



PUBLIC NOTICE

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AUCTION OF AWS-1 AND BROADBAND PCS LICENSES RESCHEDULED FOR AUGUST 13, 2008

Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 78

AU Docket No. 08-46

Report No. AUC-08-78-B (Auction 78)

TABLE OF CONTENTS

Heading	Paragraph #
I. GENERAL INFORMATION.....	1
A. Introduction.....	1
1. Background of Proceeding.....	2
2. Licenses to be Offered in Auction 78.....	4
B. License Descriptions.....	5
1. AWS-1 Licenses.....	6
2. Broadband PCS Licenses.....	7
C. Rules and Disclaimers.....	17
1. Relevant Authority.....	17
2. Prohibition of Collusion; Compliance with Antitrust Laws.....	19
a. Entities Subject to Anti-Collusion Rule.....	20
b. Prohibition Applies Until Down Payment Deadline.....	25
c. Prohibited Communications.....	29
d. Disclosure of Bidding Agreements and Arrangements.....	35
e. Anti-Collusion Certification.....	36
f. Antitrust Laws.....	37
g. Duty to Report Prohibited Communications; Reporting Procedure.....	38
h. Winning Bidders Must Disclose Terms of Agreements.....	42
i. Additional Information Concerning Anti-Collusion Rule.....	43
3. Incumbency Issues.....	44
a. AWS-1.....	44
b. Broadband PCS.....	48
c. International Coordination.....	49
d. Quiet Zones.....	50
4. Due Diligence.....	51
5. Use of Integrated Spectrum Auction System.....	62
6. Fraud Alert.....	63
7. Environmental Review Requirements.....	64

D.	Auction Specifics	65
1.	Auction Start Date	65
2.	Auction Title.....	69
3.	Bidding Methodology.....	70
4.	Pre-Auction Dates and Deadlines.....	71
5.	Requirements for Participation.....	72
II.	SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS	73
A.	General Information Regarding Short-Form Applications	73
B.	License Selection	78
C.	Disclosure of Bidding Arrangements.....	80
D.	Ownership Disclosure Requirements.....	83
E.	Designated Entity Provisions.....	85
1.	Entrepreneur Eligibility for Closed Bidding	86
a.	Entrepreneur Eligibility Criteria	87
b.	Asset and Revenue Disclosure on Short-Form Application	88
2.	Bidding Credits for Small and Very Small Businesses	90
a.	Bidding Credit Eligibility Criteria	91
b.	Revenue Disclosure on Short-Form Application	94
3.	Attributable Interests	95
a.	Controlling Interests.....	95
b.	Affiliates	97
c.	Material Relationships	98
d.	Gross Revenue Exceptions.....	102
e.	Bidding Consortia	104
4.	Installment Payments.....	105
F.	Tribal Lands Bidding Credit	106
G.	Provisions Regarding Former and Current Defaulters.....	107
H.	Optional Applicant Status Identification.....	112
I.	Minor Modifications to Short-Form Applications	113
J.	Maintaining Current Information in Short-Form Applications.....	119
III.	PRE-AUCTION PROCEDURES.....	121
A.	Auction Seminar – June 10, 2008	121
B.	Short-Form Applications – Due Prior to 6:00 p.m. ET on June 19, 2008.....	124
C.	Application Processing and Minor Corrections	127
D.	Upfront Payments – Due July 17, 2008	130
1.	Making Upfront Payments by Wire Transfer	131
2.	FCC Form 159.....	134
3.	Upfront Payments and Bidding Eligibility	135
a.	AWS-1	139
b.	Broadband PCS.....	140
4.	Applicant’s Wire Transfer Information for Purposes of Refunds of Upfront Payments.....	144
E.	Auction Registration	145
F.	Remote Electronic Bidding.....	149
G.	Mock Auction – August 11, 2008.....	151
IV.	AUCTION EVENT	152
A.	Auction Structure	153
1.	Simultaneous Multiple Round Auction.....	153
2.	Information Available to Bidders Before and During the Auction	155
3.	Eligibility and Activity Rules	167
4.	Auction Stages.....	171
5.	Stage Transitions	176
6.	Activity Rule Waivers	178

7. Auction Stopping Rules.....	183
8. Auction Delay, Suspension, or Cancellation	186
B. Bidding Procedures.....	188
1. Round Structure.....	188
2. Reserve Price and Minimum Opening Bids	190
a. Reserve Prices.....	191
b. Minimum Opening Bids.....	192
(i) AWS-1.....	193
(ii) Broadband PCS	194
3. Bid Amounts.....	199
a. Minimum Acceptable Bids	200
b. Additional Bid Amounts	203
c. Cap on Increases in Bid Amounts.....	207
4. Provisionally Winning Bids	210
5. Bid Removal and Bid Withdrawal.....	220
6. Round Results.....	230
7. Auction Announcements	231
V. POST-AUCTION PROCEDURES	232
A. Down Payments	233
B. Final Payments.....	234
C. Long-Form Application (FCC Form 601).....	235
D. Ownership Disclosure Information Report (FCC Form 602)	237
E. Tribal Lands Bidding Credit	240
F. Default and Disqualification	243
G. Refund of Remaining Upfront Payment Balance.....	246
VI. CONTACT INFORMATION	249
ATTACHMENT A: Licenses to Be Auctioned	
ATTACHMENT B: Map of CW-BTA460-E	
ATTACHMENT C: Short-Form Filing Instructions	
ATTACHMENT D: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)	
ATTACHMENT E: Activity-Based Formula to Determine Minimum Acceptable Bids	
ATTACHMENT F: Summary Listing of Judicial, Commission and Bureau Documents Addressing Application of the Anti-Collusion Rule	
ATTACHMENT G: Auction 78 Seminar Registration Form	

I. GENERAL INFORMATION

A. Introduction

1. By this Public Notice, we announce the procedures and minimum opening bid amounts for the upcoming auction of Advanced Wireless Services (“AWS”) and broadband Personal Communications Service (“PCS”) licenses. This auction, which is designated as Auction 78, is rescheduled and will start on August 13, 2008. Auction 78 will offer 55 licenses: 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”) and 20 broadband PCS licenses.

1. Background of Proceeding

2. The spectrum associated with licenses to be auctioned in Auction 78 has been either previously licensed and returned to the Commission as a result of license cancellation or termination or offered previously in other auctions but remained unsold.

3. On April 4, 2008, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended,¹ the Wireless Telecommunications Bureau (“Bureau”) released a public notice seeking comment on competitive bidding procedures to be used in Auction 78.² Interested parties submitted one comment and one reply comment in response to the *Auction 78 Comment Public Notice*.³

2. Licenses to be Offered in Auction 78

4. A complete list of licenses available for Auction 78 is included as Attachment A of this Public Notice. In addition, Attachment B provides a map for the broadband PCS E block license in the Walla Walla, WA-Pendleton, OR Basic Trading Area (“BTA”) market (BTA460) that is available in Auction 78.⁴

B. License Descriptions

5. The following tables display information regarding blocks, frequencies of licenses in these blocks, total bandwidth per block, geographic area type, and the number of each license type available.

1. AWS-1 Licenses

6. Auction 78 will offer 35 AWS-1 licenses for which there were no winning bids in Auction 66.⁵ These licenses consist of six Regional Economic Area Grouping (“REAG”) licenses, seven Economic Area (“EA”) licenses, and 22 Cellular Market Area (“CMA”) licenses, as shown in Table 1.⁶

¹ 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).

² “Auction of AWS-1 and Broadband PCS Licenses Scheduled for July 29, 2008; Comment Sought on Competitive Bidding Procedures For Auction 78,” *Public Notice*, FCC 08-767, 23 FCC Rcd 5484 (2008) (“*Auction 78 Comment Public Notice*”).

³ *See* Comments filed by MetroPCS Communications, Inc., dated April 18, 2008 (“MetroPCS Comments”); Reply Comments filed by Leap Wireless International, Inc., dated April 25, 2008 (“Leap Reply Comments”). MetroPCS also submitted an *ex parte* filing on May 15, 2008. In addition, Alpine PCS, Inc. (“Alpine”) filed a motion for stay of the auction of the broadband PCS C block licenses for the San Luis Obispo, CA and the Santa Barbara-Santa Maria, CA Basic Trading Areas (“BTAs”). *See* Motion for Stay filed by Alpine PCS, Inc. on April 18, 2008. Alpine’s request will be addressed separately.

⁴ BTAs are material copyright © 1992 Rand McNally & Company. Rights granted pursuant to a license from Rand McNally & Company (“Rand McNally”) through an agreement with the Federal Communications Commission. Rand McNally’s BTA specification contains 487 geographic areas covering the 50 states and the District of Columbia. For its spectrum auctions, the Commission added additional BTA-like areas for: American Samoa; Guam; Northern Mariana Islands; San Juan, Puerto Rico; Mayagüez/Aguadilla-Ponce, Puerto Rico; and the U.S. Virgin Islands. *See* Rand McNally, *1992 Commercial Atlas and Marketing Guide*, 123rd Edition, at 38-39 (1992). *See also* 47 C.F.R. § 24.202.

⁵ Additional information concerning AWS-1 licenses may be found in Part 27 of the Commission’s rules. 47 C.F.R. Part 27. *See also* “Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66,” AU Docket No. 06-30, *Public Notice*, FCC 06-47, 21 FCC Rcd 4562 (2006) (“*Auction 66 Procedures Public Notice*”); “Auction of Advanced Wireless Services Licenses Rescheduled for August 9, 2006; Revised Schedule, Filing Requirements and Supplemental Procedures for Auction No. 66,” AU Docket No. 06-30, *Public Notice*, FCC 06-71, 21 FCC Rcd 5598 (2006).

⁶ The CMA licenses consist of both Metropolitan Statistical Area (MSA) and Rural Service Area (RSA) licenses. MSAs and RSAs were originally used to license cellular service. 47 C.F.R. § 22.909. The Commission’s rules for the 1710-1755 and 2110-2155 MHz bands use a slightly refined definition of MSAs and RSAs. 47 C.F.R. § 27.6(h)(1); *see also* Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, FCC 03-251, 18 FCC Rcd 25,162, 25,176 n.83 (2003), *modified by Order on* (continued....)

Table 1: AWS-1 Band Licenses Available in Auction 78

Block	Frequency Bands (MHz)	Bandwidth	Geographic Area Type	No. of Licenses
A	1710-1720 / 2110-2120	20 MHz	CMA	22
B	1720-1730 / 2120-2130	20 MHz	EA	4
C	1730-1735 / 2130-2135	10 MHz	EA	3
D	1735-1740 / 2135-2140	10 MHz	REAG	2
E	1740-1745 / 2140-2145	10 MHz	REAG	1
F	1745-1755 / 2145-2155	20 MHz	REAG	3

2. Broadband PCS Licenses

7. Auction 78 includes 20 broadband PCS licenses in the C, D, E and F frequency blocks in full or partial BTA markets.⁷

8. As discussed in more detail below, certain C block licenses are subject to an eligibility restriction making them available only to “entrepreneurs” in “closed” bidding.⁸ In order for a bidder to qualify as an entrepreneur, it, along with its attributable investors and affiliates, must have had gross revenues of less than \$125 million in each of the last two years and must have less than \$500 million in total assets.⁹

9. The Commission adopted this eligibility restriction when it originally established the framework for broadband PCS auctions in the *Competitive Bidding Fifth Report and Order*.¹⁰ Specifically, it reserved all C and F block licenses in broadband PCS as “set-aside” licenses for which eligibility would be limited to “entrepreneurs,” i.e., those entities that met the financial threshold set forth above.¹¹

(Continued from previous page) _____

Reconsideration, FCC 05-149, 20 FCC Rcd 14,058 (2005) (codified at 47 C.F.R. Part 27, Subpart L). CMAs cannot be combined to form EAs because several CMAs cross EA borders.

⁷ Additional information concerning broadband PCS licenses may be found in Part 24 of the Commission’s rules. 47 C.F.R. Part 24. For additional background on previous broadband PCS auctions, including Auctions 4, 5, 10, 11, 22, 35, 58, and 71, see <http://wireless.fcc.gov/auctions>. See also “Auction of Broadband PCS Spectrum Scheduled for May 16, 2007; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 71,” AU Docket No. 06-206, *Public Notice*, DA 07-30, 22 FCC Rcd 433 (2007) (“*Auction 71 Procedures Public Notice*”).

⁸ See 47 C.F.R. § 24.709. The Commission provided a detailed background of the eligibility restrictions on broadband PCS C and F block licenses in an order regarding C block licenses prior to Auction 58. See Eligibility Restrictions on C Block Licenses in the Broadband Personal Communication Services, RM-11019, *Memorandum Opinion and Order*, FCC 04-249, 19 FCC Rcd 20,321 (2004) (“*C Block Order*”).

⁹ See 47 C.F.R. § 24.709(a)(1).

¹⁰ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket 93-253, *Fifth Report and Order*, FCC 94-178, 9 FCC Rcd 5532, 5581-82, ¶ 115 (1994) (“*Fifth Report and Order*”). See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket 93-253, *Fifth Memorandum Opinion and Order*, FCC 94-285, 10 FCC Rcd 403, 420-21 ¶¶ 28-30 (1994) (“*Fifth Memorandum Opinion and Order*”).

¹¹ See *Fifth Report and Order*, 9 FCC Rcd at 5581-82 ¶ 115; see also *Fifth Memorandum Opinion and Order*, 10 FCC Rcd at 420-21 ¶¶ 28-30.

10. The Commission amended the entrepreneur eligibility restrictions in 2000.¹² Specifically, it reconfigured the license size for the C block, creating three 10 megahertz licenses out of each 30 megahertz C block license,¹³ and divided BTAs into two categories based on population: Tier 1 markets are those BTAs with populations equal to or greater than 2.5 million and Tier 2 markets are the BTAs with populations below 2.5 million.¹⁴ The Commission then adopted “open bidding” (i.e., bidding open to both entrepreneurs and non-entrepreneurs) for two of the three newly reconfigured 10 megahertz C block licenses in Tier 1 markets, and for one of the three newly reconfigured 10 megahertz C block licenses in Tier 2 markets.¹⁵ The remaining 10 megahertz C block licenses in Tier 1 and 2 were reserved for entrepreneurs.¹⁶ For 15 megahertz C block licenses, the Commission eliminated the entrepreneur eligibility requirements in Tier 1 markets, but maintained them in Tier 2 markets.¹⁷ The Commission also removed the eligibility restriction on all F block licenses regardless of market. The Commission stated that these rules would apply to “any subsequent auctions of C or F block licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future.”¹⁸

11. Table 2 cross-references the general rules regarding block/eligibility status/frequencies of broadband PCS licenses in the C, D, E, and F blocks. Gray boxes indicate that no license of the particular tier/frequency block combination will be available in Auction 78.

Table 2: General Broadband PCS License Eligibility Rules

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

¹² Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, *Sixth Report and Order and Order on Reconsideration*, FCC 00-313, 15 FCC Rcd 16,266, 16,275-80 ¶¶ 17-24 (2000) (“*C/F Block Sixth Report and Order*”). The Commission also eliminated bidding credits in closed bidding. *Id.* at 16,288 ¶ 45.

¹³ *C/F Block Sixth Report and Order*, 15 FCC Rcd at 16,273-75 ¶¶ 12-15.

¹⁴ *Id.* at 16,276 ¶ 18. Only Tier 2 licenses will be offered in Auction 78.

¹⁵ *Id.* at 16,276-77 ¶ 20.

¹⁶ See 47 C.F.R. § 24.839. The assignment or transfer of control of entrepreneur-only C and F block licenses within the first five years of the initial license grant to entities that do not qualify as entrepreneurs can occur if the licensee has first met the five-year construction requirement for that license. *Id.* The Commission also adopted open bidding for all F block licenses. *C/F Block Sixth Report and Order*, 15 FCC Rcd at 16,279-80 ¶ 24.

¹⁷ *C/F Block Sixth Report and Order*, 15 FCC Rcd at 16,276-77 ¶ 20.

¹⁸ *Id.* at 16,267 ¶ 1.

12. As indicated in the table, C1, C2, C3, and C4 block licenses in Tier 2 (marked with “*”) are generally available only to entrepreneurs at auction in closed bidding.¹⁹ However, when the Commission amended the entrepreneur eligibility restrictions in 2000, it also decided to no longer apply this eligibility restriction to any of these licenses that have been previously made available through closed bidding, but not won, in any auction beginning on or after March 23, 1999.²⁰ Such licenses are instead to be offered in open bidding. As a result, of the 20 broadband PCS licenses available in Auction 78, 11 are open to all bidders and 9 are available only to entrepreneurs in closed bidding.

