



# PUBLIC NOTICE

Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY 1-888-835-5322

DA 04-3005  
September 16, 2004

## BROADBAND PCS SPECTRUM AUCTION SCHEDULED FOR JANUARY 12, 2005

### Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 58

Report No. AUC-04-58-C (Auction No. 58)

I. GENERAL INFORMATION.....	1
A. Introduction.....	1
1. Background of Proceeding.....	1
2. Licenses to Be Auctioned .....	3
B. Rules and Disclaimers.....	4
1. Relevant Authority.....	4
2. Prohibition of Collusion .....	5
3. Due Diligence .....	7
4. Bidder Alerts.....	8
5. National Environmental Policy Act Requirements .....	9
C. Auction Specifics .....	9
1. Auction Date.....	9
2. Auction Title.....	9
3. Bidding Methodology .....	9
4. Pre-Auction Dates and Deadlines .....	9
5. Requirements For Participation .....	9
6. General Contact Information .....	10
II. SHORT-FORM (FCC FORM 175) APPLICATION REQUIREMENTS .....	11
A. License Selection .....	11
B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A) .....	11

C.	Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B).....	11
D.	Eligibility .....	12
1.	Eligibility for Closed Bidding (FCC Form 175 Exhibit C) .....	12
2.	Bidding Credit Eligibility (FCC Form 175 Exhibit D).....	12
3.	Tribal Land Bidding Credit.....	13
4.	Applicability of Part 1 Attribution Rules.....	13
5.	Supporting Documentation.....	15
E.	Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit E).....	16
F.	Transfer and Assignment Restrictions on Licenses Won in Closed Bidding .....	17
G.	Unjust Enrichment Payments.....	17
H.	Installment Payments.....	17
I.	Other Information (FCC Form 175 Exhibits F and G) .....	17
J.	Minor Modifications to Short-Form Applications (FCC Form 175).....	17
K.	Maintaining Current Information in Short-Form Applications (FCC Form 175).....	18
III. PRE-AUCTION PROCEDURES .....		18
A.	Auction Seminar .....	18
B.	Short-Form Application (FCC Form 175) — Due November 12, 2004.....	18
1.	Electronic Filing .....	18
2.	Completion of the FCC Form 175 .....	19
3.	Electronic Review of FCC Form 175 .....	19
C.	Application Processing and Minor Corrections .....	19
D.	Upfront Payments — Due December 13, 2004 .....	19
1.	Making Auction Payments by Wire Transfer .....	20
2.	FCC Form 159 .....	20
3.	Amount of Upfront Payment .....	20
4.	Applicant’s Wire Transfer Information for Purposes of Refunds of Upfront Payments .....	22
E.	Auction Registration .....	22
F.	Remote Electronic Bidding.....	23
G.	Mock Auction .....	23
IV. AUCTION EVENT.....		23
A.	Auction Structure .....	24

1.	Simultaneous Multiple Round Auction .....	24
2.	Maximum Eligibility and Activity Rules.....	24
3.	Auction Stages .....	24
4.	Stage Transitions.....	26
5.	Activity Rule Waivers and Reducing Eligibility .....	26
6.	Auction Stopping Rules .....	27
7.	Auction Delay, Suspension, or Cancellation .....	27
B.	Bidding Procedures.....	28
1.	Round Structure .....	28
2.	Reserve Price or Minimum Opening Bid.....	28
3.	Minimum Acceptable Bids and Bid Increments .....	30
4.	High Bids .....	31
5.	Bidding .....	31
6.	Bid Removal and Bid Withdrawal.....	32
7.	Round Results .....	34
8.	Auction Announcements.....	34
9.	Maintaining the Accuracy of FCC Form 175 Information .....	34
V.	POST-AUCTION PROCEDURES.....	34
A.	Down Payments and Withdrawn Bid Payments .....	34
B.	Final Payments.....	34
C.	Long-Form Application (FCC Form 601) .....	35
D.	Ownership Disclosure Information Report (FCC Form 602) .....	35
E.	Tribal Land Bidding Credit.....	35
F.	Default and Disqualification .....	36
G.	Refund of Remaining Upfront Payment Balance .....	36
VI.	Attachment A: Licenses to be Auctioned .....	A-1
VII.	Attachment B: FCC Auction Seminar Registration Form.....	B-1
VIII.	Attachment C: Electronic Filing and Review of the FCC Form 175.....	C-1
IX.	Attachment D: Guidelines for Completion of FCC Form 175 and Exhibits.....	D-1
X.	Attachment E: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159 - February 2003 Edition) .....	E-1
XI.	Attachment F: Minimum Acceptable Bids, Bid Increments, and the Smoothing Formula .....	F-1
XII.	Attachment G: Summary Listing of Commission and Bureau Documents Addressing Application of the Anti-Collusion Rule .....	G-1



## I. GENERAL INFORMATION

### A. Introduction

By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces the procedures and minimum opening bids for the upcoming auction of licenses in the broadband personal communication services (“PCS”), Auction No. 58, which is scheduled to start on January 12, 2005. On June 18, 2004, in accordance with the Balanced Budget Act of 1997,<sup>1</sup> the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 58.<sup>2</sup> The Bureau released a second public notice on August 3, 2004, revising the list of licenses available and seeking comment on procedures for the auction of those licenses.<sup>3</sup> The Bureau received 19 comments and five reply comments in response to the *Auction No. 35 Comment Public Notice* and no comments in response to the *Auction No. 58 Revised Inventory Public Notice*.<sup>4</sup>

#### 1. Background of Proceeding

Auction No. 58 includes licenses for A, C, D, E, and F blocks of broadband PCS spectrum. This auction will be the fifth auction of C block broadband PCS spectrum and the fourth auction of F block broadband PCS spectrum. The Commission initially designated the C and F block licenses to be held only by those entities that qualified as “entrepreneurs” under the Commission’s rules.<sup>5</sup> Specifically, only those entities that qualified as entrepreneurs could bid on the C and F block licenses and hold the licenses for the first five years following the date of the initial

---

<sup>1</sup> 47 U.S.C. § 309(j)(3)(E) (as adopted by the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251, § 3002(a) (1997) (“Balanced Budget Act”).

<sup>2</sup> See Broadband PCS Spectrum Auction Scheduled for January 12, 2005; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures, *Public Notice*, DA 04-1639 (rel. June 18, 2004). On July 19, 2004, Verizon Wireless filed a petition for reconsideration of this public notice. See Petition for Reconsideration filed by Verizon Wireless, July 19, 2004. The Bureau released an erratum to the public notice of June 18, 2004. See Erratum to Broadband PCS Spectrum Auction Scheduled for January 12, 2005; Correction to Formulas for Upfront Payments and Minimum Opening Bids (rel. June 21, 2004) (the public notices of June 18, 2004 and June 21, 2004, are collectively referred to as the “*Auction No. 58 Comment Public Notice*”).

<sup>3</sup> See Revised Inventory for Broadband PCS Spectrum Auction; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures, *Public Notice*, DA 04-2451 (rel. Aug. 3, 2004) (“*Auction No. 58 Revised Inventory Public Notice*”).

<sup>4</sup> Comments were filed on July 7, 2004, by Arctic Slope Regional Corporation (“ASRC”) and on July 8, 2004, by 3G PCS, LLC (“3G PCS”); Alta Communications (“Alta”); American Women in Radio and Television, Inc. (“AWRT”); Catalyst Investors (“Catalyst”); Coloma Spectrum, LLC (“Coloma”); Council Tree Communications, Inc. (“Council Tree”); CTIA – The Wireless Association™ (“CTIA”); The Designated Entity Program Supporters (“DE Supporters”); Dobson Communications Corporation (“Dobson”); Doyon, Limited (“Doyon”); Highland Cellular LLC (“Highland”); Madison Dearborn Partners, LLC (“MDP”); Maxicom PCS, L.L.C. (“Maxicom”); Media Venture Partners (“MVP”); Northstar Technology (“Northstar”); The Rural Telecommunications Group, Inc. (“RTG”); Verizon Wireless; and Vincent D. McBride and Scott D. Reiter (“McBride/Reiter”). Reply Comments were filed on July 15, 2004, by Council Tree; CTIA; DE Supporters; QUALCOMM Incorporated (“QUALCOMM”); and T-Mobile USA, Inc. (“T-Mobile”). Northstar subsequently asked to rescind its comments. See Request to Rescind Comments, filed by Northstar Technology on July 9, 2004.

<sup>5</sup> In order to qualify as an “entrepreneur,” an applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, must have had gross revenues of less than \$125 million in each of the last two years and must have less than \$500 million in total assets. 47 C.F.R. § 24.709(a). See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket 93-253, *Fifth Report and Order*, 9 FCC Rcd. 5,532, 5,581-82, ¶ 115 (1994) (“*Competitive Bidding Fifth Report and Order*”). See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket 93-253, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd. 403, 420-21, ¶¶ 28-30 (1994) (“*Competitive Bidding Fifth Memorandum Opinion and Order*”).

license grant.<sup>6</sup> The initial C block licenses were awarded through two auctions, Auction No. 5, which ended on May 6, 1996, and Auction No. 10, which concluded on July 16, 1996. Auction No. 11, the initial F block auction, ended on January 14, 1997, and also included D and E block licenses. Auction No. 22, which concluded on April 15, 1999, made available C, E and F block licenses that had been returned to, or reclaimed by, the Commission.<sup>7</sup>

In 2000, the Commission revised certain service and auction rules for the C and F block licenses.<sup>8</sup> Among the modifications to the Commission's rules, the *C/F Block Sixth Report and Order* reconfigured the size of 30 megahertz C block licenses available for auction, creating three 10 megahertz licenses.<sup>9</sup> The Commission also removed the entrepreneur eligibility restrictions for some C block licenses. It did so by first establishing two categories for licenses: Tier 1 being comprised of those Basic Trading Areas (BTAs) with populations that, according to the 1990 census, are equal to or greater than 2.5 million and Tier 2 being comprised of the remaining BTAs.<sup>10</sup> The Commission then established "open bidding" (*i.e.*, bidding without entrepreneur eligibility restrictions) for two of the three newly reconfigured 10 megahertz C block licenses in Tier 1 and for one of the three newly reconfigured 10 megahertz C block licenses in Tier 2.<sup>11</sup> The remaining 10 megahertz C block licenses in Tier 1 and 2 were reserved for entrepreneurs.<sup>12</sup> Finally, with respect to available 15 megahertz C block licenses, the Commission eliminated eligibility restrictions for such licenses in Tier 1, but maintained the eligibility requirements in Tier 2.<sup>13</sup>

Following the adoption of the *C/F Block Sixth Report and Order*, the Commission held Auction No. 35, which included 422 C and F block broadband PCS licenses.<sup>14</sup> Certain of the licenses won at auction, however, were not

---

<sup>6</sup> 47 C.F.R. § 24.839(a)(1). See *Competitive Bidding Fifth Report and Order* at 5585, 5588, ¶¶ 121, 128. The five-year holding period was later modified to allow the transfer of control or assignment of the C and F block licenses prior to the five-year mark to entities that did not qualify as entrepreneurs if the licensee had met the five-year construction requirement for the license. See 47 C.F.R. § 24.839(a)(6). See also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communication Services (PCS) Licensees, WT Docket No. 97-82, *Sixth Report and Order and Order on Reconsideration*, 15 FCC Rcd. 16,266, 16,290-91, ¶¶ 49-51 (2000) ("*C/F Block Sixth Report and Order*").

<sup>7</sup> Auction No. 22 was originally announced as an auction of licenses for C, D, E, and F block spectrum; however, no D block spectrum remained in the license inventory by the start of the auction.

<sup>8</sup> See generally, *C/F Block Sixth Report and Order*.

<sup>9</sup> *Id.* at 16,273, ¶ 12.

<sup>10</sup> *Id.* at 16,276, ¶ 18.

<sup>11</sup> *Id.* at 16,276-77, ¶ 20.

<sup>12</sup> *Id.* The Commission also eliminated bidding credits for those licenses auctioned under closed bidding. *Id.* at 16,288, ¶ 45.

