



# PUBLIC NOTICE

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## AUCTION OF BROADBAND RADIO SERVICE (BRS) LICENSES SCHEDULED FOR OCTOBER 27, 2009

### Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86

AU Docket No. 09-56

#### TABLE OF CONTENTS

Heading	Paragraph #
I. GENERAL INFORMATION.....	1
A. Introduction.....	1
1. Background of Proceeding.....	2
2. Licenses to be Offered in Auction 86.....	4
B. License Descriptions.....	7
C. Rules and Disclaimers.....	8
1. Relevant Authority.....	8
2. Prohibition of Collusion; Compliance with Antitrust Laws.....	11
3. Incumbency Issues.....	33
4. Due Diligence.....	41
5. Use of Integrated Spectrum Auction System.....	50
6. Fraud Alert.....	51
7. Environmental Review Requirements.....	52
D. Auction Specifics.....	53
1. Auction Start Date.....	53
2. Auction Title.....	55
3. Bidding Methodology.....	56
4. Pre-Auction Dates and Deadlines.....	57
5. Requirements for Participation.....	58
II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS.....	59
A. General Information Regarding Short-Form Applications.....	59
B. License Selection.....	64
C. Disclosure of Bidding Arrangements.....	66
D. Ownership Disclosure Requirements.....	69
E. Designated Entity Provisions.....	71
1. Bidding Credits for Small and Very Small Businesses.....	72
2. Attributable Interests.....	76
3. Installment Payments.....	86
F. Tribal Lands Bidding Credit.....	87

G. Provisions Regarding Former and Current Defaulters.....	88
H. Optional Applicant Status Identification.....	93
I. Minor Modifications to Short-Form Applications.....	94
J. Maintaining Current Information in Short-Form Applications.....	100
III. PRE-AUCTION PROCEDURES.....	102
A. Auction Seminar – August 5, 2009.....	102
B. Short-Form Applications – Due Prior to 6:00 p.m. ET on August 18, 2009.....	105
C. Application Processing and Minor Corrections.....	108
D. Upfront Payments – Due September 24, 2009.....	111
1. Making Upfront Payments by Wire Transfer.....	112
2. FCC Form 159.....	115
3. Upfront Payments and Bidding Eligibility.....	116
4. Applicant’s Wire Transfer Information for Purposes of Refunds of Upfront Payments.....	129
E. Auction Registration.....	130
F. Remote Electronic Bidding.....	134
G. Mock Auction – October 23, 2009.....	136
IV. AUCTION EVENT.....	137
A. Auction Structure.....	138
1. Simultaneous Multiple Round Auction.....	138
2. Information Available to Bidders Before and During the Auction.....	140
3. Eligibility and Activity Rules.....	149
4. Auction Stages.....	153
5. Stage Transitions.....	158
6. Activity Rule Waivers.....	160
7. Auction Stopping Rules.....	165
8. Auction Delay, Suspension, or Cancellation.....	168
B. Bidding Procedures.....	170
1. Round Structure.....	170
2. Reserve Price and Minimum Opening Bids.....	172
3. Bid Amounts.....	179
4. Provisionally Winning Bids.....	189
5. Bidding.....	192
6. Bid Removal and Bid Withdrawal.....	199
7. Round Results.....	208
8. Auction Announcements.....	209
V. POST-AUCTION PROCEDURES.....	210
A. Down Payments.....	211
B. Final Payments.....	212
C. Long-Form Application (FCC Form 601).....	213
D. Ownership Disclosure Information Report (FCC Form 602).....	215
E. Tribal Lands Bidding Credit.....	218
F. Default and Disqualification.....	221
G. Refund of Remaining Upfront Payment Balance.....	224
VI. CONTACT INFORMATION.....	226
ATTACHMENT A: Licenses to Be Auctioned	
ATTACHMENT B: Broadband and Radio Service Channels per License	
ATTACHMENT C: Short-Form Application Filing Instructions	
ATTACHMENT D: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)	
ATTACHMENT E: Minimum Acceptable Bid Formula	
ATTACHMENT F: Summary Listing of Judicial, Commission and Bureau Documents Addressing Application of the Anti-Collusion Rule	
ATTACHMENT G: Auction 86 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 licenses for unassigned Broadband Radio Service (“BRS”) spectrum. This auction, which is designated as Auction 86, is scheduled to commence on October 27, 2009. Auction 86 will offer 78 licenses.

#### 1. Background of Proceeding

2. The spectrum associated with licenses to be auctioned in Auction 86 was previously allocated and made available under the Multipoint Distribution Services (“MDS”) and Multichannel Multipoint Distribution Service (“MMDS”), the predecessor services to BRS. In Auction 6, which was completed in 1996, the Commission conducted competitive bidding for 493 Basic Trading Area (“BTA”) licenses to provide access to all BRS spectrum nationwide that was not covered by pre-existing MDS or MMDS site-based licenses.<sup>2</sup> Overlay licenses for 75 of the BTAs originally offered in Auction 6 are available now as a result of default, cancellation, or termination. In one case, BTA 396, the available license does not cover the entire BTA due to a previous partitioning. Underlying, pre-existing incumbent BRS licenses within these geographic areas remain intact. This auction will also include three additional licenses for BRS service areas in the Gulf of Mexico.

3. On April 24, 2009, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended,<sup>3</sup> the Wireless Telecommunications Bureau (“Bureau”) released a public notice seeking comment on competitive bidding procedures to be used in Auction 86.<sup>4</sup> Interested parties submitted 7 comments and 4 reply comments in response to the *Auction 86 Comment Public Notice*.<sup>5</sup>

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<sup>1</sup> 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. See Rand McNally, *1992 Commercial Atlas and Marketing Guide*, 123<sup>rd</sup> Edition, at 38-39 (1992). See also 47 C.F.R. § 27.1208.

<sup>2</sup> Such licenses are commonly referred to as geographic “overlay” licenses. 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, *Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, FCC 08-83, 23 FCC Rcd 5992, 6002 n. 38 (2008) (“*BRS/EBS 4th MO&O & 2nd FNPRM*”).

<sup>3</sup> 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).

<sup>4</sup> “Auction of Broadband Radio Service (BRS) Licenses Scheduled for October 27, 2009; Comment Sought on Competitive Bidding Procedures For Auction 86,” *Public Notice*, DA 09-843, 24 FCC Rcd 4605 (2009) (“*Auction 86 Comment Public Notice*”).

<sup>5</sup> See Comments filed by Ad Hoc BRS Applicants Association, dated May 15, 2009 (“Ad Hoc Applicants Comments”); Inforum Communications, Inc., dated May 15, 2009 (“Inforum Comments”); The Public Interest Spectrum Coalition, dated May 15, 2009 (“PISC Comments”); SAL Spectrum, LLC, dated May 15, 2009 (“SAL Comments”); Satellite Signals of New England, Inc., dated May 15, 2009 (“SSNE Comments”); Utopian Wireless Corporation, dated May 15, 2009 (“Utopian Comments”); Wireless Communications Association International, Inc., dated May 15, 2009 (“WCAI Comments”). See Reply Comments filed by Ad Hoc BRS Applicants Association, dated May 29, 2009 (“Ad Hoc Applicants Reply Comments”); Clearwire Corporation, dated May 29, 2009 (“Clearwire Reply Comments”); Utopian Wireless Corporation, dated May 29, 2009 (“Utopian Reply Comments”); Wireless Communications Association International, Inc., dated May 29, 2009 (“WCAI Reply Comments”). Cathleen A. Massey, Vice President, Regulatory Affairs and Public Policy of Clearwire Corporation, submitted an *ex parte* filing on June 11, 2009, on behalf of Clearwire, Xanadoo, and Digital Bridge Corporation (“WCAI members *ex parte* filing”).

## 2. Licenses to be Offered in Auction 86

4. The licenses to be offered in Auction 86 consist of the available spectrum in 78 BRS service areas. BRS service areas are BTAs or additional service areas similar to BTAs adopted by the Commission.<sup>6</sup> In the *BRS/EBS 4<sup>th</sup> MO&O*, the Commission amended its rules to establish Gulf of Mexico service areas for BRS, and Auction 86 therefore includes licenses for three BRS service areas in the Gulf of Mexico.<sup>7</sup> A complete list of licenses available for Auction 86 is included as Attachment A of this Public Notice.

5. Two commenters seek the removal of certain licenses from the Auction 86 inventory. Inforum Communications, Inc. (“Inforum”) asks the Bureau to remove the license for the Sarasota-Bradenton, Florida, BTA 408 that was formerly held by Inforum.<sup>8</sup> Similarly, Satellite Signals of New England, Inc. (“SSNE”) seeks the removal of the licenses for the Burlington, Vermont, BTA 063 and Rutland-Bennington, Vermont, BTA 388 that were formerly held by SSNE.<sup>9</sup> Each license automatically cancelled when the former licensee failed to make timely payments of its installment debts.<sup>10</sup> Inforum and SSNE argue that these licenses should not be included in the inventory because the Commission has not yet acted on their petitions for reconsideration of decisions denying earlier requests for waiver of the installment payment rules and reinstatement of the licenses.

6. We do not believe that the public interest would be served by the removal of the licenses from the auction. Pending administrative and judicial appeals may often be associated with licenses offered at auction.<sup>11</sup> We note that the Bureau has already denied the former licensees’ requests for waiver and reinstatement of the licenses.<sup>12</sup> Offering the licenses in Auction 86 will have no effect on the power of the Commission to decide Inforum’s and SSNE’s petitions for reconsideration or to grant appropriate

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<sup>6</sup> The Commission established additional BRS service areas in places where Rand McNally has not defined BTAs: American Samoa; Guam; Gulf of Mexico Zone A; Gulf of Mexico Zone B; Gulf of Mexico Zone C; Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/Aguadilla-Ponce, PR, service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San German, Santa Isabel, Villalba and Yauco. The San Juan service area consists of all other municipios in Puerto Rico. 47 C.F.R. § 27.1208.

<sup>7</sup> The boundaries of Gulf of Mexico Zone A are from an area twelve nautical miles from the shoreline at mean high tide on the north and east, to the limit of the Outer Continental Shelf to the south, and to longitude 91°00’ to the west. The boundaries of Gulf of Mexico Zone B are from an area twelve nautical miles from the shoreline at mean high tide on the north, to the limit of the Outer Continental Shelf to the south, to longitude 91°00’ to the east, and to longitude 94°00’ to the west. The boundaries of Gulf of Mexico Zone C are from an area twelve nautical miles from the shoreline at mean high tide on the north and west, to longitude 94°00’ to the east, and to a line 281 kilometers from the reference point at Linares, N.L., Mexico on the southwest. *See* 47 C.F.R. § 27.1208. *See also*, *BRS/EBS 4th MO&O & 2nd FNPRM*, 23 FCC Rcd 5992, 6040 ¶ 127.

