

(1) November 20, 1996 letter to Ms. Kathleen C. Callahan, Director of the Division of Environmental Planning and Protection from Deputy Commissioner David Sterman providing a SIP revision for Tenneco Gas Pipeline Company.

(2) February 24, 1997 letter to Ronald Borsellino, Chief of the Air Programs Branch from Donald H. Spencer, P.E., providing supplemental information for Tenneco Gas Pipeline Company's Compressor Station #245.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 22, 24, 27, 73, 80, 90, 95 and 101

[WT Docket No. 97-82; FCC 03-98]

Competitive Bidding Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses five petitions for reconsideration filed in response to the Commission's Part 1 *Order on Reconsideration of the Third Report and Order, and Fifth Report and Order*. The Commission also adopts several minor modifications and revisions to certain part 1 general competitive bidding rules to provide specific guidance to auction participants and to streamline the competitive bidding regulations.

DATES: Effective September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Regina Martin, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, adopted on April 22, 2003 and released on May 8, 2003. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

I. Overview

1. In the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, the Commission addresses five petitions for reconsideration filed in response to the Commission's *Order on Reconsideration of the Part 1 Third Report and Order*, 65 FR 52401 (August 29, 2000), and *Fifth Report and Order*, 65 FR 52323 (August 29, 2000), which clarified and amended the general competitive bidding rules for all auctionable services.

2. Specifically, in the *Order on Reconsideration of the Part 1 Fifth Report and Order*, the Commission:

- Clarifies that in calculating an applicant's gross revenues under the controlling interest standard, the personal net worth, including personal income, of its officers and directors will not be attributed to the applicant. To the extent that the officers and directors of the applicant are controlling interest holders of other entities, the Commission will attribute the gross revenues of those entities to the applicant.

- Establishes a narrow exemption for the officers and directors of a rural telephone cooperative so that the gross revenues of the affiliates of a rural telephone cooperative's officers and directors need not be attributed to the applicant. Specifically, the gross revenues of the affiliates of an applicant's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets *all* of the following conditions: (i) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law; (ii) the applicant (or the controlling interest) is a "rural telephone company" as defined by the Communications Act; and (iii) the applicant (or the controlling interest) is eligible for tax-exempt status under the Internal Revenue Code. However, the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant.

- Declines to revise the controlling interest standard to exclude entities operating under control group structures.

- Modifies the Commission's part 1 default payment rule, § 1.2104(g)(2), to incorporate the combinatorial bidding default rule adopted in the *700 MHz Second Memorandum Opinion and Order*.

- Revises the part 1 rules to make certain conforming edits in the following areas: (i) License default; (ii) definition of consortium; (iii) women- and minority-owned businesses; (iv) clarification of the attribution rule; (v) ownership disclosure requirements; and (vi) short-form disclosure requirements for small or very small business consortiums. Additionally, technical edits are made to Commission rules that refer to service-specific competitive bidding rules that have been removed, revised, or modified.

3. In the *Second Order on Reconsideration of the Part 1 Third Report and Order*, the Commission:

- Dismisses a repetitive challenge to modifications to the installment payment rules adopted in the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998) and the *Order on Reconsideration of the Part 1 Third Report and Order*.

- Reorganizes § 1.2112(a) to move the requirement that each application fully disclose all "real party or parties in interest" into § 1.2112(a)(1). The Commission also conforms § 1.2112(a)(1) to the disclosure requirements as set forth in § 1.919(e) to ensure a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant.

II. Order on Reconsideration of the Part 1 Fifth Report and Order

A. Controlling Interest Standard

4. In the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), the Commission adopted as its general attribution rule a controlling interest standard, § 1.2110(c)(2), to be used for determining which applicants are eligible for small business status. The attribution rule is significant because, among other things, it is used to determine which applicants qualify as small businesses and therefore, may apply for bidding credits if they are available in a particular service.

5. Under the controlling interest standard, the Commission attributes to the applicant the gross revenues of the applicant, its controlling interests, the applicant's affiliates, and the affiliates of the applicant's controlling interests, in assessing whether the applicant is eligible for the Commission's small business provisions. Section 1.2110(c)(2)(i) defines a controlling interest as including "individuals or entities with either *de jure* or *de facto* control." Thus, there may be more than one "controlling interest" whose gross revenues must be counted. The premise