

balance due, would be assessed a substantial penalty. Any bidder that withdraws a high bid during an auction before the Commission declares bidding closed would be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid. If a license is re-offered by auction, the "winning bid" would refer to the high bid in the auction in which the license is re-offered. If a license is re-offered in the same auction, the "winning bid" would refer to the high bid amount, made subsequent to the withdrawal, in that auction. If the subsequent high bidder also withdraws its bid, that bidder would be required to pay a penalty equal to the difference between its withdrawn bid and the amount of the subsequent willing bid the next time the license is offered by the Commission. If a license which is the subject of withdrawal or default is not re-auctioned, but is instead offered to the highest losing bidders in the initial auction, the "winning bid" would refer to the bid of the highest bidder who accepts the offer. Losing bidders would not be required to accept the offer, and therefore may decline without penalty. The Commission seeks comment on these proposals.

28. The Commission also proposes that after bidding closes, a defaulting winner would be assessed an additional penalty of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. See 47 CFR 1.2104(g), 1.2109. If a default or disqualification involves an applicant's gross misconduct, misrepresentation, or bad faith, the Commission would be able to declare the applicant ineligible to bid in future auctions or take other action. These penalties would adequately discourage default and ensure that bidders have adequate financing and meet all eligibility and qualification requirements.

29. Finally, the Commission proposes that if the MTA winner defaults, is otherwise disqualified after having made the required down payment, or the license is terminated or revoked, then the Commission would re-auction the license. If the default occurs within five days after bidding has closed, the Commission would retain the discretion to offer the license to the second highest bidder at its final bid level, and thereafter to other bidders (in descending order of their bid amounts). If only a small number of relatively low-value licenses were to be re-auctioned

and only a short time has passed since the initial auction, the Commission would have authority to choose to offer the license to the highest losing bidders if the cost of running another auction exceed the benefits. The Commission seeks comment on these proposals.

30. *Long-Form Applications.* If the winning bidder makes the down payment in a timely manner, the Commission proposes the following procedures: A long-form application filed on FCC Form 600 must be filed by a date specified by Public Notice, generally within ten business days after the close of bidding. Designated entities must also submit evidence to support their claim to any special provision, such as bidding credits or installment payment options. Once the long-form is accepted for filing, the Commission will issue a Public Notice announcing this fact, triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and is otherwise satisfied that the applicant is qualified, the license(s) will be granted to the auction winner. See generally 47 CFR 90.163–90.166. The Commission seeks comment on this proposal.

31. *Petitions to Deny and Limitations on Settlements.* A party filing a petition to deny will be required to demonstrate standing and meet all other applicable filing requirements. 47 CFR 90.163. The Commission also adopted "greenmail" restrictions to prevent filing of speculative applications and pleadings (or threats of the same) designed to extract money from 900 MHz SMR applicants. 47 CFR 90.162. Thus, the consideration than an applicant or petitioner is permitted to receive for agreeing to withdraw an application or petition to deny is limited to the legitimate and prudent expenses of the withdrawing party. Finally, the Commission need not conduct a hearing before denying an application if it determines that an applicant is not qualified and no substantial issue of fact exists concerning that determination.

32. *Transfer Disclosure Requirements.* In the 1993 Budget Act amendments to the Communications Act, Congress directed the Commission to "require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits. 47 U.S.C. 309(j)(4)(E)). To ensure that these statutory requirements are met, the Commission concluded in the *Auctions Second Report & Order*, 59 FR 22980 (May 4, 1994), that transfer disclosure requirements will enable the Commission to accumulate the necessary data to evaluate auction

designs and judge whether licenses have been issued for bids that fall short of the true market value of the license. The Commission tentatively concludes to apply these same requirements to all 900 MHz SMR licenses obtained through the competitive bidding process. See 47 CFR 1.2111(a). Generally, licensees transferring their licenses within three years after the initial license grant would be required to file, together with their transfer applications, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of the license. The Commission would give particular scrutiny to auction winners who have not yet begun commercial service and who seek approval for a transfer of control or assignment of their licenses, so it may determine if any unforeseen problems relating to unjust enrichment have arisen outside the small business context. The Commission seeks comment on this proposal.

33. *Performance Requirements.* The Communications Act requires the Commission to "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services. 47 U.S.C. 309(j)(4)(B). The Commission tentatively concludes that additional performance requirements, beyond those already provided in the service rules, and that coverage requirements adopted in this Order will sufficiently prevent warehousing of spectrum. The Commission seeks comment on this proposal.

D. Treatment of Designated Entities

34. *Overview and Objectives.* Congress provided that in establishing eligibility criteria and bidding methodologies, the Commission shall "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." 47 U.S.C. 309(j)(3). Congress also provided that to promote these objectives, the Commission shall "consider alternative payment schedules and methods of calculation, including lump sums or