13. MetroPCS argues that the Commission should reconsider this eligibility restriction and should make all broadband PCS licenses in Auction 78 available without restriction.²¹ MetroPCS contends that circumstances have changed dramatically since the Commission amended the C block eligibility rules in 2000 and offers a number of policy-based arguments in support of its position.²²

14. The changes requested by MetroPCS, however, would require modification of the Commission’s rules on entrepreneur eligibility and are therefore outside the scope of this proceeding to establish procedures for conducting Auction 78. Moreover, the arguments put forth by MetroPCS resemble those considered and rejected by the Commission in 2004 prior to Auction 58.²³ Absent further Commission action, the C block eligibility rules will continue to apply for Auction 78, as they did for licenses offered in Auction 71 last year.²⁴

15. Therefore, the entrepreneur eligibility requirements for the C block licenses in Auction 78 that are closed remain in effect. Consequently, the specific broadband PCS licenses to be offered in Auction 78 are described below in Table 3.

¹⁹ See 47 C.F.R. § 24.709(a)(4)(i)(B). As noted above, C5 block licenses and all D, E, and F block licenses are also available in open bidding.

²⁰ See 47 C.F.R. § 24.709(a)(4)(ii). See also *C/F Block Sixth Report and Order*, 15 FCC Rcd at 16,281-82 ¶¶ 27-29.

²¹ MetroPCS Comments at 4.

²² For example, MetroPCS asserts that, if the Commission opens all licenses to all Auction 78 bidders, the auction will be “more efficient and robust,” because the licenses will be more fungible. *Id.* at 5. MetroPCS further suggests that closed licenses provide an unfair advantage to those entities that qualify as entrepreneurs, and that bidding credits adequately help small businesses, while opening the closed licenses will provide more opportunity for mid-tier wireless carriers by providing current licensees with an “opportunity to supplement and expand discreet [*sic*] service areas in a precise manner.” *Id.* MetroPCS also specifically addresses the licenses available in Auction 78 because the previous licensee failed to meet build-out requirements. MetroPCS argues there is no evidence to suggest that the closed licenses that went unconstructed by entrepreneurs will now be acquired and placed in service by other entrepreneurs. *Id.* at 4. In fact, MetroPCS argues, the previous licensees’ failure to build-out suggests that, in these markets, it is “impossible for an entrepreneur to maintain the license and use it in a viable business.” MetroPCS suggests that failure to build-out provides “just as compelling support for altering the closed license status viability as does the fact that a license went unsold in an auction.” *Id.* at 6. Finally, MetroPCS adds that, if the Commission concludes that it needs to initiate a prompt notice and comment rulemaking to make this change, it should do so. *Id.*

²³ *C Block Order*, 19 FCC Rcd at 20,327-28 ¶ 17.

²⁴ We also note, in response to one of MetroPCS’s concerns, that all of the entrepreneur-only C block broadband PCS licenses available in Auction 71, in 2007, sold after receiving multiple bids. See “Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced in Auction No. 71,” *Public Notice*, DA 07-2142, 22 FCC Rcd 9247 (2007).

Table 3: Broadband PCS Licenses Available in Auction 78

Block	Eligibility Status	Frequency Bands (MHz)	Bandwidth	Geographic Area Type	No. of Licenses
C1	Open ²⁵	1902.5-1910 / 1982.5-1990	15 MHz	BTA	1
C1	Closed ²⁶	1902.5-1910 / 1982.5-1990	15 MHz	BTA	4
C3	Closed ²⁷	1895-1900 / 1975-1980	10 MHz	BTA	2
C4	Closed ²⁸	1900-1905 / 1980-1985	10 MHz	BTA	3
C5	Open	1905-1910 / 1985-1990	10 MHz	BTA	2
D	n/a	1865-1870 / 1945-1950	10 MHz	BTA	1
E	n/a	1885-1890 / 1965-1970	10 MHz (or less) ²⁹	BTA	4
F	Open	1890-1895 / 1970-1975	10 MHz	BTA	3

16. Because of the history of licenses for broadband PCS spectrum, some licenses available in Auction 78 cover less bandwidth and fewer frequencies than noted in Table 3. In addition, in some cases, licenses are available for only part of a market. Attachments A and B to this Public Notice provide more details about the broadband PCS licenses that will be offered in Auction 78.

²⁵ The C1 block license for market BTA127 is offered in open bidding because it was offered in Auction 58, which occurred after March 23, 1999, but remained unsold. The license was later offered in opening bidding in Auction 71, but remained unsold.

²⁶ Four C1 block licenses to be offered in Auction 78 (for markets BTA208, BTA333, BTA388, and BTA453) were available only to entrepreneurs and won in Auction 35, but automatically terminated for failure to meet the build-out requirements. Therefore, pursuant to the Commission's determination in the *C/F Block Sixth Report and Order* and Section 24.709(a)(4)(ii), they remain subject to the entrepreneur eligibility restriction when they are offered in Auction 78. 47 C.F.R. § 24.709(a)(4)(ii); *see also C/F Block Sixth Report and Order*, 15 FCC Rcd at 16,281-82 ¶¶ 27-29.

²⁷ When the Commission reconfigured 30 megahertz C block licenses available for auction into three 10 megahertz licenses – designated the C3, C4, and C5 blocks – it specified that, for Tier 2 markets, two license blocks (C3 and C4) would be subject to closed bidding, while the third license block (C5) would be made available in open bidding. *See C/F Block Sixth Report and Order*, 15 FCC Rcd at 16,273-77 ¶¶ 12-20. *See also* 47 C.F.R. § 24.709(a)(4)(i)(B). The two C3 block licenses in Auction 78 – in markets BTA405 and BTA406 – are available only to entrepreneurs because they are C3 block licenses that have not been previously made available on a closed basis in any auction beginning on or after March 23, 1999. *See* paragraph 11 and note 20, above.

²⁸ Two of the C4 block licenses – in markets BTA405 and BTA406 – are also available only to entrepreneurs because they are C4 block licenses that have not been previously made available on a closed basis in any auction beginning on or after March 23, 1999. Auction 78 also includes a C4 block license in market BTA062, which had been disaggregated from a 30 MHz C block license won in Auction 5, but which was subsequently cancelled pursuant to an order from federal bankruptcy court. The C4 license in market BTA062 in its entirety is also available only to entrepreneurs because it has not been previously made available on a closed basis in any auction beginning on or after March 23, 1999. *See* note 27, above.

²⁹ The two partial E block licenses in BTA385 and BTA460, which are available in Auction 78, had been cancelled/terminated after being partitioned and/or disaggregated.

C. Rules and Disclaimers

1. Relevant Authority

17. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in Title 47, Part 1, Subpart Q of the Code of Federal Regulations, including all amendments and clarifications; rules relating to the Advanced Wireless Services and emerging technologies contained in Title 47, Parts 27 and 101, of the Code of Federal Regulations; rules relating to broadband PCS, contained in Title 47, Part 24, of the Code of Federal Regulations; and rules relating to applications, environment, practice and procedure contained in Title 47, Part 1, Subpart I of the Code of Federal Regulations.³⁰ 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.³¹

18. 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.bcpweb.com>.³²

2. Prohibition of Collusion; Compliance with Antitrust Laws

19. To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission's rules prohibits auction applicants for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to Section 1.2105(a)(2)(viii).³³

a. Entities Subject to Anti-Collusion Rule

20. The anti-collusion rule will apply to any applicants that submit short-form applications seeking to participate in a Commission auction and select licenses in the same or overlapping markets

³⁰ 47 C.F.R. Parts 1, 24, 27, and 101.

³¹ See, e.g., Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, PP Docket No. 93-253, *Second Report and Order*, FCC 94-61, 9 FCC Rcd 2348 (1994) ("*Competitive Bidding Second Report and Order*"); Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, FCC 00-274, 15 FCC Rcd 15,293 (2000) (modified by Erratum, DA 00-2475, 15 FCC Rcd 24,501) ("*Part 1 Fifth Report and Order*"); Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17,546 (2001) ("*Part 1 Seventh Report and Order*") (amending the anti-collusion rule, which is codified at 47 C.F.R. § 1.2105(c)).

³² When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 08-767 for the *Auction 78 Comment Public Notice*, or DA 08-1090 for this Public Notice).

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

(i.e., CMAs, EAs, REAGs or BTAs), regardless of the service. Therefore, in Auction 78, for example, the rule would prohibit an applicant bidding for an AWS-1 EA license and another applicant bidding for a PCS BTA license within that EA from communicating absent an agreement.³⁴

21. Under the terms of the rule, applicants that have applied for licenses covering the same or overlapping markets – unless they have identified each other on their short form applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii) – must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure.³⁵ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**³⁶

22. 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.³⁷

23. As described in Section IV.A.2., below, information concerning applicants’ license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same or overlapping geographic areas as the licenses that it has selected in its short-form application.³⁸

24. Entities and parties subject to the anti-collusion rule should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant’s bids or bidding strategies. In situations where the anti-collusion rule views the same person as the applicant with respect to two different entities filing competing applications, under Bureau precedent the bids and bidding strategies of one applicant are necessarily conveyed to the other and, absent a disclosed bidding agreement, an apparent violation of the anti-collusion rule occurs.³⁹ The Bureau has not addressed situations where employees who do not qualify as the applicant (e.g., are not officers or directors) receive information regarding a competing

³⁴ See “Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules,” *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (1995).

³⁵ See, e.g., “Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E, and F Block Bidders,” *Public Notice*, DA 96-1460, 11 FCC Rcd 10,134.

³⁶ See, e.g., *Star Wireless, LLC, Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18,626, 18,628 ¶ 4, n.19 (2004) (“*Star Wireless Order*”) (collusion rule applies to applicants regardless of whether they are qualified to bid), upheld on review, *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007), affirmed *Star Wireless, LLC v. FCC*, D.C. Cir. No. 07-1190 (decided April 22, 2008); Letter to Robert Pettit, Esquire, from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 00-2905, 16 FCC Rcd 10,080 (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).

³⁷ 47 C.F.R. § 1.2105(c)(7)(i).

³⁸ Section IV.A.2. “Information Available to Bidders Before and During the Auctions,” below, especially ¶ 163.

³⁹ Letter to John Cooper, Aurora Communications, Inc., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 06-157, 21 FCC Rcd 523 (2006); Letter to Howard A. Kalmenson, Lotus Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 06-156, 21 FCC Rcd 520 (2006); Letter to Colby M. May from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 05-2445, 20 FCC Rcd 14,648 (2005) (“*May Letter*”).

applicant's bids or bidding strategies and whether that information might be deemed to be necessarily conveyed to the applicant. We note that the exception to the anti-collusion rule providing that non-controlling interest holders may have interests in more than one competing bidder without violating the anti-collusion rule, provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), does not extend to controlling interest holders.⁴⁰

b. Prohibition Applies Until Down Payment Deadline

25. Section 1.2105(c)'s anti-collusion prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.⁴¹

26. MetroPCS recommends modifying and/or clarifying the application of the anti-collusion rule and anonymous bidding procedures after the close of bidding.⁴² MetroPCS proposes that the anti-collusion rule be modified to remain in effect only until the Commission issues the public notice identifying the winning bidders and the high bid amounts.⁴³ This request seeks amendment of Section 1.2105(c) and is therefore outside of the scope of this proceeding. The Commission has observed that "[p]rohibiting such communications between applicants during the proscribed auction period protects a valid governmental interest without infringing unduly on the First Amendment rights of auction participants."⁴⁴

27. MetroPCS also requests, in the alternative, that the Commission make clear that applicants can disclose bidding-related information that the Commission has already made public after the close of the auction but before the down-payment deadline.⁴⁵ Information contained in a public notice announcing the winning bidders would be public upon release. It is difficult to envision a case in which communication of the bare facts contained in such public information by an applicant could result in violation of the anti-collusion rule. We note, however, that "it is the substance and timing of specific communications that are key in determining whether there has been a violation of Section 1.2105(c)."⁴⁶ In the absence of such factual context, and given the importance of the anti-collusion rules, we decline to make further clarification.

28. We continue to strongly caution applicants that the communication of information that has been made public by the Commission could violate the anti-collusion rule, even if its disclosure might not infringe our limited information procedures. Therefore, applicants should consider the potential consequences of *any* disclosures. In this regard, we note that, upon the release of information after the close of an auction, the applicants in an auction conducted under anonymous bidding procedures are in the same position with regard to the application of the anti-collusion rule as the applicants in an auction conducted without such procedures.

c. Prohibited Communications

29. Applicants for the upcoming Auction 78 and other parties that may be engaged in discussion with such applicants are cautioned of the need to comply with the Commission's anti-collusion

⁴⁰ 47 C.F.R. § 1.2105(c)(4).

⁴¹ 47 C.F.R. § 1.2105(c)(1).

⁴² MetroPCS states that the Commission has indicated that upfront payment and high bid information cannot be discussed by bidders even after the winning bidders are announced. MetroPCS Comments at 11.

⁴³ *Id.* at 11-12.

⁴⁴ Star Wireless, LLC and Northeast Communications of Wisconsin, Inc., *Order on Review*, FCC 07-80, 22 FCC Rcd 8943 (2007), *affirmed Star Wireless, LLC v. FCC*, D.C. Cir. No. 07-1190 (decided April 22, 2008).

⁴⁵ *Id.*

⁴⁶ *Star Wireless Order*, 19 FCC Rcd at 18,630 ¶ 8.

rule, Section 1.2105(c).⁴⁷ The anti-collusion rule prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy.⁴⁸ While the anti-collusion rule provisions do not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

30. 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."⁴⁹

31. Applicants are hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that is confidential at the time of disclosure may violate the anti-collusion rule.⁵⁰ This is so even though similar types of information were revealed prior to and during other Commission auctions subject to different information procedures. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as for Auction 78, 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.⁵¹ Similarly, an applicant's public statement of intent not to participate in Auction 78 bidding could also violate the rule.

32. Applicants for licenses for any of the same or overlapping geographic license areas must not communicate directly or indirectly about bids or bidding strategy.⁵² 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.⁵³ In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent

⁴⁷ 47 C.F.R. § 1.2105(c).

⁴⁸ See Western PCS BTA 1 Corp., *Memorandum Opinion and Order*, FCC 99-383, 14 FCC Rcd 21,571 (1999).

⁴⁹ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) ("*Memorandum Opinion and Order*").

⁵⁰ Thus, communication by an applicant of its license selections to another applicant for one or more of the same licenses, or communication of the fact that an applicant does or does not hold provisionally winning bids on particular licenses, may well violate the anti-collusion rule.

⁵¹ Cf. "Wireless Telecommunications Bureau Responds to Questions about the Local Multipoint Distribution Service Auction," *Public Notice*, DA 98-37, 13 FCC Rcd 341, 347-48 (1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

⁵² *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17,549-50 ¶ 6.

⁵³ 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*, DA 98-1137, 13 FCC Rcd 11,973, 11,977 ¶ 11 (1998) ("*Nevada Wireless Order*").

communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.⁵⁴

33. 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.⁵⁵ Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,"⁵⁶ 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."⁵⁷

34. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the limited information procedures in effect for Auction 78.⁵⁸ Specifically, applicants should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

d. Disclosure of Bidding Agreements and Arrangements

35. 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.⁵⁹ If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants for licenses covering any of the same or overlapping geographic areas after the short-form filing deadline.⁶⁰

e. Anti-Collusion Certification

36. By electronically submitting a 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 application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.⁶¹ The Commission has stated that it "intend[s] to

⁵⁴ *Id.*

⁵⁵ See, e.g., *May Letter* (finding apparent violation of anti-collusion rule where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

⁵⁶ *Mercury PCS II, LLC, Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17,970, 17,976 ¶ 12 (1997).

⁵⁷ *Mercury PCS II, LLC, Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23,755, 23,760 ¶ 11 (1998).

⁵⁸ See Section IV.A.2. "Information Available to Bidders Before and During Auctions," below.

⁵⁹ 47 C.F.R. § 1.2105(c)(7)(i).

⁶⁰ "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (1995) ("*Anti-Collusion Public Notice*").

⁶¹ *Nevada Wireless Order*, 13 FCC Rcd at 11,978 ¶ 13.

scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring.”⁶² Any applicant found to have violated the anti-collusion rule may be subject to sanctions.⁶³

f. Antitrust Laws

37. 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.⁶⁴ Compliance with the disclosure requirements of the Commission’s anti-collusion rule will not insulate a party from enforcement of the antitrust laws.⁶⁵ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application.⁶⁶ 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.⁶⁷ 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.”⁶⁸ To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation.⁶⁹ If an applicant is found to have violated the antitrust laws or the Commission’s rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.⁷⁰

g. Duty to Report Prohibited Communications; Reporting Procedure

38. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.⁷¹ The Commission recently clarified

⁶² *Memorandum Opinion and Order*, 9 FCC Rcd at 7689 ¶ 12.

