

FHH Telecom Law
May 2006

**FCC Ties “Designated Entity” Status
to Bidder’s Spectrum Use Plans**

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In anticipation of the upcoming AWS auction and in response to a widely publicized Justice Department case against the backer of numerous designated entities, the FCC has tightened the rules by which a designated entity may operate. The latest FCC restrictions apply to how a licensee uses its spectrum.

Material Relationship – The FCC has created a “material relationship” standard based on the use of the spectrum at issue. A licensee’s lease or resale of spectrum to another entity is now referred to as a material relationship.

The FCC will treat a material relationship in one of three ways. If the lease or resale is 25 percent or less of a license’s spectrum capacity, the FCC requires nothing further from the licensee. If a licensee leases or resells more than 25% of the spectrum capacity of license to any individual entity, the relationship is “attributable” and the revenues of such entity are included in calculating a licensee’s bidding credit eligibility. If a licensee leases or resells more than 50% of spectrum capacity – regardless of to whom or how many – the relationship is “impermissible” for bidding credit purposes and the applicant with such an arrangement will not qualify for a credit. If such an arrangement were entered into *after* the auction, any bidding credits used during the auction would need to be repaid with interest. The rule is curious in that it strips a prospective Designated Entity of its credit even if the prospective lessee of the spectrum is itself a DE. This seems to make no sense since leasing spectrum to another DE would be fully consistent with the underlying objective of the Commission’s rule. Notably, the FCC has not proposed to take away any licenses involved in “attributable” or “impermissible” material relationships. Instead, these new decisions affect bidding credits in most cases.

Longer Holding Periods – The FCC is also doubling the amount of time that a licensee needs to hold a license in order to keep bidding credits. If a licensee attempts to assign or transfer control of a license to an applicant with a lower or no credit, it will have to pay back the credits on a declining basis. During the first five years, the entire credit will need to be repaid. A sliding scale is applied during years six to ten. Again, the penalty does not involve losing a licenses but simply repaying the bidding credit.