



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[GN Docket Nos. 13-185, 25-70, 25-71; FCC 25-39; FR ID 306799]

Competitive Bidding Rules for Auction of AWS-3 Licenses

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts final rules that update the eligibility criteria for designated entity bidding credits in auctions for licenses in the 1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz (AWS–3) bands. The Commission also updates its general competitive bidding rules for categorizing an entity as a small business concern.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Report and Order and Second Report and Order in GN Docket Nos. 25-70, 25-71, and 13-185, adopted on July 24, 2025, and released on July 25, 2025 ([AWS-3 Report and Order](#)). The full text of this document is available at <https://www.fcc.gov/document/fcc-updates-bidding-rules-aws-3-inventory-auction-0>.

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I. Introduction

1. Advancing U.S. leadership in wireless is good for the U.S. economy, for U.S. national security, and for ensuring that every American has access to affordable, high-speed service. That is why the Commission is focused on freeing up more spectrum for consumer use.

2. With the [AWS-3 Report and Order](#), the Commission moves to satisfy a bipartisan

congressional mandate to auction licenses for AWS-3 spectrum in the Commission's inventory. The proceeds from this auction will fund the Commission's ongoing efforts to protect American networks from untrustworthy and insecure foreign equipment.

3. The Commission has held spectrum auctions for roughly 30 years. Auctions assign spectrum licenses to their highest and best use by allowing bidders to reveal their preferences and discover a market-clearing price. Commission auctions have proven a resounding success largely because the Commission has updated its rules to account for the lessons of the past. For example, in 2015, the Commission reformed its rules to protect the integrity of their auctions from fraud, collusion, and manipulation while promoting participation by bona fide small businesses and rural providers.

4. The AWS-3 Report and Order advances those time-tested objectives. First, the Commission adopts designated entity eligibility requirements for future AWS-3 spectrum license auctions that are in harmony with the requirements used in every 5G auction held since 2015. Updating the AWS-3 rules to match settled practice will give small businesses and rural service providers the predictability they need to participate meaningfully at auction. Next, the AWS-3 Report and Order updates the Commission's general part 1 competitive bidding rules for categorizing an entity as a "small business concern," pursuant to the Small Business Runway Extension Act of 2018 (SBREA). In adopting these rules, the Commission rejects arguments from the affiliates of Auction 97 defaulters (whose unwillingness to pay the full amount of their gross winning bids led to significant AWS-3 spectrum sitting fallow in the Commission's inventory for nearly a decade) that the Commission conduct the next auction of AWS-3 licenses under the same rules that enabled the very bidding behavior that led to their defaults in the first place. Finally, the Commission declines to adopt a Tribal priority licensing window in advance of the next AWS-3 auction.

5. Shortly after the Commission adopted the Notice of Proposed Rulemaking in this proceeding (NPRM), 90 FR 11931 (March 13, 2025), the Office of Economics and Analytics (OEA), jointly with the Wireless Telecommunications Bureau (WTB), sought comment on proposed procedures for an auction of AWS-3 licenses (Auction 113). The AWS-3 Report and Order allows OEA and WTB to establish final procedures for Auction 113 in accordance with the adopted rules and to move forward with that auction.

II. Background

6. In 2014, the Commission adopted service and bidding rules for the auction of AWS-3 spectrum licenses (Auction 97) in the 1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz frequencies. Bidding in Auction 97 began in November 2014 and ended in January 2015. Auction 97 raised a total of \$41,329,673,325 in net bids, with 31 bidders placing winning bids for a total of 1,611 licenses. Following that auction, certain winning bidders selectively defaulted on winning bids for 197 licenses. In March 2025, the Commission announced that it would conduct a new auction, Auction 113, for the AWS-3 spectrum that remained in the agency’s inventory, most of which was available primarily due to Auction 97 defaults.

7. The Commission Provides Notice in 2014 that All AWS-3 Auctions Would Be Subject to Generally Applicable Rule Changes. Prior to Auction 97, the Commission provided clear notice that any and all future auctions of AWS-3 spectrum licenses would be subject to generally applicable changes to the part 1 competitive bidding rules. In particular, the Commission determined that any AWS-3 auction would be conducted in accordance with the general competitive bidding rules set forth in part 1, subpart Q of the Commission’s rules except as “otherwise provided in” part 27.

8. The part 1 competitive bidding rules advance the agency’s statutory directive by ensuring that designated entities (DEs), which are small businesses and rural telephone companies, have a meaningful opportunity to access wireless spectrum in FCC auctions. DEs are eligible for auction bidding credits, represented as percentage discounts from their winning bids. Eligibility requirements for DEs are set on a service-by-service basis, the capital requirements and other characteristics of each particular service establishing the appropriate threshold.

9. The Commission adopted service-specific bidding credits and DE eligibility requirements for the AWS-3 bands prior to Auction 97. The Commission provided a 15% small business bidding credit to entities with average annual gross revenues not exceeding \$40 million and a 25% very small business bidding credit to entities with average annual gross revenues not exceeding \$15 million. The average gross revenues would be calculated from the preceding three years. These thresholds were consistent with the standardized schedule of DE bidding credits in the Commission’s rules at the time. The relevant definitions and thresholds for particular bidding credits were codified in the part 27 AWS-3

service rules. The DE eligibility requirements were modeled after the small business size standards and associated bidding credits that the Commission adopted for the AWS-1 band, based on the belief that the AWS-3 bands would be employed for purposes similar to those for the AWS-1 band.

10. DISH's DEs Improperly Claim \$3.3 Billion in FCC Bidding Credits Intended For "Very Small Businesses." Two participants in Auction 97, Northstar Wireless, LLC (Northstar) and SNR Wireless License Co. (SNR), made extensive use of bidding credits intended for "very small businesses." In total, Northstar and SNR improperly claimed \$3.3 billion in credits under the Commission's DE rules. They ultimately placed over \$13.3 billion in gross winning bids on 702 of the 1611 licenses in Auction 97, or 43.5% of the available licenses.

11. SNR and Northstar were formed immediately before Auction 97 and funded almost exclusively by a large DISH Network Corporation (DISH). During the course of reviewing long-form applications following Auction 97, the Commission denied bidding credit eligibility for both Northstar and SNR. The Commission determined that the companies were under the de facto control of DISH and therefore were ineligible for the \$3.3 billion of DE bidding credits for "very small businesses."

12. Because SNR and Northstar were ineligible for the DE bidding credits they claimed, they were required to pay the full amount of their \$13.3 billion bid price for those licenses. DISH and its DEs appealed the Commission's determination. The litigation finally came to a close in 2023 when a federal court of appeals upheld the Commission's determination and the Supreme Court declined to grant certiorari.

13. DISH's DEs Selectively Default on the AWS-3 Licenses They Won. Northstar and SNR selectively defaulted on winning bids for 197 AWS-3 licenses. Pursuant to the Commission's well-established part 1 rules governing defaults on winning bids, Northstar and SNR became liable for the difference between their winning bids in Auction 97 and the amount of winning bids for licenses accessing the same spectrum in subsequent auctions. Also pursuant to those rules, SNR and Northstar became liable for an additional payment equal to 15% of their own bids or the applicable subsequent winning bids, whichever was less. The upcoming auction of AWS-3 licenses may provide subsequent winning bids that ultimately determine the size of any deficiency payment owed by Northstar and SNR.

