

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act, 5 U.S.C. 604, the Commission prepared a Supplemental Final Regulatory Flexibility Analysis for the *Order on Reconsideration of the Part 1 Fifth Report and Order*. The Commission also prepared a second Supplemental Final Regulatory Flexibility Analysis for the *Second Order on Reconsideration of the Part 1 Third Report and Order*.

B. Paperwork Reduction Act Analysis

36. This *Second Order on Reconsideration of the Part 1 Third Report and Order*, and *Order on Reconsideration of the Part 1 Fifth Report and Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It was submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public and other Federal agencies are invited to comment on the new or modified collection(s) contained in this proceeding.

V. Supplemental Final Regulatory Flexibility Analysis (Order on Reconsideration of the Part 1 Fifth Report and Order)

37. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the report and order section of the *Part 1 Fifth Report and Order* in WT Docket No. 97-82. The Commission received four petitions for reconsideration, two comments, two reply comments, and *ex parte* filings from three parties in response to the *Part 1 Fifth Report and Order*. This present supplemental FRFA (SFRFA) conforms to the RFA.

A. Need for, and Objectives of, the Order on Reconsideration of the Part 1 Fifth Report and Order

38. In August 2000, the Commission released the most recent comprehensive order in the part 1 proceeding, the *Order on Reconsideration of the Part 1 Third Report and Order*, *Part 1 Fifth Report and Order*, and *Part 1 Fourth Further Notice of Proposed Rule Making*, which clarified and amended the general competitive bidding rules for all auctionable services. Most significantly, in the *Part 1 Fifth Report and Order*, the Commission adopted, as its general attribution rule, a controlling interest standard to be used for determining

which applicants are eligible for small business status.

39. The Commission received petitions for reconsideration from several parties in response to the *Part 1 Fifth Report and Order*. Petitioners request reconsideration of certain aspects of the new controlling interest standard, § 1.2110(c)(2), by which 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. Specifically, petitioners request reconsideration of the attribution of the personal net worth of an applicant's officers and directors to the applicant, application of the controlling interest attribution rule as applied to the officers and directors of rural telephone cooperatives, and application of the controlling interest standard to entities operating under the former control group rules. In the *Order on Reconsideration of the Part 1 Fifth Report and Order* the Commission resolves the petitions for reconsideration filed in response to the *Part 1 Fifth Report and Order*.

40. First, the Commission clarifies that in calculating an applicant's gross revenues under the controlling interest standard, the personal net worth, including personal income and assets, 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. Second, 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. 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. Third, the Commission declines to revise the controlling interest standard to exclude entities operating under control group structures. At the same time, the Commission restates the application of the attribution rules with respect to eligibility to hold restricted C/F block licenses.

41. Lastly, on its own motion, the Commission also modifies the 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*. The Commission also makes certain ministerial conforming amendments and rule revisions to the part 1 general competitive bidding rules, and portions of the service-specific competitive bidding rules, to conform to the new rule revisions in part 1 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. Finally, technical edits are made to Commission rules that refer to service-specific competitive bidding rules that have been removed or revised.

B. Summary of Significant Issues Raised by Public Comments in Response to the FRFA Contained in the Order on Reconsideration of the Part 1 Third Report and Order

42. No petitions for reconsideration or comments were filed directly in response to the FRFA. However, the Commission did receive petitions for reconsideration and comments on issues affecting small businesses. As previously noted, in this SFRFA, petitioners request reconsideration of certain aspects of the new controlling interest standard, to be used for determining which applicants are eligible for small business status. Most notably, under the controlling interest standard, officers and directors of any applicant will be considered to have a controlling interest in the applicant. Thus, in calculating an applicant's gross revenues, the gross revenues of other entities controlled by such officers and directors must be included. Specifically, RTG seeks an exemption for rural telephone cooperatives from 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. NTCA