

Attachment D

INSTRUCTIONS FOR COMPLETING FCC FORM 601

FCC Form 601: General Requirements

In completing the FCC Form 601, applicants are strongly encouraged to use the format below in submitting the information required by our rules as exhibits. Following this format will help expedite the processing of the FCC Form 601 and minimize the need for requesting missing information.

Applicants bear full responsibility for submission of timely and complete FCC Form 601 applications. Applicants should read the instructions on the FCC Form 601 carefully and should consult the rules to ensure that, aside from the materials described below, all the information that is required under our rules is included with their FCC Form 601 applications. **Incomplete or defective applications may be returned to the applicant.** Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application. *See* 47 C.F.R. § 1.65.

An applicant that fails to submit the required FCC Form 601 application by **5:30 p.m. ET on May 5, 1999**, and fails to establish good cause for any late-filed submissions, shall be deemed to have defaulted and will be subject to the default payments set forth in 47 C.F.R. §§ 1.2104, 24.704. *See* 47 C.F.R. § 1.2107(c).

Number of Forms To Be Filed

Filers applying for multiple licenses are not required to submit a separate application for each market if **all** filing requirements associated with the application are identical **except** for the market designator and market name. Under these circumstances, applicants may submit *one* FCC Form 601 Main Form and Schedule B.

Frivolous Pleadings

Pursuant to 47 C.F.R. § 1.52, the Commission reminds parties to our proceedings and their attorneys that the Commission intends to use its authority fully to discourage and deter the filing of frivolous pleadings. *See Public Notice*, "Commission Taking Tough Measures Against Frivolous Pleadings," 11 FCC Rcd 3030 (1996).

Organization of Application

Filing FCC Form 601 Electronically. Follow the instructions set forth in Attachment E to this Public Notice in order to access the ULS from your web browser.

Establish a Dial-up connection to ULS, point your web browser to <http://wtbwww05.fcc.gov>, and select the Online Filing button.

At the ULS Online Filing Screen, enter the applicant's Taxpayer Identification Number (TIN), Subgroup Identification Number (SGIN), and Password. The TIN provided must be the same one used to identify the applicant when filing Form 175. Contact Technical Support at (202) 414-1250 if you have problems accessing the ULS.

Click on the "Select New Filing" button to begin filing your application.

Select Application Purpose "New" and click on "Continue."

Select Auction ID "22 – PCS Broadband" and click on "Continue."

Supply the information requested by the Form 601.

If you plan to file a request for waiver or exception to the Commission's Rules, select "Yes" for the second question on this page.

If the TIN of the Real Party in Interest to the application differs from the TIN used to access the ULS for the application, you must register the Real Party in Interest's TIN prior to submitting the application. You will not be able to submit the application if you supply an unregistered TIN for the Real Party in Interest.

After supplying all the requested information, including a signature at the bottom of the page and click on "Continue."

The following screen lists each of the markets won by the applicant at the auction. Select the market(s) you want to apply for in this application by clicking on the box to the right of the market name.

After the market(s) have been selected, click on the "Attachments" button and upload the required attachments as described later in this section. Be sure to use the standard attachment types and file descriptions set forth herein. There is no standard format, however, for the file names to be uploaded.

After uploading each of the required attachments, click on the "Continue" button. At this point

you may “Print Preview” your application, or “Submit” it to the Commission.

The ULS will assign a file number to the application. If you wish to change anything on the submitted application during the filing window, you may enter your TIN, SGIN, and Password and click on the desired file number in Complete status. If you wish to change anything after the filing deadline, you may enter your TIN, SGIN, and Password, select application purpose Amendment, and select the desired file number.

Main Form-Related Exhibits

Any exhibits to be attached to an application in response to a question on the FCC Form 601 Main Form or on Schedule B should be identified as specified in the instructions to the FCC Form 601.

Filers should use the Attachment screen provided within the electronic filing software to submit these exhibits as uploaded files and should select the appropriate attachment type. The electronic filing software will accept a variety of file formats including Word, Word Perfect, Excel, Lotus, and ASCII text. See online help for a full list of acceptable file formats.