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

⁶⁴ Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rule Making*, FCC 99-384, 14 FCC Rcd 21,558, 21,560 ¶ 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 at 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*, FCC 94-624, 9 FCC Rcd 6858, 6869 n.134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”). (“*Fourth Memorandum Opinion and Order*”).

⁶⁵ *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).

⁶⁶ The Commission has cited a number of examples of such anticompetitive behavior. *See, e.g., Fourth Memorandum Opinion & Order*, 9 FCC Rcd at 6869 n.134.

⁶⁷ *Id.*; *see also Anti-Collusion Public Notice*.

⁶⁸ *Anti-Collusion Public Notice*.

⁶⁹ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

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

⁷¹ 47 C.F.R. § 1.2105(c)(6).

that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five day period.⁷²

39. 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.⁷³ 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).

40. Parties reporting communications pursuant to Section 1.2105(a)(2) must take care to ensure that any such reports of prohibited communications do not themselves give rise to a violation of the anti-collusion rule. For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection.⁷⁴ Such parties are also encouraged to consult with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports.⁷⁵ This Public Notice provides additional guidance on procedures for submitting application-related information below.⁷⁶

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

⁷² See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule, WT Docket No. 07-166, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15,289, 15,403-04 ¶¶ 285-86 (2007) (“700 MHz Second Report and Order”) recon. pending.

⁷³ 47 C.F.R. § 1.65.

⁷⁴ See 47 C.F.R. § 0.459 (procedures for requesting that materials or information submitted to the Commission be withheld from public inspection). If an applicant requests confidential treatment of a document, the cover page of the filing must prominently display that the applicant is seeking confidential treatment for that document. For example, a filing might include a cover page stamped with “Request for Confidential Treatment Attached” or “Not for Public Inspection.” Any such request must cover all of the material to which the request applies. See 47 C.F.R. § 0.459(a).

⁷⁵ See Section VI. “Contact Information,” below.

⁷⁶ See Section II.J. “Maintaining Current Information in Short-Form Applications,” below.

h. Winning Bidders Must Disclose Terms of Agreements

42. 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.⁷⁷

i. Additional Information Concerning Anti-Collusion Rule

43. 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.⁷⁸

3. Incumbency Issues

a. AWS-1

44. The AWS-1 bands are now being used for a variety of government and non-government services. The 1710-1755 MHz band is currently a government band, which is in the process of transitioning to a commercial band.⁷⁹ The incumbents in the 2110-2150 MHz band are private services (including state and local governmental public safety services) and common carrier fixed microwave services.⁸⁰ The 2150-2155 MHz band contains incumbents in the Broadband Radio Service ("BRS").⁸¹

⁷⁷ 47 C.F.R. § 1.2107(d).

⁷⁸ See <http://wireless.fcc.gov/auctions/anticollusion>

⁷⁹ In the 1710-1755 MHz band, Federal stations in the fixed and mobile services will operate on a primary basis until accommodated in accordance with the Commercial Spectrum Enhancement Act, and certain Federal stations may continue to operate in the band indefinitely, some on a primary basis. See, e.g., US Notes 311 and 378 of the Table of Allocations, 47 C.F.R. § 2.106. In the Omnibus Budget Reconciliation Act of 1993 ("OBRA-93"), Congress directed the Secretary of Commerce to identify at least 200 megahertz of spectrum below 5 GHz for transfer to non-Federal services. 47 U.S.C. § 923. The National Telecommunications and Information Administration ("NTIA") identified the band 1710-1755 MHz for transfer, with certain Federal operations to remain protected indefinitely. See Spectrum Reallocation Final Report, Response to Title VI Omnibus Budget Reconciliation Act of 1993, NTIA Special Publication 95-32, at App. E and page F-4 (Feb. 1995). Subsequently, NTIA concluded that most of the protected Federal operations could relocate or modify their operations to allow reallocation of the band for AWS. See NTIA Report, "An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands," at 1-2 (July 22, 2002) ("*NTIA AWS Assessment*") (available at http://www.ntia.doc.gov/reportsarchive2000_2003.html). The Commission sought comment on the *NTIA AWS Assessment*. "FCC Seeks Comment on the National Telecommunications and Information Administration's Report, An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands," ET Docket No. 00-258, *Public Notice*, DA 02-1780, 17 FCC Rcd 14,390 (2002). The *NTIA AWS Assessment* was incorporated into Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Fourth Notice of Proposed Rulemaking*, FCC 03-134, 18 FCC Rcd 13,235 (2003).

⁸⁰ See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Notice of Proposed Rule Making*, FCC 00-455, 16 FCC Rcd 596, 617-18 (2001).

⁸¹ See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, *Second Report and Order*, FCC 02-304, 17 FCC Rcd 23,193, 23,208-13 ¶¶ 34-41 (2002). The Commission has decided to clear BRS from the 2150-2155 MHz band as part of a fundamental restructuring of the service. See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, *Report and Order and Further Notice of Proposed Rule Making*, FCC 04-135, 19 FCC Rcd 14,165, 14,177-78 ¶¶ 23-24 (2004).

The Commission previously provided information on incumbency issues for the AWS-1 bands in the *Auction 66 Procedures Public Notice*.⁸² While much of that information remains current, several updates follow.

45. *Spectrum Relocation Fund*. The Commission established a reserve amount in Auction 66 in order to comply with a statutory requirement aimed at funding the relocation of federal government entities that currently operate in the 1710-1755 MHz band.⁸³ In order for Auction 66 to close in compliance with the statute, the total winning bids in that auction, net of bidding credits applicable at the close of bidding, were required to equal or exceed a reserve amount of approximately \$2.059 billion.⁸⁴ At the close of Auction 66, the net total winning bids far exceeded the reserve amount.⁸⁵ For the reasons discussed below, the Bureau proposes to not establish reserve prices for the 35 AWS-1 licenses being offered in Auction 78.⁸⁶

46. *Relocation of Government Incumbents*. The Commission also issued guidance, along with the National Telecommunications and Information Administration, to assist AWS-1 licensees to begin implementing service during the transition of federal operations from the band while providing interference protection to incumbent federal government operations until they have been relocated to other frequency bands or technologies.⁸⁷

47. *Relocation of Non-Government Incumbents*. On the same day it released the *Auction 66 Procedures Public Notice*, the Commission, among other things, adopted relocation procedures that AWS-1 licensees will follow when relocating incumbent BRS licensees from the 2150-2160/62 MHz portion of the band.⁸⁸

b. Broadband PCS

48. While most of the private and common carrier fixed microwave services (“FMS”) formerly operating in the 1850-1990 MHz band (and other bands) have been relocated to available frequencies in higher bands or to other media, some FMS licensees may still be operating in the band. Any remaining FMS entities operating in the 1850-1990 MHz band, however, are secondary to PCS operations. FMS licensees, absent an agreement with the applicable PCS entities or an extension pursuant to Section 101.79(b) of the Commission’s rules, must turn in their authorizations six months following

⁸² *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4573-77 ¶¶ 24-34. See also “Auction of Advanced Wireless Services Licenses, 168 Bidders Qualified to Participate in Auction No. 66; Information Disclosure Procedures Announced,” *Public Notice*, DA 06-1525, 21 FCC Rcd 8585 (2006).

⁸³ See *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4612-15 ¶¶ 188-200 (Commission adoption of reserve amount for Auction 66 pursuant to the Commercial Spectrum Enhancement Act, Pub. L. No. 108-494, 118 Stat. 3986, Title II (2004) (codified in various sections of Title 47 of the United States Code), § 202 (codified at 47 U.S.C. § 923(g)(2))).

⁸⁴ *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4615 ¶ 198.

⁸⁵ “Auction of Advanced Wireless Services Licenses Closes; Winning Bidders Announced for Auction No. 66,” *Public Notice*, DA 06-1882, 21 FCC Rcd 10,521 (2006) (“*Auction 66 Closing Public Notice*”).

⁸⁶ See Section IV.B.2.a. “Reserve Prices,” below.

⁸⁷ See “The Federal Communications Commission and the National Telecommunications and Information Administration – Coordination Procedures in the 1710 – 1755 MHz Band,” *Public Notice*, WT Docket No. 02-353, FCC 06-50, 21 FCC Rcd 4730 (2006).

⁸⁸ See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Ninth Report and Order and Order*, FCC 06-45, 21 FCC Rcd 4473 (2006) (“*Ninth Report and Order*”) recon. pending.

written notice from a PCS entity that such entity intends to turn on a system within the interference range of the incumbent FMS licensee.⁸⁹ Further, broadband PCS licensees are no longer responsible for costs associated with relocating an incumbent FMS operation.⁹⁰

c. International Coordination

49. AWS-1 and broadband PCS licensees must not cause harmful interference across the borders with Mexico and Canada. Potential bidders seeking licenses in Auction 78 for geographic areas that are near the Canadian or Mexican borders are encouraged to consult all international agreements with Canada and Mexico.⁹¹ If agreements between the United States, Mexico and Canada have not yet become effective, the same technical restrictions at the border that are adopted for operation between geographic service areas will apply, to the extent they are not in violation of current bilateral agreements and arrangements.⁹² When interim arrangements or agreements between the United States, Mexico and Canada are final and become effective, licensees must comply with these agreements. If these agreements are modified in the future, licensees must likewise comply with these modifications.

d. Quiet Zones

50. All licensees must protect the radio quiet zones set forth in the Commission's rules.⁹³ 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.⁹⁴

4. Due Diligence

51. We caution potential applicants formulating their bidding strategies to investigate and consider the extent to which these frequencies are occupied. For example, as stated above, operations in the AWS-1 bands must be protected and/or relocated to available frequencies, typically in higher bands, or to other media. These limitations may restrict the ability of AWS-1 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 and relocation requirements, and applicable

⁸⁹ See 47 C.F.R. § 101.79(a). See also 47 C.F.R. §§ 15.307, 24.5; Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, *Memorandum Opinion and Order on Reconsideration*, FCC 00-123, 15 FCC Rcd 13,999 (2000); Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, *Second Report and Order*, FCC 97-48, 12 FCC Rcd 2705 (1997); Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, *First Report and Order and Further Notice of Proposed Rule Making*, FCC 96-196, 11 FCC Rcd 8825 (1996).

⁹⁰ Broadband PCS entities were previously required to pay costs of relocating FMS licensees to other bands or alternative facilities, or in certain circumstances, to share the costs of relocating FMS licensees. The relocation reimbursement requirement sunset on April 4, 2005. See 47 C.F.R. §§ 24.239-24.253, 101.69-101.81; "Broadband PCS Entities and Fixed Microwave Services Licensees Reminded of April 4, 2005 Sunset of Relocation Cost Compensation and Microwave Cost Sharing Rules," *Public Notice*, DA 05-612, 20 FCC Rcd 5141 (2005).

⁹¹ For information on the agreements with Canada and Mexico, prospective bidders should go to <http://www.fcc.gov/ib/sand/agree/welcome.html>.

⁹² Current agreements and coordination arrangements between the United States and Canada or Mexico may be found on the Commission's website under <http://www.fcc.gov/ib/sand/agree/welcome.html>. Boundary limits using a predicted or measured 47 dBmV/m field strength limit for all 2110-2155 MHz transmissions address co-channel interference. Adjacent channel interference is addressed by $43 + 10 \log_{10}(P)$ out-of-band emission limit for all transmissions, originating in both the 1710-1755 and 2110-2155 MHz bands.

⁹³ 47 C.F.R. § 1.924.

⁹⁴ *Id.*

Commission rules, orders and any pending proceedings related to the service, in order to make reasoned, appropriate decisions about their participation in this auction and their bidding strategy.

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

53. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction 78 in order to determine the existence of any pending legislative, administrative or judicial proceedings that might affect their decision regarding participation in the auction. Participants in Auction 78 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.

54. Applicants should also be aware that certain pending and future proceedings, including rulemaking proceedings or petitions for rulemaking, applications (including those for modification), requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction 78.⁹⁵ Pending and future judicial proceedings may also relate to particular applicants or incumbent licensees, or the licenses available in Auction 78. 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.

55. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction 78. 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.

56. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses being offered.

57. Applicants may obtain information about licenses available in Auction 78, including non-Federal Government incumbent licenses that may have an effect on availability of the AWS-1 licenses, through the Bureau's online licensing databases at <http://wireless.fcc.gov/uls>. Part 101 fixed point-to-point microwave licenses can be identified by searching on the "Microwave Site-Based" service group and limiting the search to the frequency range 2110 MHz to 2150 MHz. 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

⁹⁵ For example, we note that a request concerning the inclusion of certain licenses in Auction 78 is pending. See n.3 above.

available to assist with questions Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

58. In addition, to further assist potential bidders in determining the scope of the new AWS entrants' relocation obligations in the 2150-2155 MHz band, the Commission ordered BRS licensees in the 2150-2160/62 MHz band to submit information on the locations and operating characteristics of BRS systems in that band.⁹⁶ That information may also be found on ULS at <http://wireless.fcc.gov/uls>. To obtain the information, potential bidders should use the ULS Advanced Application Search to search for modifications filed in the BR Radio Service between November 30, 2005, and July 14, 2006. Each application will need to be viewed to determine if it is a BRS Channel 1, 2/2A Notification.

59. Information on the locations of non-DOD Government stations can be found at <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm>. Points of contact for the Government agencies involved can be found at http://www.ntia.doc.gov/osmhome/reports/specrelo/pdf/1710-1755MHz_points_of_contact.pdf.

60. 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.

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

5. Use of Integrated Spectrum Auction System

62. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 78 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. Fraud Alert

63. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 78 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

⁹⁶ See "Licensees of Broadband Radio Service Channels 1 and/or 2/2A Must File Site and Technical Data by December 27, 2005," *Public Notice*, DA 05-3126, 20 FCC Rcd 19,273 (2005); "Licensees of Broadband Radio Service Channels 1 and/or 2/2A Must File Supplemental Data by July 14, 2006, Data Will Assist in Determining Future AWS Licensees' Relocation Obligations," *Public Notice*, 21 FCC Rcd 6593 (2006). BRS licensees who did not file under the mandatory data collection requirements, and who subsequently claim that they are entitled to relocation or reimbursement, have the burden to demonstrate to an AWS entrant that they meet the relocation eligibility requirements. See, e.g., *Ninth Report and Order*, 21 FCC Rcd at 4473 n.40.

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service, Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.
- Information about deceptive telemarketing investment schemes is available from the Commission as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from: (i) the FCC by going to <http://wireless.fcc.gov/csinfo/#fraud> or by telephone at (888) 225-5322 (FCC’s Consumer Call Center); (ii) the FTC by telephone at (877) FTC-HELP ((877) 382-4357) or by going to <http://ftc.gov/bcp/edu/pubs/consumer/invest/inv03.shtm>; and (iii) the SEC by telephone at (202) 942-7040 or by going to <http://sec.gov/cgi-bin/txt-srch-sec?text=fraud§ion=Investor+Information&x=8&y=5>. 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

64. Licensees must comply with the Commission’s rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes.⁹⁷ 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.⁹⁸ 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.⁹⁹ 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.

⁹⁷ 47 C.F.R. Ch. 1, Subpart I.

⁹⁸ 47 C.F.R. §§ 1.1301-1.1319.

⁹⁹ 47 C.F.R. Part 1, Appendix C.

D. Auction Specifics**1. Auction Start Date**

65. Bidding in Auction 78 will begin on Wednesday, August 13, 2008.

66. MetroPCS and Leap each request that we postpone the start of bidding in Auction 78.¹⁰⁰ MetroPCS suggests delaying the start of Auction 78 by four or five weeks, i.e., until September 2008.¹⁰¹ MetroPCS contends that participation in an FCC auction presents resource challenges for small and medium-sized companies and notes that conducting bidding during August is difficult when “businesses are thinly staffed due to employee vacation schedules.”¹⁰² MetroPCS also asserts that potential bidders need more time to finance licenses won in the recently-concluded 700 MHz auction (Auction 73) and resume business.¹⁰³ Leap supports postponing the auction, noting that a “brief delay will afford potential bidders, including small and mid-sized bidders, more time to prepare.”¹⁰⁴

67. We are not persuaded by the arguments of MetroPCS and Leap that a four- or five-week postponement is warranted. Interested parties were able to begin preparations for this auction when the auction was first announced on April 4, 2008, with the release of the *Auction 78 Comment Public Notice*. Nevertheless, we find that providing an additional two weeks prior to the start of Auction 78 will promote efficient administration of the auction and provide prospective applicants with additional time for planning and preparation. Additional pre-auction dates and deadlines for Auction 78 are provided below.

