not have interests in spectrum capacity or the provision of service, such as financial institutions or venture capital firms, provided that such entities do not have a controlling interest relationship with the applicant. Presumptively, for those entities, the overarching goal and primary incentive for partnering with a designated entity is to seek a return on investment rather than to provide service themselves using the designated entity's spectrum licenses. We seek comment on this presumption. Likewise, we presume that where an entity is not already providing communications services, there is no opportunity for it to bundle existing communications services with a strategic wireless partner, and there is less potential for those entities to exert undue influence over a designated entity licensee's decision making regarding its service provision or the use of its licensed spectrum. We seek comment on this presumption. Assuming that these presumptions are valid, we anticipate that such relationships do not require the additional safeguards we may apply to relationships with other entities that have differing incentives and motivations. For instance, if we included financial relationships in our definition of either "impermissible material relationships" or "attributable material relationship" we might specifically exclude relationships with financial institutions from such a definition. We seek comment on whether we should specifically do so.

82. With regard to financial relationships, should the Commission conclude that the greater the financial stake an entity has in a designated entity the more incentive it has to significantly influence the designated entity licensee's decisions regarding its provision of service? We also seek comment on whether we should expand our definitions of "impermissible material relationship" or "attributable material relationship" to include any financial relationship(s) (including any combination of equity, debt, loan or credit agreements, as well as future interests for such financial arrangements) between a designated entity applicant or licensee and another entity that represents more than a certain percentage of the designated entity's total financing. If so, what is the appropriate percentage? Council Tree suggested that a more than a 33 percent financial stake should be "material." Should such a financial interest be considered to be an "impermissible material relationship" or "attributable material relationship"? We note that the 33 percent benchmark offered by Council Tree is derived from the Commission's broadcast ownership attribution rules, but the relevance of that benchmark in this context is uncertain, given the different policy issues that were considered in adopting that percentage limitation in the broadcast context. Other commenters suggested that our definition of material relationship should include as little as a percent financial interest or as much as a 50 percent interest. We seek comment on how the percentage of an entity's financial interest in a designated entity applicant or licensee should be considered in our definitions of "impermissible material relationship" or "attributable material relationship." We are concerned that we do not want to create a situation in which additional safeguards regarding financial interests render a designated entity without any avenues for access to much needed capital.

83. Additionally, are there circumstances in which we should agree with Council Tree and others that argue that the definition of material relationship should include, "without limitation, 

187 47 C.F.R. § 73.3555.
management agreements, trademark license agreements, joint marketing agreements, future interest agreements (such as puts, calls, options, and warrants), and long-term de facto and spectrum manager leasing arrangements?188 If so, should such relationships be considered to be “impermissible material relationships” or “attributable material relationships”? Under what circumstances, does the existence of any agreement between a designated entity applicant or licensee and another entity have the strong potential to convey influence over the operations of the designated entity and the deployment of its spectrum in a manner contrary to that intended by Congress?

84. We also seek comment upon whether we should adopt even tighter safeguards to prevent the development of relationships that might deter designated entities from evolving into independent facilities-based competitors. For example, are there circumstances in which we should define “material relationship” to include “any relationship, financial and/or operational” between a designated entity applicant or licensee and another entity? For instance, does the likelihood that certain relationships will influence a designated entity’s provision of service increase when agreements are entered into with an entity that has existing self interests in the same spectrum?

85. If we include all agreements, both financial and operational, as either “impermissible material relationships” or “attributable material relationships” between designated entities and entities that have existing spectrum interests in the same geographic areas can we reduce the reliance of designated entities on those that might provide funding or operational support in a manner designed to complement their own services rather than for facilitating the emergence of new technologies and new facilities-based competitors? In so doing, can we reduce the potential for abuse of the designated entity program and can we lessen the possibility of entities with existing self interests to use relationships with designated entities as a means to gain access to spectrum at a discounted value?

86. We seek comment on any and all of the agreements the Commission should consider including in its definitions of “impermissible material relationships” or “attributable material relationships” and whether the Commission should take into consideration whether such agreements are made with certain types of entities with certain geographic interests.

87. Personal Net Worth. We seek comment on whether we should include personal net worth in determining designated entity eligibility and if so, whether we should adopt the proposal put forth by Council Tree in its ex parte to prohibit individuals with a net worth of $3 million or more (excluding the value of a primary residence) from having a controlling interest in a designated entity189 or whether we should place other net-worth-based restrictions on designated entity eligibility.

88. In its ex parte, Council Tree specifically urges the Commission to prohibit individuals with a net worth of $3 million or more (excluding the value of a primary residence) from having a controlling interest in a designated entity.190 It argues that in the absence of a personal net worth

188 A number of commenters also generally appeared to support the premise of Council Tree’s proposals without specifically commenting on how the Commission might define “material relationship.” See e.g., Comments of MobiPCS at 1; Comments of Suncom at 1; Comments of USCC at 2-3, 5; Reply Comments of Royal Street at 1.