Rule-Related Exhibits

Any exhibits to be attached to an application as a result of our rule requirements should be uploaded and identified as follows:

<u>Title</u>	<u>Required From</u>
Exhibit A: Ownership	All Applicants
Exhibit B: Foreign Ownership	If Applicable
Exhibit C: Eligibility	C and F Block Applicants
Exhibit D: Designated Entities	Designated Entity Applicants
Exhibit E: Agreements & Other Instruments	Designated Entity Applicants and Other Applicants Where Applicable
Exhibit F: Confidentiality Requests	If Applicable
Exhibit G: Waiver Requests	If Applicable
Exhibit H: Divestiture Plans	If Applicable

As specified in the instructions to the FCC Form 601, each page of each exhibit must be identified with the number or letter of the exhibit, the number of the page of the exhibit, and the total number of pages of the exhibit.

Filers should use the Attachment screen to upload each exhibit file and select the appropriate attachment type. The recommended titles listed above should be entered in the File Description field on the Attachment screen. The electronic filing software will accept a variety of file formats including Word, Word Perfect, Excel, Lotus, and ASCII text. See online help for a full list of

acceptable file formats.

I. Applicant Identity and Ownership Information

Background

Sections 1.2112 and 24.709 of the Commission's rules requires each applicant to make full and complete disclosure with regard to the real party or parties in interest and as to all matters required to be disclosed by the application form. Applicants should attach the information concerning the identity of the applicant (*i.e.*, real party or parties in interest) and ownership interests held in the applicant and in investors in the applicant. Each application shall be clear and complete in itself without cross reference to information previously filed. Please clearly label additional pages to indicate the Exhibit and Item number to which those pages relate.

EXHIBIT A: OWNERSHIP

Part 1: General Information

First, attach and label as "**Exhibit A: Ownership**" a document that indicates the applicant's form of business organization. In addition,

If the applicant is a general partnership, provide the name, address, and citizenship of all partners, and the share or interest participation in the partnership.

If the applicant is a limited partnership, provide the name, address, and citizenship of each limited partner whose interest in the applicant is equal to or greater than ten percent (as calculated according to the percentage of equity paid in and the percentage of distribution of profits and losses).

If the applicant is a limited liability corporation, provide the name, address, and citizenship of each of its members.

Part 2: Direct Ownership

Second, as part of "**Exhibit A: Ownership**," attach and label a document or series of documents that identifies all persons or entities that *directly* hold a ten percent or more interest in the applicant, including interest holders already identified in Part 1 of Exhibit A. For each ten percent interest holder listed, applicants should provide the following information:

Item (1) Name and address: Identify the name and address of the interest holder. If the interest holder is an individual, provide the name and address of that person, and indicate whether the interest holder is a partner, officer, director, or key manager (*e.g.*, CEO, General Manager) of the

applicant. If the interest holder is a corporation, provide the name and address of the corporate office and the name and title of an officer, director or authorized contact. If the interest holder is a partnership, provide the name and address of all partners, and the name, title and address of an authorized contact for the partnership. If the interest holder is a limited liability corporation, provide the name and address of each of its members. If the interest holder is a trust, provide the name and address of the trustee.

Item (2) Principal Business: Describe the interest holder's principal business and its relationship to the applicant.

Item (3) Relationship to Other Interest Holder: Indicate whether the interest holder is related to any other ten percent or greater interest holder by blood or marriage, and provide the name of the related interest holder.

Item (4) Amount Held: Specify the amount held (e.g., number of shares of stock and percentage of total ownership) for each type of interest specified.

Item (5) Type of Interest Held: Indicate whether the interest held is in the form of stocks, bonds, warrants, debt instruments, partnership, etc. If interests are held in stock, specify the class of stock and any voting rights associated with the stock. If the interests are held in a partnership, indicate whether the interests are limited or general partnership interests.

Item (6) Interests Held on Behalf of Others: If an interest is held in trust, or on behalf of another person or entity, identify the party for whom the interest is held.