14. The Commission Overhauls its Competitive Bidding Rules and DE Eligibility in

Response to Auction 97 Irregularities. After the close of Auction 97, the Commission became aware of allegations of significant bidding irregularities on the part of SNR and Northstar. The Commission also received numerous complaints about abuses of the DE program beyond the DISH-controlled entities. Commenters alleged that supposedly “small businesses” that claimed bidding credits were operating at the direction and control of large, well-financed corporations.

15. In response to these concerns, the Commission in 2015 significantly reformed its competitive bidding rules for future spectrum auctions. The reforms adopted in the Updating Part 1 Report and Order, 80 FR 56764 (September 18, 2015), were expressly informed by “lessons learned” in Auction 97. Many of the Commission’s reforms were intended to expand the range of businesses eligible for DE benefits while simultaneously ending practices that had incentivized larger players to manipulate the DE regime. As the Commission explained, the changes to the part 1 rules were designed to promote auction participation by small businesses while ensuring “that valuable bidding credits are available only to those Congress intended,” namely, small businesses and rural providers.

16. Although the 2015 reforms expanded DE eligibility by raising the gross revenue thresholds for small business bidding credits and establishing a new bidding credit for eligible rural service providers, it also took several steps to protect the integrity of the DE program by: (i) prohibiting joint bidding arrangements between applicants; (ii) prohibiting the common control of separate auction applicants; (iii) requiring the establishment, on an auction-by-auction basis, of a maximum total discount of no less than \$25 million that a winning eligible DE may receive; and (iv) modifying attribution rules to prevent the unjust enrichment of ineligible entities. These and other reforms resulted in changes to the Commission’s part 1 rules, which apply generally to spectrum auctions. While existing service-specific competitive bidding rules, including those for the AWS-3 bands, specified that the part 1 competitive bidding rules would apply to mutually exclusive applications for licenses, the specific provisions related to designated entity eligibility in those services were never updated to reflect the increased gross revenue thresholds and the availability of the rural service provider bidding credit.

17. Congress Tightens the Definition of “Small Business Concern” for Federal Programs. In the 2018 SBREA, Congress amended provisions of the Small Business Act for defining a “small business concern.” In relevant part, the 2018 amendments required federal agencies to treat an entity as a “small

business concern” only if the agency considered average gross receipts over the preceding five years.

18. In requiring a five-year lookback, Congress sought to more accurately reflect a business’s long-term size. Congress also sought to combat fraud and abuse by making it harder for companies to manipulate short-term revenue fluctuations to improperly qualify as “small.”

19. The 2018 statutory amendments also responded to longstanding criticisms, raised over the years by Congress and agencies like the Small Business Administration (SBA) Office of Inspector General and the Government Accounting Office (GAO), that large firms had exploited loopholes to win preferential contracts and discounts intended for small businesses. Although service-specific small business definitions that the Commission has adopted for bidding credit eligibility since 2019 contain the congressionally mandated five-year lookback period, the Commission has not previously amended any of its prior-existing rules—including prior service-specific rules and the general part 1 rules to conform with the amended Small Business Act’s standards.

20. To Fund Critical National Security Objectives, Congress Authorizes the FCC to Auction AWS-3 Licenses that DISH’s DEs Selectively Defaulted After Auction 97. In the Spectrum and Secure Technology and Innovation Act of 2024, Congress directed the Commission to initiate systems of competitive bidding to grant licenses for spectrum in its inventory in the AWS-3 spectrum bands. Auction proceeds will support the Commission’s Supply Chain Reimbursement Program, which reimburses eligible advanced communications service providers for their costs to remove, replace, and dispose of untrustworthy Huawei Technologies Company or ZTE Corporation equipment and services.

21. In February 2025, the Commission issued the NPRM as the first step to conduct Auction 113. As the 2015 reforms to the part 1 rules that were adopted in the immediate aftermath of Auction 97 to protect the integrity of Commission spectrum auctions already apply to this auction, the NPRM sought to update the part 27 requirements for DE eligibility in AWS-3 spectrum auctions based on the intervening developments proposing to set the average annual gross revenue eligibility requirements for very small and small business bidding credits at \$20 million and \$55 million, respectively and to incorporate the amended Small Business Act’s five-year lookback period for calculating gross revenues. The NPRM also proposed to make the rural service provider bidding credit adopted in 2015 available for future auctions of AWS-3 spectrum licenses. These proposals would align DE eligibility requirements for

Auction 113 with the requirements used in auctions for 5G-ready spectrum licenses conducted since Auction 97.

III. Competitive Bidding Rules To Be Used For Future Auctions of AWS-3 Spectrum Licenses

22. The Commission affirms that, consistent with its AWS-3 service-specific rules, any future auctions will be conducted using the part 1 competitive bidding rules that are in effect at the time of the auction. For Auction 113, that includes the reforms to the DE rules adopted as part of the 2015 Updating Part 1 Report and Order and any other changes that may be effectuated prior to the auction. For example, the Commission is considering a proposal to require auction applicants to make certain certifications as to whether they are owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary. If such a rule were to be adopted and made effective prior to the deadline for submitting an application to participate in Auction 113, the new requirement could apply to Auction 113 applicants. The Commission has repeatedly found that application of its part 1 competitive bidding rules, as modified by the 2015 Updating Part 1 Report and Order, to individual services serves the public interest. Consistent with that precedent, the Commission finds that conducting Auction 113 using these updated rules would similarly serve the public interest.

A. The 2015 Reforms to the Competitive Bidding Rules Will Apply to Future Auctions of AWS-3 Spectrum Licenses

23. In 2015, the Commission modified its part 1 competitive bidding rules to facilitate competitive entry into the wireless industry by small businesses with capital and operational experience. The Commission sought to “provide meaningful opportunities to bona fide small businesses and rural service providers to participate in auctions and in the provision of spectrum-based services, and in providing such opportunities, to prevent unjust enrichment.” While the record in that proceeding supported these changes, some commenters strongly opposed several proposals, but their arguments initially failed to persuade the Commission, which proceeded to modify its rules, and later failed to persuade the U.S. Court of Appeals for the Third Circuit, which upheld certain challenged rules. The Third Circuit found that the Commission, in the Updating Part 1 Report and Order, “not only set forth a policy that is likely to allow continued participation by DEs, but also rationally explained why it expected no significant loss of DE participation.” Now, in this proceeding, one of the challenging parties seeks to

revive those failed arguments. But they are no more persuasive now than they were when the Commission first rejected them a decade ago.