189 Council Tree ex parte at 2, 6-7, 13.

190 Id. Council Tree suggests that the Commission measure personal net worth as of the time of filing the applicant’s short form application. Council Tree notes that this limitation should be applied only to an individual with de jure or de facto control of the applicant as determined under the Commission’s controlling interest standard. It believes that such a condition is important because the Commission’s attribution rules provide that the officers and directors of an applicant, and the officers and directors of an entity that control the applicant, shall be “considered” to have a controlling interest in the applicant. As such, Council Tree asserts that unless application of the personal net worth test is limited to individuals with actual de jure or de facto control of the applicant, legitimate designated entities would risk losing preference eligibility due to the net worth of an officer or director who has only constructive control under the Commission’s rules, which could discourage designated entities from hiring experienced managers and industry veterans to serve as officers or directors.
limitation, there is very little to prevent wealthy individuals from seeking status as small businesses. According to Council Tree, designated entities “have come to be dominated by high net worth individuals, particularly well-connected former wireless industry executives who have no need for government assistance.” Council Tree asserts that high net worth individuals have exploited the designated entity program since they recognize that the Commission does not count personal wealth in assessing the size of a business that applies for auction-related bidding credits or set asides. In its comments filed in this proceeding, Council Tree continues to urge the Commission to close the “loophole” that, it alleges, allows “high net worth individuals to take advantage of designated entity preferences.”

89. Few commenters in this proceeding addressed Council Tree’s proposal to impose a net worth prohibition. Cook Inlet acknowledges Council Tree’s concern that wealthy individuals may have the ability to obtain designated entity benefits. Carroll Wireless, Aloha Partners and Poplar argue that the proposal is “both unnecessary and impractical,” in view of the investment needed for wireless and the difficulty in measuring individual net worth. Those commenters also all allege that a net worth cap on individuals is impractical because “it would seem to eliminate many entrepreneurs who have been successful in wireless to date – and are the ones who can make a DE program work.” RTG and Rural Carriers oppose Council Tree’s net worth proposal on the ground that such a rule possibly would exclude family-owned, independent rural telephone companies and small businesses and most cooperative rural telephone companies.

90. In previous circumstances, where the Commission was focused primarily on creating flexibility for designated entities to have access to capital, the Commission generally has not adopted personal net worth restrictions, including personal income and assets, for purposes of eligibility for designated entity provisions. In that context, the Commission has observed, for example, that personal net worth limits are difficult to apply and enforce and may be easily manipulated. The Commission also has explained that it did not believe that eliminating the personal net worth limits would facilitate significant encroachment by “deep pockets” that can be accessed by wealthy individuals through affiliated entities because, in those instances in which access to such resources would create an unfair advantage, the affiliation rules will continue to apply and require that such an entity’s assets and revenues be included in determining an applicant’s size. The Commission previously has explained that it believed that the affiliation rules make the personal net worth rules largely unnecessary because most wealthy individuals are likely to have their wealth closely tied to ownership of another business.

91. In the Further Notice, we did not address Council Tree’s personal net worth proposal substantively, noting that it had been rejected in a prior proceeding. After further considering, however, our rule modifications that we are adopting in this Second Report and Order, the additional matters that we are addressing herein, as well as Council Tree’s continued urging to include a net worth prohibition, we are persuaded that we should seek further comment on this issue. Accordingly, we seek comment on whether the Commission should reconsider its treatment of personal net worth in

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191 Council Tree Comments at 6.
193 Comments of Aloha Partners at 5; Comments of Carroll Wireless at 7; Comments of Poplar at 4.
194 Id.
195 Comments of RTG at 5; Reply Comments of Rural Carriers at 5-6.
196 Competitive Bidding Fifth MO &O, 10 FCC Red at 403.
197 Id. at 421 ¶ 30.
198 Id.
199 See Further Notice, 21 FCC Red at 1756-57 ¶ 5, n.17.
determining eligibility for designated entity benefits and if so, what changes the Commission should adopt and why. We specifically seek comment on Council Tree's proposal to prohibit individuals with a net worth of $3 million or more (excluding the value of a primary residence) from having a controlling interest. We ask commenters to address the validity of Council Tree's arguments in support of its proposal200 and, if possible, to cite specific instances that may be relevant to evaluating the proposal of Council Tree or other proposals offered by commenters. We particularly seek comments on Council Tree’s assertion that “an individual who has made a fortune in the wireless industry, but who is no longer affiliated with his or her former company, may form a new limited liability company . . .[,] use his or her contacts to partner with an existing wireless service provider” and then pledge his or her personal assets to secure financing for any desired capital contribution to the new entity.201