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

2. Auction Title

69. Auction 78 – AWS-1 & Broadband PCS

3. Bidding Methodology

70. As discussed in more detail below, the bidding methodology for Auction 78 will be simultaneous multiple round (“SMR”) bidding.¹⁰⁵ The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone. All telephone calls are recorded.

4. Pre-Auction Dates and Deadlines

71. The following dates and deadlines apply:

Auction Seminar	June 10, 2008
Short-Form Application (FCC Form 175)	
Filing Window Opens	June 10, 2008; 12:00 noon ET

¹⁰⁰ MetroPCS Comments at 15-16; Leap Reply Comments at 2-3. The Bureau previously announced that Auction 78 would start on July 29, 2008. *Auction 78 Comment Public Notice* at 5485 ¶ 1.

¹⁰¹ MetroPCS Comments at 15-16; Leap Reply Comments at 2-3.

¹⁰² MetroPCS Comments at 15.

¹⁰³ *Id.* at 15-16.

¹⁰⁴ Leap Reply Comments at 2-3.

¹⁰⁵ See Section IV.A.1. “Simultaneous Multiple Round Auction,” below.

Short-Form Application (FCC Form 175)

Filing Window Deadline	June 19, 2008; prior to 6:00 p.m. ET
Upfront Payments (via wire transfer).....	July 17, 2008; 6:00 p.m. ET
Mock Auction	August 11, 2008
Auction Begins.....	August 13, 2008

5. Requirements for Participation

72. Those wishing to participate in this auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, June 19, 2008, 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, July 17, 2008, following the procedures and instructions set forth in Attachment D to this Public Notice.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

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

A. General Information Regarding Short-Form Applications

73. 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.¹⁰⁶ 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 must file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.¹⁰⁷ Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments, as explained below.¹⁰⁸ In the second phase of the process, winning bidders must file a more comprehensive long-form application (FCC Form 601) and have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.¹⁰⁹

74. Entities seeking licenses available in Auction 78 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on June 19, 2008, following the procedures prescribed in Attachment C to this Public Notice. Applicants filing a short-form application are subject to the Commission's anti-collusion rules beginning on the deadline for filing, as described above. The information provided in its short-form application will be used in determining, among other things, if the applicant is eligible for entrepreneur status and/or for a bidding credit.

75. 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.¹¹⁰ Applicants

¹⁰⁶ 47 C.F.R. § 1.2105.

¹⁰⁷ *Id.*; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

¹⁰⁸ Section III.D. "Upfront Payments – Due July 17, 2008," below.

¹⁰⁹ 47 C.F.R. § 1.2107.

¹¹⁰ 47 C.F.R. § 1.2105(a)(2)(v).

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.

76. An entity may not submit more than one short-form application for a single auction. If a party submits multiple short-form applications, only one application may become qualified to bid.

77. 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. An applicant cannot change the certifying official to its application.¹¹¹ Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

B. License Selection

78. An applicant must select the licenses on which it wants to bid from the "Eligible Licenses" list on its short-form application. To assist applicants in identifying licenses of interest that will be available in Auction 78, the FCC Auction System includes a filtering mechanism that allows an applicant to filter the "Eligible Licenses" list. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may select all the licenses in the customized list or select individual licenses from the list. Applicants also will be able to select licenses from one customized list and then create additional customized lists to select additional licenses.

79. Applicants will not be able to change their license selections after the short-form application filing deadline.¹¹² Applicants interested in participating in Auctions 78 must have selected license(s) available in the respective auction by the short-form application deadline. Applicants must confirm their license selections before the deadline for submitting short-form applications. The FCC Auction System will not accept bids from an applicant on licenses that the applicant has not selected on its short-form application.

C. Disclosure of Bidding Arrangements

80. Applicants will be required to identify in their short-form application 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.¹¹³

81. 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.¹¹⁴ If an applicant has had discussions, but has not reached an agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.¹¹⁵

¹¹¹ 47 C.F.R. § 1.2105(b).

¹¹² 47 C.F.R. § 1.2105(b)(2).

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

¹¹⁴ 47 C.F.R. § 1.2105(a)(2)(ix).

¹¹⁵ Section I.C.2. "Prohibition of Collusion; Compliance with Antitrust Laws," above.

82. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.¹¹⁶ 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.¹¹⁷ 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.¹¹⁸

D. Ownership Disclosure Requirements

83. 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.¹¹⁹ 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 application are prescribed in Sections 1.2105 and 1.2112 of the Commission's rules.¹²⁰ Each applicant is responsible for information submitted in its short-form application being complete and accurate.

84. 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 with an ownership disclosure information report (FCC Form 602) or in a short-form application (FCC Form 175) filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. An applicant is responsible for ensuring that the information submitted in its short-form application for Auction 78 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the Auction 78 deadline for filing the short-form application. If any information that was entered automatically needs to be changed, applicants must do so directly in the short-form application.

E. Designated Entity Provisions

85. Eligible applicants in Auction 78 may claim designated entity status, as an "entrepreneur" eligible to bid on closed C block broadband licenses and/or as a small or very small business eligible for bidding credits. In addition to the information provided below, applicants should review carefully the Commission's recent decisions regarding the designated entity provisions.¹²¹

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

¹¹⁷ Section I.C.2. "Prohibition of Collusion; Compliance with Antitrust Laws," above.

¹¹⁸ *Id.*

¹¹⁹ Section 1.2105 requires the disclosure on the short-form application of the applicant's ownership information set forth in both Sections 1.2105 and 1.2112. 47 C.F.R. §§ 1.2105, 1.2112.

¹²⁰ 47 C.F.R. §§ 1.2105, 1.2112.

¹²¹ *See, e.g.*, Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, FCC 06-4, 21 FCC Rcd 891 (2006) ("*CSEA/Part 1 Report and Order*"); 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*, FCC 06-52, 21 FCC Rcd 4753 (2006) ("*Designated Entity Second Report and Order*"), *recon. pending*; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and (continued....)

1. Entrepreneur Eligibility for Closed Bidding

86. As noted above, nine broadband PCS C block licenses available in Auction 78 (i.e., certain C1, C3, and C4 block licenses) are restricted to entities that qualify as entrepreneurs.

a. Entrepreneur Eligibility Criteria

87. In determining if an entity qualifies as an entrepreneur, the Commission considers both the total assets and gross revenues of the applicant, its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.¹²² Specifically, as of the short-form application filing deadline, the applicant and its attributable interests must have combined total assets of less than \$500 million and must have had combined gross revenues of less than \$125 million in each of the last two years.¹²³

b. Asset and Revenue Disclosure on Short-Form Application

88. An entity applying to bid on closed licenses must disclose on its short-form application the total assets and gross revenues for the preceding two years for each of the following: (1) the applicant; (2) its affiliates; (3) its controlling interests; (4) the affiliates of its controlling interests; and (5) the entities with which it has an attributable material relationship.¹²⁴ Certification that the gross revenues for each of the preceding two years or the total assets do not exceed the applicable limit is not sufficient.

89. Applicants for closed bidding in Auction 78 should not include existing broadband PCS C and F block licenses in their calculations of total assets; all other Commission licenses, however, must be included in such calculations.¹²⁵ Additionally, if an applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.¹²⁶

2. Bidding Credits for Small and Very Small Businesses

90. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction 78, bidding credits will be available to small businesses and very small businesses, and consortia thereof, for all 35 AWS-1 licenses and six broadband PCS licenses – the three C block licenses available in open bidding and the three F block licenses.

a. Bidding Credit Eligibility Criteria

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

(Continued from previous page) _____
Procedures, WT Docket No. 05-211, *Order on Reconsideration of the Second Report and Order*, FCC 07-68, 21 FCC Rcd 6703 (2006) (“*Order on Reconsideration of the Designated Entity Second Report and Order*”).

¹²² See 47 C.F.R. §§ 1.2110(b)(1)(ii), 24.709(a). More detailed information for determining controlling interests, affiliates, and material relationships is provided in Section II.E.3. “Attributable Interests,” below, and in Attachment C.

¹²³ See 47 C.F.R. §§ 1.2110(b)(1)(ii), 24.709(a).

¹²⁴ *Id.*

¹²⁵ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, GN Docket No. 90-314, *Order on Reconsideration*, FCC 00-299, 15 FCC Rcd 17,384, 17,394 ¶ 20 (2000).

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

- A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (“small business”) will receive a 15 percent discount on its winning bid.¹²⁷
- A bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years (“very small business”) will receive a 25 percent discount on its winning bid.¹²⁸

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

93. As noted above, bidding credits for applicants that qualify as small or very small businesses will be available for those C block licenses that are available in open bidding and for all F block licenses.¹²⁹ Bidding credits are not available for C block licenses subject to closed bidding or for broadband PCS licenses in the D or E blocks.¹³⁰

b. Revenue Disclosure on Short-Form Application

94. An entity applying as a small or very small business must provide gross revenues for the preceding three years of each of the following: (1) the applicant; (2) its affiliates; (3) its controlling interests; (4) the affiliates of its controlling interests; and (5) the entities with which it has an attributable material relationship.¹³¹ Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. Additionally, if an applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.¹³²

3. Attributable Interests

a. Controlling Interests

95. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50 percent of an entity’s voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis.¹³³ 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;

¹²⁷ See 47 C.F.R. §§ 1.2110(f)(2)(ii), 24.720(b), 27.1102.

¹²⁸ See 47 C.F.R. §§ 1.2110(f)(2)(i), 24.720(b), 27.1102.

¹²⁹ See 47 C.F.R. §§ 24.712, 24.717.

¹³⁰ See 47 C.F.R. §§ 24.712, 24.717.

¹³¹ 47 C.F.R. §§ 1.2110(b)(1)(i), 1.2110(b)(3)(iv)(B). See also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15,323-27 ¶¶ 59-67.

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

¹³³ For further guidance on the issue of *de facto* control, see the Commission’s affiliation rule at 47 C.F.R. §1.2110(b)(5); see also *Intermountain Microwave, Public Notice*, 12 FCC 2d. 559, 560 (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*, DA 98-1921, 13 FCC Rcd 18,709 (1998).

- the entity plays an integral role in management decisions.¹³⁴

96. Applicants should refer to Section 1.2110(c)(2) of the Commission's rules and Attachment C of this Public Notice to understand how certain interests are calculated in determining control. For example, pursuant to Section 1.2110(c)(2)(ii)(F), officers and directors of an applicant are considered to have controlling interest in the applicant.¹³⁵

b. Affiliates

97. Affiliates of an applicant or controlling interest include an individual or entity that: (1) directly or indirectly controls or has the power to control the applicant; (2) is directly or indirectly controlled by the applicant; (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant; or (4) has an "identity of interest" with the applicant.¹³⁶ 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.¹³⁷ For more information regarding affiliates, applicants should refer to Section 1.2110(c)(5) and Attachment C to this Public Notice.

c. Material Relationships

98. The Commission requires the consideration of certain leasing and resale (including wholesale) relationships – referred to as "material relationships" – in determining designated entity eligibility, i.e., for bidding credits and entrepreneur status. Material relationships fall into two categories: impermissible and attributable.

99. An applicant or licensee has an "impermissible material relationship" when it has agreements with one or more other entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any of its licenses. If an applicant or a licensee has an impermissible material relationship, it is, as a result, (i) ineligible for the award of designated entity benefits, and (ii) subject to unjust enrichment on a license-by-license basis.¹³⁸

100. An applicant or licensee has an "attributable material relationship" when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues and, if applicable, total assets of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (i) eligibility for designated entity benefits and (ii) liability for unjust enrichment on a license-by-license basis.¹³⁹

101. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity's ongoing eligibility for benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships

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

¹³⁵ 47 C.F.R. § 1.2110(c)(2)(ii)(F).

¹³⁶ 47 C.F.R. § 1.2110(c)(5).

¹³⁷ *Id.*

¹³⁸ *Designated Entity Second Report and Order*, 21 FCC Rcd at 4759-60 ¶ 15, 4763-65 ¶¶ 25-30, 4765-68 ¶¶ 31-41; see also *Order on Reconsideration of the Designated Entity Second Report and Order*, 21 FCC Rcd at 6712-13 ¶¶ 24-26; and 47 C.F.R. §§ 1.2110(b)(3)(iv)(A), 1.2111(d).

¹³⁹ *Designated Entity Second Report and Order*, 21 FCC Rcd at 4759-60 ¶ 15, 4763-65 ¶¶ 25-30, 4765-68 ¶¶ 31-41; see also *Order on Reconsideration of the Designated Entity Second Report and Order*, 21 FCC Rcd at 6712-13 ¶¶ 24-26; and 47 C.F.R. §§ 1.2110(b)(3)(iv)(B), 1.2111(d).

for determinations of an applicant's or licensee's designated entity eligibility for future auctions or in the context of future assignments, transfers of control, spectrum leases, or other reportable eligibility events. Rather, the occurrence of any of those eligibility events after the release date of the *Designated Entity Second Report and Order* triggers a reexamination of the applicant's or licensee's designated entity eligibility, taking into account all existing material relationships, including those previously grandfathered.¹⁴⁰

d. Gross Revenue Exceptions

102. In recent years the Commission has also made other modifications to its rules governing the attribution of gross revenues for purposes of determining designated entity eligibility. For example, the Commission has clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant.¹⁴¹

103. The Commission has also exempted, from attribution to the applicant, the gross revenues of the affiliates of a rural telephone cooperative's officers and directors if certain conditions specified in Section 1.2110(b)(3)(iii) of the Commission's rules are met.¹⁴² An applicant claiming this exemption must provide in an attachment an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of Section 1.2110(b)(3)(iii) and supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.¹⁴³ Applicants seeking to claim this exemption must meet all of the conditions.¹⁴⁴ Additional guidance on claiming this exemption may be found in Attachment C to this Public Notice.

e. Bidding Consortia

104. A consortium of small businesses, very small businesses, or entrepreneurs is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business, very small business, or entrepreneur.¹⁴⁵ Thus, each member of a consortium of small businesses, very small businesses, or entrepreneurs that applies to participate in Auction 78 must individually meet the criteria for small businesses, very small businesses, or

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

¹⁴¹ See 47 C.F.R. § 1.2110(c)(2)(ii)(F). See also *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd at 10,185-86 ¶¶ 8-9. However, to the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant.

¹⁴² *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd at 10,186-94 ¶¶ 10-18; Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Fifth Report and Order*, FCC 04-295, 20 FCC Rcd 1942, 1945-46 ¶ 9 (2004) (“*Second Order on Reconsideration of the Fifth Report and Order*”).

¹⁴³ 47 C.F.R. § 1.2110(b)(3)(iii). See also 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 1949 ¶ 18.

¹⁴⁴ See *Order on Reconsideration of the Part 1 Fifth Report and Order*, 18 FCC Rcd at 10,186-94 ¶¶ 10-18; see also *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd at 1945-46 ¶ 9.

¹⁴⁵ 47 C.F.R. § 1.2110(c)(6).

entrepreneurs, as set forth above.¹⁴⁶ Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business or very small business,¹⁴⁷ this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.¹⁴⁸

4. Installment Payments

105. Installment payment plans will not be available for licenses offered in Auction 78.

F. Tribal Lands Bidding Credit

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

G. Provisions Regarding Former and Current Defaulters

107. Current defaulters are not eligible to participate in Auction 78, but former defaulters can participate so long as they are otherwise qualified and, as discussed in Section III.D.3. below, make upfront payments that are fifty percent more than the normal upfront payment amounts.¹⁴⁹ An applicant is considered a "current defaulter" when it, its affiliates, its controlling interests, or the affiliates of its controlling interests, are in default on any payment for any Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for short-form applications. An applicant is considered a "former defaulter" when it, its affiliates, its controlling interests, or the affiliates of its controlling interests, have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but have since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

108. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110 of the Commission's rules,¹⁵⁰ 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.¹⁵¹ Each applicant must also state under penalty of perjury whether or not it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any

¹⁴⁶ *Id.*

¹⁴⁷ 47 C.F.R. § 1.2110(b)(3)(i).

¹⁴⁸ The *CSEA/Part 1 Report and Order* modified the procedure by which a consortium that is a winning bidder will apply for a license. See *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 911-12 ¶¶ 51-52. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* and 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.

¹⁴⁹ 47 C.F.R. §§ 1.2105(a)(2)(x), 1.2105(b)(1), and 1.2106(a); see *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15,317 ¶ 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.").

¹⁵⁰ 47 C.F.R. § 1.2110.

¹⁵¹ 47 C.F.R. § 1.2105(a)(2)(x); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15,317 ¶ 42.

Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency.¹⁵² Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application to participate in an FCC auction.

