statute directs the Commission to 'consider the use of tax certificates, bidding preferences, and other procedures." Id. In addition, Section 309(j)(3)(B) instructs the Commission, in establishing eligibility criteria and bidding methodologies, to promote 'economic opportunity and competition * by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women," which are collectively referred to as "designated entities." 47 U.S.C. 309(j)(3)(B); 47 CFR 1.2110. Section 309(j)(4)(A) further provides that to promote these objectives, the Commission shall consider alternative payment schedules, including lump sums or guaranteed installment payments. 47 U.S.C. 309(j)(4)(A).

133. In instructing the Commission to ensure the opportunity for designated entities to participate in auctions and spectrum-based services, Congress was aware of the problems that designated entities would have in competing against large, well-capitalized companies in auctions and the difficulties they encounter in accessing capital. For example, the legislative history accompanying our grant of auction authority states generally that the Commission's regulations "must promote economic opportunity and competition," and "[t]he Commission will realize these goals by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women. H.R. Rep. No. 111, 103d Cong., 1st Sess. 254 (1993) (House Report). The House Report states that the House Committee was concerned that, "unless the Commission is sensitive to the need to maintain opportunities for small businesses, competitive bidding could result in a significant increase in concentration in the telecommunications industries." Id. More specifically, the House Committee was concerned that the adoption of competitive bidding should not have the effect of "excluding small businesses from the Commission's licensing procedures," and anticipated that the Commission would adopt regulations to ensure that small businesses would "continue to have opportunities to become Commission licensees." Id. at

134. Consistent with Congress' concern that auctions not operate to exclude small businesses, the provisions relating to installment payments in Section 309(j) were clearly intended to

assist small businesses. The House Report states that these provisions were drafted to "ensure that all small businesses will be covered by the Commission's regulations, including those owned by members of minority groups and women." *Id.* at 255. It also states that the provisions in Section 309(j)(4)(A) pertaining to installment payments were intended to promote economic opportunity by ensuring that competitive bidding does not inadvertently favor incumbents with "deep pockets" "over new companies or start-ups." *Id.*

135. Moreover, with regard to access to capital, Congress had made specific findings in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that "small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit." Small Business Credit and **Business Opportunity Enhancement Act** of 1992, Pub. L. No. 102-366, § 331(a)(3), 106 Stat. 986, 1007 (1992). As a result of these difficulties, Congress resolved to consider carefully legislation and regulations "to ensure that small business concerns are not negatively impacted" and to give priority to passage of "legislation and regulations that enhance the viability of small business concerns." Id. at § 331(b)(2) &

136. In our initial implementation of Section 309(j), the Commission established in the Second Report and Order eligibility criteria and general rules that would govern the special measures for small businesses, rural telephone companies, and businesses owned by minorities and women. We also identified several measures, including installment payments, bidding credits and spectrum set-asides, that we could choose from in formulating the rules for auctionable spectrum-based services. In addition, we established rules to prevent unjust enrichment by designated entities seeking to assign or transfer licenses obtained through use of one of these special measures. See Second Report and Order at 2388-2400.

137. In adopting provisions to provide designated entities opportunities in MDS, we note that, while Section 309(j) lists the various designated entities together, the statute does not indicate that each group must be afforded the same type of treatment. See Competitive Bidding Notice at 7646. We have consistently emphasized that the provisions applicable to particular designated entities would vary depending on the nature of each

individual service. In particular, we have evaluated the capital requirements, the nature of the expected pool of bidders, and other characteristics of each service to determine the appropriate measures to achieve the objectives of the auction statute. See Second Memorandum Opinion and Order at 7256; Fourth Report and Order at 2336.

138. With regard to MDS, we note that this service differs from the other services that have been auctioned to date in several important ways. First, unlike PCS and IVDS, wireless cable is a heavily encumbered service with many of the channels in most major markets already occupied. Given the limited amount of remaining usable spectrum and the need to protect incumbents from harmful interference, we anticipate that the BTA service areas will be auctioned for relatively modest amounts, particularly in comparison to the sums bid in the PCS auctions. Second, it is necessary for MDS channels within a geographic area to be aggregated under the control of a single wireless cable operator, to allow it to compete with wired cable television systems in the same area. Notice at 7667. Thus, our goal in this proceeding is not to set the stage for the development of an entirely new industry, such as PCS, but to allow the progression and rationalization of the existing wireless cable industry. Accordingly, we cannot adopt designated entity rules that would hinder the accumulation of MDS channels within BTAs by entities financially capable of operating wireless cable systems and providing competitive service to the public.

139. In this Report and Order we adopt specific designated entity measures appropriate for MDS, based on the record in this proceeding and on the unique characteristics of the service as identified above. Specifically, we have determined to make installment payments, reduced upfront payments and bidding credits available to small businesses, including those owned by minorities and women, and to small business consortia. We also adopt the unjust enrichment provisions set forth in the Second Report and Order applicable to installment payments and bidding credits. Id. at 2395; 47 CFR 1.2111(c) & (d). We decline to adopt spectrum set-asides. Such a measure is inappropriate for MDS, given the heavily encumbered nature of this