

"plus" factor since there is record evidence in this proceeding and in congressional legislation that establishes compelling governmental interests in diversity of ownership.

37. Several commenters oppose our proposal to modify our installment payment plan. InTouch asserts that we are raising barriers to accessing capital by minority-owned businesses. By eliminating the race and gender preference, BET argues that we are not assisting minority-owned small businesses in overcoming obstacles to entry into the PCS marketplace. BET further maintains that the *Further Notice* must still satisfy Congress' directive to disseminate licenses among a wide variety of applicants and to ensure that minorities are not excluded from the auction process. O.N.E. charges that we are wrong to eliminate all race- and gender-based preferences without proposing a race- and gender-neutral solution. Specifically, O.N.E. argues that our proposals do not create a size standard that is race and gender neutral yet small enough to ensure that businesses owned by members of minority groups and women are given the opportunity to participate in the provision of PCS. As a result, they assert that our proposals have the effect of restricting opportunities to only an elite handful of minorities and women.

38. RTC disagrees with our installment plans as set forth in the *Further Notice* and suggests two proposals of its own. First, RTC would make the same installment payment terms available to all small businesses that qualify to participate in the C block auction. Alternatively, RTC would maintain the existing differentials available to small businesses that meet the \$40 million gross revenues test vis-a-vis other small businesses that qualify as "entrepreneurs." RTC asserts that the effect of the proposals creates a massive gulf between small businesses whose control groups can meet the \$40 million gross revenues test versus those whose control group cannot meet that test.

39. *Decision.* We will amend our rules concerning installment payments as set forth in the *Further Notice* (60 Fed. Reg. 34,200). We have concluded that revision of our installment payment program in this manner, is minimally disruptive to the established business arrangements of the applicants. All small businesses, including minority- or women-owned small businesses, will continue to be eligible for the most favorable installment plan.

40. We further conclude that our installment payment plan designed solely for small businesses will give designated entities an opportunity to

participate in the provision of spectrum-based services. By allowing all small businesses to pay for their licenses in this manner (i.e., using installments, at a rate equal to ten-year U.S. Treasury obligations applicable on the date the license is granted and requiring that payments include interest only for the first six years with payments of principal and interest amortized over the remaining four years of the license term), we will provide the most favorable plan to the smallest companies. We are not, as O.N.E. suggests, restricting opportunities to a handful of minorities and women. We are complying with our statutory obligations in a manner that we believe is necessary under the circumstances. We reject RTC's alternatives to make the same installment plan available to all applicants. Our record shows that smaller companies need more assistance accessing capital for broadband licenses and, therefore, the Commission decided these businesses should receive more favorable treatment than the medium to large companies participating in the C block auction.

41. Based on our experience, we conclude that Minority Media *et al.*'s waiver proposal as described in its comments is administratively burdensome, and potentially has its own legal risks since it is based in part on an applicant's status as a woman or minority. A major purpose of our proposals is to avert further delays in the auction and grant of C block licenses. The waivers would give losing applicants a built-in reason to challenge the auction results with petitions to deny if a winning applicant utilized the bidding credit solely as a result of a waiver for "good cause." Therefore, for purposes of the C block auction, we will not adopt such a waiver proposal.

42. Although the revised rules do not specifically target minorities and women, we realize that because a large number of minority- or women-owned businesses are small businesses, our new rules will nonetheless, afford designated entities opportunities to participate in the C block auction. We recognize that this amendment to the installment payment plan will not allow some minority- and women-owned businesses to elect the most favorable installment payment plan because these businesses exceed our small business threshold. We further recognize that these businesses may have to restructure agreements to obtain additional capital to participate in the C block auction.

43. We weighed the risks of litigation to the Commission and to winning bidders, the need to preserve competition, and our commitment to

providing service to the public as expeditiously as possible against the additional financial burden this rule change will have on minority- and women-owned businesses that do not qualify as small businesses under our rules. After carefully considering these issues, we determined that the need to mitigate litigation risks, enhance market competition, and encourage prompt service to the public far out-weigh the additional financial burden this rule change would create for potential bidders.

#### E. Bidding Credits

44. *Background.* Our current rules provide three tiers of bidding credits ranging between 10 percent and 25 percent. Small businesses are eligible for a 10 percent bidding credit. Businesses owned by women or minorities are eligible for a 15 percent bidding credit and small businesses owned by women or minorities are eligible for a 25 percent total bidding credit. The bidding credit acts as a discount on the winning bid amount that a licensee actually pays for the license. In the *Further Notice*, we proposed increasing the bidding credit for small businesses from 10 percent to 25 percent and eliminating the remaining bidding credits (60 Fed. Reg. 34,200). We recognized that this proposal would enhance the competitiveness of all small businesses which will receive a 15 percent increase in their bidding credits. The positions of minority- or women-owned businesses will remain the same because they are already eligible for a 25 percent bidding credit.

45. *Comments.* Commenters generally advocate increasing the small business bidding credit to 25 percent and the elimination of bidding credits based upon an applicant's race or gender. Some commenters supported our proposal to differentiate between applicants on the basis of size in order to avert any *Adarand* or *TEC* legal challenges to our rules. Minority Media *et al.* repeated its "good cause" waiver argument under Sections 1.3 and 24.819(a) of our rules.

46. Two commenters oppose the proposed bidding credit modification. Both BET and InTouch argue that race neutral alternatives serve only to reinforce the barriers to capital that many minority-owned businesses face. BET specifically states that the bidding credit is meant to "address directly the financing obstacles encountered by minorities." Two commenters presented alternative proposals for consideration. RTC wants to either (1) make the same bid credits available to all small