24. New data and the Commission's experience administering auctions over the last ten years prove the success of the modernized DE rules. Publicly available auction results demonstrate that the Commission and Third Circuit accurately foresaw that the rules adopted in 2015 would offer bona fide designated entities opportunities to participate in auctions and the provision of spectrum-based services. In every spectrum license auction since, the percentage of winning bidders that are designated entities has remained similar to or has risen higher than the percentage in Auction 97. In six of those eight auctions, the percentage of applicants qualifying to bid that were designated entities was higher than in Auction 97. This data meaningfully demonstrate that, consistent with the Commission's statutory duty, the part 1 rule modifications adopted in 2015 serve the public interest by using bidding preferences to ensure that small businesses and rural telephone companies are given the opportunity to participate in the provision of spectrum-based services. Accordingly, the Commission declines to conduct future auctions of AWS-3 spectrum licenses, including Auction 113, using the outdated rules that are no longer in effect.

25. The Commission is not persuaded by arguments that it may not use competitive bidding rules, including DE eligibility requirements, that differ from those used in Auction 97. Two commenters assert that the use of the current competitive bidding rules and procedures, as amended, for the upcoming AWS-3 auction would undermine robust participation by DEs. This claim is rooted in their fear that the DE eligibility rules adopted by the Commission would reduce the winning net bids in Auction 113 and thereby increase the amount of Northstar's and SNR's deficiency payments. The Commission finds that argument unavailing.

26. As an initial matter, all auctions conducted since 2015 have been conducted under the updated rules in effect at the time, including the increased gross revenue thresholds the AWS-3 Report and Order adopts for the AWS-3 service-specific rules. These rules have led to robust participation by small entities and rural providers. The Commission finds that their use in Auction 113 is likely to expand the pool of entities that can potentially qualify for DE bidding credits while still allowing the Commission to "prevent the unjust enrichment of entities that would be ineligible to receive DE benefits in their own right."

27. The Commission has, from time to time, updated its auction rules to promote the efficient assignment of spectrum licenses, promote economic opportunity and competition, ensure that innovative technologies can be brought to market, and encourage auction participation by small businesses and rural providers. As demonstrated by the outcomes of auctions held since Auction 97, the reforms adopted in 2015 have served this purpose. The Commission therefore affirms that the updated rules will govern the conduct of Auction 113. As is the Commission's standard practice when adopting auction rules, and as it did in advance of Auction 97, the Commission also gives notice to potential auction participants that future auctions will be subject to any modifications that it may adopt for its part 1 general competitive bidding rules in the future.

B. Updating Eligibility Criteria for Small and Very Small Business Bidding Credits for Auctions of AWS-3 Spectrum Licenses

28. The Commission adopts the proposal in the NPRM to update the AWS-3 service specific competitive bidding rules to align the gross revenue thresholds used to determine eligibility for small and very small business bidding credits with the DE eligibility requirements contained in the part 1 rules and the requirements of the SBREA. For purposes of DE eligibility, a small business is defined as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$55 million for the preceding five years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$20 million for the preceding five years. This change will bring the DE eligibility requirements for AWS-3 services in line with the Commission's standardized schedule for small business bidding credits in part 1, subpart Q.

29. In accordance with the schedule of DE bidding credits set forth in part 1, a qualifying small business will continue to be eligible for a bidding credit of 15% and a qualifying very small business will be eligible for a bidding credit of 25%, subject to the bidding credit caps specified in 47 CFR 1.2110(f)(2)(ii).

30. The eligibility requirements that the AWS-3 Report and Order adopts harmonize the AWS-3 DE rules with both the part 1 standardized schedule of DE bidding credits and the amended Small Business Act's current five-year average gross receipts benchmark. By updating the AWS-3 DE

eligibility requirements to match the requirements that have been used for all other auctions of 5G-ready services since 2015, the Commission provides small businesses and rural service providers with a simple, consistent, and predictable avenue for facilitating access to capital, thereby increasing participation and competition in an AWS-3 auction.

31. In all auctions of licenses likely to be used to provide 5G services in a variety of bands since the part 1 schedule of bidding credits was updated in 2015, the Commission has consistently used the DE business size standards that it adopted. That is, the Commission has used the two larger average gross revenue thresholds and associated bidding credits in the part 1 schedule of bidding credits. The results from these auctions demonstrate that using the two larger size standards to assign bidding credits has provided a real opportunity for bidders claiming eligibility as small businesses to win licenses to provide spectrum-based services at auction. By adopting average annual gross revenue thresholds that are not too high, and thus not overly inclusive, the Commission preserves the effectiveness of DE benefits for the small businesses that are intended to benefit from its DE rules. This proposal received strong support in the record, with the majority of commenters, including those representing small and rural interests, generally supporting raising the average annual gross revenue thresholds as proposed in the NPRM.

32. The Commission also adopts its proposals to amend the AWS-3 competitive bidding rules to reflect the five-year benchmark mandated by the amended Small Business Act. Adopting the benchmark will bring the AWS-3 competitive bidding rules into alignment with the Small Business Act, as the Commission has done for all other service specific designated entity requirements since 2019. Simultaneously, the Commission adopts its proposal to codify this requirement in its part 1 standardized schedule of bidding credits such that eligibility for small business bidding credits would be based on an entity's average gross revenues for the preceding five years. The Commission finds that this modification to the part 1 standardized schedule of bidding credits will ensure consistency with the requirements of the Small Business Act in spectrum bands that may be subject to competitive bidding in the future, and it adopts the proposal.

33. One commenter asks the Commission to go beyond its proposal and increase the eligibility threshold beyond the existing part 1 rules. That commenter did not propose any specific thresholds or provide a justification for why auctions of licenses for the AWS-3 spectrum in the

Commission's inventory should be treated differently from other auctions for licenses likely to be used to provide 5G services. Based on the Commission's prior experience with bidding credits in spectrum auctions and the lack of service-specific justifications in the record, the Commission is not persuaded that it should adopt small business size standards for AWS-3 spectrum that differ from those used in auctions for other 5G-ready services.

34. Finally, the Commission declines to increase the bidding credit percentages for small businesses and very small businesses and declines to include the 35% bidding credit from its part 1 standardized schedule of bidding credits for entities with not more than \$4 million in average annual gross revenues. When determining the amount of bidding credits and who should be eligible for them, the Commission takes care to avoid expanding the scope of DE benefits to a level that may incentivize gamesmanship. The Commission has consistently used only the two largest DE business size standards and associated bidding credits outlined in its part-1 rules when adopting service-specific rules for competitive bidding for spectrum licenses, including in Auction 97. This approach has facilitated the successful participation of many eligible small businesses in Commission auctions over the last decade and has provided uniformity and predictability for designated entities and other bidders as well. The Commission is not persuaded by the limited record before us that AWS-3 spectrum is different in a way that warrants deviating from the rule frameworks that have governed previous auctions. The Commission finds that the bidding credit percentages and thresholds in the part-1 size standards continue to "provide a simple, consistent, and predictable avenue for facilitating small business participation in auctions."

