



PUBLIC NOTICE

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News Media Information 202 / 418-0500
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DA 07-514
February 26, 2007

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

AU Docket No. 06-214

Report No. AUC-07-72-B (Auction No. 72)

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I. GENERAL INFORMATION

A. Introduction

1. By this Public Notice, the Commission announces the procedures and minimum opening bid amounts for the upcoming auction of Phase II 220 MHz Service licenses in the paired 220-222 MHz band scheduled to begin on June 20, 2007 (Auction No. 72).¹ On December 12, 2006, 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 reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 72.³ The Bureau received one comment and no reply comments in response to the *Auction No. 72 Comment Public Notice*.⁴

2. In the *Auction No. 72 Comment Public Notice*, the Bureau proposed to include all 94 Phase II 220 MHz Service licenses in a single auction using the Commission’s standard simultaneous multiple-round (“SMR”) auction format.⁵ At the same time, the Bureau sought comment on the feasibility and desirability of allocating the Phase II 220 MHz Service licenses using the Commission’s

¹ For some of the orders and related rules associated with the Phase II 220 MHz service auction, see *In the Matter of Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Third Report and Order and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 10943(1997), *modified on recon.*, 13 FCC Rcd 14569 (1998) (“*220 MHz Third R&O*”); *In the Matter of Amendment of Part 90 of the Commission’s Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, Fourth Report and Order*, 12 FCC Rcd 13453 (1997) (“*220 MHz Fourth R&O*”); *In the Matter of Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services-Geographic Partitioning and Spectrum Disaggregation for the 220-222 MHz Service, Fifth Report and Order*, 13 FCC Rcd 24615 (1998) (“*220 MHz Fifth R&O*”) and *Memorandum Opinion and Order*, 15 FCC Rcd 5919 (2000), *vacated and superseded by Memorandum Opinion and Order*, 15 Rcd 13924 (2000) (“*220 MHz 2000 MO&O*”). In addition, in 2004, the Commission released an order making the substantial service standard available to those 220 MHz Phase II licensees that were not already authorized to use it to meet their construction requirements. See *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, Report and Order*, 19 FCC Rcd 19078 (2004), *erratum*, 19 FCC Rcd 24084 (2004) (“*Rural Services Order*”).

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 Phase II 220 MHz Spectrum Scheduled for June 20, 2007; Comment Sought on Competitive Bidding Procedures For Auction No. 72,” *Public Notice*, DA 06-2437 (rel. Dec. 12, 2006) (“*Auction No. 72 Comment Public Notice*”).

⁴ Skybridge Spectrum Foundation (Skybridge) submitted comments (filed Dec. 29, 2006) and an *erratum* (filed Jan. 1, 2007).

⁵ *Auction No. 72 Comment Public Notice* at ¶¶ 7-8. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Bidding generally remains open on all licenses until bidding stops on every license.

package bidding format (“SMR-PB”).⁶ Based on the record and the particular circumstances of the auction of Phase II 220 MHz Service licenses, the Bureau, as described in more detail below, will include all 94 Phase II 220 MHz Service licenses in a single auction using the Commission’s standard SMR format, as proposed.⁷ Package bidding will not be used in Auction No. 72.⁸

3. The Bureau also sought comment in the *Auction No. 72 Comment Public Notice* on whether to implement procedures that would limit the disclosure of certain information on bidder interests, and identities prior to the close of bidding.⁹ In particular, the Bureau asked commenters to indicate what factors weigh for or against limiting disclosure of bidder interests and identities, and whether the Commission should condition the use of any disclosure limits on a measure of competition in the auction.

4. For Auction No. 72, the Bureau will determine the information procedures based primarily on the eligibility ratio, a measure of likely competition in the auction. The eligibility ratio is defined as the total number of bidding units of eligibility purchased by bidders through their upfront payments, divided by the total number of bidding units for the licenses in the auction. Specifically, if the eligibility ratio equals or exceeds three, the Bureau will not use the limited information procedures, since with sufficient likely competition, the anti-competitive behavior that limited information procedures aim to deter is unlikely to be successful.¹⁰ If the eligibility ratio is less than three, in general the Bureau will withhold certain information on bidder interests and bidder identities. However, if the eligibility ratio is less than three, the Commission reserves the discretion not to limit information on bidder interests and identities if circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. Such circumstances would occur, for example, if only two applicants became qualified to participate in the bidding, since limited information procedures would be ineffective in preventing bidders from knowing the identity of the competing bidder.¹¹

5. In the event that the conditions described above result in the use of procedures under which certain information is withheld, the Bureau will release: (1) each bidder’s eligibility and upfront payment made prior to the start of the auction; and (2) the amounts of all gross bids (including the losing bids) for each license after each round, but not the identities of the bidders placing the bids. The Bureau believes this provides bidders with information regarding license valuations without compromising the goal of reducing the potential for anti-competitive outcomes.

6. Pursuant to these procedures, information on the license selections of auction applicants will be withheld at least until the upfront payment deadline has passed and the Commission determines the information procedures that will be used for the auction. Therefore, to enable applicants to comply with the Commission’s anti-collusion rules, once the Bureau has conducted its initial review of

⁶ Under the Commission’s package bidding format, bidders would be able to place bids on any groups of licenses they wish to win together, with the result that they win either all the licenses in a group or none of them.

⁷ Section IV.A.1. “Simultaneous Multiple Round Auction,” below.

⁸ *Id.*

⁹ *Auction No. 72 Comment Public Notice* at ¶ 9.

¹⁰ Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006, Notice and Filing Requirement, Minimum Opening Bids, Upfront Payment and Other Procedures for Auction No. 66, *Public Notice*, 21 FCC Rcd 4562, 4565, 4600-05 ¶¶ 4-5, 140-157 (2006) (“*Auction No. 66 Procedures Public Notice*”).

¹¹ We anticipate announcing the information disclosure procedures to be used at or about the time that we release a public notice announcing the applicants that are qualified to participate in the bidding.

applications to participate in Auction No. 72, each applicant will receive a letter that lists the other applicants in Auction No. 72 that have applied for licenses in any of the same geographic areas as the applicant.¹²

1. Background of Proceeding

7. Licenses in the Phase II 220 MHz spectrum to be auctioned in Auction No. 72 have been offered previously in other auctions¹³ but were returned to the Commission as a result of license cancellation or termination. In March 1997, the Commission restructured the licensing framework that governs the 220 MHz Service. Site-specific licensing, used in the Phase I 220 MHz Service, was replaced with a geographic-based system in the Phase II 220 MHz Service.¹⁴ This geographic-based licensing methodology is similar to that used in other commercial mobile radio services ("CMRS"). The Commission developed three types of geographic area licenses for the Phase II 220 MHz Service. The first type of license was based upon Economic Areas (EAs), developed by the Bureau of Economic Analysis of the U.S. Department of Commerce. In addition, the Commission created three EA-type license areas to cover the following United States territories: American Samoa; the U.S. Virgin Islands and Puerto Rico; and Guam and the Northern Mariana Islands. The second type of license, known as Economic Area Groupings (EAGs), included 6 groups of EAs, which collectively encompassed all of the EA and EA-type licenses. Finally, the Commission designed three nationwide licenses, each of which encompassed all six EAGs. Service and operational requirements for the Phase II 220 MHz Service are contained primarily in Part 90 of the Commission's Rules, 47 C.F.R. Part 90.

2. Licenses to be Auctioned

8. Auction No. 72 will offer 94 licenses: 93 Economic Area (EA) licenses and one Economic Area Grouping ("EAG") license.

9. The following table describes the Phase II 220 MHz Service licenses that will be offered in Auction No. 72:

¹² The list will identify the Auction No. 72 applicant(s) by name but will not list the license selections of the Auction No. 72 applicant(s). As in past auctions, additional information regarding applicants in Auction No. 72 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 on-line short-form application database. *See* below at ¶¶ 111-116.

¹³ Auction No. 18, "Phase II 220 MHz Service Auction Closes, Winning Bidders in the Auction of 908 Phase II 220 MHz Service Licenses," *Public Notice*, 14 FCC Rcd 605 (1998) ("*Auction No. 18 Winning Bidders' Public Notice*"); Auction 24, "Phase II 220 MHz Service Spectrum Auction Closes, Winning Bidders in the Auction of 225 Licenses in the Phase II 220 MHz Service," *Public Notice*, 14 FCC Rcd 11218 (1999) ("*Auction No. 24 Winning Bidders' Public Notice*"); Auction No. 43 "Multi-Radio Service Auction Closes, Winning Bidders Announced," *Public Notice*, 17 FCC Rcd 1446 (2002) ("*Auction No. 43 Winning Bidders' Public Notice*").

¹⁴ Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order and Fifth Notice of Proposed Rulemaking*, FCC 97-57, 12 FCC Rcd 10943 (1997) ("220 MHz Third Report and Order").

Block	Bandwidth	Pairing*	Geographic Area Type	No. of Licenses
A	100 kHz	2 x 50 kHz	EA	13
B	100 kHz	2 x 50 kHz	EA	18
C	100 kHz	2 x 50 kHz	EA	23
D	100 kHz	2 x 50 kHz	EA	17
E	100 kHz	2 x 50 kHz	EA	22
I	150 kHz	2 x 75 kHz	EAG	1

*For the specific frequencies of licenses in each block refer to Attachment A – Part 2. Licenses in blocks A-E have 10 paired 5 kHz channels, and the I block license has 15 paired 5 kHz channels. None of the licenses offered in Auction No. 72 have contiguous channels except for the E block licenses.

