

are established by a corporation's board of directors and officers. Providing a broad exemption for officers and directors of an applicant would ultimately underestimate the role of officers and directors in an organization; thereby potentially providing large businesses with a significant monetary benefit reserved only for eligible small businesses. Such a result is contrary to the Commission's intent when adopting the controlling interest rule. As the Commission noted in the *Part 1 Fifth Report and Order*, the Commission adopted the attribution rules to ensure that small business bidding credits are extended only to *bona fide* small businesses. Further, adoption of Newworld's drastic revision to the Commission's rules would essentially require the Commission to conduct a case-by-case review of the specific insulating mechanism employed to ensure that the arrangements are legitimate and are not sham transactions. In contrast, the exemption the Commission adopts for rural telephone cooperatives does not require such a case-by-case analysis. The cooperative's structure coupled with the factors identified serves as gating criteria obviating a need for such a case-by-case analysis.

Application of Controlling Interest Standard to Control Group Structures.

15. TeleCorp, Tritel, Poplar, and Summit ("Petitioners") request that the Commission revise the controlling interest standard to exclude entities operating under the Commission's previously adopted control group structure. Petitioners state that they are concerned that the controlling interest standard could be interpreted to provide that officers and directors are always considered to have a controlling interest even under a control group structure. Petitioners argue that a literal reading of the rule could be used to expand the definition of affiliates so that greater gross revenues and assets would be attributed on that basis alone. Specifically, Petitioners request that newly established affiliates of existing restricted C/F block licensees that were structured so as to establish their eligibility under a control group attribution rule be able to utilize the same structure used by the existing restricted C/F block licensee to establish their eligibility. The Petitioners did not indicate the context of their request, *i.e.*, whether they sought to use the control group attribution rule solely to determine eligibility to hold a restricted C/F block license, or also to determine if an unjust enrichment payment would be owed upon transfer of control or assignment of such a license.

16. To the extent Petitioners are seeking a modification to the Commission's rule, the Commission denies their petitions for reconsideration and affirms the Commission's decision in the *Part 1 Fifth Report and Order* to consider officers and directors as controlling interests in a licensee or applicant. However, to avoid similar questions in the future, the Commission restates the application of the attribution rules with respect to eligibility to hold restricted C/F block licenses. Generally, if an applicant does not hold a restricted C/F block license under the former control group rules it must use the controlling interest attribution rule to determine eligibility to hold restricted C/F block licenses, whether through auctions or through assignment or transfer of control. However, with respect to the acquisition of restricted C/F block licenses through assignment or transfer of control, wholly-owned subsidiaries and commonly controlled affiliates (whether newly formed or in existence prior to the adoption of the controlling interest attribution rule) that establish their eligibility directly through an existing restricted C/F block licensee, will be eligible to hold a C/F block restricted license to the same extent as the existing restricted C/F block licensees. Thus, in the context of an application to assign or transfer a restricted C/F block license, the eligibility of an existing restricted C/F block licensee (that obtained its license under the former control group rules) and its wholly owned subsidiaries and commonly controlled affiliates to hold such licenses (as opposed to eligibility for small business provisions such as bidding credits) may be determined without application of the controlling interest attribution rule. For example, X creates a wholly-owned subsidiary Y. X also has a commonly controlled affiliate Z. X obtained its restricted C/F block licenses under the former control group rules. W, an unrelated party, also obtained its restricted C/F block licenses under the former control group rules. W seeks to assign its restricted C/F block licenses to Y and Z. Because X, Y, and Z are commonly controlled, Y and Z may establish their eligibility to hold restricted C/F block licenses through X without application of the controlling interest attribution standard. Further, X, Y, and Z will continue to be eligible to hold restricted C/F block licenses provided they comply with the requirements of § 24.709. See *TeleCorp Order*, 16 FCC Rcd at 3725–26, ¶¶ 23–41. Significantly, X, Y, and Z can only exceed the total assets test by

permissible growth pursuant to § 24.709(a)(2). *Id.* at ¶ 29. This explanation does not alter the determination that, as stated in the *Part 1 Fifth Report and Order*, for all future C/F block auctions, all applicants will be subject to the attribution rules in effect at the time of filing their short-form applications.

17. For purposes of determining an assignee's or transferee's eligibility for benefits offered to small businesses, such as bidding credits and installment financing, and the application of the unjust enrichment provisions, all applicants will be subject to the attribution rules in effect at the time of filing their applications for assignment or transfer of control. The Commission has previously determined that the fact that an existing restricted C/F block licensee may choose to retain a control group structure does not exempt it from attributing the gross revenues of its affiliates, including the gross revenues of other entities controlled by its officers and directors, to the licensee for purposes of determining eligibility for small business provisions, such as bidding credits and installment financing.

B. Calculation of Default Payments in Combinatorial Bidding

18. The Commission incorporates into the part 1 general competitive bidding rules the combinatorial bidding default rule adopted in the *700 MHz Second Memorandum Opinion and Order*, 66 FR 10374 (February 15, 2001). The Commission adopts this provision because the effects of default in a combinatorial bidding auction are so detrimental to the integrity of the auctions system that they require a strong deterrent against insincere bidding and strategic default. As a commenter noted, in response to the *Auction No. 31 Combinatorial Bidding Comment Public Notice*, 65 FR 35636 (June 5, 2000), "[d]efault in a combinatorial auction has more far reaching consequences than does default in an auction of single items. In particular, a default in a combinatorial auction could affect the award of many other licenses and [could] be used strategically to do so." Comments of Aleksandar Pekec and Michael H. Rothkopf, "Making the FCC's First Combinatorial Auction Work Well" (filed June 9, 2000) at section 6. Thus, the rule as adopted in the *700 MHz Second Memorandum Opinion and Order* is necessary to adequately discourage defaults, deter frivolous or insincere bidding, and generally protect the integrity of the auction process. The rule will be used to calculate default