Rural Service Provider Bidding Credits for Future Auctions of AWS-3 Spectrum Licenses

35. Consistent with the findings in the Updating Part 1 Report and Order and the Commission's approach in other bands where the spectrum is likely to be used to provide 5G services, the Commission adopts its proposal to offer a 15% bidding credit to a rural service provider, as defined in 47 CFR 1.2110(f)(4)(i) and subject to the bidding credit cap defined in 47 CFR 1.2110(f)(4)(ii), that has not claimed a small business bidding credit. Those commenters that addressed this proposal generally supported extending bidding credits to rural service providers in auctions of licenses for AWS-3 spectrum. Permitting bidders to claim a rural service provider bidding credit in Auction 113, a bidding credit that was not available when this spectrum was initially auctioned, will allow a diversity of service

providers to compete more effectively for spectrum licenses in rural areas. The Commission finds that adopting this bidding credit will promote robust participation in Auction 113.

36. Some commenters advocate for increasing the bidding credit percentage for rural service providers so that it matches the percentage provided to very small businesses, generally reasoning that more small businesses will be eligible for the larger bidding credit given the new thresholds that the Commission is adopting, in addition to new entrants. As with calls to increase the bidding credit percentages for small business designated entities, the commenters advocating to increase the bidding credit percentage for rural service providers fail to demonstrate that services particular to the limited number of licenses being auctioned in the AWS-3 band would materially benefit from a larger rural service provider bidding credit. The Commission sees nothing in the record that disturbs its conclusion when it adopted a rural service provider credit that “rural service providers generally have greater access to capital and infrastructure than other small businesses or new entrants,” making it appropriate for the rural service provider credit to equal the smallest credit amount available to a small business.

37. The Commission’s past experience with the rural service provider bidding credit indicates that the existing part 1 rural service provider bidding credit achieves an appropriate balance of the statutory obligations that the Commission is charged with pursuing, while sufficiently enabling rural service providers to compete for spectrum licenses. Thus, the Commission confirms that the part 1 rural service provider bidding credit standard will apply for auctions of licenses for AWS-3 spectrum as proposed in the NPRM.

IV. The Commission Is Not Required to Use the 2014 Competitive Bidding Rules for Auction 113 in 2025

38. The Commission will conduct Auction 113 under the part 1 competitive bidding rules in effect at the time of the auction, and not part 1 rules that were in effect during Auction 97. As the NPRM observed, when establishing the AWS-3 service ahead of Auction 97, the Commission “specified that such licenses would be subject to competitive bidding and that the competitive bidding procedures contained in part 1 of the Commission’s rules would apply, unless otherwise specified.” The current part 1 rules include improvements related to DEs that were adopted in the wake of Auction 97. The Commission’s longstanding part 1 rules have led to robust participation by small entities and rural

providers. Notwithstanding the assertions of two commenters, nothing in the language of the AWS-3 2014 Report and Order, 79 FR 32366 (June 4, 2014), or the part 27 rules indicates that the part 1 rules used in Auction 97 must be used to conduct any and all future auctions of licenses for AWS-3 spectrum.

39. Under the Commission's rules, any auction involving AWS-3 licenses will be governed by the "general competitive bidding procedures set forth 47 CFR part 1, subpart Q." Neither commenter addresses the straightforward application of the text of these rules. Instead, they claim that Auction 113 will be a continuation of Auction 97 and therefore the Commission must continue to use the 2014 part 1 rules in future AWS-3 auctions, including Auction 113. In an attempt to marry Auction 113 to Auction 97, a commenter interprets the words "subsequent auction" and "re-auction," that appear in the Commission's rules regarding the consequences of an auction default, to require an "inextricable link" between the first auction and the second.

40. In reality, these phrases mean the opposite of what the commenter asserts. The terms "subsequent auction" and "re-auction," on their face, refer to a new auction that will offer licenses for spectrum that has been offered but not successfully assigned in a prior auction. In all material respects, Auction 97 has concluded: the Commission has completed the process of competitive bidding, issued licenses to all winning bidders, finished the transition process, and accomplished all other prerequisites to the provision of wireless service for licenses that were successfully auctioned. Bidding in Auction 97 concluded more than a decade ago. The Commission's default rules rely on bids in two auctions of licenses for the same spectrum to determine the consequences of a default in the first one, but this does not suggest that the second auction is a continuation of the first. The Commission is entitled to set the rules of each auction within its statutory parameters. By using the updated part 1 rules, the Commission is able to leverage experience and expertise that it did not have at the time of Auction 97, and indeed leverage its experience in Auction 97 itself, to better promote robust competition and combat fraud in Auction 113.

A. Applying the Current Part 1 Competitive Bidding Rules in Auction 113 is Not a Violation of Due Process

41. Using the part 1 rules in effect at the time of future AWS-3 auctions is consistent with applicable law and the reasonable expectations of any party involved in Auction 97. Applying current

part 1 rules in future AWS-3 auctions is consistent with due process of law. Application of the Commission's rules at the time of the auction is neither a prohibited primary retroactive application nor secondary retroactive application of the rules. Furthermore, one commenter's contention that changes in rules applicable to Auction 97 and a future AWS-3 auction effectively single out the defaulters in Auction 97 for differential treatment ignores their own legal responsibility as defaulters.

42. Primary retroactivity. An agency order is impermissible as "primarily retroactive" if it alters the past legal consequences of past actions. An order can be primarily retroactive if it (1) increases a party's liability for past conduct; (2) impairs rights a party possessed when he acted; or (3) imposes new duties with respect to transactions already completed.

43. Applying part 1 rules in effect at the time of Auction 113 will not alter "the past legal consequences for past actions" taken by Northstar and SNR. To the contrary, the "past legal consequences of past actions" by Northstar and SNR were determined by the Commission's rules governing default penalties, which were well established prior to Auction 97 and have not changed in any meaningful way since then. It is those rules, not the DE rules, that determines a defaulter's liabilities, rights, and duties.

44. As such, applying part 1 rules in effect when Auction 113 commences would not increase DISH's liability for past conduct by penalizing Northstar and SNR in the form of a larger deficiency payment owed than if the Auction 97 DE rules remained in place. The Commission's default payment rules determine the amounts of Northstar's and SNR's default payment obligations or, in other words, the default payment rules establish the liabilities applicable to the defaulters. Pursuant to the rules, a bidder's obligation to pay its entire bid amount is set when its bid is accepted, and after default, the amount due may be reduced based on the results of a later auction. The amount that a defaulter will ultimately owe is determined by the delta between its winning bid and the winning bid in a subsequent auction, and if the subsequent winning bid equals or exceeds the defaulted bid, no deficiency payment will be assessed. The bidding rules that are applied in a subsequent auction would not increase DISH's liability for past conduct because the maximum amount of the liability due to its past conduct was established at the time DISH defaulted, and the Commission's rules controlling default payments have not changed. Accordingly, using those rules in a future AWS-3 auction would not increase DISH's liability for past conduct.

45. Secondary Retroactivity. A commenter further claims that conducting Auction 113 using the part 1 rules that are in effect at that time would have secondary retroactive effect, making their use impermissible. A change in law that does not result in primary retroactivity nonetheless can still be impermissibly secondarily retroactive. This sort of retroactivity is “characteristic of a rule having exclusively ‘future effect’ but affects the desirability of past transactions.” However, simply having an effect, even if negative, on expectations based on past rules does not make a new rule secondarily retroactive.