10. Because of the history of licenses for Phase II 220 MHz Service, certain licenses available in Auction No. 72 are available for only part of a market. In addition, one license available for only part of a market also covers less bandwidth than noted in the table above. The licenses available in this auction are listed in Attachment A of this Public Notice. The Phase II 220 MHz spectrum covered by this auction is only available to non-Government applicants.¹⁵

B. Rules and Disclaimers

1. Relevant Authority

11. 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;¹⁶ rules relating to the Phase II 220 MHz Service contained in Title 47, Part 90, of the Code of Federal Regulations; and rules relating to applications, practice and procedure contained in Title 47, Part 1, of the Code of Federal Regulations. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, “terms”) contained in this Public Notice and the Commission’s decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.¹⁷

¹⁵ Section 90.721(b) of the Commission’s rules, 47 C.F.R. § 90.721(b). In this context, non-Government applicants are those applying to use spectrum for non-Federal Government operations. *See* In the Matter of Amendment of Part 90 of the Commission’s Rules to Provide For the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89-522, *Report and Order*, 6 FCC Rcd 2356, 2356-2357 n.5 (1991), and *Third Report and Order*, 12 FCC Rcd 10943, 11004 (1997).

¹⁶ 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*”), petitions for reconsideration 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) (“*CSEA/Part 1 Second Report and Order and CSEA/Part 1 Designated Entity Second FNPRM*”), petitions for reconsideration 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 Second Report and Order*, 21 FCC Rcd 6703 (2006), petition for reconsideration pending.

¹⁷ *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 (continued....)

For example, among other Commission orders, prospective bidders should be familiar with the *220 MHz Third R&O*, the *220 MHz Fourth R&O*, the *220 MHz Fifth R&O*, the *220 MHz 2000 M&O*, and the *Rural Services Order*.

12. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpiweb.com>.¹⁸

2. Prohibition of Collusion; Compliance with Antitrust Laws

13. To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission's rules prohibit applicants competing 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).¹⁹ In Auction No. 72, the rule would apply to any applicants for licenses in the same EA or EAG. The rule would also apply to applicants for licenses in overlapping EAs and the EAG. For example, assume that one applicant applies for an EAG license and a second applicant applies for an EA license covering any area within that EAG. 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. In addition, the rule would preclude applicants that apply to bid for all licenses 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

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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*.

¹⁸ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 06-2437 for the *Auction No. 72 Comment Public Notice*, or DA 07-514 for this Public Notice).

¹⁹ 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.

communications regarding the post-auction market structure.²⁰ This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.²¹ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**²² (As described in Section IV.A.2., below, information concerning applicants' license selections will not be made public at least until the upfront payment deadline has passed and the Commission determines the information procedures that will be used for the auction. 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.²³)

14. For purposes of this prohibition, Section 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.²⁴

15. Applicants for licenses for any of the same geographic license areas must not communicate directly or indirectly about bids or bidding strategy.²⁵ 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 consulting firm), a violation similarly could occur.²⁶ 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.²⁷ 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.²⁸ Moreover, the

²⁰ 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).

²¹ 47 C.F.R. § 1.2105(c)(1).

²² 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).

²³ Section IV.A.2. "Information Available to Bidders Before and During the Auction," below, especially ¶¶ 111-116.

²⁴ 47 C.F.R. § 1.2105(c)(7)(i).

²⁵ *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

²⁶ 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").

²⁷ *Id.*

²⁸ 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- (continued....)

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,"²⁹ and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."³⁰ Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."³¹ Applicants are hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that – although revealed prior to and during other Commission auctions – is confidential in this auction at the time of disclosure may violate the anti-collusion rule.³² 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.³³

16. 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.³⁴ If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form filing deadline.³⁵

17. By electronically submitting its short-form application following the electronic filing procedures set forth in Attachment C to this Public Notice, each applicant certifies its compliance with Section 1.2105(c). However, the Bureau cautions that merely filing a certifying statement as part of an

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collusion rule where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

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

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

³¹ 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).

³² 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.

³³ For example, where limited information disclosure procedures are in place, as in this auction, 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. *Cf.* Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, 13 FCC Rcd 341, 347-8 (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.").

³⁴ 47 C.F.R. § 1.2105(c)(7)(i).

³⁵ Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995) ("*Anti-Collusion Public Notice*").

application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.³⁶ The Commission has stated that it “intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring.”³⁷ Any applicant found to have violated the anti-collusion rule may be subject to sanctions.³⁸

18. 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.³⁹ Compliance with the disclosure requirements of the Commission’s anti-collusion rule will not insulate a party from enforcement of the antitrust laws.⁴⁰ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short form application.⁴¹ 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.⁴² 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.”⁴³ To the extent the Commission becomes aware of specific allegations that may give rise to violations of the federal antitrust laws, the Commission may refer such allegations to the United States Department of Justice for investigation.⁴⁴ 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

³⁶ *Nevada Wireless Order*, 13 FCC Rcd at 11978 ¶ 13.

³⁷ 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).

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

³⁹ 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*”).

⁴⁰ *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).

⁴¹ 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.

⁴² 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*.

⁴³ *Anti-Collusion Public Notice*.

⁴⁴ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.⁴⁵

19. 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.⁴⁶ Thus, Section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by Section 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under Section 1.2105(a)(2)(viii). In addition, Section 1.2105(c)(6) provides that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.⁴⁷ Applicants must be aware that failure to comply with the Commission's rules can result in enforcement action under certain circumstances.

20. 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.⁴⁸

21. 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 F. These documents are available on the Commission's auction anti-collusion web page.⁴⁹

3. Protection of Incumbent Operations

22. Potential applicants are advised that there are a number of incumbent Phase I 220 MHz Service licensees already licensed and operating on frequencies between 220 and 222 MHz. Such Phase I incumbents must be protected from harmful interference by Phase II 220 MHz Service licensees in accordance with the Commission's rules. See, e.g., 47 C.F.R. § 90.763. These limitations may restrict the ability of Phase II geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

a. International Coordination

23. Potential bidders seeking licenses for geographic areas that are near the Canadian or Mexican borders should be aware that the use of some or all of the channels they acquire in the auction could be restricted by agreements with Canada or Mexico on the use of 220-222 MHz spectrum in the border area.⁵⁰

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

⁴⁶ 47 C.F.R. § 1.65.

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

⁴⁸ 47 C.F.R. § 1.2107(d).

⁴⁹ <http://wireless.fcc.gov/auctions/anticollusion>

⁵⁰ Agreements with Canada and Mexico at <http://www.fcc.gov/ib/sand/agree/welcome.html>

b. Quiet Zones

24. Phase II 220 MHz Service licensees must protect the radio quiet zones set forth in the Commission's rules.⁵¹ 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.⁵²

4. Due Diligence

25. The Bureau cautions potential applicants formulating their bidding strategies to investigate and consider the extent to which Phase II 220 MHz frequencies are occupied. Applicants and their investors should also understand that Commission rules and requirements place limitations on the ability of Phase II 220 MHz Service licensees to use this spectrum. As stated above, incumbent Phase I 220 MHz Service operations in the 220-222 MHz band must be protected. These limitations may restrict the ability of Phase II 220 MHz Service geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. Bidders should become familiar with the status of these operations, applicable Commission rules, orders and any pending proceedings related to the service, in order to make reasoned, appropriate decisions about their participation in Auction No. 72 and their bidding strategy.

26. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the Phase II 220 MHz Service licenses in this auction. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in the Phase II 220 MHz Service subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC license constitute a guarantee of business success.** Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

27. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 72 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision regarding participation in the auction. Participants in Auction No. 72 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.

28. Applicants should also be aware that certain pending and future proceedings, including applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 72. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 72. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

29. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of

⁵¹ 47 C.F.R. § 1.924.

⁵² *Id.*

spectrum for Auction No. 72. 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.

30. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 72.

31. Applicants may use the Bureau's licensing databases at <http://wireless.fcc.gov/uls> to obtain information about incumbent licenses that may affect the availability of the spectrum for which licenses are offered in Auction No. 72. Applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the upper right-hand corner of the License Search screen or by going to the Universal Licensing System ("ULS") support site at <http://esupport.fcc.gov/licensing.htm>. Applicants should direct questions regarding the ULS search capabilities to the FCC ULS Technical Support hotline at (877) 480-3201, option two. The hotline is available to assist with questions Monday through Friday, from 8:00 a.m. to 7:00 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

32. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

33. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the service 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

34. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction No. 72 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 this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

6. Bidder Alerts

35. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 72 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.

36. 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) FCC by going to <http://wireless.fcc.gov/csinfo/#fraud> or by telephone at (888) 225-5322 (FCC’s Consumer Call Center); (ii) FTC by going to <http://ftc.gov/bcp/menu-invest.htm> or by telephone at (202) 326-2222; and (iii) 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

37. Licensees must comply with the Commission’s rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes.⁵³ 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.⁵⁴ 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.⁵⁵ 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 Date

38. Bidding in Auction No. 72 will begin on Wednesday, June 20, 2007, as announced in the *Auction No. 72 Comment Public Notice*.⁵⁶

⁵³ 47 C.F.R. Ch. 1, Subpart I.

⁵⁴ 47 C.F.R. §§ 1.1305-1.1319.

⁵⁵ 47 C.F.R. Part 1, Appendix C.

⁵⁶ *Auction No. 72 Comment Public Notice*, at ¶ 1.