In addition to requesting comments on Council tree’s proposal, we also ask commenters to propose any other individual net worth restrictions that they may deem necessary or appropriate to strengthen our rules. We also ask commenters supporting additional restrictions to discuss how such restrictions should be implemented? For example, should the attribution rules be amended with respect to the exclusion of personal income, or would any adopted restriction be more effectively implemented through some other rule? If commenters believe that no changes are needed in the Commission’s current exclusion of individual net worth in determining designated entity eligibility, we ask that they explain their position in detail and include a discussion of whether they believe that the Commission should be concerned about the types of individuals described by Council Tree receiving benefiting from the designated entity program and, if not, why not. We ask that all commenters explain how the position that they advocate is consistent with the Commission’s statutory responsibilities toward designated entities. In that regard, we seek comment on whether the potential threat, if any that an individual with sufficient wealth poses to the designated entity program is similar in nature to, or different from, the other threats that we address or raise as possibilities elsewhere in this Second Report and Order. We ask that commenters explain what they believe the similarities or differences are and how those factors should affect any actions by the Commission.

V. CONCLUSION

93. For all of the reasons set forth above, we modify our rules for determining the eligibility of applicants for size-based benefits in the context of competitive bidding and issue a Second Notice of Proposed Rule Making to consider whether we should adopt additional restrictions to further safeguard the benefits reserved for designated entities.

VI. PROCEDURAL MATTERS

A. Regulatory Flexibility Analyses

94. As required by the Regulatory Flexibility Act, see 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis, set forth below at Appendix C.

95. An Initial Regulatory Flexibility Analysis (“IRFA”) for the Second Further Notice is attached at Appendix D.202 Comments on the IRFA should be labeled as IRFA Comments, and should be submitted pursuant to the filing dates and procedures set forth below.

200 Council Tree argues, for example, that if a high net worth individual does not have his or her wealth tied to ownership of other businesses or if such other businesses have few or no gross revenues, individuals who are not the intended beneficiaries of the designated entity program could receive designated entity benefits

201 Council Tree ex parte at 11.

B. Comment Filing Procedures

96. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 C.F.R §§ 1.415, 1.419, interested parties may file comments on or before 60 days after publication in the Federal Register and may file reply comments on or before 90 days after publication in the Federal Register. All filings related to this Second Further Notice of Proposed Rule Making should refer to WT Docket No. 05-211. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rule Making Proceedings, 63 FR 24121 (1998).

97. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rule making numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rule making number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rule making number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

98. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

C. Paperwork Reduction Act Analysis

99. This Second Report and Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

100. In this Second Report and Order, we have assessed the effects of our new restriction on the award of designated entity benefits where an applicant or licensee has agreements, which create a material relationship, with one or more other entities for the lease (under either spectrum manager or de facto transfer leasing arrangements) or resale (including under a wholesale arrangement) of a portion of its spectrum capacity. We find that the rule we adopt will best ensure that the Commission can continue to award designated entity benefits to entities that Congress intended. While the new rule may impose a
new information collection on small businesses, including those with fewer than 25 employees, we conclude that this information collection is necessary to ensure that the benefits of the Commission's designated entity program are reserved only for legitimate small businesses.

101. This Second Further Notice contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget ("OMB") to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days after the date of publication in the Federal Register. Comments should address: (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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

D. Congressional Review Act

102. The Commission will include a copy of this Second Report and Order and Second Further Notice in a report it will send to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

E. Ordering Clauses

103. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(r), and 309(j), this Second Report and Order is hereby ADOPTED and Part I of the Commission's rules, 47 C.F.R. Part 1, is AMENDED as set forth below in Appendix B, effective 30 days after publication in the Federal Register, except for the grandfathering provisions which are effective upon release.

104. IT IS FURTHER ORDERED that pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(r), and 309(j), this Second Further Notice of Proposed Rule Making is HEREBY ADOPTED.

105. IT IS FURTHER ORDERED that, pursuant to 47 U.S.C. § 155(c) and 47 C.F.R. §§ 0.131(c) and 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.

106. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Second Report and Order and Second Further Notice, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary
APPENDIX A

