



PUBLIC NOTICE

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AUCTION OF 800 MHz AIR-GROUND RADIOTELEPHONE SERVICE LICENSES SCHEDULED FOR MAY 10, 2006

Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 65

Report No. AUC-06-65-B (Auction No. 65)

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I. GENERAL INFORMATION

A. Introduction

1. By this Public Notice, the Wireless Telecommunications Bureau (“Bureau”) announces the procedures and minimum opening bid amounts for the upcoming auction of new nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band¹ scheduled for May 10, 2006 (Auction No. 65).² On January 10, 2006, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended,³ the Bureau released a public notice seeking comment on a reserve price and minimum opening bid amounts and the procedures to be used in Auction No. 65.⁴ The Bureau received one comment in response to the *Auction No. 65 Comment Public Notice*.

1. Background of Proceeding

2. On February 22, 2005, the Commission released the *Air-Ground Order*, in which it adopted a flexible regulatory approach to determine the future band configuration of the four megahertz of dedicated spectrum in the 800 MHz commercial Air-Ground Radiotelephone Service. Based on the band configuration proposals submitted by interested parties in the proceeding, the Commission decided to assign nationwide air-ground licenses under one of three alternative band configurations, implementing the band plan receiving the highest gross aggregate bid in an auction.⁵ The Commission also requested comment on competitive bidding rules for the 800 MHz commercial Air-Ground Radiotelephone Service.⁶

3. On December 9, 2005, the Commission released the *Air-Ground Reconsideration Order and R&O*, in which it resolved petitions for reconsideration of the *Air-Ground Order* and adopted competitive bidding rules for the 800 MHz commercial Air-Ground Radiotelephone Service.⁷

¹ The spectrum consists of an uplink band at 849-851 MHz and a downlink band at 894-896 MHz. 47 C.F.R. § 22.857.

² Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review — Amendment of Parts 1, 22, and 90 of the Commission’s Rules, Amendment of Parts 1 and 22 of the Commission’s Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service, WT Docket Nos. 03-103 and 05-42, *Order on Reconsideration and Report and Order*, FCC 05-202 (rel. December 9, 2005) (“*Air-Ground Reconsideration Order and R&O*”); Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review — Amendment of Parts 1, 22, and 90 of the Commission’s Rules, Amendment of Parts 1 and 22 of the Commission’s Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service, WT Docket Nos. 03-103 and 05-42, *Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 4403 (2005) (“*Air-Ground Order*”).

³ 47 U.S.C. § 309(j)(3)(E)(i) (requiring the Commission to “ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed ... before issuance of bidding rules, to permit notice and comment on proposed auction procedures....”). *See also* 47 U.S.C. § 309(j)(4)(F) (authorizing the Commission to establish a reserve price or minimum opening bid); 47 C.F.R. § 1.2104(c) and (d).

⁴ “Auction of 800 MHz Air-Ground Radiotelephone Service Licenses Scheduled for May 10, 2006; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures for Auction No. 65,” *Public Notice*, DA 06-3 (rel. January 10, 2006) (“*Auction No. 65 Comment Public Notice*”) (70 Fed. Reg. 3513) (January 23, 2006).

⁵ *Air-Ground Order*, 20 FCC Rcd at 4405-06 ¶ 1, 4418-22 ¶¶ 24-32.

⁶ *Id.* at 4464-67 ¶¶ 169-77.

⁷ *See supra* note 2.

4. Licensees in the 800 MHz Air-Ground Radiotelephone Service will be permitted to provide any type of air-ground service (*i.e.*, voice telephony, broadband Internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.⁸

2. Licenses to Be Auctioned

5. Auction No. 65 will offer nationwide commercial licenses in the 800 MHz band in three alternative band configurations: (1) Band Plan 1, comprised of two overlapping, shared, cross-polarized 3 MHz licenses (Licenses A and B, respectively),⁹ (2) Band Plan 2, comprised of an exclusive 3 MHz license and an exclusive 1 MHz license (Licenses C and D, respectively),¹⁰ and (3) Band Plan 3, comprised of an exclusive 1 MHz license and an exclusive 3 MHz license (Licenses E and F, respectively), with the blocks at opposite ends of the band from Band Plan 2.¹¹ Licenses in only one of these mutually incompatible band configurations will be awarded. The band plan that receives the highest aggregate gross bid in the auction will be implemented,¹² and licenses composing that configuration will be awarded to winning bidders subject to review of their long-form license applications. Because the three band configurations are mutually incompatible, applications for licenses in different band plans will be mutually exclusive.

6. No party may obtain a controlling interest, either at auction or by a post-auction transaction, in new licenses for more than three megahertz of spectrum (either shared or exclusive) in the band. No single party, therefore, may win or hold more than one license in any of the available band configurations.¹³

⁸ See *Air-Ground Order*, 20 FCC Rcd at 4431 ¶¶ 52-53; *Air-Ground Reconsideration Order and R&O* at ¶¶ 5-7.

⁹ Licenses A and B would authorize transmission of radio waves that are vertically and horizontally polarized, respectively, and would initially share 3.0 MHz: 1.5 MHz at 849.0-850.5 MHz paired with 1.5 MHz at 894.0-895.5 MHz. Once Verizon Airfone Inc.'s ("Verizon Airfone" or "Airfone") incumbent system ceases operations in the upper 0.5 MHz of each band, the License B licensee would shift its operations to 1.5 MHz at 849.5-851.0 MHz paired with 1.5 MHz at 894.5-896.0 MHz, and the licensees for Licenses A and B would share 2.0 MHz. See *infra* I.B.3. "Incumbent Licensee." However, licensees in Band Plan 1 would have the option of agreeing to a different implementation scheme, subject to the service rules. See *infra* I.B.5. "Spectrum Sharing Plan."

¹⁰ License C would be located in the lower 1.5 MHz portion of each 2 MHz band (1.5 MHz at 849.0-850.5 MHz paired with 1.5 MHz at 894.0-895.5 MHz). License D would be located in the upper 0.5 MHz portion of each 2 MHz band (0.5 MHz at 850.5-851.0 MHz paired with 0.5 MHz at 895.5-896.0 MHz).

¹¹ License E would be located in the lower 0.5 MHz portion of each 2 MHz band (0.5 MHz at 849.0-849.5 MHz paired with 0.5 MHz at 894.0-894.5 MHz). License F would be located in the upper 1.5 MHz portion of each 2 MHz band (1.5 MHz at 849.5-851.0 MHz paired with 1.5 MHz at 894.5-896.0 MHz).

¹² Gross bids for the licenses, rather than net bids adjusted for bidding credits, will be used to determine the band plan with the highest aggregate bid.

¹³ See *Air-Ground Order*, 20 FCC Rcd at 4426-27 ¶¶ 43-44.

7. The following table contains the characteristics of the licenses that will be offered in Auction No. 65:

Band Plan	License	Frequency Band (MHz)	Total Bandwidth	Pairing	Geographic Area Type
1	A	849.0-850.5 / 894.0-895.5	3 MHz (2 MHz Shared)	Paired	Nationwide
	B	Initial: 849.0-850.5 / 894.0-895.5 After Clearing: 849.5-851.0 / 894.5-896.0	3 MHz (2 MHz Shared)	Paired	Nationwide
2	C	849.0-850.5 / 894.0-895.5	3 MHz	Paired	Nationwide
	D	850.5-851.0 / 895.5-896.0	1 MHz	Paired	Nationwide
3	E	849.0-849.5 / 894.0-894.5	1 MHz	Paired	Nationwide
	F	849.5-851.0 / 894.5-896.0	3 MHz	Paired	Nationwide

8. A complete list of the licenses available in Auction No. 65 and their descriptions is also included in Attachment A of this Public Notice.

B. Rules and Disclaimers

1. Relevant Authority

9. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in Title 47, Part 1, of the Code of Federal Regulations, including recent amendments and clarifications;¹⁴ rules relating to the 800 MHz Air-Ground Radiotelephone Service contained in Title 47, Part 22, of the Code of Federal Regulations; and rules relating to applications, practice and procedure 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 and the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.¹⁵

¹⁴ See, e.g., Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, FCC 06-4 (rel. January 24, 2006) ("CSEA/Part 1 Report and Order"); Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180 (2003) ("Order on Reconsideration of the Part 1 Fifth Report and Order"). The Commission has recently released Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Further Notice of Proposed Rule Making*, FCC 06-8 (rel. February 3, 2006), in which it considers whether to modify its general competitive bidding rules governing benefits reserved for designated entities (i.e., small businesses, rural telephone companies, and businesses owned by women and minorities) ("CSEA/Part 1 Designated Entity FNPRM").

¹⁵ See, e.g., Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Second Report and Order*, 9 FCC Rcd 2348 (1994) ("Competitive Bidding Second Report and Order"); Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and* (continued....)

10. 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 auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpiweb.com>.¹⁶

2. Prohibition of Collusion

11. To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission's rules prohibits applicants for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii).¹⁷ Because all of the licenses available in Auction No. 65 have the same service area, i.e., they are nationwide, this prohibition will apply to all applicants. Thus, all applicants (unless they 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)) must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure.¹⁸ This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.¹⁹ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**²⁰

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Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)) ("Part 1 Fifth Report and Order"); Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (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); *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd 1942 (2005) ("Second Order on Reconsideration of the Fifth Report and Order") (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); *CSEA/Part 1 Report and Order*.

¹⁶ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 06-3 for the *Auction No. 65 Comment Public Notice*, and DA 06-299 for this public notice).

¹⁷ 47 C.F.R. § 1.2105(c)(1); 47 C.F.R. § 1.2105(a)(2)(viii). See also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17548-50 ¶¶ 4-8; *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

¹⁸ See, e.g., "Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders," *Public Notice*, DA 96-1460 (rel. August 28, 1996).

¹⁹ 47 C.F.R. § 1.2105(c)(1).

²⁰ See, e.g., Application of Star Wireless, LLC, *Forfeiture Order*, 19 FCC Rcd 18626, 18628 ¶ 4, n. 19 (Enf. Bur. 2004), *application for review pending* (collusion rule applies to "applicants" regardless of whether they are qualified to bid); Letter to Robert Pettit, Counsel for Noverr Publishing, Inc., from Margaret W. Wiener, Chief, Auctions and (continued....)

12. For purposes of this prohibition, Section 1.2105(c)(7)(i) defines “applicant” as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.²¹

13. Applicants for licenses for any of the same geographic license areas must not communicate directly or indirectly about bids or bidding strategy.²² Because all of the licenses available in Auction No. 65 have the same service area, all applicants 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 applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm, engineering firm, or consulting firm), a violation similarly could occur.²³ In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.²⁴ A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer of two or more applicants.²⁵

14. The Commission’s rules do not prohibit applicants from entering into otherwise lawful bidding agreements **before** filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form filing deadline.²⁶

15. By electronically submitting its short-form application, each applicant certifies its compliance with Section 1.2105(c). However, the Bureau cautions that merely filing a certifying

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Industry Analysis Division, 16 FCC Rcd 10080 (WTB 2000) (declining to except an applicant’s controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

²¹ 47 C.F.R. § 1.2105(c)(7)(i).

²² *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

²³ 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 11973, 11977 ¶ 11 (1998) (“*Nevada Wireless MO&O*”).

²⁴ *Id.*

²⁵ See, *e.g.*, Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445 (Video and Auctions Divs. Sept. 13, 2005) (finding apparent violation of anti-collusion rule where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

²⁶ See “Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules,” *Public Notice* DA 95-2244, 11 FCC Rcd 9645 (1995).

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.²⁷

16. 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.²⁸ Thus, Section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by Section 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under Section 1.2105(a)(2)(viii). In addition, Section 1.2105(c)(6) provides that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.²⁹

17. 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.³⁰

18. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.³¹ Applicants are also reminded that, regardless of compliance with the Commission’s rules, they are subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.³² Compliance with the disclosure requirements of the Commission’s anti-collusion rule will not necessarily insulate a party from enforcement of the antitrust laws.³³ If an applicant is found to have violated the antitrust laws or the Commission’s rules in connection with its participation in the competitive bidding 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.³⁴

²⁷ *Nevada Wireless MO&O*, 13 FCC Rcd at 11978 ¶ 13.

