



PUBLIC NOTICE

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NOTICE OF INITIAL 39 GHZ RECONFIGURATION PROCEDURES

PREPARATION FOR INCENTIVE AUCTION OF UPPER MICROWAVE FLEXIBLE USE SERVICE LICENSES IN THE 37 GHZ, 39 GHZ, AND 47 GHZ BANDS (AUCTION 103)

ORDER OF MODIFICATION

39 GHZ LICENSE TRANSFER AND ASSIGNMENT FREEZE

GN Docket No. 14-177

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TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	4
III. PREPARING THE 39 GHZ BAND FOR AUCTION 103	6
IV. FINAL ACTIONS	11
A. Freeze on Transfers and Assignments for 39 GHz Licenses	11
B. Final Order of Modification	14
V. QUANTIFYING EXISTING 39 GHZ LICENSES	17
A. Current Universal Licensing System Data	17
B. Determining Current Licensees' Aggregate Holdings by PEA	21
C. Consolidation of Aggregated Holdings for Commonly Controlled Entities	24
D. Methodology for Setting Relative Weights for Spectrum Holdings by PEA	26
E. Combined Incumbent Holdings	34
VI. RECONFIGURING AGGREGATED 39 GHZ HOLDINGS FOR MODIFIED LICENSES	36
A. Reconfigurations Proposed by the Commission	38
B. Alternative Reconfigurations Proposed by Incumbents	39
C. Reconfigured Holdings Equivalent to a Partial PEA	40
1. Rounding	41
2. Option to Relinquish	43
3. Boundaries of Modified Licenses for Partial PEAs	45
VII. INITIAL COMMITMENTS	48
A. Incumbent 39 GHz Licensee Short-Form Application	51

B. Initial Commitment Options	59
C. Transition for Existing 39 GHz Licenses.....	67
D. Incentive Payments	72
VIII. PROCEDURAL MATTERS	75
IX. ORDERING CLAUSES.....	94

I. INTRODUCTION

1. In this Public Notice, as directed by the Commission, the Wireless Telecommunications Bureau (Bureau), in cooperation with the Office of Economics and Analytics (OEA), takes the next steps toward implementing the procedures to reconfigure the 39 GHz band in preparation for the incentive auction that will offer new flexible use licenses in the Upper 37 GHz (37.6–38.6 GHz), 39 GHz (38.6–40 GHz), and 47 GHz (47.2–48.2 GHz) bands.¹ We designate this upcoming incentive auction as Auction 103.² As the Commission stated in the *Spectrum Frontiers Fourth R&O*, the incentive auction process – which includes the opportunity for 39 GHz incumbents not choosing to participate in the auction to receive modified licenses – resolves the persistent difficulties presented by the need for existing 39 GHz licenses to be transitioned efficiently to the new band plan and in some cases, new service areas.³ This process substantially furthers the public interest in making available spectrum for the provision of next-generation services, while preserving incumbents’ spectrum usage rights and modifying their licenses (if desired) in a manner that will also leave these incumbents better able to provide fifth-generation (5G) wireless, Internet of Things, and other advanced services in the 39 GHz band.⁴

2. The key decision for each 39 GHz incumbent will be whether to: (a) relinquish 39 GHz licenses in exchange for an incentive payment, with the opportunity to bid on new licenses in the incentive auction, if it chooses to do so; or (b) elect to receive modified licenses and not apply to participate in the auction for new licenses.⁵ In the reconfiguration process we describe below, we refer to this decision as an Initial Commitment. As the Commission determined in the *Spectrum Frontiers Fourth R&O*, incumbents have three options for their Initial Commitment. An incumbent can choose to: (1) have its licenses modified based on the Commission’s proposed reconfiguration of its license holdings; (2) have its licenses modified based on an acceptable alternative reconfiguration that the incumbent proposes, provided that it satisfies certain specified conditions; or (3) commit to relinquish its licenses in exchange for an incentive payment and the ability to bid for new licenses.⁶ The Initial Commitment results will determine the inventory of 39 GHz spectrum blocks that will be available to be assigned in the clock phase of Auction 103. Regardless of which option an incumbent chooses, once it has made its Initial