Commenters

Comments

1. Aloha Partners, L.P. ("Aloha")
2. Antares, Inc. ("Antares")
3. Carroll Wireless, L.P. ("Carroll Wireless")
4. Centennial Communications Corp. ("Centennial")
5. Columbia Capital LLC ("Columbia Capital")
6. Communications Advisory Counsel ("CAC")
7. Comscape Telecommunications, Inc. ("Comscape")
8. Cook Inlet Region, Inc. ("Cook Inlet")
9. Council Tree Communications, Inc. ("Council Tree")
10. CTIA – The Wireless Association ("CTIA")
11. Dobson Communications Corporation ("Dobson")
12. Doyon Communications, Inc. ("Doyon")
13. Dull, Arvin D.
14. John Staurulakis, Inc.
15. Leap Wireless International, Inc. ("Leap")
16. Madison Dearborn Partners, LLC ("Madison Dearborn")
17. MetroPCS Communications, Inc. ("MetroPCS")
18. Minority Media and Telecommunications Council ("MMTC")
19. MobiPCS
20. National Association of Broadcasters ("NAB")
21. National Hispanic Media Coalition ("NHMC")
22. National Telecommunications Cooperative Association ("NTCA")
23. NTCH, Inc.
24. NTCH, Inc., dba Clear Talk ("Clear Talk")
25. Paging Systems, Inc. ("Paging Systems")
26. Patrick, Levi
27. Poplar Associates, LLC ("Poplar")
28. Rural Telecommunications Group, Inc. ("RTG")
29. STX Wireless, LLC ("STX")
30. Suncom Wireless, Inc. ("Suncom")
31. T-Mobile USA, Inc. ("T-Mobile")
32. United States Cellular Corporation ("USCC")
33. U.S. Wirefree
34. Verizon Wireless ("Verizon Wireless")
35. Wirefree Partners III, LLC ("Wirefree Partners")
36. Wireless Broadband Service Providers Association ("WBSPA")
37. Wireless Communications Association International, Inc. ("WCAI")
Reply Comments

1. Antares, Inc. ("Antares")
2. Blooston Rural De Colalition ("Blooston")
3. Cablevision Systems Corporation ("CSC")
4. Cingular Wireless, LLC ("Cingular")
5. Consumers Union
6. Cook Inlet Region, Inc. ("Cook Inlet")
7. Council Tree Communications, Inc. ("Council Tree")
8. Ericsson, Inc. ("Ericsson")
9. Leap Wireless International, Inc. ("Leap")
10. Minority Media and Telecommunications Council ("MMTC")
11. Royal Street Communications, LLC ("Royal Street")
12. Rural Carriers
13. T-Mobile USA, Inc. ("T-Mobile")
14. United States Cellular Corporation ("USCC")
15. U.S. Wirefree
16. Verizon Wireless ("Verizon Wireless")
17. Wirefree Partners III, LLC ("Wirefree Partners")
18. Wireless Broadband Service Providers Association ("WBSPA")

Notice of Ex Parte Presentations

1. Carroll Wireless et al ("Carroll")
2. Cook Inlet Region, Inc. ("Cook Inlet") *
3. Council Tree Communications, Inc. ("Council Tree") *
4. CTIA – The Wireless Association ("CTIA")
5. Doyon Communications, Inc. ("Doyon")
6. Madison Dearborn Partners, LLC ("Madison Dearborn")
7. Media Access Project ("MAP")*
8. MetroPCS Communications, Inc. ("MetroPCS")*
9. Minority Media and Telecommunications Council ("MMTC")
10. National Hispanic Media Coalition ("NHMC") *
11. National Telecommunications Cooperative Association ("NTCA") *
12. Royal Street Communications, LLC ("Royal Street")
13. T-Mobile USA, Inc. ("T-Mobile") *
14. Transactional Transparency and Related Outreach Subcommittee
15. U.S. Department of Justice
16. Verizon Wireless ("Verizon Wireless") *
17. Wirefree Partners III, LLC ("Wirefree Partners")

* Indicates that more than one ex parte submission was filed
APPENDIX B

Final Rules

PART 1 – PRACTICE AND PROCEDURE

For the reasons discussed in the preamble, the FCC amends parts 1 of the Code of Federal Regulations to read as follows:

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

   Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

2. In § 1.913, paragraph (a) introductory text and the first sentence of paragraph (b) are revised and paragraph (a)(6) is added to read as follows:

   § 1.913 Application and notification forms; electronic and manual filing.

   (a) Application and notification forms. Applicants, licensees, and spectrum lessees (see § 1.9003) shall use the following forms and associated schedules for all applications and notifications:

   * * * * *

   (6) FCC Form 609, Application to Report Eligibility Event. FCC Form 609 is used by licensees to apply for Commission approval of reportable eligibility events, as defined in § 1.2114.

   (b) Electronic filing. Except as specified in paragraph (d) of this section or elsewhere in this chapter, all applications and other filings using the application and notification forms listed in this section or associated schedules must be filed electronically in accordance with the electronic filing instructions provided by ULS.

   * * *

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3. Revise paragraph (b) introductory text and add paragraph (b)(5) to § 1.919 to read as follows:

   § 1.919 Ownership information.

   * * * * *

   (b) Any applicant or licensee that is subject to the reporting requirements of § 1.2112 or § 1.2114 shall file an FCC Form 602, or file an updated form if the ownership information on a previously filed FCC Form
602 is not current, at the time it submits:

* * * * *

(5) An application reporting any reportable eligibility event, as defined in § 1.2114.

