



PUBLIC NOTICE

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AUCTION OF H BLOCK LICENSES IN THE 1915-1920 MHz and 1995-2000 MHz BANDS SCHEDULED FOR JANUARY 14, 2014

NOTICE AND FILING REQUIREMENTS, RESERVE PRICE, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 96

AU Docket No. 13-178

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I. GENERAL INFORMATION

A. Introduction

1. By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) establishes the procedures, reserve price, and minimum opening bid amounts for the upcoming auction of licenses in the 1915-1920 MHz (“Lower H Block”) and 1995-2000 MHz (“Upper H Block”) bands (collectively, the “H Block”).¹ This auction, which is designated as Auction 96, is scheduled to start on January 14, 2014. This Public Notice provides an overview of the procedures, terms, and conditions governing Auction 96 and the post-auction application and payment processes.

2. The Federal Communications Commission (“Commission” or “FCC”) is offering the licenses in Auction 96 pursuant to the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”).² The Spectrum Act requires, among other things, that the Commission allocate for commercial use and license spectrum in the H Block using a system of competitive bidding no later than February 23, 2015.³

¹ Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands, *Report and Order*, FCC 13-88, 28 FCC Rcd 9483 (2013) (*H Block Report and Order*). All references to the Part 27 rules adopted by the Commission in the *H Block Report and Order* and cited herein will become effective on the dates announced in the Federal Register Notice regarding the *H Block Report and Order*. See 78 Fed. Reg. 50214 (Aug. 16, 2013).

² See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012) (“Spectrum Act”).

³ Spectrum Act, § 6401(b), codified at 47 U.S.C. § 1451(b). The Commission concluded in the *H Block Report and Order* that both blocks of the H Block spectrum are already allocated for non-Federal Fixed and Mobile use on a primary basis, with their present spectrum pairing, and that no further action to allocate the frequencies in the H Block bands for commercial use is necessary to meet the Spectrum Act’s allocation requirements. See *H Block* (continued....)

3. On July 15, 2013, in accordance with section 309(j)(3) of the Communications Act of 1934, as amended,⁴ the Bureau released a public notice seeking comment on competitive bidding procedures to be used in Auction 96.⁵ Twelve comments and ten reply comments were submitted in response to the *Auction 96 Comment Public Notice*.⁶

B. Description of Licenses to be Offered in Auction 96

4. In the *H Block Report and Order*, the Commission concluded that licenses for H Block spectrum should be awarded on an Economic Areas (EA) basis in all areas, including the Gulf of Mexico.⁷ Auction 96 will offer one license for each of the 176 EAs. The H Block frequencies will be licensed as paired 5 megahertz blocks, with each license having a total bandwidth of 10 megahertz; 1915-1920 MHz for mobile and low power fixed (i.e., uplink) operations and 1995-2000 MHz for base station and fixed (i.e., downlink) operations.⁸ Figure 1 shows the H Block band plan, and Table 1 contains summary information regarding H Block frequencies, total bandwidth, and geographic area type.

(Continued from previous page) _____
Report and Order, 28 FCC Rcd at 9490 ¶ 14. See also Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, RM-9498, RM-10024, *Third Report and Order*, *Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223, 2238 ¶ 28 (2003); Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, IB Docket No. 99-81, *Sixth Report and Order*, *Third Memorandum Opinion and Order and Fifth Memorandum Opinion and Order*, 19 FCC Rcd 20720, 20722 ¶ 1 (2004).

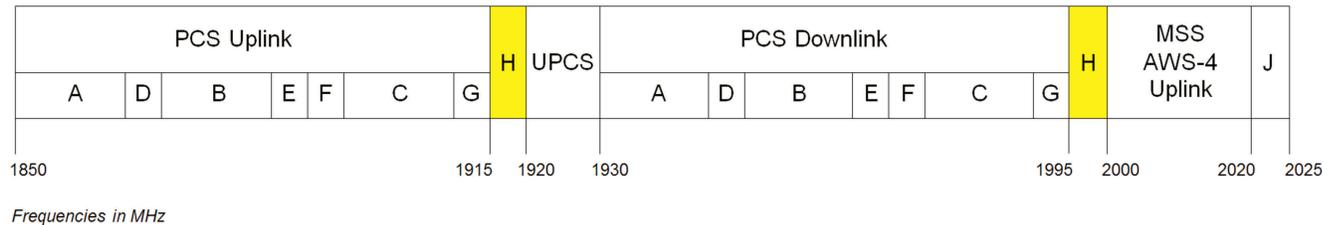
⁴ 47 U.S.C. § 309(j)(3)(E)(i) (requirement to seek comment on proposed auction procedures); see also 47 U.S.C. § 309(j)(4)(F) (authorization to prescribe reserve price or minimum bid); 47 C.F.R. §§ 1.2104(c) and (d).

⁵ Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands; Comment Sought on Competitive Bidding Procedures For Auction 96, AU Docket No. 13-178, *Public Notice*, DA 13-1540, 28 FCC Rcd 10013 (WTB 2013) ("*Auction 96 Comment Public Notice*"). A summary of this public notice was published at 78 Fed. Reg. 45524 (Jul. 29, 2013).

⁶ A listing of the parties that filed comments, reply comments, and *ex parte* notices can be found in Attachment C. Commenters are identified in this Public Notice by the abbreviated names shown in Attachment C.

⁷ See *H Block Report and Order*, 28 FCC Rcd at 9500, 9502 ¶¶ 37, 45; 47 C.F.R. § 27.6. A few commenters ask that smaller geographic licensing areas, such as Cellular Market Areas ("CMAs"), be used to license the H Block spectrum. See Cellcom/Pioneer Cellular Joint Reply Comments at 1, 2-5; NTELOS Holdings Reply Comments at 1, 3, 11; see also CCA Reply Comments at 3-4. The requirement that the H Block spectrum be licensed on an EA-basis was adopted by the Commission as a rule in the *H Block Report and Order*. A Commission rule cannot be amended in the context of this proceeding establishing the procedures for Auction 96 because such action is outside of the scope of the Bureau's delegated authority. See 47 C.F.R. § 0.131.

⁸ See *id.* at 9496-97 ¶¶ 28-29.

Figure 1: H Block Band Plan**Table 1: H Block License Summary**

Block	Frequencies (MHz)	Bandwidth	Pairing	Area Type	Licenses
H	1915-1920/1995-2000	10 MHz	2 x 5 MHz	EA	176

A complete list of the licenses offered in Auction 96 is available in Attachment A to this Public Notice.

C. Rules and Disclaimers

1. Relevant Authority

5. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules,⁹ including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.¹⁰ Prospective bidders should also familiarize themselves with the Commission's rules relating to the H Block frequencies,¹¹ including cost-sharing obligations for H Block licensees,¹² and rules relating to applications, environment, practice and procedure.¹³ All bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice and any future public notices that may be issued in this proceeding.

6. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying

⁹ See 47 C.F.R. Part 1, Subpart Q.

¹⁰ See, e.g., Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274, 15 FCC Rcd 15293 (2000) (“*Part 1 Fifth Report and Order*”) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)); *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”); *Eighth Report and Order*, FCC 02-34, 17 FCC Rcd 2962 (2002); *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, FCC 03-98, 18 FCC Rcd 10180 (2003); *Second Order on Reconsideration of the Fifth Report and Order*, FCC 04-295, 20 FCC Rcd 1942 (2005).

¹¹ See 47 C.F.R. Part 27.

¹² See Section I.C.3. “Cost-Sharing Obligations,” below.

¹³ See 47 C.F.R. Part 1, Subpart I.

between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from BCPI, the Commission's duplicating contractor.¹⁴

2. Prohibited Communications and Compliance with Antitrust Laws

7. To ensure the competitiveness of the auction process, section 1.2105(c) of the Commission's rules prohibits auction applicants for licenses in any of the same or overlapping geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to section 1.2105(a)(2)(viii).¹⁵

a. Entities Subject to Section 1.2105

8. Section 1.2105(c)'s prohibition on certain communications will apply to any applicants that submit short-form applications seeking to participate in a Commission auction for licenses in the same or overlapping geographic license area. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under section 1.2105(a)(2)(viii), applicants for any of the same or overlapping geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy.¹⁶ In some instances, this prohibition extends to communications regarding the post-auction market structure. **This prohibition applies to all applicants that submit short-form applications regardless of whether such applicants ultimately become qualified bidders or actually bid.**¹⁷

9. Applicants are also reminded that, for purposes of this prohibition on certain communications, section 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.¹⁸ For example, where an individual served as an officer for two or more applicants, the Bureau has found that the bids and bidding strategies of one applicant are conveyed

¹⁴ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, FCC 13-88 for the *H Block Report and Order*, or DA 13-1540 for the *Auction 96 Comment Public Notice*).

¹⁵ See 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17546.

¹⁶ See, e.g., Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, DA 96-1460, 11 FCC Rcd 10134 (1996).

¹⁷ See, e.g., *Star Wireless, LLC, Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626, 18628 ¶ 4 & n.19 (EB 2004), *order granted in part sub nom*, *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007) ("*Star and Northeast Review Order*"), *petition for review denied*, *Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008) (section 1.2105(c) applies to applicants regardless of whether they are qualified to bid); Letter to Robert Pettit, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, DA 00-2905, 16 FCC Rcd 10080 (WTB 2000) (declining to exempt an applicant's controlling interest from coverage by the communication prohibitions of section 1.2105(c), even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

¹⁸ 47 C.F.R. § 1.2105(c)(7)(i).

to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of section 1.2105(c) occurs.¹⁹

10. As described in Section IV.A.2., below, information concerning applicants' license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same or overlapping geographic areas as the licenses that it has selected in its short-form application.²⁰

11. Individuals and entities subject to section 1.2105(c) should take special care in circumstances where their employees may receive information directly or indirectly relating to any competing applicant's bids or bidding strategies. The Bureau has not addressed a situation where non-principals (i.e., those who are not officers or directors, and thus not considered to be the applicant) receive information regarding a competing applicant's bids or bidding strategies and whether that information should be presumed to be communicated to the applicant.

12. An exception to the prohibition on certain communications allows non-controlling interest holders to obtain interests in more than one competing applicant without violating section 1.2105(c) provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), but that exception does not extend to controlling interest holders.²¹

13. Moreover, Auction 96 applicants selecting licenses for any of the same or overlapping geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of section 1.2105(c) could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Similarly, if the authorized bidders are different individuals employed by the same organization (e.g., law firm, engineering firm or consulting firm), a violation likewise could occur.²² In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders, and that the applicant and its bidders will comply with section 1.2105(c).²³

¹⁹ See, e.g., Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445, 20 FCC Rcd 14648 (WTB/MB 2005) ("*Trinity*") (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

²⁰ Section IV.A.2. "Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction," below.

²¹ 47 C.F.R. § 1.2105(c)(4). Specifically, the Commission's rules permit a party holding a non-controlling, attributable interest in one applicant to acquire an ownership interest in or enter into a joint bidding arrangement with other applicants after the short-form application filing deadline, provided that: (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. 47 C.F.R. §§ 1.2105(c)(4)(i), (ii).

²² See Application of Nevada Wireless, *Memorandum Opinion and Order*, DA 98-1137, 13 FCC Rcd 11973, 11977-78 ¶¶ 11-12 (1998) ("*Nevada Wireless Order*").

²³ *Id.*

b. Prohibition Applies Until Down Payment Deadline

14. Section 1.2105(c)'s prohibition on certain communications begins at the short-form application filing deadline and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.²⁴

c. Prohibited Communications

15. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction (as described above).²⁵ Section 1.2105(c) prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's bids or bidding strategy.²⁶ While section 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.²⁷

16. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."²⁸ Moreover, the Commission has found a violation of section 1.2105(c) where an applicant used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,"²⁹ and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."³⁰ Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as is the case for Auction 96, an applicant's statement to the press that it has lost bidding eligibility and intends to stop bidding in the auction could give rise to a

²⁴ 47 C.F.R. § 1.2105(c)(1).

²⁵ *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-54 ¶ 12. For a discussion of the term "applicant" within the meaning of section 1.2105(c), see Section I.C.2.a. above.

²⁶ See Notice of Apparent [L]iability for Forfeiture of Western PCS BTA 1 Corp., *Memorandum Opinion and Order*, FCC 99-385, 14 FCC Rcd 21571, 21574 ¶ 8 (1999).

²⁷ RDL asks the Bureau to revise section 1.2105(c) to permit bidders to engage in ordinary commercial business discussions as long as no auction bidding or bidding strategy information is shared. See RDL Comments at 24-25. However, as the Bureau has previously advised, although auction applicants who have applied for licenses in the same geographic areas, and who are also licensees or applicants for licenses in the same or competing services, must affirmatively avoid all communications with each other that affect, or have the potential to affect, their bids or bidding strategy, this does not mean that all business negotiations between bidders for the same markets are prohibited. See Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37, 13 FCC Rcd 341, 347 (1998) ("*LMDS Auction Guidance Public Notice*").

²⁸ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) ("*Competitive Bidding Memorandum Opinion and Order*").

²⁹ Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970, 17974 ¶ 12, 17976 ¶ 17 (1997).

³⁰ Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

finding of a section 1.2105(c) violation.³¹ Similarly, an applicant's public statement of intent not to participate in Auction 96 bidding could also violate the rule.

17. Applicants are also hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that has not yet been made public by the Commission at the time of disclosure may violate the provisions of section 1.2105(c) that prohibit certain communications.³² This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures.

18. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate section 1.2105(c), particularly in light of the limited information procedures in effect for Auction 96.³³ Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

d. Disclosure of Bidding Agreements and Arrangements

19. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications.³⁴ Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.³⁵

20. If parties agree in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiation, discussion or communication with any other applicants after the short-form application filing deadline.³⁶

21. Section 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants.³⁷ However, certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include,

³¹ Compare *LMDS Auction Guidance Public Notice*, 13 FCC Rcd at 347-48 ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

³² Thus, communication by an applicant of its license selections to another applicant for one or more of the same licenses, or communication of the fact that an applicant does or does not hold provisionally winning bids on particular licenses, may well violate 47 C.F.R. § 1.2105(c).

³³ See Section IV.A.2. "Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction," below.

³⁴ 47 C.F.R. § 1.2105(c)(1).

³⁵ 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

³⁶ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, DA 95-2244, 11 FCC Rcd 9645, 9646 (WTB 1995) ("*Anti-Collusion Public Notice*").

³⁷ See, e.g., Todd Stuart Noordyk, *Memorandum Opinion and Order*, FCC 01-275, 16 FCC Rcd 18113, 18116-17 ¶ 12 (2001).

but are not limited to, issues such as management, sales, local marketing agreements, and other transactional agreements.³⁸

e. Section 1.2105(c) Certification

22. By electronically submitting a short-form application, each applicant in Auction 96 certifies its compliance with section 1.2105(c). In particular, an applicant must certify under penalty of perjury it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of the applicant's bids, bidding strategies, or the particular licenses on which it will or will not bid.³⁹ However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.⁴⁰ The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring."⁴¹ Any applicant found to have violated section 1.2105(c) may be subject to sanctions.⁴²

f. Duty to Report Prohibited Communications

23. Section 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate section 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.⁴³ The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.⁴⁴

24. In addition, section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission of any substantial change that may be of decisional significance to that application.⁴⁵ Thus, section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. An applicant is therefore required by section 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under section 1.2105(a)(2)(viii).⁴⁶

25. Sections 1.65(a) and 1.2105(c) require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its

³⁸ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 467-68 ¶ 163 (1997) ("Part 1 Third Report and Order").

³⁹ 47 C.F.R. § 1.2105(a)(2)(ix).

⁴⁰ *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

⁴¹ *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 ¶ 12.

⁴² See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

⁴³ 47 C.F.R. § 1.2105(c)(6); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55 ¶¶ 13-17.

⁴⁴ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15,289, 15,395 ¶¶ 285-86 (2007).

⁴⁵ 47 C.F.R. § 1.65; see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 ¶ 9.

⁴⁶ See *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51 ¶ 9.

short-form application no more than five days after the applicant becomes aware of the need for amendment.⁴⁷ These rules are intended to facilitate the auction process by making the information available promptly to all participants and to enable the Bureau to act expeditiously on those changes when such action is necessary.⁴⁸

g. Procedure for Reporting Prohibited Communications

26. A party reporting any communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of section 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection.

27. Section 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions.⁴⁹ This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by section 1.2105(c) must be filed consistent with the instructions set forth in this Public Notice.⁵⁰ For Auction 96, such reports must be filed with Margaret W. Wiener, the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by e-mail to Ms. Wiener at the following e-mail address: auction96@fcc.gov. If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 6423, Washington, DC 20554.

28. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in section 0.459 of the Commission's rules.⁵¹ Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.⁵² This Public Notice provides additional guidance on procedures for submitting application-related information below.⁵³

⁴⁷ Procedural Amendments to Commission Part 1 Competitive Bidding Rules, WT Docket No. 10-18, *Order*, FCC 10-4, 25 FCC Rcd 521, 523 ¶ 8 (2010) ("*Part 1 Procedural Amendments Order*").

⁴⁸ *Id.*

⁴⁹ *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522 ¶ 4. This process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants.

⁵⁰ *Id.*

⁵¹ See 47 C.F.R. § 0.459 (requests that materials or information submitted to the Commission be withheld from public inspection). Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all of the material to which the request applies. See 47 C.F.R. § 0.459 (a).

⁵² See Section VI. "Contact Information," below.

⁵³ See Section II. L. "Maintaining Current Information in Short-Form Applications," below.

h. Winning Bidders Must Disclose Terms of Agreements

29. Each applicant that is a winning bidder will be required to disclose in its long-form applications the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure.⁵⁴ Failure to comply with the Commission's rules can result in enforcement action.

i. Additional Information Concerning Rule Prohibiting Certain Communications

30. A summary listing of documents issued by the Commission and the Bureau addressing the application of section 1.2105(c) may be found in Attachment F. These documents are available on the Commission's auction web page at http://wireless.fcc.gov/auctions/prohibited_communications.

j. Antitrust Laws

31. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.⁵⁵ Compliance with the disclosure requirements of section 1.2105(c) will not insulate a party from enforcement of the antitrust laws.⁵⁶ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a short-form application.⁵⁷ The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.⁵⁸ Similarly, the Bureau previously reminded potential applicants and others that "[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws."⁵⁹

32. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.⁶⁰ If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding

⁵⁴ 47 C.F.R. § 1.2107(d).

⁵⁵ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rulemaking*, FCC 99-384, 14 FCC Rcd 21558, 21560-61 ¶ 4 & n.17 (1999) quoting *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 ¶ 12 (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.”); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, FCC 94-264, 9 FCC Rcd 6858, 6869 n.134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”) (“*Fourth Memorandum Opinion and Order*”).

⁵⁶ See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689 ¶ 12. See also Justice Department Sues Three Firms Over FCC Auction Practices, *Press Release* 98-536 (DOJ Nov. 10, 1998).

⁵⁷ See, e.g., *Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6869 n.134.

⁵⁸ *Id.* See also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2387 n.165.

⁵⁹ *Anti-Collusion Public Notice*, 11 FCC Rcd at 9646.

⁶⁰ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.⁶¹

3. Cost-Sharing Obligations

33. As noted in the *H Block Report and Order*, the spectrum in the Lower H Block and the Upper H Block is subject to cost-sharing requirements related to the past clearing and relocation of incumbent users from these bands.⁶² Consistent with its long-standing policy that cost-sharing obligations for both the Lower H Block and the Upper H Block be apportioned on a *pro rata* basis against the relocation costs attributable to the particular band,⁶³ the Commission adopted cost-sharing rules in the *H Block Report and Order* that require H Block licensees to pay a *pro rata* share of expenses previously incurred by UTAM, Inc. (“UTAM”) and by Sprint Nextel, Inc. (“Sprint”) in clearing incumbents from the Lower H Block and the Upper H Block, respectively.⁶⁴

34. Under the cost sharing formula adopted in the *H Block Report and Order*, the reimbursement amount owed (“RN”) to UTAM with respect to the 1915-1920 MHz band will be determined by dividing the gross winning bid (“GWB”) for an H Block license by the sum of the gross winning bids for all H Block licenses won in Auction 96 and then multiplying that result by \$12,629,857—the total amount owed to UTAM for clearing the Lower H Block.⁶⁵ The cost-sharing formula for the Lower H Block is as follows:

$$RN = \left(\frac{\text{EA GWB}}{\text{Sum of GWBs}} \right) \times \$12,629,857$$

⁶¹ See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁶² See *H Block Report and Order*, 28 FCC Rcd at 9543-51 ¶¶ 159-73 (Section II.B-Cost Sharing Obligations). For background information related to past clearing of Lower H Block incumbents, see *id.* at 9543-44 ¶¶ 157-58. For background information related to past clearing of the Upper H Block incumbents, see *id.* at 9544-45 ¶ 159.