<sup>8</sup> Inforum Comments at 1-3.

<sup>9</sup> SSNE Comments at 1-2.

<sup>10</sup> *See* Request of Inforum Communications, Inc. for Petition for Reconsideration and Waiver Request for Late Acceptance of BTA Installment Payment, *Order*, DA 04-20, 19 FCC Rcd 83 (2004) (“Inforum Petition for Reconsideration”); Satellite Signals of New England, Inc., Request for Waiver of Installment Payment Rules for Auction No. 6 and Reinstatement of Licenses, *Order*, DA 07-482, 22 FCC Rcd 1937 (2007) (“SSNE Request for Waiver”).

<sup>11</sup> Alpine PCS, Inc., Request for Stay of Auction 78 for the Broadband PCS C Block Licenses in the San Luis Obispo, CA and the Santa Barbara-Santa Maria, CA Basic Trading Areas, *Order*, DA 08-1602, 23 FCC Rcd 10485, 10491-2 ¶ 22 and n. 50 (2008) (“Alpine”).

<sup>12</sup> Inforum Petition for Reconsideration, *supra* n.13; SSNE Request for Waiver, *supra* n.13.

relief if the parties were to ultimately prevail on the merits of the petitions. As a matter of policy, if the Bureau were to refrain from offering at auction licenses associated with spectrum that remains subject to a petition for reconsideration or judicial appeal, the Bureau would risk delay of future auctions for review by the Commission and courts of the myriad issues parties could raise in attempts to circumvent auctions for their individual purposes.<sup>13</sup> Such delaying action could frustrate the business plans of entities intending to acquire licenses at auction and provide service to the public. For these reasons, we decline to remove these three licenses from the Auction 86 inventory.

## **B. License Descriptions**

7. Where unencumbered, the licenses to be auctioned consist of 76.5 megahertz of spectrum at 2496-2502, 2602-2615, and 2616-2673.5 MHz. We note that the licenses issued pursuant to this auction will be issued pursuant to the post-transition band plan contained in Section 27.5(i)(2) of the Commission's rules.<sup>14</sup> A table showing the channelization of this spectrum is included as Attachment B of this Public Notice.

## **C. Rules and Disclaimers**

### **1. Relevant Authority**

8. 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 Broadband Radio Service and emerging technologies contained in Title 47, Part 27 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.<sup>15</sup> 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.<sup>16</sup>

9. SAL Spectrum, LLC ("SAL") and the Ad Hoc BRS Applicants Association ("the Ad Hoc Applicants") seek a revision of the performance requirement set forth in the BRS service rules.<sup>17</sup> Section 27.14(o) of the Commission's rules provides that a BRS licensee must demonstrate "substantial service" in its service area no later than May 1, 2011.<sup>18</sup> Clearwire and the Wireless Communications Association International, Inc. ("WCAI") oppose SAL's proposal, contending that it would not be in the public

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<sup>13</sup> Compare Alpine at ¶ 22.

<sup>14</sup> See 47 C.F.R. § 27.5(i)(2).

<sup>15</sup> 47 C.F.R. Parts 1 and 27.

<sup>16</sup> 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)).

<sup>17</sup> Specifically, SAL requests a change to the rule, or in the alternative, that the Commission adopt the procedures for the auction and thus amend the rule to allow Auction 86 licensees a full ten years from license grant to demonstrate substantial service. SAL Comments at 2-3. The Ad Hoc Applicants assert that they had assumed that any new licenses issued pursuant to Auction 86 would be subject to extended ten-year substantial service deadlines. Ad Hoc Reply Comments at 2.

<sup>18</sup> 47 C.F.R. § 27.14(o).

interest to give new licensees ten years to demonstrate substantial service because the spectrum could lie fallow during that period.<sup>19</sup> The requests made in comments filed to the *Auction 86 Comment Public Notice* to change the BRS service rules are beyond the scope of this public notice regarding the procedures for Auction 86. Any such rule change would require action by the full Commission, which could address this issue in a rule making proceeding. Absent such action, new licensees will be subject to the requirements set forth in the current rules. We also note that the Bureau, under its delegated authority, has discretion to entertain requests for extension of the substantial service deadline pursuant to section 1.946 of the Commission's rules.<sup>20</sup>

10. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpweb.com>.<sup>21</sup>

## **2. Prohibition of Collusion; Compliance with Antitrust Laws**

11. 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).<sup>22</sup>

### **a. Entities Subject to Section 1.2105**

12. 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 markets. In Auction 86, the rule would prohibit any applicants that have selected any of the same licenses in their short form applications from communicating absent an agreement.<sup>23</sup>

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<sup>19</sup> WCAI Reply Comments at 4; Clearwire Reply Comments at 3. WCAI recommends that any additional time "be an appropriate balance between the goal of ensuring that the spectrum is put to good use and permitting winners a reasonable opportunity to construct." WCAI Reply Comments at 4. Clearwire argues that the existing May 1, 2011 substantial service deadline should apply, while noting that licensees could request an extension of the deadline "if they make a particularized showing justifying an extension under the Commission's rules." Clearwire Reply Comments at 3 and n.5. Clearwire asks that any additional time to demonstrate substantial service be limited to two years from the date of license grant. *Id.*

<sup>20</sup> 47 C.F.R. § 1.946.

<sup>21</sup> When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 09-843 for the *Auction 86 Comment Public Notice*, or DA 09-1376 for this Public Notice).

<sup>22</sup> 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.

<sup>23</sup> *See* "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (1995).

13. Under the terms of the rule, applicants that have applied for licenses covering the same 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.<sup>24</sup> **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**<sup>25</sup>

14. For purposes of this prohibition, Section 1.2105(c)(7)(i) defines “applicant” as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.<sup>26</sup>

15. As described in Section IV.A.2., below, information concerning applicants’ license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same geographic areas as the licenses that it has selected in its short-form application.<sup>27</sup>

16. 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.<sup>28</sup> The Bureau has not addressed situations where employees who do not qualify as the applicant (e.g., are not officers or directors) receive information regarding a competing applicant’s bids or bidding strategies and whether that information might be deemed to 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

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<sup>24</sup> 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.

<sup>25</sup> 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).

<sup>26</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>27</sup> Section IV.A.2. “Information Available to Bidders Before and During the Auction,” below, especially ¶ 163.

<sup>28</sup> Letter to John Cooper, Aurora Communications, Inc., from Margaret W. Wiener, Chief, Auctions and Spectrum Access 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 Spectrum Access 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 Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445, 20 FCC Rcd 14,648 (2005) (“*May Letter*”).

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.<sup>29</sup>

**b. Prohibition Applies Until Down Payment Deadline**

17. 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.<sup>30</sup>

**c. Prohibited Communications**

18. Applicants for the upcoming Auction 86 and other parties that may be engaged in discussion with such applicants are cautioned on the need to comply with the Commission's anti-collusion rule, Section 1.2105(c).<sup>31</sup> 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.<sup>32</sup> 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.

19. 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."<sup>33</sup>

20. 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.<sup>34</sup> 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 86, 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.<sup>35</sup> Similarly, an applicant's public statement of intent not to participate in Auction 86 bidding could also violate the rule.

21. Applicants selecting licenses for any of the same geographic license areas must not communicate directly or indirectly about bids or bidding strategy.<sup>36</sup> Accordingly, such applicants are

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<sup>29</sup> 47 C.F.R. § 1.2105(c)(4).

<sup>30</sup> 47 C.F.R. § 1.2105(c)(1).

<sup>31</sup> 47 C.F.R. § 1.2105(c).

<sup>32</sup> See Western PCS BTA 1 Corp., *Memorandum Opinion and Order*, FCC 99-383, 14 FCC Rcd 21,571 (1999).

<sup>33</sup> 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*").

<sup>34</sup> 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.

<sup>35</sup> Compare "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.").

<sup>36</sup> *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17,549-50 ¶ 6.



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.<sup>37</sup> In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.<sup>38</sup>

22. 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.<sup>39</sup> 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,"<sup>40</sup> 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."<sup>41</sup>

23. 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 86.<sup>42</sup> 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**

24. 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.<sup>43</sup> 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 geographic areas after the short-form filing deadline.<sup>44</sup>

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<sup>37</sup> 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*").

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

<sup>39</sup> 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).

<sup>40</sup> Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17,970, 17,976 ¶ 12 (1997).

<sup>41</sup> Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23,755, 23,760 ¶ 11 (1998).

<sup>42</sup> See Section IV.A.2. "Information Available to Bidders Before and During the Auction," below.

<sup>43</sup> 47 C.F.R. § 1.2105(c)(7)(i).

<sup>44</sup> "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (1995) ("*Anti-Collusion Public Notice*").

**e. Anti-Collusion Certification**

25. 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.<sup>45</sup> The Commission has stated that it “intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring.”<sup>46</sup> Any applicant found to have violated the anti-collusion rule may be subject to sanctions.<sup>47</sup>

**f. Antitrust Laws**

26. 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.<sup>48</sup> Compliance with the disclosure requirements of the Commission’s anti-collusion rule will not insulate a party from enforcement of the antitrust laws.<sup>49</sup> For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application.<sup>50</sup> 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 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.<sup>51</sup> 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.”<sup>52</sup> 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.<sup>53</sup> 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

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<sup>45</sup> *Nevada Wireless Order*, 13 FCC Rcd at 11,978 ¶ 13.

<sup>46</sup> *Memorandum Opinion and Order*, 9 FCC Rcd at 7689 ¶ 12.

<sup>47</sup> 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>48</sup> 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*”).

<sup>49</sup> *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).

<sup>50</sup> 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.

<sup>51</sup> *Id.*; *see also Anti-Collusion Public Notice*.

<sup>52</sup> *Anti-Collusion Public Notice*.

<sup>53</sup> *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.<sup>54</sup>

**g. Duty to Report Prohibited Communications; Reporting Procedure**

27. 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.<sup>55</sup> Section 1.2105(c)(6) provides that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.<sup>56</sup> The Commission has clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five day period.<sup>57</sup>

28. In addition, Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.<sup>58</sup> 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 of bids or bidding strategies that result in a bidding arrangement, agreement, or understanding after the short-form filing application deadline.<sup>59</sup>

29. Parties reporting communications pursuant to Sections 1.65 or 1.2105(c)(6) 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.<sup>60</sup> Such parties

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<sup>54</sup> 47 C.F.R. § 1.2109(d); *see also* *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

<sup>55</sup> 47 C.F.R. § 1.2105(c)(6).