* * * * *

4. Revise paragraph (a)(2)(ii)(B) of § 1.2105 to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of collusion.

(a) * * *

(2) * * *

(ii)(B) Applicant ownership and other information, as set forth in 1.2112.

* * * * *

5. In paragraph § 1.2110, paragraphs (b)(1)(i)-(ii) and (j) are revised, paragraphs (n) and (o) are redesignated as paragraphs (o) and (p), and paragraphs (b)(3)(iv) and (n) are added to read as follows:

§ 1.2110 Designated entities.

* * * * *

(b) * * *

(1) Size attribution.

(i) The gross revenues of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules. An applicant seeking status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules, must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous three years of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.

(ii) If applicable, pursuant to § 24.709, the total assets of the applicant (or licensee), its affiliates, its
controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as an entrepreneur. An applicant seeking status as an entrepreneur must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous two years of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.

* * * * *

(3) * * *

(iv) Applicants or licensees with material relationships.

(A) Impermissible material relationships. An applicant or licensee that would otherwise be eligible for designated entity benefits under this section and applicable service-specific rules shall be ineligible for such benefits if the applicant or licensee has an impermissible material relationship. An applicant or licensee has an impermissible material relationship when it has arrangements with one or more entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any one of the applicant’s or licensee’s licenses.

(B) Attributable material relationships. An applicant or licensee must attribute the gross revenues (and, if applicable, the total assets) of any entity, (including the controlling interests, affiliates, and affiliates of the controlling interests of that entity) with which the applicant or licensee has an attributable material relationship. An applicant or licensee has an attributable material relationship when it has one or more arrangements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any one of the applicant’s or licensee’s licenses.

(C) Grandfathering.

(I) Licensees. An impermissible or attributable material relationship shall not disqualify a licensee for previously awarded benefits with respect to a license awarded before April 25, 2006, based on spectrum
lease or resale (including wholesale) arrangements entered into before April 25, 2006.

(2) **Applicants.** An impermissible or attributable material relationship shall not disqualify an applicant seeking eligibility in an application for a license, authorization, assignment, or transfer of control or for partitioning or disaggregation filed before April 25, 2006, based on spectrum lease or resale (including wholesale) arrangements entered into before April 25, 2006. Any applicant seeking eligibility in an application for a license, authorization, assignment, or transfer of control or for partitioning or disaggregation filed after April 25, 2006, or in an application to participate in an auction in which bidding begins on or after [30 days after Federal Register publication], need not attribute the material relationship(s) of those entities that are its affiliates based solely on section 1.2110(c)(5)(i)(C) if those affiliates entered into such material relationship(s) before April 25, 2006, and are subject to a contractual prohibition preventing them from contributing to the applicant's total financing.

Example to paragraph (C)(2): Newco is an applicant seeking designated entity status in an auction in which bidding begins after the effective date of the rules. Investor is a controlling interest of Newco. Investor also is a controlling interest of Existing DE. Existing DE previously was awarded designated entity benefits and has impermissible material relationships based on leasing agreements entered into before April 25, 2006, with a third party, Lessee, that were in compliance with the Commission’s designated eligibility standards prior to April 25, 2006,. In this example, Newco would not be prohibited from acquiring designated entity benefits solely because of the existing impermissible material relationships of its affiliate, Existing DE. Newco, Investor, and Existing DE, however, would need to enter into a contractual prohibition that prevents Existing DE from contributing to the total financing of Newco.

**• • • • •**

(j) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements, spectrum leasing arrangements, spectrum resale (including wholesale) arrangements, and all other agreements, including oral agreements, establishing, as applicable, de facto or de
jure control of the entity or the presence or absence of impermissible and attributable material relationships. Designated entities also must provide the date(s) on which they entered into each of the agreements listed. In addition, designated entities must file with their long-form applications a copy of each such agreement. In order to enable the Commission to audit designated entity eligibility on an ongoing basis, designated entities that are awarded eligibility must, for the term of the license, maintain at their facilities or with their designated agents the lists, summaries, dates, and copies of agreements required to be identified and provided to the Commission pursuant to this paragraph and to § 1.2114.

* * * * *

(n) Annual reports. Each designated entity licensee must file with the Commission an annual report within five business days before the anniversary date of the designated entity’s license grant. The annual report shall include, at a minimum, a list and summaries of all agreements and arrangements (including proposed agreements and arrangements) that relate to eligibility for designated entity benefits. In addition to a summary of each agreement or arrangement, this list must include the parties (including affiliates, controlling interests, and affiliates of controlling interests) to each agreement or arrangement, as well as the dates on which the parties entered into each agreement or arrangement. Annual reports will be filed no later than, and up to five business days before, the anniversary of the designated entity’s license grant.