<sup>13</sup> *Id.* at 16,276-77, ¶ 20. The Commission also adopted open bidding for all F block licenses. *Id.* at 16,279-80, ¶ 24.

<sup>14</sup> See C and F Block Broadband PCS Spectrum Auction Scheduled for December 12, 2000; Notice and Filing Requirements for 422 Licenses in the C and F Block Broadband PCS Spectrum Auction; Minimum Opening Bids, Upfront Payments and Other Procedural Issues For Final Auction Inventory," *Public Notice*, 15 FCC Rcd. 19,485 (WTB 2000). Of the 422 licenses, 170 were set-aside licenses, available in closed bidding to entities that qualified as entrepreneurs. At the close of the auction, a total of thirty-five bidders had won the 422 licenses for a total of approximately \$16.9 billion dollars in net bids. See C and F Block Broadband PCS Auction Closes; Winning Bidders Announced; Down Payments Due February 12, 2001, FCC Forms 601 and 602 Due February 12, 2001; Ten-Day Petition to Deny Period, *Public Notice*, 16 FCC Rcd. 2339 (WTB 2001).

granted because the spectrum was the subject of litigation and/or bankruptcy proceedings.<sup>15</sup> Recent settlement in a number of those matters has made C and F block spectrum available again for licensing.<sup>16</sup> This spectrum, along with spectrum associated with other licenses that cancelled or were otherwise returned to the Commission, is now included in the inventory for Auction No. 58.

Additionally, following the announcement of Auction No. 58, CTIA – The Wireless Association™ (“CTIA”) filed a petition for rulemaking, or in the alternative, a request for waiver of the eligibility restrictions placed on certain C block licenses (“CTIA Petition”).<sup>17</sup> This petition was placed on public notice and will be addressed in a proceeding separate from the instant one which is intended to establish procedures for the conduct of Auction No. 58.<sup>18</sup> The eligibility issue raised in the CTIA Petition was also addressed in nearly all of the comments filed pursuant to the *Auction No. 58 Comment Public Notice*, as well as in the Verizon Wireless petition for reconsideration. As explained in more detail below,<sup>19</sup> this issue is beyond the scope of that public notice and will be addressed separately. Accordingly, unless the Commission decides otherwise, the current eligibility structure for C block licenses (*i.e.*, closed bidding for certain C block licenses by only those entities that qualify as entrepreneurs) will remain in effect for Auction No. 58.

## 2. Licenses to Be Auctioned

Auction No. 58 will offer 242 broadband PCS licenses. A complete list of the licenses available in Auction No. 58 is included in Attachment A of this Public Notice.

While most licenses are available to all bidders in open bidding, 119 C block licenses are available only to entrepreneurs in closed bidding. In order to qualify as an “entrepreneur,” an applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, must have had gross revenues of less than \$125 million in each of the last two years and must have less than \$500 million in total assets.<sup>20</sup>

---

<sup>15</sup> Certain of the licenses included in Auction No. 35 were for spectrum that was associated with licenses initially granted to NextWave Personal Communications Inc. and NextWave Power Partners Inc. (collectively “NextWave”) and that were subject to litigation between NextWave and the Commission.

<sup>16</sup> For example, as part of a settlement between the Commission and NextWave in April 2004, 60 C block and 2 F block broadband PCS licenses were returned to the Commission. *See* “FCC Announces NextWave Settlement Agreement; Vital Spectrum Resources Freed, Nets at Least \$4 Billion,” *News Release*, 2004 WL 840904 (Apr. 20, 2004). Another 8 C block and 2 F block licenses were returned to the Commission as part of a settlement with Devon Mobile Communications, L.P.

<sup>17</sup> *See* Petition of CTIA – The Wireless Association for Expedited Rulemaking or, Alternatively, a Waiver, filed on July 8, 2004 (“CTIA Petition”).

<sup>18</sup> *See* Public Notice, Petition for Rulemaking Filed, Consumer & Governmental Affairs Bureau Reference Information Center, Report No. 2663 (rel. July 15, 2004) (RM No. 11019).

<sup>19</sup> *See infra*, Section II.D.1.

<sup>20</sup> *Id.* § 24.709(a)(1). The entrepreneur eligibility restriction does not apply to licenses that were available but not won in any auction beginning on or after March 23, 1999. *Id.* § 24.709(a)(4)(ii). C block licenses for BTA215, BTA330, and BTA470 were available but not won in Auction No. 22. Accordingly, even though licenses in the C3 and C4 frequency blocks in Tier 2 generally are designated as subject to closed bidding, CW-BTA215-C3, CW-BTA330-C3, and CW-BTA470-C4 will be offered in open bidding in Auction No. 58. CW-BTA215-C3, CW-BTA330-C3, and CW-BTA470-C4 were offered in open bidding and won in Auction No. 35; however, because the winners defaulted on their payment obligations, the licenses were never awarded. *See* TPS Utilicom, Inc., *Order on Reconsideration*, 18 FCC Rcd. 2516 (2003); Citifone PCS, LLC, *Order*, 16 FCC Rcd. 13,970 (2001).

For C and F block licenses available in open bidding, bidding credits are available to small and very small businesses, or consortia thereof, as defined in the Commission’s rules.<sup>21</sup> Specifically, an entity will be considered a small business if it, together with its affiliates, has less than \$40 million in average annual gross revenues for the preceding three years.<sup>22</sup> An entity will be considered a very small business if it, together with its affiliates, has less than \$15 million in average annual gross revenues for the preceding three years.<sup>23</sup> **Small business and very small business bidding credits are not available for C block licenses won in closed bidding or for licenses in the A, D, or E blocks.**<sup>24</sup>

The following table contains the block/eligibility status/frequency cross-reference list for Auction No. 58:

Frequency Block	Eligibility Status		Bandwidth (MHz) (Unless otherwise noted in Attachment A)	Frequency (MHz) (Unless otherwise noted in Attachment A)
	Tier 1	Tier 2		
A	n/a	n/a	30	1850-1865, 1930-1945
C1	Open	Closed	15	1902.5-1910, 1982.5-1990
C2	Open	Closed	15	1895-1902.5, 1975-1982.5
C3	Closed	Closed	10	1895-1900, 1975-1980
C4	Open	Closed	10	1900-1905, 1980-1985
C5	Open	Open	10	1905-1910, 1985-1990
D	n/a	n/a	10	1865-1870, 1945-1950
E	n/a	n/a	10	1885-1890, 1965-1970
F	Open	Open	10	1890-1895, 1970-1975

In some cases, licenses are available for only part of a market or may not include all of the spectrum associated with a particular frequency block in Auction No. 58. Dark gray boxes indicate that no license of the particular tier/frequency block combination will be available in Auction No. 58. See Attachment A to determine which licenses will be offered.

## B. Rules and Disclaimers

### 1. Relevant Authority

Prospective applicants must familiarize themselves thoroughly with the Commission’s rules relating to broadband PCS, contained in Title 47, Part 24, of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, Part 1, of the Code of Federal Regulations. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in this Public Notice, the *Auction No. 58 Comment Public Notice*, the *Auction No. 58 Revised Inventory Public Notice*, the *C/F Block Sixth Report and Order*, as well as any other prior and subsequent Commission proceedings regarding competitive bidding procedures.<sup>25</sup>

<sup>21</sup> See 47 C.F.R. § 24.712, 24.717.

<sup>22</sup> See 47 C.F.R. § 24.720(b)(1).

<sup>23</sup> See 47 C.F.R. § 24.720(b)(2).

<sup>24</sup> See *C/F Block Sixth Report and Order* at 16,288, ¶ 45. See also 47 C.F.R. §§ 24.712, 24.717.

<sup>25</sup> See, e.g., Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd. 15,293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)) (“*Part 1 Fifth Report and Order*”). Other decisions regarding the Commission’s competitive bidding procedures include, but are not limited to, the following:

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 our 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 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 during regular business hours at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 (telephone) or <http://www.bcpiweb.com>. When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 04-1639 for the *Auction No. 58 Comment Public Notice*).

## 2. Prohibition of Collusion

To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii).<sup>26</sup> Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.<sup>27</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.** For purposes of this prohibition, Section 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, 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, and all officers and directors of that entity.<sup>28</sup>

Applicants for licenses in any of the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule 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 the applicants he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary

---

Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd. 17,546 (2001) ("*Part 1 Seventh Report and Order*") (amending the anti-collusion rule, which is codified at 47 C.F.R. § 1.2105(c)); Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Eighth Report and Order*, 17 FCC Rcd. 2962 (2002) (amending Section 1.2110 of the Commission's rules); and Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd. 10,180 (2003) ("*Order on Reconsideration of the Part 1 Fifth Report and Order*") (recons. pending) (further amending Section 1.2110 to exempt the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant and adopting other modifications to the competitive bidding rules).

<sup>26</sup> 47 C.F.R. § 1.2105(a)(2)(viii); 47 C.F.R. § 1.2105(c)(1). *See also Part 1 Seventh Report and Order*, 16 FCC Rcd. 17,546 (2001); *Part 1 Fifth Report and Order*, 15 FCC Rcd. at 15,297-98, ¶¶ 7-8.

<sup>27</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>28</sup> 47 C.F.R. § 1.2105(c)(7)(i).

steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.<sup>29</sup> However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>30</sup>

The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas.<sup>31</sup> In addition, applicants that apply to bid for all markets will be precluded from communicating with all other applicants until after the down payment deadline. However, all applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175.<sup>32</sup> If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations.<sup>33</sup> By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with Section 1.2105(c).

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 within 30 days of any substantial change that may be of decisional significance to that application.<sup>34</sup> Thus, Section 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, Section 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.<sup>35</sup>

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.<sup>36</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions, including forfeiture of its upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.<sup>37</sup> In addition, applicants are reminded that they are subject

---

<sup>29</sup> See Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd. 11,973, 11,977, ¶ 11 (1998).

<sup>30</sup> See *id.* at 11,978.

<sup>31</sup> 47 C.F.R. § 1.2105(c)(2) & (3).

<sup>32</sup> 47 C.F.R. § 1.2105(c).

<sup>33</sup> See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd. 9645 (1995).

<sup>34</sup> 47 C.F.R. § 1.65.

<sup>35</sup> 47 C.F.R. § 1.2105(c)(6); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd. at 17,555, ¶ 17.

<sup>36</sup> 47 C.F.R. § 1.2107(d).

<sup>37</sup> See 47 C.F.R. § 1.2109(d).

to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. If an applicant is found to have violated the antitrust laws in connection with its participation in the competitive bidding 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.<sup>38</sup>

A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G.

### 3. Due Diligence

The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

Applicants are reminded that private and common carrier fixed microwave services (“FMS”) operating in the 1850-1990 MHz band (and other bands) are being relocated to available frequencies in higher bands or to other media. Applicants should become familiar with the status of FMS operation and relocation, and applicable Commission rules and orders, in order to make a reasoned, appropriate decision about their participation in Auction No. 58 and their bidding strategy.<sup>39</sup>

**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 licenses available in Auction No. 58.**

Applicants should also be aware that certain pending and future applications (including those for modification), petitions for rulemaking, requests for special temporary authority (“STA”), waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 58. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 58. Applicants are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned. We note that resolution of such matters could have an impact on the availability of spectrum for Auction No. 58. In addition, although the Commission may continue to act on various pending applications, informal objections petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the auction or by the time of license grant.

