

which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

D. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

44. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests.

45. In the *Lower 700 MHz Report & Order*, the Commission determined that three levels of bidding credits were appropriate for the MSA/RSA licenses in the C block and that the licenses in the D block would be limited to two levels of bidding credits. Aloha and Cavalier urge that the Commission apply three levels of bidding credits to the EAG licenses in the D block. Because the bidding credit levels were adopted by the Commission in its Lower 700 MHz band proceeding, they were not a matter upon which the Bureau sought comment. Accordingly, for Auction No. 49, bidding credits will be available to small and very small businesses and entrepreneurs, or consortia thereof, as defined in 47 CFR 27.702 for the Lower 700 MHz band licenses:

- A bidder with attributed average annual gross revenues of not more than \$40 million for the preceding three years ("small business") receives a 15 percent discount on its winning bids for Lower 700 MHz band licenses;
- A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years ("very small business") receives a 25 percent discount on its winning bids for Lower 700 MHz band licenses;
- A bidder with attributed average annual gross revenues of not more than \$3 million for the preceding three years ("entrepreneur") receives a 35 percent discount on its winning bids for the MSA/RSA licenses in the Lower 700 MHz band. This definition applies only with respect to licenses in Block C (710–

716 MHz and 740–746 MHz) as specified in 47 CFR 27.5(c)(1).

46. A bidder that qualifies as an entrepreneur may bid on EAG licenses in Block D, but will only receive a 25 percent bidding credit on any EAG license that it wins. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent, 25 percent, or 35 percent bidding credit on its winning bid, but only one credit per license.

ii. Tribal Land Bidding Credit

47. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. See section V.E. of the *Auction No. 49 Procedures Public Notice*.

iii. Applicability of Part 1 Attribution Rules

48. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the Part 1 proceeding. Part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 49. Accordingly, the "controlling interest" standard as set forth in the part 1 rules will be in effect for Auction No. 49.

49. *Control.* The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control.* *De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

50. *Attribution for small, very small business and entrepreneur eligibility.* In determining which entities qualify as

small, very small businesses or entrepreneurs, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

51. A consortium of small businesses, very small businesses or entrepreneurs is a "conglomerate organization formed as a joint venture between or among mutually independent business firms," each of which *individually* must satisfy the definition of small business, very small business or entrepreneur in §§ 1.2110(f), 27.702. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small business, very small business or entrepreneur credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

52. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small, very small businesses or entrepreneurs (or consortia of small, very small businesses or entrepreneurs) for this auction.

53. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

54. *Small business, very small business, or entrepreneur eligibility (Exhibit C).* Entities applying to bid as small or very small businesses or