²⁸ 47 C.F.R. § 1.65.

²⁹ 47 C.F.R. § 1.2105(c)(6); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

³⁰ 47 C.F.R. § 1.2107(d).

³¹ *See* 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

³² In cases where specific instances of collusion in the competitive bidding process are alleged in the petition to deny process, the Commission may conduct an investigation or refer such matters to the United States Department of Justice for investigation. *See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226. *See also* “Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release* 98-536 (DOJ Nov. 10, 1998).

³³ *See* Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rule Making*, 14 FCC Rcd 21588, 21590 ¶ 4 (1999); *see also* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission’s Rules may be prohibited by the antitrust laws.”); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994).

³⁴ *See* 47 C.F.R. § 1.2109(d); *see also Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

19. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment E. These documents are available on the Commission's auction anti-collusion web page.³⁵

3. Incumbent Licensee

20. In the *Air-Ground Order*, the Commission granted Verizon Airfone Inc. ("Verizon Airfone" or "Airfone"), the only incumbent service provider in the 800 MHz air-ground band, a nonrenewable license to operate in the band for five years. This license will expire on May 13, 2010.³⁶ Verizon Airfone must remove its incumbent narrowband operations from three megahertz of spectrum in the band within two years of the initial grant date of a new license in the band, but may continue to operate in the remaining one megahertz of the band until the expiration of its nonrenewable license.³⁷ The Commission has directed the Bureau to adopt reporting requirements so that Airfone's transition of its base stations and its subscribers' aircraft to operations in one megahertz of the 800 MHz air-ground band may be monitored.³⁸ Accordingly, the Bureau issued a public notice enumerating such requirements on February 6, 2006.³⁹ Airfone must file its initial transition status report with the Commission six months from the date of the grant of any new license in the band and at each of the three six-month intervals thereafter.⁴⁰

21. In addition, if Airfone, or an affiliate of Airfone, wins an exclusive 3 MHz license at auction, the Bureau will issue a public notice within 60 days of the grant of such a license that will require the company (1) to include in each status report information regarding the transition of its existing subscribers from its narrowband system to a broadband system and (2) to file additional status reports at six-month intervals from the conclusion of the two-year transition period until the expiration of its five-year nonrenewable license.⁴¹

³⁵ <http://wireless.fcc.gov/auctions/anticollusion>.

³⁶ *Air-Ground Order*, 20 FCC Rcd at 4440-41 ¶¶ 80-81.

³⁷ *See id.* at 4438-39 ¶ 75. If Band Plan 1 or 2 is the winning configuration at auction, Verizon Airfone's incumbent system must cease operations in the lower 1.5 MHz portion of each 2 MHz air-ground band within two years of the initial date of grant of a new license or licenses. Verizon Airfone may relocate its incumbent operations to the upper 0.5 MHz portion of each 2 MHz band (0.5 MHz at 850.5-851.0 MHz paired with 0.5 MHz at 895.5-896.0 MHz) and may continue to operate under the renewal authorization until the end of the five-year license term. If Band Plan 3 is the winning configuration at auction, Verizon Airfone's incumbent system must cease operations in the upper 1.5 MHz portion of each 2 MHz air-ground band within two years of the initial date of grant of a new license; Airfone may relocate to the lower 0.5 MHz portion of each 2 MHz band (0.5 MHz at 849.0-849.5 MHz paired with 0.5 MHz at 894.0-894.5 MHz) and may continue to operate under the renewal authorization until the end of the five-year license term.

³⁸ *Air-Ground Reconsideration Order and R&O* at ¶ 21.

³⁹ "Wireless Telecommunications Bureau Adopts Reporting Requirements Regarding Verizon Airfone Inc., Call Sign KNKG804," *Public Notice*, DA 06-294 (rel. February 6, 2006).

⁴⁰ Airfone is not required to submit any classified information regarding government aircraft in its reports, and may seek confidential treatment of information contained in the transition reports in accordance with the Commission's rules and policies. *Air-Ground Reconsideration Order and R&O* at ¶ 21. *See also* 47 C.F.R. § 0.459.

⁴¹ *Air-Ground Reconsideration Order and R&O* at ¶ 22. The Commission has stated that, at a minimum, Airfone must specify the number and percentage of each type of aircraft (commercial, general aviation, and government) and base stations that have been configured to operate in the three megahertz portion of the band. The report must also delineate which aircraft have been transitioned from Airfone's 4 MHz narrowband system directly to a 3 MHz broadband system, and which aircraft have been transitioned from the 4 MHz narrowband system to a 1 MHz narrowband system and then to a 3 MHz broadband system. *Id.*

4. Interference Protection

22. Ground stations in the Air-Ground Radiotelephone Service that operate in the 849-851 MHz range will be subject to the same interference abatement obligation rules adopted for cellular services in the *800 MHz Order*.⁴²

a. International Coordination

23. To promote interoperable communications and to manage interference, some of the ground station locations in North America and channel block assignments of the 800 MHz air-ground band have been predetermined consistent with bilateral agreements with Mexico and with Canada.⁴³ These agreements, which provide for coordinated use of the 800 MHz air-ground frequencies over North American airspace, are based on a narrow bandwidth channel scheme, and therefore may need to be renegotiated to provide for more flexible use of this spectrum based on the band plan configuration that is implemented as a result of the auction.

b. Quiet Zone

24. Stations in the 800 MHz Air-Ground Radiotelephone Service must protect the radio quiet zones set forth in the Commission's rules.⁴⁴ Licensees are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone entity prior to operating within the areas described in the Commission's rules.⁴⁵

5. Spectrum Sharing Plan

25. If Band Plan 1, which is comprised of two overlapping 3 MHz licenses, is implemented, the new licensees will be required to jointly file a spectrum sharing and site selection plan with the Bureau within six months of the initial grant of their spectrum licenses, and they will be required to notify the Bureau of any changes to the plan.⁴⁶ The Bureau will issue a public notice prior to the commencement of Auction No. 65 in which it will specify the filing requirements for such a plan. This approach will provide parties with overlapping spectrum licenses flexibility to configure their systems without having to adhere to minimum spacing requirements or site locations predetermined by the Commission.

6. Due Diligence

26. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the 800 MHz Air-Ground Radiotelephone Service licenses in this auction. **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 the 800 MHz Air-Ground**

⁴² *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15029-30 ¶¶105-107 (2004) (subsequent history omitted) (to be codified at 47 C.F.R. §§ 22.970(b) and 90.672) ("*800 MHz Order*").

⁴³ See "Arrangement Between the Department of Communications of Canada and the Federal Communications Commission of the United States of America Concerning the Use of the Bands 849-851 and 894-896 MHz," signed August 18, 1992 (U.S.A.) and August 28, 1992 (Canada), Section 4. See also "Protocol Concerning the Use of the 849-851 and 894-896 MHz Bands for Public Air-To-Ground Radio Service," signed June 16, 1994, by the Government of the United States and the Government of Mexico, Article IV.

⁴⁴ See 47 C.F.R. § 1.924.

⁴⁵ See *id.*

⁴⁶ See *Air-Ground Order*, 20 FCC Rcd at 4422-23 ¶ 34.

Radiotelephone Service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, 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.

27. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 65 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision regarding participation in the auction. Participants in Auction No. 65 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

28. Applicants should also be aware that certain pending and future applications (including those for modification), petitions for rulemaking, requests for special temporary authority, 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. 65. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 65. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

29. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction No. 65. 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.

30. 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. 65.

31. Applicants may obtain information about the incumbent air-ground licensee, Verizon Airfone Inc., through the Bureau's licensing database 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 or by going to the ULS support site at <http://esupport.fcc.gov/licensing.htm>. Applicants should direct questions regarding the ULS search capabilities to the FCC ULS Technical Support hotline at (877) 480-3201, option two. The hotline is available to assist with questions Monday through Friday, from 8:00 a.m. to 7:00 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

32. 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 its databases.

33. Potential applicants are strongly encouraged to physically inspect any prospective ground station sites and also to familiarize themselves with the environmental assessment obligations described below in Section I.B.8.

7. Bidder Alerts

34. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 65 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.

35. 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. 65 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

8. National Environmental Policy Act Requirements

36. Licensees must comply with the Commission’s rules regarding implementation of the National Environmental Policy Act (“NEPA”).⁴⁷ 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.⁴⁸ 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 also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

⁴⁷ 47 C.F.R. Ch. 1, Subpart I.

⁴⁸ 47 C.F.R. §§ 1.1305-1.1319.

C. Auction Specifics**1. Auction Date**

37. Bidding in Auction No. 65 will begin on Wednesday, May 10, 2006, as announced in the *Auction No. 65 Comment Public Notice*.⁴⁹ 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

38. Auction No. 65 – 800 MHz Air-Ground Radiotelephone

3. Bidding Methodology

39. The bidding methodology for Auction No. 65 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC’s Integrated Spectrum Auction System (“ISAS” or “FCC Auction System”), and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.⁵⁰

4. Pre-Auction Dates and Deadlines

40. Dates and Deadlines

Auction Seminar	March 14, 2006
Short-Form Application (FCC Form 175) Filing Window Opens	March 14, 2006; 12:00 p.m. ET
Short-Form Application (FCC Form 175) Filing Deadline	March 24, 2006; 6:00 p.m. ET
Upfront Payment (via wire transfer) Deadline.....	April 17, 2006; 6:00 p.m. ET
Mock Auction	May 8, 2006
Auction Begins.....	May 10, 2006

5. Requirements for Participation

41. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. Eastern Time (ET), March 24, 2006, following the electronic filing procedures set forth in Attachment C to this Public Notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, April 17, 2006.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

⁴⁹ *Auction No. 65 Comment Public Notice* at 1.

⁵⁰ For additional information regarding the FCC’s Integrated Spectrum Auction System, including sample screen shots, visit the “About ISAS” web page at http://wireless.fcc.gov/auctions/about_isas.

6. General Contact Information

42. General Contact Information Table

GENERAL AUCTION INFORMATION

General Auction Questions
Seminar Registration

FCC Auctions Hotline
(888) 225-5322, option two;
or (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

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

Mobility Division
(202) 418-0620

TECHNICAL SUPPORT

Electronic Filing
FCC Auction System

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

PAYMENT INFORMATION

Wire Transfers
Refunds

FCC Auctions Accounting Branch
(202) 418-0578
(202) 418-2843 (Fax)

AUCTION BIDDER LINE

Will be furnished only to qualified bidders

FCC COPY CONTRACTOR

Additional Copies of
Commission Documents

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

PRESS INFORMATION

Chelsea Fallon (202) 418-7991

FCC FORMS

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

ACCESSIBLE FORMATS

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

Consumer and Governmental Affairs Bureau
(202) 418-0530 or (202) 418-0432 (TTY)
fcc504@fcc.gov

FCC INTERNET SITES

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

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

43. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits.⁵¹ The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.⁵² Eligibility to participate in bidding is based on the applicant's short-form application and certifications as well as its upfront payment, explained below.⁵³ In the second phase of the process, winning bidders file a more comprehensive long-form application.⁵⁴

44. Entities seeking licenses available in Auction No. 65 must file a short-form application electronically via the FCC Auction System before 6:00 p.m. ET on March 24, 2006, following the procedures prescribed in Attachment C to this Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.⁵⁵ Applicants should read the instructions set forth in Attachment C to this Public Notice carefully and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their short-form applications.

45. An entity may not submit more than one short-form application for a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

46. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. 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.

A. Preferences for Small Businesses

1. Bidding Credits

47. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction No. 65 bidding credits will be available to small businesses and very small businesses, and consortia thereof, as follows:

⁵¹ See 47 C.F.R. § 1.2105.