39. In its comments in response to the *Auction No. 72 Comment Public Notice*, Skybridge seeks a delay of several months in the start of Auction No. 72.⁵⁷ We do not believe that it would be in the public interest to do so. Skybridge argues for a delay to enable the Commission to complete the processing of applications for the assignment of certain 220 MHz licenses to an affiliate of Skybridge.⁵⁸ Generally, we have held that the existence of related pending proceedings is not a sufficient reason to delay an auction.⁵⁹ Similarly, the Commission has observed that Section 309(j)(3)(E)(ii)'s statutory requirement to provide prospective bidders with time to develop business plans and evaluate the availability of equipment does not "require[] the Commission to postpone an auction until every external factor that might influence a bidder's business plan is resolved with absolute certainty."⁶⁰ Further, we note that the application identified by Skybridge has been acted upon.⁶¹ Skybridge provides no legal or policy reason, other than its concern about the processing of the identified assignment application, in support of its request for postponement. In furtherance of the statutory objectives underlying the Commission's auctions process, including promoting the rapid deployment of new technologies and services to the public, and enhancing economic opportunity and competition,⁶² we determine that the public interest would be served by proceeding with the auction as scheduled.⁶³ The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

40. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

2. Auction Title

41. Auction No. 72 – Phase II 220 MHz

3. Bidding Methodology

42. As discussed in more detail below, the bidding methodology for Auction No. 72 will be simultaneous multiple round bidding.⁶⁴ The Commission will conduct this auction over the Internet

⁵⁷ Skybridge Comments at 5 (proposing to extend dates for this auction by 12 months but at least by six months).

⁵⁸ Skybridge Comments at 2-3.

⁵⁹ In the Matter of Motion of Ranger Cellular and Miller Communications, Inc. for a Stay of the Cellular Rural Service Areas Auction No. 45, Order, 17 FCC Rcd 9320 at 9322-23 (WTB 2002).

⁶⁰ See Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, *Order on Reconsideration of the Second Report and Order*, 21 FCC Rcd 6703, 6707 ¶ 9 (2006).

⁶¹ Application for Assignment of Authorization, Warren C. Havens (assignee) and Net Radio Group Communications, LLC (assignor) (File No. 0002482294). On Jan. 12, 2007, the Commission consented to this assignment.

⁶² 47 U.S.C. § 309(j)(3)(A)-(D). See also 47 U.S.C. § 309(j)(15).

⁶³ See also In the Matter of Petition for Reconsideration by Warren C. Havens, AMTS Consortium, LLC, Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLC, *Memorandum Opinion and Order*, DA 07-457, at ¶¶ 4-5 (rel. Jan. 31, 2007) (finding public interest served by conduct of auction of Automated Maritime Telecommunications System (AMTS) licenses (Auction No. 61) as scheduled and denying requests of Skybridge affiliates for reconsideration of refusal to delay that auction, *inter alia*, because of claimed impact conduct of that auction would have had on those affiliates' business plans, their financing activities, and the valuation of the spectrum).

⁶⁴ Section IV.A.1. "Simultaneous Multiple Round Auction," below.

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.⁶⁵ All telephone calls are recorded.

4. Pre-Auction Dates and Deadlines

43. Dates and Deadlines

Auction Seminar	April 11, 2007
Short-Form Application (FCC Form 175) Filing Window Opens	April 11, 2007; 12:00 noon ET
Short-Form Application (FCC Form 175) Filing Window Deadline	April 20, 2007; prior to 6:00 p.m. ET
Upfront Payments (via wire transfer).....	May 21, 2007; 6:00 p.m. ET
Mock Auction	June 18, 2007
Auction Begins	June 20, 2007

5. Requirements for Participation

44. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. Eastern Time (ET), April 20, 2007, following the electronic filing procedures set forth in Attachment C to this Public Notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, May 21, 2007, following the procedures and instructions set forth in Section III.D. and Attachment D to this Public Notice.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules. For example, the Phase II 220 MHz spectrum covered by this auction is only available to non-Government applicants under section 90.721(b) of those rules, 47 C.F.R. § 90.721(b). In this context, non-Government applicants are those applying to use spectrum for non-Federal Government operations. See paragraph 10 and footnote 15 above.

⁶⁵ For additional information regarding ISAS, including sample screen shots, visit the “About ISAS” web page at http://wireless.fcc.gov/auctions/about_isas.

6. General Contact Information

45. General 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 (202) 418-0660
LICENSING INFORMATION Service Rules, Policies, Regulations Licensing Issues, Engineering Issues Due Diligence, Incumbency Issues	Mobility Division (202) 418-0620
TECHNICAL SUPPORT Electronic Filing FCC Auction System (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 (202) 418-0578 (202) 418-2843 (Fax)
AUCTION BIDDER LINE	Will be furnished only to qualified bidders
FCC COPY CONTRACTOR Additional Copies of Commission Documents	Best Copy and Printing, Inc 445 12th Street, SW, Room CY-B402 Washington, DC 20554 (800) 378-3160 http://www.bcpweb.com
PRESS INFORMATION	Chelsea Fallon (202) 418-7991
FCC FORMS	(800) 418-3676 (outside Washington, DC) (202) 418-3676 (in the Washington area) http://www.fcc.gov/formpage.html
ACCESSIBLE FORMATS Braille, large print, electronic files, or audio format for people with disabilities	Consumer and Governmental Affairs Bureau (202) 418-0530 or (202) 418-0432 (TTY) fcc504@fcc.gov
FCC INTERNET SITES	http://www.fcc.gov http://wireless.fcc.gov/auctions http://wireless.fcc.gov/uls

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

46. 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.⁶⁶ The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.⁶⁷ Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments, explained below.⁶⁸ In the second phase of the process, winning bidders file a more comprehensive long-form application.⁶⁹

47. Entities seeking licenses available in Auction No. 72 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on April 20, 2007, following the procedures prescribed in Attachment C to this Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.⁷⁰ Applicants should read the instructions set forth in Attachment C to this Public Notice carefully and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their short-form applications.

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

49. 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.⁷¹ 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.

⁶⁶ 47 C.F.R. § 1.2105.

⁶⁷ *Id.*; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

⁶⁸ Section III.D. "Upfront Payments – Due May 21, 2007," below.

⁶⁹ 47 C.F.R. § 1.2107.

⁷⁰ 47 C.F.R. § 1.2105(a)(2)(v).

⁷¹ 47 C.F.R. § 1.2105(b).

A. Preferences for Small Businesses and Others

1. Size Standards for Bidding Credits

50. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction No. 72, 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 \$3 million and do not exceed \$15 million for the preceding three years ("small business") will receive a 25 percent discount on its winning bid.⁷²
- A bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years ("very small business") will receive a 35 percent discount on its winning bid.⁷³

51. Bidding credits are not cumulative; a qualifying applicant receives either the 25 percent or 35 percent bidding credit on its winning bid, but not both.

52. Every applicant that claims eligibility for a bidding credit as either a small business or a very small business, or a consortium of small businesses or very small businesses, will be required to provide information regarding revenues attributable to the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests on its FCC Form 175 short-form application to establish that it satisfies the applicable eligibility requirement.⁷⁴ Applicants claiming eligibility as a designated entity in Auction No. 72 should review carefully the *CSEA/Part 1 Designated Entity FNPRM and 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*.⁷⁵ The Commission's new rules regarding applicants seeking eligibility for designated entity benefits requires the disclosure of 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,⁷⁶ and a list, separately and in the aggregate, of the gross revenues of entities with which the applicant has an attributable material relationship, as defined in Section 1.2110(b)(3)(iv)(B).⁷⁷

53. 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.⁷⁸ 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

⁷² 47 C.F.R. § 1.2110(f)(2)(ii).

⁷³ 47 C.F.R. § 1.2110(f)(2)(i).

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

⁷⁵ See, generally, *Designated Entity Second Report and Order*, recons. pending.

⁷⁶ 47 C.F.R. § 1.2112(b)(1)(iii).

⁷⁷ 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).

⁷⁸ 47 C.F.R. § 1.2110(c)(2)(ii)(F).

organization is reflected in its articles of incorporation, by-laws, and/or other relevant organic documents.⁷⁹ Applicants seeking to claim this exemption must meet all of the conditions specified in 47 C.F.R. § 1.2110(b)(3)(iii) of the Commission's rules.⁸⁰ Additional guidance on completing the FCC Form 175 to claim this exemption may be found in Attachment C to this Public Notice.

2. Tribal Lands Bidding Credit

54. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit.⁸¹

3. Installment Payments

55. Installment payment plans will not be available in Auction No. 72.

B. License Selection

56. In Auction No. 72, applicants must select the licenses on which they want to bid from the "Eligible Licenses" list. In Auction No. 72, FCC Form 175 will include a filtering mechanism that allows an applicant to filter the available licenses. 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. There will be no opportunity to change license selection after the short-form filing deadline.⁸² It is critically important that an applicant confirm its license selections before submitting its short-form application because the FCC Auction System will not accept bids on licenses that an applicant has not selected on its FCC Form 175.

C. Disclosure of Bidding Arrangements

57. Applicants will be required to identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.⁸³ Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.⁸⁴ If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.⁸⁵

58. 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

⁷⁹ *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd at 1949 ¶ 18.

⁸⁰ 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.

⁸¹ Section V.E. "Tribal Lands Bidding Credit," below.

⁸² 47 C.F.R. § 1.2105(b)(2).