46. As a preliminary matter, the commenter could not reasonably rely on a future AWS-3 auction replicating Auction 97, with respect to rules or outcome. At the outset of the AWS-3 service, the Commission gave notice that future AWS-3 auctions would rely on the part 1 rules then in effect, meaning that the participants should never have relied upon the Auction 97 rules being applied in perpetuity. The Commission expressly admonished bidders that any future auction of AWS-3 spectrum, which would determine subsequent winning bid amounts for purposes of default obligations, could be subject to updated rules. Participants in Auction 97 were on notice of potential for changes in the Commission’s competitive bidding rules, and they reasonably should have expected the Commission to update or modernize its rules in an auction being held over a decade later. It would be irresponsible for the Commission to ignore the vast changes involving spectrum-based services since Auction 97. As the D.C. Circuit has recognized, “an agency must be allowed to adjust its policies to changing circumstances, within the framework of the rules it established in advance of the auction.”

47. Moreover, the benefits of applying the revised part 1 rules in a future AWS-3 auction will outweigh the burden claimed by the commenter. Agencies must “balance the harmful ‘secondary retroactivity’ of upsetting prior expectations or existing investments against the benefits of applying their rules to those preexisting interests.” In 2015, the Commission updated the part 1 rules after finding that the rule amendments served the public interest, and evidence in the record shows that DE participation in Commission auctions has been enhanced by those updates. That finding was made in part based on the experience the Commission gained from administering Auction 97, an auction in which the defaults of Northstar and SNR significantly affected the outcome. The actions taken by the Commission in the AWS-3 Report and Order further align eligibility criteria for DE bidding credits for AWS-3 spectrum

licenses with the Commission's part 1 rules and with the DE eligibility requirements used in auctions for 5G-ready spectrum licenses since Auction 97. The "amorphous injury" to Northstar and SNR, a purely speculative decrease in winning bid amounts in Auction 113, is outweighed by the public interest benefits in enhancing bona fide DE participation in spectrum auctions and in harmonizing the competitive bidding rules. In conducting Auction 113 pursuant to the reformed part 1 rules, the Commission is exercising its discretion to balance fairness to losing bidders with the needs of the market and the public interest. Accordingly, there is no impermissible secondary retroactivity.

48. Disparate Treatment. In support of its argument that due process requires that Auction 113 be conducted using Auction 97 part 1 rules, one commenter complains that Northstar and SNR would be impermissibly "singled out" by the use of modified part 1 rules. This argument is unsupported and unpersuasive. It disregards Northstar's and SNR's own responsibility for improperly claiming bidding credits under the Commission's DE rules in Auction 97. Northstar and SNR, and their guarantors, will be subject to default obligations based on their defaulted winning bids in Auction 97, bids that they won while relying on improperly claimed bidding credits, pursuant to a rule that applied to all other Auction 97 participants. Had any other winning bidder defaulted in that auction, it would have had its final default payment determined just as Northstar's and SNR's will be. The only thing that "singles out" Northstar and SNR is that they voluntarily defaulted on winning bids of over \$3 billion in Auction 97 after improperly claiming billions in small business bidding credits. The commenter similarly argues that the participants are unique in that any bidders in future auctions outside the AWS-3 band will have fresh, revised expectations based on application of the Commission's post-Auction 97 revisions to its part 1 competitive bidding rules. But this claim ignores that the Commission regularly admonishes potential auction participants that future auctions will also be subject to any modifications that the Commission may adopt for its part 1 general competitive bidding rules in the future.

B. The Commission Provided the Notice and Opportunity for Comment Required by the Administrative Procedure Act

49. The Commission finds no merit in one commenter's contention that it failed to comply with the Administrative Procedure Act (APA). The commenter complains that the Commission's use of a fixed comment period from the release of the NPRM rather than from the date of its Federal Register

publication does not meet APA requirements. The APA requires that notice of regulatory action be published in the Federal Register and permits action only after such notice is provided. It does not define the minimum period of notice before a deadline for comments. Commission rules state that “a reasonable time will be provided” and that such time will be “specified in the NPRM,” without prescribing a specific length of time.

50. The NPRM was adopted at the Commission Open Meeting on February 27, 2025, and was released by publication on the Commission’s website on February 28, 2025. It set a deadline for comments to be filed by March 31 and for reply comments by April 14. The Federal Register published a summary of the NPRM, including information about the dates for comments and replies, on March 13, or 12 business days and 18 calendar days prior to the comment deadline.

51. That notice satisfied the requirements of the APA and the Commission’s rules and gave interested parties a sufficient opportunity to participate in the rulemaking. The commenter does not claim that the comment period was unreasonably short or that it was prejudiced in any way. In fact, the commenter hired outside counsel and filed 18 pages of comments by the March 31 deadline. Eleven other parties filed comments within this time period, and no party claimed to have been unable to meet a filing deadline or otherwise sought additional time to address the NPRM.

52. The Commission are likewise unpersuaded by the commenter’s claim that the Commission violated the APA by “failing to identify and seek any comment on any issue relating to the inextricable linkage of Auctions 97 and 113.” The APA requires an agency to publish a notice that identifies “either the terms or substance of the proposed rule or a description of the subjects and issues involved.” That notice “must be sufficient to fairly apprise interested parties of the issues involved, but it need not specify every precise proposal which the agency may ultimately adopt as a rule.” The Commission satisfied that requirement when it proposed updating the DE rules for Auction 113.

C. Applying Part 1 Rules in Effect at the Time of Any Future AWS-3 Auctions Will Not Breach Any Contractual Duty of the Commission

53. Contrary to two commenters’ assertions, changes to the competitive bidding rules do not breach DISH’s guaranties. One of the commenters relied on a savings clause in the guaranties, a provision that the guaranties may be enforced to the fullest extent permissible under the laws and public

policies in the event that and to the extent that “the obligations of the Guarantor under this Guaranty shall be adjudicated to be invalid or unenforceable.” The commenter contends that because changing the bidding credit rules from Auction 97 violates its due process rights, enforcing the guaranties would exceed the savings clause provision of “permissible” enforcement. Changes in the Commission’s bidding credit rules do not prejudice any rights of the commenter protected by due process and its strained reading of the savings clause fails to prove any breach of the guaranties.

54. The commenter suggests that applying the part 1 competitive bidding rules in effect at the time that the auction takes place is somehow analogous to the government’s actions in the Supreme Court case of *United States v. Winstar Corp.* The Commission find it is not. In that case, the Supreme Court addressed the enforcement of a regulation that contradicted contractual assurances of specific future accounting treatment that a banking regulator had made to induce healthier savings and loan companies to purchase failing financial entities. In contrast, the commenter never received any contractual assurance that future AWS-3 auctions would be conducted under the Auction 97 rules, and the Commission never extended any such assurance. To the contrary, the Commission provided notice that its competitive bidding rules would be subject to future changes.