109. 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.¹⁵³ 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.¹⁵⁴ 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.¹⁵⁵ Parties are also encouraged to coordinate with the Commission's Office of Managing Director or the Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

110. 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.¹⁵⁶ 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.¹⁵⁷ 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.

111. 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

¹⁵² 47 C.F.R. § 1.2105(a)(2)(xi); *see also Part 1 Fifth Report and Order*, 15 FCC Rcd at 15,317 ¶ 42 and n.149. above.

¹⁵³ "WTB Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements," *Public Notice*, DA 04-3491, 19 FCC Rcd 21,920 (2004) ("*Auction Default Disclosure Public Notice*"). This public notice (Report No. AUC-04-58-E) may be found at <http://wireless.fcc.gov/auctions/58/>.

¹⁵⁴ Letter to Cheryl A. Tritt, Esq., Morrison and Foerster, LLP, from Margaret Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 04-3685, 19 FCC Rcd 22,907 (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/>.

¹⁵⁵ 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.

¹⁵⁶ Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, FCC 04-72, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)) ("*Debt Collection Report and Order*").

¹⁵⁷ *Debt Collection Report and Order*, 19 FCC Rcd at 6541 n.11 (specifically mentions 47 C.F.R. §§ 1.2105(a)(2)(x) and (xi)).

auction applicant's ability to comply with the default and delinquency disclosure requirements of Section 1.2105.¹⁵⁸ Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's "red light" status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

H. Optional Applicant Status Identification

112. Applicants owned by members of minority groups and/or women, as defined in Section 1.2110(c)(3),¹⁵⁹ and rural telephone companies, as defined in Section 1.2110(c)(4),¹⁶⁰ 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.¹⁶¹

I. Minor Modifications to Short-Form Applications

113. Applicants are not permitted to make major modifications to their short-form applications (e.g., change their license selections, change control of the applicant, change the certifying official, or change their size to claim eligibility for a higher bidding credit) after the short-form application deadline.¹⁶² Thus, any change in control of an applicant, resulting from a merger for example, will be considered a major modification to the applicant's short-form application, which will consequently be dismissed.¹⁶³

114. Applicants are, however, permitted to make only minor changes to their short-form applications after the filing deadline. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

115. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible. Applicants are reminded to click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

116. An applicant cannot update its short-form application using the FCC Auction System outside of the initial and resubmission filing windows. In that case, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form applications in ISAS as soon as possible. Moreover, after the filing window has closed, ISAS will not permit applicants to make certain changes, such as legal classification and bidding credit.

117. Any letter describing changes to an applicant's short-form application should be submitted by e-mail to the following address: auCTION78@fcc.gov. The e-mail summarizing the changes

¹⁵⁸ *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21,920 (addressing relationship between Commission's Red Light Display System and short-form application default and delinquency disclosure requirements for auction applicants).

¹⁵⁹ 47 C.F.R. § 1.2110(c)(3).

¹⁶⁰ 47 C.F.R. § 1.2110(c)(4).

¹⁶¹ 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).

¹⁶² 47 C.F.R. § 1.2105(b).

¹⁶³ We reiterate that, even if an applicant's short-form application is dismissed, the applicant would remain subject to the anti-collusion rule until the down-payment deadline, which will be established after the auction closes.

must include a subject or caption referring to Auction 78 and the name of the applicant – for example, “RE: Changes to Auction 78 Short-Form Application of ABC Corp.” The Bureau requests that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

118. Applicants must not submit application-specific material through the Commission’s Electronic Comment Filing System (“ECFS”). Further, as discussed above, parties submitting information related to their applications should use caution to ensure that information contained in their submissions do not contain confidential information or communicate information that would violate the Commission’s anti-collusion rule or limited information procedures adopted for Auction 78.¹⁶⁴ A party seeking to submit information that might reflect non-public information, such as an applicant’s license selections, upfront payment amount or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the anti-collusion period.

J. Maintaining Current Information in Short-Form Applications

119. 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.¹⁶⁵ Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. If an amendment reporting substantial changes is a “major amendment,” as defined by Section 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.¹⁶⁶

120. As noted above, after the short-form filing deadline, applicants may make only minor changes to their short-form applications. 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 e-mail at the following address: auction78@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 78 and the name of the applicant. The Bureau requests that parties format any attachments to e-mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Applicants must not submit application-specific material through ECFS. A party seeking to submit information that might reflect non-public information, such as an applicant’s license selections, upfront payment amount or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the anti-collusion period.

III. PRE-AUCTION PROCEDURES

A. Auction Seminar – June 10, 2008

121. On Tuesday, June 10, 2008, the Commission will conduct a seminar for parties interested in participating in Auction 78 at FCC headquarters, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing short-form applications, auction conduct, the FCC Auction System, auction rules, and AWS-1 and broadband PCS 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.

¹⁶⁴ See Section I.C.2.g. “Duty to Report Prohibited Communications; Reporting Procedure,” above.

¹⁶⁵ 47 C.F.R. § 1.65.

¹⁶⁶ 47 C.F.R. § 1.2105(b)(2).

122. To register, please provide the information listed on Attachment G by fax, e-mail or telephone to the FCC by Friday, June 6, 2008. The seminar is free of charge.

123. For individuals who are unable to attend, an Audio/Video webcast of this seminar will be available from the FCC's Auction 78 web page at <http://wireless.fcc.gov/auctions/78/>. Select the "Auction Seminar" link. The seminar webcast will be archived for future viewing.

B. Short-Form Applications – Due Prior to 6:00 p.m. ET on June 19, 2008

124. 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 a short-form application (FCC Form 175) electronically via the FCC Auction System.¹⁶⁷ This application must be received at the Commission prior to 6:00 p.m. ET on June 19, 2008. **Late applications will not be accepted.** There is no application fee required when filing a FCC Form 175, but an applicant must submit an upfront payment to be eligible to bid.¹⁶⁸

125. Applications may generally be filed at any time beginning at noon ET on June 10, 2008, until the filing window closes at 6:00 p.m. ET on June 19, 2008. 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 June 19, 2008.

126. An applicant must always click on the SUBMIT button on the "Certify & Submit" screen to successfully submit its short-form application and any modifications, otherwise the application or changes to the application will not be reviewed. 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

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

128. As described above, after the June 19, 2008, short-form filing deadline, applicants may make only minor corrections to their applications.¹⁶⁹ 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).¹⁷⁰

129. Applicants should be aware the Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that

¹⁶⁷ 47 C.F.R. § 1.2105(a).

¹⁶⁸ See Section III.D. "Upfront Payments – Due July 17, 2008," below.

¹⁶⁹ See Section II.I. "Minor Modifications to Short-Form Applications," above.

¹⁷⁰ 47 C.F.R. § 1.2105(b); see also Two Way Radio of Carolina, Inc., *Memorandum Opinion and Order*, FCC 99-189, 14 FCC Rcd 12,035 (1999).

applicant's counsel or other representative is authorized to speak on its behalf.¹⁷¹ Authorizations may be submitted by e-mail at the following address: auction78@fcc.gov.

D. Upfront Payments – Due July 17, 2008

130. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to 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 July 17, 2008.

1. Making Upfront Payments by Wire Transfer

131. Wire transfer payments must be received by 6:00 p.m. ET on July 17, 2008.¹⁷² No other payment method is acceptable.¹⁷³ To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh
500 Ross St.
Pittsburgh, PA 15262

BENEFICIARY: FCC/Account # 910-1174

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

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

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "A78U")

FCC CODE 1: (same as FCC Form 159, block 28A: "78")

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

LOCKBOX NO. # 358405

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

132. An applicant must fax a completed FCC Form 159 (Revised 7/05) to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the fax cover sheet, applicants should write "Wire Transfer – Auction Payment for Auction 78." 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.¹⁷⁴ **The applicant is responsible for obtaining**

¹⁷¹ In no event, however, will the FCC send registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175. See Section III.E. "Auction Registration," below.

¹⁷² An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the Commission's auction payment lockbox bank, the 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>.

¹⁷³ The Commission will not accept checks, credit cards, or ACH payments.

¹⁷⁴ Letter to Patrick Shannon, Counsel for Lynch 3G Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, DA 03-1944, 18 FCC Rcd 11,552 (2003).

confirmation from its financial institution that Mellon Bank has timely received its upfront payment and deposited it in the proper account.

133. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 78 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 July 17, 2008, deadline will result in dismissal of the application and disqualification from participation in the auction.

2. FCC Form 159

134. A completed FCC Remittance Advice Form (FCC Form 159, Revised 7/05) must be faxed to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 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 short-form application. Payors using the 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 by fax.

3. Upfront Payments and Bidding Eligibility

135. The Commission has delegated to the Bureau the authority and discretion to determine appropriate upfront payments for each auction.¹⁷⁵ Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction.

136. Applicants that are former defaulters, as described above, must pay upfront payments 50 percent greater than non-former defaulters.¹⁷⁶ 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.¹⁷⁷

137. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. The Bureau proposed, in the *Auction 78 Comment Public Notice*, 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.¹⁷⁸ Under the Bureau’s proposal, in order to bid on a particular license, a qualified bidder must have selected the license(s) on its short-form application and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. **At a minimum, therefore, an applicant’s total upfront payment must be**

¹⁷⁵ 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*”).

¹⁷⁶ *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15,316-17 ¶¶ 40-42; see also 47 C.F.R. § 1.2106(a); Section II.G. “Provisions Regarding Former and Current Defaulters,” above.

¹⁷⁷ 47 C.F.R. § 1.2110(c).

¹⁷⁸ *Auction 78 Comment Public Notice* at 5494 ¶ 32.

enough to establish eligibility to bid on at least one of the licenses selected on its short-form application, 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 short-form application, but only enough 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.¹⁷⁹

138. In the *Auction 78 Comment Public Notice*, the Bureau proposed to calculate upfront payments for Auction 78 on a license-by-license basis using the following formulas based on bandwidth and license area population, with a minimum of \$500 per license.¹⁸⁰ The Bureau also proposed to use upfront payment formulas similar to those used in the most recent auctions for AWS-1 licenses (Auction 66)¹⁸¹ and broadband PCS licenses (Auction 71).¹⁸²

a. AWS-1

139. For AWS-1 licenses offered in Auction 78, the Bureau proposed upfront payments as follows:

- For licenses covering CMAs or EAs in the 50 states, upfront payment amounts will be calculated as \$0.03 per MHz per population (MHz-pop);
- For the REAG that covers the Gulf of Mexico, the upfront payment amount will be \$20,000; and
- For all remaining licenses, upfront payment amounts will be calculated as \$0.01/MHz-pop.

b. Broadband PCS

140. For broadband PCS licenses offered in Auction 78, the Bureau proposed upfront payments as follows:

- For licenses covering BTAs in the 50 states, upfront payment amounts will be calculated as \$0.03/MHz-pop; and
- For all remaining licenses, upfront payment amounts will be calculated as \$0.01/MHz-pop.

141. The Bureau set forth the specific proposed upfront payments and bidding units for each license in Attachment A of the *Auction 78 Comment Public Notice* and sought comment on this proposal. The Bureau did not receive any comments in response to the proposed upfront payments, or on its proposal that the upfront payment amount would determine a bidder's initial bidding eligibility. Therefore, we adopt the upfront payments and bidding units we proposed for each license in Auction 78, which are set forth in Attachment A of this Public Notice.¹⁸³

142. 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)

¹⁷⁹ 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.

¹⁸⁰ The exception to the bandwidth and population formulas is the AWS-1 license covering the Gulf of Mexico. See paragraph 139, below. 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.

¹⁸¹ See *Auction 66 Procedures Public Notice*, 21 FCC Rcd at 4594-97 ¶¶ 109-121.

¹⁸² See *Auction 71 Procedures Public Notice*, 22 FCC Rcd at 460 ¶ 93.

¹⁸³ The bandwidth/population formula 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.

in any single round, and submit an upfront payment amount covering that number of bidding units.¹⁸⁴ 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			
License	Market Name	Bidding Units	Upfront Payment
AW-CMA207-A	Jackson, MI	95,000	\$95,000
AW-CMA258-A	Jacksonville, NC	90,000	\$90,000

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 185,000 bidding units (95,000 + 90,000). If a bidder only wishes to bid on one, but not both, purchasing 95,000 bidding units would meet the eligibility requirement for either license. The bidder would be able to bid on either license, but not both at the same time. If the bidder purchased only 90,000 bidding units, it would have enough eligibility for the North Carolina license but not for the Michigan license.

143. If an applicant is a former defaulter, it must calculate its upfront payment for all licenses by multiplying the number of bidding units on which it wishes to be active by 1.5.¹⁸⁵ 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

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

Name of Bank
 ABA Number
 Address of Bank
 Contact and Phone Number
 Account Number to Credit

¹⁸⁴ A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of licenses selected on its short-form application. In some cases a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission license or delinquent on non-tax debt owed to a Federal agency (see 47 C.F.R. § 1.2106(a)), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the licenses it selected on its short-form application.

¹⁸⁵ 47 C.F.R. § 1.2106(a).

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

E. Auction Registration

145. Approximately ten days before the auction, the Bureau will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants with submitted short-form applications that are deemed complete and upfront payments that are sufficient to make them eligible to bid.

146. 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 short-form application 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.

147. 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, August 7, 2008, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

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

149. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference – electronic or telephonic – on its short-form application. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. **For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the “Integrated Spectrum Auction System (ISAS) Bidder’s Guide” are only mailed to the contact person at the contact address listed on the short-form application.** Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 78.

150. 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 – August 11, 2008

151. All qualified bidders will be eligible to participate in a mock auction on Monday, August 11, 2008. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. AUCTION EVENT

152. The first round of bidding for Auction 78 will begin on Wednesday, August 13, 2008. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is to be released approximately 10 days before the start of the auction.

A. Auction Structure

1. Simultaneous Multiple Round Auction

153. In the *Auction 78 Comment Public Notice*, the Bureau proposed to auction all licenses in Auction 78 in a single auction using the Commission's standard simultaneous multiple-round ("SMR") auction format.¹⁸⁶ 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.

154. The Bureau also sought comment on using some form of package bidding design for Auction 78.¹⁸⁷ MetroPCS supported the Bureau's recommendation to not employ package bidding for this auction, arguing that the Auction 78 licenses have "no readily identifiable inter-relationships or inter-dependencies with each other."¹⁸⁸ We agree and continue to believe that a package bidding design is not likely to offer significant advantages to bidders in Auction 78. Given the nature of the auction inventory, we conclude that the standard SMR auction format will best meet the needs of bidders in Auction 78. Therefore, we adopt our proposal to use a SMR 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, allowing bidders to take advantage of synergies that exist among licenses.

2. Information Available to Bidders Before and During the Auction

155. In the *Auction 78 Comment Public Notice*, the Bureau proposed to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications, (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. The Bureau proposed to withhold this information irrespective of any pre-auction measurement of likely auction competition.¹⁸⁹

156. MetroPCS and Leap urge the Commission to not adopt anonymous bidding for Auction 78. Both assert that anonymous bidding deprives small to mid-size bidders of valuable information, which in turn reduces the level of participation in the auction and ultimately depresses revenues.¹⁹⁰ MetroPCS argues that knowing who is bidding during an auction helps bidders determine the value of the licenses, assess whether or not equipment for build-out will be available, and estimate the potential for negotiating roaming agreements – all of which can help small to mid-size bidders acquire favorable financing.¹⁹¹ Leap also adds that disclosure of bids and bidders during an auction can help bidders estimate possible signal interference.¹⁹²

¹⁸⁶ *Auction 78 Comment Public Notice* at 5492 ¶ 22.

¹⁸⁷ *Id.* at 5492 ¶ 23.

¹⁸⁸ MetroPCS Comments at 12-13

¹⁸⁹ *Auction 78 Comment Public Notice* at 5491-92 ¶¶ 16-21.

¹⁹⁰ MetroPCS Comments at 7; Leap Reply Comments at 2.

¹⁹¹ MetroPCS Comments at 8-9.

¹⁹² Leap Reply Comments at 2.

157. We disagree with the commenters that the “results of Auction 73 demonstrate the harms of withholding bidding information were significant to the point where the balance has shifted in favor of disclosing bidder information in Auction 78.”¹⁹³ While the Commission has previously acknowledged that revealing bidder identities may provide useful information to some bidders, there is no evidence apart from MetroPCS’s conclusory statement that any class of bidders in Auction 73 suffered a competitive disadvantage due to the use of limited information procedures. We believe that the overall competitive benefits of limited information procedures in Auction 73 – from reduced opportunities for bid signaling, retaliatory bidding, or other anti-competitive strategic bidding – far outweigh the disadvantages alleged by MetroPCS.¹⁹⁴

158. We also note that MetroPCS’s allegations regarding Auction 73 would not necessarily apply to Auction 78, given the differences between the two auctions. The licenses being offered in Auction 78 are very different from those offered in Auction 73 in terms of the numbers of licenses, amount of spectrum, adjacencies, and the nature of the services. Auction 78 is offering licenses in discrete locations for which adjacent neighbors are already known. In many cases, information on the technologies and services in adjacent license areas may also be available. We conclude that the pro-competitive benefits of using limited information procedures far outweigh the potential value of revealing bidder identities during this auction of PCS and AWS licenses.

