



PUBLIC NOTICE

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AUCTION OF 700 MHz BAND LICENSES SCHEDULED FOR JANUARY 24, 2008

Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76

AU Docket No. 07-157

Report No. AUC-07-73-B (Auctions 73 and 76)

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I. GENERAL INFORMATION

A. Introduction

1. By this Public Notice, we announce the procedures and minimum opening bid amounts for the upcoming auction of licenses for services in the 698-806 MHz band (herein, the “700 MHz Band”) scheduled to begin on January 24, 2008.¹ This auction is designated as Auction 73. Auction 73 will offer

¹ The 698-806 MHz band, which currently is occupied by television broadcasters, is being made available for new commercial and public safety services as a result of the digital television (DTV) transition. In prior proceedings, the Commission considered the 700 MHz Band in two parts, 698-746 MHz (the “Lower 700 MHz Band”) and 746-806 MHz (the “Upper 700 MHz Band”). The Lower 700 MHz Band was divided into blocks A through E, and the Upper 700 MHz Band was divided into blocks A through D. The Commission previously assigned licenses for blocks C and D in the Lower 700 MHz Band and for blocks A and B in the Upper 700 MHz Band. Consequently, the remaining blocks to be licensed are the Lower 700 MHz Band A, B, and E Blocks, and the Upper 700 MHz (continued....)

700 MHz Band licenses for initial bidding. As explained in this Public Notice, 700 MHz Band licenses may be offered in contingent subsequent bidding. In the event that any licenses are offered in contingent subsequent bidding, that event will be designated as Auction 76. On August 17, 2007, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended,² the Wireless Telecommunications Bureau (“Bureau”) released a public notice seeking comment on competitive bidding procedures for both the initial bidding and the contingent subsequent bidding for 700 MHz Band licenses.³ Interested parties submitted 12 comments and 8 reply comments in response to the *700 MHz Auction Public Notice* as well as a number of *ex parte* communications.⁴

2. In the *700 MHz Auction Public Notice*, the Bureau proposed to include all available, commercial 700 MHz Band licenses (1,099 licenses) for initial bidding in Auction 73 using the Commission’s standard simultaneous multiple-round (“SMR”) auction format for the A, B, D, and E block licenses and an auction design with hierarchical package bidding (“HPB”) for the C Block licenses.⁵ The *700 MHz Auction Public Notice* also proposed procedures for the contingent subsequent bidding, now designated Auction 76, on licenses for spectrum associated with any initially offered licenses for which the Auction 73 results do not satisfy applicable reserve prices. Based on the record and after considering comments provided in response to the *700 MHz Auction Public Notice*, we hereby announce the final procedures for Auction 73 and Auction 76.

3. This Public Notice, provides, among other things, procedures for the following:

- anonymous bidding, to enhance competition by safeguarding against potential anti-competitive auction strategies;
- package bidding, to enable bidders trying to combine multiple C Block licenses to place bids on packages of those licenses;
- block-specific aggregate reserve prices, to help assure that the public recovers a portion of the value of the spectrum resource; and
- prompt subsequent bidding in Auction 76, to offer licenses for relevant block(s) in the event Auction 73 results do not satisfy applicable reserve prices.

4. *Anonymous Bidding.* In the *700 MHz Second Report and Order*, the Commission found that the public interest would be served if the auction for new 700 MHz Band licenses is conducted using anonymous (or “limited information”) bidding procedures, regardless of any pre-auction measurement of

(Continued from previous page) _____

Band C and D Blocks. As the letters identifying the blocks remaining to be licensed in the Lower and Upper 700 MHz Bands do not overlap, we will refer to these blocks to be licensed as the A, B, E, C and D Blocks, without repeating the Lower 700 MHz Band and Upper 700 MHz Band designation.

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

³ “Auction of 700 MHz Band Licenses Scheduled for January 16, 2008; Comment Sought on Competitive Bidding Procedures For Auction 73,” *Public Notice*, FCC Rcd 15004 (2007) (“*700 MHz Auction Public Notice*”).

⁴ A listing of parties that filed comments, reply comments and *ex parte* or may be found in Attachment C. Parties will be identified in this Public Notice by their abbreviated name as indicated in Attachment C.

⁵ *700 MHz Auction Public Notice* at ¶¶ 17-24. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses and on certain pre-defined packages of specified licenses. A bidder may bid on, and potentially win, any number of licenses and/or packages. Bidding generally remains open on all licenses until bidding stops on every license, based on the applicable stopping rule.

likely auction competition.⁶ Such information procedures are intended to reduce the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors. Having proposed and sought comment on more detailed procedures for employing anonymous bidding for the upcoming auction, we now announce, in this Public Notice, detailed anonymous bidding procedures.

5. *Package Bidding for C Block Licenses.* The Commission also determined in the *700 MHz Second Report and Order* that providing for package bidding for C Block licenses would serve the public interest.⁷ The Commission found that package bidding for these licenses should facilitate the entry of entities seeking to create a nationwide footprint and whose business plans require the economies of scale that only can be obtained with nationwide operation.⁸ At Commission direction, the Bureau previously proposed and sought comment on detailed procedures for implementing package bidding for the C Block licenses and not for licenses in the other blocks to be auctioned.⁹ In this Public Notice, we detail the process for package bidding for the C Block licenses.

6. *Block-Specific Aggregate Reserve Prices.* The Commission also decided to provide for aggregate reserve prices for licenses authorizing the use of each block of the commercial 700 MHz Band yet to be licensed.¹⁰ The Commission concluded that, consistent with its statutory mandate, disclosed reserve prices would promote the recovery of a portion of the value of the public spectrum resource.¹¹ The Commission directed the Bureau to adopt aggregate reserve prices reflecting the potential market value of this spectrum based on a variety of factors including, but not limited to, the characteristics of this band and the auction prices of other recently auctioned licenses, such as licenses for Advanced Wireless Services in the 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”).¹² Accordingly, the Bureau proposed and sought comment on the following block-specific aggregate reserve prices: Block A, \$1.807380 billion; Block B, \$1.374426 billion; Block C, \$4.637854 billion; Block D, \$1.330000 billion; Block E, \$0.903690 billion. Further, the Bureau proposed that if the sum of the provisionally winning bids for the licenses in a block does not satisfy the relevant aggregate reserve price, none of the relevant licenses for the particular block will be assigned based on the auction results. In this Public Notice, we adopt this proposal.

⁶ Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission’s Part 1 Anti-Collusion Rule, WT Docket No. 07-166, *Second Report and Order*, FCC 07-132, ¶¶ 274-284 (2007) (“*700 MHz Second Report and Order*”), recon. pending.

⁷ *700 MHz Second Report and Order* at ¶¶ 287-292.

⁸ *Id.* at ¶¶ 291-292.

⁹ In the event that unforeseen difficulties make it impracticable to implement package bidding for the C Block consistent with the goals the Commission articulated in the *700 MHz Second Report and Order*, the Commission provided that the Bureau could conduct the auction without package bidding for the C Block.

¹⁰ *700 MHz Second Report and Order* at ¶¶ 297-317.

¹¹ *Id.* at ¶ 304.

¹² *Id.* The Commission’s website provides extensive information regarding the recent auction of AWS-1 licenses (“AWS-1 auction” or “Auction 66”). See <http://wireless.fcc.gov/auctions/66/>.

7. *Auction 76 Overview.* The Commission decided that, if licenses initially offered for the A, B, C, or E Blocks are not assigned because the auction results do not satisfy the applicable aggregate reserve price(s) for those licenses, the Commission promptly will offer alternative licenses for those blocks.¹³ More specifically, the Commission will offer licenses for the A, B, and E Blocks subject to alternative performance requirements. With respect to the C Block, the Commission will offer alternative licenses without the open platform conditions and based on different geographic areas and spectrum bandwidth. If the D Block license is not assigned because the auction results do not satisfy the D Block reserve price, the Commission may re-offer that license subject to the same rules or reconsider the applicable rules. For administrative purposes, we will designate as Auction 76 any subsequent bidding for alternative licenses for the A, B, C or E Blocks or for the D Block license that occurs because Auction 73 results for licenses initially offered for the relevant blocks do not satisfy the applicable aggregate reserve price(s). In this Public Notice, we announce detailed procedures for conducting Auction 76, if necessary.

8. The Commission will conduct bidding in Auction 73 and any contingent subsequent bidding in Auction 76 for 700 MHz Band licenses as a single auction to the extent possible, given the strong public interest in promptly assigning all 700 MHz Band licenses for recovered analog spectrum and the related nature of the licenses being offered in Auctions 73 and 76. Thus, pursuant to the *700 MHz Second Report and Order*, we will permit only qualified bidders in the initial auction to participate in the contingent subsequent auction. To enable a prompt start to Auction 76 after Auction 73, applicants must select any licenses on which they may bid in Auction 76 by the deadline for filing their Auction 73 application. Applicants must select those licenses by submitting a separate abbreviated short-form application to participate in Auction 76. The abbreviated Auction 76 application must be filed together with the applicant's standard application for Auction 73, following procedures described in this Public Notice. In the event that Auction 76 takes place, bidder identity and other information on the applicant's completed Auction 73 short-form application will be combined with the licenses selected in the abbreviated Auction 76 application to create the applicant's Auction 76 application. This process will minimize the time period between auctions by eliminating any need for applicants to take time following Auction 73 to file new applications or select additional licenses, and for the Commission to review newly-filed short-form applications. Applicants in Auction 76, however, will have an opportunity after Auction 73 to obtain additional eligibility for any licenses offered in Auction 76 by supplementing their upfront monies on deposit with the Commission pursuant to the procedures described herein, as provided for in the *700 MHz Second Report and Order*.

9. We also will use the Auction 73 design in Auction 76, including an aggregate reserve price for each block that matches the applicable initial reserve price. In the event that alternative licenses for the C Block are offered for Blocks C1 and C2, we will conduct package bidding for the C2 Block only, using the pre-determined packages described in this Public Notice. Alternative licenses for Blocks C1 and C2 will be subject to reserve prices. There will be a joint aggregate reserve price equal to the initial auction C Block aggregate reserve price, and separate aggregate reserve prices for the C1 and C2 Blocks that add to the joint aggregate reserve price. Licenses in both blocks will be assigned if the joint aggregate reserve price is met. If the joint aggregate reserve price is not met but one of the block-specific reserve prices is met, licenses in the block for which the reserve price is met will be assigned. Licenses in the other block will not be assigned. This will assure the aggregate reserve price in the initial auction continues to apply while maximizing the opportunity for licenses for either Block C1 or C2 to be assigned.

¹³ *700 MHz Second Report and Order* at ¶¶ 306-308.

1. Background of Proceeding

10. The Commission is offering the licenses in Auction 73 consistent with the requirements of the Digital Television Transition and Public Safety Act of 2005 (“DTV Act”).¹⁴ Pursuant to the DTV Act the Commission must conduct the auction of licenses for recovered analog spectrum by commencing the bidding not later than January 28, 2008.¹⁵ A number of incumbent broadcasters are licensed and operating on these frequencies (TV Channels 52-53, 56-58, 60-62, and 65-67) and adjacent channels.¹⁶

2. Licenses to be Offered in Auction 73

11. Auction 73 will offer a total of 1,099 licenses: 176 Economic Area (EA) licenses in each of the A and E Blocks, 734 Cellular Market Area (CMA)¹⁷ licenses in the B Block, 12 Regional Economic Area Grouping (REAG) licenses in the C Block, and one nationwide license, to be used as part of the 700 MHz Public/Private Partnership, in the D Block.

12. The following table describes the 700 MHz Band licenses that will be offered in Auction 73:

Block	Frequencies (MHz)	Bandwidth	Pairing	Geographic Area Type	No. of Licenses
A	698-704, 728-734	12 MHz	2 x 6 MHz	EA	176
B	704-710, 734-740	12 MHz	2 x 6 MHz	CMA	734
E	722-728	6 MHz	unpaired	EA	176
C	746-757, 776-787	22 MHz	2 x 11 MHz	REAG	12
D	758-763, 788-793	10 MHz	2 x 5 MHz	Nationwide	1*

*Subject to conditions respecting a public/private partnership license.

¹⁴ See Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (“DRA”). Title III of the DRA is the DTV Act. The DTV Act is codified in various portions of Title 47 of the United States Code.

¹⁵ 47 U.S.C. § 309(j)(15)(v).

¹⁶ The 700 MHz *Second Report and Order* is part of the 700 MHz band proceeding. See also, e.g., Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making*, 21 FCC Rcd 9345 (2006), *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064 (2007), *Order on Reconsideration*, FCC 07-171 (2007).

¹⁷ The CMA licenses consist of both Metropolitan Statistical Area (MSA) and Rural Service Area (RSA) licenses. For the Lower 700 MHz Band, the Commission adopted MSAs and RSAs as defined by Public Notice Report No. CL-92-40 “Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties,” January 24, 1992, DA 92-109, 7 FCC Rcd 742 (1992), with the following modifications: (i) the service areas of cellular markets that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline; and (ii) the service area of cellular market 306 that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf. 47 C.F.R. § 27.6(c)(2).

B. Rules and Disclaimers

1. Relevant Authority

13. 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;¹⁸ rules relating to the 700 MHz Band contained in Title 47, Part 27, of the Code of Federal Regulations; rules relating to the public/private partnership applicable to the D Block contained in Title 47, Part 90, of the Code of Federal Regulations; and rules relating to applications, environment, 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.¹⁹ For example, among other Commission orders, prospective bidders should be familiar with the *700 MHz First Report and Order* and the *700 MHz Second Report and Order*.²⁰

14. 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 Auctions 73 and 76. 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

¹⁸ 47 C.F.R. Part 1, Subpart Q. Prospective applicants are also encouraged to review the Commission's decisions that establish competitive bidding rules and policies, including policies governing benefits extended to designated entities (i.e., small businesses, rural telephone companies, and businesses owned by women and minorities). 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*, 21 FCC Rcd 891 (2006) ("*CSEA/Part 1 Report and Order*"), recons. pending; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 21 FCC Rcd 4753 (2006) ("*Designated Entity Second Report and Order and Designated Entity Second FNPRM*"), recons. pending; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Order on Reconsideration of the Designated Entity Second Report and Order*, 21 FCC Rcd 6703 (2006).

¹⁹ 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 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*.

²⁰ See n.6 & 16.

contractor, Best Copy and Printing, Inc. (“BCPI”), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpweb.com>.²¹

2. Prohibition of Collusion; Compliance with Antitrust Laws

15. To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission’s rules prohibits auction applicants for licenses in any of the same 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 pursuant to Section 1.2105(a)(2)(viii).²²

a. Entities Subject to Anti-Collusion Rule

16. The anti-collusion rule will apply to any applicants that submit short-form applications for Auctions 73 or 76 and select licenses in the same or overlapping CMAs, EAs, REAGs or the nationwide license in the D Block. For example, assume that one applicant applies for a REAG license and a second applicant applies for an EA license covering any area within that REAG. The two entities will have applied for licenses covering the same geographic areas and would be precluded from communicating with each other under the rule. The rule also applies where one applicant has selected a license in Auction 73 and another applicant selects a license in Auction 76 that covers any of the same geographic area. In addition, the rule precludes applicants that apply to bid for the nationwide license in the D Block, or all the licenses in any other block, from communicating with all other applicants. Thus, applicants that have applied for licenses covering the same markets (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.²³ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**²⁴ (As described in Section IV.A.2., below, information concerning applicants’ license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same geographic areas as the licenses that it has selected in its short-form application.²⁵)

17. 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

²¹ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 07-3415 for the *700 MHz Auction Public Notice*, or DA 07-4171 for this Public Notice).

²² 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1). *See also Part 1 Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

²³ *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).

²⁴ *See, e.g.*, *Star Wireless, LLC, Forfeiture Order*, 19 FCC Rcd 18626, 18628 ¶ 4, n.19 (EB 2004), application for review pending (collusion rule applies to applicants regardless of whether they are qualified to bid); Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 16 FCC Rcd 10080 (WTB 2000) (declining to exempt 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).

²⁵ Section IV.A.2. “Information Available to Bidders Before and During the Auctions,” below, especially ¶ 154.

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.²⁶

18. Entities and parties subject to the anti-collusion rule should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant's bids or bidding strategies. In situations where the anti-collusion rule views the same person as the applicant with respect to two different entities filing competing applications, under Bureau precedent the bids and bidding strategies of one applicant are necessarily conveyed to the other and, absent a disclosed bidding agreement, an apparent violation of the anti-collusion rule occurs.²⁷ The Bureau has not addressed situations where employees who do not qualify as the applicant, (e.g., are not officers or directors) receive information regarding a competing applicant's bids or bidding strategies and whether that information might be deemed to necessarily convey to the applicant. We note that the exception to the anti-collusion rule providing that non-controlling interest holders may have interests in more than one competing bidder without violating the anti-collusion rule, provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), does not extend to controlling interest holders.²⁸

b. Prohibition Applies Until Down Payment Deadline

19. Section 1.2105(c)'s anti-collusion prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.²⁹ In recognition of the related nature of the initial auction and any contingent auction of alternative licenses, the Commission concluded in the *700 MHz Second Report and Order* that the provisions of the anti-collusion rule would continue to apply until the down payment deadline for the subsequent auction.³⁰

20. Some commenters argue that we should allow applicants to "opt-out" from the anti-collusion prohibition in the event Auction 76 is conducted.³¹ Under MetroPCS's proposal, an applicant that has no intention to bid in the subsequent auction could inform the Commission of its intent in writing with a certification that its decision is not based on any discussion with other competing bidders of auction strategy or post-auction market structure.³² As one commenter acknowledges, changing the application of the rule in this way is beyond the Bureau's delegated authority and beyond the scope of this non-rulemaking proceeding and would require action by the Commission to reconsider its determination in the *700 MHz Second Report and Order*.³³ Thus, we are unable to adopt the proposed opt-out certification procedure. If it is necessary to conduct Auction 76, the provisions of the anti-collusion rule will apply to

²⁶ 47 C.F.R. § 1.2105(c)(7)(i).

²⁷ Letter to John Cooper, Aurora Communications, Inc., from Margaret W. Wiener, DA 06-157, 21 FCC Rcd 523 (Auc. Div. 2006); Letter to Howard A. Kalmenson, Lotus Communications Corp., from Margaret W. Wiener, DA 06-156, 21 FCC Rcd 520 (Auc. Div. 2006); Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, DA 05-2445, 20 FCC Rcd 14648 (Video and Auc. Divs. 2005).

²⁸ 47 C.F.R. § 1.2105(c)(4).

²⁹ 47 C.F.R. § 1.2105(c)(1).

³⁰ *700 MHz Second Report and Order* at ¶ 316 ("[T]he applicable 'down payment deadline' for purposes of our anti-collusion rule shall be the 'down payment deadline' established for the subsequent auction.").

³¹ MetroPCS Comments at 24; US Cellular Reply Comments at 8-9; Leap Reply Comments at 4-5.

³² MetroPCS Comments at 24.

³³ *Id.*

all applicants until the down payment deadline, which will occur after the close of bidding on licenses offered in Auction 76.

c. Prohibited Communications

21. Prospective applicants for upcoming Auctions 73 and 76 and other parties that may be engaged in discussion with such prospective applicants are cautioned of the need to comply with the Commission's anti-collusion rule, Section 1.2105(c).³⁴ The anti-collusion rule prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy.³⁵ While the anti-collusion rule provisions do not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

22. The Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."³⁶

23. Applicants are hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that is confidential in both Auctions 73 and 76 at the time of disclosure may violate the anti-collusion rule.³⁷ This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as for Auctions 73 and 76, a qualified bidder's statement to the press that it has lost bidding eligibility and stopped bidding in the auction could give rise to a finding of an anti-collusion rule violation.³⁸ Similarly, an applicant's public statement of intent not to participate in Auction 76 bidding could also violate the rule.

24. Applicants for licenses for any of the same geographic license areas must not communicate directly or indirectly about bids or bidding strategy.³⁹ Accordingly, such 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 competing 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 or engineering firm or

³⁴ 47 C.F.R. § 1.2105(c).

³⁵ See *Western PCS BTA I Corp.*, 14 FCC Rcd 21571 (1999).

³⁶ 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).

³⁷ Thus, communication by an applicant to another applicant for one or more of the same licenses of the applicant's license selections on its short-form application, or of the fact that the applicant does or does not hold provisionally winning bids on particular licenses, may well violate the anti-collusion rule.

³⁸ Cf. *Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction*, *Public Notice*, 13 FCC Rcd 341, 347-48 (1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

³⁹ *Part I Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

consulting firm), a violation similarly could occur.⁴⁰ 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.⁴¹ A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants.⁴² Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,"⁴³ and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."⁴⁴

25. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures for limited information.⁴⁵ Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

d. Disclosure of Bidding Agreements and Arrangements

26. 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 application.⁴⁶ 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 for licenses covering any of the same or overlapping geographic areas after the short-form filing deadline.⁴⁷

e. Anti-Collusion Certification

27. By electronically submitting a short-form application following the electronic filing procedures set forth in Attachments D and E to this Public Notice, each applicant certifies its compliance

⁴⁰ 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 Order").

⁴¹ *Id.*

⁴² 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*, 20 FCC Rcd 14648 (WTB/MB 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).

⁴³ Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970, 17976 ¶ 12 (1997).

⁴⁴ Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

⁴⁵ See Section IV.A.2. "Information Available to Bidders Before and During Auctions," below.

⁴⁶ 47 C.F.R. § 1.2105(c)(7)(i).

⁴⁷ Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995) ("Anti-Collusion Public Notice").

with Section 1.2105(c). However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.⁴⁸ The Commission has stated that it “intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring.”⁴⁹ Any applicant found to have violated the anti-collusion rule may be subject to sanctions.⁵⁰

f. Antitrust Laws

28. Applicants are also reminded that, regardless of compliance with the Commission’s rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.⁵¹ Compliance with the disclosure requirements of the Commission’s anti-collusion rule will not insulate a party from enforcement of the antitrust laws.⁵² For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application.⁵³ The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other.⁵⁴ Similarly, the Bureau has long reminded potential applicants and others that “[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws.”⁵⁵ To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.⁵⁶ 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

⁴⁸ *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

⁴⁹ 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).

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

⁵¹ 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 21558, 21560 ¶ 4 and n.4 (1999) *citing* 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)(“[A]pplicants will also be subject to existing antitrust laws.”). (“*Fourth Memorandum Opinion and Order*”).

⁵² *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).

⁵³ The Commission has cited a number of examples of such anticompetitive behavior. *See, e.g.*, Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858 at 6869 n.134.

⁵⁴ 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); *see also Anti-Collusion Public Notice*.

⁵⁵ *Anti-Collusion Public Notice*.

⁵⁶ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.⁵⁷

29. Frontline urges the Commission to “adopt an auction rule that states that a bidder cannot release any bidding information to the public during the course of the auction,” and provide notice that all parties remain subject to the antitrust laws.⁵⁸ As Verizon Wireless points out, however, the Commission has consistently provided such guidance in prior auctions.⁵⁹ We do so again here: All parties remain subject to the antitrust laws.

g. Duty to Report Prohibited Communications

30. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.⁶⁰ The Commission recently clarified that each applicant’s obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five day period.⁶¹

31. 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.⁶² 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).

32. Applicants must be aware that failure to comply with the Commission’s rules can result in enforcement action.

h. Winning Bidders Must Disclose Terms of Agreements

33. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.⁶³

i. Additional Information Concerning Anti-Collusion Rule

34. 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 I. These documents are available on the Commission’s auction anti-collusion web page.⁶⁴

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

⁵⁸ Frontline Comments at 9-10.

⁵⁹ Verizon Wireless Reply Comments at 2-3.

⁶⁰ 47 C.F.R. § 1.2105(c)(6).

⁶¹ *See 700 MHz Second Report and Order* at ¶¶ 285-86.

⁶² 47 C.F.R. § 1.65.

⁶³ 47 C.F.R. § 1.2107(d).

⁶⁴ <http://wireless.fcc.gov/auctions/anticollusion>

3. Protection of Incumbent Operations

35. A number of incumbent broadcasters are licensed and operating on these frequencies (TV Channels 52-53, 56-58, 60-62, and 65-67) and adjacent channels. In accordance with the Commission's rules, 700 MHz Band licensees must protect analog and digital TV incumbents from harmful interference through February 17, 2009, the end of the DTV transition period.⁶⁵ After February 17, 2009, 700 MHz licensees must continue to operate in accordance with the Commission's rules to reduce the potential for interference to public reception of the signals of DTV broadcast stations transmitting on DTV Channel 51.⁶⁶ These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to some parts of their geographic license areas.

36. In the *700 MHz Second Report and Order*, the Commission grandfathered an incumbent guard band B Block licensee in Major Economic Areas (MEAs) 21 and 39 at 761-763 MHz and 791-793 MHz of the D Block. The new D Block licensee will be authorized on a secondary basis at 761-763 MHz and 791-793 MHz in these markets, and it may not cause interference to the primary operations of the grandfathered licensee. If the grandfathered licensee, or a successor or assignee, cancels either of the grandfathered licenses, or if either license cancels automatically, is terminated by the Commission, or expires, then the licensed geographic area will revert to the D Block licensee automatically.

a. International Coordination

37. Potential bidders seeking licenses for geographic areas that are near the Canadian or Mexican borders are subject to international agreements with Canada and Mexico. Pursuant to these agreements, the U.S. must protect the signals of Canadian and Mexican television broadcast stations located in the border area.⁶⁷ Unless otherwise modified by international treaty, licensees must not cause interference to, and must accept harmful interference from, television broadcast operations in Mexico and Canada. Further, until such time as existing agreements are replaced or modified to reflect the new uses, licensees in the band will be subject to existing agreements.

b. Quiet Zones

38. 700 MHz Band licensees must protect the radio quiet zones set forth in the Commission's rules.⁶⁸ 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.⁶⁹

4. Due Diligence

39. We caution potential applicants formulating their bidding strategies to investigate and consider the extent to which 700 MHz Band frequencies are occupied. Applicants and their investors should also understand that Commission rules and requirements place limitations on the ability of 700 MHz Band licensees to use this spectrum. As stated above, there are a number of incumbent broadcast television licensees already licensed and operating in the band that will be subject to the upcoming auction. Geographic area licensees operating on the spectrum associated with Channels 52-53, 56-58, 60-62, and 65-67 must comply with the co-channel and the adjacent channel provision of Section 27.60 of

⁶⁵ See 47 C.F.R. § 27.60 (co-channel and adjacent channel interference protection requirements for analog TV and DTV facilities).

⁶⁶ See 47 C.F.R. § 27.60.

⁶⁷ See 47 C.F.R. § 27.57(b). Agreements with Canada and Mexico at <http://www.fcc.gov/ib/sand/agree/welcome.html>

⁶⁸ 47 C.F.R. § 1.924.

⁶⁹ *Id.*

the Commission's rules.⁷⁰ These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. For example, bidders should become familiar with any petitions or other pleadings filed in response to the *700 MHz First Report and Order*, *700 MHz Second Report and Order*, and any other orders that have been or may be released affecting the 700 MHz Band.

40. 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 700 MHz Band licenses. **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 700 MHz Band 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.

41. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction 73 in order to determine the existence of any pending legislative, administrative or judicial proceedings that might affect their decision regarding participation in the auction, including any subsequent auction (if necessary). Participants in Auctions 73 and 76 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 as well as other applicable Federal, state, and local laws.

42. Applicants should also be aware that certain pending and future proceedings, including rulemaking proceedings or petitions for rulemaking, applications (including those for modification), 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 Auctions 73 and 76. For example, bidders should note that petitions have been filed for reconsideration of certain decisions made in the *700 MHz First Report and Order* and the *700 MHz Second Report and Order*. In addition, applicants should be aware that the Commission has sought comment on a range of proposals concerning consumer education about the DTV transition, including the possible imposition of reporting requirements on winning bidders for 700 MHz band licenses.⁷¹ Of course, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auctions 73 and 76.⁷² Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in Auctions 73 and 76.

43. 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 73. 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 beginning of bidding in the auction.

⁷⁰ 47 C.F.R. § 27.60; *see also* Section I.B.3 of this Public Notice.

⁷¹ In the Matter of DTV Consumer Education Initiative, MB Docket No. 07-148, *Notice of Proposed Rulemaking*, FCC 07-148, ¶ 17 (rel. July 30, 2007)

⁷² *Cellco Partnership d/b/a Verizon Wireless v. FCC*, Case Nos. 07-1359 & 07-1382, U.S. Court of Appeals for the District of Columbia Circuit.

44. 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 being offered.

45. Applicants may use the licensing database for the Media Bureau on the Internet in order to determine which frequencies are already licensed to incumbent licensees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb/cdbs.html>. Potential bidders may query the database and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information, Search for Application Information and downloading query results are available online by selecting the CDBS Public Access options from this page. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. A search for assignment of license or transfer of control applications may be conducted using "ALTC" as the Group Type under the Group Search function. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418-2662, or via e-mail at cdbshelp@fcc.gov.

46. 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.

47. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the geographic area for which they plan to bid, and also to familiarize themselves with the environmental review obligations described below in Section I.B.7.

5. Use of Integrated Spectrum Auction System

48. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 73 over the Internet using the Commission's Integrated Spectrum Auction System ("ISAS" or "FCC Auction System"). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with Auctions 73 and 76. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

6. Fraud Alert

49. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 73 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.

