

reserved only for eligible small businesses.

50. *Application of attribution rule to rural telephone cooperatives.* 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. This exemption for the applicant's officers and directors extends to situations where the applicant is not a rural telephone cooperative but is controlled by an eligible rural telephone cooperative. 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.

51. The Commission limits this exemption to only those rural telephone cooperatives that are eligible for Federal tax-exempt status, which 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). At the same time, the Commission concludes that an across-the-board change to § 1.2110(c)(2)(ii)(F), as proposed as an alternative by Neoworld, 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, is not warranted. Such a drastic revision to the Commission's rules would require additional scrutiny on the Commission's

part to ensure that such contractual arrangements are legitimate and are not sham transactions that could undercut the basis of the attribution rule.

52. *Application of controlling interest standard to control group structures.* The Commission affirms its 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 takes this opportunity, in the *Order on Reconsideration of the Part 1 Fifth Report and Order*, to clarify 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.

53. 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) may be determined without application of the controlling interest attribution rule. For all future C/F block auctions, however, pursuant to the Commission's determination in the *Part 1 Fifth Report and Order*, all applicants will be subject to the attribution rules in effect at the time of filing their short-form applications. This decision will prevent large firms from illegitimately seeking small business status. A less restrictive alternative would frustrate the Commission's achievement of its goal of preventing large firms from gaining benefits only reserved for smaller entities.

54. *Conforming edits to the Part 1 competitive bidding rules.* The Commission, on its own motion, 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. These rule revisions are consistent with the Commission's efforts to provide specific guidance to future auction participants and to streamline the competitive bidding regulations by eliminating certain service-specific rules.

F. Report to Congress

55. The Commission will send a copy of the *Second Order on Reconsideration of the Third Report and Order*, and *Order on Reconsideration of the Fifth Report and Order*, including this SFRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Order on Reconsideration of the Third Report and Order*, and *Order on Reconsideration of the Fifth Report and Order*, including this SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Second Supplemental Final Regulatory Flexibility Analysis (Second Order on Reconsideration of the Part 1 Third Report and Order)

56. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Supplementary Final Regulatory Flexibility Analysis (SFRFA) was incorporated into the report and order section of the *Order on Reconsideration of the Part 1 Third Report and Order* in WT Docket No. 97–82. The Commission received three petitions for reconsideration and one reply comment in response to the *Order on Reconsideration of the Part 1 Third Report and Order*. This present second SFRFA conforms to the RFA.

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

57. 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. The Commission received petitions for reconsideration from several parties in response to the *Order on Reconsideration of the Part 1 Third Report and Order*. Specifically, the Commission received a petition for reconsideration, filed by NextWave, of the Commission's installment payment rules. In this *Second Order on*