<sup>56</sup> 47 C.F.R. § 1.2105(c)(6); *see also* *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

<sup>57</sup> *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*.

<sup>58</sup> 47 C.F.R. § 1.65.

<sup>59</sup> *See* *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17552 ¶ 12.

<sup>60</sup> *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

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.<sup>61</sup> This Public Notice provides additional guidance on procedures for submitting application-related information below.<sup>62</sup>

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

#### **h. Winning Bidders Must Disclose Terms of Agreements**

31. 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.<sup>63</sup>

#### **i. Additional Information Concerning Anti-Collusion Rule**

32. 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.<sup>64</sup>

### **3. Incumbency Issues**

33. There are pre-existing BRS site-based incumbent licenses. The service area for each of those incumbent licenses is a 35-mile circle centered at the station's reference coordinates, and is bounded by the chord(s) drawn between the intersection points of the licensee's previous protected service area and those of respective adjacent market, co-channel licensees.<sup>65</sup> Any licenses granted pursuant to this auction will not include the geographic service areas of any co-channel incumbent site-based licenses.<sup>66</sup> If a site-based incumbent license cancels or is forfeited, however, the right to operate within that area shall revert to the overlay licensee that holds the license for the BRS service area that encompasses that BTA.<sup>67</sup> BRS incumbent licenses are entitled to interference protection in accordance with the applicable technical rules.<sup>68</sup> BRS licenses have previously been awarded through auction (Auction 6) for BTAs other than those in this auction, and the previously-awarded licenses may have since been assigned or partitioned. Such BRS geographic area licenses authorize operation within a BTA and provide the licensee with rights similar to those being offered in Auction 86.

34. In addition, on the E and F channel groups, grandfathered Educational Broadband Service ("EBS") licenses originally issued on those channels prior to 1983 may continue to operate indefinitely.<sup>69</sup> Such grandfathered EBS licenses must be protected in accordance with the applicable technical rules.<sup>70</sup>

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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).

<sup>61</sup> *See* Section VI. "Contact Information," below.

<sup>62</sup> *See* Section II.J. "Maintaining Current Information in Short-Form Applications," below.

<sup>63</sup> 47 C.F.R. § 1.2107(d).

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

<sup>65</sup> *See* 47 C.F.R. § 27.1206(a)(1).

<sup>66</sup> *See* 47 C.F.R. § 27.1206(a)(2).

<sup>67</sup> *See* 47 C.F.R. § 27.1206(b).

<sup>68</sup> *See* 47 C.F.R. §§ 27.50(h), 27.53(m), 27.55(a)(4), 27.1221.

<sup>69</sup> *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; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and

35. Operations within the 2614-2618 MHz band are secondary to adjacent channel operations.<sup>71</sup>

36. Finally, in the 2496-2500 MHz band, BRS licensees must share the band on a co-primary basis with the Code Division Multiple Access (“CDMA”) Mobile Satellite Service (“MSS”),<sup>72</sup> grandfathered Broadcast Auxiliary Service (“BAS”) stations,<sup>73</sup> and grandfathered land mobile and microwave licenses licensed under Parts 90 and 101 of the Commission’s rules, respectively.<sup>74</sup> In addition, the 2400-2500 MHz band is allocated for use by Industrial, Scientific, and Medical equipment under Part 18 of the Commission’s rules.<sup>75</sup>

37. The WCAI filed comments noting that in certain markets, the transition to the new band plan is not yet complete, and in those markets, new licensees may not be able to operate on some or all of their spectrum until the transition process is completed.<sup>76</sup> Under our rules, until a transition has been completed in a BTA, existing licensees operating under the pre-transition band plan are entitled to interference protection in accordance with the applicable technical rules.<sup>77</sup> Potential bidders can check on the status of transition in a market by checking the Commission’s Electronic Comment Filing System and reviewing WT Docket No. 06-136. If a post-transition notification has been filed for a BTA, the transition has been completed in that BTA.<sup>78</sup> In a BTA where no transition initiation plan had been filed by January 21, 2009, for a BTA, existing licensees in the BTA could file notifications with the Commission by April 21, 2009, of an intent to self-transition.<sup>79</sup> Once a licensee completes a self-transition, it is required to modify its license to reflect its operation pursuant to the new band plan.<sup>80</sup> Potential bidders can review the Universal Licensing System to see if a license has been modified to operate pursuant to the new band plan.

38. WCAI also asks that potential bidders be reminded of obligations to reimburse certain licensees of their costs in transitioning to the new BRS/EBS band plan.<sup>81</sup> Under the Commission’s rules, BRS licensees are responsible for reimbursing transition proponents or self-transitioning EBS licensees in

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74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; WT Docket Nos. 03-66, 03-67, 02-68, MM Docket No. 97-217, *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, FCC 06-46, 21 FCC Rcd 5606, 5749-5751 ¶¶ 347-354 (2006) (*BRS/EBS 3<sup>rd</sup> MO&O* or *Big LEO Spectrum Sharing Reconsideration Order*, as appropriate); 47 C.F.R. § 27.1216.

<sup>70</sup> See 47 C.F.R. §§ 27.50(h), 27.53(m), 27.55(a)(4), 27.1221.

<sup>71</sup> See 47 C.F.R. § 27.1222.

<sup>72</sup> See *Big LEO Spectrum Sharing Reconsideration Order*, 21 FCC Rcd at 5623-5627 ¶¶ 29-34. CDMA MSS licensees are not entitled to interference protection from fixed and mobile services operating in the 2495-2500 MHz band. *Id.* at 5623 ¶ 29.

<sup>73</sup> See *id.* at 5628-5630 ¶¶ 38-42.

<sup>74</sup> See *id.* at 5631-4632 ¶¶ 44-47.

<sup>75</sup> See 47 C.F.R. § 18.301.

<sup>76</sup> See WCAI Comments at 8-9.

<sup>77</sup> See 47 C.F.R. §§ 27.50(h), 27.53(m), 27.55(a)(4), 27.1221.

<sup>78</sup> See 47 C.F.R. § 27.1235.

<sup>79</sup> See 47 C.F.R. § 27.1236.

<sup>80</sup> See *BRS/EBS 3<sup>rd</sup> MO&O*, 21 FCC Rcd at 5674 ¶ 143.

<sup>81</sup> WCAI Comments at 8.

accordance with the Commission's rules.<sup>82</sup> Potential bidders should be aware that in BTAs where the transition to the new band plan has not yet been completed as of the date licenses are issued pursuant to this auction, they may be required to reimburse eligible licensees for a *pro rata* share of transition costs.<sup>83</sup>

**a. International Coordination**

39. BRS licensees must individually apply for and receive a separate license for each transmitter if the proposed operation requires coordination with either Mexico or Canada.<sup>84</sup> Potential bidders seeking licenses in Auction 86 for geographic areas that are near the Canadian or Mexican borders are encouraged to consult all international agreements with Canada and Mexico.<sup>85</sup> We also note that the current agreement with Mexico does not provide for two-way operation in the border area. If the agreements with Mexico or Canada are modified in the future, licensees must likewise comply with these modifications.

**b. Quiet Zones**

40. BRS licensees must individually apply for and receive a separate license for each transmitter if the proposed operation would affect the radio quiet zones set forth in the Commission's rules.<sup>86</sup>

**4. Due Diligence**

41. 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, there are incumbent operations already licensed and operating in the band that must be protected. These limitations may restrict the ability of BRS 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 applicable 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.

42. 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.

43. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction 86 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 86 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

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<sup>82</sup> See 47 C.F.R. §§ 27.1237-27.1239.

<sup>83</sup> See *id.*

<sup>84</sup> See 47 C.F.R. § 27.1207(b)(1)(i).

<sup>85</sup> For information on the agreements with Canada and Mexico, prospective bidders should go to <http://www.fcc.gov/ib/sand/agree/welcome.html>.

<sup>86</sup> 47 C.F.R. §§ 1.924, 27.1207(b)(1)(ii).

operate facilities that will fully comply with the Commission's technical and legal requirements as well as other applicable Federal, state, and local laws.

44. 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 86. Pending and future judicial proceedings may also relate to particular applicants or incumbent licensees, or the licenses available in Auction 86. 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.

45. 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 86. 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.

46. 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.

47. Applicants may obtain information about licenses available in Auction 86 through the Bureau's online licensing databases at <http://wireless.fcc.gov/uls>. Applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the upper right-hand corner of the "License Search" screen or by going to the Universal Licensing System ("ULS") support site at <http://esupport.fcc.gov/licensing.htm>. Applicants should direct questions regarding the ULS search capabilities to the FCC ULS Technical Support hotline at (877) 480-3201, option two. The hotline is available to assist with questions Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

48. 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.

49. 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**

50. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 86 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

51. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 86 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service, 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&section=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

52. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes.<sup>87</sup> 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.<sup>88</sup> 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.<sup>89</sup> 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

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<sup>87</sup> 47 C.F.R. Ch. 1, Subpart I.

<sup>88</sup> 47 C.F.R. §§ 1.1301-1.1319.

<sup>89</sup> 47 C.F.R. Part 1, Appendix C.



that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

#### **D. Auction Specifics**

##### **1. Auction Start Date**

53. Bidding in Auction 86 will begin on Tuesday, October 27, 2009, as announced in the *Auction 86 Comment Public Notice*.<sup>90</sup> The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

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

##### **2. Auction Title**

55. Auction 86 – Broadband Radio Service

##### **3. Bidding Methodology**

56. As discussed in more detail below, the bidding methodology for Auction 86 will be simultaneous multiple round (“SMR”) bidding.<sup>91</sup> 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**

57. The following dates and deadlines apply:

Auction Seminar .....	August 5, 2009
Short-Form Application (FCC Form 175)	
Filing Window Opens .....	August 5, 2009; 12:00 noon ET
Short-Form Application (FCC Form 175)	
Filing Window Deadline .....	August 18, 2009; prior to 6:00 p.m. ET
Upfront Payments (via wire transfer).....	September 24, 2009; 6:00 p.m. ET
Mock Auction .....	October 23, 2009
Auction Begins.....	October 27, 2009

##### **5. Requirements for Participation**

58. Those wishing to participate in this auction must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET, August 18, 2009, 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, September 24, 2009, 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.

<sup>90</sup> *Auction 86 Comment Public Notice* at ¶ 1.

<sup>91</sup> See Section IV.A.1. “Simultaneous Multiple Round Auction,” below.

