

of this rule is that all parties that control an applicant or have the power to control an applicant, and such parties' affiliates, will have their gross revenues counted and attributed to the applicant in determining the applicant's eligibility for small business status or for any other size-based status using a gross revenue threshold.

#### Attribution of Officers and Directors

##### *Personal Net Worth of Officers and Directors.*

6. Generally, the Commission has excluded personal net worth, including personal income and assets, from attribution for purposes of eligibility for small business provisions. In making this determination, the Commission has stated that attribution of personal net worth was not necessary because most wealthy individuals are likely to have their wealth tied to the ownership of other businesses. The Commission finds this rationale equally applicable here. Accordingly, for purposes of the controlling interest standard, the Commission clarifies that in calculating an applicant's gross revenues under § 1.2110, the personal net worth, including personal income and assets, of its officers and directors will *not* be attributed to the applicant. This clarification is consistent with the Commission's decisions in several service-specific rulemakings. For instance, in using the controlling interest standard to determine the eligibility of applicants in the 929–931 MHz Paging Service ("Auction No. 26") for small business bidding credits, the Commission made clear that the personal net worth, including personal income, of controlling interests was not attributable to the applicant.

7. Personal income of officers and directors, however, is distinguishable from the gross revenues received by any business entities such individuals may control. For example, if an officer or director were to operate a separate business, the gross revenues derived from that separate business would be attributed to the applicant, although any personal income from such separate business would not be attributed. Further, if an officer or director of an applicant were an affiliate of another entity through any ownership interest or other means of affiliation, the gross revenues of such entity would be attributed to the applicant, whereas any income derived directly by an officer or director from that entity would be considered personal income and not attributed to the applicant. Finally, applicants are reminded that by operation of the Commission's rules all affiliates of controlling interests are

attributable to the applicant. Thus, although the Commission does not attribute to the applicant the personal income of its officers and directors, to the extent that the officers and directors are controlling interest holders of other entities, the Commission attributes the gross revenues of those entities to the applicant.

##### *Application of Attribution Rule to the Officers and Directors of a Rural Telephone Cooperative.*

8. The Commission grants Rural Telecommunications Group's ("RTG") request to exclude from attribution the gross revenues of entities controlled by a rural telephone cooperative's officers and directors, by providing a narrow exemption only available where the gross revenues of the affiliates of a rural telephone cooperative's officers and directors would otherwise be attributable based solely on their status as officers and directors of the rural telephone cooperative applicant or as officers and directors of a rural telephone cooperative that controls the applicant. However, if an officer or director of a rural telephone cooperative is considered a controlling interest of the applicant under another section of the controlling interest attribution rule, this exemption does not apply. For example, if an officer or director of the rural telephone cooperative manages its operations pursuant to a management agreement and either has authority to make certain decisions regarding the services offered by the applicant, or significantly influences such decisions, the gross revenues of other entities controlled by the officer or director would be attributed to the rural telephone cooperative. The Commission denies Neoworld's suggestion to broadly exempt officers and directors from the controlling interest standard where an applicant institutes a contractual mechanism in an effort to insulate officers and directors from involvement in an applicant's telecommunications activities.

##### *Limited Exemption for Rural Telephone Cooperatives.*

9. In light of the unique nature of rural telephone cooperatives, an exemption from the requirement that the gross revenues of entities controlled by a rural telephone cooperative's officers and directors are attributed to the applicant would not undermine the purpose of the controlling interest attribution rule. The attribution rules are intended to eliminate incentives for entities to create small business "fronts" that would enable large firms to secure a benefit to which they are not entitled, *i.e.*, small business bidding credits. The Commission agrees with the

commenters' explanation that the key differences between rural cooperatives and other structures make it highly unlikely that rural telephone cooperatives would be able to participate in the types of sham transactions the rule is designed to protect against. For example, ownership and control of the cooperative remain in the hands of patrons of the cooperative (*i.e.*, telephone subscribers), rather than in non-patron equity investors as is often the case with traditional corporations or other business forms. Additionally, unlike traditional corporations or other business forms, the outside business interests of individual officers and directors of rural telephone cooperatives are not financial and management resources available to the cooperative. Further, because of the democratic structure of cooperatives, the patrons of each cooperative control the cooperative. Finally, members contribute equity to, and control, the capital of the cooperative, as opposed to outside investors. In light of these factors, grant of RTG's petition does not undermine the purpose of the controlling interest attribution rule.

10. Accordingly, based upon the comments received, the Commission adopts 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. In the Commission's experience, rural telephone cooperatives frequently create wholly owned subsidiaries, or similar entities, to participate in Commission auctions. Accordingly, this exemption for the applicant's officers and directors would also extend to situations where the applicant is not a rural telephone cooperative but is controlled by an eligible rural telephone cooperative. For example, X is a rural telephone cooperative that satisfies all the elements of the exemption. X creates a subsidiary Y. Y's officers and directors are controlling interests solely based upon their status as officers and directors—*i.e.*, solely pursuant to § 1.2110(c)(2)(ii)(F). Y has no other controlling interests. Then, for purposes of determining eligibility for small business provisions, the gross revenues of the affiliates of X's officers and directors and affiliates of Y's officers and directors are not attributed to Y. If, however, Y has another controlling interest (other than Y's officers and directors and X's officers and directors) that is not an eligible rural telephone cooperative or controlled by an eligible