⁶³ See, e.g., *id.* at 9543 ¶ 157 n.483, citing *Emerging Technologies* proceeding.

⁶⁴ See *id.* at 9548-51 ¶¶ 167-73; 47 C.F.R. §§ 27.1021, 27.1031, 27.1041. The Commission made clear in the *H Block Report and Order* that winning bidders in the first auction offering H Block licenses may not seek reimbursement from other H Block licensees, including for licenses awarded in subsequent auctions. *H Block Report and Order*, 28 FCC Rcd at 9548 ¶ 168. Holt and Goeree submit that the formula for allocating the amount of compensation to be paid for past clearing of the H Block introduces uncertainty since compensation is fixed and the burden on winning bidders could be high if a sizable group of licenses are not sold (with a higher risk if single-round sealed bidding is used), which could dampen bids and revenue. Holt and Goeree Comments at 3. They suggest that to address this, the Commission could announce that compensation will be paid directly from auction revenues, with no additional payments by auction winners. *Id.* The requirement that H Block licensees pay a *pro rata* share of expenses incurred by UTAM and Sprint for past band clearing was adopted by the Commission as a rule in the *H Block Report and Order*. A Commission rule cannot be amended in the context of this proceeding establishing the procedures for Auction 96 because such action is outside of the scope of the Bureau’s delegated authority. See 47 C.F.R. § 0.131.

⁶⁵ See 47 C.F.R. § 27.102(a). See also *H Block Report and Order*, 28 FCC Rcd at 9548-51 ¶¶ 167-73. The Commission noted that \$12,629,857 is the amount UTAM has identified as the amount collectively owed to UTAM by future Lower H Block licensees for UTAM’s clearing of the 1910-1930 MHz band; that is, this amount represents one-fourth of UTAM’s total reimbursable clearing costs for the entire 1910-1930 MHz band. See *H Block Report and Order* at 9544 ¶ 158 n. 491.

35. The *H Block Report and Order* adopted the same cost-sharing formula for the Upper H Block (1995-2000 MHz band) related to Sprint's clearing costs of \$94,875,516.⁶⁶

$$RN = \left(\frac{\text{EA GWB}}{\text{Sum of GWBs}} \right) \times \$94,875,516$$

36. Winning bidders are required to pay UTAM and Sprint, as applicable, the reimbursement amounts owed within thirty days after the grant of the winning bidders' long-form license applications.⁶⁷

37. The Commission also adopted a contingency plan in the *H Block Report and Order* that will be triggered in the unlikely event that licenses won in this auction cover less than forty percent of the U.S. population.⁶⁸ If such an event occurs, winning bidders—in this auction and in subsequent H Block auctions—will be required to timely pay UTAM and Sprint, respectively, their *pro rata* share calculated by dividing the population of the individual EA by the total U.S. population and then multiplying this quotient by \$12,629,857 for UTAM and by \$94,875,516 for Sprint.⁶⁹

38. The cost-sharing rules and contingency plan adopted in the *H Block Report and Order* are designed to ensure the UTAM and Sprint receive full reimbursement after this auction even if some of the licenses are not sold. The rules accomplish this by apportioning the reimbursement costs associated with any unsold H Block licenses among the winning bidders, except in cases where the above-described contingency plan is triggered or a successful bidder's long-form application is not filed or granted. If any of the licenses won in this auction are not awarded, the license at issue will be deemed to have triggered a reimbursement obligation that will be paid by the licensee acquiring the license in a subsequent auction.

4. International Coordination

39. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the H Block frequencies they acquire in the auction is subject to international agreements with Canada and Mexico.⁷⁰ As the Commission noted in the *H Block Report and Order*, because of our shared borders with Canada and Mexico, the Commission routinely works in conjunction with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas.⁷¹ Until such time as any adjusted agreements, as needed, between the United States, Mexico and/or Canada can be agreed to, operations in the H Block frequency bands must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.⁷²

⁶⁶ See 47 C.F.R. § 27.1031(a). See also *H Block Report and Order*, 28 FCC Rcd at 9544-45 ¶¶ 158-59. The Commission noted that Sprint has stated that the *pro rata* share of the overall Broadcast Auxiliary Service (BAS) relocation costs attributable to each five megahertz of relocated BAS spectrum amounts to \$94,875,516. See *H Block Report and Order*, 28 FCC Rcd at 9544-45 ¶ 159 n.496.

⁶⁷ See 47 C.F.R. §§ 27.2021(e), 27.1031(e), 27.1041(b). See also *H Block Report and Order*, 28 FCC Rcd at 9549-51 ¶¶ 170-73.

⁶⁸ See *H Block Report and Order*, 28 FCC Rcd at 9547, 9548-49 ¶¶ 163, 168. In such a scenario the population would be measured using 2010 Census data, which is the most recent decennial census data. *Id.* at 9549 ¶ 168 n. 528.

⁶⁹ See 47 C.F.R. §§ 27.1021(b)-(c), 27.1031(b)-(c). See also *H Block Report and Order*, 28 FCC Rcd at 9547, 9548-49 ¶¶ 163, 168.

⁷⁰ See *H Block Report and Order*, 28 FCC Rcd at 9541-42, ¶ 154; 47 C.F.R. § 27.57(c).

⁷¹ *H Block Report and Order*, 28 FCC Rcd at 9541-42, ¶ 154.

⁷² *Id.*

5. Quiet Zones

40. H Block licensees must individually apply for and receive a separate license for each transmitter if the proposed operation would affect the radio quiet zones set forth in the Commission's rules.⁷³

6. Due Diligence

41. We remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a license, it will be able to build and operate facilities in accordance with the Commission's rules. The Commission makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations, and that the Commission's statutory authority, under the Communications Act, to add, modify and eliminate rules governing spectrum use, as the public interest warrants, applies equally to all licenses, whether acquired through the competitive bidding process or otherwise.⁷⁴ In addition, a Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

42. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureau strongly encourages each potential bidder to review all Commission orders establishing rules and policies for the H Block bands,⁷⁵ including cost-sharing obligations for H Block licensees.⁷⁶ Additionally, each potential bidder should perform technical analyses or refresh their previous analyses to assure itself that, should it become a winning bidder for any Auction 96 license, it will be able to build and operate facilities that will fully comply with all applicable technical and regulatory requirements. The Bureau strongly encourages each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act.⁷⁷

43. The Bureau strongly encourages each applicant to conduct its own research prior to Auction 96 in order to determine the existence of pending administrative or judicial proceedings, including pending allocation rulemaking proceedings, that might affect its decision to participate in the auction. The Bureau strongly encourages each participant in Auction 96 to continue such research throughout the auction. The due diligence considerations mentioned in this Public Notice do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

44. The Bureau also reminds each applicant that pending and future judicial proceedings, as well as pending and future proceedings before the Commission — including applications, applications for modification, rulemaking proceedings, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review — may relate to

⁷³ 47 C.F.R. § 1.924.

⁷⁴ See 47 U.S.C. §§ 309(j)(6)(C)-(D); *Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585 (D.C. Cir. 2001).

⁷⁵ See, e.g., authorities cited at note 1, above.

⁷⁶ See Section I.C.3., "Cost-Sharing Obligations," above.

⁷⁷ 47 C.F.R. Chapter 1, Part 1, Subpart I.

particular applicants or the licenses available in Auction 96 (or the terms and conditions thereof, including all applicable Commission rules and regulations). Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in this auction.

45. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the licenses available in Auction 96. Each potential bidder is responsible for undertaking research to ensure that any licenses won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

7. Use of Integrated Spectrum Auction System

46. Bidders will be able to participate in Auction 96 over the Internet using the Commission's web-based Integrated Spectrum Auction System ("ISAS" or "FCC Auction System"). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

8. Fraud Alert

47. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 96 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service, Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

48. Information about deceptive telemarketing investment schemes is available from the FCC as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from the following sources:

- the FCC's Consumer Call Center at (888) 225-5322 or by visiting <http://wireless.fcc.gov/csinfo#fraud>
- the FTC at (877) FTC-HELP ((877) 382-4357) or by visiting <http://ftc.gov/bcp/edu/pubs/consumer/invest/inv03.shtm>

- the SEC at (202) 942-7040 or by visiting <http://sec.gov/cgi-bin/txt-srch-sec?text=fraud§ion=Investor+Information>.

Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060.

9. Environmental Review Requirements

49. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes.⁷⁸ The construction of a wireless antenna facility is a federal action, and the licensee must comply with the Commission's environmental rules for each such facility.⁷⁹ These environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.⁸⁰ The licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Native American religious sites, floodplains, and surface features. In addition, the licensee must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

D. Auction Specifics

1. Auction Start Date

50. Bidding in Auction 96 will begin on Tuesday, January 14, 2014. Pre-auction dates and deadlines are listed below.

51. The initial schedule for bidding rounds will be announced by public notice at least one week before the auction starts. Moreover, unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

2. Auction Title

52. Auction 96 – H Block

3. Bidding Methodology

53. As discussed in more detail below, the bidding methodology for Auction 96 will be a simultaneous multiple round format.⁸¹ The Commission will conduct this auction over the Internet using the FCC Auction System. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

4. Pre-Auction Dates and Deadlines

54. The following dates and deadlines apply:

Auction Tutorial Available (via Internet) October 23, 2013

⁷⁸ 47 C.F.R. Chapter 1, Part 1, Subpart I.

⁷⁹ 47 C.F.R. §§ 1.1301-1.1319.

⁸⁰ 47 C.F.R. Part 1, Appendix C.

⁸¹ See Section IV.A.1.a. "Simultaneous Multiple Round Auction," below.

Short-Form Application (FCC Form 175)	
Filing Window Opens	October 23, 2013; 12:00 noon ET
Short-Form Application (FCC Form 175)	
Filing Window Deadline.....	November 5, 2013; prior to 6:00 p.m. ET
Upfront Payments (via wire transfer).....	December 11, 2013; 6:00 p.m. ET
Mock Auction	January 10, 2014
Auction Begins.....	January 14, 2014

5. Requirements for Participation

55. Those wishing to participate in this auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, on November 5, 2013, following the electronic filing procedures set forth in Attachment D to this Public Notice;
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, on December 11, 2013, following the procedures and instructions set forth in Attachment E to this Public Notice; and
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

A. General Information Regarding Short-Form Applications

56. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits.⁸² The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, parties desiring to participate in the auction must file a streamlined, short-form application in which they certify under penalty of perjury as to their qualifications.⁸³ Eligibility to participate in bidding is based on the applicant's short-form application and certifications, and on its upfront payment, as explained below.⁸⁴ In the second phase of the process, each winning bidder must file a more comprehensive long-form application (FCC Form 601) and have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.⁸⁵

57. Every entity and individual seeking a license available in Auction 96 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on November 5, 2013, following the procedures prescribed in Attachment D to this Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant is eligible for the claimed bidding credit. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning at the deadline for filing, as described above.

⁸² 47 C.F.R. §§ 1.2105.

⁸³ *Id.*; see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 165.

⁸⁴ Section III.D. "Upfront Payments – Due December 11, 2013," below.

⁸⁵ 47 C.F.R. §§ 1.2107.

58. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.⁸⁶ Each applicant should read carefully the instructions set forth in Attachment D to this Public Notice and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information required is included within its short-form application.

59. An individual or entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may be accepted for filing.

60. Applicants should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the person certifying the application that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application.⁸⁷ Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. License Selection

61. An applicant must select the licenses on which it wants to bid from the "Eligible Licenses" list on its short-form application. Applicants must review and verify their license selections before the deadline for submitting short-form applications. License selections cannot be changed after the short-form application filing deadline.⁸⁸ The FCC Auction System will not accept bids on licenses that were not selected on the applicant's short-form application.

C. Disclosure of Bidding Arrangements

62. An applicant will be required to identify in its short-form application all real parties in interest with whom it has entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.⁸⁹

63. Each applicant will also be required to certify under penalty of perjury in its short-form application that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of its bids, bidding strategies, or the particular licenses on which it will or will not bid.⁹⁰ If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it should not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.⁹¹

64. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (i) the attributable interest

⁸⁶ 47 C.F.R. § 1.2105(a)(2)(v).

⁸⁷ See 47 C.F.R. § 1.2105(b).

⁸⁸ 47 C.F.R. § 1.2105(b)(2).

⁸⁹ 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

⁹⁰ 47 C.F.R. § 1.2105(a)(2)(ix).

⁹¹ Section I.C.2. "Prohibited Communications and Compliance with Antitrust Laws," above.

holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.⁹² While section 1.2105(c) of the rules does not prohibit non-auction-related business negotiations among auction applicants, we remind applicants that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.⁹³ Further, as discussed above, compliance with the disclosure requirements of section 1.2105(c) of the Commission's rules will not insulate a party from enforcement of the antitrust laws.⁹⁴

D. Ownership Disclosure Requirements

65. Each applicant must comply with the uniform Part 1 ownership disclosure standards and provide information required by sections 1.2105 and 1.2112 of the Commission's rules.⁹⁵ Specifically, in completing the short-form application, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in sections 1.2105 and 1.2112 of the Commission's rules.⁹⁶ Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

66. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Each applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Any information that needs to be corrected or updated must be changed directly in the short-form application.

E. Foreign Ownership Disclosure Requirements

67. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses.⁹⁷ The provisions of section 310 apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules.⁹⁸ In completing the short-form application (FCC Form 175), an applicant will be required to disclose information concerning any foreign ownership of the applicant. An applicant must certify in its short-form application that, as of

⁹² 47 C.F.R. §§ 1.2105(c)(4)(i), (ii).

⁹³ Section I.C.2. "Prohibited Communications and Compliance with Antitrust Laws," above; *see* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 467-68 ¶ 163 (1997) ("Part 1 Third Report and Order").

⁹⁴ *Id.*

⁹⁵ 47 C.F.R. § 1.2105 requires the disclosure on the short-form application of the applicant's ownership information as set forth in 47 C.F.R. §§ 1.2105 and 1.2112.

⁹⁶ 47 C.F.R. §§ 1.2105, 1.2112.

⁹⁷ *See* 47 U.S.C. §§ 310(a), (b).

⁹⁸ *See* Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, *Second Report and Order*, FCC 13-50, 28 FCC Rcd 5741, 5747-48 ¶ 7 (2013) ("*Foreign Ownership Second Report and Order*").

the deadline for filing a short-form application to participate in Auction 96, the applicant either is in compliance with the foreign ownership provisions of section 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission.⁹⁹

F. National Security Certification Requirement for Auction 96 Applicants

68. Section 6004 of the Spectrum Act prohibits a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant from participating in any auction that is required or authorized to be conducted pursuant to the Spectrum Act.¹⁰⁰ In the *H Block Report and Order*, the Commission implemented the national security restriction in Section 6004 by adding a certification to the various other certifications that a party must make in any short-form application.¹⁰¹ This newly-adopted national security certification requires any applicant seeking to participate in Auction 96 to certify in its short-form application, under penalty of perjury, that the applicant and all of the related individuals and entities required to be disclosed on its application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant, and who are thus statutorily prohibited from participating in such a Commission auction.¹⁰² As with other required certifications, an auction applicant's failure to include the required certification in its short-form application by the applicable filing deadline would render its application unacceptable for filing, and its application would be dismissed with prejudice.¹⁰³

G. Designated Entity Provisions

69. Eligible applicants in Auction 96 may claim small business bidding credits. In addition to the information provided below, applicants should review carefully the Commission's decisions regarding the designated entity provisions.¹⁰⁴

1. Bidding Credits for Small Businesses

70. A bidding credit represents an amount by which a bidder's winning bid will be discounted. For Auction 96, bidding credits will be available to small businesses and consortia thereof.

a. Bidding Credit Eligibility Criteria

71. In the *H Block Report and Order*, the Commission adopted small business bidding credits to promote and facilitate the participation of small businesses in competitive bidding for licenses in the H Block.¹⁰⁵

⁹⁹ See 47 C.F.R. § 1.2105(a)(2)(v), (vi). See Attachment D, "Short-Form Application Filing Instructions," below for additional information concerning foreign ownership disclosure requirements.

¹⁰⁰ See 47 U.S.C § 1404.

¹⁰¹ *H Block Report and Order*, 28 FCC Rcd at 9577-78 ¶¶ 253-54. See also 47 C.F.R. § 1.2105(a)(2).

¹⁰² *H Block Report and Order*, 28 FCC Rcd at 9577-78 ¶¶ 253-54; 47 C.F.R. § 1.2105(a)(2)(xii).

¹⁰³ 47 C.F.R. § 1.2105(b)(1).

¹⁰⁴ See, e.g., Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, FCC 06-4, 21 FCC Rcd 891 (2006) ("*CSEA/Part 1 Report and Order*"); *Second Report and Order and Second Further Notice of Proposed Rule Making*, FCC 06-52, 21 FCC Rcd 4753 (2006) ("*CSEA/Part 1 Second Report and Order*"), recon. pending; *Order on Reconsideration of the Second Report and Order*, FCC 06-78, 21 FCC Rcd 6703 (2006) ("*CSEA/Part 1 Second Report and Order's First Reconsideration Order*").

¹⁰⁵ See *H Block Report and Order*, 28 FCC Rcd at 9581, ¶ 262.

72. The level of bidding credit is determined as follows:

- A bidder with attributed average annual gross revenues that do not exceed \$40 million for the preceding three years will receive a 15 percent discount on its winning bid.¹⁰⁶
- A bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years will receive a 25 percent discount on its winning bid.¹⁰⁷

73. Bidding credits are not cumulative; qualifying applicants receive either the 15 percent or the 25 percent bidding credit on its winning bid, but not both. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license to an entity not qualifying for the same level of bidding credit.¹⁰⁸

b. Revenue Disclosure on Short-Form Application

74. An entity applying as a small business must provide gross revenues for the preceding three years of each of the following: (1) the applicant, (2) its affiliates, (3) its controlling interests, (4) the affiliates of its controlling interests, and (5) the entities with which it has an attributable material relationship.¹⁰⁹ Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. Additionally, if an applicant is applying as a consortium of small businesses, this information must be provided for each consortium member.¹¹⁰

2. Attributable Interests

a. Controlling Interests

75. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis.¹¹¹ The following are some common indicia of *de facto* control:

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee;

¹⁰⁶ See 47 C.F.R. §§ 1.2110(f)(2)(iii), 27.1002(a)(1), (b).

¹⁰⁷ See 47 C.F.R. §§ 1.2110(f)(2)(ii), 27.1002(a)(2), (b). Council Tree asks that a maximum 45 percent "designated entity" bidding credit be implemented for Auction 96. See Council Tree Comments at 11-15. The Commission adopted the small business bidding credit levels applicable to competitive bidding for licenses in the H Block as rules in the *H Block Report and Order*. Commission rules cannot be amended in the context of this proceeding establishing the procedures for Auction 96 because such action outside of the scope of the Bureau's delegated authority. See 47 C.F.R. § 0.131.

¹⁰⁸ See 47 C.F.R. § 1.2111.

¹⁰⁹ 47 C.F.R. §§ 1.2110(b)(1)(i), 1.2110(b)(3)(iv)(B). See also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15323-27 ¶¶ 59-67.

¹¹⁰ 47 C.F.R. §§ 1.2110(b)(3)(i), 1.2110(b)(6), 1.2110(k).

¹¹¹ For further guidance on the issue of *de facto* control, see the Commission's affiliation rule at 47 C.F.R. §1.2110(b)(5); see also *Intermountain Microwave, Public Notice*, 12 FCC 2d 559, 560, Report No. 1142 (1963); *Application of Baker Creek Communications, L.P., Memorandum Opinion and Order*, DA 98-1921, 13 FCC Rcd 18709 (1998).