⁵² See *id.*; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

⁵³ See *infra* Section III.D. "Upfront Payments — Due April 17, 2006."

⁵⁴ See 47 C.F.R. § 1.2107.

⁵⁵ See 47 C.F.R. § 1.2105(a)(2)(v).

- A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (“small business”) will receive a 15 percent discount on its winning bid.⁵⁶
- A bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years (“very small business”) will receive a 25 percent discount on its winning bid.⁵⁷

48. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

49. Every applicant that claims eligibility for a bidding credit as either a small business or a very small business, or a consortium of small businesses or very small businesses, will be required to provide information regarding revenues attributable to the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests on its FCC Form 175 short-form application to establish that it satisfies the applicable eligibility requirement.⁵⁸ Applicants considering claiming eligibility as a designated entity in Auction No. 65 should review carefully the recently released *CSEA/Part 1 Designated Entity FNPRM*.⁵⁹ In the *CSEA/Part 1 Designated Entity FNPRM*, the Commission tentatively concluded that it should “restrict the award of designated entity benefits to an otherwise qualified designated entity where it has a ‘material relationship’ with a ‘large in-region incumbent wireless service provider,’” and sought comment on how to define the elements of such a restriction. The Commission also sought comment on whether to restrict the award of designated entity benefits where an otherwise qualified designated entity has a “material relationship” with a large entity that has a significant interest in communications services.⁶⁰ The Commission further proposed that in the event that any designated entity applicants have filed an application to participate in an auction prior to the effective date of any designated entity rule changes adopted pursuant to the *CSEA/Part 1 Designated Entity FNPRM*, such applicants be required to amend their applications on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to section 1.2110 of the Commission’s rules effective as of the date of the statement.⁶¹ Finally, the Commission noted that under this proposal the Bureau will establish any detailed procedures necessary for making required amendments and announce such procedures by public notice.⁶² Accordingly, applicants considering claiming eligibility as a designated entity in Auction No. 65 should monitor further proceedings pursuant to the *CSEA/Part 1 Designated Entity FNPRM* to assure their ability to comply with any changes to the designated entity rules that the Commission may adopt that are applicable to applicants in Auction No. 65.

⁵⁶ *Air-Ground Reconsideration Order and R&O* at ¶¶ 28-42; 47 C.F.R. § 1.2110(f)(2)(iii). See *infra* Section II.E. “Bidding Credit Revenue Disclosures” regarding the attribution of revenues to applicants.

⁵⁷ *Air-Ground Reconsideration Order and R&O* at ¶¶ 28-42; 47 C.F.R. § 1.2110(f)(2)(ii). See *infra* Section II.E. “Bidding Credit Revenue Disclosures” regarding the attribution of revenues to applicants.

⁵⁸ 47 C.F.R. §§ 1.2105, 1.2110(b)(1)(i). See *infra* Section II.E. “Bidding Credit Revenue Disclosures” and Attachment C.

⁵⁹ *CSEA/Part 1 Designated Entity FNPRM*, FCC 06-8 (rel. February 3, 2006), at ¶¶ 1, 11.

⁶⁰ *Id.*, ¶¶ 1, 19.

⁶¹ *Id.*, ¶ 21.

⁶² *Id.*, ¶ 21, n.54.

2. Tribal Land Bidding Credits

50. Tribal land bidding credits will not be available in Auction No. 65. The Commission's tribal land bidding credits are intended to provide incentives for wireless telecommunications carriers to serve individuals living on tribal lands. More specifically, tribal land bidding credits are intended for winning bidders that use licenses to deploy facilities and provide service to federally recognized tribal areas that are either unserved by any telecommunications carrier or that have a wireline telephone subscription or penetration rate of 85 percent or less.⁶³ Commercial Air-Ground Radiotelephone Service licenses, however, must be used to provide service to aircraft and may not be used to provide ancillary land mobile or fixed services.⁶⁴ Because 800 MHz air-ground licenses may not be used to provide terrestrial telephone service, tribal land bidding credits will not be available to winning bidders in Auction No. 65 under 47 C.F.R. § 1.2110(f)(3).

3. Installment Payments

51. Installment payment plans will not be available in Auction No. 65.

B. License Selection

52. In Auction No. 65, applicants must select the licenses on which they want to bid from the "Eligible Licenses" list. The applicant may select all the licenses in the list (by using the **SELECT ALL** option) or select individual licenses from the list. There will be no opportunity to change license selection after the short-form filing deadline.⁶⁵ It is critically important that an applicant confirm its license selection before submitting its short-form application because the FCC Auction System will not accept bids on licenses that an applicant has not selected on its FCC Form 175.

C. Consortia and Joint Bidding Arrangements

53. Applicants will be required to identify in their short-form applications all 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.⁶⁶ Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.⁶⁷ If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.⁶⁸

⁶³ Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, *Third Report and Order*, 19 FCC Rcd 17652, 17652 ¶ 1 (2004); 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 11794, 11796 ¶ 1 (2000).

⁶⁴ See *Air-Ground Order*, 20 FCC Rcd at 4431 ¶¶ 52-53; *Air-Ground Reconsideration Order and R&O* at ¶¶ 5-7.

⁶⁵ 47 C.F.R. § 1.2105(b)(2).

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

⁶⁷ 47 C.F.R. § 1.2105(a)(2)(ix).

⁶⁸ See *supra* Section I.B.2 "Prohibition of Collusion."

54. After the filing of short-form applications, 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 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.⁶⁹ 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.⁷⁰

D. Ownership Disclosure Requirements

55. 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.⁷¹ Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties in interest and ownership structure of the applicant.

56. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction), will automatically be entered into the applicant's short-form application. Applicants are responsible for ensuring that the information submitted in their FCC Form 175 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that needs to be changed directly in the short-form application.

E. Bidding Credit Revenue Disclosures

57. To determine which applicants qualify for bidding credits as small businesses or very small businesses, the Commission considers the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests.⁷² Therefore, 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 their FCC Form 175 short-form applications the gross revenues of each of the following for the preceding three years: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests.⁷³ **Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. In order to comply with the Commission's disclosure requirements for bidding credit eligibility, an applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, the gross revenues for each of the preceding three years. If**

⁶⁹ 47 C.F.R. § 1.2105(c)(4)(i), (ii).

⁷⁰ See *supra* Section I.B.2 "Prohibition of Collusion."

⁷¹ 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.

⁷² 47 C.F.R. § 1.2110(b); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15323-27, ¶¶ 59-67.

⁷³ 47 C.F.R. § 1.2110(b).

the applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.⁷⁴

58. Controlling interests include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, **ownership of at least 50.1 percent of an entity's voting stock evidences *de jure* control.** *De facto* control is determined on a case-by-case basis.⁷⁵ The following are some common indicia of *de facto* control:

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee;
- the entity plays an integral role in management decisions.⁷⁶

Officers and directors of an applicant are also considered to have a controlling interest in the applicant.⁷⁷ 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.

59. In recent years the Commission has made modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes include 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.⁷⁸ The Commission has also clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant.⁷⁹

60. A consortium of small businesses or very small businesses is a "conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business

⁷⁴ The recently adopted *CSEA/Part 1 Report and Order* will modify the procedure by which a consortium that is a winning bidder will apply for a license. See *CSEA/Part 1 Report and Order* at ¶¶ 51-52. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* to understand how the members of the consortia will apply for a license in the event they are winning bidders.

⁷⁵ For further guidance on the issue of *de facto* control, see the Commission's affiliation rule at 47 C.F.R. § 1.2110(b)(5); see also *Intermountain Microwave*, 12 FCC 2d 559, 560 (1963), and Application of Baker Creek 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).

⁷⁶ See 47 C.F.R. § 1.2110(c)(2).

⁷⁷ See 47 C.F.R. § 1.2110(c)(2)(ii)(F).

⁷⁸ *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd at 10186-194 ¶¶ 10-18; *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd at 1945-46 ¶ 9.

⁷⁹ *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd at 10185-186 ¶¶ 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.

[or] very small business as those terms are defined in the service-specific rules.”⁸⁰ Thus, each member of a consortium of small or very small businesses that applies to participate in Auction No. 65 must **individually** meet the definition of small business or very small business adopted by the Commission for the 800 MHz Air-Ground Radiotelephone Service.⁸¹ Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium’s eligibility as a small business or very small business,⁸² this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.⁸³

F. Provisions Regarding Former and Current Defaulters

61. Each applicant must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110,⁸⁴ have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency.⁸⁵ In addition, each applicant must certify under penalty of perjury on its short-form application that, as of the short-form filing deadline, the applicant, its affiliates, its controlling interests, 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 that they are not delinquent on any non-tax debt owed to any Federal agency.⁸⁶ 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.

62. “Former defaulters” — *i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that in the past have defaulted on any Commission 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. 65, 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 50 percent more than the normal upfront payment amounts.⁸⁷

63. “Current defaulters” — *i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that are in default on any payment for any Commission licenses (including down payments) or are delinquent on any non-tax debt

⁸⁰ 47 C.F.R. § 1.2110(c)(6).

⁸¹ *Air-Ground Reconsideration Order and R&O* at ¶ 33.

⁸² 47 C.F.R. § 1.2110(b)(3)(i).

⁸³ The recently adopted *CSEA/Part 1 Report and Order* will modify the procedure by which a consortium that is a winning bidder will apply for a license. See *CSEA/Part 1 Report and Order* at ¶¶ 51-52. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* to understand how the members of the consortia will apply for a license in the event they are winning bidders.

⁸⁴ 47 C.F.R. § 1.2110.

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

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

⁸⁷ 47 C.F.R. § 1.2106(a).

owed to any Federal agency as of the filing deadline for applications to participate in this auction – are not eligible to bid in Auction No. 65.⁸⁸

64. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process.⁸⁹ For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of Sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.⁹⁰ Therefore, with respect to regulatory or application fees, the sanctions Sections 1.2105(a) and 1.2106(a) impose with respect to competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.⁹¹

65. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the "red light rule," that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States.⁹² Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules "are not affected" by the red light rule.⁹³ As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of Sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to

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

⁸⁹ *See* "WTB Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements," *Public Notice*, 19 FCC Rcd 21920 (WTB 2004) ("*Auction Default Disclosure Public Notice*"). This public notice may be found at <http://wireless.fcc.gov/auctions/58/>.

⁹⁰ *See* Letter to Cheryl A. Tritt, Esq., Morrison and Foerster, LLP, from Margaret Wiener, Chief, Auctions and Spectrum Access Division, 19 FCC Rcd 22907 (WTB 2004) (clarifying the term "debt" or "non-tax debt" as referenced in 47 C.F.R. §§ 1.2105(a) and 1.2106(a)). This letter may be found at <http://wireless.fcc.gov/auctions/58/>.

⁹¹ Even where Commission rules expressly permit late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. *See* 47 C.F.R. § 1.1164(a). Failure to comply with the terms of a particular demand letter in the time period provided may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

⁹² Amendment of Part 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) ("*Debt Collection Report and Order*").

⁹³ *Debt Collection Report and Order*, 19 FCC Rcd at 6541 n.11. Footnote 11 specifically mentions 47 C.F.R. § 1.2105(a)(2)(x) and (xi).

comply with the default and delinquency disclosure requirements of 47 C.F.R. § 1.2105.⁹⁴ Thus, while the red light rule may ultimately prevent the processing of long-form applications by auction winners, an auction applicant's "red light" status is not necessarily determinative of its eligibility to participate in this auction or to its upfront payment obligation.