Applicants may obtain information about licenses available in Auction No. 58 through the Bureau’s licensing

---

<sup>38</sup> *Id.*

<sup>39</sup> See, e.g., 47 C.F.R. §§ 15.307, 24.5, 24.237–24.253, 101.3, 101.69–101.81, 101.147; Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, *Memorandum Opinion and Order on Reconsideration*, FCC 00-123 (rel. July 19, 2000); Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *Second Report and Order*, 12 FCC Rcd. 2705 (1997); Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd. 8825 (1996).

databases on the World Wide Web at <http://wireless.fcc.gov/uls>. Applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the “?” button at the upper right-hand corner of the License Search screen. Applicants should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY), or via e-mail at [ulscomm@fcc.gov](mailto:ulscomm@fcc.gov). The hotline is available to assist with questions Monday through Friday, from 8:00 AM to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission’s databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. **Applicants are strongly encouraged to physically inspect any sites located in, or near, the service area(s) for which they plan to bid.**

#### 4. Bidder Alerts

**The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.**

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 58 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 (“IRS”), 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.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. 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. Consumers who have concerns about specific proposals regarding Auction No. 58 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

## 5. National Environmental Policy Act Requirements

Licenses must comply with the Commission's rules regarding the National Environmental Policy Act ("NEPA").<sup>40</sup> The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility.<sup>41</sup> The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities 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, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

### C. Auction Specifics

#### 1. Auction Date

The auction will begin on Wednesday, January 12, 2005. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

#### 2. Auction Title

Auction No. 58 – Broadband PCS

#### 3. Bidding Methodology

The bidding methodology for Auction No. 58 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

#### 4. Pre-Auction Dates and Deadlines

Auction Seminar .....	November 1, 2004
Short-Form Application (FCC Form 175) Filing Window Opens.....	November 1, 2004; 12:00 p.m. ET
Short-Form Application (FCC Form 175) Filing Window Deadline .....	November 12, 2004; 6:00 p.m. ET
Upfront Payments (via wire transfer) .....	December 13, 2004; 6:00 p.m. ET
Mock Auction .....	January 7, 2005
Auction Begins .....	January 12, 2005

#### 5. Requirements For Participation

Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, November 12, 2004.

<sup>40</sup> 47 C.F.R. Ch. 1, Subpart I.

<sup>41</sup> 47 C.F.R. §§ 1.1305-1.1319.

- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, December 13, 2004.
- Comply with all provisions outlined in this public notice.

**6. Any Filings Related to Auction No. 58**

An electronic copy of any filings that are submitted to the Commission related to Auction No. 58, including filings made with the Commission's Office of the Secretary, should also be submitted by electronic mail to the following address: [auction58@fcc.gov](mailto:auction58@fcc.gov).

**7. General Contact Information**

**GENERAL AUCTION INFORMATION**

General Auction Questions  
Seminar Registration

FCC Auctions Hotline  
(888) 225-5322, Press Option #2  
or direct (717) 338-2888  
Hours of service: 8:00 a.m. – 5:30 p.m. ET,  
Monday through Friday

**AUCTION LEGAL INFORMATION**

Auction Rules, Policies, Regulations

Auctions and Spectrum Access Division  
(202) 418-0660

**LICENSING INFORMATION**

Rules, Policies, Regulations  
Licensing Issues  
Due Diligence  
Incumbency Issues

Mobility Division  
(202) 418-0620

**TECHNICAL SUPPORT**

Electronic Filing  
FCC Automated Auction System

FCC Auctions Technical Support Hotline  
(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  
(202) 418-0578  
(202) 418-2843 (Fax)

**TELEPHONIC BIDDING**

Will be furnished only to qualified bidders

**FCC COPY CONTRACTOR**

Additional Copies of  
Commission Documents

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

**PRESS INFORMATION**

Lauren Patrich (202) 418-7944

**FCC FORMS**

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

## FCC INTERNET SITES

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

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

Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D to this public notice. The short-form application seeks the applicant's name and address; legal classification; status; bidding credit eligibility; identification of the license(s) sought; and the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed below in Section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

### A. License Selection

In Auction No. 58, FCC Form 175 will include a mechanism that allows an applicant to create customized lists of licenses. The applicant will select the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the list (by using the "Save all filtered licenses" option) or select and save individual licenses from the list.

### B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

All applicants 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. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in Section 1.2112 of the Commission's rules.<sup>42</sup>

### C. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure.<sup>43</sup> Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.<sup>44</sup> As discussed above, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for any of the same geographic license areas after the deadline.<sup>45</sup> Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

---

<sup>42</sup> 47 C.F.R. § 1.2105 requires the disclosure on the short-form of the applicant's ownership information as set forth in 47 C.F.R. § 1.2112. Note that both of these sections were revised in the *Part 1 Fifth Report and Order*. See also *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd. 10,180 (2003).

<sup>43</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

<sup>44</sup> 47 C.F.R. § 1.2105(a)(2)(ix).

<sup>45</sup> See *supra* Section I.B.2.

A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area 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 formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.<sup>46</sup> While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

## **D. Eligibility**

### **1. Eligibility for Closed Bidding (FCC Form 175 Exhibit C)**

In order to be eligible to bid for one or more closed C block licenses, an applicant must demonstrate that it meets the eligibility requirements of section 24.709(a) of the Commission's rules. 47 C.F.R. § 24.709(a). Specifically, as of the FCC Form 175 filing deadline, the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, must have combined total assets of less than \$500 million and must have had combined gross revenues of less than \$125 million in each of the last two years. *Id.* Applicants should make this showing in "Exhibit C" to the FCC Form 175.

The majority of comments filed in response to the *Auction No. 58 Comment Public Notice* address the eligibility restrictions placed on the C block licenses, referred to as set-aside licenses, reserved to only entities that qualify as entrepreneurs. Some parties advocate a change in the current rules to allow all entities to bid on the set-aside licenses.<sup>47</sup> On the other hand, a number of commenters oppose any change to the eligibility structure,<sup>48</sup> and at least one party advocates a change in the current structure to increase the number of licenses limited to entrepreneurs.<sup>49</sup> The requests made in comments filed to the *Auction No. 58 Comment Public Notice* to change the eligibility rules are beyond the scope of this public notice regarding the procedures for Auction No. 58. As noted above, the eligibility issue was also raised in a petition for rulemaking and a request for waiver filed by CTIA, and in the Verizon Wireless petition for reconsideration. Those petitions will be addressed separately.

Included in its Auction No. 58 comments, Dobson Communications Corporation also seeks a waiver of the Commission's rules to extend the expired entrepreneur eligibility provisions of Section 24.709(a)(5)(i) to allow it and other entities to participate in closed bidding in Auction No. 58.<sup>50</sup> Specifically, Section 24.709(a)(5)(i) formerly allowed entities that had been eligible for and had participated in Auction No. 5 or Auction No. 10 to bid

---

<sup>46</sup> 47 C.F.R. § 1.2105(c)(4)(i), (ii).

<sup>47</sup> CTIA Comments at 1-2; Verizon Comments at 2, 12; QUALCOMM Reply Comments at 2, 5-6. T-Mobile notes that the notice and comment requirements of the Administrative Procedures Act would foreclose any rule change in this context. T-Mobile Comments at 1-2.

<sup>48</sup> 3G PCS Comments at 1-2; Alta Comments at 1-2; AWRT Comments at 1-3, 8; ASRC at 1-2; Catalyst at 1-2; Coloma Comments at 1-2; DE Supporters Comments at 1-2; Doyon Comments at 1-2; Highland Comments at 1; MDP Comments at 1-2; Maxicom Comments at 1-3; MVP Comments at 1-2; RTG Comments at 1-4; and McBride/Reiter Comments at 1-2. DE Supporters also note the rules cannot be changed in the context of an auction public notice. DE Supporters Reply Comments at 5.

<sup>49</sup> See Council Tree Comments at 10.

<sup>50</sup> Dobson Comments at 4.

for C block licenses offered in closed bidding in any auction beginning within two years of March 23, 1999, which was the start date of Auction No. 22, even if those entities did not meet the size requirements to participate in closed bidding.<sup>51</sup> In opposing reply comments, Council Tree argues that Dobson has shown neither that its circumstances are sufficiently unique to justify a waiver nor that the public would benefit from continuing to extend the grandfather exception to entities that have grown too large to meet the Commission's entrepreneur eligibility requirements.<sup>52</sup> Here too, we will address this matter separately.

## 2. Bidding Credit Eligibility (FCC Form 175 Exhibit D)

Bidding credits are available to small and very small businesses, or consortia thereof, (as defined in 47 C.F.R. § 24.720(b)) that win C and F block licenses in open bidding. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests.<sup>53</sup>

For Auction No. 58, bidding credits will be available to small businesses or consortia thereof, as follows:

- A bidder with attributable average annual gross revenues of not more than \$40 million for the preceding three years ("small business") will receive a 15 percent discount on its winning bids for C and F block licenses;<sup>54</sup>
- A bidder with attributable average annual gross revenues of not more than \$15 million for the preceding three years ("very small business") will receive a 25 percent discount on its winning bids for C and F block licenses.<sup>55</sup>

Small business bidding credits are not cumulative; a qualifying applicant receives the 15 percent or 25 percent bidding credit on its winning bid, but only one credit per license. No small and very small business bidding credits are provided for licenses in the A, E and D blocks or C block licenses available only to entrepreneurs in closed bidding.

## 3. Tribal Land Bidding Credit

To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. See Section V.E. of this Public Notice.

## 4. Applicability of Part 1 Attribution Rules

**Controlling interest standard.** On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a "controlling interest" standard for attributing to auction applicants the total assets and/or gross revenues of their investors and affiliates in determining entrepreneur and small business eligibility for future C and F block auctions.<sup>56</sup> The Commission observed that the rule modifications adopted in the

<sup>51</sup> See 47 C.F.R. § 24.709(a)(5)(i). Entities that had earlier returned C block spectrum to the Commission pursuant to the disaggregation, prepayment, or amnesty/prepayment restructuring options, however, were barred from bidding on that spectrum until two years after the start date of the reauction of that spectrum. 47 C.F.R. § 24.709(a)(5)(iv).

<sup>52</sup> Council Tree Reply Comments at 12-14.

<sup>53</sup> 47 C.F.R. § 1.2110(f).

<sup>54</sup> 47 C.F.R. § 1.2110(f)(2)(ii).

<sup>55</sup> 47 C.F.R. § 1.2110(f)(2)(i).

<sup>56</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd. at 15323-27, ¶¶ 59-67.

various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (“CFR”) consistent with the rules adopted in the Part 1 proceeding.<sup>57</sup> More recently, the Commission made further modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes included exempting the gross revenues of the affiliates of a rural telephone cooperative’s officers and directors from attribution to the applicant if certain specified conditions are met.<sup>58</sup> The Commission also clarified that in calculating an applicant’s gross revenues under the controlling interest standard, the personal net worth, including personal income, of its officers and directors will not be attributed to the applicant.<sup>59</sup>

In comments filed in response to the *Auction No. 58 Comment Public Notice*, Council Tree requests that the Commission establish a personal net worth limitation for designated entity eligibility.<sup>60</sup> The auction context in general and this public notice specifically are not the proper venues for reconsidering the Commission’s prior determination that the personal net worth of individuals will not be attributed to the applicant. Council Tree itself notes that it has filed a petition for rulemaking on this subject.<sup>61</sup> The petition was placed on public notice and will be addressed in a separate proceeding.<sup>62</sup>

The Commission will thoroughly review the information provided in applicants’ FCC Form 175 in determining eligibility for designated entity status. Eligibility for small business preferences will be determined based on the attribution rules in effect at the short-form application deadline.<sup>63</sup> Accordingly, the “controlling interest” standard, as recently modified, and the Part 1 rules that superseded inconsistent service-specific rules, will apply in Auction No. 58.

**“Control” for purposes of controlling interest standard .** The term “control” includes both *de facto* and *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity’s voting stock indicates *de jure* control. *De facto* control is determined on a case-by-case basis.<sup>64</sup> The following are some common indicia of *de facto* control:

---

<sup>57</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd. at 15330, ¶ 78. Pursuant to this delegation of authority, the Bureau made conforming edits to service-specific competitive bidding rules and portions of the Part 1 general competitive bidding rules. These modifications became effective on August 8, 2002. Amendment of Parts 1, 21, 22, 24, 25, 26, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission Rules – Competitive Bidding, *Order*, 17 FCC Rcd. 6534 (2002).

<sup>58</sup> *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd. at 10186-94, ¶¶ 10-18.

<sup>59</sup> *Id.* 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.

<sup>60</sup> Council Tree Comments at 2, 7.

<sup>61</sup> *Id.* at 2. See Petition for Rulemaking filed by Council Tree Communications, Inc. on March 8, 2004.

<sup>62</sup> See Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed, Report No. 3654 (rel. Apr. 2, 2004) (assigned RM-10956). No comments were filed in response.