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

⁸⁴ 47 C.F.R. § 1.2105(a)(2)(ix).

⁸⁵ Section I.B.2. "Prohibition of Collusion; Compliance with Antitrust Laws," above.

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.⁸⁶ 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.⁸⁷ 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.⁸⁸

D. Ownership Disclosure Requirements

59. 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.⁸⁹ Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short form are prescribed in Sections 1.2105 and 1.2112 of the Commission's rules.⁹⁰ Each applicant is responsible for information submitted in its short-form application being complete and accurate.

60. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Applicants are responsible for ensuring that the information submitted in their FCC Form 175 for Auction No. 72 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

61. To determine which applicants qualify for bidding credits as small businesses or very small businesses, the Commission considers the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests.⁹¹ Therefore, entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on their FCC Form 175 short-form applications the gross revenues of each of the following for the preceding three years: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests.⁹² Certification that the average annual gross

⁸⁶ 47 C.F.R. § 1.2105(c)(4)(i), (ii).

⁸⁷ Section I.B.2. "Prohibition of Collusion; Compliance with Antitrust Laws," above.

⁸⁸ *Id.*

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

⁹⁰ *Id.*

⁹¹ § 1.2110(b); *see also Part 1 Fifth Report and Order*, 15 FCC Rcd at 15323-27 ¶¶ 59-67.

⁹² § 1.2110(b).

revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. In order to comply with the Commission's disclosure requirements for bidding credit eligibility, an applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, the gross revenues for each of the preceding three years. If the applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.

62. 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.⁹³ 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.⁹⁴

63. Officers and directors of an applicant are also considered to have controlling interest in the applicant.⁹⁵ The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, and the applicant and its affiliates will be counted in determining small business eligibility.

64. In recent years the Commission has made modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes include exempting the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant if certain specified conditions are met.⁹⁶ 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.⁹⁷

65. 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."⁹⁸ Thus,

⁹³ 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).

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

⁹⁵ 47 C.F.R. § 1.2110(c)(2)(ii)(F).

⁹⁶ *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.

⁹⁷ *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.

⁹⁸ 47 C.F.R. §1.2110(c)(6).

each member of a consortium of small or very small businesses that applies to participate in Auction No. 72 must individually meet the definition of small business or very small business adopted by the Commission for the Phase II 220 MHz Service.⁹⁹ Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business or very small business,¹⁰⁰ this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.¹⁰¹

F. Provisions Regarding Former and Current Defaulters

66. 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 1.2110,¹⁰² have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency.¹⁰³ 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.¹⁰⁴ 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.

67. "Former defaulters" — *i.e.*, applicants, including any of their affiliates, any of their controlling interests, or any of the affiliates of their controlling interests, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auction No. 72, 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.¹⁰⁵

68. "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

⁹⁹ 47 C.F.R. §§ 90.912, 90.1021, and 90.1103.

¹⁰⁰ 47 C.F.R. § 1.2110(b)(3)(i).

¹⁰¹ 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.

¹⁰² 47 C.F.R. § 1.2110.

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

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

¹⁰⁵ 47 C.F.R. § 1.2106(a).

debt owed to any Federal agency as of the filing deadline for applications to participate in this auction — are not eligible to bid in Auction No. 72.¹⁰⁶

69. 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.¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹

70. 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.¹¹⁰ 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.¹¹¹ 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 comply with the default and delinquency disclosure requirements of

¹⁰⁶ 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.")

¹⁰⁷ "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/>.

¹⁰⁸ 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/>.

¹⁰⁹ 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.

¹¹⁰ 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*").

¹¹¹ *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).

section 1.2105.¹¹² 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 this auction or of its upfront payment obligation.

71. Prospective applicants in Auction No. 72 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,¹¹³ and such review may result in the dismissal of a winning bidder's long-form application.¹¹⁴

G. Other Information

72. Applicants owned by member of minority groups and/or women, as defined in Section 1.2110(c)(3),¹¹⁵ 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.¹¹⁶

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

73. As of the deadline for filing short-form applications (FCC Forms 175) prior to 6:00 p.m. ET on April 20, 2007, applicants are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (*e.g.*, change their license selections, change control of the applicant, change the certifying official, or change their size to claim eligibility for a higher bidding credit).¹¹⁷ 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.

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

75. In addition, during those periods outside of the initial and resubmission filing windows (*i.e.*, when you cannot electronically update your FCC Form 175), an applicant should submit a letter briefly summarizing the changes and subsequently update their 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: auction72@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 72 and the name of the applicant (*e.g.*, "RE: Changes to Auction No. 72 Short-Form Application of ABC Corp."). The Bureau requests that parties format any attachments to

¹¹² *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).

¹¹³ *Debt Collection Report and Order*, 19 FCC Rcd 6540. *See also* 47 C.F.R. § 1.1112.

¹¹⁴ 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).

¹¹⁵ 47 C.F.R. § 1.2110(c)(3).

¹¹⁶ 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).

¹¹⁷ 47 C.F.R. § 1.2105(b).

electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application (FCC Form 175) amendments should be directed to Howard Davenport of the Auctions and Spectrum Access Division at (202) 418-0660.

76. 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)

77. 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.¹¹⁸ Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. If an amendment reporting substantial changes is a "major amendment" as defined by 47 C.F.R. § 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.¹¹⁹

78. As noted in Section II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications, for example, deletion and addition of authorized bidders (to a maximum of three). Applicants must click on the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission. In addition, applicants must submit a letter, briefly summarizing the changes, by electronic mail at the following address: auction72@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 72 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.

79. Applicants must **not** submit application-specific material through ECFS into the record of the proceeding concerning Auction No. 72 procedures.

III. PRE-AUCTION PROCEDURES

A. Auction Seminar — April 11, 2007

80. On Wednesday, April 11, 2007, the FCC will sponsor a free seminar for parties interested in participating in Auction No. 72 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 Phase II 220 MHz 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 this auction.

81. To register, please provide the information listed on Attachment B by fax, e-mail or telephone to the FCC by Monday, April 9, 2007.

82. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC's Auction No. 72 web page at <http://wireless.fcc.gov/auctions/72/>. Select the "Auction Seminar" link. The seminar webcast will be archived for future viewing.

¹¹⁸ 47 C.F.R. § 1.65.

¹¹⁹ 47 C.F.R. § 1.2105(b)(2).

B. Short-Form Application (FCC Form 175) — Due Prior to 6:00 p.m. ET on April 20, 2007

83. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment C to this Public Notice to submit an FCC Form 175 application electronically via the FCC Auction System.¹²⁰ This application must be received at the Commission prior to 6:00 p.m. ET on April 20, 2007. **Late applications will not be accepted.** There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.¹²¹

84. Applications may generally be filed at any time beginning at noon ET on April 11, 2007, and the filing window will close prior to 6:00 p.m. ET on April 20, 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 April 20, 2007.

85. 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 Attachment C. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

C. Application Processing and Minor Corrections

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

87. As described more fully in the Commission's rules, after the April 20, 2007, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change control of the applicant, change certifying official, or change their size to claim eligibility for a higher bidding credit).¹²²

D. Upfront Payments — Due May 21, 2007

88. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. **All upfront payments must be received in the proper account at Mellon Bank by 6:00 p.m. ET on May 21, 2007.**

¹²⁰ 47 C.F.R. § 12105(a).

¹²¹ Section III.D. "Upfront Payments — Due May 21, 2007," below.

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

1. Making Auction Payments by Wire Transfer

89. Wire transfer payments must be received by 6:00 p.m. ET on May 21, 2007.¹²³ **No other payment method is acceptable** for this auction.¹²⁴ 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 # 910-1182

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: "A72U")

FCC CODE 1: (same as FCC Form 159, block 28A: "72")

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

LOCKBOX NO. # 358415

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

90. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209-6045. On the cover sheet of the facsimile, write "Wire Transfer — Auction Payment for Auction No. 72." 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.¹²⁵ **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.**

91. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 72 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 May 21, 2007, deadline, will result in dismissal of the application and disqualification from participation in the auction.

¹²³ 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>.

¹²⁴ The Commission will not accept checks, credit cards, or ACH payments.

¹²⁵ 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).

2. FCC Form 159

92. 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. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D to this Public Notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

3. Upfront Payments and Bidding Eligibility

93. In the *Part 1 Order*, the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction.¹²⁶ 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.¹²⁷ 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.¹²⁸

94. In the *Auction No. 72 Comment 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.¹²⁹ In order to bid on a license, otherwise qualified bidders that selected that license on Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its 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 at any given time.¹³⁰

95. In the *Auction No. 72 Comment Public Notice*, the Bureau proposed to calculate upfront payments for Auction No. 72 on a license-by-license basis using the following formulas:¹³¹

EA Licenses	\$500 per license
EAG License	\$0.01 * 0.15 MHz * License Area Population

¹²⁶ 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*”).

¹²⁷ *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.

¹²⁸ 47 C.F.R. § 1.2110(c).

¹²⁹ *Auction No. 72 Comment Public Notice* at ¶ 18.

¹³⁰ 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.

¹³¹ 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. Two of the licenses available cover partial markets. The population listed for these licenses is based on the 2000 decennial census and reflects the area covered. See Attachment A for more information.

96. The Bureau set forth the specific upfront payments and bidding units for each license in Attachment A of the *Auction No. 72 Comment Public Notice* and sought comment on this proposal. The Bureau received no comments in response to the proposed upfront payments. The specific upfront payments and bidding units for each license are set forth in Attachment A of this Public Notice.