50. Information about deceptive telemarketing investment schemes is available from the Commission as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from: (i) the FCC by going to <http://wireless.fcc.gov/csinfo/#fraud> or by telephone at (888) 225-5322 (FCC’s Consumer Call Center); (ii) the FTC by going to <http://ftc.gov/bcp/menu-invest.htm> or by telephone at (202) 326-2222; and (iii) the SEC by going to <http://sec.gov/cgi-bin/txt-srch-sec?text=fraud§ion=Investor+Information&x=8&y=5> or by telephone 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.

7. Environmental Review Requirements

51. Licensees must comply with the Commission’s rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes.⁷³ The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission’s environmental rules for each such facility.⁷⁴ The Commission’s environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.⁷⁵ 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.

C. Auction Specifics

1. Auction 73 Start Date

52. Bidding in Auction 73 will begin on **Thursday, January 24, 2008**.

53. This change of the previously-announced start date for Auction 73 will provide interested parties with additional time after this announcement of competitive bidding procedures to develop business plans, assess market conditions, and evaluate the availability of equipment for new 700 MHz Band services.⁷⁶

⁷³ 47 C.F.R. Ch. 1, Subpart I.

⁷⁴ 47 C.F.R. §§ 1.1301-1.1319.

⁷⁵ 47 C.F.R. Part 1, Appendix C.

⁷⁶ See 47 U.S.C. § 309(j)(3)(E)(ii). In the *700 MHz Auction Public Notice*, the Bureau proposed to start Auction 73 on January 16, 2008.

54. Some commenters had sought a postponement of the previously-announced start date until January 25 or 28, 2008.⁷⁷ Pursuant to the Congressional mandate, the Commission must conduct the auction of licenses for recovered analog spectrum in the 700 MHz Band by commencing the bidding not later than January 28, 2008.⁷⁸ Starting the auction on the statutory deadline for commencing the auction, or one business day prior to the deadline would provide insufficient time to address unexpected matters that might arise just prior to the start of bidding.

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

2. Auction Title

56. The auction in which the 700 MHz Band licenses will initially be offered is designated as “Auction 73 – 700 MHz Band.” In the event that any licenses, including alternative licenses, are offered in contingent subsequent bidding, that will be designated as Auction 76.

3. Bidding Methodology

57. As discussed in more detail below, the bidding methodology for Auction 73 will be simultaneous multiple round (“SMR”) bidding for the A, B, D, and E Block licenses and an auction design with hierarchical package bidding (“HPB”) for the C Block licenses.⁷⁹ The Commission will conduct Auctions 73 and 76 over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

4. Pre-Auction Dates and Deadlines

58. The following dates and deadlines apply:

Auction Seminar	November 19, 2007
Auction 73 and 76 Short-Form Application (FCC Form 175) Filing Window Opens	November 19, 2007; 12:00 noon ET
Auction 73 and 76 Short-Form Application (FCC Form 175) Filing Window Deadline	December 3, 2007; prior to 6:00 p.m. ET
Auction 73 Upfront Payments (via wire transfer).....	December 28, 2007; 6:00 p.m. ET
Mock Auction	January 18, 2008
Auction 73 Begins.....	January 24, 2008

59. If contingent subsequent bidding is necessary, we intend to announce the start date for Auction 76 and the deadline for additional upfront payments within five business days after the end of bidding in Auction 73. We expect that Auction 76 would begin within three weeks of that announcement.

5. Requirements for Participation in Auction 73 and 76

60. Those wishing to participate in Auction 73 and 76 (should any subsequent auction become necessary), must:

⁷⁷ MetroPCS Comments at 5; US Cellular Reply Comments at 9. *See also*, “Joint Request for Mid-December Short-Form Filing Deadline,” filed by Frontline, MetroPCS, RTG, and US Cellular, filed on October 2, 2007.

⁷⁸ *See* 47 U.S.C. § 309(j)(15)(v).

⁷⁹ Section IV.A.1. “Simultaneous Multiple Round Auction with Package Bidding on C Block Licenses,” below.

- For Auction 73, submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, December 3, 2007, following the electronic filing procedures set forth in Attachment D to this Public Notice.
- For Auction 76, submit short-form applications (FCC Form 175) electronically prior to 6:00 p.m. ET, December 3, 2007, for each auction following the electronic filing procedures set forth in Attachments D and E to this Public Notice. Bidding in Auction 76 is open only to applicants that qualify to participate in Auction 73, and that comply with all of the requirements for participating in Auction 76, including submitting a separate short-form application.
- For Auction 73, submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, December 28, 2007, following the procedures and instructions set forth in Attachment F to this Public Notice.
- For Auction 76 (if necessary), submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by the deadline to be announced following the end of bidding in Auction 73.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

D. Other Issues Raised by Commenters

61. Two commenters raised issues that are unrelated to those raised in the *700 MHz Auction Public Notice*. Eydt proposes that the Commission should require that all licenses offered in Auction 73 be made available to public safety personnel for priority use during critical emergencies.⁸⁰ Eydt also suggests that such a requirement be considered in the event of a contingent auction, if any.⁸¹ Frontline urges the Commission to require applicants to disclose on their short-form applications whether winning the licenses they have selected would cause their spectrum holdings to exceed 70 MHz of spectrum in the markets of the selected licenses.⁸² In the event that any applicants indicate that their spectrum holdings would exceed this amount, Frontline proposed that their short-form applications should be dismissed before the commencement of Auction 73.⁸³ Frontline also requests that the Commission investigate alleged violations of the Commission's *ex parte* rules by Verizon Wireless concerning policy on the open platform provisions for C Block licenses, and proposes excluding Verizon Wireless from Auction 73 as a possible sanction for violating the Commission's rules.⁸⁴

62. These issues are outside the scope of this non-rulemaking proceeding, which is confined to establishing competitive bidding procedures for Auction 73. We note that some of these issues have been presented to the Commission in petitions for reconsideration of the *700 MHz Second Report and Order* and will be addressed in that proceeding.⁸⁵

⁸⁰ Eydt Comments at 1.

⁸¹ *Id.*

⁸² Frontline Comments at 14-16.

⁸³ *Id.*

⁸⁴ Frontline *Ex Parte* Letter, dated September 27, 2007, at 1.

⁸⁵ Petition for Partial Reconsideration and/or Clarification, filed on behalf of the Blooston Rural Carriers, received September 24, 2007; Petition for Reconsideration, filed on behalf of the *Ad Hoc* Public Interest Spectrum Coalition, received September 24, 2007; Petition for Reconsideration, filed on behalf of Frontline Wireless, LLC, received September 24, 2007; Petition for Reconsideration, filed on behalf of Pierce Transit, received September 24, 2007; (continued....)

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

63. 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.⁸⁶ 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 (FCC Form 175) in which they certify under penalty of perjury as to their qualifications.⁸⁷ Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments, as explained below.⁸⁸ In the second phase of the process, winning bidders file a more comprehensive long-form application.⁸⁹

64. Entities seeking licenses available in Auction 73 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on December 3, 2007, following the procedures prescribed in Attachment D to this Public Notice. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning on the deadline for filing, as described above. Note that for Auctions 73 and 76, applicants filing a short-form application for Auction 73 will remain subject to the Commission's anti-collusion rules through the completion of Auction 76, if conducted. 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.⁹⁰ Applicants should read the instructions set forth in Attachment D 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.

65. Entities seeking licenses that may be offered in Auction 76, if Auction 76 is conducted, must file electronically via the FCC Auction System prior to 6:00 p.m. ET on December 3, 2007 both a short-form application for Auction 73, following the procedures prescribed in Attachment D to this Public Notice, and an abbreviated short-form application for Auction 76, following the procedures prescribed in Attachment E to this Public Notice. Applicants filing short-form applications for both Auctions 73 and 76 are subject to the Commission's anti-collusion rules beginning on the deadline for filing both applications, as described above.

66. To streamline the application process, other than license selection requirements, all relevant information for the application to participate in Auction 76 must be submitted as part of the application to participate in Auction 73. The Auction 76 abbreviated application will request – and will accept – only
(Continued from previous page) _____

Petition for Reconsideration and Clarification, filed on behalf of AT&T Inc., received September 24, 2007; Petition for Reconsideration, filed on behalf of the Rural Telecommunications Group, Inc., received September 24, 2007; Petition for Reconsideration, filed on behalf of the Commonwealth of Virginia, received September 24, 2007; Petition for Partial Reconsideration and For Clarification, filed on behalf of Cyren Call Communications Corporation, received September 24, 2007; Petition for Partial Reconsideration, filed on behalf of NTCH, Inc., received September 21, 2007; Petition for Clarification and Reconsideration, filed on behalf of MetroPCS Communications, Inc., received September 20, 2007.

⁸⁶ 47 C.F.R. § 1.2105.

⁸⁷ *Id.*; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

⁸⁸ Section III.D. "Upfront Payments – Due December 28, 2007," below.

⁸⁹ 47 C.F.R. § 1.2107.

⁹⁰ 47 C.F.R. § 1.2105(a)(2)(v).

information that the FCC Auction System requires in order to enable applicants to submit license selections for Auction 76. For example, applicants seeking to submit information regarding bidding agreements with respect to licenses offered in Auction 76 will not be able to access the bidding agreement screens that are usually part of the short-form application in the Auction 76 abbreviated application. Instead, such applicants must submit information regarding those agreements as part of their Auction 73 short-form application.

67. To comply with FCC Auction System requirements, however, applicants will be required to repeat some information submitted in their Auction 73 application, e.g. their FCC Registration Number (FRN), their name and address, certification of the form's contents, etc. As noted in the procedures for filing the abbreviated short-form application for Auction 76, applicants must provide the same information submitted in their application for Auction 73 as they provide in their Auction 76 application. Most importantly, **if an entity wishes to submit a short-form application for Auction 76, it must do so using the same FRN that it uses for its short-form application for Auction 73. In addition, the same person must certify both applications, as the certification applies to information submitted in both applications.**

68. An entity may not submit more than one short-form application for Auction 73. Similarly, an entity may not submit more than one short-form application for Auction 76. If a party submits multiple short-form applications for either Auction 73 or Auction 76, only one application for each will be accepted for filing.

69. Applicants also should note that submission of a short-form application (and any amendments thereto) 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. Applicants are not permitted to make major modifications to their applications; such impermissible changes include a change of the certifying official to the application.⁹¹ 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 and Others

1. Size Standards for Bidding Credits

70. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction 73 and Auction 76, bidding credits will be available to small businesses and very small businesses, and consortia thereof, as follows:

- 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.⁹²
- 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.⁹³

71. 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.

⁹¹ 47 C.F.R. § 1.2105(b).

⁹² See 47 C.F.R. § 1.2110(f)(2)(ii).

⁹³ See 47 C.F.R. § 1.2110(f)(2)(i).

72. 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 for Auction 73 to establish that it satisfies the applicable eligibility requirement.⁹⁴ An applicant's disclosure of this information in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required – and will not be able to – submit this information in their abbreviated Auction 76 application. Applicants claiming eligibility as a designated entity in Auction 73 and Auction 76 should review carefully the *CSEA/Part 1 Report and Order*, the *Designated Entity Second Report and Order*, and the *Order on Reconsideration of the Designated Entity Second Report and Order*. In that connection, the Commission adopted rules governing eligibility for designated entity benefits in the *Designated Entity Second Report and Order*.⁹⁵ The Commission's rules regarding applicants seeking eligibility for designated entity benefits require the disclosure of (1) all parties with which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum;⁹⁶ and (ii) the gross revenues, separately and in the aggregate, of entities with which the applicant has an attributable material relationship, as defined in Section 1.2110(b)(3)(iv)(B).⁹⁷

73. The Commission has adopted a narrow exemption from the attribution rule for the officers and directors of a rural telephone cooperative pursuant to which the gross revenues of the affiliates of the cooperative's officers and directors are not attributed to the applicant.⁹⁸ An applicant (or controlling interest) seeking to claim this exemption must include in its short-form application a certification that it is validly organized under the most closely applicable organizing statute for a cooperative, and that such organization is reflected in its articles of incorporation, by-laws, and/or other relevant organic documents.⁹⁹ Applicants seeking to claim this exemption must meet all of the conditions specified in Section 1.2110(b)(3)(iii) of the Commission's rules.¹⁰⁰ Additional guidance on completing the FCC Form 175 to claim this exemption may be found in Attachment D to this Public Notice.

2. Tribal Lands Bidding Credit

74. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their FCC Form 175 short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their FCC Form 601 long-form applications. This process is described in Section VI.F. "Tribal Lands Bidding Credit," below.

⁹⁴ 47 C.F.R. §§ 1.2105, 1.2110(b)(1)(i). See Section II.E. "Bidding Credit Revenue Disclosures," below, and Attachment D.

⁹⁵ See, generally, Competitive Bidding Rules and Procedures, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 21 FCC Rcd 4753 (2006) ("*Designated Entity Second Report and Order*"), petitions for reconsideration pending; *Order on Reconsideration of the Second Report and Order*, 21 FCC Rcd 6703 (2006) ("*Order on Reconsideration of the Designated Entity Second Report and Order*"), petitions for reconsideration pending.

⁹⁶ 47 C.F.R. § 1.2112(b)(1)(iii).

⁹⁷ 47 C.F.R. § 1.2112(b)(1)(iv). Note that certain otherwise attributable material relationships may not be attributable pursuant to the provisions of 47 C.F.R. § 1.2110(b)(3)(iv)(C)(2).

⁹⁸ 47 C.F.R. § 1.2110(c)(2)(ii)(F).

⁹⁹ *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd at 1949 ¶ 18.

¹⁰⁰ 47 C.F.R. § 1.2110(b)(3)(iii). See *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd at 10186-94 ¶¶ 10-18; *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd at 1945-46 ¶ 9.

3. Installment Payments

75. Installment payment plans will not be available in Auction 73 or in Auction 76.

B. License Selection

76. An applicant must select the initially offered licenses on which it wants to bid individually or as part of a pre-defined package in Auction 73 from the “Eligible Licenses” list on its short-form application for Auction 73. An applicant interested in bidding on licenses in the contingent subsequent auction must select those licenses from the “Eligible Licenses” list on its short-form application for Auction 76. Applicants will be able to bid on pre-defined packages of initially offered C Block licenses and alternative C2 Block licenses, if offered in subsequent bidding, pursuant to the package bidding procedures described below, only if they have selected all the individual licenses that comprise the relevant package on their respective short-form applications.

77. To assist applicants in identifying licenses of interest that will be available in Auctions 73 and 76, FCC Form 175 will include a filtering mechanism that allows an applicant to filter the “Eligible Licenses” list. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may select all the licenses in the customized list or select individual licenses from the list. Applicants also will be able to select licenses from one customized list and then create additional customized lists to select additional licenses.

78. Applicants will not be able to change their license selections for either Auction 73 or Auction 76 after the short-form application filing deadline.¹⁰¹ Applicants interested in participating in Auctions 73 and 76 must have selected license(s) available in the respective auction by the short-form application deadline. Applicants must confirm their license selections before the deadline for submitting FCC Form 175. The FCC Auction System will not accept bids from an applicant on individual licenses that the applicant has not selected on its FCC Form 175. In addition, the FCC Auction System will not accept bids from an applicant on a pre-defined hierarchical package unless the applicant selected on its FCC Form 175 all the individual licenses that comprise the package.

C. Disclosure of Bidding Arrangements

79. Applicants will be required to identify in their short-form application for Auction 73 all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned in Auctions 73 and 76, including any agreements relating to post-auction market structure.¹⁰² The agreements identified in the short-form application for Auction 73 will become part of the applicant’s Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required – and will not be able to – disclose bidding agreements in their abbreviated Auction 76 application.

80. 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 to participate in Auction 73, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.¹⁰³ If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it would not include the names of parties to the

¹⁰¹ 47 C.F.R. § 1.2105(b)(2).

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

¹⁰³ 47 C.F.R. § 1.2105(a)(2)(ix).

discussions on its application and may not continue such discussions with any applicants after the deadline.¹⁰⁴

81. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.¹⁰⁵ 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.¹⁰⁶ Further, as discussed above, compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.¹⁰⁷

D. Ownership Disclosure Requirements

82. 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.¹⁰⁸ Specifically, in completing the short-form application for Auction 73, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short-form application are prescribed in Sections 1.2105 and 1.2112 of the Commission's rules.¹⁰⁹ Each applicant is responsible for information submitted in its short-form application being complete and accurate. An applicant's disclosure of ownership information in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required – and will not be able to – submit ownership disclosure information in their abbreviated Auction 76 application.

83. 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 online FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. An applicant is responsible for ensuring that the information submitted in its short-form application for Auction 73 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 was entered automatically and needs to be changed directly in the short-form application.

E. Bidding Credit Revenue Disclosures

84. 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

¹⁰⁴ Section I.B.2. "Prohibition of Collusion; Compliance with Antitrust Laws," above.

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

¹⁰⁶ Section I.B.2. "Prohibition of Collusion; Compliance with Antitrust Laws," above.

¹⁰⁷ *Id.*

¹⁰⁸ Section 1.2105 requires the disclosure on the short-form application of the applicant's ownership information set forth in both Sections 1.2105 and 1.2112. 47 C.F.R. §§ 1.2105, 1.2112.

¹⁰⁹ *Id.*

interests, and the affiliates of its controlling interests.¹¹⁰ 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 short-form applications for Auction 73 the gross revenues of the preceding three years for each of the following: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests.¹¹¹ 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. Applicants must also disclose the gross revenues of the entities with which they have attributable material relationships, as defined by the Commission's rules.¹¹² Additionally, if an applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member. An applicant's disclosure of bidding credit revenue information in the short-form application for Auction 73 will become part of the applicant's Auction 76 application, in the event the Commission conducts Auction 76. Accordingly, applicants are not required – and will not be able to – submit bidding credit revenue information in their abbreviated Auction 76 application.

85. Controlling interests of an applicant 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.¹¹³ 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.¹¹⁴

86. Officers and directors of an applicant are also considered to have controlling interest in the applicant.¹¹⁵ 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; the applicant and its affiliates; and, as discussed below, any parties having an attributable material relationship with the applicant will be counted in determining small business eligibility.

87. Last year, in the *Designated Entity Second Report and Order*, the Commission adopted material relationship rules.¹¹⁶ The Commission now requires the consideration of certain leasing and resale (including wholesale) relationships – “material relationships” – in determining designated entity

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

¹¹¹ 47 C.F.R. § 1.2110(b).

¹¹² 47 C.F.R. § 1.2112(b)(iv); *see* 47 C.F.R. § 1.2110(b)(3)(iv)(B) (defining attributable material relationships).

¹¹³ 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).

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

¹¹⁵ 47 C.F.R. § 1.2110(c)(2)(ii)(F).

¹¹⁶ *See, generally, Designated Entity Second Report and Order*, 21 FCC Rcd 4753; *Order on Reconsideration of the Designated Entity Second Report and Order*, 21 FCC Rcd 6703; and 47 C.F.R. §§ 1.2110, 1.2111, and 1.2112; *see also id.* § 1.2114.

eligibility. Material relationships fall into two categories: impermissible and attributable. An applicant or licensee has an “impermissible material relationship” when it has agreements with one or more other entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any of its licenses. If an applicant or a licensee has an impermissible material relationship, it is, as a result, (i) ineligible for the award of designated entity benefits, and (ii) subject to unjust enrichment on a license-by-license basis.¹¹⁷

88. An applicant or licensee has an “attributable material relationship” when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues and, if applicable, total assets of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant’s or licensee’s (i) eligibility for designated entity benefits and (ii) liability for unjust enrichment on a license-by-license basis.¹¹⁸

89. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, meaning that those preexisting relationships would not alone cause the Commission to examine a designated entity’s ongoing eligibility for benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant’s or licensee’s designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, the occurrence of any of those eligibility events after the release date of the *Designated Entity Second Report and Order* triggers a reexamination of the applicant’s or licensee’s designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.¹¹⁹

90. In recent years the Commission has also made other 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.¹²⁰ 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.¹²¹

¹¹⁷ *Designated Entity Second Report and Order*, 21 FCC Rcd at 4759-60 ¶ 15, 4763-65 ¶¶25-30, 4765-68 ¶¶ 31-41; *Order on Reconsideration of the Designated Entity Second Report and Order*, 21 FCC Rcd at 6712-13 ¶¶ 24-26; and 47 C.F.R. §§ 1.2110(b)(3)(iv)(A), 1.2111(d).

¹¹⁸ *Designated Entity Second Report and Order*, 21 FCC Rcd at 4759-60 ¶ 15, 4763-65 ¶¶25-30, 4765-68 ¶¶ 31-41; *Order on Reconsideration of the Designated Entity Second Report and Order*, 21 FCC Rcd at 6712-13 ¶¶ 24-26; and 47 C.F.R. §§ 1.2110(b)(3)(iv)(B), 1.2111(d).

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

¹²⁰ *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.

¹²¹ *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.

91. 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 [or] very small business as those terms are defined in the service-specific rules.”¹²² Thus, each member of a consortium of small or very small businesses that applies to participate in Auction 73 must individually meet the definition of small business or very small business adopted by the Commission for the 700 MHz Band.¹²³ Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium’s eligibility as a small business or very small business,¹²⁴ this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.¹²⁵

F. Provisions Regarding Former and Current Defaulters

92. 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 1.2110,¹²⁶ have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency.¹²⁷ 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.¹²⁸ 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. These statements and certifications are prerequisites to submitting an application in the FCC Auction System. Accordingly, applicants seeking licenses that may be offered in Auction 76 will be required to make these statements and certifications in both their short-form application for Auction 73 and their abbreviated Auction 76 application.

93. “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 Auctions 73 and 76, provided that they are otherwise qualified. However, as discussed in Section III.D.3. below, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.¹²⁹

¹²² 47 C.F.R. § 1.2110(c)(6).

¹²³ 47 C.F.R. §§ 27.502 and 27.702.

¹²⁴ 47 C.F.R. § 1.2110(b)(3)(i).

¹²⁵ The *CSEA/Part 1 Report and Order* modified the procedure by which a consortium that is a winning bidder will apply for a license. See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 911-912 ¶¶ 51-52. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* and sections 1.2107(g) and 1.2110(b)(3) of the Commission’s rules to understand how the members of the consortia will apply for a license in the event they are winning bidders.

¹²⁶ 47 C.F.R. § 1.2110.

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

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

¹²⁹ 47 C.F.R. § 1.2106(a).

94. “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 owed to any Federal agency as of the filing deadline for short-form applications — are not eligible to bid in either Auction 73 or Auction 76.¹³⁰

95. 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.¹³¹ 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.¹³² Therefore, with respect to regulatory or application fees, the provisions of Sections 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.¹³³

96. 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.¹³⁴ 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.¹³⁵ 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

¹³⁰ 47 C.F.R. §§ 1.2105(a)(2)(x) and 1.2105(b)(1); *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] FCC Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x)...and will not be eligible to participate in Commission auctions.”)

¹³¹ “WTB Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements,” *Public Notice*, 19 FCC Rcd 21920 (2004) (“*Auction Default Disclosure Public Notice*”). This public notice may be found at <http://wireless.fcc.gov/auctions/58/>.

¹³² Letter to Cheryl A. Tritt, Esq., Morrison and Foerster, LLP, from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 19 FCC Rcd 22907 (2004) (clarifying the term “debt” or “non-tax debt” as referenced in 47 C.F.R. §§ 1.2105(a) and 1.2106(a)). This letter may be found at: <http://wireless.fcc.gov/auctions/58/>.

¹³³ 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.

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

¹³⁵ *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 Section 1.2105.¹³⁶ Thus, while the red light rule ultimately may 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 an auction or of its upfront payment obligation.

97. Prospective applicants should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule,¹³⁷ and such review may result in the dismissal of a winning bidder's long-form application.¹³⁸

G. Other Information

98. Applicants owned by members of minority groups and/or women, as defined in Section 1.2110(c)(3),¹³⁹ 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.¹⁴⁰

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

99. Applicants are not permitted to make major modifications to their short-form applications (e.g., change their license selections, change control of the applicant, change the certifying official, or change their size to claim eligibility for a higher bidding credit) after the short-form application deadline.¹⁴¹ Thus, any change in control of an applicant, resulting from a merger for example, will be considered a major modification to the applicant's FCC Form 175, which will consequently be dismissed.¹⁴²

100. Applicants are, however, permitted to make only minor changes to their FCC Form 175 after the short-form application deadline. 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.

101. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its Auction 73 short-form application using the FCC Auction System. Applicants should not make changes to short-form applications associated with Auction 76. Applicants are reminded to 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.

¹³⁶ *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).

¹³⁷ *Debt Collection Report and Order*, 19 FCC Rcd 6540. See also 47 C.F.R. § 1.1112.

¹³⁸ 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).

¹³⁹ 47 C.F.R. § 1.2110(c)(3).

¹⁴⁰ Designated entities are defined as small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. See 47 C.F.R. § 1.2110(a).

¹⁴¹ 47 C.F.R. § 1.2105(b).

¹⁴² We reiterate that, even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the anti-collusion rule until the down-payment deadline, which will occur after the auction or the contingent subsequent auction.

102. In addition, during those periods outside of the initial and resubmission filing windows (i.e., when an applicant cannot electronically update its FCC Form 175), an applicant should submit a letter briefly summarizing the changes and subsequently update its short-form applications in ISAS as soon as possible. Note: After the filing window has closed, the auction system will not permit applicants to make certain changes, such as legal classification and bidding credit. Any letter describing changes to an applicant's short-form application should be submitted by electronic mail to the following address: auction73@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction 73 and the name of the applicant (e.g., "RE: Changes to Auction 73 Short-Form Application of ABC Corp."), and should not reference Auction 76. 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 the Auctions and Spectrum Access Division at (202) 418-0660.

103. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS).

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

104. 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.¹⁴³ 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 Section 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.¹⁴⁴

105. As noted in Section II.H., after the short-form filing deadline, applicants may make only minor changes to their short-form applications, such as deleting or adding 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 must submit a letter, briefly summarizing the changes, by electronic mail at the following address: auction73@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction 73 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.

106. Applicants must **not** submit application-specific material through ECFS.

III. PRE-AUCTION PROCEDURES

A. Auction Seminar — November 19, 2007

107. On Monday, November 19, 2007, the FCC will sponsor a free seminar for parties interested in participating in Auction 73 at the FCC 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 700 MHz Band service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements and other matters related to Auctions 73 and 76.

108. To register, please provide the information listed on Attachment J by fax, e-mail or telephone to the FCC by Thursday, November 15, 2007.

¹⁴³ 47 C.F.R. § 1.65.

¹⁴⁴ 47 C.F.R. § 1.2105(b)(2).

109. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC's Auction 73 web page at <http://wireless.fcc.gov/auctions/73/>. Select the "Auction Seminar" link. The seminar webcast will be archived for future viewing.

B. Short-Form Applications (FCC Form 175) — Due Prior to 6:00 p.m. ET on December 3, 2007

110. In order to be eligible to bid in Auction 73 or Auction 76, applicants must first follow the procedures set forth in Attachments D and E to this Public Notice to submit an FCC Form 175 application electronically via the FCC Auction System.¹⁴⁵ This application must be received at the Commission prior to 6:00 p.m. ET on December 3, 2007. **Late applications will not be accepted.** There is no application fee required when filing an FCC Form 175, but an applicant must submit an upfront payment to be eligible to bid.¹⁴⁶

111. Applications may generally be filed at any time beginning at noon ET on November 19, 2007, and the filing window will close prior to 6:00 p.m. ET on December 3, 2007. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on December 3, 2007.

112. Applicants must always click on the SUBMIT button on the Certify & Submit screen of the electronic form to successfully submit or modify their FCC Form 175. Any form that is not submitted will not be reviewed by the FCC. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachments D and E. 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

113. After the deadline for filing short-form applications, the Commission will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting corrected applications.

114. As described more fully in the Commission's rules, after the December 3, 2007, short-form filing deadline, applicants may make only minor corrections to their applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change control of the applicant, change certifying official, or change their size to claim eligibility for a higher bidding credit).¹⁴⁷ Accordingly, as noted above, applicants interested in participating in any potential contingent subsequent bidding must have selected license(s) available in the initial bidding as well as licenses that may be available in contingent subsequent bidding, including alternative licenses, by the deadline for submitting their application to participate in Auction 73. FCC personnel will communicate regarding a short-form application only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or

¹⁴⁵ 47 C.F.R. § 12105(a).

¹⁴⁶ See Section III.D. "Upfront Payments — Due December 28, 2007," below.

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

contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf.¹⁴⁸

D. Upfront Payments — Due December 28, 2007

115. In order to be eligible to bid in Auction 73 and any contingent subsequent auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Only applicants that become qualified bidders in Auction 73, by, among other things, making upfront payments to be eligible to bid in Auction 73, will be eligible to participate in any contingent subsequent auction. However, as described in Section V of this Public Notice, qualified bidders in Auction 73 will be permitted to make additional upfront payments with respect to licenses being offered in any contingent subsequent auction at a later date. 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 for Auction 73 must be received in the proper account at Mellon Bank by 6:00 p.m. ET on December 28, 2007.**

1. Making Upfront Payments by Wire Transfer

116. Wire transfer payments for Auction 73 must be received by 6:00 p.m. ET on December 28, 2007.¹⁴⁹ **No other payment method is acceptable.**¹⁵⁰ 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 # 910-1174
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: "A73U")
FCC CODE 1: (same as FCC Form 159, block 28A: "73")
PAYER NAME: (same as FCC Form 159, block 2)
LOCKBOX NO. # 358405

NOTE: The BNF and Lockbox number are specific to the upfront payments for Auction 73. Do not use BNF or Lockbox numbers from previous auctions. Wire transfer information for Auction 76 will be made available in a future public notice.