55. Likewise, the Commission’s improvement of its competitive bidding rules does not breach any applicable covenant of good faith and fair dealing. Notwithstanding claims by the commenters the underlying default obligations are set by 47 CFR 1.2104(g) and those liabilities are reflected in the guaranties. The final amount of those obligations will be determined by the applicable subsequent winning bids, not by any of the changes that the Commission has made to the competitive bidding rules since Auction 97 or makes in the AWS-3 Report and Order. Whatever the subsequent winning bid amounts, the commenter remains liable for any deficiency regardless of the DE rules, or any other particular rules, in a future auction.

D. Commenter’s Pre-Auction Request for Post-Auction Relief Is Not Ripe

56. Finally, two commenters request that, if it does not apply the 2014 part 1 rules in Auction 113, the Commission refrain from requiring any deficiency payments pursuant to 47 CFR 1.2104(g) and from “enforcing the DISH guaranties.” Obviously, the Commission has not yet assessed a final default payment for the defaulted bids from Auction 97. Indeed, the outcome of a future auction of AWS-3

spectrum licenses may prove such a request to be unnecessary if the subsequent winning bids are equal to or greater than Northstar's and SNR's prior defaulted winning bids. Thus, the Commission declines to consider the commenters request that it refrain from requiring any deficiency payments pursuant to 47 CFR 1.2104(g) and from enforcing the DISH guaranties" if it amends the rules as proposed in the NPRM.

57. The commenters' request in this regard is similar to that of the petitioner in Mountain Solutions in that the default liability, if any, is not yet ripe. Indeed, the request here is even more premature. In Mountain Solutions, there were subsequent winning bids for seven of the ten licenses involved in the petitioner's defaults. In this case, by contrast, there are no subsequent winning bids with respect to the defaults by the participants. As one commenter observes, at this point, any injury related to deficiency payments and enforcement of the guaranties is speculative and, accordingly, any requests for related Commission action are premature. The Commission therefore does not need to consider any request by the commenters for relief from the obligations of the involved parties under the rules and the guaranties until after the Commission is able to calculate any final payment for the defaults.

V. Tribal Licensing Window

58. In the NPRM, the Commission sought comment on the possible use of a Tribal licensing window for Auction 113. After consideration of the comments received in response, the Commission finds that it would not be in the public interest to implement a Tribal licensing window for the inventory proposed for Auction 113.

59. In seeking comment on a possible Tribal licensing window, the Commission noted that the Spectrum and Secure Technology and Innovation Act directs the Commission to use competitive bidding to "grant licenses for spectrum in the inventory of the Commission as of the date of enactment of this Act in the bands of frequencies referred to by the Commission as the 'AWS-3 bands.'" The Act also directs proceeds from the auction to the general fund of the Treasury to, among other things, reimburse funds borrowed by the Commission to carry out the Commission's Supply Chain Reimbursement Program. The Spectrum and Secure Technology and Innovation Act also includes a directive for the Commission to "initiate systems of competitive bidding under section 309(j)" for these AWS-3 licenses within 18 months of enactment and provision to processing applications and grant licenses notwithstanding the lapse in the Commission's broader authority under 47 U.S.C. 309(j), indicating

Congressional urgency in moving forward with Auction 113.

60. Within this context, the Commission sought comment on whether a Tribal licensing window for any relevant portions of the limited number of AWS-3 licenses available for auction would be permissible according to the language of the statute. Additionally, the Commission sought comment on the appropriate eligibility requirements to adopt should it offer a Tribal licensing window. The Commission sought comment on the putative benefits of a Tribal licensing window given the bandwidth available for auction and the presence of Federal operations in the band. Finally, the Commission sought general comment on the potential impact of a Tribal licensing window on the process for auctioning these licenses.

61. Numerous Tribal entities and their representatives, including Tribal Governments, a Tribal regulatory entity, a Tribal wireless provider, and public interest groups, filed in support of including a Tribal licensing window in Auction 113. They argued that adopting a Tribal licensing window would serve the public interest, promote Tribal spectrum access, and support access to communications services in rural, unserved, and underserved areas. In addition, a number of commenters address the eligibility criteria for a Tribal licensing window in Auction 113, referencing previous proceedings where the Commission prioritized Tribal licensing. By contrast, another commenter opposed including a Tribal licensing window in Auction 113, arguing that doing so would not be consistent with the goals of the Spectrum and Secure Technology and Innovation Act, which include auctioning the valuable AWS-3 spectrum, which has “already been sitting in the Commission’s inventory unused for far too long.”

62. The Commission finds that it would not be in the public interest to implement a Tribal licensing window in the context of Auction 113, given Congress’s specific directives in the Spectrum and Secure Technology and Innovation Act regarding the inventory to be licensed and the timetable for doing so. Congress was clear in the Spectrum and Secure Technology and Innovation Act that the Commission is to auction all the unassigned AWS-3 spectrum in its inventory as of December 2024, and that the proceeds from the auction are ultimately to be used to reimburse the Treasury for funds deposited in the Spectrum Auction Trust Fund to fill the funding shortfall in the Supply Chain Reimbursement Program and support the removal of telecommunications equipment that poses a risk to national security. What is

more, the text of the Spectrum and Secure Technology and Innovation Act reflects the urgent public interest in moving expeditiously to secure American networks from equipment that poses a risk to national security, and in using proceeds from the AWS-3 spectrum auction to achieve that goal. The Commission agrees with the one commenter that conducting a Tribal licensing window, which would remove spectrum prior to the auction from the congressionally specified inventory and could potentially reduce the auction proceeds available for the Supply Chain Reimbursement Program, would not further the public interest goals of the Spectrum and Secure Technology and Innovation Act. Additionally, one commenter argues that an auction of AWS-3 inventory licenses can still benefit Tribes. However, there is disagreement about whether this is true. Another commenter counters that it has seen too many cases where auction winners acquire licenses covering Navajo lands but do not build infrastructure because it is not economically lucrative to do so, or if they do, Navajo lands are the very last areas built out. Although the Commission does not adopt a Tribal priority window for Auction 113, it acknowledges its trust relationship with Tribal Nations, and remains committed to finding ways to address the connectivity challenges facing Tribal Nations.

63. Furthermore, as the commenter suggested, conducting a Tribal licensing window in connection with Auction 113 could further delay the AWS-3 spectrum from being used to provide service. This spectrum has been in inventory for a decade now amidst protracted litigation and the subsequent lapse of the Commission's auction authority. With the Spectrum and Secure Technology and Innovation Act, Congress provided the authority to auction these licenses and established a clear and swift timeline for moving forward. Consistent with the public benefits of this well-established service and as reflected by the legislative action, the public interest mandates prioritizing expeditious licensing. Several commenters claim that implementing a Tribal licensing window would not delay the auction and such a window could even be held simultaneously with traditional bidding to expedite the process. The Commission does not find these arguments compelling. In the Commission's experience with the Tribal priority window in the 2.5 GHz auction, considerable time and resources were required in order to establish and conduct a Tribal licensing window with adequate outreach and support for potential participants. Additionally, the Commission does not find it feasible to hold a Tribal licensing window and bidding simultaneously as it would not allow bidders sufficient time to develop business plans or

assess market conditions as required by the Communications Act. Finally, because the Commission declines to adopt a Tribal licensing window, it finds it unnecessary at this time to evaluate the various proposals in the record regarding eligibility criteria for participation in a Tribal licensing window for Auction 113.