Part 3: Indirect Ownership

Third, as part of "**Exhibit A: Ownership**," attach and label a document or series of documents that identifies all persons or entities that **indirectly** hold a ten percent or more interest in the applicant, as determined by successive multiplication of the ownership percentages in each link in the vertical ownership chain, except that if the ownership percentage for any link exceeds fifty percent or represents actual control, it shall be reported as if it were a one hundred percent interest. For each person or entity listed, provide the same information listed in *Items (1)-(6)* above as is requested for *direct* interests.

Part 4: Other Disclosable Interests and Entities

Fourth, as part of "**Exhibit A: Ownership**," attach and label a document or series of documents that identifies all persons or entities required to be disclosed pursuant to 47 C.F.R. § 1.2112(a)(1) and (3). For each FCC-regulated business, include a description of its principal business and its relationship to applicant.

Note: Applicants may provide information required in Parts 1 through 4 above by scanning and

attaching a copy of their current FCC Form 602 as an exhibit to FCC Form 601. To avoid inadvertent disclosure of Taxpayer Identification Number (TIN) information, applicants submitting a copy of FCC Form 602 as an attachment to FCC Form 601 should not include TIN information on the copy of FCC Form 602 or should block out this information.

EXHIBIT B: FOREIGN OWNERSHIP

If the applicant has responded "yes" to either Question 40, 41, 42, 43, or 44 on the FCC Form 601, attach and label as "**Exhibit B: Foreign Ownership**" a document that explains the circumstances regarding foreign ownership in the applicant. For every direct or indirect foreign owner, applicants should provide the following information:

Item (1) Percentage of Interest: Identify each foreign owner's percentage of ownership in the applicant.

Item (2) Country of Origin and Address: List each foreign owner's country of origin and principal place of business.

Item (3) Public Interest Statement: Demonstrate how allowing the applicant to hold the requested license is consistent with the Commission's policies pursuant to section 310(b)(4) of the Communications Act of 1934. In general, the Commission has indicated that there is a strong presumption that indirect foreign ownership of common carrier radio licensees by entities whose home markets are in countries that are members of the World Trade Organization (WTO) serves the public interest. If more than twenty-five percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose home markets are in non-WTO member countries, the Commission will evaluate whether those markets offer effective competitive opportunities to U.S. investors in the same service sector. *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97-142, Report and Order and Order on Reconsideration, 12 FCC Rcd. 23891, 23935-42, 23946, ¶¶ 97-118, 131 (1997).*

Note: There is no need to include an Exhibit B stating that the applicant responded "no" to Questions 40 through 44.

Filers should select Attachment Type 'Ownership' and enter "Exhibit B: Foreign Ownership" in the File Description field on the Attachment screen.

II. Applicant Eligibility (C and F Block Only)

Background

Section 24.709 of the Commission's rules requires each applicant to demonstrate that it is eligible to participate as a qualified entrepreneur in the C and F block auction, either because it qualifies

under the general rule set forth in 47 C.F.R. § 24.709(a) or because it qualifies under an exception set forth in 47 C.F.R. § 24.709(b). Applicants for E block licenses only do not need to submit Exhibits C or D.

EXHIBIT C: ELIGIBILITY

If applying for a C or F block license, attach and label as "**Exhibit C: Eligibility**" a document or series of documents that certifies as truthful the gross revenues and total assets of the applicant, its affiliates, persons or entities that hold attributable interests in the applicant and their affiliates, as specified in 47 C.F.R. § 24.709(a). Identify the applicant's claimed eligibility status and provide the requisite information demonstrating such status as indicated in the following instructions.

Note: Applicants that were eligible for and participated in either of the prior C block auctions, Auction No. 5 and Auction No. 10, are not required for Auction No. 22 to meet the revenue and asset requirements of Section 24.709 of the Commission's rules, provided that they did not apply to bid on any F block licenses. *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, Fourth Report and Order, 13 FCC Rcd. 15743, 15751-15753, ¶¶ 13-16; 47 C.F.R § 24.709(b)(9)(i). Applicants that participated in either of the prior C block auctions must still meet the revenue and asset requirements of Section 24.709 -- and demonstrate in Exhibit C that they have met these requirements -- if they applied to bid on any F block licenses.