117. 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

¹⁴⁸ In no event, however, will the FCC send registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175. See Section III.E., below.

¹⁴⁹ A wire transfer is a transaction that you initiate through your bank. It authorizes your bank to wire funds from your account to our lockbox bank, the Mellon Bank in Pittsburgh, PA. Additional information on wire transfers is available on the Commission's web site at <http://www.fcc.gov/fees/wiretran.html>.

¹⁵⁰ The Commission will not accept checks, credit cards, or ACH payments.

(412) 209-6045. On the cover sheet of the facsimile, write “Wire Transfer — Auction Payment for Auction 73.” 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.¹⁵¹ **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.**

118. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 73 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 as instructed by the December 28, 2007, deadline will result in dismissal of the application and disqualification from participation in the auction as well as ineligibility for participation in any contingent subsequent bidding for 700 MHz Band licenses.

2. FCC Form 159

119. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be sent by facsimile to Mellon Bank to accompany each upfront payment.¹⁵² 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 F to this Public Notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payers 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

120. In the *Part 1 Order*, the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction.¹⁵³ In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that applicants that are former defaulters be required to pay upfront payments 50 percent greater than non-former defaulters.¹⁵⁴ For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by Section 1.2110 of the Commission’s rules.¹⁵⁵

¹⁵¹ Letter to Patrick Shannon, Counsel for Lynch 3G Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 18 FCC Rcd 11552 (2003).

¹⁵² As noted below, bidders will be afforded the opportunity to purchase additional bidding eligibility for the contingent subsequent auction by supplementing their upfront payments pursuant to the procedures described below. See Section V. “Auction 76,” below.

¹⁵³ 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*”).

¹⁵⁴ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-17 ¶¶ 40-42; 47 C.F.R. § 1.2106(a); see Section II.F. “Provisions Regarding Former and Current Defaulters,” above.

¹⁵⁵ 47 C.F.R. § 1.2110(c).

121. Upfront payments help deter frivolous or insincere bidding. In addition, upfront payments provide the Commission with a source of funds in the event that the bidder incurs liability during the auction. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid individually or as part of a package.

122. In the *700 MHz Auction Public Notice*, the Bureau proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids.¹⁵⁶ In addition, consistent with the Commission's direction in the *700 MHz Second Report and Order*, the Bureau proposed that qualified bidders in Auction 73 would have an opportunity to submit additional upfront payments to obtain bidding eligibility for licenses in any contingent subsequent auction (Auction 76).¹⁵⁷

123. Under the Bureau's proposal, in order to bid on a particular license or package, qualified bidders must have selected the license(s) on FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license or package. For a package, the bidding units are calculated by adding together the bidding units of the individual licenses that make up the package. **At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its FCC Form 175 for Auction 73, or else the applicant will not be eligible to participate in Auction 73 or in Auction 76.** An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold provisionally winning bids (via bids on licenses and/or packages) at any given time in Auction 73.¹⁵⁸ If contingent subsequent bidding is necessary, qualified bidders for Auction 73 will be given an opportunity to supplement their upfront payments in order to increase their bidding eligibility for Auction 76.

124. In the *700 MHz Auction Public Notice*, the Bureau proposed to calculate upfront payments as follows:¹⁵⁹

- For licenses covering CMAs in the 50 states in which the licenses offered in Auction 66 were sold, \$0.05 per MHz per population (MHz-pop) for Metropolitan Statistical Area (MSA) licenses and \$0.03/MHz-pop for Rural Service Area (RSA) licenses
- For licenses covering EAs in the 50 states in which the corresponding licenses in both EA blocks offered in Auction 66 were sold, the sum of \$0.05/MHz-pop for counties contained within an MSA and \$0.03/MHz-pop for counties contained within an RSA
- For licenses covering REAGs in the 50 states in which the corresponding licenses in all three REAG blocks offered in Auction 66 were sold, the sum of \$0.05/MHz-pop for counties contained within an MSA and \$0.03/MHz-pop for counties contained within an RSA
- For licenses covering geographic areas for which an Auction 66 license was unsold, \$0.01/MHz-pop
- For licenses covering the Gulf of Mexico, \$1,000 per MHz
- For all remaining licenses, \$0.01/MHz-pop

¹⁵⁶ *700 MHz Auction Public Notice* at ¶ 33.

¹⁵⁷ *Id.* at ¶ 100. See also *700 MHz Second Report and Order* at ¶ 316.

¹⁵⁸ Provisionally winning bids are bids that would become final winning bids if the auction were to close after the given round. See Section IV.B.4. "Provisionally Winning Bids," below.

¹⁵⁹ All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2000 Summary File 1 (SF1) and July 3, 2001, news releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

For all licenses, the results of the above calculations are subject to a minimum of \$500 per license and are rounded using our standard rounding procedure.¹⁶⁰

125. The Bureau set forth the specific upfront payments and bidding units for each license in Attachment A of the *700 MHz Auction Public Notice* and sought comment on this proposal. The Bureau did not receive any comments in response to the proposed upfront payments, or on its proposal that the upfront payment amount would determine a bidder's initial bidding eligibility. Therefore, we adopt the upfront payments and bidding units for each license in Auction 73 as proposed and set forth in Attachment A of this Public Notice.¹⁶¹

126. In calculating its upfront payment amount, an applicant interested in bidding only on individual licenses should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round in Auction 73, and submit an upfront payment amount covering that number of bidding units.¹⁶² Applicants interested in bidding on packages should determine their upfront payment amount by calculating the sum of bidding units associated with each discrete license they wish to include in new bids (package or individual bids) or have included in provisionally winning bids in any single round. The bidding units associated with a given license, even if the license is included in more than one bid, will be counted only once per bidder per round. In order to make this calculation, an applicant should add together the upfront payments for all licenses comprising all combinations of licenses and packages of licenses on which it seeks to be active in any given round. If a bidder has enough eligibility to bid on certain licenses, it can place bids on the licenses individually *and* on packages containing those licenses without needing additional eligibility. For example, if licenses A, B, and C each have 10,000 bidding units, and a bidder wishes in a single round to be able to bid on licenses A, B, and C individually and on packages AB and ABC, the bidder needs 30,000 bidding units of eligibility. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility for Auction 73 after the upfront payment deadline.**

¹⁶⁰ 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.

¹⁶¹ The upfront payment for any of the pre-defined packages of C Block licenses will be the sum of the upfront payments of the licenses included in the specific package.

¹⁶² In some cases a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission license or delinquent on non-tax debt owed to a Federal agency (see 47 C.F.R. § 1.2106(a)), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the licenses it selected on its FCC Form 175.

Example: Upfront Payments and Bidding Flexibility			
License	Market Name	Bidding Units	Upfront Payment
WU-REA009-C	Guam, Northern Mariana Islands	49,000	\$49,000
WU-REA011-C	American Samoa	13,000	\$13,000

If a bidder wishes to bid on both licenses in a round either individually or as one of the available packages, it must have selected both on its FCC Form 175 and purchased at least 62,000 bidding units (49,000 + 13,000). If a bidder only wishes to bid on one, but not both, purchasing 49,000 bidding units would meet the eligibility requirement for either license. The bidder would be able to bid on either license, but not both at the same time. If the bidder purchased only 13,000 bidding units, it would have enough eligibility for the American Samoa license but not for the Guam, Northern Mariana Islands license.

If a bidder has at least 62,000 bidding units, it has enough eligibility to bid on the package of the two licenses in this example (the “Pacific” package) instead of or in addition to bidding on these licenses individually. This will be explained further below.¹⁶³

127. We reiterate that, in the event it is necessary to conduct Auction 76, bidders will have an opportunity to supplement their upfront payments in order to increase their bidding eligibility for Auction 76. The instructions and deadline for doing so would be announced within five business days after the end of bidding in Auction 73.

128. **For Auction 73 and any contingent subsequent auction, “former defaulters” must calculate their upfront payment for all licenses and packages by multiplying the number of bidding units on which they wish to be active by 1.5.**¹⁶⁴ In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

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

129. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted. (Applicants are reminded that information submitted as part of an FCC Form 175 will be available to the public; for that reason, wire transfer information should **not** be included in an FCC Form 175.) Wire Transfer Instructions can also be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418-2843. Eligibility for refunds is discussed in Section VI.H., below. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

Name of Bank
 ABA Number
 Address of Bank
 Contact and Phone Number

¹⁶³ See Section IV.A.1. “Simultaneous Multiple Round Auction with Package Bidding on C Block Licenses” and Section IV.A.3. “Eligibility and Activity Rules,” below.

¹⁶⁴ 47 C.F.R. § 1.2106(a).

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

E. Auction Registration

130. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for Auction 73. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on license(s) initially offered in Auction 73.

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

132. 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 Tuesday, January 15, 2008, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

133. In the event that SecurID[®] tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request 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

134. The Commission will conduct Auctions 73 and 76 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[®] token, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID[®] tokens, while applicants with two or three authorized bidders will be issued three tokens. **For security purposes, the SecurID[®] tokens, the telephonic bidding telephone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175.** Please note that each SecurID[®] token is tailored to a specific auction; therefore, SecurID[®] tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 73. In the event that it is necessary to conduct Auction 76, qualified bidders for Auction 76 will use the same SecurID[®] tokens as they used for Auction 73.¹⁶⁵

135. Please note that the SecurID[®] tokens can be recycled, and the Bureau encourages bidders to return the tokens to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the tokens once the auction is closed.

¹⁶⁵ See Section V. "Auction 76," below.

G. Mock Auction — January 18, 2008

136. All qualified bidders will be eligible to participate in a mock auction on Friday, January 18, 2008. 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 73

137. The first round of bidding for Auction 73 will begin on Thursday, January 24, 2008. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction 73 Structure

1. Simultaneous Multiple Round Auction with Package Bidding on C Block Licenses

138. In the *700 MHz Auction Public Notice*, the Bureau proposed using the Commission’s standard simultaneous multiple-round (“SMR”) auction format for the A, B, D, and E Block licenses, while enabling package bidding for C Block licenses using an auction design with hierarchical package bidding (“HPB”).¹⁶⁶ An SMR-HPB auction format offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses and on certain pre-defined packages of specified licenses, which, for Auction 73, only include C Block licenses. A bidder may bid on, and potentially win, any number of licenses and/or packages. Typically, bidding remains open on all licenses until bidding stops on every license, unless an alternative version of the stopping rule is invoked.

139. The *700 MHz Auction Public Notice* proposed pre-defined packages for C Block licenses according to a hierarchical structure. The initial level consists of individual licenses, and the next level consists of non-overlapping packages of those licenses, such that a given license is included only once in each level. The winning set of bids could therefore consist of bids from various levels as long as each license is included in only one winning bid. The Bureau proposed to accept individual bids on C Block licenses for REAGs 1-12 (Level 1) and package bids on the following combinations of C Block REAG licenses (Level 2): (i) REAGs 1-8 (the “50 States” package); (ii) REAGs 10 and 12, comprising Puerto Rico, the U.S. Virgin Islands and the Gulf of Mexico (the “Atlantic” package); and (iii) REAGs 9 and 11, comprising the U.S. Pacific territories (the “Pacific” package).

Figure 1: Proposed Package Structure of C Block Licenses

Level 2: Packages	50 States								Atlantic	Pacific		
Level 1: REAG licenses	1	2	3	4	5	6	7	8	10	12	9	11

140. The Bureau also sought comment on alternative levels or alternative ways of packaging licenses within levels. Additionally, the Bureau proposed to conduct the auction using standard SMR procedures for all of the licenses, including the C Block licenses in the event that currently unforeseen difficulties make it impracticable to implement package bidding.¹⁶⁷

¹⁶⁶ *700 MHz Auction Public Notice* at ¶ 17.

¹⁶⁷ *Id.* at ¶ 18.

141. The majority of commenters support package bidding for C Block licenses either in general or for the HPB auction format specifically.¹⁶⁸ Some commenters, however, urge the Bureau to abandon package bidding for Auction 73 under the “unforeseen difficulties” exception to the Commission’s directive to use package bidding for the C Block licenses.¹⁶⁹ These parties assert that the SMR-HPB format is too complex, will disadvantage bidders interested in only individual licenses, and will not be fully understood by bidders or implemented by the Bureau in time for the start of the auction.¹⁷⁰ When the Commission directed the Bureau to adopt package bidding for the C Block, it noted that package bidding minimizes exposure risk for applicants whose business plans require the economies of scale that only can be obtained with nationwide operation, but would not preclude the participation of entities wishing to bid on individual licenses.¹⁷¹ The HPB auction format was chosen in part because it mitigates issues inherent in some other package bidding formats that give bidders interested in large packages an advantage over bidders interested in individual licenses. Of course, to the extent that providing bidders the option of package bidding favors those bidders seeking packages over those seeking individual licenses, we note that the same argument could be applied in reverse to the other 1,087 licenses in Auction 73 that bidders will not have the option to package in order to decrease their exposure risk. After review of the record, we conclude that considerations raised in the comments opposing package bidding are not the kinds of “unforeseen difficulties” regarding the feasibility of package bidding for the C Block licenses that the Commission envisioned in the *700 MHz Second Report and Order*.

142. Therefore, we conclude that the SMR format for A, B, E and D Block licenses, and the HPB auction format for the C Block licenses, will best meet the needs of bidders in Auction 73, and therefore adopt them as proposed.¹⁷² As is typical with both formats, bids will be accepted on all individual licenses and on pre-defined packages of licenses in each round of the auction until bidding stops on every license, allowing bidders to take advantage of synergies that exist among licenses.

143. With regard to the proposed pre-defined packages for C Block licenses, we decline to adopt the alternate packages suggested by two commenters. The 4G Coalition asserts that it sees value in adopting a 12 REAG package or even allowing bidders to choose their own package.¹⁷³ Second, Wrege/Hoffman propose adopting packages of regions larger than REAGs (e.g., East, Midwest, West Coast) and a package of only the lower 48 States.¹⁷⁴ Wrege/Hoffman base its proposal for a lower 48 State package on the premise that prospective nationwide bidders have limited interest in Hawaii and Alaska, and that these states would be better served if they are not included in a “nationwide” package.¹⁷⁵

¹⁶⁸ 4G Comments at 4; Frontline Comments, Attachment at 2-3; Pecec Comments at 1; Space Data Comments at 4-5; Frontline Reply Comments, Attachment at 1.

¹⁶⁹ The Commission directed the Bureau to adopt package bidding for C Block licenses unless “unforeseen difficulties make it impracticable to implement package bidding for the C Block consistent with the goals articulated here.” *700 MHz Second Report and Order* at ¶ 292.

¹⁷⁰ See MetroPCS Comments at 10-13; US Cellular Comments at 2-3; MetroPCS Reply Comments at 13-14; US Cellular Reply Comments at 2-3. See also RTG Reply Comments at 1-2 (supporting notion that there is insufficient time to prepare for package bidding for Auction 73, and that package bidding favors large companies).

¹⁷¹ *700 MHz Second Report and Order*, ¶ 292. The Commission noted that the use of package bidding for C Block licenses facilitates direct competition between competing business plans, without predetermining the outcome or favoring one business plan over the other. *Id.*

¹⁷² As noted in more detail below, if a subsequent auction becomes necessary, we also adopt the SMR format for A, B, E, and D Block licenses, and the HPB format for C1 and C2 Block licenses. See Section V. “Auction 76,” below.

¹⁷³ 4G Coalition Comments at 4.

¹⁷⁴ Wrege/Hoffman Comments at 3.

¹⁷⁵ *Id.*

The State of Hawaii submitted reply comments challenging the assertion that nationwide carriers have little interest in providing coverage to Hawaii, noting several major carriers already do in fact operate in Hawaii.¹⁷⁶ The State of Hawaii also asserts that any “nationwide” package without Hawaii and Alaska unfairly discriminates against these states and its inhabitants, which would not only be inconsistent with the Communications Act, but also with Commission precedent.¹⁷⁷ Wrege/Hoffman also suggest that we eliminate the Atlantic and Pacific packages on the grounds that bidders would not obtain any benefits from bidding on the licenses as packages.¹⁷⁸ We see no disadvantages to including the packages.

144. The Commission adopted package bidding for C Block licenses to reduce the exposure problem that might otherwise inhibit bidders seeking to create a nationwide footprint.¹⁷⁹ At the same time, the Commission directed the Bureau to implement package bidding without imposing disadvantages on parties that wish to bid on individual licenses comprising the nationwide footprint.¹⁸⁰ We find that offering three packages – the 50 States, Atlantic, and Pacific packages – meets this balance by reducing exposure risk of bidders seeking to provide nationwide coverage without disadvantaging those bidders seeking individual licenses. Therefore, we adopt the pre-defined packages as proposed in the *700 MHz Auction Public Notice*.

2. Information Available to Bidders Before and During the Auctions

145. In the *700 MHz Second Report and Order*, the Commission found that the public interest would be served if the auction for new 700 MHz Band licenses is conducted using anonymous (or “limited information”) bidding procedures, regardless of any pre-auction measurement of likely auction competition.¹⁸¹ Such information procedures are intended to reduce the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors. The Commission therefore directed the Bureau to propose and seek comment on more detailed procedures for employing anonymous bidding for the 700 MHz auction.

146. In the *700 MHz Auction Public Notice*, the Bureau proposed to withhold, until after the close of bidding, public release of (1) bidders’ license selections on their short-form applications, (2) the amounts of bidders’ upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. In contrast to procedures implemented for anonymous bidding in past auctions,¹⁸² and consistent with the *700 MHz Second Report*

¹⁷⁶ State of Hawaii Comments at 2 (citing Verizon Wireless, Sprint Nextel, T-Mobile, and AT&T Wireless).

¹⁷⁷ *Id.* at 2-4. The State of Hawaii also notes that other provisions facilitate small/regional carrier coverage in its state, citing the adoption of CMA and EA licenses, and the options of partitioning, disaggregation and leasing available to carriers. *Id.* at 5-6.

¹⁷⁸ Wrege/Hoffman Comments at 4.

¹⁷⁹ *700 MHz Second Report and Order* at ¶ 290.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at ¶¶ 8, 274-84.

¹⁸² See, e.g., “Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66,” *Public Notice*, 21 FCC Rcd 4562, 4600-05 ¶¶ 140-157 (2006) (“*Auction 66 Procedures Public Notice*”); “Auction of Broadband PCS Spectrum Scheduled for May 16, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 71,” *Public Notice*, DA 07-30, 22 FCC Rcd 433, 463-464 ¶¶ 109-113 (WTB 2007) (“*Auction 71 Procedures Public Notice*”); “Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 72,” *Public Notice*, DA 07-514, 22 FCC Rcd 3404, 3433-34 ¶¶ 112-116 (WTB 2007) (“*Auction 72 Procedures Public Notice*”).

and Order, the Bureau proposed to withhold this information irrespective of any pre-auction measurement of likely auction competition.¹⁸³

147. Commenters generally support the proposal to implement limited information disclosure procedures for the 700 MHz auction, though they differ on the disclosure of specific data elements. Some commenters suggest that the Commission should inform bidders of the license(s) or license block(s) for which an overlap occurs with other applicants, citing fundamental differences between the different 700 MHz license blocks and the particular needs of small and rural bidders to better identify those bidders interested in nationwide/open access licenses.¹⁸⁴ Verizon Wireless opposes disclosure of this information.¹⁸⁵ We find that revealing information on license blocks selected by competing applicants would be inconsistent with the goals of limiting information disclosure. Thus, we will not release information on licenses or license blocks selected until after the close of bidding.

148. Commenters also recommend releasing each bidder's upfront payment amount and initial bidding eligibility before the auction, on the grounds that this information would help small companies better gauge the level of competition.¹⁸⁶ Some entities also seek disclosure of an aggregate eligibility ratio after each round.¹⁸⁷ 4G Coalition advocates releasing the total number of active bidders and, for each license and package, the number of bids and amount of the bids after each round.¹⁸⁸ While these parties contend that release of this information would not facilitate anti-competitive practices and would not disclose bidder identities,¹⁸⁹ we disagree. As Frontline notes, release of bidder eligibility before the auction could be used by incumbents to block new entrants or for other strategic purposes.¹⁹⁰ Similarly, Verizon Wireless contends that release of this information weakens anonymous bidding.¹⁹¹ This information could potentially be used to discern the identities of individual bidders. Moreover, we are particularly concerned that release of such information could foster anticompetitive bidding activity, particularly in light of the use of reserve prices in this auction.

149. Verizon Wireless and MetroPCS urge the Commission to release names of auction applicants and provide access to the ownership information in applicants' short form applications.¹⁹² This information has been made publicly available in past auctions even where limited information procedures have been implemented.¹⁹³ We plan to continue to make available the names of applicants and their ownership information, as release of that information is necessary for other applicants to comply with the anti-collusion rules and does not undermine the purpose of our anonymous bidding procedures. To enable applicants to comply with the Commission's anti-collusion rules, once the Bureau has conducted

¹⁸³ 700 MHz Auction Public Notice at ¶¶ 14-15.

¹⁸⁴ Blooston Rural Carriers Comments at 4-5; MetroPCS Reply Comments at 2.

¹⁸⁵ Verizon Wireless Reply Comments at 3-4.

¹⁸⁶ US Cellular Comments at 3-4; RTG Reply Comments at 2.

¹⁸⁷ US Cellular Comments at 4; MetroPCS Reply Comments at 2-3; 4G Comments at 9.

¹⁸⁸ 4G Comments at 9. *See also* MetroPCS Comments at 8; MetroPCS Reply Comments at 2.

¹⁸⁹ MetroPCS argues, for example, that release of such information that would not disclose bidder identities will allow bidders to better discern market value and anticipate changes in the pace of the bidding. MetroPCS Reply Comments at 3.

¹⁹⁰ Frontline Reply Comments at A-4.

¹⁹¹ Verizon Wireless Reply Comments at 3.

¹⁹² Verizon Wireless Comments at 9; MetroPCS Reply Comments at 2.

¹⁹³ *See, e.g., Auction 71 Procedures Public Notice*, 22 FCC Rcd at 463-65, ¶¶ 109-114.

its initial review of applications to participate in Auction 73 and Auction 76, each applicant will receive a letter that lists the other applicants in Auction 73 and Auction 76 that have applied for licenses in any of the same geographic areas as the applicant.¹⁹⁴

150. We adopt the proposals set out in the *700 MHz Auction Public Notice*. Thus, we will disclose after the conclusion of each round the amount of every bid placed and whether a bid was withdrawn.¹⁹⁵ More generally, we will disclose, after the conclusion of each round, all relevant information about all bids placed, withdrawn, or dropped except for the identities of the bidders performing the actions and the net amounts of the bids placed, withdrawn, or dropped. As in past auctions conducted with limited information procedures, for each license we will indicate the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, we will also release for each license the number of bidders that placed a bid on the license.¹⁹⁶ Furthermore, we will indicate whether any proactive waivers were submitted in each round, and we will release the stage transition percentage — the percentages of licenses (as measured in bidding units) on which there were new bids — for the round. In addition, after each round, bidders logged in to the FCC Auction System will be able to see whether their own bids are provisionally winning. We will provide samples of publicly-available and bidder-specific (non-public) results files prior to the start of the auction.

151. Several commenters argue that information about the initial auction results (for Auction 73) should not be withheld in the event that a contingent auction (Auction 76) must be conducted. MetroPCS, US Cellular and Frontline, for example, urge disclosure of initial auction results for blocks that meet their reserve prices before the contingent auction, claiming that such information may be necessary to meet Securities and Exchange Commission and other regulatory requirements, to allow bidders to communicate with financial institutions, and to facilitate network build-out.¹⁹⁷ Similarly, Verizon Wireless and MetroPCS favor allowing bidders to announce that they won licenses in a block that has met its reserve price if required by law or regulation.¹⁹⁸ These parties do not, however, cite any specific regulatory requirements that would compel such disclosures, and we are not aware of any such regulations. To the extent that any such requirements are related to winning bidders' payments, we note that if Auction 76 were to be held, winning bidders in Auction 73 of licenses in the A, B, C, or E Blocks will not be required to make down payments until after the subsequent bidding.¹⁹⁹ We find that premature disclosure to financial institutions, vendors, and others of identities of successful bidders in Auction 73 would undermine the purposes of our limited information procedures.

152. Regarding Auction 76 and the timing of information disclosure, we adopt our proposal not to release until after the close of bidding in both auctions (a) information on the winning bidders for licenses in blocks for which the reserve price was met in the first auction, (b) information on bidder

¹⁹⁴ The list will identify the Auction 73 applicant(s) by name but will not list the license selections of the Auction 73 applicant(s). As in past auctions, additional information regarding applicants in Auction 73 that is needed to comply with section 1.2105(c), e.g., the identities of controlling interest in the applicant and of ownership interests greater than ten percent (10%), will be available through the publicly accessible online short-form application database. See below at ¶¶ 111-116.

¹⁹⁵ *700 MHz Auction Public Notice* at ¶ 15.

¹⁹⁶ For C Block licenses that are subject to HPB, the number of bidders that placed a bid on each license will include both bidders that bid on the license itself and on a package containing the license.

¹⁹⁷ MetroPCS Comments at 24-25; US Cellular Reply Comments at 3; Frontline Comments, Attachment at 22-23.

¹⁹⁸ Verizon Wireless Comments at 8; MetroPCS Reply Comments at 4.

¹⁹⁹ As discussed below, if there is a winning bidder for the D Block license based on the initial bidding, that winning bidder will owe its down payment (and final payment) for that license even if there is subsequent bidding for alternative licenses in any of the other blocks.

license selections and eligibility, and (c) any other information that may reveal the identities of bidders placing bids and taking other bidding-related actions on licenses in all blocks. For the D Block, however, in the event there is a winning bidder for the D Block license in Auction 73, we will make public before the close of bidding in a Auction 76 only such information as may be necessary to proceed with promptly facilitating the D Block winner's obligations to negotiate a Network Sharing Agreement with the national Public Safety Broadband Licensee in the adjacent spectrum block.²⁰⁰

153. Commenting parties also urge the Commission to allow applicants to "opt-out" of Auction 76 in order to be free of anti-collusion prohibition, so long as bidder certifies that its decision has not been based on discussion with other parties concerning auction strategy or post-auction market structure.²⁰¹ Yet, as Leap acknowledges, reversal of the Commission's determination on this issue would need to be addressed by full Commission.²⁰² As such, we cannot implement such a change in this proceeding.

154. *Other Issues.* We conclude in the rulemaking proceeding that the information disclosure procedures established for this auction will not interfere with the administration of or compliance with the Commission's anti-collusion rule. Section 1.2105(c)(1) of the Commission's rules provides that after the short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions.²⁰³ When limited information procedures are not in effect for a particular auction, each applicant's selection of licenses has been publicly available through the Commission's online short-form application database. In Auction 73 and Auction 76, however, the Commission will not disclose information regarding license selection or the amounts of bidders' upfront payments and bidding eligibility. As in the past, the Commission will disclose the other portions of applicants' short-form applications, through its online database and certain application-based information through public notices. Thus, even without information regarding license selection, applicants would be able to comply with Section 1.2105(c) by not disclosing bids or bidding strategies to any other applicants in the auction. This approach, however, could inhibit otherwise lawful communications with applicants for licenses in other geographic license areas, which the Commission's anti-collusion rule permits.²⁰⁴

155. Consequently, the Bureau will notify separately each applicant with short-form applications to participate in a pending auction whether applicants in Auction 73 and Auction 76 have applied for licenses in any of the same geographic areas as that applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 73 and Auction 76, each applicant with a pending short-form application will receive a letter that lists the applicants in Auction 73 and Auction 76 that have applied for licenses in any of the same geographic areas as the applicant. The list will identify the Auction 73 and Auction 76 applicant(s) by name but will not list the license selections of the Auction 73 and Auction 76 applicant(s). As in past auctions, additional information regarding applicants in Auction 73 and Auction 76 that is needed to comply with Section 1.2105(c), e.g., the identities of

²⁰⁰ See *700 MHz Second Report & Order* at ¶¶ 444-454.

²⁰¹ MetroPCS Comments at 24-25; Leap Reply at 4-5; US Cellular Reply at 8-9.

²⁰² Leap Reply Comments at 4-5.

²⁰³ 47 C.F.R. § 1.2105(c)(1).

²⁰⁴ As discussed at greater length elsewhere in this Public Notice, other laws may prohibit particular communications regarding bids and bidding strategies. Nothing in the Commission's rules or procedures insulates applicants against liability for violating such laws, e.g., applicable anti-trust laws.

controlling interest(s) in an applicant and ownership interests greater than ten percent, will be available through the publicly accessible online short-form application database.²⁰⁵

156. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the Commission's procedures regarding the availability of certain information in Auction 73 and Auction 76. While applicants' license selection will not be disclosed until after Auction 73 and Auction 76 close, the Commission will disclose other portions of short-form applications through its on-line database and public notices.²⁰⁶ Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections. If an applicant is found to have violated the Commission's rules or antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.²⁰⁷

3. Eligibility and Activity Rules

157. As discussed above, we will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 73.²⁰⁸ The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. As noted earlier, each license is assigned a specific number of bidding units listed in Attachment A. Bidding units for a given license do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses or packages. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during Auction 73; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its FCC Form 175 for Auction 73. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license or package of licenses.

158. A bidder is eligible to bid on a package of licenses if it selected all the licenses in the package on its FCC Form 175 and has sufficient eligibility. The bidding units for a package are calculated by adding together the bidding units of the individual licenses that make up the package.

159. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific minimum percentage of their current bidding eligibility during each round of the auction.