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

### A. General Information Regarding Short-Form Applications

59. 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.<sup>92</sup> 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.<sup>93</sup> Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments, as explained below.<sup>94</sup> 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.<sup>95</sup>

60. Entities seeking licenses available in Auction 86 must file a short-form application electronically via the FCC Auction System prior to 6:00 p.m. ET on August 18, 2009, 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 a bidding credit.

61. 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.<sup>96</sup> Applicants should read the instructions set forth in Attachment C to this Public Notice carefully and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their short-form applications.

62. 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.

63. 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.<sup>97</sup> 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

64. 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 86, 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

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<sup>92</sup> 47 C.F.R. § 1.2105.

<sup>93</sup> *Id.*; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

<sup>94</sup> Section III.D. "Upfront Payments – Due September 24, 2009," below.

<sup>95</sup> 47 C.F.R. § 1.2107.

<sup>96</sup> 47 C.F.R. § 1.2105(a)(2)(v).

<sup>97</sup> 47 C.F.R. § 1.2105(b).

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.

65. Applicants will not be able to change their license selections after the short-form application filing deadline.<sup>98</sup> Applicants interested in participating in Auction 86 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**

66. 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.<sup>99</sup>

67. 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.<sup>100</sup> 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.<sup>101</sup>

68. 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.<sup>102</sup> While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.<sup>103</sup> 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.<sup>104</sup>

### **D. Ownership Disclosure Requirements**

69. 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.<sup>105</sup> Specifically,

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<sup>98</sup> 47 C.F.R. § 1.2105(b)(2).

<sup>99</sup> 47 C.F.R. §§ 1.2105(a)(2)(viii), (c)(1).

<sup>100</sup> 47 C.F.R. § 1.2105(a)(2)(ix).

<sup>101</sup> Section I.C.2. "Prohibition of Collusion; Compliance with Antitrust Laws," above.

<sup>102</sup> 47 C.F.R. §§ 1.2105(c)(4)(i), (ii).

<sup>103</sup> Section I.C.2. "Prohibition of Collusion; Compliance with Antitrust Laws," above.

<sup>104</sup> *Id.*

<sup>105</sup> 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.

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.<sup>106</sup> Each applicant is responsible for information submitted in its short-form application being complete and accurate.

70. 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 86 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 86 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**

71. Eligible applicants in Auction 86 may claim designated entity status, as an entrepreneur, a small business, 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.<sup>107</sup>

##### **1. Bidding Credits for Small and Very Small Businesses**

72. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction 86, bidding credits will be available to entrepreneurs, small businesses and very small businesses, and consortia thereof.

##### **a. Bidding Credit Eligibility Criteria**

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

- A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years ("small business") will receive a 15 percent discount on its winning bid.<sup>108</sup>
- A bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years ("very small business") will receive a 25 percent discount on its winning bid.<sup>109</sup>
- A bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years ("entrepreneur") will receive a 35 percent discount on its winning bid.<sup>110</sup>

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<sup>106</sup> 47 C.F.R. §§ 1.2105, 1.2112.

<sup>107</sup> 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 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*").

<sup>108</sup> See 47 C.F.R. §§ 1.2110(f)(2)(ii), 27.1218.

<sup>109</sup> See 47 C.F.R. §§ 1.2110(f)(2)(ii), 27.1218.

74. Bidding credits are not cumulative. A qualifying applicant may claim either a 15 percent, 25 percent, or 35 percent bidding credit on its winning bid.

**b. Revenue Disclosure on Short-Form Application**

75. An entity applying as an entrepreneur, small business, 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.<sup>111</sup> 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 entrepreneurs, small businesses, or very small businesses, this information must be provided for each consortium member.<sup>112</sup>

**2. Attributable Interests**

**a. Controlling Interests**

76. 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.<sup>113</sup> The following are some common indicia of *de facto* control:

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee;
- the entity plays an integral role in management decisions.<sup>114</sup>

77. 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.<sup>115</sup>

**b. Affiliates**

78. 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.<sup>116</sup> The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the

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<sup>110</sup> See 47 C.F.R. §§ 1.2110(f)(2)(i), 27.1218.

<sup>111</sup> 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.

<sup>112</sup> 47 C.F.R. §§ 1.2110(b)(3)(i), 1.2110(b)(6), 1.2110(k).

<sup>113</sup> 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).

<sup>114</sup> 47 C.F.R. § 1.2110(c)(2)(i)(A)-(C).

<sup>115</sup> 47 C.F.R. § 1.2110(c)(2)(ii)(F).

<sup>116</sup> 47 C.F.R. § 1.2110(c)(5).

applicant and affiliates of controlling interests of the applicant.<sup>117</sup> For more information regarding affiliates, applicants should refer to Section 1.2110(c)(5) and Attachment C to this Public Notice.

**c. Material Relationships**

79. 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. Material relationships fall into two categories: impermissible and attributable.

80. 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.<sup>118</sup>

81. 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 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.<sup>119</sup>

82. 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 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.<sup>120</sup>

**d. Gross Revenue Exceptions**

83. 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

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<sup>117</sup> *Id.*

<sup>118</sup> *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).

<sup>119</sup> *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).

<sup>120</sup> 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.

interest standard, it will not attribute the personal net worth, including personal income, of its officers and directors to the applicant.<sup>121</sup>

84. 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.<sup>122</sup> 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 must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.<sup>123</sup> Applicants seeking to claim this exemption must meet all of the conditions.<sup>124</sup> Additional guidance on claiming this exemption may be found in Attachment C to this Public Notice.

#### e. Bidding Consortia

85. 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.<sup>125</sup> Thus, each member of a consortium of small businesses, very small businesses, or entrepreneurs that applies to participate in Auction 86 must individually meet the criteria for small businesses, very small businesses, or entrepreneurs, as set forth above.<sup>126</sup> 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, very small business, or entrepreneur<sup>127</sup> this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.<sup>128</sup>

### 3. Installment Payments

86. Installment payment plans will not be available for licenses offered in Auction 86.

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<sup>121</sup> 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.

<sup>122</sup> *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*”).

<sup>123</sup> 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*, FCC 03-98, 18 FCC Rcd 10,180 (2003); *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd at 1949 ¶ 18.

<sup>124</sup> 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.

<sup>125</sup> 47 C.F.R. § 1.2110(c)(6).

<sup>126</sup> *Id.*

<sup>127</sup> 47 C.F.R. § 1.2110(b)(3)(i).

<sup>128</sup> 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.

**F. Tribal Lands Bidding Credit**

87. 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**

88. Current defaulters are not eligible to participate in Auction 86, 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.<sup>129</sup> 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 license (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 license 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.

89. 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,<sup>130</sup> are not in default on any payments for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency.<sup>131</sup> 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 Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency.<sup>132</sup> 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.

90. 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.<sup>133</sup> 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.<sup>134</sup> Therefore, with respect

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<sup>129</sup> 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.”).

<sup>130</sup> 47 C.F.R. § 1.2110.

<sup>131</sup> 47 C.F.R. § 1.2105(a)(2)(x); *see also Part 1 Fifth Report and Order*, 15 FCC Rcd at 15,317 ¶ 42.

<sup>132</sup> 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.

<sup>133</sup> “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*”).

<sup>134</sup> 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)).



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.<sup>135</sup> 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.

91. 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.<sup>136</sup> 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.<sup>137</sup> 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.

92. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of Section 1.2105.<sup>138</sup> 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**

93. Applicants owned by members of minority groups and/or women, as defined in Section 1.2110(c)(3),<sup>139</sup> and rural telephone companies, as defined in Section 1.2110(c)(4),<sup>140</sup> 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.<sup>141</sup>

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<sup>135</sup> 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.

<sup>136</sup> 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*").

<sup>137</sup> *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)).

<sup>138</sup> *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).

<sup>139</sup> 47 C.F.R. § 1.2110(c)(3).

<sup>140</sup> 47 C.F.R. § 1.2110(c)(4).

<sup>141</sup> 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).

## **I. Minor Modifications to Short-Form Applications**

94. 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.<sup>142</sup> 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.<sup>143</sup>

95. Applicants are, however, permitted to make 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.

96. 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.

97. 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.

98. Any letter describing changes to an applicant's short-form application should be submitted by e-mail to the following address: [auction86@fcc.gov](mailto:auction86@fcc.gov). The e-mail summarizing the changes must include a subject or caption referring to Auction 86 and the name of the applicant – for example, "RE: Changes to Auction 86 Short-Form Application of ABC Corp." The Bureau requests that parties format any attachments to e-mail as Adobe<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft<sup>®</sup> Word documents. Questions about short-form application amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

99. 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 86.<sup>144</sup> 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**

100. 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

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<sup>142</sup> 47 C.F.R. § 1.2105(b).

<sup>143</sup> 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.

<sup>144</sup> See Section I.C.2.g. "Duty to Report Prohibited Communications; Reporting Procedure," above.

days of any substantial change that may be of decisional significance to that application.<sup>145</sup> 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.<sup>146</sup>

101. 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: auction86@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 86 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 – August 5, 2009

102. On Wednesday, August 5, 2009, the Commission will conduct a seminar for parties interested in participating in Auction 86 at FCC headquarters, located at 445 12<sup>th</sup> 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 Broadband Radio 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.

103. To register, please provide the information listed on Attachment G by fax, e-mail or telephone to the FCC by Monday, August 3, 2009. The seminar is free of charge.

104. For individuals who are unable to attend, a webcast of this seminar will be available from the FCC’s Auction 86 web page at <http://wireless.fcc.gov/auctions/86/>. 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 August 18, 2009

105. 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.<sup>147</sup> This application must be received at the Commission prior to 6:00 p.m. ET on August 18, 2009. **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.<sup>148</sup>

106. Applications may generally be filed at any time beginning at noon ET on August 5, 2009, until the filing window closes at 6:00 p.m. ET on August 18, 2009. 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 August 18, 2009.

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<sup>145</sup> 47 C.F.R. § 1.65.

<sup>146</sup> 47 C.F.R. § 1.2105(b)(2).

<sup>147</sup> 47 C.F.R. § 1.2105(a).

<sup>148</sup> See Section III.D. “Upfront Payments – Due September 24, 2009,” below.

107. 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

108. 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 that are 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.

109. As described above, after the August 18, 2009, short-form filing deadline, applicants may make only minor corrections to their applications.<sup>149</sup> 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).<sup>150</sup>

110. 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 applicant’s counsel or other representative is authorized to speak on its behalf.<sup>151</sup> Authorizations may be submitted by e-mail at the following address: [auction86@fcc.gov](mailto:auction86@fcc.gov).