159. More generally, while well-prepared FCC auction participants likely will utilize all information available to them when calculating license values, including, in some cases, information revealed during the auction, we do not believe that knowing bidder identities and other bidder-related information during the auction process is an essential prerequisite to confident bidding and successful auction participation. As we note in this and other auction public notices, we expect bidders to conduct careful pre-auction due diligence before bidding on a license.¹⁹⁵ There is an increasing amount of external market data available on spectrum license values, as more and more licenses have been auctioned and others traded in secondary transactions, which should help auction participants and their financial backers determine their willingness to pay for licenses. Hence, we are not persuaded that disclosure of bidder identity information during the auction is necessary to facilitate bidder license evaluation in Auction 78.

160. Therefore, we adopt the limited information procedures proposed in the *Auction 78 Comment Public Notice*.¹⁹⁶ Thus, after the conclusion of each round, we will disclose all relevant information about the bids placed and/or withdrawn except the identities of the bidders performing the actions and the net amounts of the bids placed or withdrawn. As in past auctions conducted with limited information procedures, we will indicate, for each license, the minimum acceptable bid amount for the next round and whether the license has a provisionally winning bid. After each round, we will also release, for each license, the number of bidders that placed a bid on the license. Furthermore, we will indicate whether any proactive waivers were submitted in each round, and we will release the stage transition percentage – the percentages of licenses (as measured in bidding units) on which there were new bids – for the round. In addition, bidders can log in to the FCC Auction System to see, after each round, whether their own bids are provisionally winning. We will provide descriptions and/or samples of publicly-available and bidder-specific (non-public) results files prior to the start of the auction.

¹⁹³ MetroPCS Comments at 8; Leap Comments at 2.

¹⁹⁴ MetroPCS Comments at 7-9.

¹⁹⁵ As Congress has recognized, potential bidders should carefully develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services as they prepare for an auction. *See* 47 U.S.C. § 309(j)(3)(E).

¹⁹⁶ *Auction 78 Comment Public Notice* at 5491-92 ¶¶ 16-21.

161. *Other Issues.* Information disclosure procedures established for this auction will not interfere with the administration of or compliance with the Commission’s anti-collusion rule. Section 1.2105(c)(1) of the Commission’s rules provides that after the short-form application filing deadline, all applicants for licenses in any of the same or overlapping geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions.¹⁹⁷

162. In Auction 78, the Commission will not disclose information regarding license selection or the amounts of bidders’ upfront payments and bidding eligibility. As in the past, the Commission will disclose the other portions of applicants’ short-form applications through its online database, and certain application-based information through public notices.

163. To assist applicants in identifying other parties subject to the anti-collusion rule, the Bureau will notify separately each applicant that has filed a short-form application to participate in a pending auction whether applicants in Auction 78 have applied for licenses in any of the same or overlapping geographic areas as the applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 78, it will send to each applicant in Auction 78 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same or overlapping geographic areas. The list will identify the other applicants by name but will not list their license selections. As in past auctions, additional information regarding other applicants that is needed to comply with Section 1.2105(c) – such as the identities of other applicants’ controlling interests and entities with a greater than ten percent ownership interest – will be available through the publicly accessible online short-form application database.¹⁹⁸

164. When completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission’s anti-collusion rule, particularly in light of the Commission’s procedures regarding the availability of certain information in Auction 78. While applicants’ license selection will not be disclosed until after Auction 78 closes, the Commission will disclose other portions of short-form applications through its online database and public notices. Accordingly, applicants should avoid including any information in their short-form applications that might convey information regarding license selections. For example, applicants should avoid using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants’ license selections.

165. If an applicant is found to have violated the Commission’s rules or antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.¹⁹⁹ MetroPCS advocates a “safe-harbor” for auction-related statements made by bidders in filings with the U.S. Securities and Exchange Commission (“SEC”). MetroPCS suggests that creating this safe harbor would avoid a potential conflict between a bidder’s attempt to comply with the Commission’s anonymous bidding procedures and SEC disclosure regulations.²⁰⁰

166. We decline to create blanket immunity for statements filed with the SEC because that would violate the intent of the limited information procedures that we adopt for Auction 78. MetroPCS

¹⁹⁷ 47 C.F.R. § 1.2105(c)(1).

¹⁹⁸ For purposes of the anti-collusion rule, 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).

¹⁹⁹ 47 C.F.R. § 1.2109(d).

²⁰⁰ MetroPCS Comments at 9-10.

has not persuaded us that the Commission's anonymous bidding procedures are "irreconcilable" with SEC reporting requirements.²⁰¹ We continue to believe that premature disclosure of the identities of successful bidders in Auction 78, whether to financial institutions, vendors, or others, would undermine the purposes of our limited information procedures. Therefore, we decline to create an exception to our limited information procedures as advocated by MetroPCS. We hereby warn applicants that the direct or indirect communication to other applicants or the public disclosure of non-public information, (e.g., bid withdrawals, proactive waivers submitted, reductions in eligibility) could violate the Commission's anonymous bidding procedures and the anti-collusion rule.²⁰² **To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the Securities and Exchange Commission, the Bureau strongly urges that the applicant consult with the Commission before making such disclosure.**

3. Eligibility and Activity Rules

167. As discussed above, we will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 78.²⁰³ 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 short-form application as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its short-form application. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

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

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

170. 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 78. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any

²⁰¹ *Id.* at 9.

²⁰² We note that we also warned bidders that such disclosures could violate our rules prior to then upcoming auction of 700 MHz Band Licenses. *See* "Wireless Telecommunications Bureau Reminds 700 MHz Auction Applicants of Confidential Nature of Upfront Payment and Other Bidding-Related Information," *Public Notice*, DA 08-13, 23 FCC Rcd 18 (2008).

²⁰³ *See* Section III.D.3. "Upfront Payments and Bidding Eligibility," above.

remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.²⁰⁴

4. Auction Stages

171. In the *Auction 78 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule.²⁰⁵ Under the Bureau's proposal a bidder desiring to maintain its current bidding eligibility would be required to be active on licenses representing at least 80 percent of its current bidding eligibility, during each round of Stage One, and at least 95 percent of its current bidding eligibility in Stage Two. The Commission received no comments on this proposal.

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

173. **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).

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

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

175. Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, we adopt them for Auction 78.

5. Stage Transitions

176. In the *Auction 78 Comment Public Notice*, the Bureau proposed that it would advance the auction to the next stage (i.e., from Stage One to Stage Two) after considering a variety of measures of auction activity, including, but not limited to, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue.²⁰⁶ The Bureau further

²⁰⁴ See Section IV.A.6. "Activity Rule Waivers," below.

²⁰⁵ *Auction 78 Comment Public Notice* at 5495-96 ¶¶ 40-43.

²⁰⁶ *Id.* at 5495-96 ¶¶ 41-42.

proposed that it would retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent. The Bureau proposed to alert bidders of stage advancements by announcement during the auction. The Bureau received no comments on this issue.

177. We adopt our proposal for stage transitions. Thus, the auction will start in Stage One.²⁰⁷ The Bureau will regulate the pace of the auction by announcement. The Bureau retains the discretion to transition the auction to Stage Two, to add an additional stage with a higher activity requirement, not to transition to Stage Two, and to transition to Stage Two with an activity requirement that is higher or lower than 95 percent. This determination will be based on a variety of measures of auction activity, including, but not limited to, the number of new bids and the percentages of licenses (as measured in bidding units) on which there are new bids.²⁰⁸

6. Activity Rule Waivers

178. In the *Auction 78 Comment Public Notice*, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers.²⁰⁹ MetroPCS supported the proposal without further comment.²¹⁰

179. Therefore, we adopt our proposal to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity rule waivers can be either applied proactively by the bidder (a "proactive waiver") or applied automatically by the FCC Auction System (an "automatic waiver") and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

180. 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.

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

²⁰⁷ 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.

²⁰⁸ When monitoring activity for determining when to change stages, we may consider the percentage of bidding units of the licenses receiving new provisionally winning bids, excluding any FCC-held licenses. In past auctions, the Bureau has generally changed stages when this measure was approximately twenty percent or below for three consecutive rounds of bidding.

²⁰⁹ *Auction 78 Comment Public Notice* at 5497 ¶ 48.

²¹⁰ MetroPCS Comments at 13.

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

7. Auction Stopping Rules

183. For Auction 78, the Bureau proposed to employ a simultaneous stopping rule approach.²¹¹ 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.

184. The Bureau also sought comment on alternative versions of the simultaneous stopping rule for Auction 78:

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

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

Option 3. The auction would remain open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

185. The Bureau proposed to exercise these options only in circumstances such as where the auction is proceeding unusually slowly or quickly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time or will close prematurely.²¹² The Bureau noted that before exercising these options, it is likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids.²¹³

8. Auction Delay, Suspension, or Cancellation

186. In the *Auction 78 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or

²¹¹ *Auction 78 Comment Public Notice* at 5492-93 ¶¶ 27-29.

²¹² *Id.* at 5493 ¶ 29.

²¹³ *Id.*

unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.²¹⁴ The Bureau received no comment on this issue.

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

B. Bidding Procedures

1. Round Structure

188. 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.

189. 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

190. 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.²¹⁵ 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.²¹⁶ 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.²¹⁷ The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.²¹⁸

²¹⁴ *Id.* at 5493 ¶ 30.

²¹⁵ 47 U.S.C. § 309(j)(4)(F).

²¹⁶ Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, FCC 97-413, 13 FCC Rcd 375, 455-56 ¶ 141 (1997) (“*Part 1 Third Report and Order*”).

²¹⁷ *Id.*

²¹⁸ *Id.*

a. Reserve Prices

191. In the *Auction 78 Comment Public Notice*, the Bureau recommended that no reserve price be imposed in Auction 78, noting that when the PCS licenses were offered initially there was no reserve price and that the reserve price for AWS licenses was met in Auction 66. MetroPCS agrees with the Bureau's proposal.²¹⁹ We adopt our proposal not to establish a reserve price in Auction 78.

b. Minimum Opening Bids

192. The Bureau proposed in the *Auction 78 Comment Public Notice* to establish minimum opening bids for each license, while retaining discretion to lower the minimum opening bids.²²⁰ Specifically, for Auction 78, the Bureau proposed to calculate minimum opening bid on a license-by-license basis.²²¹

(i) AWS-1

193. For AWS-1 licenses offered in Auction 78, the Bureau proposed minimum opening bids as follows:

- For licenses covering CMAs or EAs in the 50 states, minimum opening bid amounts will be calculated as \$0.03/MHz-pop;
- For the REAG that covers the Gulf of Mexico, the minimum opening bid amount will be \$20,000; and
- For all remaining licenses, minimum opening bid amounts will be calculated as \$0.01/MHz-pop.

(ii) Broadband PCS

194. For broadband PCS licenses offered in Auction 78, the Bureau proposed minimum opening bids as follows:

- For licenses covering BTAs in the 50 states, minimum opening bid amounts will be calculated as \$0.03/MHz-pop; and
- For all remaining licenses, minimum opening bid amounts will be calculated as \$0.01/MHz-pop.

195. For all licenses, the results of the above calculations are subject to a minimum of \$500 per license and are rounded using our standard rounding procedure.²²² The Bureau sought comment on this proposal and, in the alternative, on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bids.²²³

196. The Commission did not receive any comments addressing the proposed minimum opening bid amounts or the formula proposed to calculate them. Accordingly, we adopt the proposed minimum opening bids and formulas, with a minimum of \$500 per license.

197. The Commission did not receive any comments addressing the proposal that the Bureau retains the discretion to reduce minimum opening bid amounts. We therefore adopt this proposal, noting

²¹⁹ MetroPCS Comments at 13-14.

²²⁰ *Auction 78 Comment Public Notice* at 5498-99 ¶¶ 53-61.

²²¹ 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.

²²² 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.

²²³ *Auction 78 Comment Public Notice* at 5499 ¶ 60.

that the Bureau retains the discretion to reduce the minimum opening bid amounts. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, i.e., before bidders lose all activity waivers. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid amount on specific licenses.

198. The specific minimum opening bid amounts for each license available in Auction 78 calculated pursuant to the procedure describe above are set forth in Attachment A.

3. Bid Amounts

199. In the *Auction 78 Comment Public Notice*, the Bureau proposed that in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts.²²⁴ Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license.²²⁵ The Commission received no comment on this issue. Based on the Commission's experience in prior auctions, we adopt the proposals for Auction 78.

a. Minimum Acceptable Bids

200. Under our proposed procedures, the first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula described below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.²²⁶

201. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the "additional percentage") is calculated at the end of each round, based on an activity index. The activity index is a weighted average of (a) the number of distinct bidders placing a bid on the license, and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round.²²⁷ The additional percentage is determined by adding one to the activity index, and multiplying that sum by a minimum percentage, with the result not to exceed a maximum percentage. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round.

202. The Bureau proposed initially to set the weighting factor at 0.5, the minimum percentage (floor) at 0.1 (10%), and the maximum percentage (ceiling) at 0.2 (20%). At these initial settings, the minimum acceptable bid for a license will generally be between ten percent and twenty percent higher

²²⁴ Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3 "Upfront Payments and Bidding Eligibility," above.

²²⁵ 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.

²²⁶ See Section IV.B.5. "Bid Removal and Bid Withdrawal," below.

²²⁷ 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.

than the provisionally winning bid, depending upon the bidding activity for the license.²²⁸ Equations and examples are shown in Attachment E.

b. Additional Bid Amounts

203. Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage – more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage. If, for example, the bid increment percentage is five percent, the calculation of the first additional acceptable amount is (minimum acceptable bid amount) * (1 + 0.05), or (minimum acceptable bid amount) * 1.05; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, or (minimum acceptable bid amount) * 1.1, etc. The Bureau will round the results of these calculations and the minimum acceptable bid calculations using the Bureau’s standard rounding procedures.

204. For Auction 78, we proposed to set the bid increment percentage at 0.05, so that any additional bid amounts above the minimum acceptable bid would each be 5 percent higher. We received no comments on this proposal. Therefore, we adopt our proposal to begin the auction with a bid increment percentage of 0.05.²²⁹

205. We also sought comment on whether we should start Auction 78 with no additional bid amounts or eight additional bid amounts (for a total of nine bid amounts) per license. MetroPCS recommends starting with eight additional bid amounts, arguing that this would allow bidders to bid closer to their valuation of the spectrum, which, in turn, increases the chance that the licenses will be awarded to those who value them the most.²³⁰

206. Auction 78 will begin with eight additional bid amounts per license.²³¹ We are not persuaded that these additional bid amounts are necessary to provide bidders with adequate ability to express their valuations. Our experience with past auctions conducted without anonymous bidding procedures indicates that bidders rarely use multiple increment bids as the commenters suggest – to express their final valuations more precisely – but more frequently use jump bids as a means of signaling other bidders. However, given the limited nature of the inventory of licenses offered in Auction 78 and the use of anonymous bidding, we are not particularly concerned that the additional bid amounts will effectively be used for signaling in this auction.

c. Cap on Increases in Bid Amounts

207. The Bureau also sought comment on whether we should cap (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. No commenters addressed this question.

208. We will start the auction with a cap of \$1 million. This will limit the amount by which minimum acceptable bids and additional bid amounts may increase. Given the inventory of Auction 78,

²²⁸ 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. Also, when a cap on increases in bid amounts is in effect, minimum acceptable bid amounts may increase by less than the minimum percentage (floor).

²²⁹ When a cap on increases in bid amounts is in effect, additional bid amounts may increase by less than the bid increment percentage.

²³⁰ MetroPCS Comments, Attachment at 14.

²³¹ 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.

we believe that this cap may be useful in preventing very rapid price increases on some licenses, which could potentially discourage bidder participation, inhibit price discovery, and create bid approval issues for bidders.

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

4. Provisionally Winning Bids

210. 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.²³²

211. In the *Auction 78 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).²³³ No comments were received on this proposal.

212. Hence, we adopt the proposal described above. The FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

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

214. A bidder’s ability to bid on specific licenses is determined by two factors: (1) the licenses selected on the bidder’s short-form application 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 short-form application.