<sup>63</sup> See *Part 1 Fifth Report and Order*, 15 FCC Rcd. at 15327, ¶ 67.

<sup>64</sup> For further guidance on the issue of *de facto* control for purposes of the controlling interest standard, see the Commission’s affiliation rule at 47 C.F.R. § 1.2110(b)(5); see also *Ellis Thompson Corp.*, *Summary Decision of Administrative Law Judge Joseph Chachkin*, 10 FCC Rcd. 12554, 12555-56 (1994), in which the Commission identified the following factors used to determine control of a business: (1) use of facilities and equipment; (2) control of day-to-day operations; (3) control of policy decisions; (4) personnel responsibilities; (5) control of financial obligations; and (6) receipt of monies and profits; *Intermountain Microwave*, 12 FCC 2d. 559, 560 (1963) and Application of Baker Creek

- 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; or
- the entity plays an integral role in management decisions.

**Attribution for entrepreneur eligibility.** For purposes of determining which entities qualify as entrepreneurs for closed bidding, the Commission will consider the total assets and gross revenues of the applicant, its controlling interest holders, the affiliates of the applicant, and their controlling interest holders. The Commission does not impose specific equity requirements on parties with controlling interests. Once principals or entities with a controlling interest are determined, only the assets and revenues of those principals or entities, the applicant, and their affiliates will be counted in determining entrepreneur eligibility. Applicants for closed bidding in Auction No. 58 should not include existing C and F block licenses in their calculations of total assets; however, all other Commission licenses must be included in such calculations.<sup>65</sup>

**Attribution for small business and very small business eligibility.** Similarly, in determining which entities qualify as small businesses or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, and the applicant and its affiliates, will be counted in determining small business eligibility.

A consortium of small businesses or very small businesses is a “conglomerate organization formed as a joint venture between or among mutually independent business firms,” each of which *individually* must satisfy one of the definitions of small business or very small business in Section 24.720(b) of the Commission’s rules.<sup>66</sup> Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small business or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

## 5. Supporting Documentation

Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as entrepreneurs and/or small business or very small business (or consortia of small businesses or very small businesses) for this auction.<sup>67</sup>

Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the

---

Communications, L.P., for Authority to Construct and Operate Local Multipoint Distribution Services in Multiple Basic Trading Areas, *Memorandum Opinion and Order*, 13 FCC Rcd. 18709 (1998).

<sup>65</sup> See Implementation of Section 309(j) of the Communications Act — Competitive Bidding, PP Docket No. 93-253, Amendment of Parts 20 and 24 of the Commission’s Rules — Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Amendment of the Commission’s Cellular/PCS Cross-Ownership Rule, GN Docket No. 90-314, *Order on Reconsideration*, FCC 00-299, at ¶ 20 (rel. September 14, 2000).

<sup>66</sup> 47 C.F.R. § 1.2110(f).

<sup>67</sup> 47 C.F.R. § 1.2105.

certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true 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.

***Entrepreneur eligibility (Exhibit C).*** Entities applying to bid on closed licenses will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding two years and the total assets of each of the following: (1) the applicant, (2) the applicant's affiliates, (3) the applicant's controlling interest holders, and (4) the affiliates of the applicant's controlling interest holders. Certification that the gross revenues for each of the preceding two years or the total assets do not exceed the applicable limit is not sufficient. The applicant must provide separately for itself, its affiliates, its controlling interest holders, and their affiliates a schedule of gross revenues for *each* of the preceding two years.

***Small business or very small business eligibility (Exhibit D).*** Entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on Exhibit D to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. **Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period.** If the applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.

#### **E. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit E)**

Each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests, as defined by Section 1.2110, are not in default on any payment for Commission licenses (including down payments) and not delinquent on any non-tax debt owed to any Federal agency.<sup>68</sup> In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests, as defined by Section 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency.<sup>69</sup> **Applicants must include this statement as Exhibit E to the FCC Form 175.** Prospective applicants are reminded that submission of a false certification to the 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.

“Former defaulters” — *i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses 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 eligible to bid in Auction No. 58, provided that they are otherwise qualified. However, as discussed *infra* in Section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment

---

<sup>68</sup> 47 C.F.R. § 1.2105(a)(2)(x); Amendment of Part 1 of the Commission's Rule — Competitive Bidding Procedures, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd. at 15,317, ¶ 42 (“*Order on Reconsideration of the Part 1 Third Report and Order*”).

<sup>69</sup> 47 C.F.R. § 1.2105(a)(2)(xi); *Order on Reconsideration of the Part 1 Third Report and Order*, 15 FCC Rcd. at 15,317, n. 142.

amounts.<sup>70</sup>

#### **F. Transfer and Assignment Restrictions on Licenses Won in Closed Bidding**

Licenses won in closed bidding generally may be transferred or assigned only to an entity that meets the entrepreneur financial caps or that holds another C or F block license that it acquired while meeting the entrepreneur financial caps. This restriction ends five years after the date of the initial license grant or upon notification by the licensee that it has satisfied its five-year construction requirement under 47 C.F.R. § 24.203(c), whichever comes first.<sup>71</sup> Licenses won in open bidding are not subject to this restriction and may be transferred or assigned any time after grant to any qualified entity, subject to Commission consent.<sup>72</sup>

#### **G. Unjust Enrichment Payments**

C or F block licensees that use a small or very small business bidding credit, and during the first five years of their license term seek to assign or transfer control of a license to an entity that does not meet the eligibility criteria for a small or very small business bidding credit, or that is eligible for a lower bidding credit, will have to reimburse the U.S. Government for a percentage of the amount of the bidding credit, plus interest.<sup>73</sup>

#### **H. Installment Payments**

Installment payment plans will not be available in Auction No. 58.

#### **I. Other Information (FCC Form 175 Exhibits F and G)**

Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(c)(2), may attach an exhibit (Exhibit F) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of “designated entities” in its auctions. Applicants wishing to submit additional information may do so on Exhibit G (Miscellaneous Information) to the FCC Form 175.

#### **J. Minor Modifications to Short-Form Applications (FCC Form 175)**

After the short-form filing deadline (6:00 p.m. ET November 12, 2004), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credits). *See* 47 C.F.R. § 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction58@fcc.gov](mailto:auction58@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 58. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

---

<sup>70</sup> 47 C.F.R. § 1.2106(a).

<sup>71</sup> *See* 47 C.F.R. § 24.839.

<sup>72</sup> *See id.*

<sup>73</sup> 47 C.F.R. § 1.2111(d), (e)(2)-(3). Licensees are *not* subject to unjust enrichment payments for transfer or assignment of licenses won in Auction No. 5 and No. 10. *See C/F Block Sixth Report and Order*, ¶ 51.

**A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850.** Questions about other changes should be directed to Audrey Bashkin or Scott Mackoul of the Auctions and Spectrum Access Division at (202) 418-0660.

### **K. Maintaining Current Information in Short-Form Applications (FCC Form 175)**

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 within 30 days of any substantial change that may be of decisional significance to that application. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 C.F.R. § 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

## **III. PRE-AUCTION PROCEDURES**

### **A. Auction Seminar**

On Monday, November 1, 2004, the FCC will sponsor a seminar for Auction No. 58 at the Federal Communications Commission, located at 445 12<sup>th</sup> Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, auction conduct, the FCC Automated Auction System, auction rules, and the broadband PCS rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

To register, complete the registration form attached hereto as Attachment B and submit it by Thursday, October 28, 2004. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

For individuals who are unable to attend, Audio/Video of this seminar will be webcast live from the FCC's Audio/Video Events page at <http://www.fcc.gov/realaudio/>. A recording of the webcast will also be available for playback from the FCC's A/V Archives Page following the meeting.

### **B. Short-Form Application (FCC Form 175) — Due November 12, 2004**

In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on November 12, 2004. Late applications will not be accepted.

There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Section III.D, *below*.

#### **1. Electronic Filing**

Applicants must file their FCC Form 175 applications electronically.<sup>74</sup> Applications may generally be filed at any time beginning at noon ET on November 1, 2004, until 6:00 p.m. ET on November 12, 2004. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on November 12, 2004.

Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC.

---

<sup>74</sup> 47 C.F.R. § 1.2105(a).

Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text 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 the hotline are recorded.*

Applicants can also contact Technical Support via e-mail. To obtain the address, click the **Support** tab on the Form 175 Homepage.

## **2. Completion of the FCC Form 175**

Applicants should carefully review 47 C.F.R. § 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of this public notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to this public notice provide information on the required attachments and appropriate formats.

## **3. Electronic Review of FCC Form 175**

The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. *See* Attachment C for details on accessing the review system.

Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. NOTE: Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications.

### **C. Application Processing and Minor Corrections**

After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

As described more fully in the Commission's rules, after the November 12, 2004, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).<sup>75</sup>

### **D. Upfront Payments — Due December 13, 2004**

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on December 13, 2004.

Please note that:

- All payments must be made in U.S. dollars.

---

<sup>75</sup> 47 C.F.R. § 1.2105; *see also* Two Way Radio of Carolina, Inc., *Memorandum Opinion and Order*, 14 FCC Red. 12,035 (1999).

- All payments must be made by wire transfer.
- Upfront payments for Auction No. 58 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the December 13, 2004, deadline will result in dismissal of the application and disqualification from participation in the auction.

### 1. Making Auction Payments by Wire Transfer

**Wire transfer payments must be received by 6:00 p.m. ET on December 13, 2004.** To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker 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. Applicants will need the following information:

ABA Routing Number: 043000261  
 Receiving Bank: Mellon Pittsburgh  
 BENEFICIARY: FCC/Account # 910-0198  
 OBI Field: (Skip one space between each information item)  
 "AUCTIONPAY"  
 FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21)  
 PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A58U)  
 FCC CODE 1 (same as FCC Form 159, block 28A: "58")  
 PAYER NAME (same as FCC Form 159, block 2)  
 LOCKBOX NO. # 358410

**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.

Applicants must fax a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209-6045 **at least one hour before** placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer — Auction Payment for Auction Event No. 58." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline.<sup>76</sup> **Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.**

### 2. FCC Form 159

A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to this public notice. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

### 3. Amount of Upfront Payment

In the *Part I Order* the Commission delegated to the Bureau the authority and discretion to determine appropriate

---

<sup>76</sup> Letter from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Patrick Shannon, Esq., Counsel for Lynch 3G Communications Corporation, 18 FCC Rcd. 11,552 (2003).

upfront payment(s) for each auction.<sup>77</sup> In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that “former defaulters,” *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments 50 percent greater than non-“former defaulters.”<sup>78</sup> 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 (as amended in the *Part 1 Fifth Report and Order*).<sup>79</sup>

In the *Auction No. 58 Comment Public Notice* and the *Auction No. 58 Revised Inventory Public Notice*, we proposed that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids.<sup>80</sup> In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an 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 applied for on Form 175, 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 for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

In the *Auction No. 58 Comment Public Notice* and the *Auction No. 58 Revised Inventory Public Notice*, the Bureau proposed upfront payments on a license-by-license basis using a formula based on bandwidth and license area population.<sup>81</sup>

$$\$0.05 * \text{MHz} * \text{License Area Population}^{82}$$

We adopt our proposal. The specific upfront payments and bidding units for each license are set forth in Attachment A of this Public Notice.<sup>83</sup>

In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder’s maximum eligibility after the upfront payment deadline.**

---

<sup>77</sup> Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd. 5686, 5697-98, ¶ 16 (1997) (“*Part 1 Order*”).

<sup>78</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd. at 15,316-17, ¶¶ 40-42; 47 C.F.R. § 1.2106(a); *see* 47 C.F.R. § 1.2105(a)(2)(xi).

<sup>79</sup> *Part 1 Fifth Report and Order*, 15 FCC Rcd. at 15,316-17, ¶¶ 40-42.

<sup>80</sup> *Auction No. 58 Comment Public Notice* at 4 and *Auction No. 58 Revised Inventory Public Notice* at 3.

<sup>81</sup> *Auction No. 58 Comment Public Notice* at 3 and *Auction No. 58 Revised Inventory Public Notice* at 3.