¹ See *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, GN Docket No. 14-177, Fourth Report and Order, FCC 18-180, at para. 4 (Dec. 12, 2018) (*Spectrum Frontiers Fourth R&O*). See 47 CFR § 0.131(a) (Bureau’s functions). OEA works in conjunction with the Bureau with respect to the design, implementation and administration of auctions, helping develop policies, programs, and rules concerning auctions of spectrum for wireless communications. See *id.* § 0.21(m), (o) (OEA’s functions). OEA cooperates with the Bureau in this proceeding accordingly, including with respect to the Commission’s explicit directions to the Bureau in the *Spectrum Frontiers Fourth R&O*. See, e.g., *Spectrum Frontiers Fourth R&O* at paras. 17, 31.

² The clock phase of the incentive auction will serve as both the reverse and forward auctions. See *Spectrum Frontiers Fourth R&O* at para. 10.

³ See *id.* at para. 7.

⁴ See *id.*

⁵ *Id.* at paras. 15-36.

⁶ *Id.* at para. 29.

Commitment it will not need to take any further steps before the conclusion of the auction, unless it wants to bid on new licenses in the auction.

3. In this Public Notice, we (1) determine to freeze temporarily processing of future applications for transfers and assignments of 39 GHz licenses in order to facilitate this reconfiguration process, as suggested by the Commission; (2) act pursuant to Section 316 to modify incumbents' 39 GHz licenses in accordance with the Commission's proposed order of modification, in light of the absence of any protests thereto; and (3) seek comment on a proposed path toward reconfiguration of this band in preparation for Auction 103.

II. BACKGROUND

4. In the *Spectrum Frontiers Fourth R&O*, the Commission took significant steps to make spectrum available for 5G wireless, Internet of Things, and other advanced services in the Upper 37 GHz, 39 GHz, and 47 GHz bands. Over the course of the Spectrum Frontiers proceeding, the Commission has adopted Upper Microwave Flexible Use Service (UMFUS) rules to make available millimeter wave spectrum for such next-generation services. When combined, the contiguous Upper 37 GHz and the 39 GHz bands offer the largest amount of contiguous spectrum in the millimeter wave bands for flexible-use wireless services—a total of 2,400 megahertz. The 47 GHz band will provide an additional 1,000 megahertz of millimeter wave spectrum for such services.

5. The Commission's decisions in the *Spectrum Frontiers Fourth R&O* resolve the persistent difficulties presented by existing 39 GHz licenses issued for past uses under prior rules. These licenses create barriers to next-generation services by fragmenting frequencies and in some cases, geographic license areas, across the 39 GHz band.⁷ The Commission adopted an incentive auction for the Upper 37 GHz, 39 GHz, and 47 GHz bands in part to make it possible for both incumbent 39 GHz licensees and new licensees throughout these bands to provide such valuable next-generation services.⁸ In preparation for assigning new licenses in these bands by auction, the Commission decided that all existing 39 GHz licenses are subject to modification.⁹ These modifications to 39 GHz licenses will enhance opportunities for these licensees to provide valuable next generation services.¹⁰ The process the Commission mandated will remove barriers to the provision of 5G services by giving incumbents the choice of accepting modified licenses or, if an incumbent licensee volunteers to relinquish related spectrum usage rights in exchange for an incentive payment, cancelling these licenses.¹¹

⁷ See *id.* at paras. 4-5. The band plan for UMFUS licenses in these spectrum bands is 100 megahertz blocks licensed by Partial Economic Area (PEA). In contrast, existing 39 GHz licenses include a mix of 50 megahertz unpaired channel blocks, Rectangular Service Areas (RSA) licenses that do not conform to PEA boundaries, and other licenses not authorized to provide service throughout the full geographic boundaries of the PEAs due to pre-existing RSA licenses.

⁸ See *Spectrum Frontiers Fourth R&O*.

