

Commission will assess a 25% interim default payment pending assessment of the final default payment after a subsequent auction. This procedure is appropriate because even under the most favorable set of circumstances for the defaulting bidder, *i.e.*, where the bid price for the package at the subsequent auction exceeds defaulted bid, the final default payment would be 25% of the defaulted bid.

#### *C. Licenses Subject to Auction After Default in Combinatorial Bidding Auctions*

21. When the Commission adopted the default rules, it stated, as a general rule, that in the event of default by a winning bidder, the best course of action would be to offer licenses for the spectrum in a subsequent auction. Currently, under the Commission's part 1 auction rules, if a bidder defaults on a bid (or bids), the Commission may offer the license(s) for the spectrum in a new auction or it may also offer the license(s) to the other highest bidders. In the *700 MHz Second Memorandum Opinion and Order*, the Commission determined that for combinatorial bidding in the Upper 700 MHz band if a bidder defaults on a package bid, the Commission would auction the licenses making up the package on which the party defaulted, and only those licenses. This would occur even if, under the combinatorial bidding procedures, a different set of packages would have won had the defaulting bidder not bid. As the Commission explained in that *700 MHz Second Memorandum Opinion and Order*, any other result would be extremely problematic in the context of combinatorial bidding. The Commission sees no reason to change this decision now. Accordingly, in all future combinatorial bidding auctions, the Commission will not offer the package or licenses to the next highest bidder and will instead auction the license(s) for the spectrum in a new auction.

#### *D. Conforming Edits to Competitive Bidding Rules*

22. The Commission revises or removes service-specific and/or part 1 competitive bidding rules 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. Also, technical edits are made to Commission rules that refer to service-specific competitive bidding rules that have been removed, revised, or modified.

23. *License default.* Section 1.2109, among other things, provides the conditions upon which a winning bidder will be deemed to have defaulted. Specifically, § 1.2109(b) states, in pertinent part, that "[i]f a winning bidder withdraws its bid \* \* \* the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in § 1.2104(g)(2)." However, § 1.2109(c) states, in pertinent part, that "[a] winning bidder who is found unqualified to be a licensee \* \* \* will be deemed to have defaulted and will be liable for the payment set forth in § 1.2104(g)(2)." The language regarding the dismissal of an application was inadvertently omitted from § 1.2109(c). Thus, the Commission revises § 1.2109(c) to add dismissal language to conform to § 1.2109(b).

24. *Definition of consortium.* The Commission's service-specific competitive bidding rules for several services define the terms "small business consortium" and "very small business consortium." However, neither of these terms are defined in the Commission's part 1 rules. To streamline the Commission's rules and eliminate redundancies, the Commission incorporates a definition of the term "consortium" into the part 1 rules. This definition is taken almost verbatim from the service-specific definitions. Accordingly, the Commission deletes the definitions of small and very small business consortium in the service-specific competitive bidding rules.

25. Further, the Commission has generally defined a "small or very small business consortium" as a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a small or very small business as defined on a service-specific basis. In the *Part 1 Third Report and Order*, the Commission, in clarifying the part 1 definition of affiliate, determined that a "consortium" for purposes of determining status as a designated entity will not be treated as a "joint venture" under the Commission's attribution standards. In that Order, however, the Commission failed to also revise the part 1 definition of a "small or very small business consortium." Thus, the Commission revises the part 1 rules to exclude the term "joint venture" from the definition of "consortium."

26. *Clarification of the attribution rules:* In the *Part 1 Fifth Report and Order*, the Commission established a

controlling interest standard for attributing to an applicant the gross revenues of the applicant, its affiliates, its controlling interest, and the affiliates of the applicant's controlling interests in determining which applicants qualify as small businesses. In doing so the Commission amended the part 1 competitive bidding rules to incorporate new rules adopting the controlling interest standard. Specifically, § 1.2110(c)(2)(ii)(F) provides, in pertinent part, that "[o]fficers and directors of an entity shall be considered to have a controlling interest in the entity." Under the controlling interest standard, however, a controlling interest includes individuals or entities, or groups of individuals or entities, that have control of the applicant under the principles of either *de jure* or *de facto* control. Therefore, the Commission revises § 1.2110(c)(ii)(F) to read, in pertinent part, that "[o]fficers and directors of an applicant shall be considered to have a controlling interest in the applicant."

27. Additionally, the Commission makes slight modifications to § 1.2110(b)(1)(i) to provide further guidance to applicants. Specifically, the term "their affiliates" in § 1.2110(b)(1)(i) includes both affiliates of the applicant and affiliates of the applicant's controlling interests.

28. *Disclosure requirements for small businesses.* Section 1.2112(a) of the Commission's rules formerly required all applications to participate in competitive bidding or for a license, authorization, assignment, or transfer of control to disclose certain information pertaining to controlling interests including "a list of names, addresses, and citizenship of all controlling interests of the applicants, as set forth in § 1.2110." In the *Part 1 Fifth Report and Order*, the Commission determined that only applicants claiming small business status would be required to disclose controlling interest information under § 1.2112. Accordingly, the controlling interest disclosure requirements from § 1.2112(a) were moved to § 1.2112(b) which applies to entities claiming eligibility for small business provisions. At the same time, § 1.2112(b) was divided into two parts: Paragraph (b)(1), applying to short-form applications; and paragraph (b)(2), applying to long-form applications. The controlling interest language from § 1.2112(a), however, was inadvertently only carried over to paragraph (b)(1) instead of in both paragraphs (b)(1) and (b)(2). In addition, in dividing § 1.2112(b) into two sections, the Commission failed to specifically mention applications for an assignment