<sup>82</sup> All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. *See* Census 2000 Summary File 1 (SF1) and July 3, 2001, News Releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

<sup>83</sup> Results are rounded using our standard rounding procedure: 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.

<b>Example: Upfront Payments and Bidding Flexibility</b>				
<b>Market Number</b>	<b>Block</b>	<b>Market Name</b>	<b>Bidding Units</b>	<b>Upfront Payment</b>
BTA007	C5	Albany, NY	524,000	\$524,000
BTA010	C5	Allentown, PA	370,000	\$370,000

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 894,000 bidding units (524,000 + 370,000). If a bidder only wishes to bid on one, but not both, purchasing 524,000 bidding units would meet the 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 370,000 bidding units, it would have enough eligibility for the Allentown, PA, license but not for the Albany, NY, license.

Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. 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.

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

The Commission will use wire transfers for all Auction No. 58 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418-2843 by December 13, 2004. 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
- Contact and Phone Number
- Account Number to Credit
- Name of Account Holder
- FCC Registration Number (FRN)
- Taxpayer Identification Number (see below)
- Correspondent Bank (if applicable)
- ABA Number
- Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Section V.G., *below*.

**E. Auction Registration**

Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. **These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.**

Qualified bidders that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified bidder that has not received both mailings by noon on Wednesday, January 5, 2005, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction, and each qualified bidder is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC headquarters, located at 445 12<sup>th</sup> St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

#### **F. Remote Electronic Bidding**

The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference – electronic or telephonic – on the FCC Form 175. In either case, **each authorized bidder** must have its own SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 58. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number.

Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

#### **G. Mock Auction**

All qualified bidders will be eligible to participate in a mock auction on Friday, January 7, 2005. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

### **IV. AUCTION EVENT**

The first round of bidding for Auction No. 58 will begin on Wednesday, January 12, 2005. 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

In the *Auction No. 58 Comment Public Notice*, we proposed to award all licenses in Auction No. 58 in a simultaneous multiple round auction.<sup>84</sup> We received no comment on this issue. We conclude that it is operationally feasible and appropriate to auction the PCS licenses through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of synergies that exist among licenses and is administratively efficient.

### 2. Maximum Eligibility and Activity Rules

In the *Auction No. 58 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder.<sup>85</sup> We received no comments on this issue.

For Auction No. 58 we adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial eligibility (in bidding units) for each bidder. Note again that each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, applicants are cautioned to calculate their upfront payments carefully. **The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.**

In order to ensure that the 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 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 on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (*see* "Minimum Acceptable Bids and Bid Increments" in Section IV.B.3, *below*). The minimum required activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in Section IV.A.3 and "Stage Transitions" in Section IV.A.4, *below*), we adopt them for Auction No. 58.

### 3. Auction Stages

In the *Auction No. 58 Comment Public Notice*, we proposed to conduct the auction in two stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility.<sup>86</sup> Finally, we proposed that in each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 95 percent of its current bidding eligibility.

Verizon argues that the Bureau should use a 98 percent eligibility requirement rather than the proposed 95 percent

---

<sup>84</sup> *Auction No. 58 Comment Public Notice* at 3.

<sup>85</sup> *Id.* at 4.

<sup>86</sup> *Id.* at 4.

for Stage Two. They believe that it is necessary to have high final stage eligibility levels in order to speed the auction to its conclusion. For Auction No. 58, we believe that 95 percent will be a sufficiently high activity requirement for the final stage of the auction. Many past auctions had three stages using 80 percent, 90 percent, and 98 percent activity requirements. In many of these auctions, however, implementing Stage Two had little effect in terms of increasing bidding activity, and Stage Three was implemented shortly thereafter.<sup>87</sup> Based on this experience, the Bureau has generally moved away from three-stage auctions in favor of two-stage auctions. The Bureau also sees some benefit in allowing bidders a little more flexibility in fulfilling their activity requirements during the final stage of the auction.

We note that the Bureau reserves the discretion to further alter the activity requirements before and/or during the auction. We also note that the Bureau has other mechanisms by which it may influence the speed of an auction. When determining the bidding schedule, the Bureau takes into consideration the desirability of concluding the auction reasonably swiftly, and the Bureau also attempts to ensure that bidders have sufficient time for placing bids during rounds and for analysis between rounds. For Auction No. 58, the Bureau has already taken steps to adjust bid increments in a manner that should help speed the auction: the Bureau has proposed a maximum percentage increment of 0.3 (30%). This relatively high maximum percentage increment will allow licenses for which there is greater demand — i.e., those receiving many bids — to rise in price faster than if a lower maximum percentage increment were used. Additionally, the minimum opening bids adopted by the Bureau should help to avoid a protracted auction.

We adopt our proposals for the activity rules and stages. Below are the activity levels for each stage of the auction. The Bureau reserves the discretion to further alter the activity percentages before and/or during the auction.

**Stage One:** During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by five-fourths (5/4).

**Stage Two:** During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by twenty-nineteenths (20/19).

**CAUTION:** Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high 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 using the bidding system's bidding module.

Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 58.

---

<sup>87</sup> For example, in Auction No. 35, Stage One (80% activity requirement) lasted 37 rounds, Stage Two (90% activity requirement) lasted 5 rounds, and Stage Three (98% activity requirement) lasted 59 rounds.

#### 4. Stage Transitions

In the *Auction No. 58 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. We further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.<sup>88</sup> We received no comments on this issue.

We adopt our proposal. Thus, the auction will start in Stage One and will generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when, in each of three consecutive rounds of bidding, the high bid has increased on 20 percent or less of the licenses being auctioned (as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids,<sup>89</sup> the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 58.

#### 5. Activity Rule Waivers and Reducing Eligibility

In the *Auction No. 58 Comment Public Notice*, we proposed that each bidder in the auction would be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction.<sup>90</sup> We received no comments on this issue.

Based upon our experience in previous auctions, **we adopt our proposal that each bidder be provided three activity rule waivers that may be used in any round during the course of the auction.** Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license. We are satisfied that our practice of providing three waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into

---

<sup>88</sup> *Id.* at 4.

<sup>89</sup> When monitoring activity for determining when to change stages, we may consider the percentage of bidding units of the licenses receiving new high bids, excluding any FCC-held licenses.

<sup>90</sup> *Auction No. 58 Comment Public Notice* at 5.

compliance with the activity rules as described in “Auction Stages” (*see* Section IV.A.3 *above*). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder’s eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open. **Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.**

## 6. Auction Stopping Rules

For Auction No. 58, the Bureau proposed to employ a simultaneous stopping rule.<sup>91</sup> The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

The Bureau further proposed retaining the discretion to keep the auction open even if no new bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a designated number of additional rounds (“special stopping rule”). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.<sup>92</sup> Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of rounds per day, and/or adjusting the minimum acceptable bids and bid increments for the licenses.

We received no comments concerning the auction stopping rules; therefore we adopt the above proposals. Auction No. 58 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. We believe that these stopping rules are most appropriate for Auction No. 58, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

## 7. Auction Delay, Suspension, or Cancellation

In the *Auction No. 58 Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.<sup>93</sup>

---

<sup>91</sup> *Id.* at 11.

<sup>92</sup> *Id.* at 11.

<sup>93</sup> *Id.* at 5.

Because our approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive 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, resume the auction starting 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 exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

## **B. Bidding Procedures**

### **1. Round Structure**

The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

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

### **2. Reserve Price or Minimum Opening Bid**

The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC 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.<sup>94</sup> 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.<sup>95</sup> Among other factors, the Bureau 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 auctioned.<sup>96</sup> The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.<sup>97</sup>

In the *Auction No. 58 Comment Public Notice* and the *Auction No. 58 Revised Inventory Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 58 and to retain discretion to lower the minimum

---

<sup>94</sup> See Balanced Budget Act, section 3002(a), 47 U.S.C. § 309(j)(4)(F).

<sup>95</sup> 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*, 13 FCC Rcd. 375, 455-456, ¶ 141 (1997) (“*Part 1 Third Report and Order*”).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

opening bids.<sup>98</sup> Specifically, for Auction No. 58, the Bureau proposed the following license-by license formulas based on bandwidth and license area population.<sup>99</sup> Furthermore, the Bureau proposed to differentiate the formulas based on the population of each license area:<sup>100</sup>

Population ≥ 2,000,000:	\$0.50 * MHz * License Area Population
Population ≥ 500,000:	\$0.25 * MHz * License Area Population
Population < 500,000:	\$0.15 * MHz * License Area Population

In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.<sup>101</sup>

Four parties submitted comments with respect to minimum opening bids. 3G PCS, Coloma, Council Tree, and McBride/Reiter oppose the minimum opening bids established for this auction, which are higher than the minimum opening bids established for Auction No. 35. 3G PCS asserts that minimum opening bids beyond nominal levels serve no purpose other than increasing the probability that the Commission will have to hold another auction to sell those licenses that may go unsold. Council Tree also asserts that minimum opening bids proposed for Auction No. 58 are over four times higher on a weighted average per megahertz per population basis than in Auction No. 35. Council Tree contends that this may hamper entry opportunities and may also suggest a greater focus on financial results in contravention of Section 309(j)(7)(B) of the Communications Act.<sup>102</sup>

After reviewing the comments, the Bureau has concluded that it should adopt the minimum opening bids proposed in the *Auction No. 58 Comment Public Notice* and the *Auction No. 58 Revised Inventory Public Notice*. By comparing the minimum opening bids proposed in Auction No. 58 only to those of Auction No. 35, the commenters have not adequately substantiated their argument that the minimum opening bids are excessive. On average, for the licenses for spectrum that was available in Auction No. 35, the Auction No. 58 minimum opening bids are significantly lower than the net amount of winning bids from Auction No. 35. Furthermore, we disagree with the comment from 3G PCS regarding the purpose served by minimum opening bids. Minimum opening bids are established in light of the Balanced Budget Act's requirements. Minimum opening bids also serve to promote the objective of Section 309(j)(3)(C) of the Communications Act, to recover for the public a portion of the value of the spectrum.<sup>103</sup> Additionally, minimum opening bids serve to shorten the duration of the auction.

Therefore, the Bureau adopts its proposed minimum opening bids for Auction No. 58. The minimum opening bids we adopt for Auction No. 58 are reducible at the discretion of the Bureau. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid on specific licenses.

---

<sup>98</sup> *Auction No. 58 Comment Public Notice* at 7.

<sup>99</sup> All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2000 Summary File 1 (SF1) and July 3, 2001, News Releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

<sup>100</sup> For partial markets we considered the population of the area covered. For Auction No. 58, the population covered by each license for partial markets fell within Tier 2.

<sup>101</sup> *Auction No. 58 Comment Public Notice* at 7.

<sup>102</sup> 47 U.S.C. § 309(j)(7)(B).

<sup>103</sup> 47 U.S.C. § 309(j)(3)(C).

The specific minimum opening bids for each license available in Auction No. 58 are set forth in Attachment A.<sup>104</sup>

### 3. Minimum Acceptable Bids and Bid Increments

In the *Auction No. 58 Comment Public Notice*, we proposed to use a smoothing methodology to calculate minimum acceptable bids.<sup>105</sup> The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum percentage based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity on a license, decreasing the time it takes for licenses receiving many bids to reach their final prices. The formula used to calculate this increment is included as Attachment F. We proposed to initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.3 (30%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 30% depending upon the number of bids for the license. We further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.<sup>106</sup> We received no comment on this issue.

In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts.<sup>107</sup> The FCC Automated Auction System will list the nine bid amounts for each license.

Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Attachment F. The difference between the minimum acceptable bid and the standing high bid for each license will define the **bid increment** — *i.e.*, bid increment = (minimum acceptable bid) – (standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described in Attachment F, and the minimum opening bid — *i.e.*, bid increment = (minimum opening bid)(1 + percentage increment) {rounded} – (minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, etc).

In the case of a license for which the standing high bid has been withdrawn,<sup>108</sup> the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

---

<sup>104</sup> Results are rounded using our standard rounding procedure: 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.

<sup>105</sup> *Auction No. 58 Comment Public Notice* at 7-9.

<sup>106</sup> *Id.* at 9.