⁹ See *id.* at paras. 15-18, 62.

¹⁰ *Id.* at para. 1.

¹¹ *Id.* at para. 8. In the incentive auction, each incumbent 39 GHz licensee voluntarily may commit to relinquish all spectrum usage rights provided by existing licenses in exchange for a share of the proceeds from the auction of new licenses. Those making such a commitment will be eligible to apply to bid for new licenses. As in the prior broadcast television spectrum incentive auction, and in all Commission auctions, the Commission will develop and detail all the procedures necessary to conduct the auction in a pre-auction process framed by an Auction Comment Public Notice and Auction Procedures Public Notice.

III. PREPARING THE 39 GHz BAND FOR AUCTION 103

6. We must implement the steps the Commission described in the *Spectrum Frontiers Fourth R&O* to reconfigure existing 39 GHz licenses to better match the new 39 GHz band plan and service rules so that incumbents can make binding Initial Commitments through the Commission's Initial Commitment System. This Public Notice explains how we will take these steps. We also provide Appendices to this Public Notice that provide even more detail, including the mathematical calculations and assumptions made during this reconfiguration process.¹² First, we must aggregate an incumbent's 39 GHz holdings to determine how many licenses per Partial Economic Area (PEA) the incumbent would be entitled to under the new band plan. Pursuant to the Commission's directive in the *Spectrum Frontiers Fourth R&O*, we also will consolidate the holdings of any licensees that are considered "commonly controlled entities."¹³ Pursuant to the Commission's further direction, and to ensure the data remain consistent, we freeze most transactions relating to 39 GHz licenses with the adoption of this Public Notice.¹⁴

7. Because incumbents' holdings may not match the parameters for the new band plan and service rules, we anticipate that, in many markets, incumbents may have "partial PEA" holdings – i.e., spectrum rights that cover less than the entire population of the PEA. In the *Spectrum Frontiers Fourth R&O*, the Commission determined that any incumbent choosing to accept modified licenses could receive at most one license that covers a partial PEA.¹⁵ To implement this objective, the Commission decided that PEA weights should be applied to allow spectrum usage rights to be combined across markets, to produce "full" PEA holdings (license rights equal to covering the entire population of a PEA).¹⁶ This will allow the use of mathematical techniques that result in a proposed license reconfiguration for each incumbent, which will be provided to incumbents in advance of the Initial Commitment process, so that they can make informed decisions as to whether to accept the proposed reconfiguration, provide an alternative reconfiguration, or relinquish existing 39 GHz licenses.

8. The Commission directed the Bureau to take the steps necessary to implement the Commission's decisions regarding existing 39 GHz licenses.¹⁷ This Public Notice describes the proposed procedures, processes, and methodologies the Bureau plans to implement to reconfigure the 39 GHz band.

9. From the perspective of 39 GHz incumbents, the major steps of the 39 GHz band reconfiguration process will be as follows:

- *Verifying 39 GHz Aggregated Holdings Data.* In Appendix B: Initial Aggregated Incumbent Holdings, we provide as a summary of each 39 GHz incumbent's aggregated holdings by PEA. This summary indicates the amount of spectrum usage rights each incumbent holds per

¹² The Appendices to this Public Notice are Appendix A: Reconfiguration Technical Guide; Appendix B: Initial Aggregated Incumbent Holdings; Appendix C: Imputing Auction 101 Prices for Weights; and Appendix D: Initial Commitment Technical Guide. The Appendices are available on the Commission's Auction 103 web page at www.fcc.gov/auction/103.

¹³ *Spectrum Frontiers Fourth R&O* at para. 22. In the *Spectrum Frontiers Fourth R&O*, the Commission determined that separate 39 GHz licenses that are held by entities, including individuals, that control or are controlled by each other and/or have controlling ownership interests in common will be treated as held by one incumbent. *Id.* We define these 39 GHz licensees as "commonly controlled entities."

¹⁴ See *Spectrum Frontiers Fourth R&O* at para. 22.