160. A bidder's activity level in a round is the sum of the bidding units associated with any licenses covered by new and provisionally winning bids. The bidding units associated with a given

²⁰⁵ For purposes of Section 1.2105(c), the term "applicant" includes all controlling interests, all parties with ownership interests greater than ten percent and all officers and directors of the applicant. 47 C.F.R. § 1.2105(c)(7).

²⁰⁶ *Auction No. 66 Procedures Public Notice* at ¶ 158.

²⁰⁷ 47 C.F.R. § 1.2109(d).

²⁰⁸ See Section III.D.3. "Upfront Payments and Bidding Eligibility," above.

license will be counted only once in a bidder's activity calculation for the round, even if the bidder places a bid on the license and a bid on a package containing the license. For example, consider two licenses, A and B, each having 10,000 bidding units. Assuming a bidder bids on license A as well as the package AB in a given round, the bidder's activity would be 20,000 bidding units, calculated as the sum of the bidding units of licenses A and B. Note that the bidding units for license A are not counted twice. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round (*see* "Bid Amounts" in Section IV.B.3., below).

161. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures (as set forth under "Auction Stages" in Section IV.A.4. and "Stage Transitions" in Section IV.A.5. below) have proven successful in maintaining the pace of previous auctions, the Commission adopts them for Auction 73. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.²⁰⁹

162. With package bidding in the C Block, it is possible that a bidder may have an activity level that exceeds its eligibility, since the FCC Auction System considers bids placed in previous rounds when determining the provisionally winning set. The procedure for determining provisionally winning bids is discussed in more detail in Section IV.B.4. below. If a non-winning bid placed in a previous round later becomes provisionally winning, the bidder will receive activity for the newly provisionally winning bid. When added to the activity for the bidder's provisionally winning bids from the previous round and its new bids – which were limited by the bidder's current bidding eligibility – the total activity may exceed the bidder's current bidding eligibility. If this occurs, the bidder's current bidding eligibility will not increase to accommodate the additional activity. In subsequent rounds, the bidder will not be permitted to place new bids if its total activity from provisionally winning bids exceeds its bidding eligibility.

163. MetroPCS argues that we should allow bidders limited additional eligibility so that they can continue to bid on licenses or packages that become provisionally winning in later rounds.²¹⁰ We find that allowing maximum eligibility to be increased in this way may provide an incentive for bidders to intentionally place bids that are likely to become provisionally winning in later rounds, so as to increase their eligibility outside of the usual pre-auction process that requires them to purchase eligibility with upfront payments. Thus, we do not modify our procedures as suggested.

164. Frontline proposes that we modify the activity rules to reduce the difference between the number of bidding units associated with the C Block licenses and the bidding units associated with the D Block license.²¹¹ It maintains that the C and D Blocks "are in many ways substitutes," but notes that since the C Block has a bandwidth of 22 MHz compared to 10 MHz for the D Block, the C Block has many more bidding units.²¹² Frontline contends that because of the activity rule, the effect of this difference is to harm bidders that alternatively bid in the C and D Blocks. It therefore favors the modification of the activity rules through the attribution of a total bandwidth of 22 MHz to the D Block. Frontline maintains that this would enable bidders to freely alternate between the C and D Blocks, increasing auction efficiency and revenues. Verizon Wireless criticizes this proposal on several grounds, including arguing that Frontline's proposal would depart from established auction practice and is inconsistent with the

²⁰⁹ *See* Section IV.A.6. "Activity Rule Waivers," below.

²¹⁰ MetroPCS Comments at 19.

²¹¹ Frontline Comments at 7-8.

²¹² *Id.* at 7.

reserve prices proposed by Frontline itself.²¹³ We decline to adopt Frontline's proposal. We find that our current method of determining bidding units, combined with our activity and eligibility rules, offer bidders adequate opportunities to change bidding strategies.

4. Auction Stages

165. In the *700 MHz Auction Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule.²¹⁴ The Bureau further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility. Finally, the Bureau proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility.

166. Some commenters favor the addition of a third stage with either a reduced eligibility threshold (before the two proposed stages) or a higher threshold (after the two proposed stages). According to US Cellular, small and regional bidders need time "to acquaint themselves with the many new features and procedures" in Auction 73. Therefore, US Cellular proposes creating a new Stage One with a 60 percent activity threshold and moving the 80 percent and 95 percent activity thresholds to Stages Two and Three, respectively.²¹⁵ While MetroPCS and Frontline support adopting a 60 percent activity threshold for Stage One, Verizon Wireless opposes any minimum activity level decrease and instead proposes a Stage Three with a 98 percent activity threshold.²¹⁶

167. We find that adding a new initial first stage with a lower eligibility threshold is at this time unnecessary. When determining the bidding schedule, we need to balance the desirability of concluding the auction reasonably swiftly with the benefit in giving bidders sufficient time for placing bids during rounds and for analysis between rounds. We find no compelling reason to create a new first stage that requires only a 60 percent eligibility requirement. Such a lower activity requirement would unnecessarily prolong the auction by allowing bidders to postpone bidding activity until the later rounds of the auction. Establishing an 80 percent activity threshold to start the auction, and retaining the discretion to make changes as circumstances warrant represents the best compromise between allowing auction participants time to learn from the information revealed in the auction, and requiring them to participate actively throughout the auction.

168. We likewise see no need to establish, at this time, a third stage with a 98 percent eligibility requirement, finding that a 95 percent threshold should be a sufficiently high activity requirement for the final stage of the auction. In past auctions, we established three stages using 80 percent, 90 percent, and 98 percent activity requirements. In many of these auctions, however, implementing Stage Two had little effect in terms of increasing bidding activity, and Stage Three was implemented shortly thereafter. Based on this experience, the Bureau has generally moved away from three-stage auctions in favor of two-stage auctions. Moreover, a 95 percent threshold allows bidders a little more flexibility in fulfilling their activity requirements during the final stage of the auction. Therefore, we decline to establish a 98 percent activity threshold at this time.²¹⁷ The Bureau has the

²¹³ Verizon Wireless Reply Comments at 12-17.

²¹⁴ *700 MHz Auction Public Notice* at ¶ 37.

²¹⁵ US Cellular Comments at 5; Frontline Reply Comments, Attachment 2; MetroPCS Reply Comments at 17-18.

²¹⁶ Verizon Wireless Comments at 4-5; Verizon Wireless Reply Comments at 4. Verizon Wireless asserts that a 98 percent eligibility stage would end the auction quicker than the amount of time to close Auction 66. Verizon Wireless Comments at 5.

²¹⁷ We declined a similar request by Verizon Wireless for a Stage Three 98% activity threshold in Auction 58. See "Broadband PCS Spectrum Auction Scheduled for January 12, 2005, Notice and Filing Requirements, Minimum (continued....)"

discretion to further alter the activity requirements before and/or during the auction as circumstances warrant, and also has other mechanisms by which it may influence the speed of an auction. We find that, for now, two stages for an activity requirement adequately balances the desire to conclude the auction quickly with giving sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, we adopt the two stages as described in more detail immediately below.

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

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

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

171. Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, we adopt them for Auction 73.

5. Stage Transitions

172. In the *700 MHz Auction Public Notice*, the Bureau proposed that the auction would advance to the next stage (*i.e.*, from Stage One to Stage Two) after considering a variety of measures of auction activity, including, but not limited to, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue.²¹⁸ The Bureau further proposed that the Bureau would retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent. The Bureau proposed to alert bidders of stage advancements by announcement during the auction. The Bureau received no comments on this issue, other than those addressed in the "Auction Stages" section above.

(Continued from previous page) _____
Opening Bids, Upfront Payments and Other Procedures for Auction No. 58," *Public Notice*, 19 FCC Rcd 18190, 18216-17.

²¹⁸ *700 MHz Auction Public Notice* at ¶ 37.

173. We adopt this proposal for stage transitions. Thus, the auction will start in Stage One.²¹⁹ The Bureau will regulate the pace of the auction by announcement. The Bureau retains the discretion to transition the auction to Stage Two, add an additional stage with a higher activity requirement, not to transition to Stage Two, or to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in bidding units) on which there are new bids.²²⁰

6. Activity Rule Waivers

174. In the *700 MHz Auction Public Notice*, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers.²²¹ Commenters proposed two variations on our proposal regarding activity rule waivers. For the reasons described below, we decline to adopt these alternatives and adopt the proposed three activity rule waivers per bidder.

175. One commenter, 4G Coalition, advocates providing bidders with two additional activity rule waivers to allow more time for decision-making during the auction.²²² 4G Coalition suggests that the two additional waivers would provide bidders, especially those that are consortia, greater flexibility during the auction.²²³ Verizon Wireless opposes any additional activity rule waivers because, it argues, no clear connection exists between having additional waivers and decision-making.²²⁴ We agree with Verizon Wireless that the request for additional waivers does not demonstrate why the proposed three waivers are insufficient, or why consortia might have a greater need for flexibility than any other bidder. 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.

176. Another commenter, Manti Telephone, proposes a limit on activity rule waivers for bidders that are closely affiliated.²²⁵ Manti Telephone expresses concern with bidders entering more than one entity in the auction in order to receive more than standard three activity rule waivers, allowing it to preserve bidding eligibility for later in the auction.²²⁶ Manti Telephone proposes a total limit of three activity rule waivers for all “closely affiliated applicants, i.e., under common control, applying for overlapping licenses.”²²⁷ Frontline disagrees with Manti Telephone, noting that, while affiliated bidders may get twice the number of waivers, they would use them twice as fast as a single bidder in rounds in which they were not bidding.²²⁸ We agree with Frontline that no clear advantage seems possible. We

²¹⁹ The stage of the auction does not affect the auction stopping rules; the auction may conclude in Stage One. See Section IV.A.7. “Auction Stopping Rules,” below.

²²⁰ When monitoring activity for determining when to change stages, we may consider the percentage of bidding units of the licenses receiving new provisionally winning bids, excluding any FCC-held licenses. In past auctions, the Bureau has generally changed stages when this measure was approximately twenty percent or below for three consecutive rounds of bidding.

²²¹ *700 MHz Auction Public Notice* at ¶ 46.

²²² 4G Comments at 12.

²²³ *Id.*

²²⁴ Verizon Wireless Reply Comments at 5. Verizon Wireless also notes that consortia have participated in previous auctions with the standard three activity rule waivers. *Id.*

²²⁵ Manti Comments at 1-2.

²²⁶ *Id.* at 1.

²²⁷ *Id.* at 2.

²²⁸ Frontline Reply Comments at 4.

also add that entities are prohibited from submitting more than one application.²²⁹ This measure prevents bidders from entering multiple entities while permitting legitimate business plans that entail common control among more than one applicant.

177. Therefore, we adopt our proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. 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.

178. 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. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless (1) there are no activity rule waivers available or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If a bidder has no waivers remaining and does not satisfy the activity requirement, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

179. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* Section IV.A.4. above). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility even if the round has not yet ended.

180. 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 placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. **It is important for bidders to understand that applying a waiver is irreversible. Once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.**

7. Auction Stopping Rules

181. For Auction 73, the Bureau proposed to employ a simultaneous stopping rule approach.²³⁰ A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses and packages after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.

182. The Bureau also sought comment on alternative versions of the simultaneous stopping rule for Auction 73:

²²⁹ *See* Section II. "Short-Form Application (FCC Form 175) Requirements," above.

²³⁰ 700 MHz Auction Public Notice at ¶¶ 28-30.

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

Option 2. The auction would end after a specified number of additional rounds. If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

Option 3. The auction would remain open even if no bidder places any new bids, applies a proactive waiver, or withdraws any provisionally winning bids in a round. 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.

183. The Bureau proposed to exercise these options only in circumstances such as where the auction is proceeding unusually slowly or quickly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time or will close prematurely, e.g., before bidders have had an adequate opportunity to satisfy any applicable reserve prices.²³¹ The Bureau noted that before exercising these options, it is likely to attempt to increase the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing the minimum acceptable bids.²³²

184. One commenter, 4G Coalition, advocates explicitly adopting an alternate stopping rule that would give bidders one final opportunity to place bids that would meet the reserve prices.²³³ 4G Coalition believes adopting this measure will curb any incentive by some to bid in such a way to avoid the reserves being met.²³⁴ Verizon Wireless opposes the 4G Coalition's proposal, given the "unique nature of this auction and the complexity of the eligibility management issues."²³⁵

185. We find that the stopping rules as proposed are appropriate for Auction 73. Our experience in prior auctions demonstrates that these stopping rules balance interests of administrative efficiency and maximum bidder participation. Therefore, Auction 73 will begin under the simultaneous stopping rule approach.

186. While we decline to adopt any of the alternate stopping rules at this time, the Bureau retains the discretion to employ the alternative versions of the stopping rule, with or without prior announcement during the auction. We will not, however, employ the first alternative (i.e., Option 1) until the reserve prices have been met. This will allow bidders to continue to place new bids even if they are the provisional winning bidders. Bidders, therefore, will continue to have the opportunity to place bids until the reserve prices are met.²³⁶

²³¹ *Id.*

²³² *Id.*

²³³ 4G Comments at 10-11.

²³⁴ *Id.* at 11.

²³⁵ Verizon Wireless Reply Comments at 6, n.23.

²³⁶ There could be circumstances under which a bidder for C Block licenses or packages could raise its own bid. This would occur if the bidder's activity exceeded its eligibility. See Section IV.A.3. "Eligibility and Activity Rules," above.

8. Auction Delay, Suspension, or Cancellation

187. In the *700 MHz Auction Public Notice*, the Bureau 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, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.²³⁷ The Bureau received no comment on this issue.

188. Because our approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, we adopt the Bureau's proposed rules regarding auction delay, suspension, or cancellation. 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, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, 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

189. 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.

190. The Bureau 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, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

191. 4G Coalition advocates limiting the number of rounds per day in the first phase (Stage One) of Auction 73.²³⁸ More than four rounds in the auction's early stage would, according to 4G Coalition, place "substantial strains on consortia's more deliberate decision-making processes."²³⁹ 4G Coalition, however, suggests lifting the limit for Stage Two.²⁴⁰ Verizon Wireless opposes limiting the number of rounds per day.²⁴¹ We agree with Verizon Wireless that 4G Coalition fails to demonstrate why consortia would be disadvantaged vis-à-vis other bidders unless Stage One had a maximum of four rounds per day. We add that 4G Coalition also does not provide any rationale why, if a limit were necessary to allow effective decision-making amongst consortia members, it would not hold true in Stage Two of the auction, particularly when the stakes are even higher. Therefore, we decline to adopt any limit

²³⁷ *Id.* at ¶ 31.

²³⁸ 4G Comments at 12.

²³⁹ *Id.* 4G Coalition asserts that bidding in Auction 66 demonstrates that four rounds per day in Stage One would not lengthen the overall duration of the auction or cause difficulty with auction closure. *Id.*

²⁴⁰ *Id.*

²⁴¹ Verizon Wireless Reply Comments at 5.

on rounds per day. Rather, we will continue to exercise discretion with regard to the number of rounds per day under the particular circumstances of the auction.

2. Reserve Price and Minimum Opening Bids

192. 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.²⁴² 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.²⁴³ Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.²⁴⁴ The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.²⁴⁵

a. Reserve Price

193. In the *700 MHz Second Report and Order*, the Commission concluded that establishing separate aggregate reserve prices for all the licenses in each block of the 700 MHz Band spectrum to be offered in Auction 73 will serve the public interest.²⁴⁶ More specifically, the Commission directed the Bureau to adopt and publicly disclose block-specific aggregate reserve prices, pursuant to its existing delegated authority and the regular pre-auction process and consistent with the Commission's conclusions in the *700 MHz Second Report and Order*.²⁴⁷ In the *700 MHz Auction Public Notice*, the Bureau proposed that the sum of the provisionally winning gross bids for all licenses in each block must equal or exceed the disclosed aggregate reserve price for the block before the Commission will assign licenses in that block.²⁴⁸ More specifically, the Bureau proposed the following block-specific aggregate reserve prices to be used under this proposal: Block A, \$1.807380 billion; Block B, \$1.374426 billion; Block C, \$4.637854 billion; Block D, \$1.330000 billion; Block E, \$0.903690 billion.²⁴⁹ As discussed below, we adopt this proposal.

194. *Background.* In the *700 MHz Second Report and Order*, the Commission concluded that the block-specific aggregate prices should reflect current assessments of the potential market value of

²⁴² 47 U.S.C. § 309(j)(4)(F).

²⁴³ 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*").

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *700 MHz Second Report and Order* at ¶ 301-04.

²⁴⁷ *Id.*

²⁴⁸ *700 MHz Auction Public Notice* at ¶ 47. If the auction results satisfy a block-specific aggregate reserve, licenses in that block will be assigned based on the auction results, subject to completion of the licensing process, including review of applicants' qualifications. If not, the Commission has provided for a prompt auction of alternative, less restrictive licenses for the A, B, C, and E Blocks, and the possibility of a prompt re-auction of the license for the D Block, subject to the same applicable block-specific reserves. The procedures for Auction 76 are set forth in Section V, below.

²⁴⁹ *700 MHz Auction Public Notice* at ¶¶ 47, 53.

licenses for the 700 MHz Band. The Commission directed that this assessment be based on various factors including, but not limited to, the characteristics of this band and the value of other recently auctioned licenses, such as licenses for Advanced Wireless Services. The Commission reasoned that using AWS-1 auction results might be an appropriate guide for setting block-specific reserve prices reflecting a conservative estimate of final market value. Spectrum in the 700 MHz Band possesses superior propagation characteristics to AWS-1 spectrum. In addition, as of February 18, 2009, the 700 MHz Band spectrum will be unencumbered, while full access to AWS-1 spectrum requires the relocation of both Government and commercial incumbent users. Thus, other factors aside, 700 MHz Band licenses with comparable geographic service areas and bandwidth should have a higher market value than AWS-1 licenses.²⁵⁰

195. The Commission expressly noted that the detailed rules regarding the D Block license, the D Block licensee's required construction of a network to be shared by public safety service users, and the resulting limitations on the flexibility of the D Block licensee, should be given weight in assessing the D Block's potential market value. Based solely on geographic area and spectrum block size, AWS-1 auction results might suggest a D Block reserve price of \$1.7 billion. However, in light of the D Block license conditions essential to the public safety purpose of the public/private partnership, it might be appropriate to expect bidders to bid only about 75 percent to 80 percent of such an amount, or about \$1.33 billion. In addition, when determining relative valuation of other blocks, the Bureau should consider the relative valuation of differing blocks in the recent auction of AWS-1 licenses.²⁵¹

196. The Commission further noted that in setting block-specific reserve prices, the Bureau should also give consideration to Congress's view as to the value of the spectrum, as reflected in Congressional mandates regarding the uses for revenues from this auction.²⁵²

197. *Comments.* Frontline contends that the proposed reserve prices are excessive and proposes an alternative set of reserve prices roughly equal to one-fifth the reserve prices proposed by the Bureau.²⁵³ Frontline asserts that the Bureau's proposed reserve price represent an estimate of final license values and that establishing such a reserve, particularly in light of the potential subsequent auction of alternative licenses, is misguided.²⁵⁴ Frontline further argues that the Bureau's reliance on bidding for AWS licenses is misplaced in that it does not take into account subsequent changes in the credit markets or significant differences between AWS licenses and 700 MHz licenses, which Frontline contends should reduce the relative value of the 700 MHz licenses.²⁵⁵

198. In reply, and in opposition to Frontline's comments, both Verizon Wireless and MetroPCS echo the Commission's observation that that the value of the 700 MHz licenses in fact should be greater than the AWS licenses and contend that the Bureau's proposed reserve prices reflect a conservative estimate of the likely value of the 700 MHz licenses.²⁵⁶ As MetroPCS notes, attempts to take into account the fluctuating state of the credit market are not appropriate, given the degree of uncertainty inherent in such attempts.²⁵⁷ Verizon Wireless notes that, contrary to Frontline, the Bureau's

²⁵⁰ 700 MHz Second Report and Order at ¶¶ 301-05.

²⁵¹ *Id.*

²⁵² These mandates total \$10.1825 billion. *See* DTV Act, §§ 3005-3012; 47 U.S.C. § 309(j)(8)(E)(iii).

²⁵³ Frontline Comments at i, Attachment A at 17.

²⁵⁴ Frontline Comments at 3.

²⁵⁵ *Id.* at 4-6.

²⁵⁶ MetroPCS Reply Comments at 9; Verizon Wireless Reply Comments at 9-10.

²⁵⁷ MetroPCS Reply Comments at 10, n.40.

proposal takes into account conditions placed on the various blocks of 700 MHz spectrum.²⁵⁸ Finally, Verizon Wireless also notes that the proposed reserves are consistent with Congressional expectations.²⁵⁹

199. *Discussion.* We do not find Frontline’s arguments for reducing the proposed reserve prices persuasive. Frontline errs in asserting that the Bureau’s proposed reserves seek to estimate the final value of the licenses. The Bureau has not attempted to determine the value of the licenses but will rely on the auction process to do so. Rather, pursuant to statutory mandate and Commission direction, the Bureau proposed reserve prices intended to represent a likely low end of the licenses’ potential value, in order to assure that the public recovers a portion of the value of the public spectrum resource. Consistent with the guidance of the Commission, we adopt the proposal and will use the following block-specific aggregate reserve prices for Auction 73: Block A, \$1.807380 billion; Block B, \$1.374426 billion; Block C, \$4.637854 billion; Block D, \$1.330000 billion; Block E, \$0.903690 billion. Together, these block-specific aggregate reserves sum to \$10.053350 billion.²⁶⁰

200. As the Commission has already noted, the D Block reserve price of \$1.33 billion is discounted from an amount based more closely on AWS-1 bids because of the unique service rules and related obligations imposed upon the D Block licensee. For the A, B, C, and E Blocks, we base the reserve prices on the respective market value reflected in AWS-1 bids, adding one percent, and rounding to the nearest thousand dollars. Because of the value-enhancing propagation characteristics and relatively unencumbered nature of the 700 MHz Band spectrum, we believe these are conservative estimates, at the low end of the spectrum’s potential value.²⁶¹ Given this approach, there is no need to further reduce the

²⁵⁸ Verizon Wireless Reply Comments at 10.

²⁵⁹ *Id.* at 11.

²⁶⁰ The Commission’s suggested \$10.4 billion conservative aggregate market value estimate for the 700 MHz licenses was derived as the sum of block-specific estimates of the market value of 700 MHz licenses, based on AWS-1 winning bids. Each block-specific estimate was based on bid amounts for comparable AWS-1 spectrum blocks, taking geographic area type and bandwidth into account, and further adjusting for the specific bandwidth in the 700 MHz blocks. *See 700 MHz Second Report and Order*, at n.700. The block-specific reserves we propose here accept the amounts suggested by the Commission in the *700 MHz Second Report and Order* as a base, with the \$10.4 billion conservative aggregate market value estimate adjusted for the specific amount of \$1.33 billion for the D Block.

²⁶¹ The estimated market values based on Auction 66 (AWS-1) bids and the calculation of the reserve prices we propose are described in the tables below.

Estimated 700 MHz Band Market Value Based on AWS-1 Bids

700 MHz Block	700 MHz Bandwidth (MHz)	Geographic Area Type	Comparable AWS-1 Block	AWS-1 Bandwidth (MHz)	Bandwidth Ratio 700/AWS-1	AWS-1 Bids	Estimated Market Value Based on AWS-1 Bids
A	12	EA	C	10	1.2	\$1,491,238,000	\$1,789,485,600
B	12	CMA	A	20	0.6	\$2,268,029,200	\$1,360,817,520
E	6	EA	C	10	0.6	\$1,491,238,000	\$894,742,800
C	22	REAG	F	20	1.1	\$4,174,486,000	\$4,591,934,600
D	10	Nationwide*	D and E	10	1.0	\$1,749,031,000	\$1,749,031,000
Total	62						\$10,386,011,520

* Since AWS-1 did not have any nationwide licenses, “Estimated Market Value Based on AWS-1 Bids” is based on Auction 66 bids for 10 MHz REAG licenses.

The “Estimated Market Value Based on AWS-1 Bids” is calculated as the “Bandwidth Ratio 700/AWS-1” multiplied by “AWS-1 Bids.”

(continued...)

proposed reserves based on the specific rules applicable to licenses for the A, B, C, and E Blocks, as suggested by Frontline.

201. As proposed in the *700 MHz Auction Public Notice*, we will use gross bid amounts rather than net bid amounts in determining whether the block-specific reserve prices have been met.²⁶² No commenter suggested any alternative to this aspect of our reserve price procedures. Anonymous bidding procedures that will be used in Auction 73 preclude disclosing the identity of bidders and the net amounts of bids made until after the close of bidding. Consequently, if net bids determined whether or not reserves had been met, publicly disclosing whether reserves had been met might inadvertently disclose whether applicants eligible for bidding credits held certain provisionally winning bids, potentially disclosing the identity of the bidders. For example, presuming net bids determined whether or not the reserve is met, for the reserve not to be met when the provisionally winning bid on the D Block license is for \$1.5 billion dollars, the party making the bid must be an applicant eligible for a bidding credit. Depending on the number of parties eligible for a bidding credit competing for the D Block license, this information might disclose the identity of the provisionally winning bidder, thwarting the Commission's anonymous bidding procedures. Moreover, net bid amounts, unlike gross bid amounts, may decline even as the gross bids increase. For example, a party not eligible for a bidding credit might hold a provisionally winning bid of \$1.4 billion on the D Block license, in which case the reserve would be met. However, in the next round, a party eligible for a bidding credit might place a provisionally winning bid of \$1.5 billion, increasing the value bid for the license. However, because the party eligible for a bidding credit might have a net bid less than the reserve, now the reserve would not be met. We believe that it serves the public interest for bidders to know when the reserve is met and to know that once a reserve is met that fact will not change. This certainty will give bidders greater confidence in the significance of their bids and therefore may enhance competition. For these reasons, we will use gross bid amounts rather than net bid amounts in determining whether block-specific reserve prices have been met.

202. We also will count the gross amount of any withdrawn bids for licenses toward meeting the reserve prices for several reasons.²⁶³ First, withdrawn bids presumably reflect sincere valuations of the license, notwithstanding the withdrawal and the reserve is intended to measure that valuation. Second, counting withdrawn bids assures that once a reserve is met that fact will not change. Third, if we

(Continued from previous page)

700 MHz Band Reserve Prices

700 MHz Block	Estimated Market Value Based on AWS-1 Bids	Commission Guidance on D Block Reserve Price	700 MHz Band Reserve Prices
A	\$1,789,485,600		\$1,807,380,000
B	\$1,360,817,520		\$1,374,426,000
E	\$894,742,800		\$903,690,000
C	\$4,591,934,600		\$4,637,854,000
D	\$1,749,031,000	\$1,330,000,000	\$1,330,000,000
Total	\$10,386,011,520		\$10,053,350,000

The "Estimated Market Value Based on AWS-1 Bids" entries were calculated in the previous table.

"Commission Guidance on D Block Reserve Price" reflects explicit Commission advice on the D Block reserve price.

Auction 66 results are available at <http://wireless.fcc.gov/auctions/66/>.

²⁶² *700 MHz Auction Public Notice* at ¶ 55.

²⁶³ US Cellular and Frontline filed comments or reply comments advocating counting the gross amount of any withdrawn bids toward meeting the reserve price. US Cellular Comments at 4; US Cellular Reply Comments at 9; Frontline Reply Comments at 1-2; *see* Verizon Wireless Comments at 6-7 (raising issue).

did not count withdrawn bids, bidders could attempt to use bid withdrawals as a strategic mechanism to prevent auction results from satisfying a reserve in order to force an auction of alternative licenses.

203. First, as discussed below, the Commission's rules and the procedures for Auction 73 allow each bidder one round in which the bidder may withdraw provisionally winning bids for licenses not subject to package bidding. Allowing bidders to withdraw provisionally winning bids enables bidders to respond to price discovery as the auction develops by adopting alternative plans, thereby encouraging bidders to compete at early stages in the auction. Accordingly, we presume that bids placed and withdrawn reflect bidders' sincere valuations of the relevant licenses. Consistent with this presumption, the Commission's rules require bidders to cover any shortfall if a subsequent winning bid for a license is less than a withdrawn provisionally winning bid.²⁶⁴

204. Second, counting withdrawn bids is essential to assuring that once a reserve price is met, that fact does not change. As discussed below in connection with bid withdrawals, when a bid is withdrawn, there is no provisionally winning bid on that license until a new high bid is placed on it in a subsequent round. Accordingly, if we do not count withdrawn bids, then the amount counted for a particular license toward meeting the reserve price could drop from whatever the withdrawn bid is to zero. For example, if a provisionally winning bid on the D Block license of \$2.66 billion is withdrawn and only a provisionally winning high bid is counted toward the reserve, the reserve will not be met, notwithstanding the fact that a round before there was a provisionally winning bid in an amount equal to twice the reserve.

205. Third, if we did not count a withdrawn bid toward meeting the reserve, we would allow a bidder's decision to withdraw a bid to affect whether or not the reserve price has been met. As the foregoing example indicates, a bidder could outbid rivals for a license in amounts far in excess of the reserve and then, at the last minute, withdraw its bid in an attempt to prevent the auction results from meeting the applicable reserve price. If the withdrawing bidder's competitors had moved to other blocks due to the withdrawn bid, they may no longer have an interest or the budget to return and bid again on the license subject to the withdrawal. In that event, the withdrawal might succeed at preventing the reserve from being met and at forcing an auction of alternative licenses.