- the entity plays an integral role in management decisions.¹¹²

76. Applicants should refer to section 1.2110(c)(2) of the Commission's rules and Attachment D of this Public Notice to understand how certain interests are calculated in determining control. For example, pursuant to section 1.2110(c)(2)(ii)(F), officers and directors of an applicant are considered to have controlling interest in the applicant.¹¹³

b. Affiliates

77. Affiliates of an applicant or controlling interest include an individual or entity that: (1) directly or indirectly controls or has the power to control the applicant; (2) is directly or indirectly controlled by the applicant; (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant; or (4) has an "identity of interest" with the applicant.¹¹⁴ The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant.¹¹⁵ For more information regarding affiliates, applicants should refer to section 1.2110(c)(5) and Attachment D to this Public Notice.

c. Material Relationships

78. The Commission requires the consideration of certain leasing and resale (including wholesale) relationships – referred to as "attributable material relationships" – in determining designated entity eligibility for bidding credits.¹¹⁶ An applicant or licensee has an "attributable material relationship" when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (i) eligibility for designated entity benefits and (ii) liability for "unjust enrichment"¹¹⁷ on a license-by-license basis.¹¹⁸

79. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity's ongoing eligibility for existing benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant's or licensee's designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, in such circumstances, the Commission reexamines the applicant's or

¹¹² 47 C.F.R. § 1.2110(c)(2)(i)(A)-(C).

¹¹³ 47 C.F.R. § 1.2110(c)(2)(ii)(F).

¹¹⁴ 47 C.F.R. § 1.2110(c)(5).

¹¹⁵ *Id.*

¹¹⁶ See *Council Tree Communications, Inc. v. FCC*, 619 F.3d 235 (3d Cir. 2010) (affirming attributable material relationship rule and vacating impermissible material relationship rule).

¹¹⁷ The repayment obligations of designated entities are governed by a five-year unjust enrichment schedule. *Id.*, 619 F.3d at 258 (vacating ten-year unjust enrichment schedule).

¹¹⁸ *CSEA/Part 1 Second Report and Order*, 21 FCC Rcd at 4759-60 ¶¶ 15, 4763-65 ¶¶ 25-30, 4765-68 ¶¶ 31-41; see also *CSEA/Part 1 Second Report and Order's First Reconsideration Order*, 21 FCC Rcd at 6712-13 ¶¶ 24-26; and 47 C.F.R. §§ 1.2110(b)(3)(iv)(B), 1.2111(d).

licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.¹¹⁹

d. Gross Revenue Exceptions

80. The Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining designated entity eligibility. For example, the Commission has clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute to the applicant the personal net worth, including personal income, of its officers and directors.¹²⁰

81. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in section 1.2110(b)(3)(iii) of the Commission's rules are met.¹²¹ An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of section 1.2110(b)(3)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.¹²² Applicants seeking to claim this exemption must meet all of the conditions.¹²³ Additional guidance on claiming this exemption may be found in Attachment D to this Public Notice.

e. Bidding Consortia

82. A consortium of small businesses is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business.¹²⁴ Thus, each member of a consortium of small businesses that applies to participate in Auction 96 must individually meet the criteria for small businesses, as set forth above.¹²⁵ Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the

¹¹⁹ 47 C.F.R. § 1.2110(b)(3)(iv)(C); *CSEA/Part 1 Second Report and Order*, 21 FCC Rcd at 4764 ¶¶ 28-29; see *CSEA/Part 1 Second Report and Order's First Reconsideration Order*, 21 FCC Rcd at 6713-14 ¶¶ 27-29; but see the additional grandfathering provision in section 1.2110(b)(3)(iv)(C)(2) for the material relationships of those entities that are an applicant's affiliates based solely on 47 C.F.R. § 1.2110(c)(5)(i)(C). See also 47 C.F.R. § 1.2110(b)(3)(iv)(C)(2); *CSEA/Part 1 Second Report and Order*, 21 FCC Rcd at 4764-65 ¶ 30.

¹²⁰ See 47 C.F.R. § 1.2110(c)(2)(ii)(F). See also *Part 1 Fifth Report and Order's First Reconsideration Order*, 18 FCC Rcd at 10185-86 ¶¶ 8-9. However, to the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant. Moreover, if an officer or director operates a separate business, the gross revenues derived from that separate business would be attributed to the applicant, although any personal income from such separate business would not be attributed. *Id.*, 18 FCC Rcd at 10186 ¶ 9.

¹²¹ *Part 1 Fifth Report and Order's First Reconsideration Order*, 18 FCC Rcd at 10186-94 ¶¶ 10-18; Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Fifth Report and Order*, FCC 04-295, 20 FCC Rcd 1942, 1945-46 ¶ 9 (2005) ("*Fifth Report and Order's Second Reconsideration Order*").

¹²² 47 C.F.R. § 1.2110(b)(3)(iii). See also *Fifth Report and Order's Second Reconsideration Order*, 20 FCC Rcd at 1949-50 ¶ 18.

¹²³ See *Part 1 Fifth Report and Order's First Reconsideration Order*, 18 FCC Rcd at 10186-95 ¶¶ 10-20; see also *Fifth Report and Order's Second Reconsideration Order*, 20 FCC Rcd at 1945-46 ¶ 9.

¹²⁴ 47 C.F.R. § 1.2110(c)(6).

¹²⁵ *Id.*

consortium's eligibility as a small business,¹²⁶ this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.¹²⁷

3. Installment Payments

83. Installment payments will not be available in Auction 96.

H. Tribal Lands Bidding Credit

84. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their more detailed, long-form applications. This process is described in Section V.E. "Tribal Lands Bidding Credit," below.

I. Provisions Regarding Former and Current Defaulters

85. Current defaulters or delinquents are not eligible to participate in Auction 96, but former defaulters or delinquents can participate so long as they are otherwise qualified and, as discussed in Section III.D.3. below, make upfront payments that are fifty percent more than would otherwise be necessary.¹²⁸ An applicant is considered a "current defaulter" or a "current delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a "former defaulter" or a "former delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, have defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

86. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by section 1.2110 of the Commission's rules,¹²⁹ are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency.¹³⁰ Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency.¹³¹ Prospective applicants are reminded that submission of a false certification to the

¹²⁶ 47 C.F.R. § 1.2110(b)(3)(i).

¹²⁷ The *CSEA/Part 1 Report and Order* modified the procedure by which a consortium that is a winning bidder will apply for a license. See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 911-12 ¶¶ 51-52. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* and 47 C.F.R. §§ 1.2107(g) and 1.2110(b)(3) to understand how the members of the consortia will apply for a license in the event they are winning bidders.

¹²⁸ 47 C.F.R. §§ 1.2105(a)(2)(x), (xi), 1.2105(b)(1), and 1.2106(a); see *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 & n.142 ("If any one of an applicant's controlling interests or their affiliates...is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] FCC Form 175, the applicant will not be able to make the certification required by section 1.2105(a)(2)(x)...and will not be eligible to participate in Commission auctions.").

¹²⁹ 47 C.F.R. § 1.2110.

¹³⁰ 47 C.F.R. § 1.2105(a)(2)(x); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 & n.142.

¹³¹ 47 C.F.R. § 1.2105(a)(2)(xi); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42.

Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

87. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process.¹³² For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.¹³³ Therefore, with respect to regulatory or application fees, the provisions of sections 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.¹³⁴ Parties are also encouraged to consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

88. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the "red light rule," that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States.¹³⁵ Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules "are not affected" by the red light rule.¹³⁶ As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

89. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of section 1.2105.¹³⁷ Thus, while the red light rule ultimately may prevent the processing of long-form

¹³² Wireless Telecommunications Bureau Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements, *Public Notice*, DA 04-3491, 19 FCC Rcd 21920 (2004) ("*Auction Default Disclosure Public Notice*"). This public notice may be found at <http://wireless.fcc.gov/auctions/58/>.

¹³³ Letter to Cheryl A. Tritt, Esq., from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 04-3685, 19 FCC Rcd 22907 (2004) (clarifying the term "debt" or "non-tax debt" as referenced in 47 C.F.R. §§ 1.2105(a) and 1.2106(a)). This letter may be found at <http://wireless.fcc.gov/auctions/58/>.

¹³⁴ Even where Commission rules expressly permit late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. See 47 C.F.R. § 1.1164(a). Failure to comply with the terms of a demand letter in the time period specified may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

¹³⁵ Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, FCC 04-72, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) ("*Debt Collection Report and Order*").

¹³⁶ *Debt Collection Report and Order*, 19 FCC Rcd at 6541 n.11 (specifically mentions 47 C.F.R. §§ 1.2105(a)(2)(x) and (xi) and states that "[t]hese rules are not affected by the red light rule.>").

¹³⁷ *Auction Default Disclosure Public Notice*, DA 04-3491, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and short-form application default and delinquency disclosure requirements for auction applicants).

applications by auction winners, an auction applicant's lack of current "red light" status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

90. Moreover, prospective applicants in Auction 96 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule,¹³⁸ and such review may result in the dismissal of a winning bidder's long-form application.¹³⁹

J. Optional Applicant Status Identification

91. Applicants owned by members of minority groups and/or women, as defined in section 1.2110(c)(3),¹⁴⁰ and rural telephone companies, as defined in section 1.2110(c)(4),¹⁴¹ may identify themselves regarding this status in filling out their short-form applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions.¹⁴²

K. Minor Modifications to Short-Form Applications

92. After the deadline for filing initial applications, an Auction 96 applicant is permitted to make only minor changes to its application. Permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. An applicant is not permitted to make a major modification to its application (e.g., change of license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit) after the initial application filing deadline.¹⁴³ Thus, any change in control of an applicant — resulting from a merger, for example — will be considered a major modification, and the application will consequently be dismissed.¹⁴⁴

93. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number.¹⁴⁵

94. An applicant cannot use the FCC Auction System outside of the initial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing certain contact information or the name of an authorized bidder). If these or other permissible minor changes need to be made outside of these windows, the applicant must submit a letter briefly

¹³⁸ *Debt Collection Report and Order*, 19 FCC Rcd at 6540. See 47 C.F.R. § 1.1114.

¹³⁹ Applicants that have their long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 C.F.R. §§ 1.2104(g) and 1.2109(c).

¹⁴⁰ 47 C.F.R. § 1.2110(c)(3).

¹⁴¹ 47 C.F.R. § 1.2110(c)(4).

¹⁴² Designated entities are defined as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. See 47 C.F.R. § 1.2110(a).

¹⁴³ 47 C.F.R. § 1.2105(b); see also *Two Way Radio of Carolina, Inc., Memorandum Opinion and Order*, FCC 99-189, 14 FCC Rcd 12035 (1999) ("*Two Way Radio*") (auction applicant not allowed to change its designated entity status after application filing deadline).

¹⁴⁴ We reiterate that, even if an applicant's short-form application is dismissed, the applicant would remain subject to the communication prohibitions of 47 C.F.R. § 1.2105(c) until the down-payment deadline, which will be established after the auction closes.

¹⁴⁵ The Bureau advises applicants to retain a copy of this confirmation page.

summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Moreover, after the filing window has closed, the system will not permit applicants to make certain changes, such as the applicant's legal classification and license selections.

95. Any letter describing changes to an applicant's short-form application must be submitted by e-mail to auction96@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 96 and the name of the applicant, for example, "Re: Changes to Auction 96 Short-Form Application of ABC Corp." The Bureau requests that parties format any attachments to e-mail as Adobe[®] Acrobat[®] (pdf) or Microsoft[®] Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

96. As with the short-form application, any application amendment and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority, and that the contents of the amendment or statement of fact are true and correct.

97. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System, which was used for submitting comments regarding Auction 96. Further, as discussed above, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate section 1.2105(c) or the limited information procedures adopted for Auction 96.¹⁴⁶ A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount, or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to section 1.2105(c).

L. Maintaining Current Information in Short-Form Applications

98. Sections 1.65 and 1.2105(b) of the Commission's rules require an applicant to maintain the accuracy and completeness of information furnished in its pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence,¹⁴⁷ or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment.¹⁴⁸ Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. If an amendment reporting changes is a "major amendment," as defined by section 1.2105, the major amendment will not be accepted and may result in the dismissal of the application.¹⁴⁹ As noted above, after the short-form filing deadline, applicants may make only minor changes to their applications. For changes to be submitted and considered by the Commission, be sure to click on the SUBMIT button in the FCC Auction System. In addition, an applicant cannot update its short-form application using the FCC Auction System after the initial and resubmission filing windows close. If information needs to be submitted pursuant to section 1.65 after these windows close, a letter briefly summarizing the changes must be submitted by e-mail to auction96@fcc.gov. This e-mail must include a subject or caption referring to Auction 96 and the name of the applicant. The Bureau requests that parties format any attachments to e-mail as Adobe[®] Acrobat[®]

¹⁴⁶ See Section I.C.2.f. "Duty to Report Prohibited Communications," above.

¹⁴⁷ We remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. See, e.g., Vermont Telephone Company, *Notice of Apparent Liability for Forfeiture*, 26 FCC Rcd 14130 (Enf. 2011).

¹⁴⁸ 47 C.F.R. §§ 1.65, 1.2105(b). See also *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 523 ¶ 8.

¹⁴⁹ 47 C.F.R. § 1.2105(b)(2).

(pdf) or Microsoft® Word documents. A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount, or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to section 1.2105(c).

III. PRE-AUCTION PROCEDURES

A. Online Auction Tutorial – Available October 23, 2013

99. No later than Tuesday, October 23, 2013, an auction tutorial will be available on the Auction 96 web page for prospective bidders to familiarize themselves with the auction process. This online tutorial will provide information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and H Block service rules. The tutorial will also provide an avenue to ask Commission staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction.

100. The Bureau believes parties interested in participating in this auction will find the interactive, online tutorial an efficient and effective way to further their understanding of the auction process. The tutorial will allow viewers to navigate the presentation outline, review written notes, listen to audio recordings of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, e-mail links for contacting Commission licensing and auctions staff, a timeline with deadlines for auction preparation, and screen shots of the online application and bidding system. The tutorial will be accessible through a web browser with Adobe Flash Player.¹⁵⁰

101. The auction tutorial will be accessible from the Commission's Auction 96 web page at <http://wireless.fcc.gov/auctions/96/> through an "Auction Tutorial" link. Once posted, this tutorial will remain available and accessible anytime for reference in connection with the procedures outlined in this Public Notice.

B. Short-Form Applications – Due Prior to 6:00 p.m. ET on November 5, 2013

102. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment D to this Public Notice to submit a short-form application (FCC Form 175) electronically via the FCC Auction System.¹⁵¹ This short-form application must be submitted prior to 6:00 p.m. ET on November 5, 2013. **Late applications will not be accepted.** No application fee is required, but an applicant must submit a timely upfront payment to be eligible to bid.¹⁵²

103. Applications may generally be filed at any time beginning at noon ET on October 23, 2013, until the filing window closes at 6:00 p.m. ET on November 5, 2013. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applications can be updated or amended multiple times until the filing deadline on November 5, 2013.

104. An applicant must always click on the SUBMIT button on the "Certify & Submit" screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment D. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text

¹⁵⁰ Most users will already have the Flash Player browser plug-in, which can be downloaded from <http://get.adobe.com/flashplayer/>.

¹⁵¹ 47 C.F.R. § 1.2105(a).

¹⁵² See Section III.D. "Upfront Payments – Due December 11, 2013," below.

telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

105. After the deadline for filing short-form applications, the Commission will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice identifying (1) those that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

106. As described above, after the application filing deadline on November 5, 2013, applicants can make only minor corrections to their applications.¹⁵³ They will not be permitted to make major modifications (e.g., change license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit).¹⁵⁴

107. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf.¹⁵⁵ Authorizations may be sent by e-mail to auction96@fcc.gov.

D. Upfront Payments – Due December 11, 2013

108. In order to be eligible to bid in this auction, an upfront payment must be submitted and accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to U.S. Bank in St. Louis, Missouri. **All upfront payments must be made as instructed in this Public Notice and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on December 11, 2013.**

1. Making Upfront Payments by Wire Transfer

109. Wire transfer payments must be received before 6:00 p.m. ET on December 11, 2013.¹⁵⁶ No other payment method is acceptable.¹⁵⁷ To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. The following information will be needed:

ABA Routing Number: 081000210
Receiving Bank: U.S. Bank
1005 Convention Plaza
St. Louis, MO 63101
BENEFICIARY: FCC/Account # 152307774819
Originating Bank Information (OBI Field): (Skip one space between each information item)

¹⁵³ See Section II.K. "Minor Modifications to Short-Form Applications," above.

¹⁵⁴ 47 C.F.R. § 1.2105(b); see also *Two Way Radio*, 14 FCC Rcd at 12035.

¹⁵⁵ In no event, however, will the FCC send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175. See Section III.F. "Auction Registration," below.

¹⁵⁶ An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the Commission's auction payment lockbox bank, the U.S. Bank in St. Louis, Missouri.

¹⁵⁷ The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

“AUCTIONPAY”

APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: “U096”)

FCC CODE 1: (same as FCC Form 159, block 28A: “96”)

PAYER NAME: (same as FCC Form 159, block 2)

LOCKBOX NO: # 979085

NOTE: The BNF and Lockbox number are specific to the upfront payments for this auction. Do not use BNF or Lockbox numbers from previous auctions.

110. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232. On the fax cover sheet, write “Wire Transfer – Auction Payment for Auction 96.” In order to meet the upfront payment deadline, an applicant’s payment must be credited to the Commission’s account for Auction 96 before the deadline.¹⁵⁸

111. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Remittance Advice Form (FCC Form 159). An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.¹⁵⁹ **Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account.** To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director’s Auctions Accounting Group at (202) 418-0578, or alternatively, Theresa Meeks at (202) 418-2945.

112. Please note the following information regarding upfront payments:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 96 go to a lockbox number different from the lockboxes used in previous Commission auctions.
- Failure to deliver a sufficient upfront payment as instructed by the December 11, 2013, deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

2. FCC Form 159

113. An accurate and complete FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. Bank to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers using the pre-filled FCC Form 159 are responsible

¹⁵⁸ Letter to Lee G. Petro, from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 10-1270, 25 FCC Rcd 9046 (Auc. Div. 2010).

¹⁵⁹ See, e.g., Letter to David G. O’Neil, Esq. from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 08-622, 23 FCC Rcd 4765 (Auc. Div. 2008); Letter to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 03-1944, 18 FCC Rcd 11552 (2003).

for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but it must be filed with U.S. Bank by fax.

3. Upfront Payments and Bidding Eligibility

114. The Commission has delegated to the Bureau the authority and discretion to determine appropriate upfront payments for each auction.¹⁶⁰ An upfront payment is a refundable deposit made by each bidder to establish its eligibility to bid on licenses. Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

115. Applicants that are former defaulters, as described above, must make upfront payments that are fifty percent greater than non-former defaulters.¹⁶¹ For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by section 1.2110 of the Commission’s rules.¹⁶²

116. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. The Bureau proposed in the *Auction 96 Comment Public Notice* that the amount of the upfront payment would determine a bidder’s initial bidding eligibility, i.e., the maximum number of bidding units on which a bidder may place bids.¹⁶³ Under the Bureau’s proposal, in order to bid on a particular license, a qualified bidder must have selected the license on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. **At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its FCC Form 175 for Auction 96, or else the applicant will not be eligible to participate in the auction.** An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with licenses on which it wishes to place bids and hold provisionally winning bids in any given round.¹⁶⁴ The total upfront payment does not affect the total dollar amount the bidder may bid on any given license.

117. In the *Auction 96 Comment Public Notice*, the Bureau proposed to make the upfront payments equal to the minimum opening bids.¹⁶⁵ The Bureau further proposed that each license be assigned a specific number of bidding units equal to the upfront payment listed for the license, on a bidding unit for dollar basis.¹⁶⁶ The bidding unit level for each license will remain constant throughout

¹⁶⁰ Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, FCC 97-60, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997); see also *Broadcast First Report and Order*, 13 FCC Rcd at 15971 ¶ 134.

¹⁶¹ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17 ¶¶ 40-42; see also 47 C.F.R. § 1.2106(a); Section II.I. “Provisions Regarding Former and Current Defaulters,” above.

¹⁶² 47 C.F.R. § 1.2110(c).

¹⁶³ *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10023 ¶ 38.

¹⁶⁴ Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See Section IV.B.4. “Provisionally Winning Bids,” below.

¹⁶⁵ *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10022-23 ¶ 37.

¹⁶⁶ *Id.* at 10023 ¶ 38. “Former Defaulters” – i.e., applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that in the past have defaulted on any Commission license or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies – are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts. 47 C.F.R. § 1.2106(a).

the auction. The Bureau received no specific comments on the proposal,¹⁶⁷ and thus adopts its proposed upfront payments. The complete list of licenses for Auction 96 and the specific upfront payments and bidding units for each license are available as separate “Attachment A” files at <http://wireless.fcc.gov/auctions/96/>.

118. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units.¹⁶⁸ In order to make this calculation, an applicant should add together the bidding units for all licenses on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder’s eligibility after the upfront payment deadline.**

License	Market Name	Bidding Units	Upfront Payment
AH-BEA009-H	State College, PA	212,000	\$212,000
AH-BEA068-H	Champaign-Urbana, IL	109,000	\$109,000

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 321,000 bidding units (212,000 + 109,000) of bidding eligibility. If a bidder only wishes to bid on one, but not both, purchasing 212,000 bidding units would meet the eligibility requirement for either license. The bidder would be able to bid on either license, but not both at the same time. If the bidder purchased only 109,000 bidding units, it would have enough eligibility for the Champaign-Urbana license but not the State College license.

119. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified licenses by multiplying the number of bidding units on which it wishes to be active by 1.5.¹⁶⁹ In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.¹⁷⁰

E. Applicant’s Wire Transfer Information for Purposes of Refunds of Upfront Payments

120. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed below be supplied. Applicants can provide

¹⁶⁷ Sprint supports using the standard range of auction procedures outlined in the Public Notice that have typically accompanied traditional simultaneous multiple round (“SMR”) auctions in the past if the SMR format without package bidding is used for Auction 96. *See* Sprint Comments at 11. *See also* T-Mobile Comments at 6 (agreeing generally with the Bureau’s proposal to use the rules employed in prior auctions).

¹⁶⁸ A qualified bidder’s maximum eligibility will not exceed the sum of the bidding units associated with the total number of licenses identified on its FCC Form 175. In some cases a qualified bidder’s maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency (*see* 47 C.F.R. § 1.2106(a)), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the licenses it selected on its FCC Form 175.

¹⁶⁹ 47 C.F.R. § 1.2106(a).

¹⁷⁰ If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the licenses selected on its FCC Form 175, the applicant will not be eligible to participate in the auction. This applicant will retain its status as an applicant in Auction 96 and will remain subject to 47 C.F.R. §§ 1.2105(c). *See* Star Wireless and Northeast Communications of Wisconsin, Inc., *Order on Review*, 22 FCC Rcd 8943, 8947 ¶ 8.

the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should not be included in an FCC Form 175.) Wire Transfer Instructions can also be faxed to the FCC, Financial Operations, Auctions Accounting Group, Attn: Gail Glasser, at (202) 418-2980. Eligibility for refunds is discussed in Section V. G., below. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

Name of Bank
ABA Number
Address of Bank
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Correspondent Bank (if applicable)
ABA Number
Account Number

F. Auction Registration

121. Approximately ten days before the auction, the Bureau will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted short-form applications that are deemed timely-filed, accurate, and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

122. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID[®] tokens that will be required to place bids, the “Integrated Spectrum Auction System (ISAS) Bidder’s Guide,” and the Auction Bidder Line phone number.

123. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Wednesday, January 8, 2014, call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

124. In the event that SecurID[®] tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant’s short-form application may request replacements. To request replacement of these items, call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

G. Remote Electronic Bidding

125. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference — electronic or telephonic — on its FCC Form 175. In either case, each authorized bidder must have its own SecurID[®] token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID[®] tokens, while applicants with two or three authorized bidders will be issued three tokens. **For security purposes, the SecurID[®] tokens, the telephonic bidding telephone number, and the “Integrated Spectrum Auction System (ISAS) Bidder’s Guide” are only mailed to the contact person at the contact address listed on the FCC Form 175.** Each SecurID[®] token is tailored to a specific auction. SecurID[®] tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 96.

126. Please note that the SecurID® tokens can be recycled, and the Bureau encourages bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once bidding has closed.

H. Mock Auction – January 10, 2014

127. All qualified bidders will be eligible to participate in a mock auction on Friday, January 10, 2014. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureau strongly recommends that all bidders participate in the mock auction. Details will be announced by public notice.

IV. AUCTION

128. The first round of bidding for Auction 96 will begin on Tuesday, January 14, 2014. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

1. Simultaneous Multiple Round Auction Without Package Bidding

129. In the *Auction 96 Comment Public Notice*, the Bureau proposed to auction all licenses in Auction 96 in a single auction using a simultaneous multiple-round (“SMR”) auction format.¹⁷¹ This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses.

130. The Bureau also proposed to incorporate provisions for a simple form of package bidding called hierarchical package bidding (“HPB”) into the SMR auction under which, in addition to being able to bid on individual licenses, bidders would be able to bid on certain tiered, non-overlapping packages of licenses.¹⁷² We proposed that the basic bidding tier under HPB would be EA licenses, with possible predefined packages of EAs corresponding to Major Economic Areas (“MEAs”), Regional Economic Area Groupings (“REAGs”), and/or all markets in the contiguous 48 states. We sought comment generally on the proposed SMR format with HPB, including what predefined packages should be available for various tiers.¹⁷³

131. The Bureau received significant comment on its proposals. While all parties that commented on this topic generally support our proposal to use the SMR format,¹⁷⁴ most oppose implementing any form of package bidding in Auction 96.¹⁷⁵ We conclude, based on the record, that we will use a standard SMR auction format in Auction 96, without HPB.

¹⁷¹ *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10017 ¶ 16.

¹⁷² *Id.* at 10017-10019 ¶¶ 17-22.

¹⁷³ *Id.* at 10019 ¶ 22.

¹⁷⁴ See Aloha Partners Reply Comments at 6; Broadband Properties Comments at 1; C Spire Comments at 2; CCA Reply Comments at 5-7; NTELOS Holdings Reply Comments at 12; RDL Management Comments at 3; RTG Comments at 9; Sprint Comments at 3-6; US Cellular Comments at 3; C Spire Reply Comments at 1-2; Cellcom/Pioneer Cellular Joint Reply Comments at 5-6; RTG Reply Comments at 3; Sprint Reply Comments at 1-2, 10; US Cellular Reply Comments at 3, 5-6. See generally AT&T Comments and Reply Comments (supporting an SMR with HPB auction format); Holt and Goeree Comments at 1-3 (supporting an SMR with HPB auction format). T-Mobile did not take a position on the use of an SMR format but noted that this format offers bidders a simple and effective means of bidding on a single or multiple licenses and is familiar to auction participants, making it an attractive approach for Auction 96. See T-Mobile Comments at 3.

¹⁷⁵ See Broadband Properties Comments at 1; C Spire Comments at 2-4; RDL Comments at 4-13; RTG Comments at 3-9; Sprint Comments at 4, 7-10; US Cellular Comments at 3-4, 6-17; Aloha Partners Reply Comments at 1, 3-6; (continued....)

132. Commenters that oppose implementing any form of package bidding, including HPB, claim that it creates competitive issues by (1) adding unnecessary complexity to the auction, which would be most felt by smaller bidders, (2) tilting the playing field in favor of larger/incumbent carriers to the detriment of small, rural, and new entrant carriers, (3) potentially allowing certain licenses to be acquired at a discount, and (4) adding uncertainty for bidders that bid on any collection of licenses smaller than the largest package being bid.¹⁷⁶ Because we are not implementing package bidding for Auction 96, we need not address each of these comments in detail. The commenters that favor incorporating HPB into an SMR auction with package bidding, AT&T, Holt and Goeree, and T-Mobile, maintain that an SMR-HPB auction provides flexibility by allowing smaller companies to bid on “bite size” licenses, while offering major providers the chance to establish a regional or national footprint with a winning package bid.¹⁷⁷ Holt and Goeree explain that the SMR-HPB format is simple and transparent, and that a structure with one or more middle tiers of regional packages offers flexibility advantages without significant increases in complexity or reductions in transparency or computational complexity.¹⁷⁸ Both AT&T and Holt and Goeree observe that the proposed multi-round HPB auction format goes a long way towards solving an exposure problem, especially if more than two tiers are used.¹⁷⁹ AT&T further notes that our proposal to offer pre-defined, non-overlapping packages would greatly simplify the process of determining the provisionally winning bid in an EA (as compared to other package bidding formats) and that this reduced computational complexity should provide for transparency.¹⁸⁰

133. We conclude based on the record and in light of our experience with previous spectrum auctions, including auctions of Advanced Wireless Service (“AWS”) and Personal Communications Service (“PCS”) licenses, that a standard SMR auction format will offer adequate opportunity for bidders to aggregate licenses in order to obtain the level of coverage they desire consistent with their business plans. Accordingly, we decline to implement HPB, and will use a standard SMR auction format for Auction 96.¹⁸¹ Bids will be accepted on all licenses in each round of the auction until bidding stops on every license unless otherwise announced.¹⁸²

134. In the *Auction 96 Comment Public Notice*, the Bureau alternatively proposed to conduct Auction 96 as a single round sealed bid (“SRSB”) auction, given that Auction 96 offers only a single spectrum block and that a single round auction might simplify the process for bidders and reduce auction participation costs.¹⁸³ The Bureau sought comment on this alternative format and on any others it should

(Continued from previous page) _____
C Spire Reply Comments at 1-4; CCA Reply Comments at 2-7; Cellcom/Pioneer Cellular Joint Reply Comments at 5-6; NTELOS Holdings Reply Comments at 4-10; RTG Reply Comments at 1-4; Sprint Reply Comments at 1-8; US Cellular Reply Comments at 6-24.

¹⁷⁶ See Broadband Properties Comments at 1; C Spire Comments at 3-4; Cellcom/Pioneer Cellular Joint Comments at 5-6; RDL Comments at 4-12; RTG Comments at 3-8; US Cellular Comments at 6-15; Aloha Partners Reply Comments at 3-4; C Spire Reply Comments at 3-4; NTELOS Holdings Reply Comments at 4-10; Sprint Reply Comments at 2-5; US Cellular Reply Comments at 6-24.

¹⁷⁷ See AT&T Comments at 2-3; Holt and Goeree Comments at 1; T-Mobile Comments at 4-5; AT&T Reply Comments at 3; T-Mobile Reply Comments at 7. DISH also generally supports the proposal to use HPB in auctioning the H Block. See DISH *Ex Parte* at 2.

¹⁷⁸ See Holt and Goeree Comments at 4.

¹⁷⁹ See AT&T Reply Comments at 2-3; Holt and Goeree Comments at 1-2. AT&T maintains that HPB is in fact necessary to avoid a bid-suppressing exposure problem. See AT&T Reply Comments at 2.

¹⁸⁰ See AT&T Comments at 2.

¹⁸¹ Our decision not to employ an SMR-HPB format for H Block licenses in Auction 96 does not reflect on or preclude future use of package bidding in Commission auctions.

¹⁸² See Section IV.A.7, “Auction Stopping Rules,” below.

¹⁸³ *Id.* at 10019 ¶ 23.

consider. The four parties that took a position on our alternative SRSB auction format proposal all oppose it.¹⁸⁴ Given both the lack of support in the record for our alternative SRSB auction proposal and the overwhelming record support for the SMR auction format, we will not conduct Auction 96 as a SRSB auction, and will conduct the auction using a standard SMR format as discussed above.

2. Limited Information Disclosure Procedures: Information Available to Bidders Before and During the Auction

135. Consistent with its practice in several prior wireless spectrum auctions, the Bureau proposed in the *Auction 96 Comment Public Notice* to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions.¹⁸⁵ The Bureau sought comment on the proposal to implement anonymous bidding and on any alternatives for Auction 96.¹⁸⁶

136. The Bureau received several comments on its proposal to use anonymous bidding procedures for Auction 96, both in support¹⁸⁷ and in opposition.¹⁸⁸ After carefully considering the record on this issue, we conclude that we will employ our standard anonymous bidding procedures in Auction 96. We agree with commenters that assert that the anonymous bidding procedures used in past auctions help protect against potential anticompetitive behavior such as retaliatory bidding and collusion.¹⁸⁹ We find that the competitive benefits associated with anonymous bidding outweigh the potential benefits of full information disclosure, particularly in this case where we offer one block of spectrum licenses, and therefore reject the assertions of opponents of anonymous bidding, who argue that anonymous bidding procedures are unnecessary or harmful to smaller bidders.¹⁹⁰

137. We therefore adopt the limited information procedures proposed in the *Auction 96 Comment Public Notice*.¹⁹¹ Nothing in the record persuades us that we should depart from the now-established Commission practice of implementing anonymous bidding procedures in wireless spectrum

¹⁸⁴ See Holt and Goeree Comments at 2-3; RDL Comments at 13-15; Sprint Comments at 10-11; US Cellular Reply Comments at 24-27. T-Mobile did not take a position on the SRSB format but indicated that Auction 96 may be sufficiently different from other auctions that the format might be worth considering. See T-Mobile Comments at 2-4.

¹⁸⁵ *Id.* at 10020 ¶¶ 24-26.

¹⁸⁶ *Id.* at 10020 ¶29.

¹⁸⁷ See C Spire Comments at 2-4; Sprint Comments at 11; T-Mobile Comments at 5; C Spire Reply Comments at 4-5.

¹⁸⁸ See CCA Comments at 7-8; RDL Comments at 1, 16-18; US Cellular Comments at 18-28; US Cellular Reply Comments at 27-31.

¹⁸⁹ See C Spire Comments at 2-4; Sprint Comments at 9-11; T-Mobile Comments at 5; C Spire Reply Comments at 4-5; Sprint Reply Comments at 9. See Auction of AWS-1 and Broadband PCS Licenses Rescheduled for August 13, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 78, *Public Notice*, DA 08-1090, 23 FCC Rcd 7496, 7536 ¶ 157 (WTB 2008) (recognizing that limited information procedures may have overall competitive benefits from reduced opportunities for bid signaling, retaliatory bidding, or other anti-competitive strategic bidding); Auction of 700 MHz Band Licenses Scheduled for July 19, 2011; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 92, *Public Notice*, DA 11-420, 26 FCC Rcd 3342, 3372 ¶ 128 (WTB 2011) (finding that the competitive benefits associated with anonymous bidding support adoption of such procedures).

¹⁹⁰ See RDL Comments at 16-18; US Cellular Comments at 4-5, 18-28; CCA Reply Comments at 7-8; US Cellular Reply Comments at 27-31.

¹⁹¹ *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10020 ¶¶ 24-29.

auctions.¹⁹² Thus, after the conclusion of each round, the Bureau will disclose all relevant information about the bids placed and/or withdrawn except the identities of the bidders performing the actions and the net amounts of the bids placed or withdrawn. As in past auctions conducted with limited information procedures, the Bureau will indicate, for each license, the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, the Bureau will also release, for each license, the number of bidders that placed a bid on the license. Furthermore, the Bureau will indicate whether any proactive waivers were submitted in each round, and the Bureau will release the stage transition percentage – the percentages of licenses (as measured in bidding units) on which there were new bids – for the round. In addition, bidders can log in to the FCC Auction System to see, after each round, whether their own bids are provisionally winning. The Bureau will provide descriptions and/or samples of publicly-available and bidder-specific (non-public) results files prior to the start of the auction.

138. The Bureau, however, retains the discretion not to use limited information procedures if the Bureau, after examining the level of potential competition based on the short-form applications filed for Auction 96, determines that the circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. For example, if only two applicants become qualified to participate in the bidding, limited information procedures would be ineffective in preventing bidders from knowing the identity of the competing bidder and, therefore, limited information procedures would not serve to deter attempts at signaling and retaliatory bidding behavior.

139. *Other Issues.* Information disclosure procedures established for this auction will not interfere with the administration of, or compliance with, the Commission’s prohibition of certain communications. As described in more detail above, section 1.2105(c)(1) of the Commission’s rules provides that, after the short-form application filing deadline, all applicants for licenses in any of the same or overlapping geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions.¹⁹³

140. In Auction 96, the Commission will not disclose information regarding license selection or the amounts of bidders’ upfront payments and bidding eligibility. The Commission will disclose the other portions of applicants’ short-form applications through its online database, and certain application-based information through public notices.

141. To assist applicants in identifying other parties subject to section 1.2105(c), the Bureau will notify separately each applicant in Auction 96 whether applicants with short-form applications to participate in pending auctions, including but not limited to Auction 96, have applied for licenses in any of the same or overlapping geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 96, it will send to each applicant in Auction 96 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same or overlapping geographic areas. The list will identify the other applicants by name but will not list their license selections. As in past auctions, additional information regarding other applicants that is needed to comply with section 1.2105(c) – such as the identities of other applicants’ controlling interests

¹⁹² We also decline to adopt US Cellular’s suggestion that we use a pre-defined eligibility ratio to determine the level of competition for Auction 96 and make our decision about whether to limit the information available to bidders contingent upon competitiveness of the auction.

¹⁹³ 47 C.F.R. § 1.2105(c)(1). *See* Section I.C.2. “Prohibited Communications and Compliance with Antitrust Laws,” above.

and entities with a greater than ten percent ownership interest – will be available through the publicly-accessible online short-form application database.¹⁹⁴

142. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission’s prohibition of certain communications, pursuant to section 1.2105(c), particularly in light of the Commission’s procedures regarding the availability of certain information in Auction 96. While applicants’ license selections will not be disclosed until after Auction 96 closes, the Commission will disclose other portions of short-form applications through its online database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants’ license selections.

143. If an applicant is found to have violated the Commission’s rules or the antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.¹⁹⁵

144. The Bureau hereby warns applicants that the direct or indirect communication to other applicants or the public disclosure of non-public information (e.g., bid withdrawals, proactive waivers submitted, reductions in eligibility) could violate the Commission’s anonymous bidding procedures and section 1.2105(c).¹⁹⁶ **To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the SEC, the Bureau strongly urges that the applicant consult with the Commission staff in the Auctions and Spectrum Access Division before making such disclosure.**

145. In opposing the use of anonymous bidding procedures for Auction 96, US Cellular claims that smaller bidders face greater legal risks and potential consequences because of the inherent conflict between anonymous bidding and the public disclosure requirements of the SEC concerning financially-material information.¹⁹⁷ We are not persuaded by US Cellular’s suggestion that SEC rules requiring bidders to disclose financially-material information may force bidders to disclose bidding information during the auction.¹⁹⁸ US Cellular has raised this issue in the past,¹⁹⁹ but has failed to cite any specific SEC rule that explicitly requires disclosure of bidding information. Until the SEC addresses the issue, we will not presume that SEC rules require public disclosure of information about bidding while an auction is still underway.

3. Eligibility and Activity Rules

146. As discussed above, the Bureau will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 96.²⁰⁰ The amount of the upfront

¹⁹⁴ For purposes of section 1.2105(c), the term “applicant” includes all controlling interests, all parties with ownership interests greater than ten percent and all officers and directors of the applicant. 47 C.F.R. § 1.2105(c)(7).

¹⁹⁵ 47 C.F.R. § 1.2109(d).

¹⁹⁶ The Bureau has previously warned Auction 73 applicants that such disclosures could violate the Commission’s rules. See Wireless Telecommunications Bureau Reminds 700 MHz Auction Applicants of Confidential Nature of Upfront Payment and Other Bidding-Related Information, *Public Notice*, DA 08-13, 23 FCC Rcd 18 (2008).

¹⁹⁷ See US Cellular Comments at 5, 21-22; US Cellular Reply Comments at 29.

¹⁹⁸ *Id.*

¹⁹⁹ See *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4606 ¶ 159.

²⁰⁰ See Section III.D.3. “Upfront Payments and Bidding Eligibility,” above.

payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each license is assigned a specific number of bidding units as listed in the complete list of licenses available as separate “Attachment A” files at <http://wireless.fcc.gov/auctions/96/>. Bidding units assigned to each license do not change as prices change during the auction. Upfront payments are not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant’s upfront payment must cover the bidding units for at least one of the licenses it selected on its FCC Form 175. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

147. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. A bidder’s activity level in a round is the sum of the bidding units associated with licenses covered by the bidder’s new and provisionally winning bids.²⁰¹

148. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round (*see* “Bid Amounts” in Section IV.B.3., below).

149. The minimum required activity is expressed as a percentage of the bidder’s current eligibility, and increases by stage as the auction progresses. Because these procedures (as set forth under “Auction Stages” in Section IV.A.4. and “Stage Transitions” in Section IV.A.5. below) have proven successful in maintaining the pace of previous auctions, the Bureau adopts them for Auction 96. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder’s eligibility, possibly curtailing or eliminating the bidder’s ability to place additional bids in the auction.²⁰²

4. Auction Stages

150. In the *Auction 96 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule.²⁰³ Under the Bureau’s proposal, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility, during each round of Stage One, and at least 95 percent of its current bidding eligibility in Stage Two. The Commission received no specific comments on this proposal.²⁰⁴

151. The Bureau finds that, for now, a two-stage activity requirement adequately balances the desire to conclude the auction quickly with giving sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, the Bureau adopts the two stages as described in more detail immediately below.

