

described by Omnipoint. Moreover, we will have the opportunity to review these structures through the application process when bidders who elect to utilize such equity structures are required to identify the members of their control groups. Consequently, we believe that our rules adequately protect against "sham" deals.

18. Accordingly, under Section 24.709 of the rules, all applicants in the C block auction selecting a "control group" structure in order to exclude the total assets and gross revenues of certain investors will have two options for raising capital through the distribution of equity among "qualifying investors," other eligible investors in the control group (e.g., management and institutional investors) and other non-attributable "strategic" investors. In light of the fact that we have eliminated the eligibility dichotomy in the two control group equity options, we specify and clarify here how both options apply to C block applicants.

19. First, we note that under both options the following control and voting requirements continue to apply: (1) the control group must own at least 50.1 percent of the applicant's voting stock, if a corporation, or all of the applicant's general partnership interests, if a partnership; (2) qualifying investors, as defined in the rules, must hold at least 50.1 percent of the voting stock and all general partnership interests within the control group, and must have *de facto* control of the control group and the applicant; and (3) the investor(s) holding "nonattributable equity" (up to 25 percent or 49.9 percent) are limited to 25 percent of a corporate applicant's voting equity (including the right to vote such interests through a voting trust or other arrangement) and may hold only limited partnership interests, if the applicant is a partnership.

20. *Control Group Minimum 25 Percent Equity Option.* This equity structure option requires the control group to hold at least 25 percent of the applicant's total equity. Of this 25 percent equity, at least 15 percent must be held by "qualifying investors." A "qualifying investor" is generally defined as a member of, or a holder of an interest in a member of, the applicant's or licensee's control group whose gross revenues and total assets, when aggregated with those of all other attributable investors and affiliates, do not exceed the gross revenues and total assets restrictions specified in our rules with regard to eligibility for entrepreneurs' block licenses or status as a small business. With regard to the remaining 10 percent of the control group's equity, this may be held by four

types of noncontrolling investors without these investors' assets and revenues being attributed to the applicant, as is the case with other control group members. These are (1) qualifying investors (small businesses or entrepreneurs); (2) individuals who are members of the applicant's management team; (3) existing investors in a preexisting entity that is a member of the control group; and (4) institutional investors. The minimum equity amounts within the control group vary slightly three years after the license is received and for applicants whose sole control group member is a preexisting entity. As for the remaining 75 percent of the applicant's equity (assuming the control group holds no more than the minimum 25 percent), the gross revenues and total assets (and other affiliations) of an investor holding a portion of this remaining equity are not considered so long as such investor (together with its affiliates) holds no more than 25 percent of the applicant's total equity.

21. *Control Group Minimum 50.1 Percent Equity Option.* This equity structure option requires the control group to hold at least 50.1 percent of the applicant's total equity. Of this 50.1 percent equity, at least 30 percent must be held by "qualifying investors." The remaining 20.1 percent of the control group's equity may be held by the same four types of investors specified above. As with the *Control Group Minimum 25 Percent Equity Option*, the minimum equity amounts within the control group vary slightly three years after the license is received and for applicants whose sole control group member is a preexisting entity. As for the remaining non-control group equity, the gross revenues and total assets (and affiliates) of the investor(s) holding this remaining equity is not considered so long as such investor(s) (together with its affiliates) holds no more than 49.9 percent of the applicant's total equity. The reasoning behind these two options and their advantages to applicants for purposes of raising capital are set forth in our *Fifth R&O* and *Fifth MO&O* (59 Fed. Reg. 5532, 59 Fed. Reg. 53,364). We affirm here that this reasoning and the advantages for maintaining both options remain applicable. We note that, under our prior rules, businesses owned by minorities and women had the option to use either equity structure. It is our understanding that such businesses, depending on their particular circumstances, were forming applicants based on the option that best met their needs for outside investment and what the capital markets were seeking from

them in the form of equity interests. We now provide both options to all C block applicants and we anticipate that each applicant will pursue (or switch to) the option that best suits its particular capital needs and equity ownership situation.

22. *Qualifying Investors.* The modification in the *Fifth MO&O* and here of the control group minimum equity requirements to allow certain other investors to own "control group equity"—and not have their assets and revenues attributed to the applicant—may not be clear in light of the definition of "qualifying investor" in section 24.702(n) of the Commission's rules. Specifically, in the *Fifth MO&O*, we modified the rules to allow certain noncontrolling investors who do not qualify for the entrepreneurs' block or as a small business to be investors in an applicant's control group (59 Fed. Reg. 53,364). In making these limited changes to the control group equity requirements, we said that this added, but limited, flexibility will (1) promote investment in designated entities generally; (2) attract and promote skilled management for applicants; and (3) encourage involvement by existing firms that have valuable management skills and resources to contribute to the success of applicants.

23. We stated that the first category for inclusion in this 10 percent or 20.1 percent portion of the control group is "investors in the control group that are women, minorities, small businesses or entrepreneurs." The text of the rules adopted in the *Fifth MO&O* and the *erratum* to the *Fifth MO&O* capsulized this category as "qualifying investors," but the definition of "qualifying investors" in the rules failed to reflect the broader nature and purpose for allowing "women, minorities, small businesses or entrepreneurs" hold shares or options in the 10 percent or 20.1 percent portion of the control group even though they—like the other categories—"if attributed, would cause the applicant to exceed the small business or entrepreneurs' block financial caps * * *" (59 Fed. Reg. 53,364). Consistent with our intent in the *Fifth MO&O*, we clarify that, so long as the minimum equity requirements for "qualifying investors" (15 percent or 30 percent) under our new rules are met, the remaining control group equity (10 percent or 20.1 percent) may be held by investors that meet either the small business or entrepreneur eligibility requirements. We continue to believe that such entities, if they wish to provide financial support to C block applicants, should not be precluded from doing so because their financial