### D. Upfront Payments – Due September 24, 2009

111. 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 U.S. Bank in St. Louis, Missouri. **All upfront payments must be made as instructed in this Public Notice and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on September 24, 2009.**

#### 1. Making Upfront Payments by Wire Transfer

112. Wire transfer payments must be received by 6:00 p.m. ET on September 24, 2009.<sup>152</sup> No other payment method is acceptable.<sup>153</sup> To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make

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<sup>149</sup> See Section III.I. “Minor Modifications to Short-Form Applications,” above.

<sup>150</sup> 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).

<sup>151</sup> 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.

<sup>152</sup> 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 U.S. Bank in St. Louis, Missouri. Additional information on wire transfers is available on the Commission’s web site at <http://www.fcc.gov/fees/wiretran.html>.

<sup>153</sup> The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

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: 081000210  
Receiving Bank: U.S. Bank  
1005 Convention Plaza  
St. Louis, MO 63101  
BENEFICIARY: FCC/Account # 152308790392  
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: “A86U”)  
FCC CODE 1: (same as FCC Form 159, block 28A: “86”)  
PAYER NAME: (same as FCC Form 159, block 2)  
LOCKBOX NO. # 979085

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

113. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Form 159 (Revised 2/03) to U.S. Bank at (314) 418-4232. On the fax cover sheet, applicants should write “Wire Transfer – Auction Payment for Auction 86.” 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.<sup>154</sup> **The applicant is responsible for obtaining confirmation from its financial institution that U.S. Bank has timely received its upfront payment and deposited it in the proper account.**

114. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 86 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 a sufficient upfront payment as instructed by the September 24, 2009, deadline will result in dismissal of the application and disqualification from participation in the auction.

## 2. FCC Form 159

115. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be faxed to U.S. 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 U.S. Bank by fax.

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<sup>154</sup> 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).

### 3. Upfront Payments and Bidding Eligibility

116. The Commission has delegated to the Bureau the authority and discretion to determine appropriate upfront payments for each auction.<sup>155</sup> 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.

117. Applicants that are former defaulters, as described above, must pay upfront payments 50 percent greater than non-former defaulters.<sup>156</sup> For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by Section 1.2110 of the Commission’s rules.<sup>157</sup>

118. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. The Bureau proposed, in the *Auction 86 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.<sup>158</sup> Under the Bureau’s proposal, in order to bid on a particular license, a qualified bidder must have selected the license 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 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.<sup>159</sup>

119. In the *Auction 86 Comment Public Notice*, the Bureau proposed to calculate upfront payments for Auction 86 on a license-by-license basis using the following formula based on bandwidth and license area population:

$$\$0.01 * \text{MHz} * \text{BTA population with a minimum of } \$20,000 \text{ per license.}^{160}$$

120. The Bureau set forth the specific proposed upfront payments and bidding units for each license in Attachment A of the *Auction 86 Comment Public Notice* and sought comment on this proposal.

121. Several commenters addressed the proposed upfront payment amounts as well as minimum opening bids for this auction. These commenters seek a downward adjustment of the formulas used to calculate upfront payments and minimum opening bids. Commenters offer two alternatives to the upfront payment amounts and minimum opening bids proposed in the *Auction 86 Comment Public Notice*. The Ad Hoc Applicants suggest that the “fairest and most accurate way” to set the minimums would be to begin with the Commission’s calculation and then subtract the MHz/pops which are currently licensed to incumbents.<sup>161</sup> The Ad Hoc Applicants propose that the minimum be set at the

<sup>155</sup> Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997) (“*Part 1 Order*”).

<sup>156</sup> *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.

<sup>157</sup> 47 C.F.R. § 1.2110(c).

<sup>158</sup> *Auction 86 Comment Public Notice* at ¶ 25.

<sup>159</sup> 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.

<sup>160</sup> Results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

<sup>161</sup> Ad Hoc Applicants Comments at 2-3. Ad Hoc Applicants Reply Comments at 1-2.

higher of \$5,000 or the figure derived using its encumbrance-adjusted calculation. The Ad Hoc Applicants do not provide any data on the levels of encumbrance in the BRS service areas being offered in Auction 86.

122. The WCAI urges the Commission to modify its formula for calculating upfront payments based on the levels of encumbrance in the BTA.<sup>162</sup> Specifically, WCAI proposes using a formula of  $\$0.005 * \text{MHz} * \text{population}$  when the BTA's total encumbered population is greater than 50% but less than 80%, and a lower figure of  $\$0.001 * \text{MHz} * \text{BTA population}$  when the BTA's total encumbered pops is greater than 80%.<sup>163</sup> Noting that 75 of the licenses to be offered are "overlay" licenses originally offered in Auction 6, WCAI provides several examples of instances where the Commission's proposed upfront payment/minimum opening bid both "exceeds its  $\$0.01 \text{ MHz} * \text{Pop}$  target and exceeds or nearly matches" the Auction 6 winning bid for a license in the same BTA.<sup>164</sup> In reply comments, Clearwire supports an adjustment of the upfront payments and minimum opening bids that reflects encumbrances.<sup>165</sup> In an *ex parte* submission, members of WCAI submit information on the levels of encumbrance in each of the 78 BRS license areas being offered in Auction 86.<sup>166</sup> Clearwire asserts that it has no preference for either WCAI's proposal or that of Ad Hoc Applicants.<sup>167</sup>

123. Ad Hoc Applicants criticize the WCAI approach, noting that it would leave many markets "untouched" because they are less than 50% encumbered.<sup>168</sup>

124. In the *Auction 86 Comment Public Notice*, the Bureau noted the presence of pre-existing BRS site-based incumbent licenses within some of the geographic areas available in Auction 86.<sup>169</sup> The Bureau did not specifically address incumbency in its discussion of upfront payments. However, in its discussion of the proposed minimum opening bid amounts, the Bureau noted, "we have not attempted to adjust minimum opening bid amounts for licenses based on precise levels of incumbency within particular geographic areas, and have instead proposed a formula... intended to reflect overall incumbency levels within the BRS service areas being offered."<sup>170</sup> The Bureau proposed to calculate upfront payments using the same formula as proposed for minimum opening bid amounts.<sup>171</sup>

125. Upon careful consideration of the comments, reply comments, and *ex parte* submission, as well as the history of this particular service, the Bureau has decided to exercise its discretion to adjust upfront payments. In making this change, the Bureau recognizes the concerns expressed regarding relative incumbency of the licenses. The revised upfront payments are calculated on a license-by-license

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<sup>162</sup> WCAI Comments at 2, 7-8. WCAI Reply Comments at 2-3. WCAI's Comments provided data on the levels of encumbrance in some, but not all, of the BRS license areas.

<sup>163</sup> WCAI Comments at 2, 7-8. WCAI also asks that these modified upfront payment amounts be accompanied by corresponding adjustments in minimum opening bid amounts.

<sup>164</sup> WCAI Comments at 4-6.

<sup>165</sup> Clearwire Reply Comments at 1-2.

<sup>166</sup> WCAI members *ex parte* filing.

<sup>167</sup> Clearwire Reply Comments at 2.

<sup>168</sup> Ad Hoc Applicants Reply Comments at 1-2.

<sup>169</sup> *Auction 86 Comment Public Notice* at ¶¶ 3-8.

<sup>170</sup> *Id* at ¶ 40.

<sup>171</sup> *Id* at ¶¶ 24, 40.

basis using formulas based on bandwidth, license area population, and the encumbrance data submitted in the *ex parte* filing as follows:<sup>172</sup>

Encumbrance	\$/MHz-pop
0%-20%	\$0.0125
21%-50%	\$0.0100
51%-80%	\$0.0050
above 80%	\$0.0025

126. The results of the formulas are subject to our standard rounding procedures<sup>173</sup> and to a minimum of \$5,000 per license, except for the licenses for BRS service areas in the Gulf of Mexico, for which the upfront payments will be \$20,000 as originally proposed. The upfront payment and bidding units for each license are set forth in Attachment A of this Public Notice.

127. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units.<sup>174</sup> 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.**

<b>Example: Upfront Payments and Bidding Flexibility</b>			
<b>License</b>	<b>Market Name</b>	<b>Bidding Units</b>	<b>Upfront Payment</b>
BR-BTA035	Beckley, WV	160,000	\$160,000
BR-BTA048	Bluefield, WV	161,000	\$161,000

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 321,000 bidding units (160,000 + 161,000). If a bidder only wishes to bid on one, but not both, purchasing 161,000 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 160,000 bidding units, it would have enough eligibility for the Beckley, WV license but not for the Bluefield, WV license.

128. 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.<sup>175</sup> 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.

<sup>172</sup> WCAI members *ex parte* filing. Consistent with potential bidders' due diligence obligations, applicants should make their own assessments of encumbrances relating to licenses in which they are interested.

<sup>173</sup> See note 160 (concerning rounding), above.

<sup>174</sup> 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.

<sup>175</sup> 47 C.F.R. § 1.2106(a).



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

129. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed below be supplied. 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  
Name of Account Holder  
FCC Registration Number (FRN)  
Correspondent Bank (if applicable)  
ABA Number  
Account Number

#### E. Auction Registration

130. Approximately ten days before the auction, the 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.

131. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the short-form application and will include the SecurID<sup>®</sup> tokens that will be required to place bids, the "Integrated Spectrum Auction System (ISAS) Bidder's Guide," and the Auction Bidder Line phone number.

132. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Wednesday, October 21, 2009, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

133. In the event that SecurID<sup>®</sup> 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

134. 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<sup>®</sup> token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID<sup>®</sup> tokens, while applicants with two or three authorized bidders will be issued three tokens. **For security purposes, the SecurID<sup>®</sup> 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<sup>®</sup> token is tailored to a specific auction. SecurID<sup>®</sup> tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 86.

135. Please note that the SecurID<sup>®</sup> 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 – October 23, 2009**

136. All qualified bidders will be eligible to participate in a mock auction on Friday, October 23, 2009. 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**

137. The first round of bidding for Auction 86 will begin on Tuesday, October 27, 2009. In its comments, Utopian Wireless Corporation (“Utopian”) urges the Bureau to commence the auction as soon as possible and not to delay the schedule beyond the announced October 27, 2009, start date. Utopian expresses concern that applications windows for funding under National Telecommunications and Information Administration and Rural Utilities Service programs are approaching, and wants to be sure that potential recipients of federal broadband funding will have an opportunity to acquire spectrum rights to demonstrate their intention to deploy broadband services in their proposed project areas.<sup>176</sup> As indicated by this Public Notice the Bureau does not anticipate any delay in the schedule as previously announced in the *Auction 86 Comment Public Notice*. 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**

138. In the *Auction 86 Comment Public Notice*, the Bureau proposed to auction all licenses in Auction 86 in a single auction using the Commission’s standard simultaneous multiple-round (“SMR”) auction format.<sup>177</sup> 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.