97. 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.

98. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units.¹³² In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.**

Example: Upfront Payments and Bidding Flexibility			
Market Number	Market Name	Bidding Units	Upfront Payment
BEA009-D	State College, PA	500	\$500
EAG005-I	Central/Mountain	74,000	\$74,000

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 74,500 bidding units (500 + 74,000). If a bidder only wishes to bid on one, but not both, purchasing 74,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, but not both at the same time. If the bidder purchased only 500 bidding units, it would have enough eligibility for the State College, PA license but not for the Central/Mountain license.

99. "Former defaulters" should calculate their upfront payment for all licenses by multiplying the number of bidding units on which they wish to be active by 1.5.¹³³ 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

100. 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

¹³² 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. section 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 application.

¹³³ 47 C.F.R. § 1.2106(a).

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. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

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

Eligibility for refunds is discussed in Section V.G., below.

E. Auction Registration

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

102. 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.

103. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, June 14, 2007, 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.

104. 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

105. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference – electronic or telephonic – on the FCC Form 175. In either case, each authorized bidder must have its own SecurID[®] 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 No. 72.

106. 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.

G. Mock Auction — June 18, 2007

107. All qualified bidders will be eligible to participate in a mock auction on Monday, June 18, 2007. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. AUCTION EVENT

108. The first round of bidding for Auction No. 72 will begin on Wednesday, June 20, 2007. 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 Structure

1. Simultaneous Multiple Round Auction

109. In the *Auction No. 72 Comment Public Notice*, the Bureau proposed to auction all Phase II 220 MHz Service licenses in a single auction using the Commission's standard simultaneous multiple-round ("SMR") auction format.¹³⁴ This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Typically, bidding remains open on all licenses until bidding stops on every license, unless a modified stopping rule is invoked.

110. The Bureau also sought comment on using a simultaneous multiple-round with package bidding ("SMR-PB") format for Auction No. 72. The Bureau does not believe that a package bidding format would significantly enhance the ability of bidders to create efficient aggregations of licenses in Auction No. 72.¹³⁵ Therefore, the Bureau will not use an SMR-PB format for Auction No. 72. As a result, the Bureau does not address the specifics of the SMR-PB format at this time.

111. We conclude that the Bureau's standard SMR auction format will meet the needs of bidders in Auction No. 72, and we adopt the proposal to use a simultaneous multiple-round auction format without package bidding. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction until bidding stops on every license. This approach, the Bureau believes, allows bidders to take advantage of synergies that exist among licenses.

2. Information Available to Bidders Before and During the Auction

112. In the *Auction No. 72 Comment Public Notice*, the Bureau sought comment on whether to implement procedures that prior to and during the auction would limit the disclosure of information on bidder interests and identities. In particular, the Bureau sought comment on whether technological considerations or the likely level of competition in Auction No. 72 weigh in favor of or against limiting

¹³⁴ *Auction No. 72 Comment Public Notice* at ¶ 7.

¹³⁵ See, e.g., Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures," *Public Notice*, 21 FCC Rcd 794, 797-8 (2006) ("*Auction No. 66 Comment Public Notice*").

the disclosure of information on bidder interests and identities relative to most past Commission spectrum auctions, or whether the Commission should condition the implementation of such limits on a measure of the competitiveness of the auction, such as the eligibility ratio or a modified version of the eligibility ratio.¹³⁶ The Bureau received no comments on this issue.

113. Although the Commission has the option to limit the availability of information on an auction-by-auction basis, until recently the Commission generally has elected not to limit such information.¹³⁷ However, as discussed by the Commission in connection with Auction No. 66, there are potential harms as well as benefits from publicly revealing all information during the auction process.¹³⁸ The potential harms from anti-competitive behavior facilitated by the release of certain information are likely to be greater when the auction is less competitive – that is, when the number of bidders and the level of upfront payments are relatively low compared to the number of licenses offered. Therefore, for Auction No. 72, the Bureau will use limited information procedures if it appears likely that the competitiveness of the auction will be low, and if the Bureau believes that limited information procedures will be effective in making anti-competitive behavior less likely to be successful. Alternatively, if the Bureau determines that the auction is likely to be sufficiently competitive, and therefore, that the risk of successful collusion is low, the Bureau will not implement procedures that would limit the disclosure of information on bidder interests and identities before the close of bidding.

114. Specifically, the Bureau will estimate the likely level of competition in the auction by considering the eligibility ratio, defined as the total number of bidding units of eligibility purchased by bidders through their upfront payments divided by the total number of bidding units for the licenses in the auction. If the eligibility ratio equals or exceeds three, the Bureau will not use limited information procedures. If the eligibility ratio is less than three, in general the Bureau will withhold certain information on bidder interests and bidder identities prior to and during the auction.

115. However, if the eligibility ratio is less than three, the Bureau reserves the discretion not to use limited information procedures if circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. For example, if only two applicants become qualified to participate in the bidding, limited information procedures would be ineffective in preventing bidders from knowing the identity of the competing bidder and, therefore, limited information procedures would not serve to deter attempts at signaling and retaliatory bidding behavior. The Bureau anticipates announcing the information disclosure procedures to be used at or about the time that the Bureau releases a public notice announcing the applicants that are qualified to participate in the bidding.

116. If the Commission determines that limited information procedures will be used, it will make available prior to the auction the total eligibility level for the auction as well as the eligibility of each bidder but will not identify bidders' license selections. After each round of bidding, the amounts of each bid placed will be made available, but not the identities of the bidders. This information will give bidders an indication of demand for the licenses, so that bidders and their investors will be able to assess whether their bids are likely to be consistent with the valuations of other bidders, allowing them to bid more confidently. 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.

117. *Other Issues.* The Bureau does not believe that the information disclosure procedures

¹³⁶ *Auction No. 72 Comment Public Notice* at ¶ 9.

¹³⁷ *Auction No. 66 Procedures Public Notice* at ¶¶ 140-157; *see also Auction No. 66 Comment Public Notice*, 21 FCC Rcd 794, 799-800.

¹³⁸ *Auction No. 66 Comment Public Notice*, 21 FCC Rcd at 799-800.

established for this auction will 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.¹³⁹ 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 on-line short-form application database. In Auction No. 72, however, the Commission will not disclose information regarding license selection at least until the upfront payment deadline has passed and the Commission determines the information disclosure procedures to be used for the auction. As in the past, the Commission will disclose the other portions of applicants' short-form applications, through its on-line 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 rule permits.¹⁴⁰ Consequently, the Bureau will notify separately each applicant with short-form applications to participate in a pending auction whether applicants in Auction No. 72 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 No. 72, each applicant with a pending short-form application will receive a letter that lists the applicants in Auction No. 72 that have applied for licenses in any of the same geographic areas as the applicant. The list will identify the Auction No. 72 applicant(s) by name but will not list the license selections of the Auction No. 72 applicant(s). As in past auctions, additional information regarding applicants in Auction No. 72 that is needed to comply with Section 1.2105(c), e.g., the identities of controlling interest in the applicant and ownership interests greater than ten percent, will be available through the publicly accessible on-line short-form application database.¹⁴¹

3. Eligibility and Activity Rules

118. In the *Auction No. 72 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder.¹⁴² The Bureau received no comments on this issue.

119. The Commission will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction No. 72. 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. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an

¹³⁹ 47 C.F.R. § 1.2105(c)(1).

¹⁴⁰ 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.

¹⁴¹ 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).

¹⁴² *Auction No. 72 Comment Public Notice* at ¶¶ 17-18.

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. **The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.**

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

121. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the 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*). 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 No. 72. 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 bids in the auction.¹⁴³

4. Auction Stages

122. In the *Auction No. 72 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule. 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.¹⁴⁴ 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. The Bureau received no comments on this proposal.

123. The Commission adopts the Bureau's proposals for the activity rules and stages. Below are the activity levels for each stage of the auction. The Bureau reserves the discretion to further alter the activity percentages before and/or during the auction.

124. **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).

125. **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

¹⁴³ Below, Section IV.A.6. "Activity Rule Waivers."

¹⁴⁴ *Auction No. 72 Comment Public Notice* at ¶ 22.

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.

126. Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, the Bureau adopts them for Auction No. 72.

5. Stage Transitions

127. In the *Auction No. 72 Comment Public Notice*, the Bureau proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately 20 percent or lower for three consecutive rounds of bidding.¹⁴⁵ The Bureau further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureau proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.¹⁴⁶ The Bureau received no comments on this issue.

128. We adopt this proposal. Thus, the auction will start in Stage One and will generally advance to Stage Two when, in each of three consecutive rounds of bidding, the provisionally winning bids have been placed on 20 percent or less of the licenses being auctioned (as measured in bidding units).¹⁴⁷ In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids,¹⁴⁸ the number of new bids, and the percentage increase in revenue. The Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 72.

6. Activity Rule Waivers

129. In the *Auction No. 72 Comment Public Notice*, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers.¹⁴⁹ The Bureau received no comments on this issue. Therefore, we adopt the proposal that each bidder be provided three activity rule waivers. The

¹⁴⁵ The percentage of bidding units receiving new provisionally winning bids is reported as the "Stage Transition Percentage" on the Results tab of the FCC Auction System.

¹⁴⁶ *Auction No. 72 Comment Public Notice* at ¶ 21.

¹⁴⁷ 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.

¹⁴⁸ 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.