66. Prospective applicants for Auction No. 65 should note that all long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule,⁹⁵ and such review may result in the dismissal of a winning bidder's long-form application.⁹⁶

G. Other Information

67. Applicants owned by members of minority groups and/or women, as defined in Section 1.2110(c)(3),⁹⁷ may identify themselves in filling out their short-form applications 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.⁹⁸

H. Minor Modifications to Short-Form Applications (FCC Form 175)

68. After the deadline for filing short-form applications (FCC Forms 175) at **6:00 p.m. ET on March 24, 2006**, applicants are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (*e.g.*, change their license selections, change control of the applicant, or claim eligibility for a higher bidding credit).⁹⁹ Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

69. Any application amendment and related statements of fact must be certified by: (1) the applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) an officer, director, or duly authorized employee, if the applicant is a corporation, (4) a member who is an officer, if the applicant is an unincorporated association, (5) the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to make such certifications under the laws of the applicable jurisdiction, if the applicant is a governmental entity.¹⁰⁰

70. An applicant must make permissible minor changes to its short-form application, as such changes are defined by Section 1.2105(b), on-line. Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

⁹⁴ See *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and FCC Form 175 default and delinquency disclosure requirements for auction applicants).

⁹⁵ See *Debt Collection Report and Order*, 19 FCC Rcd 6540. See also 47 C.F.R. § 1.1112.

⁹⁶ Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 C.F.R. §§ 1.2104(g) and 1.2109(c).

⁹⁷ 47 C.F.R. § 1.2110(c)(3).

⁹⁸ Designated entities are defined as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. 47 C.F.R. § 1.2110(a).

⁹⁹ See 47 C.F.R. § 1.2105(b).

¹⁰⁰ See 47 C.F.R. § 1.917.

71. In addition, applicants should 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: auktion65@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 65 and the name of the applicant. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application (FCC Form 175) amendments should be directed to Brian Carter of the Auctions and Spectrum Access Division at (202) 418-0660.

I. Maintaining Current Information in Short-Form Applications (FCC Form 175)

72. 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.¹⁰¹ Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. If an amendment reporting substantial changes is a "major amendment" as defined by 47 C.F.R. § 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.¹⁰²

III. PRE-AUCTION PROCEDURES

A. Auction Seminar — March 14, 2006

73. On Tuesday, March 14, 2006, the FCC will conduct a seminar for parties interested in participating in Auction No. 65 at the Federal Communications Commission headquarters, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the 800 MHz Air-Ground Radiotelephone Service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

74. To register, complete the registration form attached hereto as Attachment B and submit it by **Monday, March 13, 2006**. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

75. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC's Auction 65 web page at <http://wireless.fcc.gov/auctions/65/>. Select the "Auction Seminar" link.

B. Short-Form Application (FCC Form 175) — Due Before 6:00 p.m. ET on March 24, 2006

76. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application electronically via the FCC Auction System.¹⁰³ This application must be received at the Commission prior to 6:00 p.m. ET on March 24, 2006. **Late applications will not be accepted.** There is no application fee associated with filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.¹⁰⁴

77. Applications may generally be filed at any time beginning at noon ET on March 14, 2006, until 6:00 p.m. ET on March 24, 2006. Applicants are strongly encouraged to file early and are

¹⁰¹ 47 C.F.R. § 1.65.

¹⁰² See 47 C.F.R. § 1.2105(b)(2).

¹⁰³ 47 C.F.R. § 12105(a).

¹⁰⁴ See *infra* Section III.D "Upfront Payments — Due April 17, 2006."

responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on March 24, 2006.

78. Applicants must always click on the SUBMIT button on the Certify & Submit screen of the electronic form to successfully submit their FCC Form 175 or modifications thereto. Any form that is not submitted will not be reviewed by the FCC. Information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; 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 Technical Support are recorded.

C. Application Processing and Minor Corrections

79. After the deadline for filing 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 that have minor defects that may be corrected, and the deadline for resubmitting such corrected applications.

80. As described more fully in the Commission's rules, after the March 24, 2006, 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 control of the applicant, or claim eligibility for a higher bidding credit).¹⁰⁵

D. Upfront Payments — Due April 17, 2006

81. 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 sent by facsimile to Mellon Bank in Pittsburgh, PA. **All upfront payments must be received in the proper account at Mellon Bank before 6:00 p.m. ET on April 17, 2006.**

1. Making Auction Payments by Wire Transfer

82. Wire transfer payments must be received before 6:00 p.m. ET on April 17, 2006. 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
500 Ross St.
Pittsburgh, PA 15262

BENEFICIARY: FCC/Account # 910-1203

Originating Bank Information (OBI Field): (Skip one space between each information item)
"AUCTIONPAY"

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

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A65U")

FCC CODE 1: (same as FCC Form 159, block 28A: "65")

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

LOCKBOX NO. # 358425

¹⁰⁵ 47 C.F.R. § 1.2105(b); see also Two Way Radio of Carolina, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 12035 (1999).

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.

83. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209-6045. On the cover sheet of the facsimile, write “Wire Transfer — Auction Payment for Auction No. 65.” In order to meet the Commission’s upfront payment deadline, an applicant’s payment must be credited to the Commission’s account before the deadline.¹⁰⁶ **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.**

84. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 65 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 April 17, 2006, deadline will result in dismissal of the application and disqualification from participation in the auction.

2. FCC Form 159

85. 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 D to this Public Notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

3. Upfront Payments and Bidding Eligibility

86. In the *Part 1 Order* the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction.¹⁰⁷ In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that former defaulters be required to pay upfront payments 50 percent greater than non-former defaulters.¹⁰⁸ For purposes of this calculation, the “applicant” includes the

¹⁰⁶ See Letter to Patrick Shannon, Counsel for Lynch 3G Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, 18 FCC Rcd 11552 (WTB 2003).

¹⁰⁷ 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*”).

¹⁰⁸ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17 ¶¶ 40-42; 47 C.F.R. § 1.2106(a). See *supra* II.F. “Provisions Regarding Former and Current Defaulters.”

applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by Section 1.2110 of the Commission's rules.¹⁰⁹

87. In the *Auction No. 65 Comment Public Notice*, we proposed an upfront payment amount of \$100,000 per license.¹¹⁰ We further proposed that the amount of the upfront payment would determine a bidder's bidding eligibility in bidding units. For Auction No. 65, we proposed to assign 100,000 bidding units per license.¹¹¹ The number of bidding units for a given license is fixed and does not change during the auction as prices change.

88. Because the mutually incompatible band configurations and the three megahertz eligibility restriction limit a bidder to winning only a single license, we proposed to permit a bidder with 100,000 bidding units of eligibility to bid or be active simultaneously on any or all of the licenses it selected on its FCC Form 175, rather than being limited to activity on a single license with 100,000 bidding units as our usual activity and eligibility rules would require. Under our proposal, an upfront payment of \$100,000, or \$150,000 if the applicant is a former defaulter,¹¹² would give a bidder 100,000 bidding units of eligibility, which in turn would permit the bidder to be active on any or all of the licenses it selected on its FCC Form 175. Under this proposal, it would be unnecessary to acquire more than 100,000 bidding units of bidding eligibility. We received no comments concerning our proposals regarding the amount of upfront payments and the number of bidding units for each license available in Auction No. 65.

89. We adopt the above proposals. In order to bid on a license, qualified bidders that applied for any or all licenses on FCC Form 175 must have eligibility of 100,000 bidding units. Therefore, an applicant that is not a former defaulter must submit a total upfront payment of at least \$100,000 in order to have 100,000 bidding units, or else the applicant will not be eligible to participate in the auction. An applicant that is a former defaulter must submit an upfront payment of at least \$150,000 in order to have 100,000 bidding units. If a former defaulter fails to submit an upfront payment of at least \$150,000, the applicant will not be eligible to participate in the auction.¹¹³ **If an applicant fails to submit the upfront payment required to establish eligibility to bid in the auction by the upfront payment deadline, it will not be permitted to establish such eligibility after the upfront payment deadline.**

90. With 100,000 bidding units a bidder may be active on any or all licenses selected on its FCC Form 175, although it may win only one license. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must purchase 100,000 bidding units. **The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.**

91. The upfront payments and bidding units for each license are set forth in Attachment A of this Public Notice.

¹⁰⁹ 47 C.F.R. § 1.2110(c).

¹¹⁰ *Auction No. 65 Comment Public Notice* at 6. In contrast to the Bureau's procedures in many auctions, the minimum opening bid amounts for licenses in Auction No. 65 will not be determined by the number of bidding units per license. See *infra* IV.B.2. "Reserve Price or Minimum Opening Bid."

¹¹¹ *Auction No. 65 Comment Public Notice* at 6.

¹¹² See *supra* II.F. "Provisions Regarding Former and Current Defaulters."

¹¹³ 47 C.F.R. § 1.2106(a).

4. Applicants' Wire Transfer Information for Purposes of Refunds of Upfront Payments

92. The Commission will use wire transfers for all Auction No. 65 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. Applicants are reminded that information submitted as part of their FCC Form 175 will be available to the public. Accordingly, the pertinent information for wire transfers should not be included in the FCC Form 175. Wire Transfer Instructions can also be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418-2843. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

Name of Bank
ABA Number
Address of Bank
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
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.¹¹⁴) Eligibility for refunds is discussed in Section V.F., below.

E. Auction Registration

93. 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 who have timely submitted upfront payments sufficient to make them eligible to bid.

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

95. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, May 4, 2006, should call (717) 338-2888. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

¹¹⁴ 47 C.F.R. § 1.1910.

96. In the event that SecurID cards are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring the replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

F. Remote Electronic Bidding

97. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. 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, the telephonic bidding phone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. 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. 65.

98. 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 – May 8, 2006

99. All qualified bidders will be eligible to participate in a mock auction on Monday, May 8, 2006. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. AUCTION EVENT

100. The first round of bidding for Auction No. 65 will begin on Wednesday, May 10, 2006. 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

101. In the *Auction No. 65 Comment Public Notice*, we proposed to award all licenses in Auction No. 65 in a simultaneous multiple round auction.¹¹⁵ We received no comments on this proposal. As indicated above, licenses will be offered in three mutually incompatible band configurations, and the band plan that receives the highest gross bids in the auction will be implemented. We believe the simultaneous multiple-round auction is an appropriate auction design given these circumstances, and we adopt our proposal. In a simultaneous multiple round auction, all licenses are available during the entire auction, and bids are accepted on any license until the auction concludes. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction until bidding stops on every license.

2. Activity Rule

102. As explained above, under the procedures we establish in this Public Notice for upfront payments and bidding eligibility, the amount of the upfront payment submitted by a bidder determines the bidder's bidding eligibility in terms of bidding units. A bidder must have 100,000 bidding units of

¹¹⁵ *Auction No. 65 Comment Public Notice* at 4.

eligibility to participate in Auction No. 65 — *i.e.*, to bid on at least one license — and may hold a maximum of 100,000 bidding units of eligibility. Any reduction in a bidder's eligibility will effectively preclude the bidder from further bidding in the auction.¹¹⁶

103. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. For Auction No. 65, we proposed the following activity requirement: in each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active (place a bid or hold the provisionally winning bid) on at least one license.¹¹⁷ Under this proposal, failure to maintain the required activity level has the effect of eliminating the bidder from further bidding in the auction unless an activity rule waiver is used. We received no comments on this proposal.

104. We adopt this proposal for Auction No. 65 because we believe it is an appropriate procedure for ensuring that the auction will proceed at a reasonable pace. Thus, in Auction No. 65, in each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on at least one license. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round or if it submits a bid in the current round.¹¹⁸ If a bidder fails to be active on at least one license in a round, it must use one of the limited number of activity rule waivers allotted to it in order to maintain its eligibility to continue bidding in the auction. If the bidder has no activity rule waivers remaining, its eligibility will be reduced and it will no longer be permitted to place bids in the auction.

3. Activity Rule Waivers

105. In the *Auction No. 65 Comment Public Notice*, we proposed that each bidder in the auction be provided with three activity rule waivers.¹¹⁹ The Bureau received no comments on this issue. We adopt our proposal that each bidder be provided with three activity rule waivers. We are satisfied that providing three waivers over the course of the auction will give bidders a sufficient number of waivers and flexibility, while also safeguarding the integrity of the auction.

106. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's failure to be active on at least one license in the current round. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity rule waivers can be either applied proactively by the bidder (a "proactive waiver") or applied automatically by the FCC Auction System (an "automatic waiver") and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

107. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility, which in this auction would have the effect of precluding the bidder from further bidding in the auction. Therefore, the system will

¹¹⁶ As also explained above, 100,000 bidding units of eligibility will permit bidders to be active on more than one license in a given round, although no bidder will be permitted to win more than a single license. *See supra* Section III.D.3. "Upfront Payments and Bidding Eligibility."

¹¹⁷ *Auction No. 65 Comment Public Notice* at 7. The activity rules in most FCC auctions require that bidders be active on a certain percentage of their eligibility, and the required percentage increases one or more times during the auction in a series of stages. The requirement we proposed for Auction No. 65 corresponds to a single stage auction with a 100 percent activity requirement.

¹¹⁸ *See infra* IV.B.4. "Provisionally Winning Bids"; IV.B.3. "Minimum Acceptable Bid Amounts and Bid Increment Amounts."

¹¹⁹ *Auction No. 65 Comment Public Notice* at 7-8.

automatically apply a waiver at the end of any bidding round in which a bidder fails to be active (place a bid or hold the provisionally winning bid) on at least one license unless the bidder has no activity rule waivers available. If a bidder has no waivers remaining and does not satisfy the required activity requirement, it will no longer be permitted to place bids in the auction.

108. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the “apply waiver” function in the FCC Auction System) during a bidding round in which no bids are submitted, the auction will remain open and the bidder’s eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. **Note: Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.**

4. Auction Stopping Rules

109. For Auction No. 65, the Bureau proposed to employ a simultaneous stopping rule approach.¹²⁰ The Bureau also sought comment on a modified version of the simultaneous stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver or submits any new bids on any license on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

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

111. In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds (“special stopping rule”). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

112. We proposed to exercise these options 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.¹²¹ We noted that before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity.

113. We received no comments concerning the auction stopping rules. We believe that the proposed stopping rules are appropriate for Auction No. 65, because our experience in prior auctions demonstrates that these stopping rules balance the interests of administrative efficiency and maximum bidder participation. Therefore, we adopt the above proposals. Auction No. 65 will begin under the simultaneous stopping rule approach, and the Bureau will retain the discretion to employ the other versions of the stopping rule.

¹²⁰ *Id.* at 5-6.

¹²¹ *Id.*

5. Auction Delay, Suspension, or Cancellation

114. In the *Auction No. 65 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.¹²² We received no comments on this issue.

115. 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

116. 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.

117. 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

118. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for 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.¹²³ 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.¹²⁴ Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum licenses being

¹²² *Id.* at 6.

¹²³ 47 U.S.C. § 309(j)(4)(F).

¹²⁴ 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*”).

auctioned.¹²⁵ The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.¹²⁶

119. In the *Auction No. 65 Comment Public Notice*, the Bureau proposed to establish minimum opening bids and an aggregate reserve price for Auction No. 65, and to retain the discretion to lower the minimum opening bids.¹²⁷ Specifically, for Auction No. 65, the Bureau proposed to set minimum opening bids for each license and to establish a published aggregate reserve price for the entire band. Under the proposal for an aggregate reserve price, if the sum of the provisionally winning gross bids at the close of bidding did not meet or exceed the aggregate reserve price, the Commission would cancel the auction and no licenses would be awarded.

120. More specifically, for Auction No. 65, we proposed to set minimum opening bids on a license-by-license basis as follows:

Licenses	Bandwidth	Minimum Opening Bid
A and B	3 MHz (2 MHz shared)	\$1,500,000
C and F	3 MHz	\$2,800,000
D and E	1 MHz	\$200,000

121. We also proposed to establish a published reserve price of \$5,000,000 for the entire band.

122. In the alternative, the Bureau sought comment on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bid or reserve price.¹²⁸

123. Verizon Airfone filed comments supporting the Bureau's proposed minimum opening bids but opposing the use of a reserve price in Auction No. 65. According to Verizon Airfone, the Bureau has no historical data on which to base its proposed reserve price, and it should let the marketplace decide the value of the licenses being auctioned. Verizon Airfone further argues that if the Bureau deems a reserve price to be necessary, it should set reserve prices for each individual license rather than an aggregate reserve price for the band because one license is likely to be valued more highly than the other and a bidder for the more highly valued license could be responsible for a disproportionate amount of any aggregate reserve price.¹²⁹

124. We adopt our proposed minimum opening bids. The minimum opening bid amounts we adopt for Auction No. 65 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 have used all of their activity waivers. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid amount on specific licenses.

125. We do not adopt our proposal for an aggregate reserve price. We recognize that, although a reserve price might be useful in meeting our obligation under Section 309(j)(3)(C) of the Communications Act to attempt to recover for the public a portion of the value of the spectrum,¹³⁰ there

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Auction No. 65 Comment Public Notice* at 8-9.

¹²⁸ *Id.* at 9.

¹²⁹ Verizon Airfone Comments, filed January 31, 2006.

¹³⁰ 47 C.F.R. § 309(j)(3)(C).

are insufficient data to use to determine an appropriate reserve price for licenses to provide air-ground services. We therefore conclude that we should not establish a reserve price for this auction.

126. The minimum opening bid amounts for each license available in Auction No. 65 are set forth in Attachment A.

3. Minimum Acceptable Bid Amounts and Bid Increment Amounts

127. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until the bids placed enable the FCC Auction System to calculate a higher “price” for the license. If such a “price” can be calculated, the minimum acceptable bid amount for the license will be determined in a two-step process:

1. The FCC Auction System designates a “price” for each license. For licenses with provisionally winning bids, this price will be equal to the amount of the provisionally winning bid. For non-provisionally winning licenses, the price will be equal to the amount of the highest bid placed on the license by any non-provisionally winning bidder.¹³¹
2. The price is increased using the minimum acceptable bid percentage to determine the minimum acceptable bid.

128. Specifically, the minimum acceptable bid amount will be calculated by multiplying the license price times one plus the minimum acceptable bid percentage. For example, if the minimum acceptable bid percentage is 5 percent, the minimum acceptable bid amount will equal (license price) * (1.05), rounded.

129. In the *Auction No. 65 Comment Public Notice*, we proposed to use a minimum acceptable bid percentage of 5 percent.¹³² We received no comment on this issue. We believe that a minimum acceptable bid percentage of 5 percent will permit bidders to express their values while allowing the auction to proceed at an appropriate pace. We therefore adopt our proposal, and we will begin the auction with a minimum acceptable bid percentage of 5 percent. We will round the result using our standard rounding procedures.¹³³

130. 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.¹³⁴ The FCC Auction System will list the nine acceptable bid amounts for each license.¹³⁵ These nine acceptable bid amounts consist of the minimum acceptable bid amount for the license and additional amounts calculated using the minimum acceptable bid amount and the bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. For example, if

¹³¹ If the only bid placed on a non-provisionally winning license was placed by a bidder holding a provisionally winning bid on a different license, a “price” cannot be calculated and the minimum acceptable bid is the minimum opening bid, as described above.

¹³² *Auction No. 65 Comment Public Notice* at 10.

¹³³ Under our standard rounding procedures, results are rounded as follows: 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.

¹³⁴ Bidders must have sufficient eligibility to bid in the auction. See *supra* Section III.D.3 “Upfront Payments and Bidding Eligibility.”

¹³⁵ In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the license.

the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.15, rounded; etc. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

131. In the *Auction No. 65 Comment Public Notice*, we proposed to use a bid increment percentage of 5 percent.¹³⁶ We received no comment on this issue. We believe that a bid increment percentage of 5 percent will give bidders the flexibility to speed up the pace of the auction, if appropriate. We therefore adopt our proposal, and we will begin the auction using a bid increment percentage of 5 percent. We will round the results using our standard rounding procedures.¹³⁷

132. In the *Auction No. 65 Comment Public Notice*, we proposed to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if we determine that circumstances so dictate.¹³⁸ No comments were received on this issue. We adopt this proposal. Therefore, the Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System during the auction. The Bureau may also use its discretion to adjust the minimum bid increment amount without prior notice if circumstances warrant.

4. Provisionally Winning Bids

133. At the end of each bidding round, the FCC Auction System will determine the provisionally winning bids by considering all of the bids that have been placed in the auction. Subject to the restriction that a single bidder cannot have more than one provisionally winning bid, the system will determine which combinations of licenses, and hence, which band plan option, has the highest aggregate gross bid amount.¹³⁹ The only licenses that can have provisionally winning bids are those of the band plan option with the highest gross bid; the licenses of the other band plan options will not have provisionally winning bids.

134. In the *Auction No. 65 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single bid from among the tied gross bids, if a provisionally winning bid must be selected from among identical bids amounts submitted on a license in a given round (*i.e.*, tied bids).¹⁴⁰ No comments were received on this proposal. Therefore, the Bureau adopts its proposal. A pseudo-random number generator based on the L'Ecuyer algorithms will be used to assign a random

¹³⁶ *Auction No. 65 Comment Public Notice* at 10.

¹³⁷ Under our standard rounding procedures, results are rounded as follows: 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.

¹³⁸ *Auction No. 65 Comment Public Notice* at 10.

¹³⁹ In determining the provisionally winning bids, the system will not consider combinations of bids in which the same bidder placed a bid for both licenses in a band plan. It will consider those bids in combination with the bids of other bidders, however, even if the bids of other bidders were placed in previous rounds. For example, if Bidder 1 places bids on both licenses A and B, the system will consider Bidder 1's bid on A combined with bids on B placed by other bidders, and Bidder 1's bid on B combined with bids on A placed by other bidders.

¹⁴⁰ *Auction No. 65 Comment Public Notice* at 10.

number to each bid.¹⁴¹ The tied gross bid with the highest random number wins the tiebreaker. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the selected provisionally winning bid.

135. Similarly, in the event of identical aggregate high gross bid amounts on more than one band plan (*i.e.*, tied band plans), the tie between band plans will be broken based on the random numbers of the corresponding bids. The tied band plan with the highest sum of random numbers will become the band plan for which there are provisionally winning bids.

136. A consequence of the mutually incompatible band configurations and the three megahertz eligibility restriction is that a bid that does not become a provisionally winning bid at the conclusion of the round in which it was placed may become a provisionally winning bid at the conclusion of a subsequent round. For example, assume that Bidder 1 places a bid on License A in round 1, and that the provisionally winning bids at the conclusion of round 1 are for Licenses C and D. If another bidder places a bid on License B in a later round that, together with Bidder 1's round 1 bid on License A, produces the highest aggregate gross bid amount on a band plan, then Bidder 1's round 1 bid on License A and the other bidder's later bid on License B would become the provisionally winning bids. This could happen after many intervening rounds even if Bidder 1 is no longer eligible to bid.¹⁴² Moreover, this could happen even if there are bids on License A that are higher than Bidder 1's because no bidder may win more than one license.

137. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.¹⁴³

5. Bidding

138. During a round, a bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid) or remove bids placed in the current bidding round. Bidders also have the option of submitting and removing multiple bids during a 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.

139. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 65. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a telephonic bid submission.

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

¹⁴¹ 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. A longer version of this paper and the C code for the algorithms can be found on the author's website at <http://www.iro.umontreal.ca/~lecuyer/papers.html>.

¹⁴² A bidder will not have its bidding eligibility restored if it has lost eligibility but in a later round has a bid (placed previously) become a provisionally winning bid. In other words, while holding a provisionally winning bid allows a bidder to maintain bidding eligibility, holding a provisionally winning bid does not restore bidding eligibility that has been lost. Nevertheless, a bidder that has lost eligibility may win a license based on a bid placed prior to losing eligibility.

¹⁴³ See *supra* Section IV.A.2 "Activity Rules."

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

142. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts.¹⁴⁴ For each license, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box.¹⁴⁵ Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an “upload” function that allows bidders to upload text files containing bid information.