215. 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.

216. In each round, eligible bidders will be able to place bids on a given license in one or more pre-defined bid amounts.²³⁴ For each license, the FCC Auction System will list the acceptable bid

²³² Section IV.A.3. “Eligibility and Activity Rules,” above.

²³³ *Auction 78 Comment Public Notice* at 5501 ¶ 69.

²³⁴ Bidders must have sufficient eligibility to place a bid on the particular license. *See* Section III.D.3. “Upfront Payments and Bidding Eligibility,” above.

amounts in a drop-down box.²³⁵ 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.

217. 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, above.

218. During a round, an eligible bidder may submit bids for as many licenses as it wishes, remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If a bidder submits multiple bids for the same license in the same round – multiple bids on the exact same license, 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.

219. 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

220. In the *Auction 78 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures.²³⁶ The Bureau sought comment on permitting a bidder to remove a bid before the close of the round in which the bid was placed. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals of provisionally winning bids on licenses in no more than one round during the course of the auction. The round in which withdrawals are used would be at each bidder’s discretion.

221. MetroPCS recommends allowing each bidder to withdraw an unlimited number of bids in a single round, as proposed in the *Auction 78 Comment Public Notice*, or up to three bids in more than one round. In its comments, MetroPCS characterizes the limitation of one bid withdrawal round as “severe restrictions... [that] may have seemed to be necessary in Auction 73 where combinatorial bidding was used for some licenses....”²³⁷

222. We are not convinced by this line of reasoning. The Commission has conducted some past auctions – particularly those with limited opportunities for license aggregation – with one or no withdrawal rounds. Therefore, we adopt our proposal.

223. *Bid Removal.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the “remove bids” function in the FCC Auction System, a bidder may effectively “unsubmit” any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder’s activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity.

224. *Bid Withdrawal.* Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds for licenses using the “withdraw bids” function in the FCC Auction System. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid

²³⁵ See Section IV.B.3. “Bid Amounts,” above.

²³⁶ *Auction 78 Comment Public Notice* at 5501-02 ¶¶ 71-74.

²³⁷ MetroPCS Comments at 15.

withdrawal payments specified in Section 1.2104(g).²³⁸ Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

225. 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.²³⁹ The Commission will serve as a “place holder” provisionally winning bidder on the license until a new bid is submitted on that license.

226. These procedures will permit bidder flexibility during the auction, and therefore the Bureau adopts them for Auction 78.

227. *Calculation of Bid Withdrawal Payment.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction.²⁴⁰ 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).²⁴¹ If a bid is withdrawn on a license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).²⁴²

228. 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.²⁴³ In the *Auction 78 Comment Public Notice*, the Bureau proposed to establish the percentage at fifteen percent (15%) for Auction 78 and sought comment on the proposal.²⁴⁴

229. The Bureau received no comments on this issue and adopts its proposal. The Commission will assess an interim withdrawal payment equal to fifteen percent (15%) of the amount of the withdrawn bids. The fifteen percent (15%) 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.²⁴⁵

²³⁸ 47 C.F.R. § 1.2104(g).

²³⁹ The Bureau retains the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds.

²⁴⁰ 47 C.F.R. §§ 1.2104(g), 1.2109.

²⁴¹ 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).

²⁴² See following paragraph for discussion of interim bid withdrawal payments.

²⁴³ 47 C.F.R. § 1.2104(g)(1); *see Part 1 Fifth Report and Order*, 15 FCC Rcd at 15,302 ¶ 15.

²⁴⁴ *Auction 78 Comment Public Notice* at 5502-03 ¶¶ 75-78.

²⁴⁵ 47 C.F.R. § 1.2104(g).

6. Round Results

230. Limited information about the results of a round will be made public after the conclusion of the round.²⁴⁶ Specifically, after a round closes, the Bureau will make available for each license, its current provisionally winning bid amount, the minimum acceptable bid amount for the following round, the amounts of all bids placed on the license during the round, and whether the license is FCC held. The system will also provide an entire license history detailing all activity that has taken place on a license with the ability to sort by round number. The reports will be publicly accessible. Moreover, after the auction, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

7. Auction Announcements

231. 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

232. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, long-form applications, and final payments., the long-form application (FCC Form 601), and the ownership disclosure information report (FCC Form 602).

A. Down Payments

233. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 78 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business bidding credits).²⁴⁷

B. Final Payments

234. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the applicable deadline for submitting down payments.²⁴⁸

C. Long-Form Application (FCC Form 601)

235. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) for the license(s) they won through Auction 78. Winning bidders that are entrepreneurs and/or small businesses or very small businesses must demonstrate their qualifications to be considered an entrepreneur and/or their eligibility for a small business or very small business bidding credit.²⁴⁹ Further filing instructions will be provided to winning bidders in the auction closing notice.

²⁴⁶ The identities of parties that are qualified to bid in Auction 78 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.

²⁴⁷ 47 C.F.R. § 1.2107(b).

²⁴⁸ 47 C.F.R. § 1.2109(a).

²⁴⁹ 47 C.F.R. § 1.2112(b).

236. Winning bidders organized as bidding consortia must comply with the long-form application procedures established in the *CSEA/Part 1 Report and Order*.²⁵⁰ Specifically, each member (or group of members) of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective license(s). If the license is to be partitioned or disaggregated, the member (or group) filing the long-form application must provide the relevant partitioning or disaggregation agreement in its long-form application. In addition, if two or more consortium members wish to be licensed together, they must first form a legal business entity, and any such entity must meet the applicable designated entity criteria.²⁵¹

D. Ownership Disclosure Information Report (FCC Form 602)

237. Within ten business days after release of the auction closing notice, each winning bidder must also comply with the ownership reporting requirements in Sections 1.913, 1.919, and 1.2112 of the Commission's rules²⁵² by submitting an ownership disclosure information report (FCC Form 602) with its long-form application.²⁵³

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

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

E. Tribal Lands Bidding Credit

240. 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 Sections 1.2107 and 1.2110(f).²⁵⁴ A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

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

²⁵⁰ *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 911-12 ¶¶ 51-52, *recon. pending*. 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.

²⁵¹ *Id.*

²⁵² 47 C.F.R. §§ 1.913, 1.919, and 1.2112.

²⁵³ *See* 47 C.F.R. § 1.2107(f).

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

Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in Section 1.2110(f)(3)(vi).²⁵⁵

242. 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.²⁵⁶ 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

243. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in Section 1.2104(g)(2).²⁵⁷ 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.

244. 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 78 Comment Public Notice*, we proposed to set the additional default payment for this auction at ten percent of the applicable bid, consistent with Auctions 66 and 71. We received no comments on this proposal, and therefore, adopt the proposal.

245. Finally, 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.²⁵⁸ In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.²⁵⁹

G. Refund of Remaining Upfront Payment Balance

246. All applicants that submit upfront payments but after the close of the auction are not winning bidders for a license in Auction 78 may be entitled to a refund of their remaining upfront

²⁵⁵ See 47 C.F.R. §§ 1.2110(f)(3)(ii) – (vii).

²⁵⁶ See generally, *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Report and Order and Further Notice of Proposed Rule Making*, FCC 00-209, 15 FCC Rcd 11,794 (2000); *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, FCC 03-51, 18 FCC Rcd 4775, 4778-79 ¶ 10 (2003); *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, *Third Report and Order*, FCC 04-202, 19 FCC Rcd 17,652 (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*, DA 01-613, 16 FCC Rcd 5355 (2001); “Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a Tribal Lands Bidding Credit and List of Tribal Lands,” *Public Notice*, DA 00-2836, 15 FCC Rcd 24,838 (2000); “Wireless Telecommunications Bureau Announces Availability of Bidding Credits for Providing Wireless Services to Qualifying Tribal Lands: Tribal Lands Bidding Credits to be Available Beginning in Auction No. 36 (800 MHz Specialized Mobile Radio (SMR) Lower 80 Channels) and in Future Auctions,” *Public Notice*, DA 00-2219, 15 FCC Rcd 18,351 (2000).

²⁵⁷ 47 C.F.R. § 1.2104(g)(2).

²⁵⁸ 47 C.F.R. §§ 1.2109(b) and (c).

²⁵⁹ 47 C.F.R. § 1.2109(d).

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.

247. Refunds will not be made until after the conclusion of bidding because providing refunds could disclose the activity of particular applicants which would be inconsistent with the anonymous bidding procedures applicable to Auction 78. For these reasons, applicants should not request refunds until after the close of the auction.

248. Bidders are encouraged to file their refund information electronically using the **Refund Information** icon found on the *Auction Application Manager* page or through the **Wire Transfer for Refund Purposes** link available in various locations throughout the FCC Auction System. If an applicant has completed the refund instructions electronically, the refund will be sent automatically. If an applicant has not completed the refund instructions electronically, the applicant may send a written request for the refund, including wire transfer instructions and FCC Registration Number (FRN) by facsimile to the Auctions Accounting Group at (202) 418-2843 or by mail to:

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

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

VI. CONTACT INFORMATION

249. Contact Information Table:

<p>General Auction 78 Information General Auction Questions Auction Process and Procedures Seminar Registration</p>	<p>FCC Auctions Hotline (888) 225-5322, option two; or (717) 338-2868</p> <p>Hours of service: 8:00 a.m. – 5:30 p.m. ET, Monday through Friday</p>
<p>Auction 78 Legal Information Auction Rules, Policies, Regulations</p>	<p>Auctions and Spectrum Access Division (202) 418-0660 Scott Mackoul or Stephen Johnson</p>
<p>Broadband PCS Licensing Information Service Rules, Policies, Regulations Licensing Issues, Engineering Issues Due Diligence, Incumbency Issues</p>	<p>Mobility Division (202) 418-0620 Erin McGrath (legal) Keith Harper (engineering) Denise Walter (licensing)</p>
<p>AWS-1 Service Licensing Information Service Rules, Policies, Regulations Licensing Issues, Engineering Issues Due Diligence, Incumbency Issues</p>	<p>Broadband Division (202) 418-2487 John Spencer</p>

Technical Support

Electronic Filing
FCC Auction System (Hardware/Software
Issues)

FCC Auctions Technical Support Hotline

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

Payment Information

Wire Transfers
Refunds

FCC Auctions Accounting Branch

Gail Glasser
(202) 418-0578
(202) 418-2843 (fax)

Auction Bidder Line

Will be furnished only to qualified bidders

FCC Copy Contractor

Additional Copies of
Commission Documents

Best Copy and Printing, Inc

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

-- FCC --

ATTACHMENT A

**Auction 78 – Auction of AWS-1 and Broadband PCS Licenses
DA 08-1090**

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

ATTACHMENT B
Map of CW-BTA460-E
DA 08-1090

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

ATTACHMENT C**Short-Form Application Filing Instructions**

This attachment provides instructions on submitting a short-form application and an upfront payment to participate in Auction 78. It also includes instructions for interested parties wishing to view the short-form applications filed for Auction 78.

I. Application Preparation and Submission

An applicant must submit its short-form application (FCC Form 175) electronically, via the FCC Auction System. **Short-form applications for Auction 78 must be submitted and confirmed prior to 6:00 p.m. ET on Thursday, June 19, 2008.** Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants are reminded that all information required in connection with applications to participate in spectrum license auctions is necessary to determine each applicant's qualifications, and as such will be available for public inspection. Accordingly, an applicant should not include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, in its short-form application. Applicants may request that information submitted not be made routinely available for public inspection following the procedures set forth in Section 0.459.²⁶⁰ 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.²⁶¹

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

A. Minimum Software Requirements

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

- Web Browser, either of the following:
 - Microsoft® Internet Explorer 6.0 or higher (recommended), with either Microsoft VM or Java Plug-In Version 1.5.
 - Mozilla® Firefox® 2.0 or higher, with Java Plug-In Version 1.5.

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

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

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

²⁶⁰ 47 C.F.R. § 0.459.

²⁶¹ 47 C.F.R. § 0.459(a).

B. Logging On

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

C. Application Filing Instructions

The FCC Form 175 requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.²⁶² Pursuant to Section 1.2105(a), FCC Form 175 must be submitted electronically. Applicants must submit required information as entries in the data fields of the FCC Form 175 whenever a data field is available for that information. Attachments should not be used to provide information that can be supplied within the data fields of the FCC Form 175.

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

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

Applicants should be able to fill out FCC Form 175 by following the instructions below. Additional help in filling out FCC Form 175 can be accessed 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

²⁶² 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 175²⁶³
- 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
- whether the applicant claims eligibility for closed bidding entrepreneur status (only applicable for certain broadband PCS C block licenses)

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

- Applicants must indicate their legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- P.O. Boxes may not be used for an applicant's address.
- To simplify filling out the FCC Form 175, an applicant that has the same address as its contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address. P.O. Boxes may not be used for a contact person's address.
- Applicants must identify at least one authorized bidder. While applicants may change their authorized bidders at a later date, only those bidders listed on the FCC Form 175 will be authorized to place bids for the applicant during the auction.
- Any qualified bidder may bid either via the Internet or by telephone during the auction. Specifying a preference for electronic or telephonic bidding assists the Commission in determining the staff required for telephonic bidding.
- Applicants that qualify as an "entrepreneur" (i.e., if the applicant, its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship have combined total assets of less than \$500 million and have had combined gross revenues of less than \$125 million in each of the last two years) must select the appropriate statement in order to be eligible to bid for one or more closed broadband PCS licenses.

2. License Selection

The *License Selection* screens make up the second series of screens in FCC Form 175. In the *License Selection* screens, the applicant will identify the licenses offered on which the applicant may wish to bid during the auction. While an applicant is not obligated to bid on all licenses that it selects, it will not be able to bid on licenses that it has not selected on its FCC Form 175.²⁶⁴ Be advised that there is no opportunity to change this list after the short-form filing deadline.

²⁶³ FCC personnel will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf.

²⁶⁴ 47 C.F.R. § 1.2105(a)(2)(i).

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

The *License Selection* screens contain a list 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 that they wish to select and save. Specifically, licenses can be selected by: (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 (3) clicking the "Save All Filtered Items" button after applying a filter.

Licenses can be removed by: (1) clicking the check box (to uncheck) next to a previously saved license, then selecting the "Remove Selected Items" button; (2) clicking the "Remove All Items" button to remove all previously saved licenses; or (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, an applicant can click the **Edit Icon** next to "Return to License Selection" at the top-right corner of the list, which will return it to the original *Select Licenses* screen, as described above.

3. Agreements

The *Agreements* screens are the third series of screens in FCC Form 175. In the *Agreements* screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission's rules.²⁶⁵

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.

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

²⁶⁵ 47 C.F.R. § 1.2105(a)(2)(viii).

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

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

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

- Clicking the **Edit** icon or the **Agreements** link to return to the initial *Agreements* screen regarding whether or not the applicant has any agreements.
- Modifying agreement identifiers by clicking on them.
- Clicking the **Delete This Agreement** link to delete an agreement and associated parties.
- Modifying information regarding a particular party to an agreement by clicking on the party's name.
- Clicking the **Remove** icon next to information about a particular party to remove 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 all agreements and the parties to each agreement have been identified, the applicant should click the **CONTINUE** button.

4. Ownership

The *Ownership* screens are the fourth series of screens in the FCC Form 175. In the *Ownership* screens, applicants will provide information regarding parties with ownership interests in the applicant that must be disclosed pursuant to Commission rules.²⁶⁶ Commission rules also require the disclosure and description of FCC-regulated businesses that are owned by the applicant and of parties with certain ownership interests in the applicant.²⁶⁷ In addition, if the applicant has claimed entrepreneur eligibility to participate in closed bidding and/or eligibility for bidding credits based on revenues attributable to the applicant and related parties, the applicant will provide information regarding revenues for entities related through ownership in the *Ownership* screens.²⁶⁸

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

²⁶⁷ 47 C.F.R. § 1.2112.

²⁶⁸ Applicants claiming eligibility for bidding credits based on revenues are also required to disclose in separate attachments information related to arrangements for the lease or resale (including wholesale agreements) of any of (continued....)

a. Information Already on File with the Commission

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

Each applicant is responsible for information submitted in its FCC Form 175 being complete and accurate. Applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for submitting their short-form applications. 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 list the interest holders in the applicant that must be disclosed in FCC Form 175.²⁶⁹
- Section 1.2112(a)(7) lists the FCC-regulated business entities, or applicants for an FCC license, that must be disclosed in FCC Form 175.²⁷⁰

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,²⁷¹ 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.²⁷² One attachment connecting all indirect owners to the applicant is sufficient. Applicants should not provide separate attachments for each indirect owner. An overview of the ownership connections is sufficient. The attachment should not duplicate all the detailed information already provided in the data fields of the FCC Form 175.