Eligibility Under the General Rule

If applicants claimed to satisfy *eligibility under the general rule* pursuant to 47 C.F.R. § 24.709(a) as entrepreneurs, they must submit the following information:

Item (1) Identity of all affiliates: Identify the name of all affiliates of the applicant. An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant if such individual or entity: (1) directly or indirectly controls or has power to control the applicant, or (2) is directly or indirectly controlled by the applicant, or (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or (4) has an "identity in interest" with the applicant, *e.g.*, spouse, kinship, stock ownership. *See* 47 C.F.R. § 24.720(1).

Item (2) Gross revenues and total assets: All applicants claiming status as entrepreneurs must submit gross revenue and total assets information.

Applicants claiming status under the general rule as an entrepreneur must disclose separately and in the aggregate in Exhibit C whether the applicant, together with its affiliates and persons or entities that hold attributable interests in the applicant and their affiliates, have gross revenues of less than \$125 million in each of the last two calendar or fiscal years, and total assets of less than \$500 million at the time of the filing of the applicant's short-form application (FCC Form 175).

See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd. 7824, 7891, ¶ 141 (1996) (*Report and Order*). Next, list the name(s) of all individuals and entities listed in Ownership Exhibits A and B and those entities' respective gross revenues for the preceding two years and total assets as of February 12, 1999, the filing deadline for the applicant's FCC Form 175. Therefore, for each applicant, affiliate, and investor with attributable interests, there should be a total of three figures: gross revenues for each of the two previous years and total assets as of February 12, 1999.

Each applicant that does not otherwise use audited financial statements must provide a certification from its chief financial officer that the gross revenue and asset figures indicated in its FCC Forms 175 and 601 applications are true, full, and accurate, and that the applicant does not have the audited financial statements that are otherwise required under our rules. See 47 C.F.R. §§ 24.720(f) and 24.720(g) of our rules; see also *Report and Order*, 11 FCC Rcd. at 7891, ¶ 140.

Eligibility Under an Exception to the General Rule: Control Group Structures, Publicly-Traded Corporations, and Small Business Consortia

If applicants claimed to satisfy *eligibility under an exception to the general rule* pursuant to 47 C.F.R. § 24.709(b) as a control group structure, publicly-traded corporation, or small business consortium, they must submit the following information:

Control Group Structure

If applicants applied as a *control group structure*, they must submit the following general information:

Item (1) Identity of all affiliates: Identify the name of all affiliates of the applicant. An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant if such individual or entity: (1) directly or indirectly controls or has power to control the applicant, or (2) is directly or indirectly controlled by the applicant, or (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or (4) has an "identity in interest" with the applicant, e.g., spouse, kinship, stock ownership. See 47 C.F.R. § 24.720(l).

Item (2) Identity and Status of Control Group: Identify each member of the applicant's control group, regardless of the size of each member's total interest in the applicant, and the percentage and type of interest held. In addition, identify each control group member that is an institutional investor, an existing investor, and or a member of the applicant's management. See 47 C.F.R. § 24.709(c)(1)(ii)(A) and (C); 47 C.F.R. § 24.720.

Item (3) Gross revenues: Compute and indicate gross revenues and total assets as per instructions outlined in *Item (2)* of "Eligibility Under the General Rule" (above). However, the

gross revenues and total assets of a person or entity that holds a non-attributable interest in the applicant and its affiliates, shall not be considered.

Item (4) Certification: Submit a certification that the applicant's sole control group member is a pre-existing entity if the applicant is making that election pursuant to 47 C.F.R. § 24.709(b)(6)(ii). *See also* 47 C.F.R. § 24.720(o).

Publicly Traded Corporation

If applicants applied as a *publicly traded corporation with widely dispersed voting power*, they must submit the following information:

Item (1) Certified statement: Submit a certified statement that such applicant is a business entity organized under the laws of the United States: (1) whose shares, debt, or other ownership interests are traded on an organized securities exchange within the United States, (2) in which no person owns more than 15 percent of the equity, or possesses directly or indirectly, through the ownership of voting securities, by contract or otherwise, the power to control the election of more than 15 percent of the members of the board of directors or other governing body of such publicly traded corporation, and (3) over which no person other than the management and members of the board of directors or other governing body of such publicly traded corporation, in their capacities as such, has *de facto* control. *See* 47 C.F.R. § 24.720(m); 47 C.F.R. § 24.709(c)(1)(i)(A). *Person* shall be defined as in section 13(d) of the Securities and Exchange Act of 1934, as amended (15 U.S.C. § 78(m)), and shall also include investors that are commonly controlled under the indicia of control set forth in the definition of *affiliate* pursuant to Section 24.720(l) of the Commission's rules.