²⁰¹ Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. *See* Section IV.B.4. “Provisionally Winning Bids,” below.

²⁰² *See* Section IV.A.6. “Activity Rule Waivers,” below.

²⁰³ *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10023-24 ¶¶ 40-42.

²⁰⁴ *See* note 167, above.

152. **Stage One:** During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on licenses representing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4).

153. **Stage Two:** During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

CAUTION: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by logging into the FCC Auction System

154. When the Bureau moves the auction from Stage One to Stage Two, we will first alert bidders by announcement in the bidding system. The Bureau has the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant.

5. Stage Transitions

155. In the *Auction 96 Comment Public Notice*, the Bureau proposed that it would advance the auction to the next stage (i.e., from Stage One to Stage Two) after considering a variety of measures of auction activity, including, but not limited to, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue.²⁰⁵ The Bureau further proposed that it would retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than 95 percent.²⁰⁶ The Bureau proposed to alert bidders of stage advancements by announcement during the auction. The Bureau received no specific comments on this issue.²⁰⁷

156. We adopt our proposal for stage transitions. Thus, the auction will start in Stage One.²⁰⁸ The Bureau will regulate the pace of the auction by announcement. The Bureau retains the discretion to

²⁰⁵ *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10024 ¶¶ 41-42.

²⁰⁶ If the Bureau implements stages with activity requirements other than the ones listed above, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by the reciprocal of the activity requirement. For example, with a 98 percent activity requirement, the bidder's current round activity would be multiplied by 50/49; with a 100 percent activity requirement, the bidder's current round activity would become its bidding eligibility (current round activity would be multiplied by 1/1).

²⁰⁷ See note 167, above.

²⁰⁸ The stage of the auction does not affect the auction stopping rules; the auction may conclude in Stage One. See Section IV.A.7. "Auction Stopping Rules," below.

transition the auction to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in bidding units) on which there are new bids.²⁰⁹

6. Activity Rule Waivers

157. The Bureau proposed in the *Auction 96 Comment Public Notice* that each bidder in the auction be provided with three activity rule waivers.²¹⁰ The Bureau received no specific comments on this issue.²¹¹ Therefore, the Bureau adopts its proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

158. The FCC Auction System assumes that a bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the ability to place additional bids in the auction.

159. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule described above. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

160. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a proactive waiver is applied (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. **Applying a waiver is irreversible; once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.**

²⁰⁹ For example, when monitoring activity to determine when to change stages, the Bureau may consider the percentage of bidding units of the licenses receiving new provisionally winning bids, excluding any FCC-held licenses. In past auctions, the Bureau has generally — but not always — changed stages when this measure was approximately twenty percent or below for three consecutive rounds of bidding.

²¹⁰ *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10025 ¶ 48.

²¹¹ See note 167, above.

7. Auction Stopping Rules

161. In the *Auction 96 Comment Public Notice*, the Bureau proposed to employ a simultaneous stopping rule under its SMR proposal.²¹² Under this rule, all licenses remain available for bidding until bidding stops simultaneously on every license.²¹³ More specifically, bidding will close on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids. Thus, under our SMR proposal, unless we announce alternative stopping procedures, the simultaneous stopping rule will be used in this auction, and bidding will remain open on all licenses until bidding stops on every license, regardless of whether bids are placed on individual licenses or packages of licenses.

162. We also proposed that the Bureau retain discretion to exercise any of the following alternative versions of the simultaneous stopping rule for Auction 96:

Option 1. The auction would close for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on a license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

Option 2. The auction would close for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on a license that is not FCC-held. Thus, absent any other bidding activity, a bidder placing a new bid on a license that does not already have a provisionally winning bid (an “FCC-held” license) would not keep the auction open under this modified stopping rule.

Option 3. The auction would close using a modified version of the simultaneous stopping rule that combines (a) and (b) above.

Option 4. The auction would end after a specified number of additional rounds (“special stopping rule”). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close.

Option 5. The auction would remain open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

163. We proposed to exercise these alternative versions of the simultaneous stopping rule only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely.²¹⁴ Before exercising these options, we are likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or the minimum acceptable bids.²¹⁵ We also proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction.²¹⁶ Sprint, the only party that commented on the stopping rules, supported them.²¹⁷ We adopt our proposals for Auction 96.

²¹² *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10021-22 ¶¶ 33-34.

²¹³ *Id.*

²¹⁴ *Id.* at 10022 ¶ 35.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *See Sprint Comments* at 11.

8. Auction Delay, Suspension, or Cancellation

164. In the *Auction 96 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.²¹⁸ We received no specific comment on this issue.²¹⁹

165. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts these proposals regarding auction delay, suspension, or cancellation. By public notice or by announcement during the auction, we may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that we will exercise of this authority solely at our discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

1. Round Structure

166. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately ten days before the start of the auction. Each bidding round is followed by the release of round results. Details regarding formats and locations of round results will also be included in the qualified bidders public notice. Multiple bidding rounds may be conducted each day.

167. The Bureau has the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' needs to study round results and adjust their bidding strategies. We may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

2. Reserve Price and Minimum Opening Bids

168. Section 309(j) of the Communications Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for Commission licenses are subject to auction (i.e., because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.²²⁰ Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.²²¹ Among other factors, we must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being

²¹⁸ See *Auction 96 Procedures Public Notice*, 28 FCC Rcd at 10022 ¶ 36.

²¹⁹ See note 167, above.

²²⁰ 47 U.S.C. § 309(j)(4)(F).

²²¹ *Part 1 Third Report and Order*, FCC 97-413, 13 FCC Rcd at 455-56 ¶ 141.

auctioned.²²² The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.²²³

a. Reserve Price

169. The Commission is statutorily obliged to consider and balance a variety of public interests and objectives when establishing service rules and licensing procedures with respect to the public spectrum resource. These objectives include promoting recovery for the public a portion of the value of that resource.²²⁴ With respect to the H Block licenses being offered in Auction 96, the Spectrum Act specifically directs that proceeds from an auction of H Block spectrum be deposited into the Public Safety Trust Fund and be used for, among other things, funding (or reimbursement to the U.S. Treasury for the funding) of the nationwide, interoperable public safety broadband network by the First Responder Network Authority.²²⁵ In view of the various public interest objectives we must consider, we proposed to establish a reserve price for the H Block licenses offered in Auction 96.²²⁶ We further proposed to utilize an aggregate reserve price based on the total of the bids for the H Block licenses, rather than license-by-license reserve prices.²²⁷ We sought comment on our proposals, and on factors we should consider in determining a reserve price.²²⁸ We also sought comment on whether, if we adopt a reserve price for the H Block licenses in Auction 96, we should disclose the reserve price publicly prior to the auction.²²⁹

170. The limited comment we received on this issue is generally supportive of our reserve price proposals, and we received no opposition to the use of a reserve.²³⁰ Sprint supports using an aggregated license reserve price if SMR without package bidding is used, stating that it accurately reflects overall demand given that all of the available Auction 96 licenses are in the same block and because calculating license-by-license reserve prices would be inefficient and complicated.²³¹ C Spire similarly states that, because all of the spectrum in Auction 96 is in a common block, aggregated reserve pricing will accurately reflect overall demand for the spectrum and will ensure that the auction raises the targeted amount.²³² T-Mobile maintains that reserve prices serve an important function and supports using both an aggregate reserve price and license-by-license reserve prices to ensure the target amount is raised and individual bidders are not permitted to acquire licenses for below-market values merely because the aggregate reserve price is satisfied.²³³ DISH also supports the use of a reserve price.²³⁴ DISH estimates

²²² *Id.*

²²³ *Id.*

²²⁴ 47 U.S.C. § 309(j)(3)(C).

²²⁵ Spectrum Act, §§ 6401(c)(4), 6413, codified at 47 U.S.C. §§ 309(j)(8)(F), 1457; *see also* Spectrum Act, § 6202(a), codified at 47 U.S.C. § 1422(a).

²²⁶ *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10026 ¶ 52.

²²⁷ *Id.*

²²⁸ *Id.* at 10026 ¶¶ 52-53.

²²⁹ *Id.* at 10026 ¶ 53.

²³⁰ *See* C Spire Reply Comments at 5; Sprint Comments at 11-12; T-Mobile Comments at 6-7; DISH *Ex Parte* at 1.

²³¹ *See* Sprint Comments at 11-12.

²³² *See* C Spire Reply Comments at 5. C Spire initially advocated setting minimum opening bids equal to the pre-determined reserve price for each license being auctioned (*see* C Spire Comments at 4-5), but on reply said it was persuaded by other commenters that aggregated license reserve pricing is an equally effective alternative. *See* C Spire Reply Comments at 5.

²³³ *See* T-Mobile Comments at 6-7.

²³⁴ *See* DISH *Ex Parte* at 1.

that the value of the H block spectrum on a nationwide aggregate basis is “at least \$0.50” per megahertz per population (“MHz-pop”), and bases its estimate on information from past Commission spectrum auctions, secondary market transactions and a range of estimates by financial institutions.²³⁵

171. C Spire and Sprint were the only two parties that commented on the issue of whether any reserve price we may adopt for Auction 96 should be publicly disclosed prior to the auction.²³⁶ Both support doing so because it allows participants to efficiently tailor their bidding strategies to their individual packaging needs and effectively know what they are playing for prior to making an initial bid.²³⁷

172. In light of the support in the record, we adopt our proposal to establish a reserve price for the H Block licenses in Auction 96 that is higher than the sum of minimum opening bids, and here we publicly disclose it. While minimum opening bids, which we are separately adopting for Auction 96, effectively function as license-by-license reserve prices, we agree with Sprint that calculating license-by-license reserve prices consistent with our higher aggregate reserve price would be inefficient and complicated. Accordingly, for the H Block licenses in Auction 96, there will be an aggregate reserve price of \$1.564 billion. This reserve price was calculated by using a minimum spectrum value of \$0.50/MHz-pop, as suggested by DISH, and rounding the result to the nearest million. We believe this amount will appropriately recover for the public a portion of the value of the spectrum, especially in light of the Spectrum Act’s requirement to deposit proceeds from this auction into the Public Safety Trust Fund to be used for a nationwide, interoperable public safety broadband network by the First Responder Network Authority.

173. When determining whether the reserve price has been met, the Bureau will use the gross bid amounts rather than net bid amounts that take into account bidding credits. We will also count the gross amount of any withdrawn bids for licenses toward meeting the reserve price.²³⁸ Thus, we will count the gross amount of either the provisionally winning bid on a license or, if higher, the highest withdrawn provisionally winning bid on a license when determining whether the reserve price has been met. We will not count more than one bid per license, be it a provisionally winning or withdrawn bid, toward meeting the relevant reserve price. In the case of licenses with multiple withdrawn bids or a withdrawn bid and a provisionally winning bid, we will count the highest of the gross bid amounts toward the reserve price. Other than the gross amounts of withdrawn bids as described above, licenses without provisionally winning bids will not count toward meeting a reserve price.

174. We will issue an announcement in the FCC Auction System stating that the reserve price has been met immediately following the first round in which that occurs, which will be viewable through the Commission’s website. The current total of the relevant provisionally winning bids may not determine whether the reserve has been met, given that we also will count withdrawn bids toward meeting the reserve. By making an announcement when the reserve is met, we will free auction observers and participants from a need to monitor withdrawn bids over the course of the auction in order to determine whether the reserve has been met and avoid any uncertainty.

²³⁵ Specifically, DISH cites estimates from financial institutions of values for the H block spectrum that are, on average, between \$0.62/MHz-pop and \$1.00/MHz-pop. *See id.*

²³⁶ *See* Sprint Comments at 12; C Spire Reply Comments at 6.

²³⁷ *Id.*

²³⁸ We include withdrawn bids in our calculation consistent with our bid withdrawal payment rules which ensure that the Commission ultimately is able to collect the difference between a withdrawn provisionally winning bid and the final selling price of a license, if the final price is less than the withdrawn provisionally winning bid. *See* Section IV.B.6. “Bid Removal and Bid Withdrawal,” below.

b. Minimum Opening Bids

175. In addition to proposing an aggregate reserve price, the Bureau proposed in the *Auction 96 Comment Public Notice* to establish minimum opening bid amounts for each license in Auction 96.²³⁹ The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.²⁴⁰

176. In the *Auction 96 Comment Public Notice*, the Bureau proposed to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area population,²⁴¹ similar to our approach in many previous spectrum auctions. We proposed to use a calculation based on \$0.07 per MHz-pop. Additionally, we proposed to incorporate pricing information from previous auctions to tailor the results of our calculation to the relative prices for each EA. For this, we proposed to create an index of the relative price of each EA using the winning bid amounts for the EA licenses of paired spectrum from Auctions 66 and 73. This modification to the use of \$0.07 per MHz-pop results in amounts ranging from less than \$0.01 per MHz-pop to \$0.16 per MHz-pop. We further proposed a minimum of \$1000 per license. For the license covering the Gulf of Mexico, we proposed to set the minimum opening bid at \$20,000.

177. Broadband Properties, the only party that commented on our proposed minimum opening bids, maintains that indexing minimum opening bids and reserve prices to prior auctions takes the market forces out of the auction process.²⁴² Broadband Properties requests that we instead set the minimum opening bid at \$.01 per MHz-pop and let the market decide the values.²⁴³ We disagree with Broadband Properties that indexing minimum opening bids amounts takes market forces out of the auction process. Minimum opening bids are not meant to set market values. Rather, they ensure that a portion of the value of the spectrum is recovered for the public.²⁴⁴ Additionally, minimum opening bids help the efficiency of the auction process by avoiding numerous additional rounds that may otherwise be required to reach the winning bid amount. Accordingly, we decline to modify opening bids proposed in the *Auction 96 Comment Public Notice*. The minimum opening bid amount for each H Block license available in Auction 96, calculated pursuant to the procedures described above, is set forth in Attachment A.

3. Bid Amounts

178. In the *Auction 96 Comment Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts.²⁴⁵ Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each

²³⁹ *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10026-27 ¶¶ 55-56.

²⁴⁰ See, e.g., Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, *Order*, DA 97-2147, 12 FCC Rcd 16354 (1997); Auction of the Phase II 220 MHz Service Licenses, Auction Notice and Filing Requirements for 908 Licenses Consisting of Economic Area (EA), Economic Area Grouping (EAG), and Nationwide Licenses, Scheduled for September 15, 1998, Minimum Opening Bids and Other Procedural Issues, *Public Notice*, DA 98-1010, 13 FCC Rcd 16445 (1998).

²⁴¹ All population figures are from the 2010 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2010 Summary File 1 (SF1) and Island Areas: 2010 Census Summary File (covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa).

²⁴² See Broadband Properties Comments at 2.

²⁴³ *Id.*

²⁴⁴ See 47 U.S.C. § 309(j)(3)(c).

²⁴⁵ Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3 “Upfront Payments and Bidding Eligibility,” above.

license.²⁴⁶ No specific comments were received on this issue.²⁴⁷ Based on the Commission's experience in prior auctions, the Bureau adopts this proposal for Auction 96.

a. Minimum Acceptable Bids

179. The Bureau proposed in the *Auction 96 Comment Public Notice* to calculate minimum acceptable bids based on "current price estimates" (CPEs) and an activity-based formula. In light of our decision not to use package bidding, and consistent with our usual procedures, we will calculate minimum acceptable bids based on provisionally winning bids instead of CPEs, which serve as proxies for provisionally winning bids under HPB procedures. We will use the activity-based formula, as proposed.

180. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula described below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.²⁴⁸

181. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount ("the additional percentage") is calculated at the end of each round based on an activity index. The activity index is a weighted average of (a) the number of distinct bidders placing a bid on the license, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round.²⁴⁹ The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round.²⁵⁰ The Bureau proposed to initially set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.25 (25%).²⁵¹ Hence, at these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty-five percent higher than the provisionally winning bid, depending upon the bidding activity covering the license. Equations and examples are shown in Attachment B.

182. We did not receive any specific comments on calculating minimum acceptable bids.²⁵² We adopt our proposal to begin the auction with the weighting factor set at 0.5, the minimum percentage at 0.1 (10%) and the maximum percentage at 0.25 (25%).

²⁴⁶ In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer acceptable bid amounts for the license.

²⁴⁷ See note 167, above.

²⁴⁸ See Section IV.B.6. "Bid Removal and Bid Withdrawal," below.

²⁴⁹ For Round 1 calculations, because there is no prior round (i.e., no round 0), the activity index from the prior round is set at 0.

²⁵⁰ The Bureau will round the result using its standard rounding procedures: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

²⁵¹ *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10028 ¶ 64.

²⁵² See note 167, above.

b. Additional Bid Amounts

183. Consistent with our practice in past wireless spectrum auctions, we proposed in the *Auction 96 Comment Public Notice* to calculate any additional bid amounts using the minimum acceptable bid amount and a bid increment percentage — more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage.²⁵³ If, for example, the bid increment percentage is five percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) * (1 + 0.05), or (minimum acceptable bid amount) * 1.05; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, or (minimum acceptable bid amount) * 1.10; etc. The Bureau will round the results using the Commission’s standard rounding procedures for auctions.²⁵⁴ The Bureau proposed in the *Auction 96 Comment Public Notice* initially to set the bid increment percentage at five percent.

184. The Bureau also proposed in the *Auction 96 Comment Public Notice* to begin the auction with three acceptable bid amounts per license (the minimum acceptable bid amount and two additional bid amounts).²⁵⁵ We received no specific comments on these proposals, but we did receive comments supporting the use of our standard range of auction procedures if we adopt a simultaneous multiple-round auction without package bidding.²⁵⁶ We note that proposing three bid amounts per license was consistent with our past experience using a simultaneous multiple-round auction format with HPB. Because we are not using package bidding for Auction 96, we instead adopt nine acceptable bid amounts per license, which is consistent with our past practice for most spectrum auctions.

c. Bid Amount Changes

185. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if the Bureau determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis. The Bureau also retains the discretion to limit (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureau could set a \$10 million limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if the activity-based formula calculates a minimum acceptable bid amount that is \$20 million higher than the provisionally winning bid on a license, the minimum acceptable bid amount would instead be capped at \$10 million above the provisionally winning bid. The Bureau sought comment in the *Auction 96 Comment Public Notice* on the circumstances under which it should employ such a limit, factors it should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters—such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts.

186. We received no specific comments on this proposal.²⁵⁷ Therefore, we will start the auction without a limit on the dollar amount by which minimum acceptable bids and additional bid amounts may increase. We retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid

²⁵³ *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10028 ¶ 65.

²⁵⁴ See note 246 (concerning rounding), above.

²⁵⁵ *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10029 ¶ 66.

²⁵⁶ See note 167, above.

²⁵⁷ See note 167, above.

amounts if we determine that circumstances so dictate. Further, we retain the discretion to do so on a license-by-license basis. If we exercise this discretion, we will alert bidders by announcement in the FCC Auction System during the auction.

4. Provisionally Winning Bids

187. At the end of each bidding round, a “provisionally winning bid” will be determined based on highest bid amount received for each license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.²⁵⁸

188. In the *Auction 96 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (i.e., tied bids).²⁵⁹ No specific comments were received on this proposal.²⁶⁰ Accordingly, we adopt the tied bids proposal described above. The FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

5. Bidding

189. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 96. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

190. A bidder’s ability to bid on specific licenses is determined by two factors: (1) the licenses selected on the bidder’s FCC Form 175 and (2) the bidder’s eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

191. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID[®] token and a personal identification number (“PIN”) created by the bidder. Bidders are strongly encouraged to print a “round summary” for each round after they have completed all of their activity for that round.

192. In each round, eligible bidders will be able to place bids on a given license in any of up to nine pre-defined bid amounts.²⁶¹ For each license, the FCC Auction System will list the acceptable bid amounts in a drop-down box.²⁶² Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an “upload” function that allows text files containing bid information to be uploaded.

²⁵⁸ Section IV.A.3. “Eligibility and Activity Rules,” above.

²⁵⁹ *Auction 96 Comment Public Notice* at 10029-30 ¶ 70.

²⁶⁰ See note 167, above.

²⁶¹ Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3. “Upfront Payments and Bidding Eligibility,” above.