139. No comments were received. Given the nature of the auction inventory, we conclude that the standard SMR auction format will best meet the needs of bidders in Auction 86. Therefore, we adopt our proposal to use a SMR auction format. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction until bidding stops on every license.

##### **2. Information Available to Bidders Before and During the Auction**

140. In the *Auction 86 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 (FCC Form 175), (2) the amounts of bidders’ upfront payments and bidding eligibility, and (3)

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<sup>176</sup> Utopian Comments at 1-2.

<sup>177</sup> *Auction 86 Comment Public Notice* at ¶ 10.

information that may reveal the identities of bidders placing bids and taking other bidding-related actions.<sup>178</sup>

141. The Public Interest Spectrum Coalition (“PISC”) supports anonymous bidding for Auction 86 claiming that anonymous bidding in Auction 73 increased the competitiveness of the auction.<sup>179</sup> WCAI also supports anonymous bidding for Auction 86.<sup>180</sup>

142. We adopt the limited information procedures proposed in the *Auction 86 Comment Public Notice*.<sup>181</sup> 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.

143. *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 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.<sup>182</sup>

144. In Auction 86, 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.

145. 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 86 have applied for licenses in any of the same geographic areas as the applicant. Specifically, after the Bureau conducts its initial review of applications to participate in Auction 86, it will send to each applicant in Auction 86 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same 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

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<sup>178</sup> *Id* at ¶ 11.

<sup>179</sup> PISC Comments at 1-3. In support of its Comments, PISC provides a study by Dr. Gregory Rose based on his analysis of the results of Auction 73, a recent auction of 700 MHz band licenses which was conducted using an auction design with package (combinatorial) bidding procedures for certain licenses offered. As described below, the Bureau has not proposed, and will not adopt, package bidding procedures for this auction. For this reason, the Bureau makes no conclusions about the applicability of Dr. Rose’s analysis of package bidding to Auction 86, which will be conducted using the Commission’s standard simultaneous multiple round bidding format.

<sup>180</sup> WCAI Reply Comments at 3.

<sup>181</sup> *Auction 86 Comment Public Notice* at ¶ 11-12.

<sup>182</sup> 47 C.F.R. § 1.2105(c)(1).

ownership interest – will be available through the publicly accessible online short-form application database.<sup>183</sup>

146. 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 86. While applicants’ license selection will not be disclosed until after Auction 86 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.

147. 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.<sup>184</sup>

148. 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.<sup>185</sup> **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

149. As discussed above, we will use upfront payments to determine initial (maximum) eligibility (as measured in bidding units) for Auction 86.<sup>186</sup> 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.

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<sup>183</sup> 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).

<sup>184</sup> 47 C.F.R. § 1.2109(d).

<sup>185</sup> 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).

<sup>186</sup> See Section III.D.3. “Upfront Payments and Bidding Eligibility,” above.

150. 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.

151. 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).

152. 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 86. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.<sup>187</sup>

#### 4. Auction Stages

153. In the *Auction 86 Comment Public Notice*, the Bureau proposed to conduct the auction in two stages and employ an activity rule.<sup>188</sup> 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 90 percent of its current bidding eligibility, during each round of Stage One, and at least 98 percent of its current bidding eligibility in Stage Two. The Commission received no comments on this proposal.

154. 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.

155. **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 90 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 ten-ninths (10/9).

156. **Stage Two:** During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 98 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 fifty-fortyninths (50/49).

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

<sup>187</sup> See Section IV.A.6. "Activity Rule Waivers," below.

<sup>188</sup> *Auction 86 Comment Public Notice* at ¶ 28-31.

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.

157. Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, we adopt them for Auction 86.

## 5. Stage Transitions

158. In the *Auction 86 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.<sup>189</sup> The Bureau further 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 98 percent. The Bureau proposed to alert bidders of stage advancements by announcement during the auction. The Bureau received no comments on this issue.

159. We adopt our proposal for stage transitions. Thus, the auction will start in Stage One.<sup>190</sup> 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 98 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.<sup>191</sup>

## 6. Activity Rule Waivers

160. In the *Auction 86 Comment Public Notice*, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers.<sup>192</sup> We received no comments on this issue.

161. 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.

162. 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

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<sup>189</sup> *Id.* at ¶ 29.

<sup>190</sup> 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.

<sup>191</sup> 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.

<sup>192</sup> *Auction 86 Comment Public Notice* at ¶ 36.

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.

163. 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.

164. 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

165. For Auction 86, the Bureau proposed to employ a simultaneous stopping rule approach.<sup>193</sup> 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.

166. The Bureau also sought comment on alternative versions of the simultaneous stopping rule for Auction 86:

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 activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

167. 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.<sup>194</sup> The Bureau noted that before exercising these options, it is likely to attempt to change the

<sup>193</sup> *Auction 86 Comment Public Notice* at ¶ 20.

<sup>194</sup> *Id.* at ¶ 22.

pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids.<sup>195</sup> The Bureau proposed to retain the discretion to exercise any of these options with or without prior announcement during the auction.<sup>196</sup> The Bureau received no comment on these proposals, and we adopt them for Auction 86.

## **8. Auction Delay, Suspension, or Cancellation**

168. In the *Auction 86 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 unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.<sup>197</sup> The Bureau received no comment on this issue.

169. 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**

170. 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.

171. 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**

172. 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.<sup>198</sup> Consistent with this mandate, the Commission directed the Bureau to seek

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<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* at 23.

<sup>198</sup> 47 U.S.C. § 309(j)(4)(F).



comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.<sup>199</sup> Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned.<sup>200</sup> The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.<sup>201</sup>

173. In the *Auction 86 Comment Public Notice*, the Bureau did not propose to establish a separate reserve price for the licenses to be offered in Auction 86. The Bureau, however, did propose to establish minimum opening bids for each license, reasoning that a minimum opening bid, which has been used on other auctions, is an effective bidding tool for accelerating the competitive bidding process.<sup>202</sup> Specifically, for Auction 86, the Bureau proposed to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area population as follows:

\$0.01 \* MHz \* BTA population with a minimum of \$20,000 per license.<sup>203</sup>

174. 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.<sup>204</sup>

175. As discussed above, several commenters seek a downward adjustment in the formula for calculating minimum opening bids (as well as the formula for upfront payments).<sup>205</sup> Commenters offer two alternatives to the upfront payment amounts and minimum opening bids proposed in the *Auction 86 Comment Public Notice*.

176. In the *Auction 86 Comment Public Notice*, the Bureau noted the presence of pre-existing BRS site-based incumbent licenses within some of the geographic areas available in Auction 86.<sup>206</sup> In its discussion of the proposed minimum opening bid amounts, the Bureau noted, “we have not attempted to adjust minimum opening bid amounts for licenses based on precise levels of incumbency within particular geographic areas, and have instead proposed a formula... intended to reflect overall incumbency levels within the BRS service areas being offered.”<sup>207</sup>

177. Upon careful consideration of the comments, reply comments, and *ex parte* submission, as well as the history of this particular service, the Bureau has decided to exercise its discretion to adjust minimum opening bids. In making this change, the Bureau recognizes the concerns expressed regarding relative incumbency of the licenses. The revised minimum opening bids are calculated on a license-by-

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<sup>199</sup> 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*”).

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Auction 86 Comment Public Notice* at ¶ 39.

<sup>203</sup> Results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

<sup>204</sup> *Auction 86 Comment Public Notice* at ¶ 40.

<sup>205</sup> See section IV.B.2., above.

<sup>206</sup> *Auction 86 Comment Public Notice* at ¶¶ 3-8.

<sup>207</sup> *Id.* at ¶ 40.

license basis using formulas based on bandwidth, license area population, and the encumbrance data submitted in the *ex parte* filing as follows:<sup>208</sup>

Encumbrance	\$/MHz-pop
0%-20%	\$0.0125
21%-50%	\$0.0100
51%-80%	\$0.0050
above 80%	\$0.0025

178. The results of the formulas are subject to our standard rounding procedures<sup>209</sup> and to a minimum of \$5,000 per license, except for the licenses for BRS service areas in the Gulf of Mexico, for which the minimum opening bids will be \$20,000 as originally proposed. The specific minimum opening bid amounts for each license available in Auction 86 calculated pursuant to the procedure described above are set forth in Attachment A.

### 3. Bid Amounts

179. In the *Auction 86 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.<sup>210</sup> Under the proposal, the FCC Auction System interface will list the acceptable bid amounts for each license.<sup>211</sup> The Commission received no comment on this issue. Based on the Commission's experience in prior auctions, we adopt the proposals for Auction 86.

#### a. Minimum Acceptable Bids

180. 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.<sup>212</sup>

181. 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 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.<sup>213</sup> The additional

<sup>208</sup> WCAI members *ex parte* filing. Consistent with potential bidders' due diligence obligations, applicants should make their own assessments of encumbrances relating to licenses in which they are interested.

<sup>209</sup> See note 203 (concerning rounding), above.

<sup>210</sup> Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3 "Upfront Payments and Bidding Eligibility," above.

<sup>211</sup> 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.

<sup>212</sup> See Section IV.B.6. "Bid Removal and Bid Withdrawal," below.

<sup>213</sup> 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.

percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round.

182. 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 0.3 (30%). At these initial settings, the minimum acceptable bid for a license will generally be between ten percent and thirty percent higher than the provisionally winning bid, depending upon the bidding activity for the license.<sup>214</sup> Equations and examples are shown in Attachment E.

**b. Additional Bid Amounts**

183. 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 bid 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.

184. For Auction 86, the Bureau proposed to set the bid increment percentage at 0.05, so that any additional bid amounts would increase by approximately 5 percent of the minimum acceptable bid. We received no comments on this proposal. Therefore, we adopt our proposal to begin the auction with a bid increment percentage of 0.05.<sup>215</sup>

185. The Bureau also sought comment on whether we should start Auction 86 with eight additional bid amounts (for a total of nine bid amounts) or with fewer or no additional bid amounts per license. We received no comments on this proposal. We adopt our proposal, and Auction 86 will begin with eight additional bid amounts per license.<sup>216</sup>

186. The Bureau also sought comment on circumstances under which the Bureau 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.

187. We will start the auction without a cap on the dollar amount by which minimum acceptable bids and additional bid amounts may increase. The Bureau retains the discretion to impose a cap on bid amounts.

188. 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

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<sup>214</sup> Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10. 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).