Item (2) Identity of all affiliates: Identify the name of all affiliates of the applicant. An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant if such individual or entity: (1) directly or indirectly controls or has power to control the applicant, or (2) is directly or indirectly controlled by the applicant, or (3) is directly or indirectly controlled by a third party (or parties) that also controls or has the power to control the applicant, or (4) has an "identity in interest" with the applicant, *e.g.*, spouse, kinship, stock ownership. *See* 47 C.F.R. § 24.720(l).

Item (3) Gross revenues: Compute and indicate gross revenues and total assets as per our instructions outlined in *Item (2)* of "Eligibility Under the General Rule" (above). However, the gross revenues and total assets of a person or entity that holds a nonattributable interest in the applicant (or licensee), and its affiliates, shall not be considered.

Small Business Consortia

For those applicants that applied as *small business consortia* as defined in 47 C.F.R. § 24.720(b)(3), the following information must be submitted for **each** small business:

Item (1) Identity of all affiliates: Identify the names of all affiliates of the applicant. An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant if such individual or entity: (1) directly or indirectly controls or has power to control the applicant, or (2) is directly or indirectly controlled by the applicant, or (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or (4) has an "identity in interest" with the applicant, *e.g.*, spouse, kinship, stock ownership. *See* 47 C.F.R. § 24.720(l).

Item (2) Identity and status of control group: Identify each member of the applicant's control group, regardless of the size of each member's total interest in the applicant, and the percentage and type of interest held. In addition, identify each control group member that is an institutional investor, an existing investor, and or a member of the applicant's management. *See* 47 C.F.R. § 24.709(c)(1)(ii)(A) and (C); 47 C.F.R. § 24.720(k).

Item (3) Gross revenues: Compute and indicate gross revenues and total assets as per our instructions outlined in *Item (2)* of "Eligibility Under the General Rule" (above). However, for applicants who applied as small business consortia, the gross revenues and total assets of each small business shall not be aggregated. That is, each small business entity comprising the small business consortia must qualify and show gross revenues and total assets separately. *See* 47 C.F.R. § 24.709(b)(1).

Item (4) Certification: Submit a certification that the applicant's sole control group member is a pre-existing entity if the applicant is making that election pursuant to Sections 47 C.F.R. § 24.709(b)(5)(ii) or (b)(6)(ii). *See also* 47 C.F.R. § 24.720.

Filers should select Attachment Type 'Ownership' and enter "Exhibit C: Eligibility" in the File Description field on the Attachment screen.

III. Designated Entities Information (C and F Block Only)

Applicants eligible for bidding credits for C and F block licenses, as either a small business or a very small business, as specified in 47 C.F.R. §§ 24.712 and 24.717, are required to make the following submissions.

EXHIBIT D: DESIGNATED ENTITIES - SMALL BUSINESSES AND VERY SMALL BUSINESSES (C AND F BLOCK ONLY)

Pursuant to 47 C.F.R. § 24.712 small businesses that bid on C licenses are eligible for bidding credits of twenty-five percent to lower the cost of their winning bids. Pursuant to 47 C.F.R. § 24.717, small businesses and very small businesses that bid on F block licenses are eligible for bidding credits of fifteen percent and twenty-five percent, respectively. Small businesses and very small businesses are defined in 47 C.F.R. § 24.720(b). Applicants that are not claiming eligibility for bidding credits do not need to submit Exhibit D. We nonetheless note that we are interested

in the status of applicants as minority-owned or women-owned businesses for statistical purposes.