²⁶² See Section IV.B.3. “Bid Amounts,” above.

193. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license, minimum acceptable bids for the following round will be determined as described in Section IV.B.3, above.

194. During a round, an eligible bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid on the specific license), remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If a bidder submits multiple bids for the same license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with licenses for which the bidder has removed or withdrawn bids do not count towards current activity.

195. Finally, bidders are cautioned to select their bid amounts carefully because, as explained below, bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

6. Bid Removal and Bid Withdrawal

196. In the *Auction 96 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal procedures.²⁶³ The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Bureau proposed not to permit any bids, provisionally winning or otherwise, to be dropped or withdrawn from consideration in Auction 96 if the SMR with HPB format is used.²⁶⁴ We noted in the *Auction 96 Comment Public Notice* that the benefits that bidders may realize from withdrawing bids in a typical SMR auction are minimized under the proposed package bidding format. In addition, in an SMR auction with package bidding, there are significant risks associated with bid withdrawals that are not present in an SMR auction without package bidding. In the *Part 1 Third Report and Order*, the Commission explained that under its typical SMR auction format without package bidding, allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of backup strategies as information becomes available during the course of an auction.²⁶⁵ The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses.²⁶⁶

197. Bid Removal. The Bureau received no specific comment on its proposed bid removal procedures, and therefore adopts these procedures for Auction 96.²⁶⁷ Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bids" function in the FCC Auction System, a bidder may effectively "undo" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. If a bid is placed on a license during a round, it will count towards the activity for that round, but when that bid is then removed during the same round it was placed, the activity associated with it is also removed, i.e., a bid that is removed does not count toward bidding activity.

198. Bid Withdrawal. RDL, the only party that commented on our proposed bid withdrawal procedures, supports providing participants with unlimited bid withdrawal rights, particularly if the SMR-

²⁶³ *Auction 96 Comment Public Notice* at 10030-31 ¶¶ 72-75.

²⁶⁴ *Auction 96 Comment Public Notice* at 10030 ¶ 73.

²⁶⁵ *Part 1 Third Report and Order*, 13 FCC Rcd at 459-60 ¶ 150.

²⁶⁶ The Commission stated that the Bureau should exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures. *Id.*

²⁶⁷ See note 167, above.

HPB format is used.²⁶⁸ In light of our decision to use a standard SMR format without HPB for Auction 96, we will permit bid withdrawals as described below, consistent with our practice in recent wireless spectrum auctions.

199. Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds using the “withdraw bids” function in the FCC Auction System. Each bidder is limited to withdrawing provisionally winning bids in only one round during the course of the auction. The round in which a bidder may withdraw bids will be at the bidder’s discretion, and there is no limit on the number of provisionally winning bids that may be withdrawn during that round. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in section 1.2104(g).²⁶⁹ Once a bid withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

200. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid.²⁷⁰ The Commission will serve as a placeholder provisionally winning bidder on the license until a new bid is submitted on that license.

201. Calculation of Bid Withdrawal Payment. Generally, the Commission imposes payments on bidders that withdraw provisionally winning bids during the course of an auction.²⁷¹ If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the winning bid in the same or subsequent auction(s).²⁷² If there are multiple bid withdrawals on a single license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).²⁷³

202. Section 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a provisionally winning bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments.²⁷⁴ In the *Auction 96 Comment Public Notice*, the Bureau sought comment on the appropriate interim withdrawal payment percentage to apply if it were to permit withdrawals under procedures for an SMR auction without package bidding for Auction 96.²⁷⁵ The

²⁶⁸ RDL Comments at 19-23.

²⁶⁹ 47 C.F.R. § 1.2104(g).

²⁷⁰ The Bureau retains the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds.

²⁷¹ 47 C.F.R. §§ 1.2104(g), 1.2109.

²⁷² The payment will equal the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid. See 47 C.F.R. § 1.2104(g)(1).

²⁷³ See following paragraphs for discussion of interim bid withdrawal payments.

²⁷⁴ 47 C.F.R. § 1.2104(g)(1); see *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15302 ¶ 15.

²⁷⁵ *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10031-322 ¶¶ 79-80.

Bureau proposed to establish this percentage at fifteen percent if withdrawals are permitted in Auction 96 and sought comment on the proposal.²⁷⁶

203. The Bureau received no specific comment on this issue.²⁷⁷ The Bureau adopted a fifteen percent payment amount for prior AWS and PCS auctions,²⁷⁸ believes this to be an appropriate amount in this case, and therefore adopts its proposal for a fifteen percent payment amount for this auction. The Commission will assess an interim withdrawal payment equal to fifteen percent of the amount of the withdrawn bids. The fifteen percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.²⁷⁹

7. Round Results

204. Limited information about the results of a round will be made public after the conclusion of the round.²⁸⁰ Specifically, after a round closes, the Bureau will make available for each license its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC-held. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction closes, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

8. Auction Announcements

205. The Commission will use auction announcements to report necessary information such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

V. POST-AUCTION PROCEDURES

206. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, long-form applications, and ownership disclosure information reports.

A. Down Payments

207. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 96 to twenty percent of the net amount of its winning bids (gross bids less any applicable small business bidding credit).²⁸¹

²⁷⁶ *Id.* at 10032 ¶ 80.

²⁷⁷ *See* note 167, above.

²⁷⁸ *See, e.g.*, Auction of Lower and Upper Paging Bands Licenses Scheduled for May 25, 2010; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 87, *Public Notice*, DA 10-18, 25 FCC Rcd 6333, 6675 ¶¶ 197 (WTB 2010).

²⁷⁹ 47 C.F.R. § 1.2104(g).

²⁸⁰ The identities of parties that are qualified to bid in Auction 96 will be available before the auction. Thus, bidders will know in advance of this auction the identities of the other parties against which they may be bidding in the auction.

²⁸¹ 47 C.F.R. § 1.2107(b).

B. Final Payments

208. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.²⁸²

C. Long-Form Application (FCC Form 601)

209. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for the license(s) they won through Auction 96. Winning bidders claiming eligibility for a small business bidding credit must demonstrate their eligibility for the bidding credit.²⁸³ Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice.

210. Winning bidders organized as bidding consortia must comply with the long-form application procedures established in the *CSEA/Part 1 Report and Order*.²⁸⁴ Specifically, each member (or group of members) of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s). If the license is to be partitioned or disaggregated, the member (or group) filing the long-form application must provide the relevant partitioning or disaggregation agreement in its long-form application. In addition, if two or more consortium members wish to be licensed together, they must first form a legal business entity, and any such entity must meet the applicable designated entity criteria.²⁸⁵

D. Ownership Disclosure Information Report (FCC Form 602)

211. Within ten business days after release of the auction closing public notice, each winning bidder must also comply with the ownership reporting requirements in sections 1.913, 1.919, and 1.2112 of the Commission's rules by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its long-form application.²⁸⁶

212. If an applicant already has a complete and accurate FCC Form 602 on file in ULS, it is not necessary to file a new report, but applicants must verify that the information on file with the Commission is complete and accurate. If the applicant does not have an FCC Form 602 on file, or if it is not complete and accurate, the applicant must submit one.

213. When an applicant submits a short-form application, ULS automatically creates an ownership record. This record is not an FCC Form 602, but may be used to pre-fill the FCC Form 602 with the ownership information submitted on the applicant's short-form application. Applicants must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the long-form application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notice.

E. Tribal Lands Bidding Credit

214. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as

²⁸² 47 C.F.R. § 1.2109(a).

²⁸³ 47 C.F.R. § 1.2112(b).

²⁸⁴ *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 911-12 ¶¶ 51-52. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* in detail and monitor any relevant future proceedings to understand how the members of the consortia will apply for a license in the event they are winning bidders.

²⁸⁵ *Id.*

²⁸⁶ 47 C.F.R. §§ 1.913, 1.919, 1.2107(f) and 1.2112.

set forth in sections 1.2107 and 1.2110(f) of the Commission's rules.²⁸⁷ A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

215. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in section 1.2110(f)(3)(vii).²⁸⁸

216. For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices.²⁸⁹ Relevant documents can be viewed on the Commission's web site by going to <http://wireless.fcc.gov/auctions/> and clicking on the **Tribal Lands Credits** link.

F. Default and Disqualification

217. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in section 1.2104(g)(2).²⁹⁰ This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 96 bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

218. As noted in the *Auction 96 Comment Public Notice*, the percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend on the auction format ultimately chosen for a particular auction. The amount can range from three percent up to a maximum of twenty percent, established in advance of the auction and based on the nature of the service and the inventory of the licenses being offered.²⁹¹ Accordingly, we sought comment in the *Auction 96 Comment Public Notice* on an appropriate additional default payment percentage in the event we do not conduct Auction 96 with package bidding procedures. As we noted in the *Auction 96 Comment Public Notice*, the Commission

²⁸⁷ 47 C.F.R. §§ 1.2107 and 1.2110(f).

²⁸⁸ See 47 C.F.R. §§ 1.2110(f)(3)(ii) – (vii).

²⁸⁹ See generally, *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Report and Order and Further Notice of Proposed Rule Making*, FCC 00-209, 15 FCC Rcd 11794 (2000); *Second Report and Order and Second Further Notice of Proposed Rulemaking*, FCC 03-51, 18 FCC Rcd 4775, 4778-79 ¶ 10 (2003); *Third Report and Order*, FCC 04-202, 19 FCC Rcd 17652 (2004). See also “Wireless Telecommunications Bureau Announces Enhancements to the Universal Licensing System to Help Winning Bidders of FCC Auctions File for Tribal Land Bidding Credits,” *Public Notice*, DA 01-613, 16 FCC Rcd 5355 (2001); “Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a Tribal Lands Bidding Credit and List of Tribal Lands,” *Public Notice*, DA 00-2836, 15 FCC Rcd 24838 (2000); “Wireless Telecommunications Bureau Announces Availability of Bidding Credits for Providing Wireless Services to Qualifying Tribal Lands: Tribal Lands Bidding Credits to be Available Beginning in Auction No. 36 (800 MHz Specialized Mobile Radio (SMR) Lower 80 Channels) and in Future Auctions,” *Public Notice*, DA 00-2219, 15 FCC Rcd 18351 (2000).

²⁹⁰ 47 C.F.R. § 1.2104(g)(2).

²⁹¹ See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903-04 ¶¶ 30-31.

explained in the *CSEA/Part 1 Report and Order* that defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and that an additional default payment of up to twenty percent will be more effective in deterring defaults than the three percent used in some earlier auctions.²⁹² However, as we further noted, we do not believe the detrimental effects of any defaults in Auction 96 are likely to be unusually great.²⁹³ Balancing these considerations, we proposed to establish an additional default payment for Auction 96 of fifteen percent of the applicable bid.²⁹⁴ We received no specific comments on this proposal, and therefore adopt it for Auction 96.²⁹⁵

219. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount.²⁹⁶ In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.²⁹⁷

G. Refund of Remaining Upfront Payment Balance

220. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise. Bidders should not request a refund of their upfront payments before the Commission releases a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, and final payments.

221. Bidders are encouraged to file their refund information electronically using the **Refund Information** icon found on the *Auction Application Manager* page or through the **Wire Transfer for Refund Purposes** link available on the *Auction Application Submit Confirmation* page in the FCC Auction System. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not completed the refund instructions electronically, the applicant must send a written request including the following information:

Name, address, contact and phone number of Bank
ABA Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)

The refund request may be submitted by fax to the Auctions Accounting Group at (202) 418-2980 or by mail to:

Federal Communications Commission
Financial Operations
Auctions Accounting Group
Gail Glasser

²⁹² *Auction 96 Comment Public Notice*, 28 FCC Rcd at 10033 ¶ 83.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ See note 167, above.

²⁹⁶ 47 C.F.R. §§ 1.2109(b) and (c).

²⁹⁷ 47 C.F.R. § 1.2109(d).

445 12th Street, SW, Room 1-C864
Washington, DC 20554

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578.

VI. CONTACT INFORMATION

222. Contact Information Table:

General Auction Information

General Auction Questions
Auction Process and Procedures

FCC Auctions Hotline

(888) 225-5322, option two; or
(717) 338-2868
Hours of service: 8:00 a.m. – 5:30 p.m. ET,
Monday through Friday

Auction 96 Legal Information

Auction Rules, Policies, Regulations, including
Reports of Section 1.2105(c) Violations and
Application Major Modifications

Auctions and Spectrum Access Division

(202) 418-0660
Valerie Barrish (Attorney)

Licensing Information

Service Rules, Policies, Regulations
Licensing Issues, Engineering Issues
Due Diligence, Incumbency Issues

Broadband Division

(202) 418-2487
Matthew Pearl (Attorney)
Janet Young (Engineer)

Technical Support

Electronic Filing
FCC Auction System (Hardware/Software
Issues)

FCC Auctions Technical Support Hotline

(877) 480-3201, option nine; or (202) 414-1250
(202) 414-1255 (TTY)
Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday

Payment Information

Wire Transfers
Refunds

FCC Auctions Accounting Branch

Gail Glasser at (202) 418-0578, or alternatively,
Theresa Meeks at (202) 418-2945, or
(202) 418-2980 (fax)

Auction Bidder Line

Will be furnished only to qualified bidders

FCC Copy Contractor

Additional Copies of Commission Documents

Best Copy and Printing, Inc

445 12th Street, SW, Room CY-B402
Washington, DC 20554
(800) 378-3160
<http://www.bcpiweb.com>

Press Information

Cecilia Sulhoff (202) 418-0587

FCC Forms

(800) 418-3676 (outside Washington, DC)
(202) 418-3676 (in the Washington area)
<http://www.fcc.gov/formpage.html>

Accessible Formats

Braille, large print, electronic files, or audio format for people with disabilities

Small Businesses

Additional information for small and disadvantaged businesses

FCC Internet Sites**Consumer and Governmental Affairs Bureau**

(202) 418-0530 or (202) 418-0432 (TTY)

fcc504@fcc.gov

Office of Communications Business**Opportunities**

(202) 418-0990

<http://www.fcc.gov/ocbo/>

<http://www.fcc.gov>

<http://wireless.fcc.gov/auctions>

<http://wireless.fcc.gov/uls>

– FCC –

ATTACHMENT A

Licenses to Be Auctioned

This page was intentionally inserted as a placeholder for Attachment A, which is available as a separate file.

ATTACHMENT B

Minimum Acceptable Bid Formula

The following formula used to calculate minimum acceptable bids is based on activity. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of the bid amount calculated using the formula below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids.

$$A_i = (C * B_i) + ((1-C) * A_{i-1})$$

$$I_{i+1} = \text{smaller of } ((1 + A_i) * N) \text{ and } M$$

$$X_{i+1} = I_{i+1} * Y_i$$

where

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bidders submitting bids on the license in the current round (round i)

A_{i-1} = activity index from previous round (round i-1), A_0 is 0

I_{i+1} = additional percentage for the next round (round i+1)

N = minimum additional percentage or floor

M = maximum additional percentage or ceiling

X_{i+1} = dollar amount corresponding to the additional percentage

Y_i = provisionally winning bid amount from the current round

Examples

$$C = 0.5, N = 0.1, M = 0.2$$

Please note that these values are for illustrative purposes only and might not be the same as those used in the auction.

Round 1 (2 bidders submitting bids, provisionally winning bid = \$1,000,000)

1. Calculation of additional percentage for round 2:

$$A_1 = (0.5 * 2) + (0.5 * 0) = 1$$

$$I_2 = \text{The smaller of } [((1 + 1) * 0.1) = 0.2] \text{ and } 0.2 \text{ (the maximum additional percentage)}$$

$$= 0.2$$

2. Calculation of dollar amount associated with the additional percentage for round 2 (using I_2 from above):

$$X_2 = 0.2 * \$1,000,000 = \$200,000$$

3. Minimum acceptable bid amount for round 2 = \$1,200,000

Round 2 (3 bidders submitting bids, provisionally winning bid = \$2,000,000)

1. Calculation of additional percentage for round 3:

$$A_2 = (0.5 * 3) + (0.5 * 1) = 2$$

$$I_3 = \text{The smaller of } [(1 + 2) * 0.1 = 0.3] \text{ and } 0.2 \text{ (the maximum additional percentage)}$$
$$= 0.2$$

2. Calculation of dollar amount associated with the additional percentage for round 3 (using I_3 from above):

$$X_3 = 0.2 * \$2,000,000 = \$400,000$$

3. Minimum acceptable bid amount for round 3 = \$2,400,000

Round 3 (1 bidder submitting bids, provisionally winning bid = \$2,400,000)

1. Calculation of additional percentage for round 4:

$$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$$

$$I_4 = \text{The smaller of } [(1 + 1.5) * 0.1 = 0.25] \text{ and } 0.2 \text{ (the maximum additional percentage)}$$
$$= 0.2$$

2. Calculation of dollar amount associated with the additional percentage for round 4 (using I_4 from above):

$$X_4 = 0.2 * \$2,400,000 = \$480,000$$

3. Minimum acceptable bid amount for round 4 = \$2,880,000

ATTACHMENT C

Auction 96 – H Block
List of Parties Filing in AU Docket No. 13-178

Initial Commenters

1. AT&T Services, Inc. (AT&T)
2. Broadband Properties Corp. (Broadband Properties)
3. Cellular South, Inc. d/b/a C Spire Wireless (C Spire)
4. Charles Holt and Jacob Goeree (Holt and Goeree)
5. Council Tree Investors, Inc. (Council Tree)
6. Maneesh Pangasa
7. New-Cell, Inc. d/b/a Cellcom (Cellcom)
8. RDL Management, LLC (RDL)
9. Rural Telecommunications Group, Inc. (RTG)
10. Sprint Corporation (Sprint)
11. T-Mobile USA, Inc. (T-Mobile)
12. United States Cellular Corporation (US Cellular)

Reply Commenters

1. AT&T Services, Inc. (AT&T)
2. Aloha Partners II, LP (Aloha Partners)
3. Competitive Carriers Association (CCA)
4. Cellular South, Inc. d/b/a C Spire Wireless (C Spire)
5. New-Cell, Inc. d/b/a Cellcom and Cellular Network Partnership d/b/a Pioneer Cellular (Joint Comments) (Cellcom/Pioneer Cellular)
6. NTELOS Holdings Corp. (NTELOS Holdings)
7. Rural Telecommunications Group, Inc. (RTG)
8. Sprint Corporation (Sprint)
9. T-Mobile USA, Inc. (T-Mobile)
10. United States Cellular Corporation (US Cellular)

Ex Parte Filings

1. T-Mobile USA, Inc. (T-Mobile)
2. DISH Network Corporation (DISH)

ATTACHMENT D

Short-Form Application Filing Instructions

This attachment provides instructions on submitting a short-form application and an upfront payment to participate in Auction 96. It also includes instructions for interested parties wishing to view the short-form applications filed.

I. Application Preparation and Submission

Among other requirements, each applicant to participate in this auction must submit its short-form application (FCC Form 175) electronically, via the FCC Auction System. **Short-form applications for Auction 96 must be submitted and confirmed prior to 6:00 p.m. ET on Tuesday, November 5, 2013.** Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants are reminded that all information required in connection with applications to participate in spectrum license auctions is necessary to determine each applicant's qualifications, and as such will be available for public inspection. Accordingly, unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, should not be included in short-form applications. Applicants may request information submitted not be made routinely available for public inspection following the procedures set forth in section 0.459 of the Commission's Rules.²⁹⁸ Such requests must be included as an attachment to the applicant's FCC Form 175 and identify the specific information to which the request applies. Because the required information bears on each applicant's qualifications, confidentiality requests will not be routinely granted.²⁹⁹

Applicants may make multiple changes to their short-form applications until the close of the filing window. However, they must press the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission.

A. Minimum Software Requirements

The following software, at a minimum, is required to use the FCC Integrated Spectrum Auction System:

- Web Browser, either of the following is recommended:
 - Microsoft[®] Internet Explorer 7.0. Your browser must have either Microsoft VM or Java Plug-In Version 1.6 installed.
 - Mozilla[®] Firefox[®] 3.5, with Sun Microsystems' Java Plug-In Version 1.6.

To obtain the Java Plug-In, point your browser at <http://www.oracle.com/technetwork/java/javase/downloads/index.html> and click the Download button in the JRE column under *Java Platform, Standard Edition*.

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)
- Minimum Screen Resolution: 1024 x 768

Currently, the Apple[®] Mac OS[®] is not supported.

²⁹⁸ 47 C.F.R. § 0.459.