(o) Gross revenues. * * *

(p) Total assets. * * *

6. Revise paragraphs (a), (b) introductory text, the first sentence of paragraph (c)(2), the first sentence of paragraph (c)(3), (d)(1), and (d)(2) of § 1.2111 to read as follows:

§ 1.2111 Assignment or transfer of control: unjust enrichment.

(a) Reporting requirement. An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission's statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements,
management agreements, or other documents disclosing the local consideration that the applicant would receive in return for the transfer or assignment of its license (see § 1.948). This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below market financing).

(b) Unjust enrichment payment: set-aside. As specified in this paragraph an applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of, or for entry into a material relationship (see §§ 1.2110, 1.2114) (otherwise permitted under the Commission's rules) involving, a license acquired by the applicant pursuant to a set-aside for eligible designated entities under § 1.2110(c), or which proposes to take any other action relating to ownership or control that will result in loss of eligibility as a designated entity, must seek Commission approval and may be required to make an unjust enrichment payment (Payment) to the Commission by cashier's check or wire transfer before consent will be granted. The Payment will be based upon a schedule that will take account of the term of the license, any applicable construction benchmarks, and the estimated value of the set-aside benefit, which will be calculated as the difference between the amount paid by the designated entity for the license and the value of comparable non-set-aside license in the free market at the time of the auction. The Commission will establish the amount of the Payment and the burden will be on the applicants to disprove this amount. No payment will be required if:

* * *

(c) * * *

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure or to enter into a material relationship (see § 1.2110) that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval. * * *

(3) If a licensee seeks to make any change in ownership or to enter into a material relationship (see § 1.2110) that would result in the licensee qualifying for a less favorable installment plan under this section,
the licensee shall seek Commission approval and must adjust its payment plan to reflect its new eligibility status. * * *

(d) * * *

(1) A licensee that utilizes a bidding credit, and that during the initial term seeks to assign or transfer control of a license to an entity that does not meet the eligibility criteria for a bidding credit, will be required to reimburse the U.S. Government for the amount of the bidding credit, plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license was granted, as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to assign or transfer control of a license to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest based on the rate for ten year U.S. treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to make any ownership change or to enter into a material relationship (see § 1.2110) that would result in the licensee losing eligibility for a bidding credit (or qualifying for a lower bidding credit), the amount of the bidding credit (or the difference between the bidding credit originally obtained and the bidding credit for which the licensee would qualify after restructuring or entry into a material relationship), plus interest based on the rate for ten year U.S. treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer or of a reportable eligibility event (see § 1.2114).

(2) Payment schedule.

(i) The amount of payments made pursuant to paragraph (d)(1) of this section will be 100 percent of the value of the bidding credit prior to the filing of the notification informing the Commission that the construction requirements applicable at the end of the initial license term have been met. If the notification informing the Commission that the construction requirements applicable at the end of the initial license term have been met, the amount of the payments will be reduced over time as follows:
(A) A loss of eligibility in the first five years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or in the case of eligibility changing to qualify for a lower bidding credit, 100 percent of the difference between the bidding credit received and the bidding credit for which it is eligible);

(B) A loss of eligibility in years 6 and 7 of the license term will result in a forfeiture of 75 percent of the value of the bidding credit (or in the case of eligibility changing to qualify for a lower bidding credit, 75 percent of the difference between the bidding credit received and the bidding credit for which it is eligible);

(C) A loss of eligibility in years 8 and 9 of the license term will result in a forfeiture of 50 percent of the value of the bidding credit (or in the case of eligibility changing to qualify for a lower bidding credit, 50 percent of the difference between the bidding credit received and the bidding credit for which it is eligible);

and

(D) A loss of eligibility in year 10 of the license term will result in a forfeiture of 25 percent of the value of the bidding credit (or in the case of eligibility changing to qualify for a lower bidding credit, 25 percent of the difference between the bidding credit received and the bidding credit for which it is eligible).

(ii) These payments will have to be paid to the United States Treasury as a condition of approval of the assignment, transfer, ownership change, or reportable eligibility event (see §1.2114).

* * * * *

7. In §1.2112, add new paragraphs (b)(1)(iii) and (b)(2)(vii), redesignate paragraph (b)(1)(iii) as (b)(1)(iv), and revise redesignated paragraph (b)(1)(iv) and paragraphs (b)(2)(iii) and (v) of to read as follows:

§1.2112 Ownership disclosure requirements for applications.

* * * * *

(b) * * *

(1) * * *

(iii) List all parties with which the applicant has entered into arrangements for the spectrum lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum.
(iv) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: The applicant, its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship; and if a consortium of small businesses, the members comprising the consortium.