VI. Procedural Matters

64. Paperwork Reduction Act Analysis. The Office of Management and Budget (OMB) has approved the collection of information in the Application to Participate in an FCC Auction, FCC Form 175, including collecting five years of annual revenue information from applicants for a small business bidding credit and information from applicants for a rural service provider bidding credit. The AWS-3 Report and Order does not contain new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

65. Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the AWS-3 Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

66. Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule and policy changes contained in this Order on small entities.

67. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the NPRM. The Commission sought written public comment on the proposals and issues raised in the NPRM, including comment on the IRFA. No comments were filed addressing the IRFA.

A. Need for, and Objectives of, the Rules

68. In the AWS-3 Report and Order, the Commission updates the DE rules for AWS-3 spectrum bands to enable the Commission to offer licenses for spectrum within those bands that is currently in the Commission's inventory through competitive bidding in the near future. In addition, the AWS-3 Report and Order resolves all remaining open issues and also addresses comments from small and other entities that were filed in response to the NPRM. Together, the rules that the Commission adopts will further its goal of facilitating the use of presently fallow spectrum and further advancing the deployment of fifth generation wireless (5G) services by efficiently bringing to auction licenses covering spectrum that is likely to be used to provide 5G services. In addition, these rules will also foster competition in wireless services by facilitating participation in an auction of licenses for AWS-3 spectrum by entities designated by in 47 U.S.C. 309(j)(3) and (4) (the Act) to be given opportunities to participate in spectrum-based services (designated entities or DEs).

69. Specifically, the AWS-3 Report and Order adopts rules that provide small businesses and rural service providers with greater opportunities to participate in the provisioning of 5G services by aligning the Commission's outdated, service-specific eligibility requirements for AWS-3 with its current practice. Additionally the AWS-3 Report and Order modifies the part 1 size definitions for small business bidding credits so that the length of time over which revenues are averaged for determining bidding credit eligibility is five years, in conformance with the Small Business Act, as amended.

70. Lastly, the proceeds generated from the auctions will bolster another of the Commission's long-standing objectives: protecting U.S. national security by supporting the Commission's Supply Chain Reimbursement Program, which implements the Secure and Trusted Communications Networks Act of 2019 through its reimbursement of eligible advanced communications service providers, some of which are small entities, for their costs incurred through the removal, replacement, and disposal of equipment and services provided by untrustworthy entities such as Huawei Technologies Company or ZTE Corporation.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

71. There were no comments filed that specifically addressed the information presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business

Administration

72. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the NPRM.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

73. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning under the Small Business Act. In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

74. Small Businesses, Small Organizations, Small Governmental Jurisdictions. The Commission actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes three broad groups of small entities that could be directly affected by our actions. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, in general, a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses. Next, “small organizations” are not-for-profit enterprises that are independently owned and operated and not dominant their field. While the Commission does not have data regarding the number of non-profits that meet that criteria, over 99 percent of nonprofits have fewer than 500 employees. Finally, “small governmental jurisdictions” are defined as cities, counties, towns, townships, villages, school districts, or special districts with populations of less than fifty thousand. Based on the 2022 U.S. Census of Governments data, the Commission estimate that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000.

75. Licenses Assigned by Auctions. The Commission's small business size standards with respect to licenses assigned by auction involve eligibility for bidding credits in the auction of licenses for various wireless frequencies. In the auction of these licenses, the Commission may define and adopt criteria for different classes of small businesses. The criteria for these small business classes may be defined in the Commission's rules or may require consultation with the U.S. Small Business Administration, Office of Size Standards. For licenses subject to auction, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. In addition, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

76. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

77. Advanced Wireless Services (AWS) - (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3); 2000–2020 MHz and 2180–2200 MHz (AWS-4)). Spectrum is made available and licensed in these bands for the provision of various wireless communications services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show

that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

78. According to Commission data as of December 2021, there were approximately 4,472 active AWS licenses. The Commission's small business size standards with respect to AWS involve eligibility for bidding credits in the auction of licenses for these services. For the first auction of AWS licenses, the Commission defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses. In the most recent auction of AWS licenses, 15 of 37 bidders qualifying for status as small or very small businesses won licenses.

79. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time the Commission is not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

80. Satellite Telecommunications. This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$44 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of that number, 242 firms had revenue of less than \$25 million. Consequently, using the SBA's small business size standard most satellite telecommunications

service providers can be considered small entities. The Commission notes however, that the SBA's revenue small business size standard is applicable to a broad scope of satellite telecommunications providers included in the U.S. Census Bureau's Satellite Telecommunications industry definition. Additionally, the Commission neither requests nor collects annual revenue information from satellite telecommunications providers, and is therefore unable to more accurately estimate the number of satellite telecommunications providers that would be classified as a small business under the SBA size standard.

E. Description of Economic Impact and Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

81. The RFA directs agencies to describe the economic impact of proposed rules on small entities, as well as projected reporting, recordkeeping and other compliance requirements, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

82. The Commission expects that the rules adopted in the AWS-3 Report and Order will impose new and/or additional reporting or recordkeeping and/or other compliance obligations on small entities as well as other applicants and licensees. These obligations are discussed in greater detail in the AWS-3 Report and Order. The Commission believes that these rules assist the Commission in meeting its statutory goals by facilitating the auction, and subsequent use, of unassigned spectrum. Further, the Commission does not believe that the costs and/or administrative burdens associated with the adopted rules will unduly burden small entities. The Commission notes that the rules adopted in the AWS-3 Report and Order modify requirements that were in place prior to the last major update to the Commission's competitive bidding rules in 2015 in order to bring them in line with the policies and procedures that have been used in auctions of 5G-ready services since 2015. Therefore, small entities that have participated in Commission auctions since 2015 may already be familiar with such policies and requirements and may have the necessary processes and procedures in place to facilitate compliance, thereby resulting in minimal incremental costs to comply with the modifications adopted in the AWS-3 Report and Order.

83. Typically, the auction procedures inform prospective applicants that they should familiarize themselves with the Commission's general competitive bidding rules, Commission decisions

regarding competitive bidding procedures, application requirements, obligations of Commission licensees, construction permit holders, and support recipients, and the Commission's service rules for the frequency band available in the auction or for construction permits or universal service support, and that they must be thoroughly familiar with the procedures, terms, and conditions contained in the public notice adopting procedures for the auction. The Commission therefore do not expect that the amended definitions adopted in the AWS-3 Report and Order will increase the need for small entities to hire attorneys, engineers, consultants, or other professionals because it does not increase the level of education or due diligence beyond what was required of applicants under the previous competitive bidding rules for the AWS-3 spectrum bands.

