

businesses that qualify to participate in the C block auction or (2) 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." O.N.E. proposes increasing the bidding credit for small businesses to 40 percent.

47. *Decision.* We amend our rules to provide for a 25 percent small business bidding credit only. Restructuring our bidding credits in this manner is consistent with our post-*Adarand* concerns about the C block auction. While small businesses, in general, will benefit with a higher credit (i.e., from 10 to 25 percent), their rule change will allow the Commission and prospective bidders to avoid litigation, allow the auction to proceed as close to its original schedule as possible and permit prospective bidders to maintain previously negotiated business arrangements and financial agreements.

48. We understand BET's and InTouch's concerns, but believe our proposals do not contradict our statutory obligations. Many commenters have noted that the elimination of minority- and gender-based preferences is necessary in light of recent court challenges to race-based statutes if the C block auction is to proceed without significant delay. Specifically, GO Communications comments that our bidding credit proposal strikes an appropriate balance by leveling benefits upward in a manner that mitigates potential harm to all affected parties. Spectrum Resources contends that the proposal is reasonable and viable although a slight negative effect will result because of the additional competition into the bidding process and a diminishing number of successful minority and women bidders. DCR Communications argues that the proposal is the most sensible and is necessary to ensure participation by designated entities in the auction for, and offering of, PCS. We agree that we are striking an appropriate balance between varied interests to retain our statutory mandate to provide opportunities for designated entities.

F. Cellular PCS Cross-Ownership and CMRS Spectrum Aggregation Limit

49. *Background.* Our cellular-PCS cross-ownership rule prohibits entities with attributable interests in cellular licenses from holding more than 10 MHz of PCS spectrum in an overlapping PCS service area. For purposes of this rule, a 20 percent or greater interest in a cellular license is considered to be attributable, except in the case of cellular interests held by designated

entities. In the latter case, we permit small businesses, rural telephone companies, and businesses owned by minorities or women to hold up to a 40 percent noncontrolling interest in a cellular licensee without being subject to the cellular-PCS cross-ownership restriction. We also apply a 40 percent cellular attribution threshold to any entity with a non-controlling interest in a PCS license controlled by minorities or women. The same attribution rules apply to our 45 MHz spectrum cap, which restricts any entities from holding interests in more than 45 MHz of broadband PCS, cellular, and SMR spectrum in the same geographic area. Thus, while interests of 20 percent or more in a broadband PCS, cellular, or SMR license are generally attributable for purposes of the spectrum cap, small businesses, rural telephone companies, and businesses owned by minorities or women are subject to a 40 percent attribution threshold.

50. In the *Further Notice*, we proposed to modify both the cellular-PCS cross-ownership and the PCS/cellular/SMR spectrum cap rule with respect to the C block by eliminating the use of the 40 percent attribution threshold on the basis of race or gender (60 Fed. Reg. 34,200). Thus, in the cellular-PCS context, we proposed to apply the 40 percent attribution threshold only to cellular interests held by small businesses and rural telephone companies, but to apply the 20 percent threshold to all other cellular interests, including those held by minority and women-controlled entities that are not small business or rural telephone companies. We further proposed to eliminate the rule allowing 40 percent cellular attribution for non-controlling investors in minority- or women-controlled PCS applicants or licensees and instead proposed to apply the 40 percent threshold to non-controlling investors in PCS applicants or licensees controlled by small businesses. In this regard, we noted that the extension of the 40 percent threshold to non-controlling investors in small businesses might result in additional investment in small business PCS applicants. Similarly, with respect to the PCS/cellular/SMR spectrum cap, we proposed to use the 40 percent attribution threshold where PCS/cellular/SMR interests are held by small businesses and rural telephone companies, but to use the 20 percent threshold in all other cases. Although we noted that the cellular-PCS and spectrum cap rules applied to more than just the C block, we proposed to change

the rules with respect to the C block only.

51. *Comments.* The comments generally support our proposals for modifying the cellular-PCS cross-ownership and CMRS spectrum aggregation limit rules. Most of the comments mirror earlier comments concerning the commenter's desire to avoid delay; to avoid *Adarand* and *TEC* type legal challenges; and to minimize disruption. DCR Communications notes that our proposal will promote investment. Only two commenters object to our proposal. O.N.E. reasserts its argument that we should not eliminate all race- and gender-based preferences without proposing a race- and gender-neutral solution. Radiofone challenges both the 40 percent cellular-PCS cross-ownership rule and our proposed amendment as unlawful and discriminatory.

52. *Decision.* We will amend our cellular PCS cross-ownership and PCS/cellular/SMR spectrum aggregation limit rules with respect to C block as proposed in the *Further Notice* (50 Fed. Reg. 34,200). These changes will help to avoid further delay or legal challenges to the C block auction and are strongly supported by the comments. We reject Radiofone's argument that the cellular-PCS cross-ownership rule should be eliminated. This argument has been fully addressed previously in the PCS docket and is not an issue raised in this proceeding. Specifically, we modify Section 24.204(d)(2)(ii) with respect to the C block to eliminate the provision in the cellular-PCS cross-ownership rule that increases the attribution threshold to 40 percent on the basis of the race or gender of the holder of the ownership interest, but we will continue to apply the 40 percent threshold to cellular interests held by small businesses and rural telephone companies. We also modify Section 24.204(d)(2)(ii) to provide that non-controlling investors in C block PCS applicants or licensees controlled by small businesses may hold up to a 40 percent interest in a cellular licensee without being subject to the cellular-PCS cross-ownership restrictions. Finally, we make the same modification to the attribution provisions in our spectrum cap rule in Section 20.6(d)(2) that we have made to our cellular-PCS rule. Thus, small businesses or rural telephone companies may hold up to a 40 percent interest in broadband PCS, cellular, or SMR licenses without such interests being attributable under the 45 MHz spectrum cap, but minority- and women-controlled interest holders who are not small businesses or rural telephone companies will be subject to the 20