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

144. Finally, bidders are cautioned to select their bid amounts carefully because, as explained below, although bids can be removed before the round ends, **no withdrawals will be allowed in Auction No. 65**, even if a bid was mistakenly or erroneously made.

6. Bid Removal and Bid Withdrawal

145. In the *Auction No. 65 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal procedures.¹⁴⁶ With respect to bid withdrawals, the Bureau proposed that bidders not be permitted, in any round, to withdraw bids made in previous rounds. We received no comments on this issue.

146. The Commission has recognized that bid withdrawals may be an important tool to help bidders avoid incomplete aggregations of licenses and pursue efficient backup strategies as information becomes available during the course of an auction.¹⁴⁷ In Auction No. 65, however, bidders may win only one license and therefore will not face risks of being unable to secure desired aggregations of licenses. In addition, we believe that given the small number of licenses in the auction and the nature of the licenses being offered, bidders will not need to use bid withdrawals to pursue backup strategies in the same way bidders may need to do in some auctions. Moreover, in previous auctions, we have observed instances in which bid withdrawals arguably may have been used for strategic, anticompetitive purposes. While we continue to recognize that bid withdrawals may play an important role in an auction, we note that bid withdrawals have not been available in several auctions.¹⁴⁸ Therefore, the Bureau adopts its proposal.

147. With respect to bid removals during the course of a bidding round, the Bureau proposed that bidders have the option of removing any bid placed in a particular round before the close of that round. We believe that providing this option will enhance bidder flexibility during the auction, without creating the opportunities for anticompetitive behavior that can be associated with withdrawals of bids

¹⁴⁴ Bidders must have sufficient eligibility to bid in the auction. *See supra* Section III.D.3 “Upfront Payments and Bidding Eligibility” regarding bidding eligibility and Section IV.B.3. “Minimum Acceptable Bid Amounts and Bid Increment Amounts” regarding the nine acceptable bid amounts for each license.

¹⁴⁵ In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the license.

¹⁴⁶ *Auction No. 65 Comment Public Notice* at 11.

¹⁴⁷ *Part 1 Third Report and Order*, 13 FCC Rcd at 459-60 ¶ 150.

¹⁴⁸ For example, bidders were not permitted to withdraw bids after the close of a bidding round in Auction No. 32 (Broadcast), Auction No. 38 (700 MHz Guard Band), Auction No. 46 (1670-1675 MHz Band), and Auction No. 54 (Broadcast).

placed in previous rounds, and therefore we adopt the proposed procedures for Auction No. 65. Thus, before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the “remove bids” function in the FCC Auction System, a bidder may effectively “unsubmit” any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. A bid that is removed does not count toward meeting the bidding activity rule. After a round closes, a bidder may no longer remove a bid.

7. Round Results

148. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureau will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts, and bidder eligibility status (bidding eligibility and activity rule waivers) and will post the reports for public access. Reports reflecting bidders’ identities for Auction No. 65 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

149. The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking a link in the FCC Auction System.

9. Maintaining the Accuracy of FCC Form 175 Information

150. As noted in Section II.I., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications, for example, deletion and addition of authorized bidders (to a maximum of three). Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants should 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: auktion65@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 65 and the name of the applicant. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

V. POST-AUCTION PROCEDURES

A. Down Payments

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

152. 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. 65 to 20 percent of the net amount of its winning bid (gross bid less any applicable small business or very small business bidding credit).

B. Final Payments

153. Each winning bidder will be required to submit the balance of the net amount of its winning bid within 10 business days after the deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

154. Within ten business days after release of the auction closing notice, each winning bidder must electronically submit a properly completed long-form application (FCC Form 601) for the license it won through Auction No. 65. Winning bidders that are small businesses or very small businesses must demonstrate their eligibility for a small business or very small business bidding credit. 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)

155. 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. An ownership disclosure record is automatically created in the Universal Licensing System (ULS) for any applicant that submits an FCC Form 175. However, winning bidders will be required to review and confirm that this information is complete and accurate as of the date of filing FCC Form 601. Further instructions will be provided to winning bidders at the close of the auction.

E. Default and Disqualification

156. 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 the *CSEA/Part 1 Report and Order* adopted January 24, 2006, the Commission modified its rules to provide that it will, as part of its determination of competitive bidding procedures in advance of each auction, establish the appropriate level, from 3 percent up to a maximum of 20 percent, for the additional payment component of default payments, which the previous rule fixed at 3 percent.¹⁴⁹ The Commission adopted this rule modification after the release of the *Auction No. 65 Comment Public Notice*. Accordingly, the Bureau today is releasing a separate public notice seeking comment on the appropriate level of the additional payment component of default payments for Auction No. 65.

157. In the event of a default, the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount.¹⁵⁰ 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.¹⁵¹

F. Refund of Remaining Upfront Payment Balance

158. All applicants that submit upfront payments but that after the close of the auction are not winning bidders for a license in Auction No. 65 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. 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.

159. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. As discussed above, a bid that does not become a provisionally winning bid at the conclusion of the round in which it was placed may become a provisionally winning bid at the conclusion of a subsequent round. Consequently, any applicant that places a bid may become a provisionally winning bidder before the close of the auction, even if the bidder is no longer eligible to place new bids. Only bidders that have placed no bids during the course of the auction and have lost all eligibility may be considered to have dropped out of the auction completely. Such bidders seeking a refund must submit a written refund request. If the applicant has completed the refund instructions

¹⁴⁹ *CSEA/Part 1 Report and Order* at ¶ 31. Other changes adopted in the *CSEA/Part 1 Report and Order* do not affect procedures in Auction No. 65, e.g., changes regarding interim withdrawal payments or tribal land bidding credits, or do not require additional public comment prior to application, e.g., changes regarding license application by winning consortia. See generally *CSEA/Part 1 Report and Order* at ¶ 2 (summarizing changes).

¹⁵⁰ See 47 C.F.R. § 1.2109(b) and (c).

¹⁵¹ 47 C.F.R. § 1.2109(d).

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 requests to:

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

160. Bidders are encouraged to file their refund information electronically using the **Refund Information** icon found on the *Auction Application Manager* page or through the **Wire Transfer for Refund Purposes** link available in various locations throughout the FCC Auction System, but bidders may also send their information by facsimile 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.

161. Media Contact:

For press inquiries: Chelsea Fallon (202) 418-7991

162. Auctions and Spectrum Access Division:

For legal questions: Brian Carter at (202) 418-0660

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

163. Mobility Division:

For legal questions: Erin McGrath or Richard Arsenault at (202) 418-0620

For technical questions: Jay Jackson or Moslem Sawez at (202) 418-0620

164. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

VI. ATTACHMENT A

DA 06-299
Auction No. 65 - 800 MHz Air-Ground Radiotelephone Service

Band Plan	License	Geographic Area Type	Market Number	License Number	Frequencies (MHz)	Bandwidth	Bidding Units ²	Upfront Payment ²	Minimum Opening Bid
1	A	Nationwide	NWA255	CJ-NWA255-A	849.0-850.5 / 894.0-895.5	3 MHz (2 MHz Shared) ¹	100,000	\$100,000	\$1,500,000
	B	Nationwide	NWA255	CJ-NWA255-B	Initial 849.0-850.5 / 894.0-895.5 After Clearing 849.5-851.0 / 894.5-896.0	3 MHz (2 MHz Shared) ¹	100,000	\$100,000	\$1,500,000
2	C	Nationwide	NWA255	CJ-NWA255-C	849.0-850.5 / 894.0-895.5	3 MHz	100,000	\$100,000	\$2,800,000
	D	Nationwide	NWA255	CJ-NWA255-D	850.5-851.0 / 895.5-896.0	1 MHz	100,000	\$100,000	\$200,000
3	E	Nationwide	NWA255	CJ-NWA255-E	849.0-849.5 / 894.0-894.5	1 MHz	100,000	\$100,000	\$200,000
	F	Nationwide	NWA255	CJ-NWA255-F	849.5-851.0 / 894.5-896.0	3 MHz	100,000	\$100,000	\$2,800,000

¹ Licenses A and B would authorize transmission of radio waves that are vertically and horizontally polarized, respectively, and would initially share 3.0 MHz: 1.5 MHz at 849.0-850.5 MHz paired with 1.5 MHz at 894.0-895.5 MHz. Once Verizon Airfone Inc.'s incumbent system ceases operations in the upper 0.5 MHz of each band, the License B licensee would shift its operations to 1.5 MHz at 849.5-851.0 MHz paired with 1.5 MHz at 894.5-896.0 MHz, and the licensees for Licenses A and B would share 2.0 MHz.

² As described in Section III.D.3. "Upfront Payments and Bidding Eligibility," under the proposed bidding procedures, bidders will not need more than 100,000 bidding units of eligibility.

VII. ATTACHMENT B

**FCC AUCTION NO. 65
SEMINAR REGISTRATION FORM**

The FCC will sponsor a one-day seminar for Auction No. 65 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 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:

Tuesday, March 14, 2006
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Registration 10:00 a.m. - 10:30 a.m.

Seminar 10:30 a.m. - 2:00 p.m.

If hotel accommodations are needed

Please contact 888-225-5322 (option #2) for a list of hotels in the area.

To register, complete the form below and
return no later than
Monday, March 13, 2006,
by facsimile to:

FCC Auction 65
Auctions and Spectrum Access Division
1270 Fairfield Road
Gettysburg, PA 17325-7245

FAX: 717-338-2850

Phone: 717-338-2888

Note: The seminar will also be available via webcast and may be viewed by clicking on the Auction Seminar link on the Auction No. 65 web page, <http://wireless.fcc.gov/auctions/65/>. For further information about accessing FCC webcasts, please visit <http://www.fcc.gov/realaudio/>.

I/We will attend the Auction No. 65 Seminar, scheduled for Tuesday, March 14, 2006.

Name of attendee: _____

Name of attendee: _____

Company name: _____

Company address: _____

Phone: _____ Fax: _____

VIII. ATTACHMENT C

ELECTRONIC FILING AND REVIEW OF THE SHORT-FORM APPLICATION (FCC FORM 175)

PAPERWORK REDUCTION ACT NOTICE

The Federal Communications Commission uses information collected in FCC Form 175 in determining whether applicants are legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. In addition, if an applicant applies for status as a particular type of auction participant pursuant to Commission rules, the Commission uses the information in determining whether the applicant is eligible for the status requested. The Commission's auctions, including the collection of information to determine applicants' qualifications to participate pursuant to Commission rules and requirements, are designed to limit the competitive bidding to qualified applicants, to deter possible abuse of the bidding and licensing process, and to enhance the use of competitive bidding to assign Commission licenses and permits in furtherance of the public interest.

The Commission estimates that each response to this collection of information will take on average 1.5 hours. This estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0600). PLEASE DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS.

The information collected in FCC Form 175 is required to be filed by all applicants to participate in a Commission auction, pursuant to Section 309(j)(5) of the Communications Act and Section 1.2105 of the Commission's rules. *See* 47 U.S.C. § 309(j)(5), 47 C.F.R. § 1.2105. Information collected in a submitted FCC Form 175 will be available for public inspection.

You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a current valid OMB control number with this notice. This collection has been assigned OMB control number 3060-0600.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

APPLICATION PREPARATION AND SUBMISSION

An applicant must submit its short-form application (FCC Form 175) electronically, via the FCC Auction System. **The FCC Form 175 applications must be submitted and confirmed prior to 6:00 p.m. ET on Friday, March 24, 2006.** Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants are reminded that all information required in connection with applications to participate in spectrum license auctions is necessary to determine each applicant's qualifications, and as such will be available for public inspection. Accordingly, an applicant should not include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security

Numbers, in its short-form application. Applicants may request that information submitted not be made routinely available for public inspection following the procedures set forth in 47 C.F.R. § 0.459. Pursuant to Section 0.459(a), such requests must be included as an attachment to FCC Form 175 and identify the information to which the request applies. Because the required information bears on each applicant's qualifications, confidentiality requests will not be routinely granted.