* * * * *

(2) * * *

(iii) List and summarize all agreements or instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business under the applicable designated entity provisions, including the establishment of de facto or de jure control or the presence or absence of impermissible and attributable material relationships. Such agreements and instruments include articles of incorporation and bylaws, partnership agreements, shareholder agreements, voting or other trust agreements, management agreements, franchise agreements, spectrum leasing arrangements, spectrum resale (including wholesale) arrangements, and any other relevant agreements (including letters of intent), oral or written;

(iv) * * *

(v) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: the applicant, its affiliates, its controlling interests, affiliates of its controlling interests, and parties with which it has attributable material relationships; and if a consortium of small businesses, the members comprising the consortium; and

(vi) * * *

(vii) List and summarize any agreements in which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the spectrum capacity of the license that is the subject of the application.

8. Add new section 1.2114 to read as follows:

§ 1.2114 Reporting of Eligibility Event.

(a) A designated entity must seek Commission approval for all reportable eligibility events. A reportable
eligibility event is:

(1) Any spectrum lease (as defined in § 1.9003) or resale arrangement (including wholesale agreements) with one entity or on a cumulative basis that would cause a licensee to lose eligibility for installment payments, a set-aside license, or a bidding credit (or for a particular level of bidding credit) under § 1.2110 and applicable service-specific rules.

(2) Any other event that would lead to a change in the eligibility of a licensee for designated entity benefits.

(b) Documents listed on and filed with application. A designated entity filing an application pursuant to this section must –

(1) List and summarize on the application all agreements and arrangements (including proposed agreements and arrangements) that give rise to or otherwise relate to a reportable eligibility event. In addition to a summary of each agreement or arrangement, this list must include the parties (including each party's affiliates, its controlling interests, the affiliates of its controlling interests, its spectrum lessees, and its spectrum resellers and wholesalers) to each agreement or arrangement, as well as the dates on which the parties entered into each agreement or arrangement.

(2) File with the application a copy of each agreement and arrangement listed pursuant to this paragraph.

(3) Maintain at its facilities or with its designated agents, for the term of the license, the lists, summaries, dates, and copies of agreements and arrangements required to be provided to the Commission pursuant to this section.

(c) Application fees. The application reporting the eligibility event will be treated as a transfer of control for purposes of determining the applicable application fees as set forth in § 1.1102.

(d) Streamlined approval procedures.

(1) The eligibility event application will be placed on public notice once the application is sufficiently complete and accepted for filing (see § 1.933).

(2) Petitions to deny filed in accordance with § 309(d) of the Communications Act must comply with the provisions of § 1.939, except that such petitions must be filed no later than 14 days following the date of the Public Notice listing the application as accepted for filing.
(3) No later than 21 days following the date of the Public Notice listing an application as accepted for filing, the Wireless Telecommunications Bureau (Bureau) will grant the application, deny the application, or remove the application from streamlined processing for further review.

(4) Grant of the application will be reflected in a Public Notice (see § 1.933(a)(2)) promptly issued after the grant.

(5) If the Bureau determines to remove an application from streamlined processing, it will issue a Public Notice indicating that the application has been removed from streamlined processing. Within 90 days of that Public Notice, the Bureau will either take action upon the application or provide public notice that an additional 90-day period for review is needed.

(e) Public notice of application. Applications under this subpart will be placed on an informational public notice on a weekly basis (see § 1.933(a)).

(f) Contents of the application. The application must contain all information requested on the applicable form, any additional information and certifications required by the rules in this chapter, and any rules pertaining to the specific service for which the application is filed.

(g) The designated entity is required to update any change in a relationship that gave rise to a reportable eligibility event.
APPENDIX C

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Further Notice of Proposed Rule Making ("Further Notice") in WT Docket No. 05-211. The Commission sought written public comment in the Further Notice on possible changes to its competitive bidding rules, as well as on the IRFA. One commenter addressed the IRFA. This Final Regulatory Flexibility Analysis conforms to the IRFA.

A. Need for, and Objectives of, the Second Report and Order

This Second Report and Order adopts modifications to the Commission's rules for determining the eligibility of applicants for size-based benefits in the context of competitive bidding. Over the last decade, the Commission has engaged in numerous rulemakings and adjudicatory investigations to prevent companies from circumventing the objectives of the designated entity eligibility rules. To that end, in determining whether to award designated entity benefits, the Commission adopted a strict eligibility standard that focused on whether the applicant maintained control of the corporate entity. The Commission's objective in employing such a standard was "to deter the establishment of sham companies in a manner that permits easy resolution of eligibility issues without the delay of administrative hearings." The Commission intends its small business provisions to be available only to bona fide small businesses.