<sup>107</sup> Bidders must have sufficient eligibility to place a bid on the particular license. *See supra* Section III.D.3 “Amount of Upfront Payment.”

<sup>108</sup> *See infra* Section IV.B.6 “Bid Removal and Bid Withdrawal.”

The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

#### **4. High Bids**

At the end of each bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a “standing high bid.” A “standing high bid” will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids are counted as activity for purposes of the activity rule.<sup>109</sup>

In the *Auction No. 58 Comment Public Notice*, the Bureau proposed to use a random number generator to select a high bid in the event of identical high bids on a license in a given round (*i.e.*, tied bids).<sup>110</sup> No comments were received on this proposal. Therefore, the Bureau adopts its proposal. A Sybase® SQL pseudo-random number generator based on the L’Ecuyer algorithms will be used to assign a random number to each bid.<sup>111</sup> The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

#### **5. Bidding**

During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder’s bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder’s activity at the close of the round.

Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (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. Normally, five to ten minutes are necessary to complete a bid submission). There will be no on-site bidding during Auction No. 58.

A bidder’s ability to bid on specific licenses in the first round of the auction is determined by three factors: (1) the licenses applied for on FCC Form 175 and (2) the eligibility restrictions on those licenses, if any, and (3) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

---

<sup>109</sup> See *supra* Section IV.A.2.

<sup>110</sup> *Auction No. 58 Comment Public Notice* at 10.

<sup>111</sup> A description of the L’Ecuyer algorithms can be found in L’Ecuyer, P. (1999) “Good Parameters and Implementations for Combined Multiple Recursive Random Number Generators” *Operations Research* 47 (1), pp.159-164. The author’s website, <http://www.iro.umontreal.ca/~lecuyer/papers.html>, includes a longer version of this paper and the C code for the algorithms.

In order to access the bidding function of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the password generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round after they have completed all of their activity for that round.

In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts.<sup>112</sup> For each license, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information and a Type Bids function that allows bidders to enter specific licenses for filtering.

Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Section IV.B.3.

Finally, bidders are cautioned to select their bid amounts carefully because, as explained in the following section, bidders that withdraw a standing high 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

In the *Auction No. 58 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures.<sup>113</sup> With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are used would be at the bidder's discretion. We received no comments on this issue.

**Procedures.** Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore we adopt them for Auction No. 58.

Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not reached its withdrawal limit). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g). **Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.**

In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, we conclude that, for Auction No. 58, adoption of a limit on the use of withdrawals to two rounds per bidder is appropriate. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block and 800 MHz SMR

---

<sup>112</sup> Bidders must have sufficient eligibility to place a bid on the particular license. *See supra* Section III.D.3 "Amount of Upfront Payment."

<sup>113</sup> *Auction No. 58 Comment Public Notice* at 10.

auctions, and is in no way a reflection of our view regarding the likelihood of any speculation or “gaming” in this auction.

The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder’s discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g). Bidders should note that abuse of the Commission’s bid withdrawal procedures could result in the denial of the ability to bid on a market.

If a high bid is withdrawn, the minimum acceptable bid will equal the second highest bid received for the license, which may be less than, or equal to, in the case of tied bids, the amount of the withdrawn bid.<sup>114</sup> To set the additional bid amounts, the second highest bid also will be used in place of the standing high bid in the formula used to calculate bid increments. The Commission will serve as a “place holder” high bidder on the license until a new bid is submitted on that license.

**Calculation.** Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction.<sup>115</sup> 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 high bid in the same or subsequent auction(s).<sup>116</sup> In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), 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 of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).<sup>117</sup> This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

In the *Part 1 Fifth Report and Order*, the Commission modified Section 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments.<sup>118</sup> As amended, Section 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 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. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.<sup>119</sup>

---

<sup>114</sup> The Bureau retains the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds.

<sup>115</sup> 47 C.F.R. §§ 1.2104(g), 1.2109.

<sup>116</sup> 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).

<sup>117</sup> See following paragraph for discussion of interim bid withdrawal payments.

<sup>118</sup> See *Part 1 Fifth Report and Order*, 15 FCC Rcd. at 15,302, ¶ 15; 47 C.F.R. § 1.2104(g)(1).

<sup>119</sup> See *Part 1 Fifth Report and Order*, 15 FCC Rcd. at 15,302, ¶ 15.

## 7. Round Results

Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 58 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

## 8. Auction Announcements

The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

## 9. Maintaining the Accuracy of FCC Form 175 Information

As noted in Section II.J., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants must make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction58@fcc.gov](mailto:auction58@fcc.gov). The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 58. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

**A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850.** Questions about other changes should be directed to Audrey Bashkin or Scott Mackoul of the Auctions and Spectrum Access Division at (202) 418-0660.

An electronic copy of any filings that are submitted to the Commission related to Auction No. 58, including filings made with the Commission's Office of the Secretary, should also be submitted by electronic mail to the following address: [auction58@fcc.gov](mailto:auction58@fcc.gov).

## V. POST-AUCTION PROCEDURES

### A. Down Payments and Withdrawn Bid Payments

After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments, final payments, and any withdrawn bid payments due.

Within ten business days after release of the auction closing 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 No. 58 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business bidding credits). In addition, by the same deadline, all bidders must pay any bid withdrawal payments due under 47 C.F.R. § 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Section IV.B.6. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

### B. Final Payments

Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business

days after the deadline for submitting down payments.

### **C. Long-Form Application (FCC Form 601)**

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) and required exhibits for each license won through Auction No. 58. Winning bidders that are entrepreneurs and/or small businesses or very small businesses must include an exhibit demonstrating their qualifications to be considered an entrepreneur and/or their eligibility for small business or very small business bidding credits. *See* 47 C.F.R. § 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

### **D. Ownership Disclosure Information Report (FCC Form 602)**

At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 C.F.R. §§ 1.913, 1.919, and 1.2112. We remind applicants that effective December 10, 2002, electronic filing of the Ownership Disclosure Information Report (FCC Form 602) became mandatory.<sup>120</sup> Accordingly, forms filed manually will not be accepted. Winning bidders without a current Form 602 already on file with the Commission must submit a properly completed Form 602 at the time they submit their long-form applications. Further filing instructions will be provided to auction winners at the close of the auction.

### **E. Tribal Land Bidding Credit**

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 telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 C.F.R. §§ 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 180 days from the close of the long-form 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 land bidding credit are subject to performance criteria as set forth in 47 C.F.R. § 1.2110(f)(3)(vi).<sup>121</sup>

For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices.<sup>122</sup> Relevant documents can be viewed on the Commission's web site by going to <http://wireless.fcc.gov/auctions> and clicking on the *Tribal Land Credits* link.

---

<sup>120</sup> See "Wireless Telecommunications Bureau Reminds Filers of Effective Date for Mandatory Electronic Filing of FCC Form 602," *Public Notice*, 17 FCC Rcd. 22,934 (2002); *see also* 47 C.F.R. § 1.913.

<sup>121</sup> *See also* 47 C.F.R. § 1.2110(f)(3)(ii) & (vii).

<sup>122</sup> *See* Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 4775, ¶ 10 (2003); *see also* Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd. 11,794 (2000); "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*, 16 FCC

## **F. Default and Disqualification**

Any high 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 47 C.F.R. § 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid.<sup>123</sup> 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 licenses held by the applicant.<sup>124</sup>

## **G. Refund of Remaining Upfront Payment Balance**

All applicants that submit upfront payments but are not winning bidders for a license in Auction No. 58 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from the applicant after any applicable bid withdrawal payments have been paid. 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 that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to:

Federal Communications Commission  
Financial Operations Center  
Auctions Accounting Group  
Gail Glasser  
445 12th Street, SW, Room 1-C864  
Washington, DC 20554

Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

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

---

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*, 15 FCC Rcd. 24,838 (2000); “Wireless Telecommunications Bureau Announces Availability of Bidding Credits For Providing Wireless Services To Qualifying Tribal Lands: Tribal Land 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*, 15 FCC Rcd. 18,351 (2000).

<sup>123</sup> See 47 C.F.R. § 1.2109(b) and (c).

<sup>124</sup> 47 C.F.R. § 1.2109(d).

**Media Contact:**

For press inquiries: Lauren Patrich at (202) 418-7944

**Auctions and Spectrum Access Division:**

For legal questions: Audrey Bashkin or Scott Mackoul at (202) 418-0660

For general auction questions: Jeff Crooks at (202) 418-0660 or Lisa Stover at (717) 338-2888

**Mobility Division:**

For legal questions: Kathy Harris or Erin McGrath at (202) 418-0620

For technical questions: Chris Miller or JoAnn Epps at (202) 418-0620

– FCC –

**VI. ATTACHMENT A**

PLACE HOLDER

VII. ATTACHMENT B

FCC AUCTION SEMINAR REGISTRATION FORM

Auction No. 58

The FCC will sponsor a one-day seminar for Auction No. 58 applicants. The seminar is free of charge and will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC Automated Auction System.

Representatives from each company may attend on a reservation basis, first-come first-served until room capacity is filled. The seminar will be held:

Monday, November 1, 2004  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
Registration 9:30 a.m. - 10:00 a.m.  
Seminar 10:00 a.m. - 2:00 p.m.

If hotel accommodations are needed  
Please contact 1-888-225-5322 (option #2) for a list of hotels in the area  
\*\*\*\*\*

To register, complete the form below and  
return no later than  
Thursday, October 28, 2004, by fax to:

FCC Auction 58  
Auctions and Spectrum Access Division  
1270 Fairfield Road  
Gettysburg, PA 17325-7245

FAX: 717-338-2850  
Phone: 717-338-2888

---

I/We will attend the Auction No. 58 Seminar, scheduled for Monday, November 1, 2004.

Name of attendee: \_\_\_\_\_

Name of attendee: \_\_\_\_\_

Company name: \_\_\_\_\_

Company address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

## VIII. ATTACHMENT C

### ELECTRONIC FILING AND REVIEW OF THE FCC FORM 175

Applicants must submit their FCC Form 175 applications electronically, via the Internet. FCC Form 175 applications must be submitted and confirmed by **6:00 p.m. ET on Friday, November 12, 2004**. Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants must click the **SUBMIT Application** button on the *Submission* page to successfully submit their FCC Form 175. The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

#### A. Software Requirements

Applicants will need to meet the following minimum software requirements:

- Web Browser, either of the following:
  - ◆ Microsoft® Internet Explorer 4.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.3.1\_08 installed.
  - ◆ Netscape® Communicator™ 4.0 or higher, with Java Plug-In Version 1.3.1\_08.

Java Plug-In Version 1.3.1\_08 is available for downloading at <http://java.sun.com/products/archive/index.html>

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)
- If you wish to use the download feature on the Search Results page, you will need a .tar file extraction utility, e.g., Winzip (available at <http://www.winzip.com>) or Pkzip for Windows (available at <http://www.pkware.com/shareware>).

#### B. Submitting FCC Form 175 Applications

To submit FCC Form 175 applications electronically via the Internet, start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). On the FCC Auctions page, click **Form 175 Application & Search** to obtain the Form 175 Homepage.

##### 1. Logging On

The Form 175 Homepage has a Form 175 Logon area at the top right. This area provides fields that let you identify yourself to the system. In these fields, type your assigned FRN (*without* the hyphens) and the password you created in CORES, respectively, then click the **Logon** button.

Once you have logged on with your FRN, you can click the **New Form** link to obtain the *Profile* page for the auction.

## 2. Uploading Attachments

- When uploading attachments from the *Form 175 Attachments* page, you may use a variety of file formats--including Word 2000 or earlier, WordPerfect 6.x or earlier, Adobe PDF, and ASCII text--and you should verify that the files contain all exhibit information. Also note the following about files to be uploaded:
  - Files may be no larger than 1.5 Mb.
  - Graphics files (e.g., *.bmp*, *.tiff*, *.jpg*) and spreadsheets (e.g., *Excel*, *Lotus*) are not supported.
  - Word processing files that are uploaded may not contain graphic images.
  - You may include hyphens (-) and underscore (\_) symbols in the name of a file to be uploaded, but do not use other punctuation marks or blank spaces. The FCC system will not be able to convert that file.
  - The path to a file (i.e., the file name and its directory) must not exceed 60 characters.
  - Do not upload a password-protected file. The FCC system will not be able to open it or convert it.
  - Do not include your TIN in any attachment to be uploaded. Contents of attachments become public once the Status PN is released.