206. In summary, we will count the gross amount of either the provisionally winning bid on a license, or on a package that includes the license, or, if higher, the highest withdrawn provisionally winning bid on a license when determining whether a reserve price has been met. We will not count more than one bid per license, be it a provisionally winning or withdrawn bid, towards meeting the relevant reserve price. In the case of licenses with multiple withdrawn bids or a withdrawn bid and a provisionally winning bid, we will count the highest of the gross bid amounts toward the reserve price. Other than the gross amounts of withdrawn bids as described above, licenses without provisionally winning bids will not count towards meeting a reserve price.²⁶⁵

207. Finally, we will issue an announcement in the FCC Auction System stating that a reserve has been met immediately following the first round in which that occurs. Both the registered bidders and the general public will be able to view such announcements through the Commission's website. The current total of relevant provisionally winning bids may not determine whether or not the reserve has been met, given that we also will count withdrawn bids toward meeting the reserve. By making an announcement when the reserve is met, we will free auction observers and participants therefore from a need to monitor withdrawn bids over the course of the auction in order to determine whether the reserve has been met and avoid any uncertainty.

²⁶⁴ 47 C.F.R. § 1.2104(g)(1).

²⁶⁵ For example, for a license without a provisionally winning bid, we will not count the minimum opening bid amount towards meeting the reserve price for the block.

b. Minimum Opening Bids

208. In addition to proposing aggregate reserve prices, the Bureau proposed in the *700 MHz Auction Public Notice* to establish minimum opening bids for each license, while retaining discretion to lower the minimum opening bids.²⁶⁶ Specifically, for Auction 73, the Bureau proposed to calculate minimum opening bid amounts as follows:²⁶⁷

- For licenses covering geographic areas in the 50 states for which all of the corresponding licenses offered in Auction 66 for the exact same geographic area were sold, 25 percent of the dollars per MHz per population (MHz-pop) of the net amounts of the Auction 66 winning bids for licenses covering the same geographic license area, subject to a minimum of \$0.03/MHz-pop
- For licenses covering geographic areas for which a corresponding Auction 66 license was unsold, \$0.01/MHz-pop
- For licenses covering the Gulf of Mexico, \$1,000 per MHz
- For all remaining licenses, \$0.01/MHz-pop

For all licenses, the results of the above calculations are subject to a minimum of \$500 per license and are rounded using our standard rounding procedure.²⁶⁸ The Bureau proposed to calculate the minimum opening bid for any package as the sum of the minimum opening bids for the licenses in the package. The Bureau sought comment on this proposal and, in the alternative, whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bids.²⁶⁹

209. The Bureau received a range of comments concerning the proposed minimum opening bids. Wrege/Hoffman support the Bureau's proposed method for establishing minimum opening bid amounts.²⁷⁰ However, the 4G Coalition advocates calculating minimum opening bids on the same basis that was used for Auction 66, rather than on one that uses the winning bids from that auction.²⁷¹ The Blooston Rural Carriers oppose using minimum opening bids based on Auction 66 results, arguing that the 700 MHz Band spectrum is not readily comparable to that offered in Auction 66. They maintain that some prices in that auction resulted from one-time bidding wars, so that RSA minimum opening bids based on these prices would be overly high and harm small and rural carriers.²⁷² MetroPCS also contends that the proposed minimum opening bids would discourage these carriers from participating. It proposes that the minimum opening bids from Auction 66 should generally be used.²⁷³ In addition, MetroPCS claims that reducing the minimum opening bids would prevent the auction from proceeding at too rapid a pace.²⁷⁴ RTG agrees that the proposed minimum opening bids for some RSAs are too high, and proposes

²⁶⁶ *700 MHz Auction Public Notice* at ¶¶ 56-59.

²⁶⁷ All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2000 Summary File 1 (SF1) and July 3, 2001, news releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

²⁶⁸ 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.

²⁶⁹ *700 MHz Auction Public Notice* at ¶¶ 56-59.

²⁷⁰ Wrege/Hoffman Comments at 8.

²⁷¹ 4G Coalition Comment at 13.

²⁷² Blooston Rural Carriers Comments at 5-6.

²⁷³ MetroPCS Comments at 13-16.

²⁷⁴ *Id.* at 15.

that these be reduced to either the same level as the upfront payments or capped at 25 percent of the median net high bid for all RSAs sold in Auction 66.²⁷⁵ Verizon Wireless generally criticizes as arbitrary the proposals to lower the minimum opening bids to the value of the upfront payments, but agrees with the Blooston Rural Carriers that certain RSA minimum opening bids may be overly high.²⁷⁶ US Cellular expresses support for the argument that reducing the minimum opening bids will make the auction less likely to proceed overly quickly.²⁷⁷

210. We find that the minimum opening bid amounts proposed in the *700 MHz Auction Public Notice* are generally appropriate. While the record indicates that the proposed minimum opening bid amounts are higher than many parties would like, the proposed amounts better enable the Commission to meet the statutory objective of recovering for the public a portion of the value of the spectrum resource made available for commercial use.²⁷⁸ The proposed minimum opening bid amounts also will help the Commission meet its statutory deadlines for auctioning this spectrum.²⁷⁹

211. In response to comments, however, we modify the proposed minimum opening bids for certain rural licenses. We recognize concerns commenters raised regarding proposed minimum opening bids and the potential for some licenses, particularly those in rural areas, to remain unsold after the auction. Thus, for RSA licenses only (CMAs 307-734), minimum opening bids will not be greater than \$0.10/MHz-pop. Accordingly, we adopt the revised minimum opening bid amounts and set the minimum opening bids using the revised formulas as follows:²⁸⁰

- For licenses covering geographic areas in the 50 states for which all of the corresponding licenses offered in Auction 66 for the exact same geographic area were sold, 25 percent of the dollars per MHz per population (MHz-pop) of the net amounts of the Auction 66 winning bids for licenses covering the same geographic license area, subject to a minimum of \$0.03/MHz-pop; for RSA licenses only, subject to a maximum of \$0.10/MHz-pop
- For licenses covering geographic areas for which a corresponding Auction 66 license was unsold, \$0.01/MHz-pop
- For licenses covering the Gulf of Mexico, \$1,000 per MHz
- For all remaining licenses, \$0.01/MHz-pop

212. Both Verizon Wireless and Frontline suggest that the minimum opening bid for the D Block should be set at its reserve price since it is only one license and will not be assigned if the reserve is not met.²⁸¹ MetroPCS opposes this suggestion, arguing that setting the D Block minimum opening bid at the reserve bid would deny bidders the opportunity to determine the relative value of the D Block, and may even hurt the winning bidder's ability to finance its bid for the D Block.²⁸² We agree that there may

²⁷⁵ RTG Comments at 3.

²⁷⁶ Verizon Wireless Reply Comments at 5-6.

²⁷⁷ US Cellular Reply Comments at 4.

²⁷⁸ See 47 U.S.C. § 309(j)(3)(C).

²⁷⁹ See 47 U.S.C. § 309(j)(15)(v).

²⁸⁰ All population figures are from the 2000 U.S. Census, U.S. Department of Commerce, Bureau of the Census. See Census 2000 Summary File 1 (SF1) and July 3, 2001, news releases covering the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

²⁸¹ Verizon Wireless Comments at 5; Frontline Comments, Attachment at 24.

²⁸² MetroPCS Reply Comments at 7.

be value, to bidders and others, in accepting bids for the D Block short of the reserve. Therefore, we adopt the minimum opening bid for the D Block as proposed in the *700 MHz Auction Public Notice*.

213. The Commission did not receive any comments addressing the proposal that the Bureau retain the discretion to reduce minimum opening bid amounts. We adopt this proposal. The minimum opening bid amounts are reducible at the discretion of the Bureau. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, i.e., before bidders lose all activity waivers. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid amount on specific licenses or packages.

214. The specific minimum opening bid amounts for each license available in Auction 73 calculated pursuant to the procedure describe above are set forth in Attachment A.

3. Bid Amounts

215. In the *700 MHz Auction Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license or package using one or more pre-defined bid amounts.²⁸³ Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license or package.²⁸⁴ Wrege/Hoffman propose “best and final” bid procedures to allow bidders a chance to enter their own bid amounts, if they wish to bid more for a license but less than the minimum acceptable bid increment would require.²⁸⁵ Wrege/Hoffman believe adopting a “best and final bid” procedure would give bidders a better opportunity to bid up to the full amount of their final license valuations.²⁸⁶ MetroPCS and Verizon Wireless oppose creating this “best and final bid” procedure because it may encourage gaming the auction system and would be unfair to bidders that have a provisionally winning bid.²⁸⁷ We recognize that there may be circumstances under which the proposed procedure could enhance the economical efficiency of the auction, but find that the costs in terms of increased auction complexity and opportunity for anti-competitive signaling would outweigh the benefits in Auction 73. We adopt the proposal set out in the *700 MHz Auction Public Notice*.

216. *Minimum Acceptable Bids*. Under our proposed procedures, the first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license or package that includes the license. The minimum acceptable bid amount for a package will be the sum of the minimum acceptable bid amounts for the licenses in the package. Minimum acceptable bids are calculated based on current price estimates and an activity-based formula.

217. *Current Price Estimates*. Under the proposed HPB auction procedures, after there is a provisionally winning bid for a license, the FCC will determine a “current price estimate” (“CPE”) for each license in each round as a basis for calculating minimum acceptable bids.²⁸⁸ For non-C Block

²⁸³ Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3 “Upfront Payments and Bidding Eligibility,” above.

²⁸⁴ In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer acceptable bid amounts for the license.

²⁸⁵ Wrege/Hoffman Comments at 8.

²⁸⁶ *Id.*

²⁸⁷ MetroPCS Reply Comments at 16-17; Verizon Wireless Reply Comments at 6, n.23.

²⁸⁸ For the licenses subject to package bidding in HPB, there may not be individual provisionally winning bids for some licenses, if the provisionally winning bid covering the licenses is a package bid. Therefore, CPEs serve as a proxy for individual license provisionally winning bid amounts. The procedure for computing CPEs is described in greater detail in Attachment H.

licenses the CPE will be the provisionally winning bid amount, so that minimum acceptable bids are based on provisionally winning bid amounts, as in an SMR auction without package bidding. For licenses in the C Block subject to HPB, if a bid on an individual license is provisionally winning, the CPE for that license will be the provisionally winning bid amount. If a package bid is provisionally winning, the CPEs for individual licenses in the package will be constructed by scaling up the bids on individual licenses so that the sum of the license CPEs equals the provisionally winning package bid.²⁸⁹ Bids are scaled up by adding “shares” to the highest bid received so far in the auction for each license in the package.²⁹⁰ These shares are proportional to the bidding units associated with each license relative to the total number of bidding units in the package. The proposed mechanism for determining CPEs in an HPB auction format is described in more detail in Attachment H.

218. Commenters disagree on the method for calculating the CPEs for C Block packages. Pecek suggests using current high bids as weights when scaling up bids. US Cellular advocates using provisionally winning bids, not bidding units, to determine CPEs for C Block bids.²⁹¹ Verizon Wireless, however, disagrees with US Cellular’s suggestion, and supports our proposed method of calculating CPEs.²⁹²

219. We do not agree that we should scale up license prices using current bid amounts, since doing so may encourage undesirable strategic bidding. Bidders would have an incentive to bid up the prices of other licenses while holding back on the licenses they are interested in, in order to force other license prices to bear a larger share of the shortfall.

220. We also decline to adopt the suggestions of MetroPCS and US Cellular that we base the minimum acceptable bids for C Block REAG licenses directly on the highest bids for those licenses. Scaling up the minimum acceptable bid amounts for licenses in a package, so that the sum of bids on individual licenses equals the minimum acceptable bid on the package, mitigates the coordination or “threshold” problem that may face bidders trying to compete with a large package bid in a package bidding auction. Absent such a procedure, package bid prices could become disproportionately large relative to the prices for the package components, making it difficult for bidders on the individual licenses to compete with the package bid, especially since bidders on the individual licenses may bid cautiously, hoping that bidders on other licenses will make up the difference required to catch up with the package bid.

221. We also do not believe that the proposed method of calculating CPEs is overly complex, as alleged by US Cellular.²⁹³ In fact, we will use HPB in part because the mechanism for calculating CPEs is significantly simpler than other package bidding pricing mechanisms that adequately address coordination issues.²⁹⁴

222. *Activity-Based Formula.* Under our proposal, once CPEs are calculated, minimum acceptable bids are then determined for each license as the amount of the CPE plus a percentage of the

²⁸⁹ Goeree, J. K. and C. A. Holt, “A Simple Combinatorial Auction,” Working Paper, May, 2007.

²⁹⁰ If no bids have been placed on an individual license, the share will be added to the minimum opening bid amount.

²⁹¹ Pecek Comments at 2; US Cellular Comments at 6; US Cellular Reply Comments at 5. MetroPCS adds that it believes the CPE calculation proposal is an unsuitable proxy, and supports US Cellular’s proposal to use provisionally winning bids to determine C Block CPEs. MetroPCS Comments at 11; MetroPCS Reply Comments 15-16.

²⁹² Verizon Wireless Reply Comments at 8.

²⁹³ US Cellular Reply Comments at 6.

²⁹⁴ See, e.g., *Auction 66 Comment Public Notice*, Attachment B.

CPE. The percentage is calculated using the activity-based formula described below. In general, the percentage will be higher when many bidders are bidding on a license, or on a package containing a license, than when few bidders are bidding on a license.

223. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the “additional percentage”) is calculated at the end of each round, based on an activity index which is a weighted average of (a) the number of distinct bidders placing a bid on the license, including package bids, in that round, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round.²⁹⁵ The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the CPE amount to obtain the minimum acceptable bid for the next round.

224. We proposed initially to set the weighting factor at 0.5, the minimum percentage (floor) at 0.1 (10%), and the maximum percentage (ceiling) at 0.2 (20%). At these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty percent higher than the CPE (which, for non-C Block licenses will equal the provisionally winning bid), depending upon the bidding activity covering the license.²⁹⁶ Equations and examples are shown in Attachment G.

225. A number of commenters addressed the activity-based formula to calculate minimum acceptable bids. Wrege/Hoffman advocate increasing the activity weight factor from 0.5 to, for example, 0.75, so that the current round’s activity has more weight in determining the next rounds minimum acceptable bid.²⁹⁷ Wrege/Hoffman also advocate modifying the minimum acceptable bid formula by decreasing the floor from the proposed 10 percent to 5 percent, and decreasing the ceiling from the proposed 20 percent to 10 percent.²⁹⁸ Frontline, MetroPCS, US Cellular, and Verizon Wireless express support for the change in floor and ceiling percentages proposed by Wrege/Hoffman.²⁹⁹

226. In the *700 MHz Auction Public Notice*, we noted that the Bureau retains discretion to limit the absolute amount by which a minimum acceptable bid for a license may increase over the previous provisionally winning bid – for example, the Bureau could set a \$10 million cap on increases in minimum acceptable bid amounts over provisionally winning bids – and we sought comment on the circumstances under which we should employ such a limit. Frontline suggested a cap on bid increments of \$150 million per license per round would help avoid problems associated with bids rising more quickly than bidders, especially new entrants, can obtain approval for the additional funds, and would not delay the auction significantly.³⁰⁰

²⁹⁵ For Round 1 calculations, because there is no prior round (*i.e.*, no round 0), the activity index from the prior round is set at 0.

²⁹⁶ Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

²⁹⁷ Wrege/Hoffman Comments at 7.

²⁹⁸ *Id.* at 7-8. US Cellular also recommends adjusting the floor and ceiling percentages and weighing recent bids more than previous bids (with weight factor greater than 0.5), but does not propose specific numbers. US Cellular Comments at 5.

²⁹⁹ Frontline Reply Comments, Attachment at 1; MetroPCS Reply Comments at 5-6; US Cellular Reply Comments at 4; Verizon Wireless Reply Comments at 4-5.

³⁰⁰ Frontline Reply Comments at 1.

227. We recognize bidder concerns that very rapid increases in minimum acceptable bids may potentially discourage bidder participation, inhibit price discovery, and create bid approval issues, especially since the minimum opening bids in Auction 73 are higher than were our starting bids, for example, in Auction 66. At the same time, since the licenses initially offered in Auction 73 will not be sold unless reserve prices are met, it will be useful for the auction to move at a reasonably fast pace at least until reserve prices are satisfied. We reiterate that we have the discretion to modify minimum acceptable bid amounts – by changing the activity-based formula parameters or by imposing or modifying a cap on the dollar amount of bid increments – as we see fit during the auction. Taking commenter concerns into account, we determine that we will retain initial floor and ceiling parameters at 10 and 20 percent, respectively, as proposed, but we will begin the auction with a \$100 million cap on the amount of the bid increment. That is, minimum acceptable bids for the next round generally will be between 10 and 20 percent higher than provisionally winning bids, but they will not exceed provisionally winning bids by more than \$100 million dollars.

228. *Additional Bid Amounts.* Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is ten percent, the calculation is (minimum acceptable bid amount) * (1 + 0.1), rounded, or (minimum acceptable bid amount) * 1.1, 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) * 1.2, rounded; etc. The Bureau will round the results of these calculations and the minimum acceptable bid calculations using the Bureau's standard rounding procedures.³⁰¹

229. For Auction 73, the Bureau proposed to set the bid increment percentage at 0.1, so that any additional bid amounts above the minimum acceptable bid would each be 10 percent higher. For non-C Block licenses, the Bureau proposed to begin the auction with one acceptable bid amount per license (the minimum acceptable bid amount). For C Block licenses subject to HPB, the Bureau proposed to begin the auction with three acceptable bid amounts per license (the minimum acceptable bid amount and two additional bid amounts) and one acceptable bid amount per package (the minimum acceptable bid amount and no additional bid amounts).

230. We received no comments on our proposal to set the bid increment percentage at 0.1. We adopt our proposal to begin the auction with a bid increment percentage of 0.1.

231. Several commenters, however, advocate providing more than one acceptable bid amount per license for the non-C Block licenses. Frontline argues that limiting bid increments would interfere with price discovery.³⁰² MetroPCS favors multiple bid increments to enable bidders to get as close to their final bidding amounts as possible.³⁰³ Wrege/Hoffman also believe multiple bid increments are important to bidders that value licenses at more than the current minimum acceptable amounts but less than the next round's minimum acceptable bids.³⁰⁴ Verizon Wireless supports providing at least three bid

³⁰¹ 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.

³⁰² Frontline Comments, Attachment at 24.

³⁰³ MetroPCS Comments at 16-17

³⁰⁴ Wrege/Hoffman Comments at 5-6.

increments for all licenses, not just those in the C Block.³⁰⁵ US Cellular agrees, advocating at least three acceptable bid amounts (i.e., the minimum acceptable bid and two additional bid amounts).³⁰⁶

232. We are not persuaded that additional bid amounts provide bidders with significantly more flexibility to express their valuations. Our experience with past auctions indicates that bidders rarely use multiple increment bids as the commenters suggest – to express their final valuations more precisely – but more frequently use jump bids as a means of signaling other bidders. As we noted in the *700 MHz Auction Public Notice*, we proposed that bidders on licenses in the C Block be able to make multiple increment bids to ensure that bidders on individual licenses can effectively compete with package bids, even when there are not individual bids on one or more of the licenses in the package. Absent that need for multiple increment bids in the non-package bidding blocks, we will not modify our proposal. Therefore, we will begin the auction with one acceptable bid amount for each non-C Block license and C Block packages and three acceptable bid amounts for each C Block license.

233. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the dollar cap on bid increments, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if it determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license and package-by-package basis.

4. Provisionally Winning Bids

234. At the end of each bidding round, a “provisionally winning bid” will be determined based on which combination of bids together provides the greatest aggregate gross amount. Provisionally winning bids at the end of the auction become the winning bids, provided that applicable reserve prices are met. For the 1,087 licenses not subject to package bidding, the FCC Auction System determines a provisionally winning bid for each license based on the highest bid amount received for the license, taking into account the bids placed in the round and the provisionally winning bids from the previous round.³⁰⁷ For licenses in the C Block subject to HPB, the FCC Auction System will determine which combination of individual and package bids yields the highest aggregate gross bid amount, taking into consideration each bidder’s highest bid on each license or package submitted up to that point in the auction.³⁰⁸ These bids become the provisionally winning bids for the round. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.³⁰⁹

235. In order to determine which combination of bids on licenses and/or packages yields the highest aggregate bid amount in a HPB auction, the FCC Auction System compares aggregate bid amounts across the various levels in a recursive process. It first compares, for each package in the second level, the sum of the highest individual license bids from the first level with the highest bids on packages in the second level containing those licenses. Those bids that generate the maximum total bid amounts become provisionally winning. Attachment H provides additional detail on this procedure.

³⁰⁵ Verizon Wireless Reply Comments at 6.

³⁰⁶ US Cellular Reply Comments at 4-5.

³⁰⁷ Bidders may have limited ability to withdraw provisionally winning bids on non-C Block licenses. See Section IV.B.5. “Bid Removal, Bid Withdrawal, and Dropped Bids,” below.

³⁰⁸ For C Block licenses and packages, bidders will be able to drop non-provisionally winning bids from consideration, in some circumstances and with certain restrictions on subsequent bidding. See Section IV.B.5. “Bid Removal, Bid Withdrawal, and Dropped Bids,” below.

³⁰⁹ Section IV.A.3. “Eligibility and Activity Rules,” above.

236. In the *700 MHz Auction Public Notice*, the Bureau proposed to break ties randomly.³¹⁰ Pecec suggests that because there will be at most a single acceptable bid amount for all but the individual C Block licenses, there will be multiple ties, and that therefore, we should consider alternate means of breaking ties.³¹¹ Frontline opposes Pecec's proposal, arguing that adopting such a procedure for breaking ties would result in bidders feeling pressure to submit their bids hastily, which, Frontline argues, would raise bidding costs, increase the potential for bidding errors, and discourage proper analysis and review before submitting bids.³¹²

237. In previous FCC auctions, even though up to nine acceptable bid amounts were permitted, multiple increment bids accounted for only a small fraction of the total number of bids placed. Thus, we do not expect that the frequency of tied bids will be significantly different than in past auctions, and we do not adopt any changes to our tie-breaking procedures. Hence, we adopt the proposal described above. The FCC Auction System will assign a random number to each license in each bid upon submission. In the event of ties among bids that generate the highest aggregate gross bid amount, the set of bids with the highest sum of random numbers becomes provisionally winning. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

238. 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 73. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

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

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

241. In each round, eligible bidders will be able to place bids on a given license or package in one or more pre-defined bid amounts.³¹³ For each license and package, the FCC Auction System will list the acceptable bid amounts in a drop-down box.³¹⁴ 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.

242. Until a bid has been placed on a license or a package that includes the 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 or a package that includes the license, minimum acceptable bids for a license will be determined as described in Section IV.B.3.

³¹⁰ *700 MHz Auction Public Notice* at ¶ 74.

³¹¹ Pecec Comments at 3.

³¹² Frontline Reply Comments, Attachment at 4.

³¹³ Bidders must have sufficient eligibility to place a bid on the particular license or package. *See* Section III.D.3. "Upfront Payments and Bidding Eligibility," above.

³¹⁴ *See* Section IV.B.3. "Bid Amounts," above.

243. During a round, an eligible bidder may submit bids for as many licenses as it wishes, remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds (in blocks without package bidding), drop non-provisionally winning bids (C-Block licenses or packages), or permanently reduce eligibility. If a bidder submits multiple bids for the same license or package in the same round — multiple bids on the exact same license or package, not one bid on a package and one bid on a license in that package — the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed, dropped, or withdrawn its bid do not count towards the bidder's current activity.

244. As stated above, for licenses subject to package bidding in HPB, the FCC Auction System considers each bidder's highest bid on each license or package when determining the provisionally winning bids.³¹⁵ Consequently, for licenses in the C Block, an individual license or package 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. This may occur even if the bidder does not have the bidding eligibility to cover the newly-provisionally winning bid.³¹⁶ This contrasts with the SMR procedure used for licenses not subject to package bidding, in which only provisionally winning bids from the previous round and bids placed during the round are considered when determining provisionally winning bids.

245. MetroPCS requests that we clarify that a bidder can win a license or package that becomes provisionally winning, after not having been part of the winning set in the previous rounds; we clarify that point here.³¹⁷ US Cellular opposes allowing a bidder to win licenses with bidding units exceeding its eligibility at the auction's end. Leap agrees.³¹⁸ The commenters argue that winning "reactivated" bids may force bidders to win more licenses than they can afford. We do not accept US Cellular's proposal that we not allow bidders to win licenses with bidding units that exceed its eligibility. We recognize that occasionally bidders may need to change bid strategies as prices rise. Accordingly, we provide limited opportunities for bidders to withdraw and drop bids, which if used carefully, allow bidders to avoid winning licenses they no longer wish to win. Thus, we find that the requested restriction on winning bids that exceed eligibility is unnecessary to protect bidders from winning more than they wish to win.

246. We encourage bidders on licenses and packages in the C Block to bear in mind that their highest bid on each package or license will be considered every time the FCC Auction System determines a new set of provisionally winning bids. This feature allows bidders on individual licenses to compete more effectively with package bids, since their individual license bid can combine with bids on other individual licenses placed in previous rounds, and stabilizes CPEs. Bidders will be able to evaluate the extent to which a bid placed in a previous round is likely to become winning by comparing the bid to the other considered bids for the license or package.

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

³¹⁵ The solver considers the highest bid placed by each bidder on a given license or package, regardless of the rounds in which the bids were placed.

³¹⁶ In such cases, the bidder's bidding eligibility will not be restored or increased.

³¹⁷ MetroPCS Reply Comments at 14-15.

³¹⁸ US Cellular Comments at 7; Leap Reply Comments at 3.

5. Bid Removal, Bid Withdrawal, and Dropped Bids

248. In the *700 MHz Auction Public Notice*, the Commission proposed bid removal, bid withdrawal, and dropped bids procedures.³¹⁹ The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals of provisionally winning bids on licenses not subject to package bidding (i.e., all licenses except in the C Block) in no more than two rounds during the course of the auction. The Bureau further proposed that bidders be able to drop non-provisionally winning bids on packages and on licenses subject to package bidding in no more than one round of the auction.

249. *Bid Removal.* 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. Removing a bid will affect a bidder’s activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore the Bureau adopts them for Auction 73.

250. *Bid Withdrawal.* Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds for non-C Block licenses using the “withdraw bids” function in the FCC Auction System. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 C.F.R. § 1.2104(g). Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

251. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid.³²⁰ The Commission will serve as a “place holder” provisionally winning bidder on the license until a new bid is submitted on that license.

252. The *700 MHz Auction Public Notice* proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The round in which withdrawals are used would be at each bidder’s discretion.³²¹ The Bureau received no comments on the number of proposed withdrawal rounds.

253. We have decided, in contrast to the proposal in the *700 MHz Auction Public Notice*, to limit each bidder to withdrawing bids in only one round of the auction. In recent auctions, we have detected bidder conduct that, arguably, may have constituted anti-competitive behavior through the use of bid withdrawals. While we continue to recognize that bid withdrawals may reduce risk associated with efforts to secure various licenses in combination, analysis of previous auctions indicates that bidders rarely need two withdrawal rounds to avoid aggregation risk. Therefore, we conclude that, for Auction 73, adoption of a limit on the use of withdrawals to one round per bidder will better balance the need for bidding flexibility with the goal of discouraging anti-competitive bidding behavior. We will therefore limit the number of rounds in which bidders may place withdrawals to one round.

254. The Bureau received a number of comments and replies addressing the proposal not to allow withdrawals on provisionally winning bids for licenses in the C Block. The 4G Coalition urges that

³¹⁹ *700 MHz Auction Public Notice* at ¶¶ 76-84.

³²⁰ The Bureau retains the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds.

³²¹ *700 MHz Auction Public Notice* at ¶ 78.

bidders on C Block licenses should have the same withdrawal options as other bidders. It asserts that this would reduce the “exposure risk” concerns for C Block bidders.³²² Wrege/Hoffman assert that the Bureau’s proposal to not allow withdrawals on C Block licenses creates major financial risks for bidders.³²³ Leap Wireless contends that the proposed bid withdrawal rules should be modified, because they could discourage bidding in the C Block and restrict bidders from seeking alternative licenses in later rounds of the auction.³²⁴ Frontline maintains that the highest bids on individual C Block REAG licenses should be subject to standard bid withdrawal rules, rather than those for dropped bids.³²⁵

255. The Bureau proposed not to permit withdrawals of provisionally winning bids in the C Block because, with package bidding, a withdrawn bid can affect the composition of the provisionally winning set of bids, thus affecting the status of the bids of other bidders. In addition, under the mechanism used to determine CPEs in HPB, a withdrawn bid can affect the prices of other licenses. In SMR, in contrast, license-by-license bidding ensures that a withdrawn bid affects only the status of the bidder placing the withdrawal. Since bidders would be able to use withdrawals in the C Block to affect other bidders, permitting withdrawals would facilitate undesirable strategic bidding behavior. Therefore, to avoid the potential for gaming, we maintain our position not to permit withdrawals of provisionally winning bids in the C Block.

256. Wrege/Hoffman suggest that withdrawals not be permitted in the D Block and Frontline supports that position.³²⁶ Because the D Block license is nationwide, bidders do not face the risk of winning an incomplete aggregation of licenses in the block. As discussed above, we will permit that each bidder have only one round in which to withdraw bids, but we do not impose a special prohibition on withdrawals in the D Block, recognizing that D Block bidders may also need to consider their financial commitment to bids in the C Block, where they are unable to withdraw provisionally winning bids.

