

**FHH Telecom Law**  
**April 2006**

**New Meaning for  
“Designated Entity”?  
Fast Track Action on Proposal Expected**

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Within days of setting the start date of the forthcoming advanced wireless services (AWS) auction, the FCC announced that it may be changing its Designated Entity (DE) rules. The FCC’s DE rules implement a Congressional mandate to ensure that spectrum is made available to small businesses.

The rules provide DE’s with discounts on their bids and, in some cases, set aside licenses. However, the standards which the FCC imposes to ensure that small businesses are truly “small” have been called into question. Since establishing the standards, the FCC has repeatedly had to deal with proceedings where competitors call a winning bidder’s DE qualification into question. In recent weeks, main stream press and media have been reporting on the FCC’s standards.

Tentatively acknowledging that modifications to its rules were warranted, the FCC is proposing to add an additional test to ensure that designated entities are not unduly influenced by large operators. Establishing a “material relationship” test, the FCC proposes to disqualify a bidder from obtaining credits if it has a close relationship with a large in-region wireless carrier.

The latest FCC test avoids the equity, voting, control and facilities tests that remain in place for determination of a controlling interest. Instead, the FCC proposes to create another level of analysis. A bidder will be restricted from designated entity benefits if a large wireless carrier has a management, joint marketing, trademark, or other material operational arrangement with the putative DE. Unfortunately, the FCC has provided little more than this in describing its “material relationship” standard. The FCC recognizes that many operational agreements can currently be drafted in order to satisfy FCC equity standards and still sign away a great deal of control. The proposed “material relationship” test is intended to eliminate these loopholes.

The FCC has proposed that large wireless carriers will be “large” only if their average gross wireless revenues for the preceding years exceed \$5 billion. In addition, the FCC has sought comment on whether its exclusion should be limited to wireless carriers or more broadly expanded to include companies with significant interests in communications services.

The FCC is also seeking comment on how a winning bidder who enters into a later

agreement with a large carrier should reimburse any credits. The FCC has been very clear that their yet-to-be-determined standard will apply in forthcoming auctions, including AWS auctions coming up in June. If you have questions about this proceeding or wish to file comments, contact the lawyer at FHH with whom you usually work or the author.