The system converts each uploaded attachment to PDF format. (The conversion process generally completes within 30 minutes.) Until the system has converted your file to PDF format, the description field shows *Not converted*.

Repeat this procedure for each additional attachment you want to add. When you have finished adding attachments, click the **Continue to CERTIFICATION** button to obtain the *Certification* page.

### a. Unreadable Attachment Files

If you are unable to read an attachment file after it has been converted, please do the following:

1. Re-upload the attachment.
2. If the file still has not been converted properly, then simplify the formatting of the file.

For example, if you are using a Table structure in a WordPerfect document, remove the Table structure and leave the contents of the table, then re-upload the attachment.

After you have successfully re-uploaded an attachment, please delete the old, unreadable attachment files using their **Delete** links.

## 3. Completing the Submission Procedure

Applicants must press the **SUBMIT Application** button on the *Submission* page to successfully submit their FCC Form 175. Pressing **SUBMIT Application** produces a *Submission Confirmation* page showing the assigned FCC Account Number. During each filing period, submitted applications may be updated and amended multiple times until the filing deadline.

### C. Reviewing FCC Form 175 Applications

Once the FCC has completed the 175 Review process, you can view FCC Form 175 applications

electronically by searching for them in the FCC database. Start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Click the **Form 175 Application & Search** link, then click the **SEARCH** link at the top of the page. When the *Form 175 Search* page appears, select the search criteria you want and then click the **Submit** button.

#### **D. Help**

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

You can also contact Technical Support via e-mail. To obtain the address, click the **Support** tab on the Form 175 Homepage.

## IX. ATTACHMENT D

### GUIDELINES FOR COMPLETION OF FCC FORM 175 AND EXHIBITS

#### A. FCC Form 175

Because of the significance of the FCC Form 175 application to the auction, bidders should especially note the following:

**Applicant:** Name given is used as your bidder name in the auction.

**Address:** Applicants must provide a street address (not a Post Office box number) for the applicant, suitable for mail or private parcel delivery.

**Legal Classification:** Applicants must indicate their legal classification. The FCC Form 175 requires the applicant to classify itself as an individual, joint venture, partnership, trust, corporation, consortium, association, limited liability corporation (LLC) or government entity.

**Applicant Status:** Applicants are requested to indicate their status as a rural telephone company, minority- and/or women-owned business, so that the FCC can monitor its performance in promoting economic opportunities for these designated entities.

**Contact person/address:** If the Commission wishes to communicate with the applicant by telephone or fax, those communications will be directed to the contact person identified on the FCC Form 175. Space is provided for an address, telephone number, fax number, and e-mail address. **All written communication and registration information will be directed to the applicant's contact person at the address specified on the FCC Form 175.** Applicants must provide a street address for the contact person; **no P.O. Box addresses may be used.**

**Authorized Bidders:** Applicants must list the name(s) of the person(s) (no more than three) authorized to represent them at the auction. Only those individuals listed on the FCC Form 175 will be authorized to place or withdraw bids for the applicant during the auction.

**Bidding Credit Eligibility:** Applicants that qualify for a small business or very small business bidding credit must select the applicable bidding credit (15 percent or 25 percent) in the bidding credit eligibility item on the Form 175. Applicants are advised that this is the sole opportunity applicants have to elect small business status and bidding credit level (if applicable). There is no opportunity to change the election once the short-form filing deadline passes on November 12, 2004.

**Entrepreneur Eligibility:** Applicants that qualify as "entrepreneur" (i.e., the applicant, its affiliates, persons or entities that hold interest in the applicant, and their affiliates, have combined total assets of less than \$500 million and have had combined gross revenues of less than \$125 million in each of the last two years) must select this block in order to be eligible to bid for one or more closed licenses.

**Electronic or Telephonic Bidding Options:** Bidders may participate in the auction either electronically or telephonically, and must specify their preference. To participate in the auction, every authorized bidder must have a SecurID card, which the FCC will provide free of charge.

**License Selection:** Applicants should select all licenses on which they want to be eligible to bid in the auction. Be advised that there is no opportunity to change this list once the short-form filing deadline passes on November 12, 2004. It is critically important that you confirm the licenses that you have selected because the auction system will not accept a bid on licenses for which an applicant has not applied on its FCC Form 175.

The online FCC Form 175 application provides filters that enable you to generate a list of licenses. Once you obtain this customized list, you can use it to select the licenses you are interested in.

## **B. Exhibits and Attachments**

In addition to the FCC Form 175, applicants must submit additional information required by the FCC's rules. If attachments are not uploaded, the FCC Form 175 submission process cannot be completed. Although the FCC does not require a particular format for this information, it has developed the following guidelines that will facilitate the processing of short-form applications. The FCC encourages applicants to submit this information using the following format.

**If you find that an attachment has not converted properly to Adobe PDF format, take the following steps:**

- 1) *Simplify the formatting of the file. For example, if using a Table structure in a WordPerfect document, remove the Table structure leaving the contents of the table, re-save the document.*
- 2) *Re-upload the attachment.*
- 3) *When the re-uploaded attachment has successfully converted, delete the failed attachment.*

**NOTE: Applicants should not include sensitive information (i.e., TIN/EIN) on any exhibits to their FCC Form 175s.**

**Exhibit A – Applicant Identity and Ownership Information:** 47 C.F.R. § 1.2105(a)(2)(ii) requires each applicant to fully disclose the real party or parties-in-interest in an exhibit to its FCC Form 175 application. Each member of an applicant applying to bid as a small business consortium must provide this information. The following information is required:

### **1. General Information**

<i>Applicant Status</i>	<i>Required Information</i>
General Partnership	Name, citizenship, and address of all partners, and the share or interest participation of each partner
Limited Partnership	Name, citizenship, and address of each limited partner whose interest in the applicant is equal to or greater than 10 percent (as calculated according to the percentage of equity paid in and the percentage of distribution of profits and losses)
Corporation	Corporate name and address; name, title, and citizenship of a responsible officer or director
Limited Liability Corporation	Corporate name and address; name, address, and citizenship of all members whose interest in the applicant is equal to or greater than 10

***Applicant Status***

***Required Information***

	percent (as calculated according to the percentage of equity paid in and the percentage of distribution of profits and losses)
Trust	Name, citizenship, and address of trustee
None of the above	Name, citizenship, title or other relation to the applicant and address of a principal or other responsible person

**2. Ownership Information**

***Applicant Status***

***Required Information***

All applicants	Name, citizenship, and address of all controlling interests of the applicant as discussed in Section 1.2110 of the Commission's rules.
All applicants	Name, citizenship, and address of all parties holding 10 percent or more of each class of stock, warrants, options or debt securities and the amount and percentage held.
All applicants	Name of all parties holding a 10 percent or greater interest in the applicant and the specific amount held.
All applicants	List of all parties holding indirect ownership interests in the applicant that equals 10 percent or more, as determined by successive multiplication of the ownership percentages in each link of the vertical ownership chain, except that if the ownership percentage for any link in the chain exceeds 50 percent or represents actual control, it shall be reported as if it were a 100 percent interest.  <i>Example.</i> Company A owns 10% of Company B, which owns 60% of Company C, which owns 25% of the applicant. Company B's interest in the applicant would be 25% (the same as Company C's interest since Company B's interest in Company C exceeds 50%), and Company A's interest in the applicant would be 2.5% (0.1 * 0.25). Under the 10% attribution benchmark, Company B's interest in the applicant must be reported on the applicant's FCC Form 175 Exhibit A, while Company A's interest in the applicant need not be reported. However, if Company A owned 40% of Company B in the above example, then Company A's interest in the applicant would be 10% (0.4 * 0.25), and the applicant would need to report it on the applicant's FCC Form 175 Exhibit A.
All applicants	List of any FCC-regulated entity or applicant for an FCC license, in which <ol style="list-style-type: none"><li>the applicant;</li><li>any party with a 10 percent or greater interest in the applicant; or</li></ol>

## ***Applicant Status***

## ***Required Information***

- c. a controlling interest (as discussed in Section 1.2110 of the Commission's rules) owns a 10 percent or greater interest of the applicant or 10 percent or more of any class of stock, warrants, options or debt securities of the applicant. (*See also* 47 C.F.R. § 1.2110) This list must include a description of each such entities' principal business and a description of each such entities' relationship to the applicant.

*Example of a.* The applicant owns 10 percent of Company A (an FCC regulated entity or an applicant for an FCC license). The applicant must list Company A on its FCC Form 175 Exhibit A and provide the required information.

*Example of b.* Company A owns 10 percent of the applicant and 10 percent of Company B (an FCC regulated entity or an applicant for an FCC license). The applicant must list both Company A and Company B on its FCC Form 175 Exhibit A and provide the required information.

*Example of c.* Company A owns 55% of the applicant and owns 10 percent of Company B (an FCC regulated entity or an Applicant for an FCC license). The applicant must list both Company A and Company B on its FCC Form 175 Exhibit A and provide the required information.

**Exhibit B – Agreements with Other Parties/Joint Bidding Arrangements:** Applicants must attach an exhibit identifying all parties with which they have entered into any agreements, arrangements or understandings which relate in any way to the licenses being auctioned, including any relating to the post-auction market structure. *See* 47 C.F.R. §1.2105(a)(2)(viii).

Be aware that pursuant to Certification (4) on the FCC Form 175, the applicant certifies that it will not enter into any explicit or implicit agreements or understandings of any kind with parties not identified in the application regarding bid amounts, bidding strategies, or the particular licenses on which the applicant will or will not bid. *See* 47 C.F.R. § 1.2105(a)(2)(ix). *To prevent collusion, the Commission's Rules generally prohibit competing applicants from communicating concerning bids, bidding strategies, or settlements during the period between the initial short-form applications filing deadline and the deadline for down payments on licenses won in the auction.* 47 C.F.R. § 1.2105(c).

**Exhibit C – Entrepreneur Eligibility:** Applicants applying to bid on closed licenses must attach an Exhibit C showing *separately and in the aggregate*, the gross revenues for each of the preceding two years and the total assets of each of the following: (1) the applicant; (2) the applicant's affiliates; (3) the applicant's controlling interests; and (4) the affiliates of the applicant's controlling interests. Certification that, as of the FCC Form 175 filing deadline, the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, has total assets of less than \$500 million and has had gross revenues of less than \$125 million in each of the last two years is not sufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and their affiliates a schedule of gross revenues for *each* of the preceding two years. By submitting the FCC Form 175, applicants certify that they are eligible to participate in Auction No. 58 under all of the Commission's rules.

**Exhibit D – Status as a Small Business or Very Small Business:** Applicants claiming status as a small business or very small business must attach an exhibit providing the following information regarding this status.

**Entity**

**Required Information**

Applicant

Annual gross revenues for the preceding three years set forth *both separately* (e.g., for each of the preceding three years individually) *and as an average* (for all of the preceding three years combined). Certification that the average of the aggregated annual gross revenues for the preceding three years do not exceed the required limit, or providing average gross revenues for the 3-year period without providing the gross revenues for each of the preceding three years, is insufficient.

Applicant’s Affiliates  
See 47 CFR §§ 1.2110, 1.2112.

Same information required as discussed above.

Applicant’s Controlling Interests  
See 47 CFR §§ 1.2110, 1.2112.

Same information required as discussed above.