257. *Dropped Bids.* A bid for a package or a license in the C Block can become provisionally winning many rounds after it was placed, since HPB considers bids made in previous rounds when determining provisionally winning bids.³²⁷ These non-provisionally winning bids are useful to the auction since they enhance the ability of bidders interested in single licenses or smaller packages to combine their bids with the bids of others to compete with a large package bid, and they provide stability to the process for determining current price estimates.³²⁸ It may be the case, however, that a bidder wishes to focus on alternative licenses instead, and no longer wishes to win one of its previous bids. In order to allow bidders to opt out of non-provisionally winning bids that they no longer wish to win, we proposed that under HPB, for licenses subject to package bidding, bidders be allowed a limited number of opportunities to “drop” non-provisionally winning bids from further consideration in the auction.³²⁹

³²² 4G Coalition Comments at 7.

³²³ Wrege/Hoffman Comments at 9-10.

³²⁴ Leap Wireless Reply Comments at 2-3.

³²⁵ Frontline Reply Comments, Attachment at 1-3.

³²⁶ Wrege/Hoffman Comments at 10-11; Frontline Reply Comments, Attachment at 3.

³²⁷ Specifically, the FCC Auction System considers the highest bid placed in any previous round by each bidder on each license and package when determining the provisionally winning set of bids.

³²⁸ See Section IV.B.3. “Bid Amounts” and Attachment H.

³²⁹ After each round of the auction, we will make available a report of the considered bids for each license or package. Thus, bidders will be able to judge the likelihood that a bid from a previous round may become provisionally winning.

258. Eliminating non-provisionally winning bids from consideration may affect the current price estimates of other licenses, thereby affecting other bidders. This ability to affect the bids of other bidders may lead to undesirable strategic use of dropped bids. Therefore, the *700 MHz Auction Public Notice* proposed to permit bidders to drop non-provisionally winning bids on packages and on licenses subject to package bidding in no more than one round of the auction. To discourage bidders from dropping bids in order to disadvantage their competitors, the *700 MHz Auction Public Notice* also proposed the following restrictions on the circumstances under which bids may be dropped and on the bidder's subsequent bidding activity:

(1) A bidder that is a provisionally winning bidder on a package will not be permitted to drop bids on licenses that are included in the package.³³⁰

(2) A bidder that drops its bids on a license or package will not be permitted to submit further bids on that particular license or package during the auction.

(3) A bidder that drops its bids on a license will not be permitted to submit any bids on packages containing that license for the duration of the auction.³³¹

259. Under these proposals, if a bidder drops a bid on a package, it will be permitted to bid individually on the licenses in the package. When a bid is dropped, all of the bidder's previous bids on that license or package are removed from consideration.

260. No payments are associated with dropped bids. The round in which a bidder may drop non-provisionally winning bids from consideration will be at the bidder's discretion. The Bureau sought comment on these proposals, and on the possibilities of not allowing dropped bids, of allowing dropped bids not subject to all the restrictions proposed above, and of imposing other restrictions than proposed above.

261. The Bureau received a number of comments and reply comments addressing dropped bids. Several entities favor permitting bidders to re-bid on licenses they previously dropped, including the 4G Coalition, Pekec, MetroPCS, Leap Wireless, and Wrege/Hoffman.³³² Pekec also suggested that dropped bids should be subject to withdrawal payments, that the Bureau should consider disallowing dropped bids, and that dropped bids should be announced in advance.³³³ MetroPCS argues that permitting dropped bids in only one round favors package bidders, and may discourage bidders interested in individual licenses from competing in the C Block.³³⁴

262. Frontline maintains that the individual C Block REAG licenses should be subject to standard bid withdrawal rules, rather than those for dropped bids.³³⁵ It also proposes that bidders that are outbid on individual REAG C Block licenses should not be committed to their bids if the higher bidder

³³⁰ If in Auction 76 there is more than one level of packages of C Block licenses, this restriction is generalized to prohibit dropping bids on sub-packages if a larger package bid is dropped.

³³¹ If in a Auction 76 there is more than one level of packages of C Block licenses, this restriction is generalized, so that a bidder that drops its bids on a license or package will not be permitted to submit any bids on packages containing that license or package for the duration of the auction.

³³² 4G Coalition Comments at 7; Pekec Comments at 2-3; MetroPCS Comments at 17-21; Wrege/Hoffman Comments at 9-11; Leap Wireless Reply Comments at 2-3 .

³³³ Pekec Comments at 2-3.

³³⁴ MetroPCS Comments at 17-21.

³³⁵ Frontline Reply Comments, Attachment at 1-3.

withdraws or drops its bid. Instead, Frontline recommends that the individual license should revert to the Commission with a minimum acceptable bid equal to the second highest bid price.³³⁶

263. We also received several requests for clarification of our intended procedures with respect to dropped bids. 4G Coalition suggests that we allow bidders who drop a package bid to be able to bid on the individual licenses in the dropped package.³³⁷ We clarify that this is our intention. US Cellular urges that the Bureau state that the dropped bid procedures allow a bidder to drop all previously submitted non-provisionally winning bids, in order to prevent them from becoming winning bids, another point we have clarified above.³³⁸ Leap Wireless also suggests that a bidder whose dormant bid will be reactivated in the next round of the auction should be notified of that fact and allowed to drop the bid without penalty at that time.³³⁹ We also reiterated above that the FCC Auction System considers the highest bid placed in any previous round by each bidder on each license and package when determining the provisionally winning bids. Therefore, bids do not become “reactivated.” As we also noted briefly, we will release a report after every round that indicates what bids are considered for each package or license, so that bidders will be aware if they have an “old” bid that appears as if it might become provisionally winning.

264. We are not persuaded that we should modify our proposed procedures on dropped bids. Dropped bid procedures in a package bidding environment must be designed to avoid creating disadvantages for other bidders — intentionally or unintentionally — when bids are pulled out of consideration, and our rules are designed with that goal in mind. For example, since withdrawn provisionally winning bids can affect the winning bids of other bidders, we permit drops on non-provisionally winning bids only. Because it is more difficult for bidders on individual licenses to compete against a package bid when only current round bids are considered, we consider bids placed in all rounds, including after a bid is dropped, in order not to give an undue advantage to package bidders.

265. In addition, we find that these dropped bids procedures, and HPB procedures in general, strike a careful balance between permitting bidders adequate bidding flexibility and discouraging insincere and anti-competitive bidding behavior. For example, the prohibition against rebidding on a license that has been dropped will keep bidders from strategically shifting off of a license so that its price will fall relative to the other licenses competing against a package bid, and then rebidding at a lower relative price. We therefore adopt the proposal to permit bidders on licenses and packages in the C Block to drop non-provisionally winning bids during any one round of the auction, subject to the restrictions described above.

266. *Calculation of Bid Withdrawal Payment.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction.³⁴⁰ If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the provisionally winning bid in the same or subsequent auction(s).³⁴¹ In Auction 73, if a bid is withdrawn on a license in a block that does not meet the reserve price in the initial auction, withdrawal payments will be based on the provisionally winning bid or bids

³³⁶ *Id.*

³³⁷ 4G Coalition Comments at 6.

³³⁸ US Cellular Comments at 6.

³³⁹ *Id.* at 4.

³⁴⁰ 47 C.F.R. §§ 1.2104(g), 1.2109.

³⁴¹ The payment will equal the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid. *See* 47 C.F.R. § 1.2104(g)(1).

for the license in Auction 76, or in any subsequent auction, consistent with our usual withdrawal payment rule. In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).³⁴²

267. Section 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a high bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments.³⁴³ No interim bid withdrawal payments will be assessed until the conclusion of Auction 76, as described in Section VI. below, if necessary. In the *700 MHz Auction Public Notice*, the Bureau proposed to establish the percentage at ten percent (10%) for the 700 MHz Band auction and sought comment on the proposal.³⁴⁴

268. The Bureau received no comments on this issue and adopts its proposal. The Commission will assess an interim withdrawal payment equal to ten percent (10%) of the amount of the withdrawn bids. The ten percent (10%) interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.³⁴⁵

6. Round Results

269. Limited information about the results of a round will be made public after the conclusion of the round.³⁴⁶ Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC held. If the license is provisionally winning and part of a larger package additional details regarding the package that contains the specific license will be available. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

7. Auction Announcements

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

³⁴² See following paragraph for discussion of interim bid withdrawal payments.

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

³⁴⁴ *700 MHz Auction Public Notice* at ¶ 89.

³⁴⁵ 47 C.F.R. § 1.2104(g).

³⁴⁶ The identities of parties that are qualified to bid in Auction 73 will be available before the auction. Thus, bidders will know in advance of this auction the identities of the other parties against which they may be bidding in the auction.

V. AUCTION 76

271. In the *700 MHz Second Report and Order*, the Commission noted the strong public interest in promptly assigning all 700 MHz Band licenses for recovered analog spectrum.³⁴⁷ Accordingly, the Commission concluded that if licenses for the A, B, C or E Blocks are not assigned because the auction results do not satisfy the applicable aggregate reserve price(s) in Auction 73, the public interest will be served by offering alternative licenses for the relevant blocks in a subsequent auction, as soon as possible after the initial auction. Similarly, if the license for the D Block is not assigned because the reserve price for that license is not met, the license for the D Block may be offered again. For administrative purposes, we designate any such subsequent bidding as Auction 76.

272. As detailed in the *700 MHz Second Report and Order*, any alternative A, B and E Block licenses will be subject to alternative performance requirements. Alternative C Block licenses will be based on different geographic areas and spectrum bandwidth, as detailed below. In addition, the alternative C Block licenses will not be subject to the open platform conditions applicable to the licenses initially offered for the C Block.

273. The Commission concluded that the public interest in prompt licensing of 700 MHz spectrum and the related nature of licenses in Auctions 73 and 76 made it appropriate to adopt auction procedures treating Auctions 73 and 76 as a single auction for purposes of assessing bidders' qualifications and applying the Commission's anti-collusion rule.³⁴⁸ The Commission directed the Bureau to permit only qualified bidders in Auction 73, to participate in Auction 76, and to use the same auction design, including the applicable aggregate reserve price(s), insofar as possible.³⁴⁹ The Commission also required the Bureau to establish procedures that give applicants an opportunity to obtain bidding eligibility specifically for licenses offered in a contingent subsequent auction. Accordingly, the Bureau sought comment on specific procedures for contingent subsequent bidding. Generally, we will apply the Commission's competitive bidding rules with a presumption that Auctions 73 and 76 should be considered to be a single auction, subject to explicit exceptions when necessary. With the exceptions detailed below, we will apply all of the procedures discussed above for Auction 73 to Auction 76.

A. Announcement of Auction 76

274. If, at the close of bidding in Auction 73, the aggregate reserve price for any block has not been met, the Bureau will issue an announcement that bidding in Auction 73 has closed and that Auction 76 will commence on a date not later than three weeks following the announcement.³⁵⁰ The announcement of Auction 76 will establish the deadline by which Auction 73 qualified bidders that selected licenses to be offered in Auction 76 may obtain additional bidding eligibility for Auction 76 by supplementing their upfront payments, if necessary. In the event that the reserve price for the D Block license is met during Auction 73, a Closing Public Notice will be released with respect to the D Block, described in Section VI. "Post-Auction Procedures," below. In the event that Auction 73 results meet the

³⁴⁷ *700 MHz Second Report and Order* at ¶ 306.

³⁴⁸ *Id.* at ¶ 316.

³⁴⁹ *Id.* at ¶ 315.

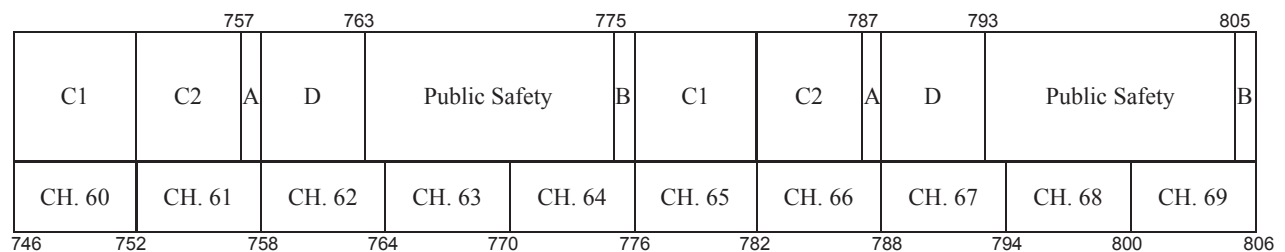
³⁵⁰ In comments responding to the *700 MHz Auction Public Notice*, Verizon Wireless suggests that the announcement require that bidders refresh upfront payments within 10 days so that the subsequent bidding may begin within weeks of the Auction 73. Verizon Wireless Comments at 4; see MetroPCS Reply Comments at 4 (supporting Verizon Wireless comments and advocating no more than "a week or two" between the end of Auction 73 and the start of any subsequent bidding). The three week window we adopt serves the interest in moving quickly to begin subsequent bidding while allowing time to respond to unanticipated developments. Given this general window, we conclude there is no need to specify the specific timeframe for supplementing upfront payments and leave the Bureau free to determine the appropriate timing if it announces that alternative licenses will be offered.

reserve prices in all blocks, the Bureau will proceed to issue a Closing Public Notice, as described below in Section VI, and Auction 76 will not be held.³⁵¹

B. Licenses To Be Offered

275. Any licenses in the A, B, D and E Blocks available in Auction 76 will cover the same geographic areas and frequencies as such licenses offered in Auction 73. However, as indicated in Figure 2, the alternative C Block will include C1 Block licenses offered in each of the 176 EAs and C2 Block licenses offered in each of the 12 REAGs. A complete list of licenses that may be available in Auction 76 is included as Attachment B of this Public Notice.

Figure 2: Alternative C Block Plan



Block	Frequencies (MHz)	Bandwidth	Pairing	Area Type	Licenses
C1	746-752, 776-782	12 MHz	2 x 6 MHz	EA	176
C2	752-757, 782-787	10 MHz	2 x 5 MHz	REAG	12

C. Auction Structure

1. Licenses for Blocks A, B, D and/or E

276. If Auction 76 offers licenses in blocks not subject to package bidding in Auction 73 — Blocks A, B, D, and/or E — those block will not be subject to package bidding in Auction 76, and will be offered using the Commission’s standard SMR auction design. The procedures applicable to the auction will be the same as those discussed above with respect to licenses for Blocks A, B, D and E in Auction 73, subject to the differences discussed below.³⁵²

2. Alternative Licenses for C Block – Available Packages

277. In the *700 MHz Auction Comment Public Notice*, the Bureau sought comment on whether to accept package bids for alternative licenses for the C Block using the HPB auction design described above for the initial C Block licenses. In response, Frontline proposed that package bids be accepted on three potential packages, one package of all C1 Block licenses, one package of all C2 Block licenses, and one package of all C1 and C2 Block licenses.³⁵³ MetroPCS and US Cellular argue against accepting any package bids for alternative C Block licenses, contending that the complexity that they believe should

³⁵¹ If any licenses remain unsold although the reserves have been met, those licenses will be subject to further proceedings, including potential future auctions, without being subject to the provisions set forth here for a contingent subsequent bidding.

³⁵² Thus, we clarify, as requested by Verizon Wireless and MetroPCS in their response to the *700 MHz Auction Public Notice*, that waivers and withdrawals utilized by a bidder during Auction 73 will not reduce the number of waivers and withdrawal rounds available to a bidder in any contingent subsequent bidding. Verizon Wireless Comments at 6-7; MetroPCS Reply Comments at 17.

³⁵³ Frontline Comments, Attachment A at 18.

preclude package bidding with respect to the original 12 C Block licenses will be further exacerbated should the Commission offer 188 alternative C1 and C2 Block licenses in subsequent bidding.³⁵⁴ In response to Frontline's proposed packages of alternative C Block licenses, US Cellular contends that Frontline's proposal creates an unfair bias in favor of bidders with national strategies.

278. We conclude that we will use non-package bidding SMR procedures for licenses in the C1 Block and HPB package bidding procedures for C2 Block licenses. This approach balances the Commission's interest in providing opportunities for new entrants competing on a nationwide basis with its goal of offering alternative licenses that may be of greater interest to a different mix of bidders, including smaller entities.

279. Accordingly, if there is subsequent bidding on alternative licenses in the C Block, we will employ the HPB auction design discussed above for the C2 Block only, with package bids accepted on the packages described below. The procedures applicable to the HPB auction of C2 Block licenses will be the same as those discussed above with respect to C Block licenses in Auction 73, subject to the differences discussed below.³⁵⁵

280. Licenses in the C1 Block will be auctioned using the SMR auction procedures discussed above for licenses in Blocks A, B, D and E in auctions 73 and 76. Bids for alternative C1 Block licenses will be accepted on individual EA Block licenses only.

281. With respect to C2 Block licenses, bids will be accepted on individual REAG licenses, and on three packages, consisting of a package of REAGs 1-8 (the 50 States), REAGs 10 & 12 (the Atlantic territories), and REAGs 9 & 11 (the Pacific territories). The hierarchical package structure for the C2 licenses is the same as was adopted for the C Block licenses in auction 73, and is displayed in Figure 3 below.

Figure 3: Package Structure of C2 Block Licenses

Level 2: Packages	50 States								Atlantic		Pacific	
Level 1: REAG licenses	1	2	3	4	5	6	7	8	10	12	9	11

D. Bidder Qualification

282. As directed by the Commission, only applicants found qualified to bid in Auction 73 may be eligible to bid in Auction 76. To be eligible to bid in Auction 76, an Auction 73 qualified bidder also must have selected a license offered in Auction 76 on the abbreviated Auction 76 application filed together with its application to participate in Auction 73. As described above, the announcement that Auction 73 bidding has ended without one or more aggregate reserve prices being met also will announce the deadline by which such bidders may submit supplemental upfront payments to purchase bidding eligibility in the subsequent auction.

283. In response to the *700 MHz Auction Public Notice*, Verizon Wireless contends that the Commission's treatment of Auction 73 and any contingent subsequent auction as a single auction for purposes of the Commission's anti-collusion rule requires that applicants select all licenses in which they may be interested, including potential alternative licenses, prior to bidding in Auction 73.³⁵⁶ Verizon

³⁵⁴ MetroPCS Comments at 21, US Cellular Comments at 9.

³⁵⁵ Thus, we clarify, as requested by Verizon Wireless and MetroPCS in their response to the *700 MHz Auction Public Notice*, that waivers and drops utilized by a bidder during Auction 73 will not reduce the number of waivers and drop rounds available to a bidder in any contingent subsequent bidding. Verizon Wireless Comments at 6-7; MetroPCS Reply Comments at 17.

³⁵⁶ Verizon Wireless Comments at 2-4.

Wireless contends that this result is compelled by the Section 1.2105(b)(2) of the Commission's competitive bidding rules, which prohibits changes in license selection after the initial application filing deadline.³⁵⁷ Moreover, Verizon Wireless contends that requiring applicants to select potential alternative licenses prior to Auction 73 will limit the amount of time required between Auction 73 and any contingent subsequent auction.³⁵⁸

284. Given the presumption that Auction 73 and any contingent subsequent bidding on licenses should be treated as a single auction, we have concluded that applicants should select both licenses offered in Auction 73 and licenses that may be offered in Auction 76 by the initial deadline for filing an application to participate in Auction 73.³⁵⁹ We conclude that bidders will be able to make informed selections prior to Auction 73 of licenses, including alternative licenses that may be offered in contingent subsequent bidding. As noted, bidders will have the opportunity to obtain additional bidding eligibility for licenses to be offered subsequently. These procedures will enable contingent subsequent bidding, if necessary, to proceed with minimal delay.

1. Bidder Status

285. To participate in Auction 76, a potential bidder must (1) have become qualified to bid for at least one license offered in Auction 73 by selecting license(s) offered in Auction 73 and making an upfront payment sufficient to establish eligibility to bid for at least one of those license(s), and (2) file an abbreviated Auction 76 application and selected at least one license offered in Auction 76. Qualified bidders in Auction 73 need not bid on the licenses offered in Auction 73 in order to be able to become qualified to participate in Auction 76.³⁶⁰

2. Auction 76 Initial Bidding Eligibility

286. For Auction 76, qualified bidders will have their initial bidding eligibility based on their initial bidding eligibility in Auction 73 and will also have an opportunity to purchase additional bidding eligibility. However, qualified bidders' initial bidding eligibility for Auction 73 will be reduced for Auction 76 if they hold winning bids for any licenses offered in Auction 73 in blocks for which the reserve price was met in Auction 73. For winning bidders of licenses in the A, B, C, or E Blocks, the amount of the reduction will be equal to the number of bidding units associated with the licenses won. For the winning bidder of the D Block license, the amount of the reduction will be equal to the amount of any withdrawal payment owed for withdrawn bid(s) on the D Block license plus the amount of the net winning bid for the D Block license, up to the amount of the winning bidder's initial Auction 73 bidding eligibility.³⁶¹

3. Supplementing Upfront Payments to Obtain Additional Eligibility

287. All bidders qualified to participate in Auction 76 will have an opportunity to purchase additional bidding eligibility. Bidders will be able to purchase additional bidding eligibility for licenses

³⁵⁷ *Id.* at 3.

³⁵⁸ *Id.* at 3-4.

³⁵⁹ Contrary to Verizon Wireless, however, we do not believe that Section 1.2105(b)(2)'s restriction on changing license selections requires the selection of potential alternative licenses. For example, it would not constitute an impermissible "change" in license selection if the Commission made alternative licenses available for selection only after the initial filing deadline for Auction 73.

³⁶⁰ This statement provides clarification requested in response to the *700 MHz Auction Public Notice*. See Frontline Comments, Attachment A at 17; Verizon Wireless Comments at 6.

³⁶¹ Thus, if the D Block winning bidder's initial eligibility is insufficient to cover any withdrawal payment and winning bid obligations relating to the D Block license, its eligibility will be reduced to zero.

to be offered in Auction 76 by supplementing their upfront payments pursuant to the procedures for making upfront payments by wire transfer set forth in this Public Notice, subject to a schedule to be announced following the close of bidding in Auction 73.

4. Continuing Applicability of the Anti-Collusion Rule

288. In the *700 MHz Second Report and Order*, the Commission directed the Bureau to adopt any procedures that may enhance the effectiveness of an auction of licenses in Auction 73 or any contingent subsequent auction. In part, the Commission found that the Commission's anti-collusion rule should treat Auction 73 and any such subsequent auction as a single auction, given the related nature of the auctions. Accordingly, the applicable "down payment deadline" marking the end of the anti-collusion period for Auction 73 and any subsequent auction shall be the down payment deadline established following the close of the subsequent auction.³⁶²

E. Bidding Procedures

1. Aggregate Reserve Prices

289. As required by the Commission, the licenses in subsequent bidding will be subject to the same aggregate reserve price(s) applicable in the initial auction. MetroPCS argues in its comments that the licenses in the second auction should not be subject to any reserve prices because using a reserve price in the contingent subsequent auction runs the risk that the licenses will not be awarded prior to the June 30, 2008, statutory deadline for filing auction proceeds.³⁶³ As MetroPCS acknowledges in its comments, the Commission decision in the *700 MHz Second Report and Order* is binding, absent reconsideration of that Order by the Commission as a whole.³⁶⁴ Consequently, MetroPCS's proposal is beyond the scope of the present non-rulemaking auctions procedures process.

290. In the *700 MHz Second Report and Order*, the Commission noted that the Bureau has delegated authority to determine how to allocate the C Block reserve price upon auction of alternative licenses. Accordingly, in the *700 MHz Auction Comment Public Notice*, the Bureau proposed to apply the C Block aggregate reserve price of \$4.637854 billion to all of the alternative C Block licenses. That is, the sum of the gross bid amounts on the C1 and C2 Block licenses must equal or exceed \$4.637854 billion in order to meet the reserve price. No commenters addressed this proposal.

291. We adopt the Bureau's proposal, with one additional feature. In the event that the sum of the gross bid amounts on the C1 and C2 Block licenses does not meet the reserve price covering both blocks, we then will apportion the aggregate reserve price between the two blocks based on their respective bandwidth and apply those aggregate reserve prices to the respective blocks separately. More specifically, if the aggregate reserve price of \$4.637854 billion covering both Blocks C1 and C2 is not met, the Commission nevertheless will assign licenses for the respective block based on the auction results if the gross bid amounts on the C1 Block licenses exceed \$2.529739 billion or the gross bid

³⁶² See 47 C.F.R. § 1.2105(c)(1). While proposing that applicants be permitted to "opt-out" of any contingent subsequent auction for purposes of the anti-collusion rule, MetroPCS acknowledges that permitting bidders to do so would revise the Commission's decision in the *700 MHz Second Report and Order* and is beyond the scope of the present non-rulemaking auction procedures process. MetroPCS Comments at 24. See Leap Reply Comments at 4-5 (same); see also US Cellular Reply Comments at 8-9 (supporting MetroPCS proposal).

³⁶³ MetroPCS Comments at 22-23.

³⁶⁴ *Id.* at 22. Frontline overlooks this fact in asserting that the bidders in the initial auction will act on the belief that there will be "possibly a lower reserve price (or no reserve price at all)" in a contingent subsequent auction. Frontline Comments at 3. Frontline's assertion is mistaken – the Commission already has decided that the reserve price in the subsequent auction will equal the reserve price in the initial auction for the same block of spectrum.

amounts on the C2 Block licenses exceed \$2.108115 billion.³⁶⁵ Applying these separate aggregate reserve prices will increase the likelihood that licenses will be assigned for the respective blocks in the contingent subsequent auction, while continuing to apply the aggregate reserve price from the initial auction to each block in proportion to the megahertz in each block.

2. Minimum Opening Bids

292. For Auction 76, the Bureau will calculate minimum opening bid amounts on a license-by-license basis using the same approach as in Auction 73, drawing on the Auction 66 prices that were bid on licenses for the exact same geographic areas.³⁶⁶ For any licenses that may be offered in Auction 76, including alternative C1 and C2 Block licenses, minimum opening bids are set forth in Attachment B of this Public Notice.

F. Additional Procedures

293. In the *700 MHz Auction Comment Public Notice*, pursuant to Commission direction, the Bureau sought comment on the possibility of denying bidding eligibility in a contingent subsequent auction based on bidder behavior in Auction 73, if that behavior appeared designed to thwart the assignment of licenses. Specifically, the Bureau proposed that bidders defaulting on winning bids in Auction 73 should be denied eligibility in any subsequent auction.³⁶⁷ We decline to restrict the circumstances under which we might deny bidding eligibility in a contingent subsequent auction to an otherwise qualified bidder.³⁶⁸ The Commission retains the authority to sanction bidders that are found to have violated the antitrust laws or the Commission's rules in connection with competitive bidding by requiring forfeiture of any upfront payments, down payment or full bid amounts, and by prohibiting the bidders participation in future auctions.³⁶⁹ The Commission intends to make full use of this authority, including banning participation in a contingent subsequent auction, with respect to bidders that seek to thwart the assignment of licenses in Auction 73.

³⁶⁵ The separate aggregate reserve prices for Blocks C1 and C2 were calculated by multiplying the C Block aggregate reserve price by the proportion of bandwidth covered by the Blocks C1 and C2 (12/22 and 10/22, respectively), and rounding the results to the nearest thousand dollars.

³⁶⁶ See Section IV.B.2.b. "Minimum Opening Bids," above.

³⁶⁷ In its comments, Verizon Wireless notes that other than with respect to a potential winning bid for the D Block license, there will be no opportunity for post-auction defaults, given that the Commission will not identify the winning bidders or required post-auction payments prior to Auction 76. Verizon Wireless Comments at 8.

³⁶⁸ Verizon Wireless and MetroPCS request that we "clarify" that the Commission will not prohibit otherwise eligible bidders from participating in Auction 76 for any "other" reason, besides a default on an Auction 73 bid, such as withdrawing a bid or dropping a bid pursuant to the procedures adopted for Auction 73. Verizon Wireless Comments at 6; see MetroPCS Reply Comments at 17. The Commission's authority to sanction a bidder by prohibiting participation in future auctions concerns both the bidder's compliance with the Commission's rules and its effect on the competitive character of the auction. Thus, while the Commission will not prohibit participation by a bidder simply because it makes use of a permissible bidding procedure, such as a bid withdrawal or drop, the bidder's compliance with the Commission's rules is not a safe harbor from sanctions in the event that the bidder's actions thwart the competitive character of the auction, notwithstanding that the action is in compliance with the Commission's rules.

³⁶⁹ 47 C.F.R. § 1.2109(d).

VI. POST-AUCTION PROCEDURES

A. Considerations Relating to Certain Post-Auction Payment Rules

1. Apportioning Package Bids

294. In package bidding, when a bidder places an all-or-nothing bid on a package of licenses, there will be no identifiable bid amounts on the individual licenses that comprise the package. However, the Commission's competitive bidding rules and procedures assume that the amount of each bid on an individual license always is known. For example, rules for calculating the amount of small business, new entrant, or tribal land bidding credits presume that the winning bid on the license is known.³⁷⁰ Similarly, in determining the amount of a default or withdrawal payment, which involves a comparison between the withdrawing or defaulting bidder's bid and a subsequent bid, the rules assume that there are bid amounts for individual licenses.³⁷¹ Accordingly, the Commission recently adopted a rule providing that, in advance of each auction with package bidding, the Commission shall establish a methodology for determining how to estimate the price or bid on an individual license included in a package of licenses.³⁷²

295. The Bureau proposed to apportion package bids when regulatory calculations require individual license bid amounts by dividing the package bid amount among the licenses comprising the package in proportion to the number of bidding units for each license. Alternatively, the Bureau proposed to use the final round CPEs for each license to apportion package bids.³⁷³ The Bureau sought comment on these proposals.³⁷⁴

296. The 4G Coalition suggests that we use a measure more closely related to relative license values, such as minimum opening bid amounts, to apportion package bid amounts among the licenses in the package.³⁷⁵ We accept 4G's recommendation that relative license values be used to apportion package bids, but rather than use a pre-auction estimate of value such as minimum opening bids, we will use the final CPEs of the licenses in the package, as in our alternative proposal. Final CPEs will reflect relative prices as determined in Auction 73. Therefore, when regulatory calculations require individual license bid amounts, we will divide the package bid amount among the licenses comprising the package in proportion to the final round CPEs for the licenses.