(Continued from previous page) _____

the capacity of any of the applicant's spectrum. 47 C.F.R. §§ 1.2112(b)(1)(iii) and (iv). The procedure for attaching this information to the application is described below in Section I.C.6. "Attaching Additional Information," below.

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

²⁷⁰ 47 C.F.R. § 1.2112(a)(7).

²⁷¹ 47 C.F.R. § 1.2112(a)(6).

²⁷² *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, a disclosable interest holder may have a 0% percent interest in the applicant, e.g., directors and officers of an entity seeking revenue-based bidding credits.²⁷³
- FCC-regulated businesses in which the applicant has an interest can be entered from the initial *Add Ownership Disclosure Information* screen. FCC-regulated businesses in which a disclosable interest holder has an interest can be entered from the *Add FCC Regulated Business* screen in the series of screens for entering information about a disclosable interest holder.
- When adding an FCC-regulated business, “Percent of Interest Held” refers to the percent of interest held by the applicant or disclosable interest holder, as applicable, in the FCC-regulated business.
- To simplify filling out the FCC Form 175, applicants can click on the **Select Business(es) Already Submitted** link when entering an FCC-regulated business previously entered as an FCC-regulated business for the applicant or another disclosable interest holder. When doing so, be certain to enter the “Percent of Interest Held” in the FCC-regulated business by the current party, either the applicant or the disclosable interest holder, with respect to which the FCC-regulated business is being entered.

c. View/Edit Ownership Disclosure Information

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

Existing ownership information is divided into three groups:

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

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

d. Bidding Credit Revenue Information

Applicants claiming eligibility for a bidding credit based on revenues must provide revenue information described below regarding entities related by ownership. In addition, applicants are also required to

²⁷³ See 47 C.F.R. § 1.2112(b)(1)(i).

provide information regarding any arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum, as well as the gross revenues of entities with which the applicant has an attributable material relationship as a result of such arrangements.²⁷⁴ Information regarding arrangements for lease or resale (include wholesale agreements), as well as related entities and revenues, must be provided in an attachment to the FCC Form 175. The procedure for attaching this information is described below in Section I.C.6, below.

If the applicant has claimed eligibility for a bidding credit based on revenues attributable to the applicant and related parties, the first *Ownership* screen will request relevant information regarding the applicant's revenues. The subsequent screen will request which of the two sources of financial information authorized by Section 1.2110(o) the applicant used for the revenue information.²⁷⁵

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.²⁷⁶

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.²⁷⁷ In the FCC Form 175, an applicant can enter information about itself, its disclosable interest holders, and its affiliates. **In those instances where a controlling interest or an affiliate of a controlling interest is not a disclosable interest holder, information regarding those entities should be disclosed in the "Affiliates of Applicant" screens.**

In order to be eligible to bid for one or more closed C block broadband PCS licenses, and applicant must demonstrate that it meets the eligibility requirements of Section 24.709(a) of the Commission's rules.²⁷⁸ Applicants applying to bid on closed licenses must show separately and in the aggregate, the gross revenues for each of the preceding two years and the total assets of each of the following: (1) the applicant; (2) the applicant's affiliates; (3) the applicant's controlling interests; and (4) the affiliates of the applicant's controlling interests. Certification that, as of the FCC Form 175 filing deadline, the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, has total assets of less than \$500 million and has had gross revenues of less than \$125 million in each of the last two years is not sufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and their affiliates a schedule of gross revenues for each of the preceding two years.

Following the first two screens, the subsequent screen will be similar to the initial *Ownership* screen described above, except applicants claiming eligibility for bidding credits will also have an option to add information regarding affiliates that are not disclosable interest holders, including the affiliates' revenues.²⁷⁹

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

²⁷⁴ See 47 C.F.R. §§ 1.2112(b)(1)(iii) and (iv)..

²⁷⁵ 47 C.F.R. § 1.2110(o).

²⁷⁶ 47 C.F.R. § 1.2112(b)(1)(iii).

²⁷⁷ 47 C.F.R. § 1.2110(c)(5).

²⁷⁸ See 47 C.F.R. § 24.709(a).

²⁷⁹ 47 C.F.R. § 1.2112(b)(1)(iii).

interest holders that are affiliates or controlling interests of the applicant, applicants will fill out two screens similar to those described above with respect to the applicant, i.e., one screen requesting the relevant information and a second screen regarding the source of the revenue information.

There may be circumstances in which the revenue information need not be provided for certain disclosable interest holders. For example, some entities that must be disclosed in FCC Form 175 pursuant to Section 1.2112(a) may not be affiliates of the applicant, controlling interests of the applicant, or affiliates of the applicant's controlling interests.²⁸⁰ Because revenues for such disclosable interest holders are not attributable to the applicant, the applicant could indicate on the first screen requesting revenue information for that disclosable interest holder that no revenue information is required pursuant to the Commission's rules. To report that no revenue information needs to be disclosed, check the box indicating that the disclosable interest holder is not an affiliate or a controlling interest within the meaning of the Commission's rules.

Claiming Attribution Exemption for Eligible Rural Telephone Cooperatives. An applicant will be exempt from attribution of gross revenues of an affiliate or a controlling interest in the applicant if such entity meets all of the conditions set forth in Section 1.2110(b)(3)(iii) of the Commission's rules.²⁸¹ **If an applicant claims that it (or its controlling interest) is an eligible rural telephone cooperative pursuant to Section 1.2110(b)(3)(iii), it should not check the box indicating that the disclosable interest holder is not an affiliate or a controlling interest.** The applicant should instead indicate that the affiliate or controlling interest has zero gross revenues. It must also provide, in an attachment to the FCC Form 175, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of Section 1.2110(b)(3)(iii) and supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.²⁸²

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,²⁸³ applicants can click on the **ADD AFFILIATE** button on the initial *Ownership* screen. Applicants also can click on the **Add Affiliate to Applicant** link on the *View/Edit Ownership Disclosure Information* screen to disclose information regarding affiliates and their revenues.

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

²⁸⁰ 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).

²⁸¹ 47 C.F.R. § 1.2110(b)(3)(iii).

²⁸² See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures. WT Docket No. 97-82 *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10,180 (2003); *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd at 1942.

²⁸³ 47 C.F.R. § 1.2112(b)(1)(iii).

Finally, applicants claiming eligibility for bidding credits based on revenues attributable to the applicant and related parties will be asked to confirm that they have provided information with respect to all of the relevant parties: (1) the applicant; (2) each of the applicant's officers and directors; (3) each of the applicant's other controlling interests; (4) each of the applicant's affiliates; and (5) each affiliate of the applicant's controlling interests, including its officers and directors.²⁸⁴

5. Summary

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

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

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

Clicking on the **CHECK ERRORS** button initiates an automated check of the application. If the automated check encounters 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.

²⁸⁴ *Id.*

6. Attaching Additional Information

If an applicant needs to provide additional information not requested directly in the screens comprising the FCC Form 175, that information can be provided in an attachment. For example, applicants can describe the relationship among indirect owners of the applicant, or provide information regarding lease and resale arrangements (including wholesale) involving the spectrum capacity of applicants claiming eligibility for bidding credits.²⁸⁵

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

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

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

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

7. Certify and Submit

The *Certify and Submit* screens are the sixth and final series of screens in FCC Form 175. In the *Certify and Submit* screens, applicants will provide certifications required of all participants in the Commission's competitive bidding processes.²⁸⁶

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.²⁸⁷ Applicants associated with a relevant entity that previously has been in default or delinquent – but is not currently – may participate in an auction, if otherwise qualified. However, such applicants must submit an upfront payment equal to 50 percent more than otherwise required.²⁸⁸

²⁸⁵ Applicants claiming eligibility for bidding credits must disclose (1) a list of all parties with which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum, and (2) a list, separately and in the aggregate, of the gross revenues of entities with which the applicant has an attributable material relationship. 47 C.F.R. §§ 1.2112(b)(1)(iii)-(iv). These lists should be provided in an attachment to the application, with the attachment type identified as "Other."

²⁸⁶ See generally, 47 C.F.R. §§ 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

²⁸⁷ 47 C.F.R. § 1.2105(a)(2)(xi).

²⁸⁸ 47 C.F.R. § 1.2106(a).

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

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

All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.²⁸⁹ Applicants are reminded that submission of an FCC Form 175 constitutes a representation by the certifying official that he or she is an authorized representative of the applicant and has read the form's instructions and certifications, and that the contents of the application, its certifications and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution. As noted above, a change of certifying official is considered a major change of the short-form application and will not be permitted after the short-form deadline.

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

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

Short-form applications for Auction 78 must be submitted and confirmed prior to 6:00 p.m. ET on Thursday, June 19, 2008. Late applications or unconfirmed submissions of electronic data will not be accepted.

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

1. Withdrawing an Application

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

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

2. Updating Existing Applications

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

²⁸⁹ 47 C.F.R. § 1.2105(a)(2)(v).

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

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

After the filing deadline, an applicant may make only minor changes to its short-form application. An applicant will not be permitted to make major modifications to its application (e.g., changes to its license selections or certifying official, changes in ownership of the applicant that would constitute an assignment or transfer of control, or changes in its size which would affect eligibility as an entrepreneur or for a higher bidding credit).²⁹⁰

II. Upfront Payment Submission

A. Upfront Payment Calculator and Form 159

Applicants 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. Clicking the **Upfront Payment Calculator and Form 159** icon or link will provide an applicant with a calculator to determine the appropriate upfront payment amount to submit with the FCC Form 159. From the *Calculate Upfront Payment* page, the applicant may click the **Form 159** button to obtain the FCC Form 159. For further instructions on how to submit the FCC Form 159, see Attachment D to this Public Notice.

B. Refund of Upfront Payment

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

III. Miscellaneous

A. Access to View Short-Form Applications

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

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

²⁹⁰ 47 C.F.R. § 1.2105(b).

B. Technical Support

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

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

ATTACHMENT D

**Auction-Specific Instructions for
FCC Remittance Advice (FCC Form 159-July 2005 Edition)**

Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 7/05), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 78. 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 7/05), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.**

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

Block Number	Required Information
1	LOCKBOX # - Enter "358405"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 7/05).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number ("FRN") registered in the Commission Registration System ("CORES").
21	Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant's ten-digit FRN registered in CORES.
24A	Payment Type Code - Enter "A78U"
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 "78" (indicating Auction 78).

NOTES:

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

Winning Bidder Requirements, Down Payments and Final Payments

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

ATTACHMENT E

Activity-Based Formula to Determine Minimum Acceptable Bids

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

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

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

where

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

C = activity weight factor

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

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

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

N = minimum additional percentage or floor

M = maximum additional percentage or ceiling

X_{i+1} = additional dollar amount

Y_i = provisionally winning bid 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:

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

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

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

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

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

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

1. Calculation of additional percentage for round 4:

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

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

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

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

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

ATTACHMENT F

**Summary Listing of Judicial, Commission and Bureau Documents
Addressing Application of the Anti-Collusion Rule****A. Judicial Decisions**

Star Wireless, LLC v. FCC, No. 07-1190, slip op. (D.C. Cir. Apr. 22, 2008).

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

B. Commission Decisions

Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, FCC 07-123, 22 FCC Rcd 15,289, 15,395 ¶¶ 285-86, 15,489 (2007).

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

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, FCC 01-270, 16 FCC Rcd 17,546 (2001).

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

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

Application of Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23,755 (1998); Applications of: Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17,970 (1997).

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

Commercial Realty St. Pete, Inc., *Memorandum Opinion and Order*, FCC 96-400, 11 FCC Rcd 15,374 (1996); Commercial Realty St. Pete, Inc., *Notice of Apparent Liability for Forfeiture*, FCC 95-58, 10 FCC Rcd 4277 (1995).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, FCC 94-295, 9 FCC Rcd 7684, 7687-7689 ¶¶ 8-12 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion and Order*, FCC 94-264, 9 FCC Rcd 6858, 6866-6869 ¶¶ 47-60 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Memorandum Opinion and Order*, FCC 94-215, 9 FCC Rcd 7245, 7253-7254 ¶¶ 48-53 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, FCC 94-178, 9 FCC Rcd 5532, 5570-5571 ¶¶ 91-92 (1994).

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

C. Wireless Telecommunications Bureau Decisions

Application of Nevada Wireless, *Memorandum Opinion and Order*, DA 98-1137, 13 FCC Rcd 11,973 (Wireless Telecom. Bur. 1998).

Applications of High Plains Wireless, L.P., *Memorandum Opinion and Order*, DA 97-2451, 12 FCC Rcd 19,627 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order on Reconsideration*, DA 97-2324, 12 FCC Rcd 18,093 (Wireless Telecom. Bur. 1997); Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order*, DA 97-1782, 13 FCC Rcd 5756 (Wireless Telecom. Bur. 1997).

Applications of GWI PCS, Inc., *Memorandum Opinion and Order*, DA 97-674, 12 FCC Rcd 6441 (Wireless Telecom. Bur. 1997).

Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-131, *Order*, DA 95-2292, 11 FCC Rcd 9655 (Wireless Telecom. Bur. 1995).

1. Public Notices

Wireless Telecommunications Bureau Reminder of Anti-Collusion Rule Obligations, *Public Notice*, DA 04-3677, 19 FCC Rcd 22,880 (Wireless Telecom. Bur. 2004).

Wireless Telecommunications Bureau Staff Provides Guidance on Completing the Short-Form Application (FCC Form 175) for Auction No. 40, Auction of Licenses for Lower and Upper Paging Bands, *Public Notice*, DA 01-2122, 16 FCC Rcd 16,391 (Wireless Telecom. Bur. 2001).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, DA 98-37, 13 FCC Rcd 341 (Wireless Telecom. Bur. 1998).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, DA 96-1460, 11 FCC Rcd 10,134 (Wireless Telecom. Bur. 1996).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS "C" Block Reauction, *Public Notice*, DA 96-929, 11 FCC Rcd 7031 (Auc. Div. 1996).

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

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

Letter to John Cooper, Aurora Communications, Inc., from Margaret W. Wiener, DA 06-157, 21 FCC Rcd 523 (Auc. Div. 2006).

Letter to Howard A. Kalmenson, Lotus Communications Corp., from Margaret W. Wiener, DA 06-156, 21 FCC Rcd 520 (Auc. Div. 2006).

Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, DA 05-2445, 20 FCC Rcd 14,648 (Video and Auc. Divs. 2005).

Letter to Robert Pettit from Margaret W. Wiener, DA 00-2905, 16 FCC Rcd 10,080 (Auc. Div. 2000).

Letter to John Reardon, Mobex Communications, Inc., from Amy J. Zoslov, DA 98-1861, 13 FCC Rcd 17,877 (Auc. Div. 1998).

Letter to Elliott J. Greenwald from Christopher J. Wright, DA 98-644, 13 FCC Rcd 7132 (Gen. Counsel 1998).

Letter to David L. Nace from Kathleen O'Brien Ham, DA 96-1566, 11 FCC Rcd 11,363 (Auc. Div. 1996).

Letter to Mark Grady from Kathleen O'Brien Ham, DA 96-587, 11 FCC Rcd 10,895 (Auc. Div. 1996).

Letter to Jonathan D. Blake from Kathleen O'Brien Ham, DA 95-2404, 10 FCC Rcd 13,783 (Auc. Div. 1995).

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

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

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

Letter to Alan F. Ciamporcero from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

D. Enforcement Bureau Decisions

Application of Star Wireless, LLC, *Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18,626 (Enf. Bur. 2004); Application of Star Wireless, LLC, *Notice of Apparent Liability for Forfeiture*, DA 03-2722, 18 FCC Rcd 17,648 (Enf. Bur. 2003).

Application of Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, DA 04-3027, 19 FCC Rcd 18,635 (Enf. Bur. 2004); Application of Northeast Communications of Wisconsin, Inc., *Notice of Apparent Liability for Forfeiture*, DA 03-2723, 18 FCC Rcd 17,672 (Enf. Bur. 2003).

E. Civil Actions Initiated by U.S. Department of Justice

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

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

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

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

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

How to Obtain Copies of the Anti-Collusion Decisions

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

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

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

ATTACHMENT G

Auction 78 Seminar Registration Form

The FCC will sponsor a one-day seminar for Auction 78 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:

Tuesday, June 10, 2008
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 Friday, June 6, 2008, 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 78 web page, <http://wireless.fcc.gov/auctions/78/>. For further information about accessing FCC webcasts, please visit <http://www.fcc.gov/realaudio/>.

I/We will attend the Auction 78 Seminar, scheduled for Tuesday, June 10, 2008.

Name of attendee: _____

Name of attendee: _____

Company name: _____

Company address: _____

Phone: _____ Fax: _____