<sup>215</sup> When a cap on increases in bid amounts is in effect, additional bid amounts may increase by less than the bid increment percentage.

<sup>216</sup> 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.

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

189. 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.<sup>217</sup>

190. In the *Auction 86 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).<sup>218</sup> No comments were received on this proposal.

191. 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.

#### 5. Bidding

192. 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 86. 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.

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

194. 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<sup>®</sup> 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.

195. In each round, eligible bidders will be able to place bids on a given license in one or more pre-defined bid amounts.<sup>219</sup> For each license, the FCC Auction System will list the acceptable bid amounts in a drop-down box.<sup>220</sup> 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.

196. 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.

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<sup>217</sup> Section IV.A.3. “Eligibility and Activity Rules,” above.

<sup>218</sup> *Auction 86 Comment Public Notice* at ¶ 48.

<sup>219</sup> Bidders must have sufficient eligibility to place a bid on the particular license. See Section III.D.3. “Upfront Payments and Bidding Eligibility,” above.

<sup>220</sup> See Section IV.B.3. “Bid Amounts,” above.

197. During a round, an eligible bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid), 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.

198. 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.

## 6. Bid Removal and Bid Withdrawal

199. In the *Auction 86 Comment Public Notice*, the Commission proposed bid removal and bid withdrawal procedures.<sup>221</sup> 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.

200. The Bureau received no comments on this issue. Therefore, we adopt our proposal.

201. *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.

202. *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 withdrawal payments specified in Section 1.2104(g).<sup>222</sup> Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

203. 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.<sup>223</sup> The Commission will serve as a placeholder provisionally winning bidder on the license until a new bid is submitted on that license.

204. These procedures will permit bidder flexibility during the auction, and therefore the Bureau adopts them for Auction 86.

205. *Calculation of Bid Withdrawal Payment.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction.<sup>224</sup> If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible

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<sup>221</sup> *Auction 86 Comment Public Notice* at ¶¶ 50-54.

<sup>222</sup> 47 C.F.R. § 1.2104(g).

<sup>223</sup> The Bureau retains the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds.

<sup>224</sup> 47 C.F.R. §§ 1.2104(g), 1.2109.

for the difference between its withdrawn bid and the winning bid in the same or subsequent auction(s).<sup>225</sup> If there are multiple bid withdrawals on a single 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).<sup>226</sup>

206. Section 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a provisionally winning bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments.<sup>227</sup> In the *Auction 86 Comment Public Notice*, the Bureau proposed to establish the percentage at 15% for Auction 86 and sought comment on the proposal.<sup>228</sup>

207. The Bureau received no comments on this issue and adopts its proposal. The Commission will assess an interim withdrawal payment equal to 15% of the amount of the withdrawn bids. The 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.<sup>229</sup>

## 7. Round Results

208. Limited information about the results of a round will be made public after the conclusion of the round.<sup>230</sup> 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.

## 8. Auction Announcements

209. 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.

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<sup>225</sup> The payment will equal the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid. See 47 C.F.R. § 1.2104(g)(1).

<sup>226</sup> See following paragraph for discussion of interim bid withdrawal payments.

<sup>227</sup> 47 C.F.R. § 1.2104(g)(1); see *Part I Fifth Report and Order*, 15 FCC Rcd at 15,302 ¶ 15.

<sup>228</sup> *Auction 86 Comment Public Notice* at ¶ 54.

<sup>229</sup> 47 C.F.R. § 1.2104(g).

<sup>230</sup> The identities of parties that are qualified to bid in Auction 86 will be available before the auction. Thus, bidders will know in advance of this auction the identities of the other parties against which they may be bidding in the auction.

## V. POST-AUCTION PROCEDURES

210. 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, final payments, and ownership disclosure information reports.

### A. Down Payments

211. 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 86 to 20 percent of the net amount of its winning bids (gross bids less any applicable entrepreneur, small business or very small business bidding credits).<sup>231</sup>

### B. Final Payments

212. 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.<sup>232</sup>

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

213. 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 86. Winning bidders claiming eligibility for a small business, very small business, or entrepreneur bidding credit must demonstrate their eligibility for the bidding credit.<sup>233</sup> Further filing instructions will be provided to winning bidders in the auction closing notice.

214. Winning bidders organized as bidding consortia must comply with the long-form application procedures established in the *CSEA/Part 1 Report and Order*.<sup>234</sup> 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.<sup>235</sup>

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

215. 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 rules<sup>236</sup> by submitting an ownership disclosure information report (FCC Form 602) with its long-form application.<sup>237</sup>

216. 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

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<sup>231</sup> 47 C.F.R. § 1.2107(b).

<sup>232</sup> 47 C.F.R. § 1.2109(a).

<sup>233</sup> 47 C.F.R. § 1.2112(b).

<sup>234</sup> *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.

<sup>235</sup> *Id.*

<sup>236</sup> 47 C.F.R. §§ 1.913, 1.919, and 1.2112.

<sup>237</sup> *See* 47 C.F.R. § 1.2107(f).

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.

217. 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**

218. 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).<sup>238</sup> A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

219. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after winning the auction when it files its long-form application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in Section 1.2110(f)(3)(vii).<sup>239</sup>

220. 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.<sup>240</sup> Relevant documents can be viewed on the Commission's web site by going to <http://wireless.fcc.gov/auctions/> and clicking on the **Tribal Lands Credits** link.

#### **F. Default and Disqualification**

221. 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

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<sup>238</sup> 47 C.F.R. §§ 1.2107 and 1.2110(f).

<sup>239</sup> See 47 C.F.R. §§ 1.2110(f)(3)(ii) – (vii).

<sup>240</sup> 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).



described in Section 1.2104(g)(2).<sup>241</sup> 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.

222. 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 86 Comment Public Notice*, we proposed to set the additional default payment for this auction at fifteen percent of the applicable bid. We received no comments on this proposal and therefore adopt the proposal.

223. 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.<sup>242</sup> In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.<sup>243</sup>

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

224. After the auction, applicants that are not winning bidders or are winning bidders whose upfront payment exceeded the total net amount of their winning bids may be entitled to a refund of some or all of their upfront payment. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payor submits written authorization instructing otherwise. Bidders should not request a refund of their upfront payments before the Commission releases 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.

225. 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 must send a written request to include the following information:

Name, address, contact and phone number of Bank  
ABA Number  
Account Number to Credit  
Name of Account Holder  
FCC Registration Number (FRN)

The refund request can be submitted by fax 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

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<sup>241</sup> 47 C.F.R. § 1.2104(g)(2).

<sup>242</sup> 47 C.F.R. §§ 1.2109(b) and (c).

<sup>243</sup> 47 C.F.R. § 1.2109(d).

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

226. Contact Information Table:

### General Auction 86 Information

General Auction Questions  
Auction Process and Procedures  
Seminar Registration

### FCC Auctions Hotline

(888) 225-5322, option two; or  
(717) 338-2868  
Hours of service: 8:00 a.m. – 5:30 p.m. ET,  
Monday through Friday

### Auction 86 Legal Information

Auction Rules, Policies, Regulations

### Auctions and Spectrum Access Division

**(202) 418-0660**

Sayuri Rajapakse

### BRS Licensing Information

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

### Broadband Division (202) 418-2487

Nancy Zaczek (legal) or Stephen Zak (technical)

### 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

Matt Nodine (202) 418-1646

**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](mailto:fcc504@fcc.gov)

**FCC Internet Sites**

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

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**ATTACHMENT A**

**Auction 86 – Auction of Broadband Radio Service Licenses  
DA 09-1376**

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

**ATTACHMENT B****Broadband Radio Service Channels per License**

<b>Channel</b>	<b>Band Segment</b>	<b>Frequency Bands (MHz)*</b>	<b>Bandwidth (MHz)*</b>
1	Lower	2496-2502	6.0
E1	Upper	2624-2629.5	5.5
E2	Upper	2629.5-2635	5.5
E3	Upper	2635-2640.5	5.5
E4	Middle	2608-2614	6.0
F1	Upper	2640.5-2646	5.5
F2	Upper	2646-2651.5	5.5
F3	Upper	2651.5-2657	5.5
F4	Middle	2602-2608	6.0
H1	Upper	2657-2662.5	5.5
H2	Upper	2662.5-2668	5.5
H3	Upper	2668-2673.5	5.5
KH1	Upper (Guard)	2614-2614.33333	0.33333
KH2	Upper (Guard)	2614.33333-2614.66666	0.33333
KH3	Upper (Guard)	2614.66666-2615	0.33333
KF1	Upper (Guard)	2616-2616.33333	0.33333
KF2	Upper (Guard)	2616.33333-2616.66666	0.33333
KF3	Upper (Guard)	2616.66666-2617	0.33333
KE1	Upper (Guard)	2617-2617.33333	0.33333
KE2	Upper (Guard)	2617.33333-2617.66666	0.33333
KE3	Upper (Guard)	2617.66666-2618	0.33333
2	Upper (Guard)	2618-2624	6.0
Total			76.5

\* The frequency bands and bandwidth listed in the table represent that maximum amount of spectrum that may be available in a given area. Not all of this spectrum is available in all areas due to incumbent licensees in the 2496-2690 MHz band.

## 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 86. It also includes instructions for interested parties wishing to view the short-form applications filed for Auction 86.

#### 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 86 must be submitted and confirmed prior to 6:00 p.m. ET on Tuesday, August 18, 2009.** 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.<sup>244</sup> 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.<sup>245</sup>

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<sup>®</sup> Internet Explorer 6.0 or higher (recommended), with either Microsoft VM or Java Plug-In Version 1.5.
  - Mozilla<sup>®</sup> Firefox<sup>®</sup> 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](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<sup>®</sup> Mac OS<sup>®</sup> is not supported.

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<sup>244</sup> 47 C.F.R. § 0.459.

<sup>245</sup> 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.<sup>246</sup> 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
- citizenship for individuals, or jurisdiction of formation for legal entities

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<sup>246</sup> See generally, 47 C.F.R. § 1.2105.

- for applicants classified as legal entities (e.g., corporations and partnerships), the name of and information regarding the entity's responsible individual
- the name, address, telephone and facsimile number of a contact person who will communicate with the Commission regarding the applicant's FCC Form 175<sup>247</sup>
- 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

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.

## 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.<sup>248</sup> Be advised that there is no opportunity to change this list after the short-form filing deadline.

To participate in an auction, applicants must select at least one license. 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

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<sup>247</sup> 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.

<sup>248</sup> 47 C.F.R. § 1.2105(a)(2)(i).



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.<sup>249</sup>

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.