2. Interim Withdrawal Payment Percentage

297. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction.³⁷⁶ However, if a license for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same

³⁷⁰ 47 C.F.R. § 1.2110(f). Knowing the size of a small business bidding credit on an individual license may be necessary in order to calculate a small business bidding credit unjust enrichment obligation on a license won as part of a package.

³⁷¹ 47 C.F.R. § 1.2104(g).

³⁷² See 47 C.F.R. § 1.2103(b), as amended by the *CSEA/Part 1 Report and Order*. *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 906 ¶ 39.

³⁷³ Current price estimates are discussed in Section IV.B.3., above.

³⁷⁴ *700 MHz Auction Public Notice* at ¶¶ 85-86.

³⁷⁵ 4G Coalition Comments at 6.

³⁷⁶ 47 C.F.R. § 1.2104(g)(1). The withdrawal payment amount is deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. No withdrawal payment is assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. *Id.*

auction, the final withdrawal payment cannot be calculated until a corresponding license receives a higher bid or winning bid in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.³⁷⁷

298. The Commission recently amended its rules to provide that in advance of the auction, the Commission shall establish a percentage between three percent and twenty percent of the withdrawn bid to be assessed as an interim bid withdrawal payment.³⁷⁸ When it adopted the new rule, the Commission indicated that it would consider the nature of the service and the inventory of the licenses being offered when determining the level of the interim withdrawal payment in a particular auction.³⁷⁹

299. In the *700 MHz Auction Public Notice*, the Bureau noted that the 700 MHz auction will offer licenses under several different geographic licensing schemes and bandwidth sizes, and it found that bidders may have a legitimate interest in using withdrawals to facilitate their efforts to aggregate licenses across potentially substitutable blocks of licenses not subject to package bidding. The Bureau also observed that the likely significant bid amounts for licenses in this auction (and resulting absolute value of withdrawal payments) will in themselves serve as a deterrent to unnecessary withdrawals. Therefore, the Bureau did not propose to set the interim bid withdrawal payment at the maximum rate of twenty percent. At the same time, the Bureau noted that a rate above the minimum three percent will help deter undesirable strategic use of withdrawals. Specifically, the Bureau proposed to establish an interim bid withdrawal payment of ten percent of the withdrawn bid in the 700 MHz auction and sought comment on this issue.³⁸⁰

300. No commenters suggested any alternative to the Bureau's proposed percentage for interim withdrawal payments. For the reasons set forth above and in the *700 MHz Auction Public Notice*, we adopt the Bureau's proposal. The Commission will assess an interim withdrawal payment equal to ten percent (10%) of the amount of the withdrawn bids. The ten percent (10%) interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.³⁸¹

3. Additional Default Payment Percentage

301. Any winning bidder that defaults or is disqualified after the close of an 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) is liable for a default payment under Section 1.2104(g)(2) of the Commission's rules.³⁸² This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Until recently this additional payment for non-combinatorial auctions has been set at three percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

³⁷⁷ *Id.*

³⁷⁸ See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903 ¶ 30.

³⁷⁹ *Id.* at 903-04 ¶ 31.

³⁸⁰ *700 MHz Auction Public Notice* at ¶¶ 87-89.

³⁸¹ 47 C.F.R. § 1.2104(g).

³⁸² 47 C.F.R. § 1.2104(g)(2).

302. The percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend on the auction format ultimately chosen for a particular auction. In non-package auctions, the amount can range from three percent up to a maximum of twenty percent, established in advance of the auction and based on the nature of the service and the inventory of the licenses being offered.³⁸³ In auctions with package bidding, the additional payment is set, pursuant to Section 1.2104(g)(2)(ii), at 25 percent of the applicable bid. This higher level reflects the fact that a defaulted winning bid in an auction with package bidding may have affected which other bids were winning other licenses.³⁸⁴

303. The Bureau proposed to establish an additional default payment of fifteen percent with respect to bids on licenses in Blocks A, B, D, and E, which are not subject to package bidding. As previously noted by the Commission, defaults weaken the integrity of the auction process and impede the deployment of service to the public, and an additional default payment of more than three percent will be more effective in deterring defaults. Moreover, the Bureau concluded an additional default payment greater than ten percent, which the Commission has established in several recent auctions, is appropriate for the 700 MHz auction.³⁸⁵ Because no licenses in Blocks A, B, or E will be sold unless the aggregate reserve price for that block is met, bidders may have an additional incentive to bid on a license and later default (after determination that the reserve price has been met), in order to help ensure that the reserve price is met and other initial licenses in the block are assigned. The Bureau concluded that a higher additional default payment will help deter such behavior. With respect to the D Block, for which there is a single nationwide license that will not be assigned unless the D Block reserve price is met, a default by the winning bidder will delay the especially time-sensitive process of establishing a public-private partnership for the provision of public safety services. Given the unusually large public interest benefits of timely licensing the D Block, the Bureau proposed to deter defaults by imposing a higher additional default payment in that block as well. Accordingly, it proposed an additional default payment of fifteen percent on licenses in the A, B, D, and E Blocks. The Bureau sought comment on this proposal.³⁸⁶ The Bureau stated that for licenses in the C Block, because they are subject to package bidding, the additional default payment will be twenty-five percent as set forth in Section 1.2104(g)(2)(ii). This additional default payment will apply to all bids for packages and for licenses that are subject to package bidding.³⁸⁷

304. While no comments filed in response to the *700 MHz Auction Public Notice* focused on the appropriate percentage for the additional default payments, Frontline proposed in its comments that the Commission impose no default penalty in connection with any defaults on a winning bid for the D Block license.³⁸⁸ Frontline's argument focused particularly on a scenario where the winning bidder is unable to negotiate a Network Sharing Agreement with the Public Safety Licensee, even while negotiating in good faith.³⁸⁹ MetroPCS opposed Frontline's proposal in its reply.³⁹⁰ As it appeared to acknowledge in its comments, Frontline's proposal runs counter to the Commission's decision in the *700 MHz Second Report and Order*, which held that "[i]n the event that the long-form application filed by the

³⁸³ See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 903 ¶ 30.

³⁸⁴ 47 C.F.R. § 1.2104(g)(2)(ii).

³⁸⁵ See *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4627-28 ¶ 258; see also *Auction 69 Procedures Public Notice*, 21 FCC Rcd at 12440 ¶ 193; *Auction 71 Procedures Public Notice*, 22 FCC Rcd at 477 ¶ 183; *Auction 72 Procedures Public Notice*, 22 FCC Rcd at 3447 ¶ 186.

³⁸⁶ *700 MHz Auction Public Notice* at ¶¶ 90-92.

³⁸⁷ *Id.* at ¶ 93.

³⁸⁸ Frontline Comments at 16-17.

³⁸⁹ *Id.* at 17.

³⁹⁰ MetroPCS Reply comments at 13.

winning bidder for the D Block license is denied, the winning bidder of the D Block licenses will be deemed to have defaulted . . . [and] it will be liable for the default payment set forth” in the Commission’s competitive bidding rules.³⁹¹ Accordingly, Frontline’s proposal is beyond the scope of the current non-rulemaking auction procedures process.

305. For the reasons set forth above and discussed in the *700 MHz Auction Public Notice*, we adopt the Bureau’s proposal and set the additional default payment percentage at fifteen percent of the defaulted bid for licenses in the A, B, D and E Blocks. Pursuant to existing Commission rules regarding licenses subject to package bidding, the additional default payment percentage will be twenty-five percent of the defaulted bid for licenses in the C Block.³⁹² These percentages are appropriate to reduce the risk that bidders may default on their winning bids.

B. Down Payments

306. After bidding has ended in Auction 73 and Auction 76, the Commission will issue a public notice declaring the auction(s) closed and identifying winning bidders, down payments and final payments due. In addition, if the D Block bidding satisfies the reserve price and there is a winning bidder for the D Block license in Auction 73, the Commission will issue a public notice identifying the winning bidder, down payments and final payments due after bidding ends in Auction 73, even if Auction 76 will be held for licenses in any other block(s).

307. 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 licenses offered in Auction 73 and Auction 76 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business bidding credits).³⁹³

C. Final Payments

308. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the applicable deadline for submitting down payments.³⁹⁴

D. Long-Form Application (FCC Form 601)

309. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for each license won through Auction 73 and/or Auction 76. Winning bidders that are small businesses or very small businesses must demonstrate their eligibility for a small business or very small business bidding credit.³⁹⁵ Further filing instructions will be provided to auction winners at the close of the auction.

310. The *CSEA/Part 1 Report and Order* modified the procedure by which a consortium that is a winning bidder in Auction 73 and/or Auction 76 will apply for a license.³⁹⁶ In particular, (a) each member or group of members of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s) and, in the case of a license to be partitioned or

³⁹¹ *700 MHz Second Report and Order* at ¶ 508; see Frontline Comments at 17.

³⁹² If C block licenses are included in a subsequent Auction 76, the additional default percentages applying to C1 block licenses will be those for non-package bidding auctions, while package bidding percentages will apply to licenses in the C2 Block.

³⁹³ 47 C.F.R. § 1.2107(b).

³⁹⁴ 47 C.F.R. § 1.2109(a).

³⁹⁵ 47 C.F.R. § 1.2112(b).

³⁹⁶ *CSEA/Part 1 Report and Order* at ¶¶ 51-52, petitions for reconsideration pending.

disaggregated, the member or group filing the applicable long-form application shall provide the parties' partitioning or disaggregation agreement in its long-form application; (b) two or more consortium members seeking to be licensed together shall first form a legal business entity; and (c) any such entity must meet the applicable eligibility requirements for small business status.³⁹⁷ Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* in detail and monitor any relevant future proceedings to understand how the members of the consortia will apply for a license in the event they are winning bidders.

E. Ownership Disclosure Information Report (FCC Form 602)

311. 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 ULS for any applicant that submits an FCC Form 175. However, winning bidders will be required to review and confirm that it is complete and accurate as of the date of filing Form 601. Further instructions will be provided to winning bidders at the close of the auction.

F. Tribal Lands Bidding Credit

312. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 C.F.R. §§ 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

313. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit **after** winning the auction when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 C.F.R. § 1.2110(f)(3)(vi).³⁹⁸

314. For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal lands bidding credits and related public notices.³⁹⁹ Relevant documents can be viewed on the

³⁹⁷ *Id.*

³⁹⁸ See also 47 C.F.R. § 1.2110(f)(3)(ii) & (vii).

³⁹⁹ See generally, *Extending Wireless Telecommunications Services to Tribal Lands, Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 11794 (2000), *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775, 4778-79 ¶ 10 (2003), *Third Report and Order*, 19 FCC Rcd 17652 (2004). See also "Wireless Telecommunications Bureau Announces Enhancements to the Universal Licensing System to Help Winning Bidders of FCC Auctions File for Tribal Lands Bidding Credits," *Public Notice*, 16 FCC Rcd 5355 (2001); "Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a Tribal Lands Bidding Credit and List of Tribal Lands," *Public Notice*, 15 FCC Rcd 24838 (2000); "Wireless Telecommunications Bureau Announces Availability of Bidding Credits for Providing Wireless Services to Qualifying Tribal Lands: Tribal Lands Bidding Credits to be Available Beginning in Auction No. 36 (800 MHz Specialized Mobile Radio (SMR) Lower 80 Channels) and in Future Auctions," *Public Notice*, 15 FCC Rcd 18351 (2000).

Commission's web site by going to <http://wireless.fcc.gov/auctions> and clicking on the **Tribal Land Credits** link.

G. Default and Disqualification

315. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

316. Pursuant to recent modifications to the rule governing default payments, the percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *700 MHz Auction Public Notice*, the Bureau proposed to set the additional default payment for the auction of 700 MHz Band licenses at fifteen percent of the applicable bid with respect to bids on licenses in Blocks A, B, D, and E, which are not subject to package bidding. For licenses in the C Block, because they are subject to package bidding, the additional default payment will be twenty-five percent as set forth in Section 1.2104(g)(2)(ii).

317. As discussed above, the Commission will apportion package bids when regulatory calculations require individual license bid amounts by dividing the package bid amount among the licenses comprising the package in proportion to the final round CPEs for the licenses. Accordingly, in the event that a winning bidder defaults on a package bid for C Block licenses and the licenses subsequently are won individually or in an different combination, the Bureau will apportion the defaulted package bid for the C Block licenses based on the ratio of the bidding units for the relevant licenses to the bidding units for the entire package.

318. As discussed above, we adopted the Bureau's proposal and set the additional default payment for the auction of 700 MHz Band licenses at fifteen percent of the applicable bid for licenses in Blocks A, B, D, and E and at twenty-five percent of the applicable bid for Block C packages and licenses.

319. Finally, the Bureau notes that 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.⁴⁰⁰ 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.⁴⁰¹

H. Refund of Remaining Upfront Payment Balance

320. The Commission received two sets of comments addressing the refund of upfront payments.⁴⁰² The 4G Coalition urges that the Commission clarify that it will promptly refund upfront payments after the close of the initial auction, prior to Auction 76.⁴⁰³ It maintains that this would promote

⁴⁰⁰ 47 C.F.R. § 1.2109(b) and (c).

⁴⁰¹ 47 C.F.R. § 1.2109(d).

⁴⁰² 4G Coalition Comments at 8-9; MetroPCS Comments at 26. Verizon Wireless also states, without explanation, that bidders should be able to receive refunds of upfront payments after the Commission announces that alternative licenses will be offered. See Verizon Wireless Comments at 4, n.7.

⁴⁰³ 4G Coalition Comments at 8.

full participation in the auction.⁴⁰⁴ MetroPCS advocates the adoption of procedures for the refund of upfront payments, and other deposits, after they are deposited in the Digital Television Transition and Public Safety Fund on June 30, 2008, pursuant to the DTV Act.⁴⁰⁵ MetroPCS argues that the lack of such procedures would discourage the participation of potential applicants.⁴⁰⁶

321. The Commission concluded that Auction 73 and Auction 76 are a single auction event for purposes of the Commission's anti-collusion rule.⁴⁰⁷ Applicants in Auction 73 are prohibited from communicating bids or bidding strategies prior to the conclusion of Auction 76. Disclosing the activity of applicants in Auction 73 or Auction 76 by providing for refunds of upfront payments prior to the conclusion of Auction 76 would conflict with this conclusion. As a practical matter, we note that applicants in any Commission auction must take into account the fact that the Commission's auctions are of indefinite duration. Thus, even if Auction 76 should not prove necessary, applicants cannot reasonably expect the return of funds by any specific date and therefore cannot reasonably require that funds be refunded immediately after the Commission announces that it will make alternative licenses available for Auction 76. Moreover, bidders in Auction 73 subject to any liabilities arising from Auction 73 may not have the extent of their liability determined prior to the close of Auction 76. For example a bidder that withdrew a provisionally winning bid in Auction 73 would be subject to a determination of the extent of its liability only after the conclusion of Auction 76. The Commission has never provided for refunds of upfront payments to such bidders. In the past, the Commission has provided for refunds of upfront payment to bidders that have no auction liabilities and no remaining bidding eligibility prior to the competition of an auction. Nevertheless, the Commission has not made any such refunds in auctions subject to anonymous bidding. For all of these reasons, we conclude that bidders reasonably should be required to maintain their upfront payments in Auction 73 and Auction 76 on deposit with the Commission until the conclusion of any contingent subsequent auction.

322. All upfront payments submitted by applicants in Auction 73 and all upfront payments submitted by Auction 73 qualified bidders in connection with Auction 76 may be available to be refunded after the conclusion of any contingent subsequent auction; subject to any required payments (i.e. winning bid, deficiency, withdrawal, and/or default payments). 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.

323. 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. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not completed the refund instructions electronically, the applicant may send a written request for the refund, including wire transfer instructions and FCC Registration Number (FRN) by facsimile to the Auctions Accounting Group at (202) 418-2843 or by mail to:

Federal Communications Commission
Financial Operations Center
Auctions Accounting Group
Gail Glasser

⁴⁰⁴ *Id.*

⁴⁰⁵ MetroPCS Comments at 25-27; *see also 700 MHz Second Report and Order* at ¶¶ 318-321. MetroPCS also urges that the Commission establish procedures for the rapid processing of applications, to reduce the need for refunds after June 30, 2008.

⁴⁰⁶ MetroPCS Comments at 26-27.

⁴⁰⁷ *700 MHz Second Report and Order* at ¶ 316.

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

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

VII. CONTACT INFORMATION

324. Contact Information Table:

GENERAL AUCTION INFORMATION

General Auction Questions
Auction Process and Procedures
Seminar Registration

FCC Auctions Hotline
(888) 225-5322, option two;
or (717) 338-2868

Hours of service: 8:00 a.m. – 5:30 p.m. ET,
Monday through Friday

AUCTION LEGAL INFORMATION

Auction Rules, Policies, Regulations

Auctions and Spectrum Access Division
Scott Mackoul, Stephen Johnson, or Howard
Davenport (202) 418-0660

LICENSING INFORMATION

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

Mobility Division (202) 418-0620
Erin McGrath (legal)
Keith Harper (engineering)
Denise Walter (licensing)

TECHNICAL SUPPORT

Electronic Filing
FCC Auction System (Hardware/Software Issues)

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

PAYMENT INFORMATION

Wire Transfers
Refunds

FCC Auctions Accounting Branch
Gail Glasser
(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.bcpiweb.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>

-- FCC --

ATTACHMENT A
Auction 73 – 700 MHz Band Licenses
DA07-4171

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

ATTACHMENT B
Contingent Auction 76 Licenses
DA07-4171

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

ATTACHMENT C
Auction No. 73 – 700 MHz Band Procedures
AU Docket No. 07-157

Initial Commenters

1. Blooston Rural Carriers
2. Coalition for 4G in America (“4G Coalition”) [Access Spectrum LLC; DirecTV Group, Inc.; EchoStar Satellite, LLC; Google Inc.; Intel Corporation; Skype Communications SARL]
3. Duggal, Gaurav
4. Eydt, Bernard (“Eydt”)
5. Frontline Wireless, LLC (“Frontline”)
6. Manti Telephone Company (“Manti”)
7. MetroPCS Communications, Inc. (“MetroPCS”)
8. Pekec, Aleksandar Sasa (“Pekec”)
9. Space Data Corporation (“Space Data”)
10. United States Cellular Corporation (“US Cellular”)
11. Verizon Wireless
12. Wrege, Karen and Hoffman, Karla (“Wrege/Hoffman”)

Reply Commenters

1. AT&T, Inc. (“AT&T”)
2. Frontline
3. Hawaii, State of
4. Leap Wireless International, Inc. (“Leap”)
5. MetroPCS
6. Rural Telecommunications Group (“RTG”)
7. US Cellular
8. Verizon Wireless

***Ex Parte* and Other Filings**

1. CTIA – The Wireless Association
2. Frontline
3. Google, Inc.
4. MetroPCS
5. US Cellular
6. Verizon Wireless

ATTACHMENT D
AUCTION 73 SHORT-FORM APPLICATION FILING INSTRUCTIONS

This attachment provides instructions for filing a short-form application (FCC Form 175) to participate in Auction 73. If an entity wishes to participate in any contingent subsequent bidding for 700 MHz licenses in Auction 76, the applicant must also complete a FCC Form 175, instructions of which are provided in Attachment E to this Public Notice.

Application Preparation and Submission for Auction 73

An applicant must submit its short-form application (FCC Form 175) electronically, via the FCC Auction System. **Short-form applications for Auction 73 must be submitted and confirmed prior to 6:00 p.m. ET on Monday, December 3, 2007.** 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 Section 0.459.⁴⁰⁸ 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.⁴⁰⁹

Applicants may make multiple changes to their short-form 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.

A. Minimum Software Requirements

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

- Web Browser, either of the following:
 - Microsoft® Internet Explorer 6.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.5 installed.
 - Netscape® Communicator™ 6.0 or higher, with Java Plug-In Version 1.5.

To obtain Java Plug-In Version 1.5, point your browser at http://java.sun.com/java.se/downloads/index_jdk5.jsp and click the Download button for the Java Runtime Environment (JRE) 5.0 option.

⁴⁰⁸ 47 C.F.R. § 0.459.

⁴⁰⁹ 47 C.F.R. § 0.459(a).

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

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

B. Logging On

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

C. Application Filing Instructions

The FCC Form 175 requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.⁴¹⁰ Pursuant to Section 1.2105(a), FCC Form 175 must be submitted electronically. Applicants must submit required information as entries in the data fields of the FCC Form 175 whenever a data field is available for that information. Attachments should not be used to provide information that can be supplied within the data fields of the FCC Form 175.

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

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

Applicants should be able to fill out FCC 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

⁴¹⁰ See generally, 47 C.F.R. § 1.2105.

- the applicant's legal classification (e.g., individual, corporation, rural telephone cooperative, etc.)
- optional information regarding the applicant's status as a minority- or woman-owned business or a rural telephone company
- 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 175⁴¹¹
- 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.⁴¹²

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

- Applicants must indicate their legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- P.O. Boxes may not be used for an applicant's address.
- To simplify filling out the FCC Form 175, an applicant that has the same address as its contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address. P.O. Boxes may not be used for a contact person's address.
- Applicants must identify at least one authorized bidder. While applicants may change their authorized bidders at a later date, in Auction 73 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 offered in Auction 73 on which the applicant may wish to bid during the auction. While an applicant is not obligated to bid on all licenses that it selects, it will not be able to bid on licenses that it has not selected on its FCC Form 175 for Auction 73.⁴¹³ Be advised that there is no opportunity to change this list after the short-form filing deadline.

To participate in an auction, applicants must select at least one license in Auction 73. Until the applicant selects a license, the applicant cannot submit the FCC Form 175. An applicant's license selections cannot

⁴¹¹ FCC personnel will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf.

⁴¹² 47 C.F.R. § 1.2105(a)(2)(ii)(A).

⁴¹³ 47 C.F.R. § 1.2105(a)(2)(i).

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 *License Selection* screens contain a list of all available licenses in Auction 73. Applicants can navigate within the *License Selection* screen by selecting the individual page links or the “Previous” and “Next” buttons above and below the list of available licenses. In addition, applicants can use pre-defined filters to narrow down the list of licenses for which they wish to select and save. Specifically, licenses can be selected by either: 1) clicking the check box next to the license name, then selecting the “Save Selected Items” button; 2) clicking the “Save All Items” button to save all available licenses for Auction 73; or by 3) clicking the “Save All Filtered Items” button after applying a filter.

NOTE: An applicant should be aware that “Save All Items” on its short-form application for Auction 73 will not include any licenses that may be offered in Auction 76.

Licenses can be removed by either: 1) clicking the check box (to uncheck) next to a previously saved license, then selecting the “Remove Selected Items” button; 2) clicking the “Remove All Items” button to remove all previously saved licenses; or by 3) clicking the “Remove All Filtered Items” button after applying a filter. Removed licenses will not have the word “Saved” next to the license name.

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

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

Applicants interested in bidding on packages for C Block licenses in Auction 73 must select the individual licenses to create those packages in the bidding system. If an applicant fails to pick a particular C Block license, it cannot bid on that license as part of a pre-defined package.

3. Agreements

The *Agreements* screens are the third series of screens in FCC Form 175. In the *Agreements* screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission’s rules.⁴¹⁴

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.

⁴¹⁴ 47 C.F.R. § 1.2105(a)(2)(viii).

In the additional *Agreements* screens, applicants must provide an identifying name for the agreement and must identify the parties, other than the applicant, to the agreement. The agreement identifier can be a brief description of the agreement or a simple reference name; however, each agreement identifier must be unique. Neither the name of the agreement or its description should indicate license selection.

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

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

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

- 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.⁴¹⁵ 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.⁴¹⁶ In addition, if the applicant has claimed eligibility for bidding

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

⁴¹⁶ 47 C.F.R. § 1.2112.

credits based on revenues attributable to the applicant and related parties, the applicant will provide information regarding revenues for entities related through ownership in the *Ownership* screens.⁴¹⁷

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 FCC 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 its FCC Form 175 for Auction 73. 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 their short-form applications for Auction 73. 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.

b. Disclosable Interest Holders and FCC-Regulated Businesses

- Sections 1.2105 and 1.2112(a) of the Commission's rules lists the interest holders in the applicant that must be disclosed in FCC Form 175.⁴¹⁸
- Section 1.2112(a)(7) lists the FCC-regulated business entities, or applicants for an FCC license, that must be disclosed in FCC Form 175.⁴¹⁹

The initial *Ownership* screen enables the applicant to add information regarding either a disclosable interest holder or the FCC-regulated businesses in which the applicant has an interest. 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,⁴²⁰ 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.⁴²¹ One attachment connecting

⁴¹⁷ Applicants claiming eligibility for bidding credits based on revenues are also required to disclose in separate attachments information related to arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum. 47 C.F.R. § 1.2112(b)(1)(iii) and (iv). The procedure for attaching this information to the application is described below in Section C.6. "Attaching Additional Information."

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

⁴¹⁹ 47 C.F.R. § 1.2112(a)(7).

⁴²⁰ 47 C.F.R. § 1.2112(a)(6).

⁴²¹ *Id.*

all indirect owners to the applicant is sufficient. Applicants should not provide separate attachments for each indirect owner. An overview of the ownership connections is sufficient. The attachment should not duplicate all the detailed information already provided in the data fields of the FCC Form 175.

- The “Percent of Interest Held in Applicant” should reflect the disclosable interest holder’s aggregate ownership interest in the applicant. In some cases, e.g., circumstances where there is joint ownership or indirect ownership resulting in different owners sharing the same ownership interests, the sum of all the percentages held by disclosable interest holders may exceed 100%. In other cases, a disclosable interest holder may have a 0% percent of interest held in the applicant, e.g., directors and officers of an entity seeking revenue-based bidding credits.⁴²²
- 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 the FCC Form 175, either automatically from compatible ownership information on file with the Commission or directly by the applicant, and provides links enabling existing information to be revised and additional information to be added.

Existing ownership information is divided into three groups:

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

⁴²² See 47 C.F.R. § 1.2112(b)(1)(i).

d. Bidding Credit Revenue Information

Applicants claiming eligibility for a bidding credit based on revenues must provide revenue information described below regarding entities related by ownership. In addition, applicants are also required to provide information regarding any arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum, as well as the gross revenues of entities with which the applicant has an attributable material relationship as a result of such arrangements.⁴²³ Information regarding arrangements for lease or resale (include wholesale agreements), as well as related entities and revenues, must be provided in an attachment to the FCC Form 175. The procedure for attaching this information is described below in Section C.6.

If the applicant has claimed eligibility for a bidding credit based on revenues attributable to the applicant and related parties, the first *Ownership* screen will request relevant information regarding the applicant's revenues. The subsequent screen will request which of the two sources of financial information authorized by Section 1.2110(o) the applicant used for the revenue information.⁴²⁴

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.⁴²⁵ 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.⁴²⁶ FCC Form 175 screens request information regarding the applicant, disclosable interest holders, and affiliates of the applicant. **In those instances where a controlling interest or an affiliate of a controlling interest is not a disclosable interest holder, information regarding those entities should be disclosed in the "Affiliates of Applicant" screens.**

Following the first two screens, the subsequent screen will be similar to the initial *Ownership* screen described above, except applicants claiming eligibility for bidding credits will also have an option to add information regarding affiliates that are not disclosable interest holders, including the affiliates' revenues.⁴²⁷

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

There may be circumstances in which the revenue information need not be provided for certain disclosable interest holders. For example, some entities that must be disclosed in FCC Form 175 pursuant to Section 1.2112(a) may not be affiliates of the applicant, controlling interests of the applicant, or

⁴²³ See 47 C.F.R. § 1.2112(b)(1)(iii) and (iv)..

⁴²⁴ 47 C.F.R. § 1.2110(o).

⁴²⁵ 47 C.F.R. § 1.2112(b)(1)(iii).

⁴²⁶ 47 C.F.R. § 1.2110(c)(5).

⁴²⁷ 47 C.F.R. § 1.2112(b)(1)(iii).

affiliates of the applicant's controlling interests.⁴²⁸ Because revenues for such disclosable interest holders are not attributable to the applicant, the applicant could indicate on the first screen requesting revenue information for that disclosable interest holder that no revenue information is required pursuant to the Commission's rules. To report that no revenue information needs to be disclosed, check the box indicating that the disclosable interest holder is not an affiliate or a controlling interest within the meaning of the Commission's rules.

Claiming Attribution Exemption for Eligible Rural Telephone Cooperatives. An applicant will be exempt from attribution of gross revenues of an affiliate or a controlling interest in the applicant if such entity meets all of the conditions set forth in Section 1.2110(b)(3)(iii) of the Commission's rules.⁴²⁹ If an applicant claims that it (or its controlling interest) is an eligible rural telephone cooperative pursuant to Section 1.2110(b)(3)(iii), it should not check the box indicating that the disclosable interest holder is not an affiliate or a controlling interest within the meaning of the Commission's rules. The applicant should then indicate that the affiliate or controlling interest has zero gross revenues *and* must provide in an attachment a statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of Section 1.2110(b)(3)(iii) and supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.⁴³⁰

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,⁴³¹ applicants can click on the **ADD AFFILIATE** button on the initial *Ownership* screen. Applicants also can click on the **Add Affiliate to Applicant** link on the *View/Edit Ownership Disclosure Information* screen to disclose information regarding affiliates and their revenues.