*Example.* The applicant had gross revenues of \$500,000 in 2001, \$1,000,000 in 2002, and \$3,000,000 in 2003, with average gross revenues for that time period of \$1,500,000. The applicant owns 60% of Company A, making Company A an affiliate of the applicant under Section 1.2110(c)(5)(i)(B). Company B owns 52% of the applicant, making Company B a controlling interest of the applicant, as defined in Section 1.2110(c)(2). Company B owns 100% of Company C, making Company C an affiliate of the applicant’s controlling interest, under Section 1.2110(c)(5)(i)(C). The applicant’s Exhibit C would look like this:

Applicant Name

2001 gross revenues	\$ 500,000
2002 gross revenues	\$ 1,000,000
2003 gross revenues	\$ 3,000,000
Average gross revenues for the preceding 3 years	\$ 1,500,000

Company A (an affiliate of the applicant)

2001 gross revenues	\$ enter amount
2002 gross revenues	\$ enter amount
2003 gross revenues	\$ enter amount

**Entity**

**Required Information**

Average gross revenues for the preceding 3 years \$ enter amount

Company B (a controlling interest in the applicant)

2001 gross revenues \$ enter amount

2002 gross revenues \$ enter amount

2003 gross revenues \$ enter amount

Average gross revenues for the preceding 3 years \$ enter amount

Company C (an affiliate of the applicant's controlling interest)

2001 gross revenues \$ enter amount

2002 gross revenues \$ enter amount

2003 gross revenues \$ enter amount

Average gross revenues for the preceding 3 years \$ enter amount

**NOTE:** Each member of an applicant that is applying to bid as a consortium of small or very small businesses must provide this information and qualify for the claimed status.

**Exhibit E – Information Required of All Applicants Regarding Defaults and Delinquencies:** As required by 47 C.F.R. § 1.2105, each applicant must include in Exhibit E a certification whether the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests are in default on any Commission licenses and are delinquent on any non-tax debt owed to any Federal agency. Each applicant must also include in Exhibit E a statement made under penalty of perjury indicating whether the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and each affiliate of its controlling interests as defined by 47 C.F.R. § 1.2110.

**Exhibit F – Information Requested of Designated Entities:** Applicants owned by minorities or women, as defined in 47 C.F.R. § 1.2110(c), or that are rural telephone companies, may attach an exhibit regarding this status. This information, in conjunction with the information requested on the FCC Form 175, will assist the Commission in monitoring the participation of these “designated entities” in its auctions.

**Exhibit G – Miscellaneous Information:** Applicants wishing to submit additional information should also include it in Exhibit G.

**Waivers:** Applicants requesting waiver of any rules must submit a statement of reasons sufficient to justify the waiver sought. See 47 C.F.R. §§ 1.3, 1.925.

**Certifications:** Applicants should carefully read the list of certifications on the FCC Form 175. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction. Submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true 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.

**Completeness:** Applicants must submit all information required by the FCC Form 175 and by applicable rules. Failure to submit required information by the resubmission date will result in dismissal of the application and inability to participate in the auction. *See* 47 C.F.R. § 1.2105(b).

**NOTE: Applicants must press the “SUBMIT Application” button on the “Submission” page to successfully submit their FCC Form 175.**

**Continuing Accuracy:** Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending FCC Form 175 short-form application and exhibits and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Applicants are reminded that they consent to be audited in the certification section of the FCC Form 175 (see certification item number 6).

Any notice summarizing any changes should be sent by electronic mail to [auction58@fcc.gov](mailto:auction58@fcc.gov). The electronic mail must include a subject or caption referring to Auction No. 58. The Bureau requests that parties format any attachments to electronic mail as Adobe<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft<sup>®</sup> Word documents.

**A separate copy of the notice of any changes should be faxed to the attention of Kathryn Garland at (717) 338-2850.**

Applicants are reminded that all information required in connection with applications to participate in spectrum auctions is necessary to determine the applicants' qualifications, and as such will be available for public inspection. Required proprietary information may be redacted, or confidentiality may be requested, following the procedures set forth in 47 C.F.R. § 0.459. Such requests must be submitted by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: [auction58@fcc.gov](mailto:auction58@fcc.gov), in which case the applicant must indicate in Exhibit G that it has filed a confidentiality request. Because the required information bears on applicants' qualifications, the FCC envisions that confidentiality requests will not be routinely granted.

In addition, Section 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under Section 1.65.<sup>125</sup>

---

<sup>125</sup> 47 C.F.R. § 1.2105(c)(6); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd. at 17,555, ¶ 17.

## X. ATTACHMENT E

### AUCTION-SPECIFIC INSTRUCTIONS FOR FCC REMITTANCE ADVICE (FCC FORM 159-February 2003 Edition)

#### A. 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 No. 58. Applicants need to complete FCC Form 159 carefully, since:

- **Mistakes may affect their bidding eligibility; and**
- **Lack of consistency between information set forth 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 FCC Form 175 Short Form Application are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "358410"
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 ( <b>not Post Office box number</b> ) 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).
24A	Payment Type Code - Enter "A58U"
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 "58" (indicating Auction No. 58).

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 this auction, leave Section E blank.

**B. 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.

## XI. ATTACHMENT F

### Minimum Acceptable Bids, Bid Increments, and the Smoothing Formula

The FCC Automated Auction System calculates the minimum acceptable bids and bid increments for each license with a standing high bid in each round of the auction based on all bidding activity for the license. For this auction, the Commission will use a standard smoothing methodology to calculate minimum acceptable bids and bid increments.

The smoothing formula calculates minimum acceptable bids by first calculating a *percentage increment*, not to be confused with the *bid increment*, for each license based on a weighted average of the activity received on each license in all previous rounds. This methodology tailors the percentage increment for each license based on activity, rather than setting a global increment for all licenses.

In a given round, the calculation of the percentage increment for each license is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.3 (30%).

#### Equations

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

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

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

where,

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

$C$  = activity weight factor

$B_i$  = number of bids in the current round (round  $i$ )

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

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

$N$  = minimum percentage increment or percentage increment floor

$M$  = maximum percentage increment or percentage increment ceiling

$X_{i+1}$  = dollar amount associated with the percentage increment

$Y_i$  = high bid from the current round

Under the smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the high bid from the current round plus the dollar amount associated with the percentage increment, with the result rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

## Examples

License 1

$C=0.5$ ,  $N = 0.1$ ,  $M = 0.3$

### Round 1 (2 new bids, high bid = \$1,000,000)

1. Calculation of percentage increment for round 2 using the smoothing formula:

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

$$I_2 = \text{The smaller of } ((1 + 1) * 0.1) = 0.2 \text{ or } 0.3 \text{ (the maximum percentage increment)}$$

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

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

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

### Round 2 (3 new bids, high bid = \$2,000,000)

1. Calculation of percentage increment for round 3 using the smoothing formula:

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

$$I_3 = \text{The smaller of } ((1 + 2) * 0.1) = 0.3 \text{ or } 0.3 \text{ (the maximum percentage increment)}$$

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

$$X_3 = 0.3 * \$2,000,000 = \$600,000$$

3. Minimum acceptable bid for round 3 = \$2,600,000

### Round 3 (1 new bid, high bid = \$2,600,000)

1. Calculation of percentage increment for round 4 using the smoothing formula:

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

$$I_4 = \text{The smaller of } ((1 + 1.5) * 0.1) = 0.25 \text{ or } 0.3 \text{ (the maximum percentage increment)}$$

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

$$X_4 = 0.25 * \$2,600,000 = \$650,000$$

3. Minimum acceptable bid for round 4 = \$3,250,000

As stated above, until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded as described above, and the minimum opening bid. That is,  $I = (\text{minimum opening bid})(1 + N)\{\text{rounded}\} - (\text{minimum opening bid})$ . Therefore, when  $N$  equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

## XII. ATTACHMENT G

### SUMMARY LISTING OF COMMISSION AND BUREAU DOCUMENTS ADDRESSING APPLICATION OF THE ANTI-COLLUSION RULE

#### A. Commission Decisions:

*Second Report and Order* in PP Docket No. 93-253, FCC 94-61, 9 FCC Rcd. 2348, 2386-2388 (1994), paragraphs 221-226.

*Fifth Report and Order* in PP Docket No. 93-253, FCC 94-178, 9 FCC Rcd. 5532, 5570-5571 (1994), paragraphs 91-92.

*Fourth Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-264, 9 FCC Rcd. 6858, 6866-6869 (1994), paragraphs 47-60.

*Second Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-215, 9 FCC Rcd. 7245, 7253-7255 (1994), paragraphs 48-55.

*Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-295, 9 FCC Rcd. 7684, 7687-7689 (1994), paragraphs 8-12.

In re Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd. 4277 (1995),  
In re Commercial Realty St. Pete, *Memorandum Opinion and Order*, 11 FCC Rcd. 15,374 (1996).

In re Applications of Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd. 17,970 (1997); Application of Mercury PCS II, L.P. for Facilities in the Broadband PCS D, E and F Blocks, *Memorandum Opinion and Order*, 13 FCC Rcd. 23,755 (1998).

Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, WT Docket No. 97-82, ET Docket No. 94-32, FCC 97-413, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd. 374, 463-469 (1997), paragraphs 155-166.

In re Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd. 8286 (1998); Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, FCC 99-90 (May 7, 1999).

In re Application of Western PCS BTA I Corporation, *Notice of Apparent Liability for Forfeiture*, FCC 98-42 (March 16, 1998); Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corporation, *Memorandum Opinion and Order*, 14 FCC Rcd. 21571, 21577-78, ¶ 20 (1999).

Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd. 17,546 (2001).

## **B. Wireless Telecommunications Bureau Decisions:**

Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Order*, 11 FCC Rcd. 9655 (Wireless Tel. Bur. 1995).

In re Applications of GWI PCS, Inc. For Authority to Construct and Operate Broadband PCS Systems Operating on Frequency Block C, *Memorandum Opinion and Order*, 12 FCC Rcd. 6441 (Wireless Tel. Bur. 1997).

In re Applications of Mercury PCS II, LLC, For Facilities in the Broadband Personal Communications Services in the D, E, and F Blocks, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 18,093 (Wireless Tel. Bur. 1997).

Applications of High Plains Wireless, L.P., For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 12 FCC Rcd. 19,627 (Wireless Tel. Bur. 1997).

Applications of Mercury PCS II, LLC, For Authority to Construct and Operate Broadband PCS Systems on Frequency Blocks D, E, and F, *Memorandum Opinion and Order*, 13 FCC Rcd. 5756 (Wireless Tel. Bur. 1997).

### **1. Public Notices:**

Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd. 9645 (1995).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS 'C' Block Reauction, *Public Notice*, 11 FCC Rcd. 7031 (1996).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, 11 FCC Rcd. 10,134 (1996).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37 (rel. January 9, 1998).

### **2. Letters from the Office of General Counsel and the Wireless Telecommunications Bureau:**

*Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission* (released October 25, 1994).

*Letter to Alan F. Ciamporcero from William E Kennard, General Counsel, Federal Communications Commission* (released October 25, 1996).

*Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau* (released December 1, 1994).

*Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau* (released December 14, 1994).

*Letter to Jonathan D. Blake and Robert J. Rini from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 95-2404* (released November 28, 1995).

*Letter to Mark Grady from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 10,895* (1996).

*Letter to David L. Nace from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, 11 FCC Rcd. 11,363* (1996).

*Letter to Elliott J. Greenwald from Christopher J. Wright, General Counsel, Federal Communications Commission* (released April 6, 1998).

*Letter to Robert Pettit, Wiley, Rein & Fielding from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 00-2905* (released December 26, 2000).

#### **C. Enforcement Bureau Decisions:**

In re Application of Star Wireless, LLC for C Block Facilities in the 710-716 and 740-746 MHz Bands, *Notice of Apparent Liability for Forfeiture, DA 03-2722* (released August 27, 2003) (recon. pending).

In re Application of Northeast Communications of Wisconsin, Inc. for C Block Facilities in the 710-716 and 740-746 MHz Bands, *Notice of Apparent Liability for Forfeiture, DA 03-2723* (released August 27, 2003) (recon. pending).

#### **D. Civil Actions Initiated by U.S. Department of Justice:**

*U.S. v. Omnipoint Corp.*, Proposed Final Judgments and Competitive Impact Statements, Department of Justice, 63 FR 65,228 (November 25, 1998).

“Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release, U.S. Department of Justice* (November 10, 1998).

Complaint, *U.S. v. Omnipoint Corp.*, No. 1:98CV02750 (D.D.C. November 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L.C.*, No. 1:98CV02751 (D.D.C. November 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. November 10, 1998).

#### **How to Obtain Copies of the Anti-Collusion Decisions:**

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

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 (telephone) or <http://www.bcpweb.com>.