

rural telephone cooperative, then the exemption does not apply to Y's officers and directors or such controlling interest's officers or directors. However, the gross revenues of the affiliates of X's officers and directors would not be attributed to Y. 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;<sup>1</sup> (ii) the applicant (or the controlling interest) is a "rural telephone company" as defined by the Communications Act;<sup>2</sup> and (iii) the applicant (or the controlling interest) is eligible for tax-exempt status under the Internal Revenue Code. 26 U.S.C. 1381(a)(2)(C); 26 U.S.C.A. 501(c)(12). 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. Further, the mere presence of an eligible rural telephone cooperative as a controlling interest will not ensure that the exemption is wholly applicable to the applicant. Thus, where an applicant is

not an eligible rural telephone cooperative, if the applicant has a controlling interest (other than the applicant's officers and directors or the eligible rural telephone cooperative's officers and directors) that is not an eligible rural telephone cooperative, or controlled by an eligible rural telephone cooperative, the exemption will not apply to the applicant's officers and directors or such controlling interest's officers and directors. However, in that situation, the gross revenues of the affiliates of the eligible rural telephone cooperative's officers and directors would not be attributed to the applicant. The exemption the Commission creates is appropriate because where the eligible rural cooperative ultimately controls the applicant, the gating criterion of the cooperative structure precludes the applicant from being a sham entity.

11. The exemption the Commission adopts is tailored to the factual assertions and policy arguments provided by commenters. The test the Commission adopts will ensure that the Commission's general assumptions regarding cooperatives hold true with respect to each applicant seeking to avail itself of this exemption. Thus, for example, the Commission is limiting this exemption only to those rural telephone cooperatives that are eligible for Federal tax-exempt status (*i.e.*, those that derive 85% or more of their income from subscribers). Adopting such an objective factor, as well as the other objective factors, will ensure that such exemption would be used only by *bona fide* community-based cooperatives, not sham entities. The Commission believes that this action will increase the number of rural telephone cooperatives that are eligible for small business status (and the corresponding bidding credits). Such a result will enhance the ability of rural telephone cooperatives to participate in spectrum auctions. This, in turn, will promote the deployment of advanced telecommunications services in rural areas as Congress mandated in section 309(j).

12. Accordingly, the Commission incorporates this exemption into the controlling interest standard contained in § 1.2110. If an applicant uses this exemption, its certification on its short-form application (FCC Form 175) that it "is qualified as a designated entity under § 1.2110" constitutes a certification that it is eligible for this narrow exemption. In addition, in the long-form application (FCC Form 601) and in the application for assignment or transfer of control (FCC Form 603), applicants seeking to use this exemption will be required to establish eligibility

for this exemption based on the factors listed.

13. Consistent with the policy objectives underlying the Commission's decision, the Commission grants three pending waiver requests filed by rural telephone cooperative applicants in Auction No. 44. Specifically, three winning bidders that are rural telephone cooperatives (or wholly-owned by rural telephone cooperatives) filed substantively identical requests for waiver of § 1.2110(c)(2)(ii)(F). See Applications to Participate in an FCC Auction (FCC 175) of Cable and Communications Corporation, Northeast Nebraska Telephone Company, and Poka Lambro Telecommunications, Ltd. (initially filed May 8, 2002) (respectively, the "C&C Application, Northeast Application, and Poka Lambro Application"). Short form applications for Auction No. 44, including the instant applications, may be viewed on the Commission's auctions Web site. See <https://auctionfiling.fcc.gov/form175/index.htm>. In connection with their demonstrations of eligibility for designated entity bidding credits, these applicants argued that the gross revenues of the affiliates of the cooperative's officers and directors should not be attributed to the cooperative. They note that the outside business interests of the cooperative's officers and directors "have no impact on the cooperative's ability to raise capital or compete for FCC licenses" due to the cooperative structure under which they are organized. The Commission believes that waiver of the requirement that the gross revenues of entities controlled by a rural telephone cooperative's officers and directors are to be attributed to the applicant would be consistent with its decision to adopt an exemption for rural telephone cooperatives and would promote the development of additional wireless services in their particular rural communities. Accordingly, consistent with the Commission's decision, it grants these waivers conditioned upon the submission to the Commission of information demonstrating the applicant's compliance with the factors adopted herein.

14. The Commission denies Neoworld's suggestion to broadly exempt officers and directors from the controlling interest standard where an applicant institutes a contractual mechanism to insulate officers and directors from involvement in an applicant's telecommunications activities. Generally, § 1.2110(c)(2)(ii)(F) reflects the corporate reality that business decisions and corporate policy

<sup>1</sup> A cooperative is defined pursuant to state law not federal law. Accordingly, the Commission requires that a rural telephone cooperative be validly organized as a cooperative under state law. See *e.g.*, New Mexico Cooperation Act, N.M. Stat. Ann. § 53-4-1 (Michie 1978); Colo. Rev. Stat. Ann. § 7-56-103 (West 2002).

<sup>2</sup> 47 U.S.C. 153(37). The term "rural telephone company" is defined in 47 U.S.C. 153(37) and in 47 CFR 1.2110(c)(4) and 51.5. Since passage of the Telecommunications Act of 1996, the Commission generally has used the statutory definition to determine which local exchange carriers can be classified as rural telephone companies. The statutory definition uses a range of standards, including the population of a jurisdiction and the number of access lines serving communities of various sizes. Specifically, section 153(37) states:

The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity—

(A) provides common carrier service to any local exchange carrier study area that does not include either—

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996. 47 U.S.C. 153(37).