Applicants may make multiple changes to their FCC Form 175 applications until the close of the filing window. However, applicants must press the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission.

Software Requirements

Applicants must meet the following minimum software requirements:

- Web Browser:
 - Microsoft® Internet Explorer 6.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.4.2_05 installed.

or

- Netscape® Communicator™ 6.0 or higher, with Java Plug-In Version 1.4.2_05.

Java Plug-In Version 1.4.2_05 is available for downloading at http://java.sun.com/products/archive/j2se/1.4.2_05/index.html (choose the JRE version).

Other browsers are not supported.

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>).

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

A. Logging On

To submit an FCC Form 175 application 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). Once on the *FCC Integrated Spectrum Auction System* page, an applicant may log in to create an FCC Form 175 application using its FCC Registration Number (FRN) and password.

B. Application Filing Instructions

The on-line FCC Form 175 requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.¹⁵² Pursuant to Section 1.2105(a), FCC Form 175 must be submitted electronically. The screens comprising FCC Form 175 consist of five series, each requesting five separate types of information: 1) *Applicant Information*; 2) *License Selection*; 3) *Agreements*; 4) *Ownership*; and 5) *Certify and Submit*. In addition, *Summary* screens, a sixth series, appear prior to the *Certify and Submit* screens. The *Summary* screens provide an overview of an applicant's FCC Form 175 that facilitates reviewing and

¹⁵² See generally, 47 C.F.R. § 1.2105.

revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

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

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

1. Applicant Information

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

- the applicant's legal classification, *e.g.*, individual, corporation, etc.
- optional information regarding the applicant's status as a minority- or woman-owned business or a rural telephone company
- the applicant's name, which will be used as the bidder name during the auction
- citizenship (for individuals), or jurisdiction of formation for legal entities
- for applicants classified as legal entities, *e.g.*, corporations and partnerships, the name of and information regarding the entity's responsible individual
- the name, address, telephone and facsimile number of a contact person who will communicate with the Commission regarding the applicant's FCC Form 175
- the names of up to three persons authorized to bid for the applicant in the auction
- the applicant's preference for electronic or telephonic bidding
- whether the applicant claims eligibility for certain types of bidding credits and the amount claimed.¹⁵³

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

- Applicants must indicate their legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- P.O. Boxes may not be used for an applicant's address.

¹⁵³ See generally, 47 C.F.R. § 1.2105(a)(2)(ii)(A).

- To simplify filling out the FCC Form 175, an applicant that has the same address as its contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address. P.O. Boxes may not be used for a contact person's address.
- Applicants must identify at least one authorized bidder. While applicants may change their authorized bidders at a later date, in Auction No. 65 only those bidders listed on the FCC Form 175 will be authorized to place bids for the applicant during the auction.
- Any qualified bidder may bid either via the Internet or by telephone during the auction. Specifying a preference for electronic or telephonic bidding assists the Commission in determining the staff required for telephonic bidding.

2. License Selection

The *License Selection* screens make up the second series of screens in FCC Form 175. In the *License Selection* screens, the applicant will identify the licenses on which the applicant may wish to bid during the auction. Applicants are not obligated to bid on all licenses selected; however, applicants will not be able to bid on licenses that they have not selected on the FCC Form 175.¹⁵⁴ Be advised that there is no opportunity to change this list once the short-form filing deadline passes on March 24, 2006.

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

The first *License Selection* screen, the *Select Licenses* screen, contains two lists: 1) a list (on the left) of all licenses on which the applicant may be eligible to bid ("Eligible Licenses"); and 2) a list (on the right) of all licenses selected by the applicant ("Selected Licenses"). Applicants select licenses by: 1) highlighting the licenses to be selected in the Eligible Licenses list; and then 2) clicking on the **ADD** button to move those licenses to the Selected Licenses list. Applicants can click on the **ADD** button multiple times, so applicants do not need to highlight all the licenses in which they are interested before clicking on the **ADD** button. 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.

Licenses can be removed from the list of Selected Licenses by: 1) highlighting the unwanted licenses in Selected Licenses; and then 2) clicking the **REMOVE** button. Applicants can click on the **REMOVE** button multiple times, so applicants do not need to highlight all the unwanted licenses before clicking on the **REMOVE** button.

In either list, applicants can highlight a single license by clicking on it. Applicants can highlight multiple licenses by holding down the control key (Ctrl) and clicking on each license the applicant

¹⁵⁴ See generally, 47 C.F.R. § 1.2105(a)(2)(i).

wants to highlight. Alternatively, if an applicant wants to highlight multiple licenses that appear sequentially in a list, applicants can click on the first license in the sequence and then hold down the shift key while clicking on the last license in the sequence. Finally, applicants can highlight all licenses by clicking on the **SELECT ALL** button.

If the applicant previously has selected licenses, the initial *License Selection* screen will be the *View/Edit License Selections* screen. This screen lists the licenses previously selected for this auction. To select a new license or remove a previously selected license, click the **Edit** icon next to Change Selection at the top-right corner of the list. This will take you to the original *Select Licenses* screen, described above.

3. Agreements

The *Agreements* screens are the third series of screens in Form 175. In the *Agreements* screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission's rules.¹⁵⁵

On the first screen, applicants must state whether the applicant has any agreements that are subject to disclosure under the Commission's rules by responding yes or no to a question asking whether the applicant has entered into partnerships, joint ventures, consortia or other agreements or understandings of any kind relating to the licenses being auctioned, including any such agreement relating to the post-auction market structure. If an applicant answers "No," the applicant will continue with the Ownership series of screens, described below. If the applicant answers "Yes," the applicant will continue with additional *Agreements* screens described here.

In the additional *Agreements* screens, applicants must provide an identifying name for the agreement and must identify the parties, other than the applicant, to the agreement. The agreement identifier can be a brief description of the agreement or a simple reference name; however, each agreement identifier must be unique.

In the event the other party to the agreement is an entity or an individual, different identifying information is required. For either entities or individuals, applicants may provide FCC Registration Numbers (FRNs), if available. Providing the FRN helps prevent identification errors resulting from parties having similar names or a single party using multiple names. Provision of a party's FRN is optional.

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

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

¹⁵⁵ See generally, 47 C.F.R. § 1.2105(a)(2) (viii).

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

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

4. Ownership

The *Ownership* screens are the fourth series of screens in the FCC Form 175. In the *Ownership* screens, applicants will provide information regarding parties with ownership interests in the applicant that must be disclosed pursuant to Commission rules.¹⁵⁶ Commission rules also require the disclosure and description of FCC-regulated businesses that are owned by the applicant and parties with certain ownership interests in the applicant.¹⁵⁷ In addition, if the applicant has claimed eligibility for bidding credits based on revenues attributable to the applicant and related parties, the applicant will provide information regarding revenues in the *Ownership* screens.

a. Information Already On File with the Commission

Some applicants may have previously filed FCC Form 602 disclosing ownership information in connection with wireless services. To simplify filling out Form 175, an applicant's most current FCC Form 602 ownership information on file with the Commission, if in an electronic format compatible with FCC Form 175, automatically will be entered into this FCC Form 175. Applicants with ownership information automatically entered into FCC Form 175 will proceed directly to the *View/Edit Ownership* screen described below.

Each applicant is responsible for information submitted in its FCC Form 175 being complete and accurate. Applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for submitting this FCC Form 175. Applicants can update the information directly in the FCC Form 175. After the deadline for filing this FCC Form 175, ownership information in a submitted FCC Form 175 will be considered to be the applicant's most current ownership information on file with the Commission.

¹⁵⁶ See generally, 47 C.F.R. §§ 1.2105(a)(2)(ii)(B), 1.2110 and 1.2112.

¹⁵⁷ See 47 C.F.R. § 1.2112.

b. Disclosable Interest Holders and FCC-Regulated Businesses

- **Section 1.2112(a) of the Commission’s rules lists the interest holders in the applicant that must be disclosed in FCC Form 175.¹⁵⁸**
- **Section 1.2112(a)(7) lists the FCC-regulated business entities, or applicants for an FCC license, that must be disclosed in FCC Form 175.¹⁵⁹**

For an applicant not claiming eligibility for a bidding credit based on revenues, the initial *Ownership* screen enables the applicant to: 1) add information regarding a disclosable interest holder; 2) add information regarding the FCC-regulated businesses in which the applicant has an interest; or 3) upload ownership information from a file prepared by the applicant.

Uploading information from a file prepared by the applicant is an alternative to individually keying information into the *Ownership* screens in FCC Form 175. Applicants may upload ownership data in a text file, which will then be processed and populated into the system as the applicant’s current ownership filing (provided there were no errors). This feature may benefit those applicants with large amounts of ownership data that would otherwise have to be entered into the system manually. It also may benefit those applicants who previously provided ownership data to the FCC in a similar format for other purposes, such as in connection with filing FCC Form 602 in relation to wireless services. Instructions on how to prepare and upload such a file are provided at <http://wireless.fcc.gov/auctions/ownership-upload>. After a successful upload, the *Upload Ownership Disclosure Information Confirmation* screen will appear. Applicants then may click the **CONTINUE** button, which loads the *View/Edit Ownership* screen described below.

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

- If an application includes one or more disclosable interest holders with an indirect ownership in the applicant,¹⁶⁰ the application must include an attachment regarding the relationship between the indirect interest holder(s) and the applicant. The attachment should provide an overview of the ownership chain that links the indirect owners to the applicant, *e.g.*, indirect owner X owns 50% of holding company Y; indirect owner Z owns 50% of holding company Y; and holding company Y owns 100% of the applicant.¹⁶¹ One attachment connecting all indirect owners to the applicant is sufficient; a separate attachment for each indirect owner is not required. An overview of the ownership connections is sufficient; the attachment does not need to duplicate all the detailed information already provided in the FCC Form 175.

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

¹⁵⁹ 47 C.F.R. § 1.2112(a)(7).

¹⁶⁰ *See* 47 C.F.R. § 1.2112(a)(6).

¹⁶¹ *Id.*

- The “Percent of Interest Held in Applicant” should reflect the disclosable interest holder’s aggregate ownership interest in the applicant. In some cases, *e.g.*, circumstances where there is joint ownership or indirect ownership resulting in different owners sharing the same ownership interests, the sum of all the percentages held by disclosable interest holders may exceed 100%. In other cases, *e.g.*, directors and officers of an entity seeking revenue-based bidding credits,¹⁶² a disclosable interest holder may have a 0% percent of interest held in the applicant.
- FCC-regulated businesses in which the applicant has an interest can be entered from the initial *Add Ownership Disclosure Information* screen. FCC-regulated businesses in which a disclosable interest holder has an interest can be entered from the *Add FCC Regulated Business* screen in the series of screens for entering information about a Disclosable Interest Holder.
- When adding an FCC-regulated business, “Percent of Interest Held” refers to the percent of interest held by the applicant or disclosable interest holder, as applicable, in the FCC-regulated business.
- To simplify filling out the FCC Form 175, applicants can click on the **select business(es) already submitted** link when entering an FCC-regulated business previously entered as an FCC-regulated business for the applicant or another Disclosable Interest Holder. When doing so, be certain to enter the “Percent of Interest Held” in the FCC regulated business by the current party, either the applicant or the disclosable interest holder, with respect to which the FCC-regulated business is being entered.

c. View/Edit Ownership Disclosure Information

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

Existing ownership information is divided into three groups:

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

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

¹⁶² See 47 C.F.R. § 1.2112(b)(1)(i).

d. Bidding Credit Revenue Information

If the applicant has claimed eligibility for a bidding credit based on revenues attributable to the applicant and related parties, the first *Ownership* screen will request relevant information regarding the applicant's revenues. The subsequent screen will request which of the two sources of financial information authorized by Section 1.2110 (n) the applicant used for the revenue information.¹⁶³

Applicants claiming eligibility for a bidding credit based on revenues are required to provide revenue information separately and in the aggregate for the applicant, its affiliates, its controlling interests, and affiliates of its controlling interests. In addition, if the applicant is a consortium of small businesses, the information must be provided with respect to each member comprising the consortium.¹⁶⁴ The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant.¹⁶⁵ Form 175 screens request information regarding the applicant, disclosable interest holders, and affiliates of the applicant. Accordingly, information that Commission rules require be disclosed regarding controlling interests and affiliates of controlling interests that are not disclosable interest holders should be disclosed in screens requesting information regarding affiliates of the applicant.

