

tentatively concluded that it should not be bound to follow the recommendations of the panel, but that it should evaluate the recommendations in light of all the submissions and comments in the record. However, it solicited comment on whether the views of the panel (especially where consensus is reached) should be entitled to greater, or perhaps controlling, deference. The Commission also sought comment on what restrictions, if any, the panel members should have vis-à-vis contact with the applicants; e.g., whether they should have authority to seek further information pertaining to the preference request or to perform field evaluations. Finally, the Commission sought comment on any additional conflict of interest requirements (e.g., related to financial interests) it should impose upon outside experts.

7. With respect to the second area addressed by the GATT legislation, the Commission stated in the Further Notice that its concerns about unjust enrichment are lessened by the statutorily-mandated payment requirement for pioneer's preference grantees in auctionable services and the formula for calculating per capita bid amounts. Nonetheless, it stated that it remained concerned about the effect of competitive bidding on the pioneer's preference program. It sought comment on a more stringent showing by a preference applicant in a service in which licenses are awarded by competitive bidding. Specifically, the Commission sought comment on whether the applicant should have to demonstrate that our public rulemaking process inhibits it from capturing the economic rewards of its innovation unless it is granted a pioneer's preference license. It also sought comment on whether in its pioneer's preference request each applicant should make a demonstration regarding possible loss of intellectual property protection to ensure that it will retain its eligibility for a preference.

8. With regard to determining which licenses are most reasonably comparable under section 309(j)(13)(B)(i) of the GATT legislation, in the Further Notice the Commission sought comment on any standards for comparing licenses and for excluding anomalous licenses that it might codify into its rules along with the statutory formulas for determining the average per capita bid amount and the payment amount. It also sought comment on the implementation of the installment payment provision in section 309(j)(13)(C). It tentatively concluded that it would not adopt any installment payment scheme that

includes royalty payments. The Commission further sought comment on whether eligibility for installment payments should be limited to small businesses or other entities as it has done in its general auction rules. The Commission proposed that, if an entity receiving a pioneer's preference award and license in a particular service would be eligible for installment payments in the auction for that service, that entity would be able to pay for its pioneer's preference license in installments under similar terms and conditions. Finally, the Commission proposed to require a pioneer's preference license that is not eligible for installment payments to pay in one lump sum within a reasonable time (e.g., 30 days) after the auction for comparable licenses has concluded or after the license grant becomes final, whichever is later.

9. In accord with the GATT legislation, the Commission proposed to sunset the pioneer's preference program on September 30, 1998. It requested comment on the utility of the program, particularly in light of its competitive bidding authority. Additionally, it proposed on its own motion to modify the pioneer's preference rules by limiting the award of preferences to services in which a new allocation of spectrum is required.

10. Finally, the Commission proposed to apply the rules adopted in response to the Further Notice to any pioneer's preference requests granted after adoption of those rules, regardless of when the requests were accepted for filing, except in proceedings in which tentative pioneer's preference decisions have been made.

11. Only two parties filed comments on the Further Notice, and no party filed reply comments. Satellite CD Radio, Inc. (CD Radio) states that the Commission should grant pioneer's preferences for regulatory as well as technical innovation, and also grant preferences in services in which no mutually exclusive applications exist. Omnipoint Communications, Inc. (Omnipoint) addresses payment measures for small business pioneers in services in which licenses are awarded by competitive bidding. It argues that the Commission should provide: (1) Payment terms that are more attractive than the terms offered to designated entities or entrepreneur-band applicants, so that small business pioneers have an incentive to take on the risks of innovation; and (2) the use of an installment plan with principal and accrued-interest obligations deferred until the end of a five-year period.

12. With respect to CD Radio's statements regarding regulatory innovation, the Commission finds that its pioneer's preference rules already incorporate non-technical or regulatory aspects. Accordingly, it finds no need to amend its pioneer's preference rules in this regard.

13. With respect to CD Radio's proposals regarding awarding preferences in services where mutually exclusive situations do not exist and where competitive bidding is not authorized, the Commission finds that a preference, beyond a guaranteed license and a 15 percent discount in auctioned services, would be unnecessary and contrary to the stated purpose of the pioneer's preference program. In adopting the pioneer's preference procedures, the Commission sought to foster the development of new services and to improve existing services by reducing the delays and risks for innovators associated with the Commission's licensing processes as they existed at that time. Applicants facing no mutually exclusive applications run no risk of not receiving licenses, assuming they are qualified, so the Commission did not contemplate that any preferences would be needed to serve the public interest purposes of the pioneer's preference program. Accordingly, the Commission rejects CD Radio's proposal to award preferences in services in which mutually exclusive license applications do not exist.

14. With respect to Omnipoint's proposal for lower payments for small business pioneers than designated entities in services in which licenses are awarded by competitive bidding, the Commission noted that the pioneer's preference and designated entity programs are designed to meet different goals. The pioneer's preference program is designed to reward a particular entity for its innovative contributions to a new or existing service, whereas the designated entity program is designed to promote economic opportunity and competition by disseminating licenses among a wide variety of applicants and to increase participation in spectrum-based telecommunications services by entities that lack access to substantial amounts of capital and that face economic disadvantages in obtaining licenses in a competitive bidding environment, such as small businesses. Accordingly, the Commission rejects Omnipoint's proposal to guarantee small business pioneers lower payments than other designated entities.

15. With respect to Omnipoint's proposal for a deferred payment plan for small business pioneers in services in which licenses are awarded by