²⁹⁹ 47 C.F.R. § 0.459(a).

B. Logging On

To submit a short-form application (FCC Form 175) electronically via the Internet, an applicant should start its web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Once on the *FCC Integrated Spectrum Auction System* page, the applicant may log in to create a short-form application using its FCC Registration Number (“FRN”) and password.

C. Application Filing Instructions

The short-form application (FCC Form 175) requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.³⁰⁰ Pursuant to section 1.2105(a), the FCC Form 175 must be submitted electronically. Applicants must submit required information as entries in the data fields of the FCC Form 175 whenever a data field is available for that information. Attachments should not be used to provide information that can be supplied within the data fields of the FCC Form 175.

The screens comprising FCC Form 175 consist of five series, each requesting five separate types of information: 1) *Applicant Information*; 2) *License Selection*; 3) *Agreements*; 4) *Ownership*; and 5) *Certify and Submit*. In addition, *Summary* screens, a sixth series, appear prior to the *Certify and Submit* screens. The *Summary* screens provide an overview of an applicant’s FCC Form 175 that facilitates reviewing and revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

To simplify filling out FCC Form 175, certain initial information applicants provide is used to determine what additional information is needed, and what subsequent screens will appear to collect that information. For example, a corporate applicant, unlike an individual applicant, must identify a corporate officer or director responsible for the application (sometimes called a responsible party). If an applicant identifies itself as an individual, no additional information is needed regarding an additional responsible party, and screens requesting responsible party information will not appear. However, if the applicant identifies itself as a corporation, subsequent screens in the FCC Form 175 will ask for responsible party information.

Applicants must fill out FCC Form 175 by following the instructions below. Additional help in filling out FCC Form 175 can be accessed in two ways: 1) by clicking on the **Help** link in the upper right of any screen, which will open Auction Application Online Filing Help; or 2) by clicking on the text of any **Common Question** link appearing on the right side of the screen. The common questions displayed relate to the current screen and vary from screen to screen. In the event the assistance provided by these sources is insufficient, applicants should use the contact information provided in this Public Notice to obtain additional assistance.³⁰¹

1. Applicant Information

The *Applicant Information* screens are the first series of screens in FCC Form 175, in which the applicant will provide basic information including:

- the applicant’s legal classification (e.g., individual, corporation, rural telephone cooperative, etc.)
- optional information regarding the applicant’s status as a minority- or woman-owned business or a rural telephone company

³⁰⁰ See generally, 47 C.F.R. § 1.2105.

³⁰¹ See Section VI. “Contact Information,” above.

- the applicant's name, which will be used as the bidder name during the auction³⁰²
- citizenship for individuals, or jurisdiction of formation for legal entities
- for applicants classified as legal entities (e.g., corporations and partnerships), the name of and information regarding the entity's responsible individual³⁰³
- the name, address, telephone and fax number of a contact person who will communicate with the Commission regarding the applicant's FCC Form 175³⁰⁴
- the names of up to three persons authorized to bid for the applicant in the auction³⁰⁵
- the applicant's preference for electronic or telephonic bidding
- whether the applicant claims eligibility for certain types of bidding credits and the percentage claimed³⁰⁶

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- Applicants must indicate their legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- P.O. Boxes may **not** be used for an applicant's address.
- To simplify filling out the FCC Form 175, an applicant that has the same address as its contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address. P.O. Boxes may **not** be used for a contact person's address.
- Applicants must identify at least one authorized bidder. While applicants may change their authorized bidders at a later date, only those bidders listed on the FCC Form 175 will be authorized to place bids for the applicant during the auction.
- Any qualified bidder may bid either via the Internet or by telephone during the auction. Specifying a preference for electronic or telephonic bidding assists the Commission in determining the staff required in this auction for telephonic bidding.

2. License Selection

The *License Selection* screens make up the second series of screens in FCC Form 175. In these screens, the applicant will identify the licenses offered on which they may wish to bid during the auction. While an applicant is not obligated to bid on all licenses that it selects, it will not be able to bid on licenses that it has not selected on its FCC Form 175.³⁰⁷ Be advised that there is no opportunity to change this list after the short-form application filing deadline.

³⁰² See 47 C.F.R. § 1.2105(a)(2)(ii)(A).

³⁰³ Section 1.2105(a)(2) requires that the name and title of an officer or director be reported if the applicant is a corporation. This rule requires disclosure of the name and title of a responsible person if a partner is not a natural person.

³⁰⁴ Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by e-mail to auction96@fcc.gov.

³⁰⁵ See 47 C.F.R. § 1.2105(a)(2)(iii).

³⁰⁶ See 47 C.F.R. §§ 1.2105(a)(2)(iv).

³⁰⁷ 47 C.F.R. § 1.2105(a)(2)(i).

To participate in an auction, applicants must select at least one license. Until a license is selected, the applicant cannot submit the FCC Form 175. An applicant's license selections cannot be changed after the initial filing window has closed. Therefore, during the initial filing window it is important to carefully review the license selections to make sure all licenses on which the applicant may wish to bid have been selected.

The *License Selection* screens contain a list of all available licenses in the auction. Applicants can navigate within this screen by selecting the individual page links or the "Previous" and "Next" buttons above and below the list of available licenses. Licenses can be selected by (1) clicking the check box next to the license name, then selecting the "Save Selected Items" button; and (2) clicking the "Save All Items" button to save all available licenses. Once the applicant has successfully saved a license, the word "Saved" will appear next to the license name to confirm it has been saved with the application.

Licenses can be removed by (1) clicking the check box (to uncheck) next to a previously saved license, then selecting the "Remove Selected Items" button; and (2) clicking the "Remove All Items" button to remove all previously saved licenses. Removed licenses will not have the word "Saved" next to the license name.

Applicants may view all saved licenses by either clicking the **Edit Icon** next to "View Saved Items" at the top-right corner of the list, or by clicking the "CONTINUE" button at the bottom of the page.

Once licenses have been saved, the *View/Edit License Selections* screen will be the first screen displayed when navigating to the License Selection step. This screen lists all licenses the applicant has selected and saved for the auction. To select a new license or remove a previously selected license, an applicant can click the **Edit Icon** next to "Return to License Selection" at the top-right corner of the list, which will return it to the original *Select Licenses* screen, as described above.

3. Agreements

The *Agreements* screens are the third series of screens in FCC Form 175. In these screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission's rules.³⁰⁸

On the first screen, applicants must state whether the applicant has any agreements that are subject to disclosure under the Commission's rules by responding "Yes" or "No" to a question asking whether the applicant has entered into a partnership, joint venture, consortia, or other agreement, arrangement or understanding of any kind relating to the licenses being auctioned, including any such agreement relating to the post-auction market structure. When two applicants in this auction share one officer, or one director, or one individual with specified ownership interests,³⁰⁹ it is at this point in each application that the two applicants can indicate that there is a sharing of this one individual (officer, director, or owner) by responding to this "agreement" question with a "Yes."³¹⁰

³⁰⁸ 47 C.F.R. § 1.2105(a)(2)(viii).

³⁰⁹ Applicants are reminded that, for purposes of the communication prohibitions of 47 C.F.R. § 1.2105(c), section 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

³¹⁰ As explained in the discussion above about the communication prohibitions of section 1.2105(c), the failure to report an agreement in both short-form applications when a specified individual is involved with two applicants in the same auction can result in a violation of section 1.2105(c). Where an individual served as an officer for two or more applicants, the Bureau has found that the bids and bidding strategies of one applicant are necessarily conveyed (continued...)

If an applicant answers “No,” the applicant will continue to the *Ownership* series of screens, described below. If the applicant answers “Yes,” the applicant will continue with additional *Agreements* screens.

In the additional *Agreements* screens, applicants must provide an identifying name for the agreement and must identify the parties, other than the applicant, to the agreement. The agreement identifier can be a brief description of the agreement or a simple reference name; however, each agreement identifier must be unique. Neither the name of the agreement nor its description should indicate license selection or potentially reveal an applicant’s bidding strategy.

Applicants may provide FRNs for the other parties to the agreement, if available. While providing the FRN is optional, it helps prevent identification errors resulting from parties having similar names or a single party using multiple names.

Up to three parties to the agreement (not including the applicant) can be identified on a single screen. Additional parties can be added by clicking the **ADD MORE PARTIES** button. In the event of an error, the name of a party and its associated FRN can be deleted from the form by clicking on the **RESET** button. After identifying all parties to a particular agreement, click the **FINISH THIS AGREEMENT** button.

The next screen, the *View/Edit Agreements* screen, lists the agreements and parties to each agreement that already have been entered. From this screen, the following options are available:

- Clicking the **Edit** icon or the **Agreements** link to return to the initial *Agreements* screen regarding whether or not the applicant has any agreements.
- Modifying agreement identifiers by clicking on them.
- Clicking the **Delete This Agreement** link to delete an agreement and associated parties.
- Modifying information regarding a particular party to an agreement by clicking on the party’s name.
- Clicking the **Remove** icon next to information about a particular party to remove that corresponding party.
- Clicking the **Add Party to This Agreement** link to add a new party to an agreement.
- Clicking the **CREATE NEW AGREEMENT** button to add additional agreements.

When all agreements and the parties to each agreement have been identified, the applicant should click the **CONTINUE** button.

4. Ownership

The *Ownership* screens are the fourth series of screens in the FCC Form 175. In these screens, applicants will provide information regarding parties with ownership or controlling interests in the applicant that

(Continued from previous page) _____
to the other applicant, and, absent a disclosed bidding agreement, an apparent violation of section 1.2105(c) occurs. *See, e.g., Trinity*, 20 FCC Rcd at 14648 (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

must be disclosed pursuant to Commission rules.³¹¹ The disclosure and description of FCC-regulated businesses that are owned by the applicant and by parties with certain ownership interests in the applicant are also required.³¹² In addition, if the applicant has claimed eligibility for bidding credits based on revenues attributable to the applicant and related parties, the applicant will provide information regarding revenues for entities related to the applicant through ownership or control in the *Ownership* screens.³¹³

a. Information Already on File with the Commission

Some applicants may have previously filed FCC Form 602 disclosing ownership information in connection with wireless services. In addition, some applicants may have filed a short-form application (FCC Form 175) for a previous auction disclosing ownership information. To simplify filling out FCC Form 175, an applicant's most current ownership information on file with the Commission will automatically be entered into the applicant's short-form application, if it is in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS). Applicants with ownership information automatically entered into FCC Form 175 will proceed directly to the *View/Edit Ownership* screen described below.

Each applicant is responsible for information submitted in its FCC Form 175 being complete and accurate. An applicant must carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for submitting its short-form application in this auction. Information must be corrected directly in the FCC Form 175. After the deadline for filing this FCC Form 175, submitted ownership information will be considered to be the applicant's most current information on file with the Commission for this auction.

b. Disclosable Interest Holders and FCC-Regulated Businesses

- Sections 1.2105 and 1.2112(a) of the Commission's rules list the interest holders in the applicant that must be disclosed in FCC Form 175.³¹⁴ **Applicants should note that holders of both direct and indirect interests must be reported.**
- Section 1.2112(a)(7) lists the FCC-regulated business entities, or applicants for an FCC license, that must be disclosed in FCC Form 175.³¹⁵

The initial *Ownership* screen enables the applicant to add information regarding either a disclosable interest holder or the FCC-regulated businesses in which the applicant has an interest or parties with 10% or more ownership interest in the applicant have an interest. Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- **If an application includes one or more disclosable interest holders with indirect ownership in the applicant,³¹⁶ the application must include an attachment describing the relationship**

³¹¹ 47 C.F.R. §§ 1.2105(a)(2)(ii)(A)-(B), 1.2110, and 1.2112.

³¹² 47 C.F.R. § 1.2112.

³¹³ Applicants claiming eligibility for bidding credits based on revenues are also required to disclose in separate attachments information related to arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum. 47 C.F.R. §§ 1.2112(b)(1)(iii) and (iv). The procedure for attaching this information to the application is described below in Section I.C.6. "Attaching Additional Information," below.

³¹⁴ 47 C.F.R. §§ 1.2105, 1.2112(a). Section 1.2105 requires the disclosure on the short-form application of applicant ownership information as set forth in Section 1.2112.

³¹⁵ 47 C.F.R. § 1.2112(a)(7).

between the indirect interest holder(s) and the applicant. The attachment should provide an overview of the ownership chain that links the indirect owner(s) to the applicant, e.g., indirect owner X owns 50% of holding company Y; indirect owner Z owns 50% of holding company Y; and holding company Y owns 100% of the applicant.³¹⁷ One attachment connecting all indirect owners to the applicant is sufficient. Applicants should not provide separate attachments for each indirect owner. An overview of the ownership connections is sufficient. The attachment should not duplicate all the detailed information already provided in the data fields of the FCC Form 175.

- The “Percent of Interest Held in Applicant” should reflect the disclosable interest holder’s aggregate ownership interest in the applicant (both direct and indirect). In some cases, e.g., circumstances where there is joint ownership or indirect ownership resulting in different owners sharing the same ownership interests, the sum of all the percentages held by disclosable interest holders may exceed 100%. In other cases, a disclosable interest holder may have a 0% ownership interest in the applicant, e.g., directors and officers of an entity seeking revenue-based bidding credits.³¹⁸
- FCC-regulated businesses in which the applicant has a direct interest can be entered from the initial *Add Ownership Disclosure Information* screen. FCC-regulated businesses in which a disclosable interest holder has a direct interest can be entered from the *Add FCC Regulated Business* screen in the series of screens for entering information about a disclosable interest holder.
- When adding an FCC-regulated business, “Percent of Interest Held” refers to the percent of interest held directly by the applicant or disclosable interest holder, as applicable, in the FCC-regulated business. FCC-regulated businesses in which the applicant or disclosable interest holder has an indirect interest need not be reported in the FCC Form 175.
- To simplify filling out the FCC Form 175, applicants can click on the **Select Business(es) Already Submitted** link when entering an FCC-regulated business previously entered as an FCC-regulated business for the applicant or another disclosable interest holder. When doing so, be certain to enter the “Percent of Interest Held” in the FCC-regulated business by the current party, either the applicant or the disclosable interest holder, with respect to which the FCC-regulated business is being entered.

c. View/Edit Ownership Disclosure Information

The *View/Edit Ownership Disclosure Information* screen summarizes ownership information already entered in the FCC Form 175, either automatically from compatible ownership information on file with the Commission or directly by the applicant, and provides links enabling existing information to be revised and additional information to be added.

Existing ownership information is divided into three groups:

- Disclosable Interest Holders of this Applicant
- FCC-Regulated Businesses of this Applicant

(Continued from previous page) _____

³¹⁶ 47 C.F.R. § 1.2112(a)(6).

³¹⁷ *Id.*

³¹⁸ *See* 47 C.F.R. § 1.2112(b)(1)(i).

- Affiliates of this Applicant and of the Applicant's Controlling Interests (i.e., those entities that are not Disclosable Interest Holders)

To view the detailed information submitted regarding the applicant, a disclosable interest holder or FCC-regulated business, or an affiliate, click on the relevant party's name. To delete existing information or add a new entry in one of the categories, click on the relevant link. This screen also provides a link enabling applicants to add an FCC-regulated business directly to an existing disclosable interest holder, without needing to reenter the disclosable interest holder's information.

d. Bidding Credit Revenue Information

Applicants claiming eligibility for a bidding credit based on revenues must provide revenue information described below regarding entities related to the applicant by ownership or control. In addition, applicants are also required to provide information regarding any arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum, as well as the gross revenues of entities with which the applicant has an attributable material relationship as a result of such arrangements.³¹⁹ Information regarding arrangements for lease or resale (including wholesale agreements), as well as related entities and revenues, must be provided in an attachment to the FCC Form 175. The procedure for attaching this information is described below in Section I.C.6, below.

If the applicant has claimed eligibility for a bidding credit based on revenues attributable to the applicant and related parties, the first *Ownership* screen will request relevant information regarding the applicant's revenues. The subsequent screen will request which of the two sources of financial information authorized by section 1.2110(o) the applicant used for the revenue information (either audited financial statements or financial statements prepared in accordance with Generally Accepted Accounting Principles that are certified as accurate by the applicant's chief financial officer or equivalent).³²⁰

Applicants claiming eligibility for a bidding credit based on revenues are required to provide revenue information separately, and in the aggregate, for the applicant, its affiliates, its controlling interests, and affiliates of its controlling interests. In addition, if the applicant is a consortium of small businesses, the information must be provided with respect to each member comprising the consortium.³²¹

The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant.³²² An applicant can enter on the FCC Form 175 information about itself, its disclosable interest holders, and its affiliates. **In those instances where a controlling interest or an affiliate of a controlling interest is not a disclosable interest holder, information regarding those entities should be disclosed in the "Affiliates of Applicant" screens.**

Following the first two screens, the subsequent screen will be similar to the initial *Ownership* screen described above, except applicants claiming eligibility for bidding credits will also have an option to add information regarding affiliates that are not disclosable interest holders, including the affiliates' revenues.³²³

³¹⁹ See 47 C.F.R. §§ 1.2112(b)(1)(iii) and (iv).

³²⁰ 47 C.F.R. § 1.2110(o).

³²¹ 47 C.F.R. § 1.2112(b)(1)(iii).

³²² 47 C.F.R. § 1.2110(c)(5).

³²³ 47 C.F.R. § 1.2112(b)(1)(iii).

Applicants that claim eligibility based on revenues attributable to the applicant and related parties will be requested to provide revenue information for each disclosable interest holder. With respect to disclosable interest holders that are affiliates or controlling interests of the applicant, applicants will fill out two screens similar to those described above with respect to the applicant, i.e., one screen requesting the relevant information and a second screen regarding the source of the revenue information.

There may be circumstances in which the revenue information need not be provided for certain disclosable interest holders. For example, some entities that must be disclosed in the short-form application pursuant to section 1.2112(a) may not be affiliates of the applicant, controlling interests of the applicant, or affiliates of the applicant's controlling interests.³²⁴ Because revenues for such disclosable interest holders are not attributable to the applicant, the applicant could indicate on the first screen requesting revenue information for that disclosable interest holder that no revenue information is required pursuant to the Commission's rules. To report that no revenue information needs to be disclosed, check the box indicating that the disclosable interest holder is not an affiliate or a controlling interest within the meaning of the Commission's rules. **If the disclosable interest holder is an individual or entity that is required to disclose revenue information, you should not check this box even if gross revenues are zero for the relevant time period.**

Eligible Rural Telephone Cooperatives Claiming Certain Gross Revenues to Be Exempt from Attribution.

An applicant will be exempt from attribution of gross revenues of an affiliate or a controlling interest in the applicant if such entity meets all of the conditions set forth in section 1.2110(b)(3)(iii) of the Commission's rules.³²⁵ **If an applicant claims that it (or its controlling interest) is an eligible rural telephone cooperative pursuant to section 1.2110(b)(3)(iii), it should not check the box indicating that the disclosable interest holder is not an affiliate or a controlling interest.** The applicant should instead indicate that the affiliate or controlling interest has zero gross revenues. It must also provide, in an attachment to the FCC Form 175, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of section 1.2110(b)(3)(iii) and supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.³²⁶

In addition, an applicant may have affiliates that are not disclosable interest holders. To disclose information regarding such affiliates and their revenues required pursuant to Commission rule,³²⁷ applicants can click on the **ADD AFFILIATE** button on the initial *Ownership* screen. Applicants also can click on the **Add Affiliate to Applicant** link on the *View/Edit Ownership Disclosure Information* screen to disclose information regarding affiliates and their revenues.

Applicants providing information regarding an affiliate must provide the name of the affiliate and the affiliate's principal business. To simplify filling out FCC Form 175, an applicant can click on the **Select Business(es) Already Submitted** link when entering an affiliate that previously was entered as an FCC-regulated business for the applicant or a disclosable interest holder. Applicants will fill out two screens similar to those described above with respect to the affiliate, i.e., one screen requesting the relevant information and a second screen regarding the source of the revenue information.

³²⁴ Compare 47 C.F.R. § 1.2110(c)(2) (definition of controlling interests) and (c)(5)(definition of affiliate) with 47 C.F.R. § 1.2112(a) (describing disclosable interest holders).

³²⁵ 47 C.F.R. § 1.2110(b)(3)(iii).

³²⁶ See *Fifth Report and Order's Second Reconsideration Order*, 20 FCC Rcd at 1942.

³²⁷ 47 C.F.R. § 1.2112(b)(1)(iii).