¹⁵ See *id.* at paras. 16, 25, 31.

¹⁶ *Id.* at paras. 19-20, 25.

¹⁷ *Id.* at paras. 17, 31.

PEA, as a product of licensed bandwidth and the population of the licensed area (MHz-pops), based on the records in the Universal Licensing System (ULS). In addition, any 39 GHz licensees with common control have their aggregated holdings consolidated, as shown in Appendix B. Incumbents will have an opportunity to update the license information provided in ULS on which these holdings are based.

- *File Excepted Transfers and Assignments (if applicable).* In this Public Notice, we freeze transfers and assignments of 39 GHz licenses, with an exception for commonly controlled entities. If commonly controlled entities wish to transfer/assign all their 39 GHz licenses to one of the commonly controlled entities, they may file an application by the deadline specified in this Public Notice.
- *Review Updated 39 GHz Reconfiguration Procedures and Updated Aggregated Holdings Data.* After considering the record produced in response to this Public Notice, we will adopt final 39 GHz band reconfiguration procedures in a future public notice (“Updated 39 GHz Reconfiguration Procedures Public Notice”). Along with that Public Notice, we will provide each incumbent’s updated 39 GHz aggregated (and consolidated, if applicable) holdings data per PEA (“Updated Aggregated Holdings Data”).¹⁸
- *Reconfigured 39 GHz Incumbent Holdings Public Notice.* After the updated 39 GHz band reconfiguration procedures are adopted, the adopted procedures and methodologies will be applied to reconfigure each incumbent’s holdings to match the new band plan and service areas. The Reconfigured 39 GHz Incumbent Holdings Public Notice will show the license holdings the incumbent would receive if in its Initial Commitment it chose to receive modified licenses based on the Commission’s proposed reconfiguration (Option 1 under the Initial Commitment Process). The Public Notice will inform each incumbent of the PEAs in which it would receive modified 100 megahertz licenses and the number of such licenses if it chooses to accept the modified licenses based on the Commission’s proposed reconfiguration. The final frequencies of the licenses will be determined later; any licensee receiving more than one modified license in a PEA will receive licenses for contiguous frequencies within the PEA.
- *File FCC Form 175-A.* To be able to access to the Commission’s Initial Commitment System, each incumbent must be represented through an Incumbent 39 GHz Licensee Short-Form Application (FCC Form 175-A). The form will provide contact information, list represented licensees, identify authorized Initial Commitment Representatives, and include required certifications. **All incumbents should be listed on a filed FCC Form 175-A regardless of whether they intend to bid for new licenses in the incentive auction. In the event an incumbent is not listed on a submitted FCC Form 175-A, that incumbent will be considered to have committed to accepting modified licenses based on reconfigured holdings proposed by the Commission and to have foregone any opportunity to relinquish any holdings for an incentive payment and to participate in an auction of new licenses in Upper 37 GHz, 39 GHz, and 47 GHz.** Bureau staff will be conducting outreach

¹⁸ An “incumbent” for these purposes is either a single 39 GHz licensee or a group of commonly controlled entities that hold 39 GHz licenses.

to all incumbents using their contact information in ULS to ensure that they are informed of their options.