Consequently, the rules as modified by the Second Report and Order provide that certain material relationships of an applicant for designated entity benefits will be a factor in determining the applicant's eligibility. The Second Report and Order provides that if an applicant or licensee has agreements that together enable it to lease or resell more than 50 percent of the spectrum capacity of any individual licenses, the applicant or licensee will be ineligible for designated entity benefits. Further, the Second Report and Order also provides that if an applicant or licensee has agreements with any other entity, including entities or individuals attributable to that other entity that enable the applicant or licensee to lease or resell more than 25 percent of the spectrum capacity of any individual licenses, the other entity will be attributed to the applicant or licensee when determining the applicant's or licensee's eligibility for designated entity benefits. Finally, the modifications of the Second Report and Order strengthen the Commission's unjust enrichment rules to better deter attempts at circumvention and to recapture designated entity benefits when there has been a change in eligibility on a license-by-license basis. Similarly, to ensure our continued ability to safeguard the award of designated entity benefits, we provide

205 Id. at 2397 ¶ 277.
clarification regarding how the Commission will implement its rules concerning audits and we refine our rules with respect to the reporting obligations of designated entities.

These rule modifications will enhance the Commission's ability to carry out Congress's statutory plan in accordance with the intent of Congress that every recipient of designated entity benefits uses its licenses directly to provide facilities-based telecommunications services for the benefit of the public. In making these changes to the rules, the Commission takes another important step in fulfilling its statutory mandate to facilitate the participation of small businesses in the provision of spectrum based services.209

B. Summary of Significant Issues Raised By Public Comment in Response to the IRFA

The National Telecommunications Cooperative Association filed comments in response to the IRFA stating, among other things, that the Commission must take steps to minimize the economic impact of its proposed rules on small entities. NTCA asserts that the Commission must tailor its rules narrowly enough to target only real abuse, rather than capturing all rural telephone companies with any ties to a large in-region wireless provider, or it should exempt rural telephone companies from the rules' provision.210

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.211 The RFA generally defines the term "small entity" as having the same meaning as the terms "small organization," "small business," and "small governmental jurisdiction." The term "small business" has the same meaning as the term "small business concern" under the Small Business Act.213 A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."214 Nationwide, as of 2002, there were approximately 1.6 million small organizations.215 The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."216 Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.217 We estimate that, of this total, 84,377 entities were

210 Comments of NTCA at 9.
211 5 U.S.C. § 603(b)(3).
212 Id. § 601(6).
213 Id. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." Id. § 601(3).
214 Id. § 601(4).
217 U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.
"small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

The changes and additions to the Commission's rules adopted in the Second Report and Order are of general applicability to all services, applying to all entities of any size that seek eligibility to participate in Commission auctions as a designated entity and/or that hold licenses won through competitive bidding that are subject to designated entity benefits. Accordingly, this FRFA provides a general analysis of the impact of the proposals on small businesses rather than a service by service analysis. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. In all of our auctions held to date, 1,975 out of a total of 3,545 qualified bidders either have claimed eligibility for small business bidding credits or have self-reported their status as small businesses as that term has been defined under rules adopted by the Commission for specific services. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of changes in control, changes in material relationships or assignments or transfers, unjust enrichment issues are implicated.

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

The Commission will require additional information from applicants in order to ensure compliance with the policies and rules adopted by the Second Report and Order. For example, designated entity applicants that have filed applications to participate in an auction for which bidding will begin on or after the effective date of the rules, will be required to amend their applications on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to the Commission's rules effective as of the date of the statement. In addition, the Commission adopts rules to make modifications, as necessary, to FCC forms related to auction, licensing, and leasing applications. Specifically, the modifications will require that designated entities report any relevant material relationship(s), as defined in newly adopted sections of 1.2110, reached after the date the rules are published in the Federal Register, even if the material relationship between the designated entity and the other entity would not have triggered a reporting requirement under the rules prior to this Second Report and Order.

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218 We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. Id.

219 See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

220 This figure is as of March 29, 2006.

221 See generally 47 C.F.R. §§ 1.948, 1.9020(i), 1.9030(h), (i).
E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule or any part thereof for small entities."\(^\text{222}\)

The Further Notice sought comment on several options for modifying its designated entity eligibility rules and specifically sought comment from small entities. The options included various ways to consider whether the Commission should award designated entity benefits where an applicant for such benefits also had financial or operational agreements with a larger entity. In considering these options, for the purposes of determining designated entity eligibility, the Commission defined the effect of entering certain agreements. By adopting the rules in the Second Report and Order, the Commission will enhance its ability to carry out Congress's statutory plan that every recipient of designated entity benefits uses their licenses directly to provide facilities-based telecommunications services, for the benefit of the public.

F. Report to Congress

The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA.\(^\text{223}\) In addition, the Commission will send a copy of the Second Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and the FRFA (or summaries thereof) will also be published in the Federal Register.

\(^{222}\) See 5 U.S.C. § 603.

\(^{223}\) See id. § 801(a)(1)(A).