Finally, applicants claiming eligibility for bidding credits based on revenues attributable to the applicant and related parties will be asked to confirm that they have provided revenue information with respect to each party for which revenue information is required: (1) the applicant; (2) each of the applicant's officers and directors; (3) each of the applicant's other controlling interests; (4) each of the applicant's affiliates; and (5) each affiliate of the applicant's controlling interests, including its officers and directors.³²⁸

5. Foreign Ownership

Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses.³²⁹ The provisions of section 310 apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules.³³⁰

Section 310(a) prohibits a foreign government or its representative from holding any radio license.³³¹ Section 310(b) contains specific restrictions on who can hold a broadcast, common carrier, or aeronautical radio station license. Sections 310(b)(1) and (b)(2) prohibit any alien or representative, and any foreign-organized corporation, respectively, from holding a broadcast, common carrier, aeronautical en route or aeronautical fixed radio station license.³³² Section 310(b)(3) prohibits foreign individuals, governments, and corporations from owning more than twenty percent of the capital stock of a broadcast, common carrier, or aeronautical radio station licensee.³³³ Section 310(b)(4) establishes a twenty-five percent benchmark for investment by foreign individuals, governments, and corporations in U.S.-organized entities that directly or indirectly control a U.S. broadcast, common carrier, or aeronautical radio station licensee.³³⁴

In its 2012 *Foreign Ownership First Report and Order*, the Commission determined that it would forbear

³²⁸ *Id.*

³²⁹ See 47 U.S.C. §§ 310 (a), (b).

³³⁰ See Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, *Second Report and Order*, FCC 13-50, 28 FCC Rcd 5741, 5747-48 ¶ 7 (2013) ("*Foreign Ownership Second Report and Order*").

³³¹ 47 U.S.C. § 310(a). This prohibition is absolute, and the Commission has no discretion to waive it. See *Foreign Ownership Second Report and Order*, 28 FCC Rcd 5741, 5748-49 ¶ 8. Section 310(a) does not, however, prohibit indirect foreign government control of licensees. See *id.*

³³² See 47 U.S.C. §§ 310(b)(1), (2); *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5749 ¶ 9. The prohibitions in sections 310(b)(1) and (b)(2) are absolute, and the Commission has no discretion to waive them. As with section 310(a), these provisions do not bar an alien or representative, or a foreign-organized entity, from holding a controlling ownership interest in a U.S.-organized company that controls the licensee pursuant to the discretionary authority afforded by section 310(b)(4). See *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5749 ¶ 9. For ease of reference, we refer to aeronautical en route and aeronautical fixed radio station licenses as "aeronautical" licenses.

³³³ See 47 U.S.C. § 310(b)(3); *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5749 ¶ 9.

³³⁴ See 47 U.S.C. § 310(b)(4); *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5749 ¶ 9. A foreign individual, government, or entity may own, directly or indirectly, more than twenty-five percent (and up to one hundred percent) of the stock of a U.S.-organized entity that holds a controlling interest in a common carrier or aeronautical radio licensee, unless the Commission finds that the public interest will be served by refusing to permit such foreign ownership. See *Foreign Ownership Second Report and Order*, 28 FCC Rcd 5741, 5749 ¶ 10. Foreign interests in a U.S.-organized parent that controls the licensee are subject to section 310(b)(4), not section 310(b)(3), and the Commission will continue to assess foreign ownership interests subject to section 310(b)(4) separately from foreign ownership interests subject to section 310(b)(3). See *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5749 ¶ 9 n.31.

from applying the foreign ownership limitations in section 310(b)(3) to the class of common carrier licensees in which the foreign investment is held in the licensee through U.S.-organized entities that do not control the licensee, to the extent the Commission determines such foreign ownership is consistent with the public interest under the policies and procedures the Commission has adopted for the public interest review of foreign ownership subject to section 310(b)(4).³³⁵ In its 2013 *Foreign Ownership Second Report and Order*, the Commission adopted a rule codifying its existing requirement that common carrier licensees subject to section 310(b)(3) forbearance seek and obtain Commission prior approval before foreign ownership in the subject licensee exceeds twenty percent of its equity interests and/or twenty percent of its voting interests.³³⁶ The Commission similarly adopted a rule codifying its existing requirement that common carrier and aeronautical radio station licensees seek and obtain prior Commission approval of their U.S. parents' foreign ownership under section 310(b)(4) before direct or indirect foreign ownership of their U.S. parent companies exceeds the twenty-five percent statutory benchmark.³³⁷

In keeping with this pre-approval process, an auction applicant is required to certify in its short-form application (FCC Form 175) that, as of the deadline for filing a short-form application for the auction, the applicant is in compliance with the foreign ownership provisions of section 310 or that it has filed a petition for declaratory ruling requesting Commission approval to exceed the statutory foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission.³³⁸ An applicant's petition for a declaratory ruling to exceed the statutory limit or benchmark in section 310(b)(3) or (b)(4), respectively, must be granted before any license for which the applicant is a high bidder may be granted. Potential applicants are encouraged to contact the Commission's staff before filing their short-form applications if they have any questions about complying with these requirements.

Petitions for a declaratory ruling to exceed the foreign ownership restrictions in section 310(b)(3) or (b)(4) may be filed electronically on the Internet through the International Bureau Filing System ("IBFS").³³⁹ There is no fee associated with such a filing. For information on filing your petition through IBFS, see Part 1, Subpart Y and the IBFS homepage at <http://www.fcc.gov/ib>. For information about what must be included in section 310(b)(3) or (b)(4) petitions for declaratory ruling and how the Commission analyzes foreign ownership issues, see sections 1.990-1.994 of the Commission's rules, 47 C.F.R. §§ 1.990-1.994, and the Commission's recent foreign ownership decisions discussed herein. Inquiries regarding compliance with Section 310 of the Communications Act and the filing and

³³⁵ See Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, *First Report and Order*, FCC 12-93, 27 FCC Rcd 9832 (2012) ("*Foreign Ownership First Report and Order*").

³³⁶ See *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5758-5763 ¶¶ 28-37; 47 C.F.R. § 1.990(a)(2). In reviewing a licensee's request to approve a higher level of foreign ownership under the Commission's section 310(b)(3) forbearance approach, the Commission will apply the same foreign ownership policies and procedures that it applies under section 310(b)(4). *Id.*

³³⁷ See *Foreign Ownership Second Report and Order*, 28 FCC Rcd at 5758-5763 ¶¶ 28-37; 47 C.F.R. § 1.990(a)(1).

³³⁸ See 47 C.F.R. § 1.2105(a)(2)(v), (vi). An applicant should attach to its short-form application as an exhibit a copy of its date-stamped request for declaratory ruling concerning its foreign ownership. If an applicant has received a declaratory ruling from the Commission granting it permission to exceed the applicable foreign ownership limit or benchmark in Section 310(b), it should attach to its short-form application an exhibit that identifies the citation(s) of the applicable declaratory ruling(s) by "DA" or "FCC" number, or by the FCC Record citation, if available, as well as the release date of the declaratory ruling, and any other identifying information. It is not necessary for an applicant to file a request for declaratory ruling concerning its foreign ownership if the applicant attaches to its short-form application an exhibit showing that the requested license is exempt from the provisions of Section 310(b)(3) or (b)(4).

³³⁹ 47 C.F.R. § 1.990(b).

processing of petitions for declaratory ruling should be directed to David Krech, Associate Division Chief, Policy Division, International Bureau, at (202) 418-7443 or by e-mail to david.krech@fcc.gov, or to Susan O'Connell, Attorney-Advisor, Policy Division, International Bureau, at (202) 418-1484 or by email to susan.oconnell@fcc.gov.

6. Summary

The *Summary* screens summarize information applicants have provided in previous screens, offering an overview of an applicant's FCC Form 175 to help locate specific information. These screens will appear prior to the *Certify and Submit* screens, in order to permit the applicant to review all the information entered in previous screens and to provide an opportunity to check for certain inconsistencies or omissions in the information within the FCC Form 175.

The first *Summary* screen, the *Summary Overview* screen, lists the first four series of screens in the application and provides a **VIEW/EDIT** button to access each one.

- Clicking **VIEW/EDIT** for Applicant Information produces a *Detail for Applicant Information* screen showing the information entered for each data entry field. To change any data item, the applicant should click the **Edit** icon for the relevant data field.
- Clicking **VIEW/EDIT** for License Selection takes the applicant to the *View/Edit License Selection* screen discussed above in the License Selection section.
- Clicking **VIEW/EDIT** for Agreements takes the applicant to the *Agreements* screen discussed above in the Agreements section.
- Clicking **VIEW/EDIT** for Ownership takes the applicant to the *View/Edit Ownership Disclosure Information* screen discussed above in the Ownership section.

Clicking on the **CHECK ERRORS** button initiates an automated check of the application. If the automated check encounters certain inconsistencies or omissions in information within the FCC Form 175 that must be corrected before submitting the application, the inconsistency or omission will be listed in an Error box at the top of the screen. To correct one of these errors, click its corresponding **EDIT** button. In addition, if the automated check encounters certain apparent inconsistencies or omissions that might render the application incomplete or deficient if the application is submitted with current information, the apparent error will be listed in a Warning box. To revise the information related to the apparent inconsistency or omission, click its corresponding **EDIT** button.

Each applicant is solely responsible for providing complete and accurate information in its FCC Form 175. The automated check is provided to assist applicants in completing the FCC Form 175. However, the automated check cannot be relied upon to determine whether the information provided is complete or accurate. The automated check may not catch all errors and applicants cannot rely on the automated check to determine the completeness or the accuracy of submitted information.

If the automated check does not encounter certain inconsistencies or omissions, a box will appear displaying the message "**No Errors found - You may continue to Certify and Submit.**" Applicants may then click the **CONTINUE TO CERTIFY** button.

7. Attaching Additional Information

If an applicant needs to provide additional information not requested directly in the screens comprising the FCC Form 175, that information can be provided in an attachment. For example, applicants can describe the relationship among indirect owners of the applicant, or provide information regarding lease and resale arrangements (including wholesale) involving the spectrum capacity of applicants claiming eligibility for bidding credits.³⁴⁰

The screen for adding an attachment to FCC Form 175 can be accessed by clicking on the **Attachments** link in the upper right of any screen. This screen requests information regarding the type of attachment to be added, the name of the file to be attached, and a brief description of the attachment.

NOTE: If the attachment is a request for a waiver or exemption of any of the Commission's rules or procedures, the applicant must identify the "Type" of attachment as a "Waiver" to facilitate prompt processing.

Once the requested information is provided, applicants can add the attachment to the application by clicking on the **ADD ATTACHMENT** button. A list of any attachments already uploaded along with the applicant's FCC Form 175 will appear at the bottom of the screen.

When uploading attachments, applicants may use a variety of file formats, including Word 2000 or earlier, WordPerfect 5.x or later, Adobe PDF, and ASCII text. Applicants must, however, verify that the files contain all attachment information, and files may be no larger than 10 Mb and must not be password-protected. Graphics files (e.g., .bmp, .tiff, .jpg) and spreadsheets (e.g., Excel, Lotus) are supported but not recommended.

After the short-form application filing deadline, an application attachment may not be deleted or withdrawn.

8. Certify and Submit

The *Certify and Submit* screens are the sixth and final series of screens in FCC Form 175. In these screens, applicants provide certifications required of all participants in the Commission's competitive bidding processes,³⁴¹ and any Auction 96-specific certifications.³⁴²

The first *Certify and Submit* screen requires each applicant to indicate whether the applicant, any affiliate of the applicant, any controlling interest of the applicant, or any affiliate of a controlling interest has ever been in default on any Commission construction permit or license or has ever been delinquent on any non-tax debt owed to any Federal agency.³⁴³ Current defaulters or delinquents are not eligible to participate in this auction. Former defaulters or delinquents who have remedied all such defaults and cured all of the outstanding non-tax delinquencies can participate in this auction so long as they are otherwise qualified and make upfront payments that are equal to 50 percent more than otherwise required.³⁴⁴

³⁴⁰ Applicants claiming eligibility for bidding credits must disclose (1) a list of all parties with which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum, and (2) a list, separately and in the aggregate, of the gross revenues of entities with which the applicant has an attributable material relationship. 47 C.F.R. §§ 1.2112(b)(1)(iii)-(iv). These lists should be provided in an attachment to the application, with the attachment type identified as "Other."

³⁴¹ See generally, 47 C.F.R. §§ 1.2105(a)(2)(iv)-(xi).

³⁴² See 47 C.F.R. §§ 1.2105(a)(2)(xii).

³⁴³ 47 C.F.R. § 1.2105(a)(2)(xi).

³⁴⁴ 47 C.F.R. §§ 1.2105(a)(2)(xi), 1.2106(a).

The second *Certify and Submit* screen lists the certifications required of all applicants in the Commission's competitive bidding processes and requests that the applicant's certifying official be identified and sign the application.

Who Can Certify. A short-form application must be certified by a person with the authority to bind the applicant. For example, a short-form application can be certified by: (1) the applicant, if the applicant is an individual; (2) one of the partners, if the applicant is a partnership; (3) an officer, director, or duly-authorized employee, if the applicant is a corporation; (4) an officer, if the applicant is an unincorporated association; (5) the trustee, if the applicant is an amateur radio service club; or (6) a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a Commission license.³⁴⁵ Applicants are reminded that submission of an FCC Form 175 constitutes a representation by the person certifying that he or she is an authorized representative of the applicant with the authority to bind the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications and any attachments are true, complete and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution. As noted above, a change in the person certifying the application is considered a major change to the short-form application and will not be permitted after the application deadline.

Once the two *Certify and Submit* screens have been filled out, the application may be submitted by clicking on the **SUBMIT** button.

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. Applicants should print a copy of the confirmation page for their records. They may then view and print copies of their submitted applications by clicking on the **PRINT PREVIEW** button.

FCC Form 175 applications for Auction 96 must be submitted and confirmed prior to 6:00 p.m. ET on Tuesday, November 5, 2013. Late applications or unconfirmed submissions of electronic data will not be accepted.

D. Withdrawing a Short-Form Application Before the Filing Deadline and Updating Existing Short-Form Applications

1. Withdrawing an Application

To withdraw a submitted application before the short-form application filing deadline, applicants should click on the **Withdraw Application** icon on the Auction Application Manager *Review or Modify Existing Short-Form Applications* page. All previously-submitted data will be deleted.

After the short-form application filing deadline, applications may not be withdrawn.

Applicants may choose to not submit an upfront payment, and therefore, will not be qualified to bid in the auction. However, an applicant remains subject to the prohibition on certain communications under section 1.2105(c), until the down payment deadline following the close of the auction.

³⁴⁵ 47 C.F.R. § 1.2105(a)(2)(v).

2. Updating Existing Applications

The *Review or Modify Existing Short-Form Applications* page displays any application created or submitted within a filing window. This page shows the application status, the date and time the application was last updated, and the date and time the application was last submitted. It may be used as a reference to confirm the date and time of the most recent submission of the application.

To review or continue working on an existing short-form application, an applicant should click the application auction number, which will produce the application's *Summary* page in a view/edit mode. Applicants must go to the *Certify and Submit* screens and click the **SUBMIT** button to submit any changes made to their FCC Form 175 applications. After the revised application has been submitted, a confirmation page will display the application's file number and submission time and date. A copy of the confirmation page should be printed for your records. Applicants may then view and print copies of their submitted applications by clicking on the **PRINT PREVIEW** button.

After the filing deadline, an applicant may make only minor changes to its application. Major modifications will not be permitted (e.g., change its license selection(s) or person certifying the application, change in ownership of the applicant that would constitute an assignment or transfer of control, or claim eligibility for a higher percentage of bidding credit).³⁴⁶

II. Upfront Payment Submission

A. Upfront Payment Calculator and Form 159

Applicants may access the **Upfront Payment Calculator and Form 159** from the *Review or Modify Existing Short-Form Applications* page and from the *Auction Application Submit Confirmation* page. Clicking the **Upfront Payment Calculator and Form 159** icon or link will provide a calculator to determine the appropriate upfront payment amount to submit with the FCC Form 159. From the *Calculate Upfront Payment* page, the applicant may click the **Form 159** button to obtain the FCC Form 159. For further instructions on how to submit the FCC Form 159, see Attachment E to this Public Notice.

B. Refund of Upfront Payment

On the *Auction Application Submit Confirmation* page, applicants can click on the **Wire Transfer for Refund Purposes** link to provide wire transfer instructions for purposes of refunds of upfront payments. The Commission will use this information to refund excess funds on deposit.

III. Miscellaneous

A. Access to View Short-Form Applications

After the deadline for filing short-form applications, the Commission will process all timely-submitted applications to determine which are complete, and subsequently will issue a public notice identifying: (1) those that are complete; (2) those that are rejected; and (3) those that are incomplete or deficient because of minor defects that may be corrected. Once that public notice is released, any interested parties may be able to view the short-form applications by searching for them in the Commission's database.

To start a search, go to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov> (secondary location) and click the **Auction Application Search** link in the Public Access area on the *FCC Integrated Spectrum Auction System* page.

³⁴⁶ 47 C.F.R. § 1.2105(b).

B. Technical Support

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is available Monday through Friday from 8 a.m. to 6 p.m. ET. All calls to the FCC Technical Support Hotline are recorded.

Paperwork Reduction Act Approval: The FCC Form 175 was assigned control number 3060-0600 and was approved, as revised, by the Office of Management and Budget on September 18, 2012.

ATTACHMENT E

**Auction-Specific Instructions for
FCC Remittance Advice (FCC Form 159-February 2003 Edition)**

Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 2/03), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 96. Applicants need to complete FCC Form 159 carefully, because:

- **Mistakes may affect bidding eligibility; and**
- **Lack of consistency between information provided in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.**

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the short-form application (FCC Form 175) are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "979085"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number ("FRN") registered in the Commission Registration System ("CORES").
21	Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant's ten-digit FRN registered in CORES.
24A	Payment Type Code - Enter "U096"
25A	Quantity - Enter the number "1"
26A	Fee Due - Amount of Upfront Payment
27A	Total Fee - Will be the same amount as 26A.
28A	FCC Code 1 - Enter the number "96" (indicating Auction 96).

NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 21 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for upfront payments for an auction, leave Section E blank.

Winning Bidder Requirements, Down Payments and Final Payments

Specific information regarding down payments and final payments will be included in a post-auction public notice announcing the winning bidders.

ATTACHMENT F

**Summary Listing of Judicial, Commission and Bureau Documents Addressing
Application of the Rule Prohibiting Certain Communications,
47 C.F.R. § 1.2105(c)**

A. Judicial Decisions

Star Wireless, LLC v. FCC, 522 F.3d 469 (D.C. Cir. 2008).

High Plains Wireless, L.P. v. FCC, 276 F.3d 599 (D.C. Cir. 2002).

B. Commission Decisions

Procedural Amendments to Commission Part 1 Competitive Bidding Rules, *Order*, FCC 10-4, 25 FCC Rcd 521 (2010).

Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15289, 15395 ¶¶ 285-86, 15489 (2007).

Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., *Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17546 (2001).

Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corp., *Memorandum Opinion and Order*, FCC 99-385, 14 FCC Rcd 21571 (1999); Application of Western PCS BTA I Corp., *Notice of Apparent Liability for Forfeiture*, FCC 98-42, 13 FCC Rcd 8305 (1998).

Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, FCC 99-90, 14 FCC Rcd 8816 (1999); Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, FCC 98-41, 13 FCC Rcd 8286 (1998).

Application of Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755 (1998); Applications of: Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970 (1997).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 374, 463-469 ¶¶ 155-166 (1997).

Commercial Realty St. Pete, Inc., *Memorandum Opinion and Order*, FCC 96-400, 11 FCC Rcd 15374 (1996); Commercial Realty St. Pete, Inc., *Notice of Apparent Liability for Forfeiture*, FCC 95-58, 10 FCC Rcd 4277 (1995).

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C. Wireless Telecommunications Bureau Decisions

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2. Letters from the Office of General Counsel, the Wireless Telecommunications Bureau and the Media Bureau

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How to Obtain Copies of Decisions Relating to Section 1.2105(c)

Many of the documents listed in this attachment can be retrieved from the following Commission web site: http://wireless.fcc.gov/auctions/prohibited_communications.

The documents may be located by using our search engine (select the link “search”). Documents retrieved from the web site are available in various formats including Word, WordPerfect, Acrobat Reader, Excel, and ASCII Text. To review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (800) 378-3160, or at <http://www.bcpweb.com>.