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

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: (1) the applicant; (2) each of the applicant's officers and directors; (3) each of the applicant's other controlling interests; (4) each of the applicant's affiliates; and (5) each affiliate of the applicant's controlling interests, including its officers and directors.⁴³²

⁴²⁸ 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).

⁴²⁹ 47 C.F.R. § 1.2110(b)(3)(iii).

⁴³⁰ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10,180 (2003); *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd at 1942.

⁴³¹ 47 C.F.R. § 1.2112(b)(1)(iii).

⁴³² *Id.*

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.

- 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.

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, that information can be provided in an attachment. For example, applicants can describe the relationship among indirect owners of the applicant, or provide information regarding lease and resale arrangements (including wholesale) involving the spectrum capacity of applicants claiming eligibility for bidding credits.⁴³³

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.

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

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

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

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.⁴³⁴

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.⁴³⁵ Applicants associated with a relevant entity that previously has been in default or delinquent – but is not currently – may participate in an auction, if otherwise qualified. However, such applicants must submit an upfront payment equal to 50 percent more than otherwise required.⁴³⁶

⁴³³ Applicants claiming eligibility for bidding credits in Auction 73 must disclose (1) a list of all parties with which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum, and (2) a list, separately and in the aggregate, of the gross revenues of entities with which the applicant has an attributable material relationship. 47 C.F.R. § 1.2112(b)(1)(iii)-(iv). These lists should be provided in an attachment to the application, with the attachment type identified as "Other."

⁴³⁴ See generally, 47 C.F.R. § 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

⁴³⁵ 47 C.F.R. § 1.2105(a)(2)(xi).

⁴³⁶ 47 C.F.R. § 1.2106(a).

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

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

All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.⁴³⁷ Applicants are reminded that submission of a FCC Form 175 constitutes a representation by the certifying official that he or she is an authorized representative of the applicant and 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. As noted above, a change of certifying official is considered a major change of the short-form application and will not be permitted after the short-form deadline.

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

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

Short-form applications for Auction 73 must be submitted and confirmed prior to 6:00 p.m. ET on Monday, December 3, 2007. Late applications or unconfirmed submissions of electronic data will not be accepted.

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

a. Withdrawing an Application

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

Applications may not be withdrawn after the short-form application filing deadline.

b. Updating Existing Applications

The *Create or Review Auction Applications* page displays any application created or submitted within a filing window. This page shows the application status, the date and time the application was last updated,

⁴³⁷ 47 C.F.R. § 1.2105(a)(2)(v).

and the date and time the application was last submitted. This page may be used as a reference to confirm the date and time of the most recent submission of the application.

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

After the filing deadline, applicants may make only minor changes to their short-form applications. An applicant will not be permitted to make major modifications to its application (e.g., changes to applicant's change their license selections or certifying official, changes in control of the applicant, or claim an increase in its bidding credit).⁴³⁸

9. Refund of Upfront Payment

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

D. Application Review

Once the short-form application review process is complete, short-form applications can be viewed by searching for them in the FCC database. To start a search, go to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location) and click the **Auction Applications** link in the Public Access area on the *FCC Integrated Spectrum Auction System* page.

E. Technical Support

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

Paperwork Reduction Act Approval: The FCC Form 175 was assigned control number 3060-0600 and was approved by the Office of Management and Budget on November 1, 2006.

⁴³⁸ 47 C.F.R. § 1.2105(b).

ATTACHMENT E**AUCTION 76 SHORT-FORM APPLICATION FILING INSTRUCTIONS**

This attachment provides instructions for filing a short-form application (FCC Form 175) to participate in any contingent subsequent bidding for 700 MHz licenses in Auction 76.

Short-Form Application for Auction 76

To streamline the application process, other than license selection requirements, all relevant information for the application to participate in Auction 76 must be submitted as part of the application to participate in Auction 73 (instructions of which are provided in Attachment D to this Public Notice). The filing period for short-applications for Auctions 73 and 76 will be simultaneous. Thus, short-form applications for Auction 76 must be submitted and confirmed prior to **Monday, December 3, 2007 at 6:00 p.m. ET**. Late applications or unconfirmed submissions of electronic data will not be accepted.

The Auction 76 abbreviated application will request – and will accept – only information that the FCC Auction System requires in order to enable applicants to submit license selections for Auction 76. For example, applicants seeking to submit information regarding bidding agreements with respect to licenses offered in Auction 76 will not be able to access the bidding agreement screens that are usually part of the short-form application in the Auction 76 abbreviated application. Instead, such applicants must submit information regarding those agreements as part of their Auction 73 short-form application.

To comply with FCC Auction System requirements, however, applicants will be required to repeat some information submitted in their Auction 73 application, e.g. their FCC Registration Number (FRN), their name and address, certification of the form's contents, etc. As noted in the procedures for filing the abbreviated short-form application for Auction 76, with respect to information requested in the abbreviated application, applicants must provide the same information submitted in their application for Auction 73. Most importantly, applicants must use the same FRN in both applications, even if the applicant has more than one FRN, and that the same person must certify both applications, as the certification applies to information submitted in both applications.

Application Preparation and Submission for Auction 76

An applicant must submit its short-form application (FCC Form 175) electronically, via the FCC Auction System. Applicants may make multiple changes to their short-form 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.

F. Minimum Software Requirements

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

- Web Browser, either of the following:
 - Microsoft® Internet Explorer 6.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.5 installed.
 - Netscape® Communicator™ 6.0 or higher, with Java Plug-In Version 1.5.

To obtain Java Plug-In Version 1.5, point your browser at http://java.sun.com/java.se/downloads/index_jdk5.jsp and click the Download button for the Java Runtime Environment (JRE) 5.0 option.

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

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

G. Logging On

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

NOTE: An applicant submitting a short-form application for Auction 76 must **use the same FRN** that it used when filing its short-form application for Auction 73.

H. Application Filing Instructions

Pursuant to Section 1.2105(a), FCC Form 175 must be submitted electronically. Applicants must submit required information as entries in the data fields of the FCC Form 175 whenever a data field is available for that information. Attachments should not be used for Auction 76 short-form applications.

The screens comprising FCC Form 175 for Auction 76 consist of three series, each requesting separate types of information: 1) *Applicant Information*; 2) *License Selection*; and 3) *Certify and Submit*. In addition, *Summary* screens, a fourth series, appear prior to the *Certify and Submit* screens. The *Summary* screens provide an overview of an applicant’s FCC Form 175 that facilitates reviewing and revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

To simplify filling out FCC Form 175, certain initial information applicants provide is used to determine what additional information is needed, and what subsequent screens will appear to collect that information. For example, a corporate applicant, unlike an individual applicant, must identify a corporate officer or director responsible for the application (sometimes called a responsible party). If an applicant identifies itself as an individual, no additional information is needed regarding an additional responsible party, and screens requesting responsible party information will not appear. However, if the applicant identifies itself as a corporation, subsequent screens in the FCC Form 175 will ask for responsible party information. Again, applicants should provide identical information to that provided in the short-form application for Auction 73.

Applicants should be able to fill out FCC 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 this 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, rural telephone cooperative, 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 fax number of a contact person who will communicate with the Commission regarding the applicant's FCC Form 175⁴³⁹
- 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.⁴⁴⁰

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

- Applicants must indicate their legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- P.O. Boxes may not be used for an applicant's address.
- To simplify filling out the FCC Form 175, an applicant that has the same address as its contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address. P.O. Boxes may not be used for a contact person's address.
- Applicants must identify at least one authorized bidder. While applicants may change their authorized bidders at a later date, in Auction 73 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.

Again, applicants should provide identical information to that provided in the short-form application for Auction 73.

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 that may be offered in Auction 76 on which the applicant may wish to bid during the auction. While an applicant is not obligated to bid on all licenses that it selects, it will not be able to bid on licenses that it has not selected on its FCC Form 175 for Auction 76.⁴⁴¹ Be advised that there is no opportunity to change this list after the short-form filing deadline.

⁴³⁹ FCC personnel will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf.

⁴⁴⁰ 47 C.F.R. § 1.2105(a)(2)(ii)(A).

⁴⁴¹ 47 C.F.R. § 1.2105(a)(2)(i).

To participate in an auction, applicants must select at least one license in Auction 76. 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 *License Selection* screens contain a list of all licenses that may be available in Auction 76. Bidding on these licenses would only occur in the event that Auction 73 results do not satisfy one or more aggregate reserve prices for licenses offered in Auction 73. If the aggregate reserve price is met in Auction 73 for a particular block, that block of licenses will not be offered in Auction 76.

Applicants can navigate within the *License Selection* screen by selecting the individual page links or the "Previous" and "Next" buttons above and below the list of available licenses. In addition, applicants can use pre-defined filters to narrow down the list of licenses for which they wish to select and save. Specifically, licenses can be selected by either: 1) clicking the check box next to the license name, then selecting the "Save Selected Items" button; 2) clicking the "Save All Items" button to save all available licenses for Auction 73; or by 3) clicking the "Save All Filtered Items" button after applying a filter.

NOTE: An applicant should be aware that "Save All Items" on its short-form application for Auction 76 will not include any licenses that may be offered in Auction 73. License selection for Auction 73 must occur on the FCC Form 175 for Auction 73.

Once the applicant has successfully saved the license(s), the word "Saved" will appear next to the license name to confirm that it has been saved with the application. Licenses selected on the *License Selection* screen will be automatically saved when navigating to another screen within the Auction Application by using the links and buttons provided on the screen.

Licenses can be removed by either: 1) clicking the check box (to uncheck) next to a previously saved license, then selecting the "Remove Selected Items" button; 2) clicking the "Remove All Items" button to remove all previously saved licenses; or by 3) clicking the "Remove All Filtered Items" button after applying a filter. Removed licenses will not have the word "Saved" next to the license name.

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

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

Applicants interested in bidding on packages for C1 and C2 Block licenses in Auction 76 must select the individual licenses to create those packages in the bidding system. If an applicant fails to pick a particular C1 or C2 Block license, it cannot bid on that license as part of a pre-defined package.

3. Agreements

Applicants will not see any *Agreements* screens for the abbreviated Auction 76 short-form application. Information regarding auction-related agreements with respect to licenses offered in Auction 76 should be supplied in the short-form application for Auction 73.

4. Ownership

Applicants will not see any *Ownership* screens for the abbreviated Auction 76 short-form application. Information regarding parties with ownership interests in the applicant that must be disclosed pursuant to Commission rules should be supplied in the short-form application for Auction 73. Additionally, revenue information supporting an applicant's claim of eligibility for a bidding credit on licenses offered in Auction 76 must likewise be provided in the short-form application for Auction 73.⁴⁴²

5. Summary

The *Summary* screens summarize information applicants have provided in previous screens, offering an overview of an applicant's FCC Form 175 to help locate specific information. 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 a series of screens in the application and provides a **VIEW/EDIT** button to access each one.

- Clicking **VIEW/EDIT** for Applicant Information produces a *Detail for Applicant Information* screen showing 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.

Note: the **VIEW/EDIT** button will not be active for Agreements or Ownership for Auction 76 short-form applications.

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.

⁴⁴² This includes any information regarding any arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum, as well as the gross revenues of entities with which the applicant has an attributable material relationship as a result of such arrangements.

6. Attaching Additional Information

If an applicant needs to provide additional information not requested directly in the screens comprising the FCC Form 175, that information should be provided in an attachment to the Auction 73 short-form application. Applicants should not provide any attachments to the Auction 76 short-form application.

7. Certify and Submit

The *Certify and Submit* screens are the 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.⁴⁴³

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.⁴⁴⁴ Applicants associated with a relevant entity that previously has been in default or delinquent – but is not currently – may participate in an auction, if otherwise qualified. However, such applicants must submit an upfront payment equal to 50 percent more than otherwise required.⁴⁴⁵

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

Who Can Certify. An applicant for Auction 76 must use the same person who certified its Auction 73 short-form application.

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.⁴⁴⁶ Applicants are reminded that submission of a FCC Form 175 constitutes a representation by the certifying official that he or she is an authorized representative of the applicant and 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. As noted above, a change of certifying official is considered a major change of the short-form application and will not be permitted after the short-form deadline.

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

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

⁴⁴³ See generally, 47 C.F.R. § 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

⁴⁴⁴ 47 C.F.R. § 1.2105(a)(2)(xi).

⁴⁴⁵ 47 C.F.R. § 1.2106(a).

⁴⁴⁶ 47 C.F.R. § 1.2105(a)(2)(v).

Short-form applications for Auction 76 must be submitted and confirmed prior to 6:00 p.m. ET on Monday, December 3, 2007. Late applications or unconfirmed submissions of electronic data will not be accepted.

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

a. **Withdrawing an Application**

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

Applications may not be withdrawn after the short-form application filing deadline.

b. **Updating Existing Applications**

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

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

After the filing deadline, applicants may make only minor changes to their short-form applications. An applicant will not be permitted to make major modifications to its applications (e.g., changes to applicant's license selections or certifying official, changes in control of the applicant, or claim an increase in its bidding credit).⁴⁴⁷

Any minor changes made to an applicant's Auction 76 short-form application should be also be made in its Auction 73 short-form application.

9. **Refund of Upfront Payment**

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

I. **Application Review**

Auction 76 short-form applications will not be viewable by the public until after the close of bidding in Auction 73. At that time, if Auction 76 is necessary, Auction 76 short-form applications can be viewed by searching for them in the FCC database. To start a search, go to either <http://auctions.fcc.gov/>

⁴⁴⁷ 47 C.F.R. § 1.2105(b).

(primary location) or <http://auctions2.fcc.gov/> (secondary location) and click the **Auction Applications** link in the Public Access area on the *FCC Integrated Spectrum Auction System* page.

J. Technical Support

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

Paperwork Reduction Act Approval: The FCC Form 175 was assigned control number 3060-0600 and was approved by the Office of Management and Budget on November 1, 2006.

ATTACHMENT F

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

Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 2/03), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 73. 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 "358405"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
21	Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant's ten-digit FRN registered in CORES.
24A	Payment Type Code - Enter "A73U"

- 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 "73" (indicating Auction 73).

NOTES:

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

Winning Bidder Requirements, Down Payments and Final Payments

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

ATTACHMENT G

Activity-Based Formula to Determine Minimum Acceptable Bids

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

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

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

where

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

C = activity weight factor

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

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

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

N = minimum additional percentage or floor

M = maximum additional percentage or ceiling

X_{i+1} = additional dollar amount

Y_i = current price estimate (CPE) for the license from the current round

(The CPE for a license is the provisionally winning bid, unless there is a provisionally winning package bid covering the license. See Attachment H for more information on CPEs.)

Examples

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

Round 1 (1 bidder submitting bids, CPE = \$1,000,000)

1. Calculation of additional percentage for round 2:

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

$$I_2 = \text{The smaller of } [((1 + 0.5) * 0.1) = 0.15] \text{ and } 0.2 \text{ (the maximum additional percentage)} \\ = 0.15$$

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

$$X_2 = 0.15 * \$1,000,000 = \$150,000$$

3. Minimum acceptable bid amount for round 2 = \$1,150,000

Round 2 (3 bidders submitting bids, CPE = \$2,000,000)

1. Calculation of additional percentage for round 3:

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

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

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

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

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

Round 3 (1 bidder submitting bids, CPE = \$2,400,000)

1. Calculation of additional percentage for round 4:

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

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

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

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

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

For packages, the minimum acceptable bid amount is the sum of the minimum acceptable bid amounts for the licenses in the package.

ATTACHMENT H

Determining Provisionally Winning Bids and Current Price Estimates

The licenses subject to package bidding in a Hierarchical Package Bidding auction are grouped into non-overlapping, successively larger packages at each level. This attachment addresses the HPB structure to be used for the C Block licenses available in Auction 73, and for the C2 Block licenses that may be available in Auction 76.⁴⁴⁸ This hierarchical structure has two levels, consisting of 12 individual REAG licenses in the first level and several packages of different sizes in the second level, as shown in Table 1 below. After each round, all considered bids and minimum opening bids are used to determine the largest bid on each license and on each allowed package, using the random tie-breaking rule.⁴⁴⁹ A simple procedure is used to calculate the provisionally winning set of bids and a “current price estimate” (“CPE”) for each individual license.⁴⁵⁰ This appendix describes the winner determination and pricing rules, first in terms of an example and then in more general terms.

Table 1. Two-Level Structure

Level 2: Packages	50 States								Atlantic		Pacific	
Level 1: REAG licenses	R1	R2	R3	R4	R5	R6	R7	R8	R10	R12	R9	R11

Determining Provisionally Winning Bids

After each round of bidding, the FCC Auction System determines which combination of bids provides the greatest aggregate gross amount and are therefore provisionally winning. In order to determine the best combination of bids, the system takes the highest bid on each individual license. It then compares the sum of the high bids on individual licenses in a package with the highest package bid to determine provisionally winning bid(s).

Example 1: Suppose that the highest bids on each license and package are as shown in Table 2 below. The sum of the highest bids on REAG licenses R1-R8, 80, exceeds the highest bid on the 50-state package, 70; the sum of the highest bids on REAG licenses R10 and R12, 20, exceeds the highest bid on the Atlantic package, 15; and the sum of the highest bids on REAG licenses R9 and R11, 20, exceeds the highest bid on the Pacific package. Thus, the provisionally winning bids would be the bids on the individual REAG licenses.

⁴⁴⁸ If the C Block licenses in Auction 73 do not meet the aggregate reserve price for that block, C1 and C2 Block licenses will be offered in Auction 76. The C2 Block licenses will be auctioned using the procedures described in this attachment, and the C1 Block of EA licenses will be auctioned using simultaneous multiple round auction procedures without package bidding.

⁴⁴⁹ The set of considered bids in a round includes new bids for that given round and each bidder’s highest bid on each license or package, regardless of the round in which it was placed. For a description of how tied bids are broken, see Section IV.B.4. “Provisionally Winning Bids.” In addition to these bids, the FCC Auction System considers a set of “FCC bids.” There is an FCC bid on each license, and the amount of each FCC bid is slightly below the minimum opening bid amount.

⁴⁵⁰ The hierarchical structure of HPB was suggested by Rothkopf, Pekeč, and Harstad, “Computationally Manageable Combinatorial Auctions,” *Management Science*, 44(8), August 1998, 1131-1147. The pricing mechanism for HPB was proposed by Goeree and Holt (2007) “A Simple Combinatorial Auction,” working paper, May 2007.

Table 2. Example 1 with High Bids in Parentheses

Level 2: Packages	50 States (70)								Atlantic (15)		Pacific (15)	
Level 1: REAGs	R1 (10)	R2 (10)	R3 (10)	R4 (10)	R5 (10)	R6 (10)	R7 (10)	R8 (10)	R10 (10)	R12 (10)	R9 (10)	R11 (10)

Example 2: Next, suppose that the highest bid on the 50-state package changes to 120, as shown below in Table 3, which exceeds the sum of the high bids for the 8 individual REAGs included in the package. In this case, the provisionally winning bids would be the package bid for the 50 states and the bids for the 4 individual REAG licenses in the Atlantic and Pacific packages.

Table 3. Example 2 with High Bids in Parentheses

Level 2: Packages	50 States (120)								Atlantic (15)		Pacific (15)	
Level 1: REAGs	R1 (10)	R2 (10)	R3 (10)	R4 (10)	R5 (10)	R6 (10)	R7 (10)	R8 (10)	R10 (10)	R12 (10)	R9 (10)	R11 (10)

Determining Current Price Estimates (CPEs) for Licenses

CPEs for licenses are determined in such a way as to indicate to bidders how high they must bid to compete with the provisionally winning bid on the package containing those licenses in the event the package bid is the provisionally winning bid. If the bids on the individual REAG licenses are all provisionally winning, then the CPEs are simply equal to those bids, as is the case in an FCC simultaneous multiple round (SMR) auction without package bidding. But if the bid amount for a package is greater than the sum of the bid amounts for the individual licenses it contains, then the highest bids received so far for the licenses are scaled up to the package bid amount by adding “shares.”⁴⁵¹ These shares are proportional to the bidding units associated with each license relative to the total number of bidding units in the package.

Suppose that all REAG licenses have equal bidding units, and that the bid amounts are as shown as in Example 2 above. The high bid on the 50 States package is 120, which exceeds the sum of the bids for the REAG licenses in the package. Therefore, the individual bids for licenses R1-R8 are raised from 10, to $10 + (1/8)[120 - 80] = 15$. In other words, the “shortfall” of 40 is divided among the 8 licenses in the package in proportion to their bidding units (assumed to be equal). In this example, a “package share” of 5 is added to the high bids on the REAG licenses in the 50-state package, but there is no package share for the licenses in the other packages.

⁴⁵¹ If no bids have been placed on an individual license, the share will be added to the minimum opening bid amount.

Minimum acceptable bids for licenses in the next round of the auction are calculated by adding a percentage to the license CPE.⁴⁵² For packages, minimum acceptable bids are the sums of the minimum acceptable bids for the licenses in the package. As a result of constructing CPEs in this way, the minimum acceptable bids for the next round will indicate to bidders what they must bid to unseat the provisionally winning bids from the last round.

Technical Description

The discussion below specifically addresses the two level package structure for bidding on the C Block licenses in Auction 73 and/or the C2 Block licenses that may be offered in Auction 76. For a more general description, which can be applied to variations on HPB, see Goeree and Holt, “A Simple Combinatorial Auction,” working paper, May 2007, “Appendix A: General Hierarchical Assignment and Pricing.”⁴⁵³

To Determine Provisionally Winning Bids: Suppose a package r is divided into individual licenses, $i = 1, \dots, I_r$ where I_r is the number of individual licenses in package r , each with α_{ir} bidding units. Bidders can submit bids on individual licenses and package bids for the entire package. Let b_{ir}^{\max} denote the highest bid for license i in package r and b_r^{\max} the highest package bid for package r . In this case, the revenue-maximizing allocation can be found recursively (Rothkopf, Pekeć, and Harstad, 1998):

1. Pick the larger of b_r^{\max} and $\sum_{i=1}^{I_r} b_{ir}^{\max}$, which determines Rev_r , the revenue for package r .
2. If $Rev_r = b_r^{\max}$, the highest package bid for package r is provisionally winning and the bids on individual licenses in that package are losing, otherwise the highest bids on individual licenses in package r are provisionally winning and the package bid for package r is losing.

To Determine CPEs for Licenses: A second procedure is used to calculate current price estimates (CPEs) for licenses (Goeree and Holt, 2007).⁴⁵⁴ The CPE p_{ir} of license i in package r is the maximum bid for the license plus a “package share” (if the sum of the high bids for individual licenses in the package falls short of Rev_r). The shares are determined by the relative sizes of the licenses in terms of bidding units. Let $\alpha_r = \sum_{i=1}^{I_r} \alpha_{ir}$ denote the total number of bidding units in package r . With this notation, the pricing formula is:

$$p_{ir} = b_{ir}^{\max} + \frac{\alpha_{ir}}{\alpha_r} \left(Rev_r - \sum_{i'=1}^{I_r} b_{i'r}^{\max} \right)$$

where the difference in parentheses is non-negative by construction. Thus,

- $p_{ir} = b_{ir}^{\max}$ if an individual license bid wins.
- $p_{ir} = b_{ir}^{\max} + \text{package share}$ if a package bid wins.

⁴⁵² In a standard FCC SMR auction (without package bidding), the FCC Auction System adds a percentage to the current provisionally winning bid amount for each license to determine minimum acceptable bids for the next round. This percentage may be determined by the activity-based formula, described in Attachment G and in Section IV.B.3. “Bid Amounts.”

⁴⁵³ “A Simple Combinatorial Auction” is available on Jacob Goeree’s web page at <http://www.hss.caltech.edu/~jkg/>.

⁴⁵⁴ The computed prices determine minimum acceptable bids for licenses by adding a percentage. The minimum acceptable bid for a package is equal to the sum of the minimum acceptable bids for the licenses it contains.

Current price estimates based on this procedure address the “threshold problem” in the sense that they provide benchmarks for bids on individual licenses that will, when incremented, allow the individual license bids to displace a provisionally winning bid on the package containing those licenses.

The procedures for determining provisionally winning bids and CPEs for licenses, set forth here for two levels, can be generalized for any number of levels. With a single level these procedures reduce to the SMR pricing and allocation rules in which the provisionally winning bid for a license is the highest bid received for that license. With multiple levels, the algorithm for determining provisionally winning bids follows a “bottom-up” approach and checks at every level, h , whether it is better to provisionally assign a level- h package to the high bidder for that package or to provisionally assign the smaller sub-packages that it contains. The rule for determining CPEs follows from this recursive comparison of level- h and level- $(h+1)$ packages: if the larger packages provide higher revenue, then the prices of the individual licenses contained in the larger packages are incremented in proportion to bidding units to reflect this shortfall. Once the algorithm finishes, the CPEs of the individual licenses add up to the sum of the associated provisionally winning bids.

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

A. Commission Decisions:

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

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

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

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

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

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

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

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7687-7689 ¶¶ 8-12 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, FCC 94-264, 9 FCC Rcd 6858, 6866-6869 ¶¶ 47-60 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Memorandum Opinion and Order*, FCC 94-215, 9 FCC Rcd 7245, 7253-7254 ¶¶ 48-53 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, FCC 94-178, 9 FCC Rcd 5532, 5570-5571 ¶¶ 91-92 (1994).

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

B. Wireless Telecommunications Bureau Decisions:

Applications of High Plains Wireless, L.P., *Memorandum Opinion and Order*, DA 97-2451, 12 FCC Rcd 19627 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order on Reconsideration*, DA 97-2324, 12 FCC Rcd 18093 (Wireless Telecom. Bur. 1997); Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order*, DA 97-1782, 13 FCC Rcd 5756 (Wireless Telecom. Bur. 1997).

Applications of GWI PCS, Inc., *Memorandum Opinion and Order*, DA 97-674, 12 FCC Rcd 6441 (Wireless Telecom. Bur. 1997).

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. 94-131, *Order*, DA 95-2292, 11 FCC Rcd 9655 (Wireless Telecom. Bur. 1995).

1. Public Notices:

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37, 13 FCC Rcd 341 (Wireless Telecom. Bur. 1998).

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

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS "C" Block Reauction, *Public Notice*, DA 96-929, 11 FCC Rcd 7031 (Auc. Div. 1996).

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

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

Letter to John Cooper, Aurora Communications, Inc., from Margaret W. Wiener, DA 06-157, 21 FCC Rcd 523 (Auc. Div. 2006).

Letter to Howard A. Kalmenson, Lotus Communications Corp., from Margaret W. Wiener, DA 06-156, 21 FCC Rcd 520 (Auc. Div. 2006).

Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, DA 05-2445, 20 FCC Rcd 14648 (Video and Auc. Divs. 2005).

Letter to Robert Pettit from Margaret W. Wiener, DA 00-2905, 16 FCC Rcd 10080 (Auc. Div. 2000).

Letter to Elliott J. Greenwald from Christopher J. Wright, DA 98-644, 13 FCC Rcd 7132 (Gen. Counsel 1998).

Letter to David L. Nace from Kathleen O'Brien Ham, DA 96-1566, 11 FCC Rcd 11363 (Auc. Div. 1996).

Letter to Mark Grady from Kathleen O'Brien Ham, DA 96-587, 11 FCC Rcd 10895 (Auc. Div. 1996).

Letter to Jonathan D. Blake from Kathleen O'Brien Ham, DA 95-2404, 10 FCC Rcd 13783 (Auc. Div. 1995).

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

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

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

Letter to Alan F. Ciamporcero from William E Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

C. Enforcement Bureau Decisions:

Application of Star Wireless, LLC, *Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626 (Enf. Bur. 2004); Application of Star Wireless, LLC, *Notice of Apparent Liability for Forfeiture*, DA 03-2722, 18 FCC Rcd 17648 (Enf. Bur. 2003).

Application of Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, DA 04-3027, 19 FCC Rcd 18635 (Enf. Bur. 2004); Application of Northeast Communications of Wisconsin, Inc., *Notice of Apparent Liability for Forfeiture*, DA 03-2723, 18 FCC Rcd 17672 (Enf. Bur. 2003).

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 Fed. Reg. 65,228 (Nov. 25, 1998).

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

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

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

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. Nov. 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>.

**ATTACHMENT J
FCC AUCTION 73
SEMINAR REGISTRATION FORM**

The FCC will sponsor a one-day seminar for Auction 73 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.

The seminar will be held:

Monday, November 19, 2007
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 the Auctions staff at (717) 338-2868 for a list of hotels in the area.

To register, please provide the information listed below no later than Thursday, November 15, 2007, by either

E-mail: Auchelp@fcc.gov
Facsimile: 717-338-2850
Phone: 717-338-2868

Note: The seminar will also be available via webcast and may be viewed by clicking on the Auction Seminar link on the Auction 73 web page, <http://wireless.fcc.gov/auctions/73/>. For further information about accessing FCC webcasts, please visit <http://www.fcc.gov/realaudio/>.

I/We will attend the Auction 73 Seminar, scheduled for Monday, November 19, 2007.

Name of attendee: _____

Name of attendee: _____

Company name: _____

Company address: _____

Phone: _____ Fax: _____