84. As mentioned, the AWS-3 Report and Order adopts rule changes that will affect reporting, recordkeeping, and/or other compliance requirements for small and other entities. The AWS-3 Report and Order amends the Commission's rules related to designated entities eligible for bidding credits for licenses subject to auction in the AWS-3 bands. It adopts the same revenue thresholds that the Commission has used in recent years to determine eligibility for small and very small business bidding credits, which are provided for in the Commission's part 1 standardized schedule of bidding credits. It also amends the AWS-3 bidding credit eligibility criteria to align with the amended Small Business Act's requirement that federal agencies that categorize business concerns that provide services as a "small business concern" based on annual average gross receipts only do so if the agency considers such receipts "over a period of not less than five years." Specifically, the Commission adopts a requirement for an entity to have average gross revenues for the preceding five years not exceeding \$55 million to be a small business, and such an entity would be eligible for a bidding credit of 15%. To be classified as a very small business an entity would be required to have average gross revenues for the preceding five years not exceeding \$20 million and would be eligible for a bidding credit of 25%. The Commission also adopts a rural service provider bidding credit for auctions of licenses for AWS-3 spectrum that has been offered. Lastly, the AWS-3 Report and Order modifies the Commission's general part 1 competitive bidding rules to incorporate the five-year average gross receipts benchmark for the purpose of determining which entities qualify for small business bidding credits for consistency with the Small Business Act.

F. Discussion of Steps Taken to Minimize the Significant Economic Impact on Small

Entities and Significant Alternatives Considered

85. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”

86. The rules adopted by the Commission in the AWS-3 Report and Order reflect its efforts to minimize significant economic impact to small entities where practicable and its consideration of various alternatives in reaching its conclusions. For example, the adopted rules update the competitive bidding rules for the AWS-3 spectrum bands to align with current practices. The Commission considered alternatives that would apply rules that deviated from our prevailing practices. However, by adopting rules similar to the DE rules that have been used in recent auctions of wireless, 5G-ready spectrum, compliance burdens on small businesses will be minimized, as many small businesses will already be familiar with these requirements. As a result, the adopted approach could lessen the compliance costs for small entities who have participated in any wireless spectrum auction since 2015.

87. Competitive Bidding and Bidding Credits for Small Entities. The Commission administers bidding credit programs to promote small business service provider participation in auctions and in the provision of spectrum-based services. Based on the Commission’s analysis of past auction data, the relative costs of participation are lowered for small businesses that take full advantage of the bidding credit programs. The current DE rules for auctions of licenses in AWS-3 spectrum bands were adopted prior to the last major update to the part 1 competitive bidding rules in 2015. Thus, as mentioned in the prior section, the Commission has modified these DE rules so that they conform with the DE rules set forth in part 1, subpart Q, of the Commission’s rules and are consistent with recent auctions. Specifically, the Commission modifies the DE rules for AWS-3 to apply the current part 1 definition of a qualifying “small business” and a “very small business” and apply the bidding credits for these two categories, and for rural service providers. The Commission also modifies the part 1 size definitions for small business bidding credits so that the amount of time over which revenues are averaged for determining bidding credit eligibility is five years, in conformance with the Small Business Act. The

Commission considered comments suggesting it implement larger bidding credits for small businesses. The Commission concludes, however, that the bidding credit percentages adopted in the AWS-3 Report and Order will sufficiently enable small businesses seeking to participate in auctions to gain access to capital, thereby fostering their increased participating and competitive in auctions, without incentivizing gamesmanship.

88. In addition, to reduce costs to small and other entities, the Commission provides resources and educational materials to assist all auction participants, including small entities, with understanding the requirements of auction participation, including applying for bidding credits. Small entities and other auction participants may seek clarification of, or guidance regarding, auction procedures, the competitive bidding rules, and any requirements related to the authorizations or support to be made available through the auction from Commission staff prior to each auction's application window. Further, an FCC Auctions Hotline provides small entities one-on-one access to Commission staff for information about the auction process and procedures. Lastly, through the FCC Auctions Technical Support Hotline, the Commission provides a technical assistance resource to small entities and other applicants, on issues such as access to or navigation within the electronic short-form application (FCC Form 175) and use of the bidding system.

G. Report to Congress

89. The Commission will send a copy of the AWS-3 Report and Order, including the FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the AWS-3 Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA.

VII. Ordering Clauses

90. IT IS ORDERED, pursuant to the authority found in sections 1, 2, 4(i), 303, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 303, and 309(j); the Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, H.R. 5009, 118th Cong. Div. D, Title LIV, section 5403, that the Report and Order and Second Report and Order IS ADOPTED.

91. IT IS FURTHER ORDERED that the rules and requirements as adopted in the Report

and Order and Second Report and Order WILL BECOME EFFECTIVE thirty (30) days after publication in the Federal Register.

92. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of the Report and Order and Second Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

93. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of the Report and Order and Second Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure; Communications common carriers; reporting and recordkeeping requirements; telecommunications

47 CFR Part 27

Administrative practice and procedure; Communications common carriers; telecommunications

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 27 to read as follows:

PART 1- PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

2. Amend § 1.2110 by revising paragraphs (b)(1)(i) and (f)(2)(i) to read as follows:

§ 1.2110 Designated entities.

* * * * *

(b) ***

(1) ***

(i) The gross revenues of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules. An applicant seeking status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules, must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous five years of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of its controlling interests.

* * * * *

(f) ***

(2) ***

(i) *Size of bidding credits.* A winning bidder that qualifies as a small business, and has not claimed a rural service provider bidding credit pursuant to paragraph (f)(4) of this section, may use the following bidding credits corresponding to its respective average gross revenues for the preceding 5 years:

(A) Businesses with average gross revenues for the preceding 5 years not exceeding \$4 million

are eligible for bidding credits of 35 percent;

(B) Businesses with average gross revenues for the preceding 5 years not exceeding \$20 million are eligible for bidding credits of 25 percent; and

(C) Businesses with average gross revenues for the preceding 5 years not exceeding \$55 million are eligible for bidding credits of 15 percent.

* * * * *

PART 27—Miscellaneous Wireless Communications Services

3. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

4. Revise § 27.1106 to read as follows:

§ 27.1106 Designated Entities in the 1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz bands.

(a) *Small business.* (1) A small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding \$55 million for the preceding five (5) years.

(2) A very small business is an entity that, together with its affiliates, its controlling interests, and the affiliates of its controlling interests, has average gross revenues not exceeding \$20 million for the preceding five (5) years.

(b) *Bidding credits.* A winning bidder that qualifies as a small business as defined in this section or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(i)(C) of this chapter, subject to the cap specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business as defined in this section or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(i)(B), subject to the cap specified in § 1.2110(f)(2)(ii) of this chapter.

(c) *Rural service provider bidding credit.* A rural service provider, as defined in § 1.2110(f)(4) of this chapter, which has not claimed a small business bidding credit may use a bidding credit of 15 percent as specified in § 1.2110(f)(4)(i), subject to the cap specified in § 1.2110(f)(4)(ii) of this chapter.