If applying for a bidding credit, attach and label as "**Exhibit D: Designated Entities**" a document or series of documents that identifies, separately and in the aggregate for the applicant and each affiliate, the gross revenues for the most recently completed three calendar fiscal years preceding the filing of the applicant's FCC Form 175 based on audited financial statements. If the applicant does not have audited financial statements to document the gross revenues figures provided, it must provide certification from its chief financial officer that the gross revenue figures indicated in its FCC Forms 175 and 601 applications are true, full, and accurate, and that the applicant does not have the audited financial statements that are otherwise required under our rules. *See* 47 C.F.R. § 24.720(f). Identify the applicant's claimed eligibility status and provide the requisite information demonstrating such status as indicated in the following instructions:

Small Business

Applicants claiming status as a small business must compute gross revenues in accordance with 47 C.F.R. § 24.720(b)(1) to demonstrate status as a small business under our rules. A small business is an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average annual gross revenues that are not more than **\$40 million** for the preceding three years. Gross revenues for each year should be separately identified and followed by the computed average total gross revenues over those years. For purposes of determining whether an entity meets **\$40 million** average annual gross revenues size, the gross revenues of the entity, its affiliates, persons or entities holding interests in the entity and their affiliates shall be considered on a cumulative basis and aggregated, subject to the exception set forth in Section 24.709(b). The status of the applicant as a minority-owned or women-owned business also is requested, but for statistical purposes only.

Very Small Businesses

Applicants claiming status as a very small business must compute gross revenues in accordance with 47 C.F.R. § 24.720(b)(2) to demonstrate status as a very small business under our rules. A very small business is an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average annual gross revenues that are not more than **\$15 million** for the preceding three years. Gross revenues for each year should be separately identified and followed by the computed average total gross revenues over those years. For purposes of determining whether an entity meets **\$15 million** average annual gross revenues size, the gross revenues of the entity, its affiliates, persons or entities holding interests in the entity and their affiliates shall be considered on a cumulative basis and aggregated, subject to the exception set forth in Section 24.709(b). The status of the applicant as a minority-owned or women-owned business also is requested, but for statistical purposes only.

Small Business and Very Small Business Consortia

Applicants that applied as a **small business consortia** or **very small business consortia** as defined in 47 C.F.R. § 24.720(b) must compute and indicate gross revenues as outlined above for **each** small or very small business in the consortium. That is, each business entity comprising the small or very small business consortia must qualify and show gross revenues separately. The gross revenues of each small or very small business shall not be aggregated. *See* 47 C.F.R. 24.709(b)(1).

Filers should select Attachment Type 'Ownership' and enter "Exhibit D: Designated Entities" in the File Description field on the Attachment screen.

Rural Telephone Company

Applicants claiming status as a rural telephone company must certify that they meet the definition set forth in 47 C.F.R. § 24.720(e). A rural telephone company is therefore defined as follows:

Rural telephone company: The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity:

(A) Provides common carrier service to any local exchange carrier study area that does not include either:

(i) Any incorporated place of 10,000 inhabitants or more, or any party therefore, based on the most recently available population statistics of the Bureau of the Census; or

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) Has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

47 U.S.C. § 153 (37); *see also* 47 C.F.R. § 24.720(e).

III. Information Not Related to Identity or Ownership

EXHIBIT E: AGREEMENTS & OTHER INSTRUMENTS

Applicants should attach and label as "**Exhibit E: Agreements and Other Instruments**" a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint ventures, partnerships or other agreements, arrangements or instruments into which the applicant has entered relating to the competitive bidding process prior to the time the bidding was completed. *See* 47 C.F.R. § 1.2107(d).

Applicants qualifying as an **entrepreneur**, a **small business**, a **very small business**, or a

consortium of small or very small businesses must list and summarize all agreements and other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as an entrepreneur, a small business, a very small business, or a consortium of small or very small businesses under sections 1.2110 and 24.720(b) of the Commission's rules, including the establishment of *de facto* and *de jure* control. 47 C.F.R. §§ 1.2112(b)(2), 24.709(c)(2)(ii). Such agreements and instruments include, but are not limited to, articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements including letters of intent, oral or written. These applicants must also list and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees. 47 C.F.R. §§ 1.2112(b)(3), 24.709(c)(2)(ii) and (iii). Such information must be maintained at the licensee's facilities or by their designated agents for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis. *See* 47 C.F.R. §§ 1.2110(i), 24.709(c)(3).

