

wireline service area and the partitioned area.

(e) Each licensee in each partitioned area will be responsible for meeting the construction requirements in its area (see § 90.665).

#### § 90.814 Definitions.

(a) Scope. The definitions in this section apply to §§ 90.810 through 90.813, unless otherwise specified in those sections.

(b) *Small Business: Consortium of Small Businesses.* (1) A small business is an entity that, together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, have average gross revenues for the three preceding years of less than \$3 million.

(2) A small business consortium is conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies the definition of a small business in paragraphs (b)(1) and (b)(2) of this section.

(c) *Rural Telephone Company.* A rural telephone company is a local exchange carrier having 100,000 or fewer access lines, including all affiliates.

(d) *Gross Revenues.* Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of calendar years preceding January 1, 1994, or, if audited financial statements were not prepared on a calendar-year basis, of the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For applications filed after December 31, 1994, gross revenues shall be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

(e) *Business Owned by Members of Minority Groups and/or Women.* A business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens control the applicant, have at least 50.1 percent equity ownership and, in the case of a corporate applicant, a 50.1 percent voting interest. For applicants that are partnerships, every general partner either must be a

minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at least 50.1 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interest of minorities and women are to be calculated on a fully-diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis.

(f) *Members of Minority Groups.* Members of minority groups includes Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders.

(g) *Nonattributable Equity.* Nonattributable equity shall mean:

(1) For corporations, voting stock or non-voting stock that includes no more than 25 percent of the total voting equity, including the right to vote such stock through a voting trust or other arrangement;

(2) For partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

(h) *Affiliate.* (1) *Basis for Affiliation.* An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant (both referred to herein as "the applicant") if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(iv) Has an "identity of interest" with the applicant.

(2) *Nature of control in determining affiliation.*

(i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is

immaterial whether it is exercised so long as the power to control exists.

*Example for paragraph (h)(2)(i).* An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

*Example for paragraph (h)(2)(iii).* In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

*Example 1 for paragraph (h)(3) introductory text.* Two shareholders in Corporation Y each have attributable interests in the same SMR application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity of interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

*Example 2 for paragraph (h)(3) introductory text.* One shareholder in