¹⁴⁹ *Auction No. 72 Comment Public Notice* at ¶ 28.

Bureau is 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.

130. 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.

131. 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.

132. 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 closed.

133. 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. **Note: Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.**

7. Auction Stopping Rules

134. For Auction No. 72, the Bureau proposed to employ a simultaneous stopping rule approach.¹⁵⁰ 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 after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.

135. The Bureau also sought comment on a modified version of the simultaneous stopping rule ("modified stopping rule"). The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a proactive waiver, withdraws a provisionally winning bid, or places any new bids on any license on which it is not the provisionally winning bidder. Thus,

¹⁵⁰ *Auction No. 72 Comment Public Notice* at ¶¶ 14-15.

absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

136. The Bureau further proposed retaining the discretion to keep the auction 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.

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

138. The Bureau proposed to exercise these options only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.¹⁵¹ The Bureau noted that before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or changing the minimum acceptable bids.

139. The Bureau believes that the proposed stopping rules are appropriate for Auction No. 72 because our experience in prior auctions demonstrates that these stopping rules balance interests of administrative efficiency and maximum bidder participation. The Bureau received no comments concerning the auction stopping rules. Therefore the Bureau adopts the proposals made in the *Auction No. 72 Comment Public Notice*. Auction No. 72 will begin under the simultaneous stopping rule approach, and the Bureau will retain the discretion to employ the other versions of the stopping rule. Moreover, the Bureau will retain the discretion to use the modified stopping rule with or without prior announcement during the auction.

8. Auction Delay, Suspension, or Cancellation

140. In the *Auction No. 72 Comment 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.¹⁵² The Bureau received no comment on this issue.

141. Because our approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts 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. The Bureau emphasizes 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.

¹⁵¹ *Id.*

¹⁵² *Id.* at ¶ 16.

B. Bidding Procedures

1. Round Structure

142. 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.

143. 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.

2. Reserve Price and Minimum Opening Bids

144. 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.¹⁵³ 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.¹⁵⁴ 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.¹⁵⁵ The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.¹⁵⁶

145. The Bureau proposed in the *Auction No. 72 Comment Public Notice* to establish minimum opening bids for each license, while retaining discretion to lower the minimum opening bids.¹⁵⁷ Specifically, for Auction No. 72, the Bureau proposed the following formulas for calculating license-by-license minimum opening bids:¹⁵⁸

EA Licenses	\$500 per license
EAG License	\$0.01 * 0.15 MHz * License Area Population

¹⁵³ 47 U.S.C. § 309(j)(4)(F).

¹⁵⁴ 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*”).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Auction No. 72 Comment Public Notice* at ¶¶ 29-33.

¹⁵⁸ 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. 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.

146. The Bureau sought comment on this proposal and, in the alternative, whether, consistent with the Section 309(j), the public interest would be served by having no minimum opening bids.¹⁵⁹ Skybridge filed comments in which it sought a reduction in the minimum opening bids by 50 percent.¹⁶⁰ Skybridge argues that lowering minimum opening bids will increase the likelihood that these licenses will be sold at auction.¹⁶¹ Skybridge notes that the auction will make available spectrum that licensees will seek to aggregate in order to satisfy “a particular viable market opportunity.”¹⁶² Skybridge also contends that the licenses being offered in Auction No. 72 have “low market value,” and asserts that it does “not know of market indications of higher values, or developments in the near term that would cause higher values.”¹⁶³

147. We continue to believe that the minimum opening bid amounts proposed in the *Auction No. 72 Comment Public Notice* are appropriate. The proposed minimum opening bid amounts better enable the Commission meet the statutory objective of recovering for the public a portion of the value of the spectrum resource made available for commercial use.¹⁶⁴ Moreover, we observed in the *Auction No. 72 Comment Public Notice* that the proposed minimum opening bid of \$500 will not impede any party willing and able to offer wireless service to the public.¹⁶⁵ Skybridge offers little support for its contention that the licenses being offered have “low market value.”¹⁶⁶

148. The Bureau believes that the minimum opening bids for this auction are reasonable. Accordingly, the Bureau will adopt the proposed minimum opening bid amounts and set the minimum opening bids using the proposed formulas.

149. The Commission did not receive any comments addressing our proposal that the Bureau retain the discretion to reduce minimum opening bid amounts. The Bureau adopts this proposal. The minimum opening bid amounts the Bureau adopts for Auction No. 72 are reducible at the discretion of the Bureau. The Bureau emphasizes, 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. The Bureau notes that effectively the minimum opening bids operate as reserve prices.

150. The specific minimum opening bid amounts for each license available in Auction No. 72 calculated pursuant to the procedure describe above are set forth in Attachment A.

3. Bid Amounts

151. In the *Auction No. 72 Comment Public Notice*, the Bureau proposed that in each round,

¹⁵⁹ *Auction No. 72 Comment Public Notice* at ¶¶ 32-33.

¹⁶⁰ Skybridge Comments at 4.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ See 47 U.S.C. § 309(j)(3)(C).

¹⁶⁵ In that regard, we noted that under the Commission’s current rules, the filing fee for a new cellular license or to make major modifications to an existing cellular license is \$365. *Auction No. 72 Comment Public Notice* at n. 31.

¹⁶⁶ Skybridge’s only support for its belief consists of a cash and debt offer made by Skybridge’s President, Warren C. Havens, to acquire certain 220 MHz licenses in a bankruptcy proceeding at a price below winning bid amounts from a prior auction held in 1998. Skybridge states that Mr. Havens was the high bidder and that this amount did not include “other direct costs.” *Id.* at 2, 4.

eligible bidders be able to place a bid on a given license in any of nine different amounts.¹⁶⁷ Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license.¹⁶⁸ The Bureau received no comment on this issue. Based on our experience in prior auctions, the Bureau adopts our proposals for Auction No. 72.

152. 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. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula described below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.¹⁶⁹

153. 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 the number of bids in that round and the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bids on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round.¹⁷⁰ The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The Commission will initially set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.2 (20%). Hence, at these initial settings, the minimum acceptable bid for a license will be between 10% and 20% higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment E.

154. The 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; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.3, rounded; etc. The Bureau will round the results of these calculations, as well as the calculations to determine the minimum acceptable bid amounts, using our

¹⁶⁷ Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3 “Upfront Payments and Bidding Eligibility,” above.

¹⁶⁸ 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.

¹⁶⁹ Section IV.B.5. “Bid Removal and Bid Withdrawal,” below.

¹⁷⁰ 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.

standard rounding procedures.¹⁷¹ For Auction No. 72, the Bureau proposed to use a bid increment percentage of ten percent to calculate the additional acceptable bid amounts. The Bureau received no comment on this issue and will begin the auction with a bid increment percentage of ten percent and eight additional bid amounts.

155. The Bureau did not receive any comments on our proposal. The Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid formula parameters, the bid increment percentage, and the number of acceptable bid amounts if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System during the auction if circumstances warrant.

4. Provisionally Winning Bids

156. At the end of each bidding round, a “provisionally winning bid” will be determined based on the highest bid amount received for each license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.¹⁷²

157. In the *Auction No. 72 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (*i.e.*, tied bids).¹⁷³ No comments were received on this proposal. Therefore, the Bureau adopts its proposal. A pseudo-random number generator based on the L’Ecuyer algorithms will be used to assign a random number to each bid.¹⁷⁴ The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. The remaining eligible bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the selected provisionally winning bid.

158. During a round, a bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid), withdraw provisionally winning bids from previous rounds, remove bids placed in the current bidding round, or permanently reduce eligibility. Bidders also have the option of submitting and removing multiple bids and withdrawing multiple provisionally winning bids (subject to the limitation on withdrawal rounds discussed below) during a round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder’s bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder’s current activity.

159. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 72. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone.

¹⁷¹ 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.

¹⁷² Section IV.A.3. “Eligibility and Activity Rules,” above.

¹⁷³ *Auction No. 72 Comment Public Notice* at ¶ 39.

¹⁷⁴ A description of the L’Ecuyer algorithms can be found in L’Ecuyer, P. (1999) “Good Parameters and Implementations for Combined Multiple Recursive Random Number Generators” *Operations Research* 47 (1), pp.159-164. A longer version of this paper and the C code for the algorithms can be found on the author’s website at <http://www.iro.umontreal.ca/~lecuyer/papers.html>.

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.

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

161. 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.

162. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts.¹⁷⁵ For each license, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box.¹⁷⁶ 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.

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

164. 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.

5. Bid Removal and Bid Withdrawal

165. In the *Auction No. 72 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures.¹⁷⁷ With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion. The Bureau received no comments on this issue. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted anti-competitive behavior through the use of bid withdrawals. While the Bureau continues to recognize the important role that bid withdrawals may play in an auction, i.e., reducing risk associated with efforts to secure various licenses in combination, the Bureau concludes that, for Auction No. 72, adoption of a limit on the use of withdrawals to two rounds per bidder is appropriate. By doing so the Bureau strikes a reasonable compromise that will allow bidders to use withdrawals. We base our decision on this issue upon the Bureau's experience with bid withdrawals in prior auctions, including PCS D, E and F block, 800 MHz SMR, and other auctions. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds, as previously proposed.

166. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove 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

¹⁷⁵ Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3. "Upfront Payments and Bidding Eligibility," above.

¹⁷⁶ In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the license.

¹⁷⁷ *Auction No. 72 Comment Public Notice* at ¶¶ 41-44.

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 No. 72.

167. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw provisionally winning bids from previous rounds using the "withdraw bids" function in the FCC Auction System (assuming that the bidder has not already withdrawn bids in two previous rounds). 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.**

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

169. 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.¹⁷⁸ To set the additional bid amounts, the second highest bid amount also will be used in place of the provisionally winning bid in the formula used to calculate additional bid amounts. The Commission will serve as a "place holder" provisionally winning bidder on the license until a new bid is submitted on that license.

170. *Calculation of Bid Withdrawal Payment.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction.¹⁷⁹ 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).¹⁸⁰ 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 withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).¹⁸¹ This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

¹⁷⁸ The Bureau retains the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds.

¹⁷⁹ 47 C.F.R. §§ 1.2104(g), 1.2109.

¹⁸⁰ 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).

¹⁸¹ See following paragraph for discussion of interim bid withdrawal payments.

171. 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.¹⁸² In the *Auction No. 72 Comment Public Notice*, the Bureau proposed to establish the percentage at ten percent (10%) for the Phase II 220 MHz Service auction and sought comment on the proposal.

172. 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.¹⁸³

6. Round Results

173. If limited information procedures described above are in effect, limited information about the results of a round will be made public after the conclusion of the round.¹⁸⁴ Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC held. The 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.

174. If, however, limited information procedures are not used, more information will be provided after each round in the auction. Bids placed during a round, including bidder identities, will be made public at the conclusion of that round. Specifically, after a round closes, the Bureau will compile reports of all bids placed and which bidders made them, current provisionally winning bids, new minimum acceptable bid amounts, and bidder eligibility status (bidding eligibility and activity rule waivers) and will post the reports for public access.

7. Auction Announcements

175. 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.

V. POST-AUCTION PROCEDURES

A. Down Payments

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

177. 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

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

¹⁸³ 47 C.F.R. § 1.2104(g).

¹⁸⁴ The identities of parties that are qualified to bid in Auction No. 72 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.

deposit with the Commission for Auction No. 72 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business bidding credits).¹⁸⁵

B. Final Payments

178. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.¹⁸⁶

C. Long-Form Application (FCC Form 601)

179. 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 No. 72. Winning bidders that are small businesses or very small businesses must demonstrate their eligibility for a small business or very small business bidding credit.¹⁸⁷ Further filing instructions will be provided to auction winners at the close of the auction.

180. The *CSEA/Part 1 Report and Order* modifies the procedure by which a consortium that is a winning bidder in Auction No. 72 will apply for a license.¹⁸⁸ 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 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 in our rules for small business status.¹⁸⁹ 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.

D. Ownership Disclosure Information Report (FCC Form 602)

181. 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.

E. Tribal Lands Bidding Credit

182. 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.

183. 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

¹⁸⁵ 47 C.F.R. § 1.2107(b).

¹⁸⁶ 47 C.F.R. § 1.2109(a).

¹⁸⁷ 47 C.F.R. § 1.2112(b).

¹⁸⁸ *CSEA/Part 1 Report and Order* at ¶¶ 51-52, petitions for reconsideration pending.

¹⁸⁹ *Id.*

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).¹⁹⁰

184. 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.¹⁹¹ Relevant documents can be viewed on the Commission's web site by going to <http://wireless.fcc.gov/auctions> and clicking on the **Tribal Land Credits** link.

F. Default and Disqualification

185. 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. 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 *Auction No. 72 Comment Public Notice*, the Bureau proposed to set the additional default payment for the auction of Phase II 220 MHz Service licenses at ten percent of the applicable bid. The Bureau sought comment on its proposal.

186. No comments were received on this issue. The Bureau therefore adopts its proposal and sets the additional default payment for the auction of Phase II 220 MHz spectrum licenses at ten percent of the applicable bid.

187. 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.¹⁹² 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

¹⁹⁰ See also 47 C.F.R. § 1.2110(f)(3)(ii) & (vii).

¹⁹¹ 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).

¹⁹² 47 C.F.R. § 1.2109(b) and (c).

auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.¹⁹³

G. Refund of Remaining Upfront Payment Balance

188. All applicants that submit upfront payments but after the close of the auction are not winning bidders for a license in Auction No. 72 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

189. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a provisionally winning bid during the auction may also be eligible for a refund of their upfront payment before the close of the auction. 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, a written request must be submitted for the refund and include wire transfer instructions, and FCC Registration Number (FRN). Send refund requests to:

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

190. Bidders are encouraged to file their refund information electronically using the **Refund Information** icon found on the *Auction Application Manager* page or through the **Wire Transfer for Refund Purposes** link available in various locations throughout the FCC Auction System, but bidders may also send their information by facsimile to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

191. Following the close of the auction, the Commission may refund upfront monies on deposit that exceed the required total of payments owed by winning bidders. Such refunds will be made to the payer of record as identified on the FCC Form 159, provided the necessary refund request and wire transfer instructions have been received.

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

VI. CONTACTS

192. List of Commission staff contacts:

Media Contact

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

Auctions and Spectrum Access Division

For legal questions: Howard Davenport at (202) 418-0660

¹⁹³ 47 C.F.R. § 1.2109(d).

For general auction questions: Debbie Smith or Barbara Sibert at (717) 338-2868

Mobility Division

For legal and technical questions: Allen Barna (legal) at (202) 418-0620 or Gary Devlin (technical) at (717) 338-2618

For licensing questions: Bettye Woodward at (202) 418-0620

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

-- FCC --

ATTACHMENT A
Auction No. 72 – Phase II 220 MHz Service
DA07-514

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

ATTACHMENT B
FCC AUCTION NO. 72
SEMINAR REGISTRATION FORM

The FCC will sponsor a one-day seminar for Auction No. 72 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:

Wednesday, April 11, 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 Monday, April 9, 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 No. 72 web page, <http://wireless.fcc.gov/auctions/72/>. For further information about accessing FCC webcasts, please visit <http://www.fcc.gov/realaudio/>.

I/We will attend the Auction No. 72 Seminar, scheduled for Wednesday, April 11, 2007.

Name of attendee: _____

Name of attendee: _____

Company name: _____

Company address: _____

Phone: _____ Fax: _____

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

APPLICATION PREPARATION AND SUBMISSION

An applicant must submit its short-form application (FCC Form 175) electronically, via the FCC Auction System. **The FCC Form 175 applications must be submitted and confirmed prior to 6:00 p.m. ET on Friday, April 20, 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 47 C.F.R. § 0.459. Pursuant to Section 0.459(a), such requests must be included as an attachment to FCC Form 175 and identify the information to which the request applies. Because the required information bears on each applicant's qualifications, confidentiality requests will not be routinely granted.

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

A. Software Requirements

Applicants must meet the following minimum software requirements:

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

or

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

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

Other browsers are not supported.

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

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

B. Logging On

To submit an FCC Form 175 application electronically via the Internet, start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/>

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

C. Application Filing Instructions

The on-line FCC Form 175 requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.¹⁹⁴ 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 electronic 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 electronic 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 Form 175 by following the instructions below. Additional help in filling out FCC Form 175 can be accessed from the electronic FCC Form 175 in two ways: 1) by clicking on the **Help** link in the upper right of any screen, which will open Auction Application Online Filing Help; or 2) by clicking on the text of any **Common Question** link appearing on the right side of the screen. The common questions displayed relate to the current screen and vary from screen to screen. In the event the assistance provided by these sources is insufficient, filers should use the contact information provided in the *Procedures Public Notice* to obtain additional assistance.

1. Applicant Information

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

- the applicant's legal classification, *e.g.*, individual, corporation, 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

¹⁹⁴ See generally, 47 C.F.R. § 1.2105.

- citizenship (for individuals), or jurisdiction of formation for legal entities
- for applicants classified as legal entities, *e.g.*, corporations and partnerships, the name of and information regarding the entity's responsible individual
- the name, address, telephone and facsimile number of a contact person who will communicate with the Commission regarding the applicant's FCC Form 175
- the names of up to three persons authorized to bid for the applicant in the auction
- the applicant's preference for electronic or telephonic bidding
- whether the applicant claims eligibility for certain types of bidding credits and the amount claimed.¹⁹⁵

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 No. 72 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 items on which the applicant may wish to bid during the auction. Applicants are not obligated to bid on all licenses selected; however, applicants will not be able to bid on licenses that they have not selected on the FCC Form 175.¹⁹⁶ Be advised that there is no opportunity to change this list once the short-form filing deadline passes on April 20, 2007.

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

¹⁹⁵ 47 C.F.R. § 1.2105(a)(2)(ii)(A).

¹⁹⁶ 47 C.F.R. § 1.2105(a)(2)(i).

The License Selection screen contains a listing of all available licenses in the auction. 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; or by 3) clicking the “Save All Filtered Items” button after applying a filter. Once the applicant has successfully saved a license, the word “Saved” will appear next to the license name to confirm that it has been saved with the application.

NOTE: 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.

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.¹⁹⁷

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

In the additional *Agreements* screens, applicants must provide an identifying name for the agreement and must identify the parties, other than the applicant, to the agreement. The

¹⁹⁷ 47 C.F.R. § 1.2105(a)(2)(viii).

agreement identifier can be a brief description of the agreement or a simple reference name; however, each agreement identifier must be unique.