To comply with these requirements, applicants may either submit the agreements themselves or submit a detailed description of those agreements with proprietary information excluded. If applicants choose to submit the agreements, they can redact proprietary information or can seek confidentiality for those documents pursuant to Section 0.459 of the Commission's rules, 47 C.F.R. § 0.459 (*see* discussion of confidentiality requests under "**Confidentiality Requests**" below).

Filers should select Attachment Type 'Other' and enter "Exhibit E: Agreements and Other Instruments" in the File Description field on the Attachment screen.

EXHIBIT F: CONFIDENTIALITY REQUESTS

Applicants should be aware that all information required by the Commission's rules in connection with applications to participate in spectrum auctions is necessary to determine the applicants' qualifications and, as such, will be available for public inspection. Required proprietary information may be redacted, and confidentiality may be sought pursuant to 47 C.F.R. § 0.459. Applicants requesting confidential treatment for any information required as a condition to participate in the auction must follow the procedures set out in 47 C.F.R. § 0.459. (Applicants submitting confidentiality requests should be aware that 47 C.F.R. § 0.459 was recently amended to set out more clearly what should be contained in a request that information not be routinely available for public disclosure. *See* Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order*, GC Docket No. 96-55, FCC 98-184 (rel. Aug. 4, 1998)).

If an applicant has sought confidential treatment of any information, it should attach and label as "**Exhibit F: Confidentiality Requests**" a statement which references the request. Because the

required information bears on an applicant's qualifications, the Commission envisions that confidentiality requests will not be routinely granted.

Note: There is no need to include an Exhibit F stating there is no confidentiality request.

Filers should select Attachment Type 'Confidentiality' and enter "Exhibit F: Confidentiality Requests" in the File Description field on the Attachment screen.

Important: All attachments will be available for public inspection unless the applicant has requested confidential treatment for each applicable attachment. Filers must select Attachment Type 'Confidentiality' for each attachment for which they request confidential treatment in addition to providing Exhibit F.

EXHIBIT G: WAIVER REQUESTS

In the event a winning bidder wishes to file a request for waiver, all such requests should be filed with the corresponding application as "**Exhibit G: Waiver Requests.**" Waiver requests filed after the submission of the FCC Form 601 may result in a delay of the processing of the application. If a request for waiver is filed separately from the FCC Form 601, such request must reference the corresponding application.

Note: There is no need to include an Exhibit G stating there are no waiver requests.

Filers should select Attachment Type 'Waiver' and enter "Exhibit G: Waiver Requests" in the File Description field on the Attachment screen.

EXHIBIT H: DIVESTITURE PLANS

Pursuant to the Commission's spectrum aggregation limit rule, 47 C.F.R. § 20.6, in situations in which the overlap between a PCS licensed service area and a CGSA (as defined in 47 C.F.R. § 22.911) service area exceeds ten percent but is less than 20 percent, the Commission allows post-auction divestitures. See 47 C.F.R. § 20.6(e). Therefore, any parties sharing a common non-controlling ownership interest who aggregate more PCS spectrum among them than a single entity is entitled to hold (*see* 47 C.F.R. §§ 20.6(e), 24.710, 24.204, and 24.229(c)) will be permitted to divest sufficient properties within 90 days of the license grant to come into compliance with the spectrum aggregation limits. *See* 47 C.F.R. § 24.833.

If an applicant is unable to certify to compliance with the CMRS spectrum aggregation limit (47 C.F.R. § 20.6), it should attach a signed statement that describes the applicant's efforts to date and future plans to come into compliance with the rules through divestiture of prohibited properties. *See* 47 C.F.R. § 20.6(e). The statement must indicate that sufficient properties will be divested within 90 days of license grant to meet our requirements. *See* 47 C.F.R. § 24.833. If divestiture is required, the Commission will condition grant of the application on the licensee coming into compliance with our requirements. For purposes of satisfying the above signature requirement, the typed name of either the applicant or the applicant's authorized representative

will suffice. All divestiture requests should be submitted utilizing the area designated for Divestiture. This area can be accessed by selecting the "Divestiture" tab of the electronic filing software.