Following the first two screens, the subsequent screen will be similar to the initial *Ownership* screen described above, with one addition. In addition to being able to add disclosable interest holders and FCC-regulated business, applicants that claim eligibility for bidding credits based on revenues also will have an option to add information regarding affiliates, including their revenues, that are not disclosable interest holders.¹⁶⁶

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

However, not all disclosable interest holders that must be listed in Form 175 pursuant to Section 1.2112(a) are affiliates of the applicant, controlling interests of the applicant, or affiliates of the applicant's controlling interests.¹⁶⁷ Consequently, applicants claiming eligibility for a bidding credit based on revenues may not need to provide revenue information for every disclosable interest holder. Accordingly, applicants may indicate that no revenue information is required with respect to the relevant disclosable interest holder on the first screen requesting revenue information for that disclosable interest holder. To do so, check the box indicating that the disclosable interest holder is **not** an affiliate or a controlling interest within the meaning of the Commission's rules and, therefore, no revenue information for the disclosable interest holder will be provided.

¹⁶³ 47 C.F.R. § 1.2110(n).

¹⁶⁴ See 47 C.F.R. § 1.2112(b)(1)(iii).

¹⁶⁵ See 47 C.F.R. § 1.2110(c)(5).

¹⁶⁶ See 47 C.F.R. § 1.2112(b)(1)(iii).

¹⁶⁷ Compare 47 C.F.R. 1.2110(c)(2) (definition of controlling interests) and (c)(5)(definition of affiliate) with 47 C.F.R. 1.2112(a) (describing disclosable interest holders).

In addition, an applicant may have affiliates that are not disclosable interest holders. To disclose information regarding such affiliates and their revenues required pursuant to Commission rule,¹⁶⁸ applicants can click on the **ADD AFFILIATE** button on the initial *Ownership* screen. Applicants also can click on the **Add Affiliate to Applicant** link on the *View/Edit Ownership Disclosure Information* screen to disclose information regarding affiliates and their revenues.

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

Finally, applicants claiming eligibility for bidding credits based on revenues attributable to the applicant and related parties will be asked to confirm that they have provided information with respect to all of the relevant parties, *i.e.*, the applicant; each of the applicant's officers and directors; each of the applicant's other controlling interests; each of the applicant's affiliates; and for each affiliate of the applicant's controlling interests, including its officers and directors.¹⁶⁹

5. Summary

The *Summary* screens are the fifth series of screens in FCC Form 175. The *Summary* screens summarize information applicants have provided in previous screens, offering an overview of an applicant's FCC Form 175 to help locate specific information. The *Summary* screens will appear prior to the *Certify and Submit* screens, in order to permit the applicant to review all the information entered in previous screens and to provide an opportunity to check for errors in the information submitted.

The first *Summary* screen, the *Summary Overview* screen, lists the first four series of screens in the application and provides a **VIEW/EDIT** button to access each one. Here is what happens if you click **VIEW/EDIT** for each series:

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

¹⁶⁸ See 47 C.F.R. § 1.2112(b)(1)(iii).

¹⁶⁹ *Id.*

Clicking on the **CHECK ERRORS** button initiates an automated check of the application. If the automated check encounters any errors that must be corrected before submitting the application, the error(s) will be listed in an Error box at the top of the screen. To correct one of these errors, click its corresponding **EDIT** button. In addition, if the automated check encounters any apparent errors that might render the application incomplete if the application is submitted with current information, the apparent error will be listed in a Warning box. To revise the information related to the apparent error, click its corresponding **EDIT** button.

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

If the automated check does not encounter any errors, a box will appear displaying the message “**No Errors found - You may continue to Certify and Submit.**” Applicants may then click the **CONTINUE TO CERTIFY** button.

6. Attaching Additional Information

If an applicant needs to provide additional information not requested directly in the screens comprising the FCC Form 175, additional information can be provided in an attachment.

The screen for adding an attachment to FCC Form 175 can be accessed by clicking on the **Attachments** link in the upper right of any screen. The *Add Attachment* screen requests information regarding the type of attachment to be added, the name of the file to be attached, and a brief description of the attachment. If the attachment is a request for a waiver of any of the Commission’s rules or procedures, the applicant should identify the “Type” of attachment as a “Waiver” to facilitate prompt processing. Once the requested information is provided, applicants can add the attachment to the application by clicking on the **ADD ATTACHMENT** button.

A list of any attachments already uploaded along with the applicant’s FCC Form 175 appears at the bottom of the screen.

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

7. Certify and Submit

The *Certify and Submit* screens are the sixth and final series of screens in FCC Form 175. In the *Certify and Submit* screens, applicants will provide certifications required of all participants in the Commission’s competitive bidding processes.¹⁷⁰

¹⁷⁰ See generally, 47 C.F.R. § 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

The first *Certify and Submit* screen requires each applicant to indicate whether the applicant, any affiliate, any controlling interest, and any affiliate of a controlling interest have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency.¹⁷¹ Applicants associated with a relevant entity that has been in default or delinquent may participate in an auction, if otherwise qualified. However, such applicants must submit an upfront payment equal to 50 percent more than otherwise required.¹⁷²

The second *Certify and Submit* screen lists the certifications required of all applicants in the Commission's competitive bidding processes and requests that the applicant's certifying official be identified and sign the application. Any auction short-form application must be certified by: (1) the applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) by an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) by the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction, if the applicant is a governmental entity.¹⁷³

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.¹⁷⁴ Applicants are reminded that 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, its certifications and any 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.

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

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

FCC Form 175 applications must be submitted and confirmed prior to 6:00 p.m. ET on Friday, March 24, 2006. Late applications or unconfirmed submissions of electronic data will not be accepted.

¹⁷¹ See 47 C.F.R. § 1.2105(a)(2)(xi).

¹⁷² See 47 C.F.R. § 1.2106(a).

¹⁷³ See 47 C.F.R. § 1.917.

¹⁷⁴ See 47 C.F.R. § 1.2105(a)(2)(v).

8. **Withdrawing an Application Before the Short-Form Filing Deadline And Updating Existing Applications**

a. **Withdrawing an Application**

If you wish to withdraw a submitted application before the short-form filing deadline, click on the **Withdraw Application** icon on the *Auction Application Manager Create or Review Auction Applications* page and confirm that you want to withdraw your application. If you subsequently decide to file an application, you will have to re-enter all previously-submitted data. Applications may not be withdrawn after the short-form application filing deadline.

b. **Updating Existing Applications**

Once you have logged into the Auctions Application Manager, the *Create or Review Auction Applications* page displays any application you have created or submitted within a filing window. **Note:** This page shows the application status, the date and time the application was last updated; and the date and time the application was last submitted. You may use this page as a reference to confirm the date and time of your most recent submission of the application.

To review or continue working on an existing application, click its auction number. This produces the application's *Summary* page and places you in a view/edit mode. Applicants must go to the *Certify and Submit* screens and click the **SUBMIT** button to submit any changes made to their FCC Form 175. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with your unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

After the short-form application filing deadline (6:00 p.m. ET March 24, 2006), applicants may make only minor changes to their 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 increase its bidding credit).¹⁷⁵

9. **Upfront Payment Calculator and Form 159**

You may access the **Upfront Payment Calculator and Form 159** from the *Create or Review Auction Applications* page and from the *Auction Application Submit Confirmation* page. When you click the **Upfront Payment Calculator and Form 159** icon or link, a page will be displayed where you can determine the appropriate upfront payment amount to submit with the FCC Form 159. From the *Calculate Upfront Payment* page, you may click the **Form 159** button to obtain the FCC Form 159.

10. **Refund of Upfront Payment**

On *My Auctions* page, click on the **See Wire Transfer for Refund Purposes** link to provide your wire transfer instructions for purposes of refunds of upfront payments. The Commission will use this information to refund excess funds on deposit upon receipt of a written refund request.

¹⁷⁵ See 47 C.F.R. § 1.2105(b).

C. Application Review

Once the FCC has completed the short-form application 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 **Auction Applications** link in the Public Access area on the *FCC Integrated Spectrum Auction System* page to start your search.

D. Technical Support

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

FCC Technical Support can also be contacted electronically by filling out a help request form at <https://esupport.fcc.gov/request.htm>. On the Submit Help Request page, select **Integrated Spectrum Auction System (ISAS)** from the "FCC System" drop-down.

IX. ATTACHMENT D

**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. 65. Applicants need to complete FCC Form 159 carefully, because:

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

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

Block Number	Required Information
1	LOCKBOX # - Enter "358425".
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
21	Applicant FRN (Complete only if applicant is different than payer.) - Enter the applicant's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).

- 24A Payment Type Code - Enter "A65U".
- 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 "65" (indicating Auction No. 65).

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.

X. ATTACHMENT E

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

A. Commission Decisions:

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, FCC 94-61, *Second Report and Order*, 9 FCC Rcd 2348, 2386-2388 ¶¶ 221-226 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, 5570-5571 ¶¶ 91-92 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fourth Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 6858, 6866-6869 ¶¶ 47-60 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7245, 7253-7255 ¶¶ 48-55 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7684, 7687-7689 ¶¶ 8-12 (1994).

Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd 4277 (1995), Commercial Realty St. Pete, *Memorandum Opinion and Order*, 11 FCC Rcd 15374 (1996).

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

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 374, 463-469 ¶¶ 155-166 (1997).

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*, 14 FCC Rcd 8816 (1999).

Application of Western PCS BTA I Corp., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8305 (1998); Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corp., *Memorandum Opinion and Order*, 14 FCC Rcd 21571, 21577-78 ¶ 20 (1999).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546 (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, MM Docket No. 94-13, *Order*, 11 FCC Rcd 9655 (Wireless Telecom. Bur. 1995).

Applications of GWI PCS, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 6441 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 18093 (Wireless Telecom. Bur. 1997).

Applications of High Plains Wireless, L.P., *Memorandum Opinion and Order*, 12 FCC Rcd 19627 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 5756 (Wireless Telecom. Bur. 1997).

1. Public Notices:

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

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

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, 11 FCC Rcd 10134 (Wireless Telecom. Bur. 1996).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, 13 FCC Rcd 341 (Wireless Telecom. Bur. 1998).

2. Letters from the Office of General Counsel, the Wireless Telecommunications Bureau and the Media 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. Ciamporocero 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 from Kathleen O'Brien Ham, 10 FCC Rcd 13783 (Auc. Div. 1995).

Letter to Mark Grady from Kathleen O'Brien Ham, 11 FCC Rcd 10895 (Auc. Div. 1996).

Letter to David L. Nace from Kathleen O'Brien Ham, 11 FCC Rcd 11,363 (Auc. Div. 1996).

Letter to Elliott J. Greenwald from Christopher J. Wright, 13 FCC Rcd 7132 (Gen. Counsel 1998).

Letter to Robert Pettit from Margaret W. Wiener, 16 FCC Rcd 10080 (Auc. Div. 2000).

Letter to Colby M. May from Barbara A. Kreisman, Chief, Video Division, Media Bureau and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445 (released September 13, 2005).

C. Enforcement Bureau Decisions:

Application of Star Wireless, LLC, *Forfeiture Order*, 19 FCC Rcd 18626 (Enf. Bur. 2004).

Application of Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, 19 FCC Rcd 18635 (Enf. Bur. 2004).

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>.