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.

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<sup>249</sup> 47 C.F.R. § 1.2105(a)(2)(viii).

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.<sup>250</sup> 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.<sup>251</sup> In addition, if the applicant has claimed eligibility for bidding credits based on revenues attributable to the applicant and related parties, the applicant will provide information regarding revenues for entities related through ownership in the *Ownership* screens.<sup>252</sup>

##### 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. In addition, some applicants may have filed a short-form application (FCC Form 175) for a previous auction disclosing ownership information. To simplify filling out FCC Form 175, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS), will automatically be entered into the applicant's short-form application. Applicants with ownership

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<sup>250</sup> 47 C.F.R. §§ 1.2105(a)(2)(ii)(B), 1.2110 and 1.2112.

<sup>251</sup> 47 C.F.R. § 1.2112.

<sup>252</sup> Applicants claiming eligibility for bidding credits based on revenues are also required to disclose in separate attachments information related to arrangements for the lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum. 47 C.F.R. §§ 1.2112(b)(1)(iii) and (iv). The procedure for attaching this information to the application is described below in Section I.C.6. "Attaching Additional Information," below.

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 in this auction. 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.<sup>253</sup>
- 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.<sup>254</sup>

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,<sup>255</sup> 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.<sup>256</sup> 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.
- The "Percent of Interest Held in Applicant" should reflect the disclosable interest holder's aggregate ownership interest in the applicant (both direct and indirect). 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% interest in the applicant, e.g., directors and officers of an entity seeking revenue-based bidding credits.<sup>257</sup>

<sup>253</sup> 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.

<sup>254</sup> 47 C.F.R. § 1.2112(a)(7).

<sup>255</sup> 47 C.F.R. § 1.2112(a)(6).

<sup>256</sup> *Id.*

<sup>257</sup> *See* 47 C.F.R. § 1.2112(b)(1)(i).

- 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 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.<sup>258</sup>

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

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<sup>258</sup> See 47 C.F.R. §§ 1.2112(b)(1)(iii) and (iv)..

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.<sup>259</sup>

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.<sup>260</sup>

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.<sup>261</sup> 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.**

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.<sup>262</sup>

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

There may be circumstances in which the revenue information need not be provided for certain disclosable interest holders. For example, some entities that must be disclosed in FCC Form 175 pursuant to Section 1.2112(a) may not be affiliates of the applicant, controlling interests of the applicant, or affiliates of the applicant's controlling interests.<sup>263</sup> 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.<sup>264</sup> **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**

<sup>259</sup> 47 C.F.R. § 1.2110(o).

<sup>260</sup> 47 C.F.R. § 1.2112(b)(1)(iii).

<sup>261</sup> 47 C.F.R. § 1.2110(c)(5).

<sup>262</sup> 47 C.F.R. § 1.2112(b)(1)(iii).

<sup>263</sup> 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).

<sup>264</sup> 47 C.F.R. § 1.2110(b)(3)(iii).

**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.<sup>265</sup>

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,<sup>266</sup> applicants can click on the **ADD AFFILIATE** button on the initial *Ownership* screen. Applicants also can click on the **Add Affiliate to Applicant** link on the *View/Edit Ownership Disclosure Information* screen to disclose information regarding affiliates and their revenues.

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

Finally, applicants claiming eligibility for bidding credits based on revenues attributable to the applicant and related parties will be asked to confirm that they have provided information with respect to all of the relevant parties: (1) the applicant; (2) each of the applicant's officers and directors; (3) each of the applicant's other controlling interests; (4) each of the applicant's affiliates; and (5) each affiliate of the applicant's controlling interests, including its officers and directors.<sup>267</sup>

## 5. Summary

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

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<sup>265</sup> 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.

<sup>266</sup> 47 C.F.R. § 1.2112(b)(1)(iii).

<sup>267</sup> *Id.*

- 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 certain inconsistencies and omissions in submitted information 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 certain apparent inconsistencies or omissions that might render the application incomplete if the application is submitted with current information, the apparent error will be listed in a Warning box. To revise the information related to the apparent error, click its corresponding **EDIT** button.

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

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

## 6. Attaching Additional Information

If an applicant needs to provide additional information not requested directly in the screens comprising the FCC Form 175, that information can be provided in an attachment. For example, applicants can describe the relationship among indirect owners of the applicant, or provide information regarding lease and resale arrangements (including wholesale) involving the spectrum capacity of applicants claiming eligibility for bidding credits.<sup>268</sup>

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.

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<sup>268</sup> 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.”

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.<sup>269</sup>

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.<sup>270</sup> 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.<sup>271</sup>

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.<sup>272</sup> 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.

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<sup>269</sup> See generally, 47 C.F.R. §§ 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

<sup>270</sup> 47 C.F.R. § 1.2105(a)(2)(xi).

<sup>271</sup> 47 C.F.R. § 1.2106(a).

<sup>272</sup> 47 C.F.R. § 1.2105(a)(2)(v).



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 86 must be submitted and confirmed prior to 6:00 p.m. ET on Tuesday, August 18, 2009. 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, 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 FCC Form 175 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 for a higher bidding credit).<sup>273</sup>

#### **VII. 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.

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<sup>273</sup> 47 C.F.R. § 1.2105(b).

**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.

**VIII. 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.

**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-February 2003 Edition)

#### Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 2/03), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 86. Applicants need to complete FCC Form 159 carefully, because:

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

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

<b>Block Number</b>	<b>Required Information</b>
1	LOCKBOX # - Enter "979085"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address ( <b>not Post Office box number</b> ) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number ("FRN") registered in the Commission Registration System ("CORES").
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 "A86U"
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 "86" (indicating Auction 86).

## 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

### Minimum Acceptable Bid Formula

The following formula used to calculate minimum acceptable bids is based on activity. 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 below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids.

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

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

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

where

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

$C$  = activity weight factor

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

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

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

$N$  = minimum additional percentage or floor

$M$  = maximum additional percentage or ceiling

$X_{i+1}$  = additional dollar amount

$Y_i$  = provisionally winning bid amount from the current round

Examples

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

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

1. Calculation of additional percentage for round 2:

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

$$I_2 = \text{The smaller of } [((1 + 0.5) * 0.1) = 0.15] \text{ and } 0.3 \text{ (the maximum additional percentage)}$$

$$= 0.15$$

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:

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

$$I_3 = \text{The smaller of } [(1 + 2) * 0.1] = 0.3 \text{ and } 0.3 \text{ (the maximum additional percentage)}$$
$$= 0.03$$

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:

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

$$I_4 = \text{The smaller of } [(1 + 1.5) * 0.1] = 0.25 \text{ and } 0.3 \text{ (the maximum additional percentage)}$$
$$= 0.25$$

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*, 522 F.3d 469 (D.C. Cir. 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 07-132, 22 FCC Rcd 15289, 15395 ¶¶ 285-86, 15489 (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 17546 (2001).

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

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

Application of Mercury PCS II, LLC, *Memorandum Opinion and Order*, FCC 98-203, 13 FCC Rcd 23755 (1998); Applications of: Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, FCC 97-388, 12 FCC Rcd 17970 (1997).

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

Commercial Realty St. Pete, Inc., *Memorandum Opinion and Order*, FCC 96-400, 11 FCC Rcd 15374 (1996); Commercial Realty St. Pete, Inc., *Notice of Apparent Liability for Forfeiture*, FCC 95-58, 10 FCC Rcd 4277 (1995).

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

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

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

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

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

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

Lotus Communications Corp., *Order*, DA 08-1364, 23 FCC Rcd 9107 (Wireless Telecom. Bur. 2008).

Application of Nevada Wireless, *Memorandum Opinion and Order*, DA 98-1137, 13 FCC Rcd 11973 (Wireless Telecom. Bur. 1998).

Applications of High Plains Wireless, L.P., *Memorandum Opinion and Order*, DA 97-2451, 12 FCC Rcd 19627 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order on Reconsideration*, DA 97-2324, 12 FCC Rcd 18093 (Wireless Telecom. Bur. 1997); Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order*, DA 97-1782, 13 FCC Rcd 5756 (Wireless Telecom. Bur. 1997).

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

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

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

Wireless Telecommunications Bureau Reminder of Anti-Collusion Rule Obligations, *Public Notice*, DA 04-3677, 19 FCC Rcd 22880 (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 16391 (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 10134 (Wireless Telecom. Bur. 1996).

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

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



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

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

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

Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, DA 05-2445, 20 FCC Rcd 14648 (Video and Auc. Divs. 2005).

Letter to Robert Pettit from Margaret W. Wiener, DA 00-2905, 16 FCC Rcd 10080 (Auc. Div. 2000).

Letter to John Reardon, Mobex Communications, Inc., from Amy J. Zoslov, DA 98-1861, 13 FCC Rcd 17877 (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 11363 (Auc. Div. 1996).

Letter to Mark Grady from Kathleen O'Brien Ham, DA 96-587, 11 FCC Rcd 10895 (Auc. Div. 1996).

Letter to Jonathan D. Blake from Kathleen O'Brien Ham, DA 95-2404, 10 FCC Rcd 13783 (Auc. Div. 1995).

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

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

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

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

**D. Enforcement Bureau Decisions:**

Cascade Access, L.L.C., *Notice of Apparent Liability for Forfeiture*, DA 09-207, 24 FCC Rcd 1350 (Enf. Bur. 2009).

Application of Star Wireless, LLC, *Forfeiture Order*, DA 04-3026, 19 FCC Rcd 18626 (Enf. Bur. 2004); Application of Star Wireless, LLC, *Notice of Apparent Liability for Forfeiture*, DA 03-2722, 18 FCC Rcd 17648 (Enf. Bur. 2003).

Application of Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, DA 04-3027, 19 FCC Rcd 18635 (Enf. Bur. 2004); Application of Northeast Communications of Wisconsin, Inc., *Notice of Apparent Liability for Forfeiture*, DA 03-2723, 18 FCC Rcd 17672 (Enf. Bur. 2003).

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

*USA v. Northeast Communications of Wisconsin, Inc.*, No. 07-C-715, 608 F.Supp.2d 1049 (E.D.Wis. June 25, 2008).

*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 86 Seminar Registration Form**

The FCC will sponsor a one-day seminar for Auction 86 applicants. The seminar is free of charge and will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC Auction System.

The seminar will be held:

Wednesday, August 5, 2009  
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.

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To register, please provide the information listed below no later than Monday, August 3, 2009, 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 86 web page, <http://wireless.fcc.gov/auctions/86/>.

I/We will attend the Auction 86 Seminar, scheduled for Wednesday, August 5, 2009.

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

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

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

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

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