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

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

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

- 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.¹⁹⁸ 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.¹⁹⁹ In addition, if the applicant has

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

¹⁹⁹ 47 C.F.R. § 1.2112.

claimed eligibility for bidding credits based on revenues attributable to the applicant and related parties, the applicant will provide information regarding revenues in the *Ownership* screens.

a. Information Already on File with the Commission

Some applicants may have previously filed FCC Form 602 disclosing ownership information in connection with wireless services. To simplify filling out 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 this FCC Form 175. Applicants with ownership information automatically entered into FCC Form 175 will proceed directly to the *View/Edit Ownership* screen described below.

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

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.**²⁰⁰
- **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.**²⁰¹

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,²⁰² 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.²⁰³ One attachment connecting all indirect owners to the applicant is sufficient; a separate attachment for each indirect owner is not required. An overview of the ownership connections is sufficient; the attachment does not need to duplicate all the detailed information already provided in the FCC Form 175.

²⁰⁰ 47 C.F.R. § 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.

²⁰¹ 47 C.F.R. § 1.2112(a)(7).

²⁰² 47 C.F.R. § 1.2112(a)(6).

²⁰³ *Id.*

- The “Percent of Interest Held in Applicant” should reflect the disclosable interest holder’s aggregate ownership interest in the applicant. In some cases, *e.g.*, circumstances where there is joint ownership or indirect ownership resulting in different owners sharing the same ownership interests, the sum of all the percentages held by disclosable interest holders may exceed 100%. In other cases, *e.g.*, directors and officers of an entity seeking revenue-based bidding credits,²⁰⁴ a disclosable interest holder may have a 0% percent of interest held in the applicant.
- FCC-regulated businesses in which the applicant has an interest can be entered from the initial *Add Ownership Disclosure Information* screen. FCC-regulated businesses in which a disclosable interest holder has an interest can be entered from the *Add FCC Regulated Business* screen in the series of screens for entering information about a Disclosable Interest Holder.
- When adding an FCC-regulated business, “Percent of Interest Held” refers to the percent of interest held by the applicant or disclosable interest holder, as applicable, in the FCC-regulated business.
- To simplify filling out the FCC Form 175, applicants can click on the **select business(es) already submitted** link when entering an FCC-regulated business previously entered as an FCC-regulated business for the applicant or another Disclosable Interest Holder. When doing so, be certain to enter the “Percent of Interest Held” in the FCC regulated business by the current party, either the applicant or the disclosable interest holder, with respect to which the FCC-regulated business is being entered.

c. View/Edit Ownership Disclosure Information

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

Existing ownership information is divided into three groups:

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

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

²⁰⁴ 47 C.F.R. § 1.2112(b)(1)(i).

d. Bidding Credit Revenue Information

If the applicant has claimed eligibility for a bidding credit based on revenues attributable to the applicant and related parties, the first *Ownership* screen will request relevant information regarding the applicant's revenues. The subsequent screen will request which of the two sources of financial information authorized by Section 1.2110 (n) the applicant used for the revenue information.²⁰⁵

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.²⁰⁶ 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.²⁰⁷ FCC Form 175 screens request information regarding the applicant, disclosable interest holders, and affiliates of the applicant. Accordingly, information that Commission rules require be disclosed regarding controlling interests and affiliates of controlling interests that are not disclosable interest holders should be disclosed in screens requesting information regarding affiliates of the applicant.

Following the first two screens, the subsequent screen will be similar to the initial *Ownership* screen described above, with one addition. In addition to being able to add disclosable interest holders and FCC-regulated business, applicants that claim eligibility for bidding credits based on revenues also will have an option to add information regarding affiliates, including their revenues, that are not disclosable interest holders.²⁰⁸

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

Some disclosable interest holders that must be listed in FCC Form 175 pursuant to Section 1.2112(a) may not be affiliates of the applicant, controlling interests of the applicant, or affiliates of the applicant's controlling interests.²⁰⁹ Revenues for such disclosable interest holders are not attributable to the applicant. Consequently, applicants may not need to provide revenue information for every disclosable interest holder. In such case, an applicant may indicate on the first screen requesting revenue information for that disclosable interest holder that no revenue information is required. To report that no revenue information needs to be disclosed, check the

²⁰⁵ 47 C.F.R. § 1.2110(n).

²⁰⁶ 47 C.F.R. § 1.2112(b)(1)(iii).

²⁰⁷ 47 C.F.R. § 1.2110(c)(5).

²⁰⁸ 47 C.F.R. § 1.2112(b)(1)(iii).

²⁰⁹ 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).

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 47 C.F.R. § 1.2110(b)(3)(iii) of the Commission's rules. When seeking to demonstrate that the applicant (or its controlling interest) is an eligible rural telephone cooperative pursuant to 47 C.F.R. § 1.2110(b)(3)(iii), you 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. You should then indicate that the affiliate or controlling interest has zero gross revenues. You should also provide in an attachment a statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of 47 C.F.R. § 1.2110(b)(3)(iii). In that attachment, you may also provide any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.²¹⁰

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,²¹¹ 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, applicants can click on the **select business(es) already submitted** link when entering an affiliate that previously was entered as an FCC-regulated business for the applicant or a Disclosable Interest Holder. Applicants will fill out two screens similar to the two described above with respect to the affiliate, *i.e.*, one screen requesting the relevant information and a second screen regarding the source of the revenue information.

Finally, applicants claiming eligibility for bidding credits based on revenues attributable to the applicant and related parties will be asked to confirm that they have provided information with respect to all of the relevant parties, *i.e.*, the applicant; each of the applicant's officers and directors; each of the applicant's other controlling interests; each of the applicant's affiliates; and for each affiliate of the applicant's controlling interests, including its officers and directors.²¹²

²¹⁰ 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.

²¹¹ 47 C.F.R. § 1.2112(b)(1)(iii).

²¹² *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. Here is what happens if you click **VIEW/EDIT** for each series:

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

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

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

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

6. Attaching Additional Information

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

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

Commission's rules or procedures, the applicant 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 appears at the bottom of the screen.

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

7. Certify and Submit

The *Certify and Submit* screens are the sixth and final series of screens in FCC Form 175. In the *Certify and Submit* screens, applicants will provide certifications required of all participants in the Commission's competitive bidding processes.²¹³

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.²¹⁴ Applicants associated with a relevant entity that has been in default or delinquent may participate in an auction, if otherwise qualified. However, such applicants must submit an upfront payment equal to 50 percent more than otherwise required.²¹⁵

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

All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.²¹⁶ Applicants are reminded that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications and any attachments are true and correct. (Moreover, as noted above, a change of certifying official is considered a major change of the short-form application and will not be permitted after

²¹³ See generally, 47 C.F.R. § 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

²¹⁴ 47 C.F.R. § 1.2105(a)(2)(xi).

²¹⁵ 47 C.F.R. § 1.2106(a).

²¹⁶ 47 C.F.R. § 1.2105(a)(2)(v).

the short-form deadline.) Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

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

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

FCC Form 175 applications must be submitted and confirmed prior to 6:00 p.m. ET on Friday, April 20, 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

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

b. Updating Existing Applications

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

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

After the short-form application filing deadline (6:00 p.m. ET April 20, 2007), applicants may make only minor changes to their applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or increase its bidding credit).²¹⁷

²¹⁷ 47 C.F.R. § 1.2105(b).

9. Upfront Payment Calculator and Form 159

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

10. Refund of Upfront Payment

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

D. Application Review

Once the FCC has completed the short-form application review process, you can view FCC Form 175 applications electronically by searching for them in the FCC database. Start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Click the **Auction Applications** link in the Public Access area on the *FCC Integrated Spectrum Auction System* page to start your search.

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.

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

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 D

**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 No. 72. 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 "358415"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
21	Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
24A	Payment Type Code - Enter "A72U"

- 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 "72" (indicating Auction No. 72).

NOTES:

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

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 E

FORMULAS 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 = provisionally winning bid amount from the current round

Examples

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

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

1. Calculation of additional percentage for round 3:

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

$$I_3 = \text{The smaller of } [((1 + 2) * 0.1) = 0.3] \text{ and } 0.2 \text{ (the maximum additional percentage)} \\ = 0.02$$

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

$$X_3 = 0.02 * \$2,000,000 = \$400,000$$

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

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

1. Calculation of additional percentage for round 4:

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

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

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

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

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

ATTACHMENT F
SUMMARY LISTING OF DOCUMENTS ADDRESSING
APPLICATION OF THE ANTI-COLLUSION RULE

Commission Decisions

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

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

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

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

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

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

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

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

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

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

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

Wireless Telecommunications Bureau Decisions

Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-13, *Order*, 11 FCC Rcd 9655 (Wireless Telecom. Bur. 1995).

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

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

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

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

Public Notices

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

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

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

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

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

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

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

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

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

Letter to Jonathan D. Blake from Kathleen O’Brien Ham, 10 FCC Rcd 13783 (Auc. Div. 1995).

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

Letter to David L. Nace from Kathleen O’Brien Ham, 11 FCC Rcd 11363 (Auc. Div. 1996).

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

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

Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, 20 FCC Rcd 14648 (Video and Auc. Divs. 2005).

Letter to John Cooper, Aurora Communications, Inc., from Margaret W. Wiener, 21 FCC Rcd 523 (Auc. Div. 2006).

Letter to Howard A. Kalmenson, Lotus Communications Corp., from Margaret W. Wiener, 21 FCC Rcd 520 (Auc. Div. 2006).

Enforcement Bureau Decisions

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

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

Civil Actions Initiated by U.S. Department of Justice

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

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

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

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

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

How to Obtain Copies of the Anti-Collusion Decisions

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

The documents may be located by using the Commission’s 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>.