- *Initial Commitment Process.* Each incumbent may commit to: (1) accepting modified licenses based on a reconfiguration of its holdings proposed by the Commission in the Reconfigured 39 GHz Holdings Public Notice; or (2) accepting modified licenses based on its alternative reconfiguration;¹⁹ or (3) relinquishing spectrum usage rights under all its 39 GHz licenses in exchange for an incentive payment. The deadline for making an Initial Commitment will be no sooner than 60 days after the release of the Reconfigured 39 GHz Incumbent Holdings Public Notice. **Any incumbent that fails to make a selection by the deadline will be deemed to have selected Option 1: the Commission’s proposed reconfiguration for modified licenses.**
- *Round Zero.* An incumbent that commits to relinquishing all its existing spectrum usage rights (Option 3) will have a limited opportunity during the Initial Commitment submission window to redistribute its MHz-pops that are equivalent to a partial PEA license based on its updated aggregated holdings in any PEA, based on their relative weights, as part of the Round Zero process in the Initial Commitment System.²⁰ Incentive payments to those 39 GHz incumbents committing to Option 3 will be based on the redistributed holdings at the close of Round Zero.
- *Existing Licenses Pending the Auction.* Regardless of each incumbent’s binding Initial Commitment, each incumbent licensee will retain its existing 39 GHz licenses until after the close of the auction and the announcement of winning bidders for new licenses. The announcement of winning bidders for the auction must occur before the Commission can assign frequencies to modified licenses, issue new licenses, or share auction proceeds as incentive payments with incumbents for cancelled 39 GHz licenses.
- *Auction of New Licenses.* Following the Initial Commitment process, potential bidders for new licenses will take typical pre-auction actions necessary to become qualified to bid. Only incumbents that elect Option 3 to relinquish licenses are permitted to bid on new licenses in Auction 103, if they choose to do so, but they also may elect not to bid and simply receive incentive payments for their relinquished licenses. As determined in the *Spectrum Frontiers Fourth R&O*, incumbents that elect to receive modified licenses will be assigned frequencies based on the results of the auction assignment phase but cannot bid for particular frequencies in the assignment phase.²¹

¹⁹ An “alternative reconfiguration” for these purposes is a reconfiguration that the incumbent submits through the Initial Commitment System. To be an acceptable alternative reconfiguration, the incumbent’s proposal must satisfy the same requirements as the Commission’s proposed reconfiguration, except that, in contrast to the Commission’s proposed reconfiguration, an incumbent’s proposal need not minimize the weighted MHz-pops remaining as white space in the one PEA in which the incumbent is left with the equivalent of a partial PEA block. *Spectrum Frontiers Fourth R&O* at para. 31. As described further in Section VII.B. below, the Initial Commitment System will provide real-time feedback to incumbents on the acceptability of proposed alternative reconfigurations.

²⁰ *Spectrum Frontiers Fourth R&O* at paras. 39-41. See Appendix D: Initial Commitment Technical Guide.

²¹ *Spectrum Frontiers Fourth R&O* at para. 58.

- *Post-Incentive Auction Transition and Incentive Payments.* Following the announcement of winning bidders in the incentive auction, the Commission, based on the incumbents' Initial Commitments, will issue modified licenses and cancel relinquished licenses. Incumbents will be able to seek Special Temporary Authority as needed to transition from existing licenses to modified licenses or to new licenses that will be issued subsequently. Any new licenses that an incumbent wins in the auction will be issued pursuant to the Commission's standard process of receiving winning bids, reviewing license applications, and then granting the new licenses. The Commission will be ready to make incentive payments owed following the grant of new licenses associated with winning bids.

10. This Public Notice describes the processes by which the 39 GHz band will be reconfigured to prepare for Auction 103. We invite comment on all aspects of the process described herein, including the aspects of the process detailed in the Appendices to this Public Notice.²² Comments in response to this Public Notice are due by **April 15, 2019**. Reply comments are due by **April 26, 2019**. The subsequent Updated 39 GHz Reconfiguration Procedures Public Notice will announce the decisions regarding proposals in this Public Notice that are subject to comment, and any other subsequent developments.

IV. FINAL ACTIONS

A. Freeze on Transfers and Assignments for 39 GHz Licenses

11. In the *Spectrum Frontiers Fourth R&O*, the Commission recognized that it may be appropriate to freeze transfers and assignments of 39 GHz licenses, and it directed the Bureau to address whether or when it is necessary to freeze transfers and assignments of 39 GHz licenses prior to calculations of aggregate holdings.²³ We conclude that, with the release of this Public Notice, we will implement a temporary freeze on the acceptance and processing of applications relating to any future transfers or assignments of 39 GHz licenses, with one exception. Any applications received after the release of this Public Notice that do not fall under the exception or applications that fall under the exception that are received after the deadline provided in this Public Notice will be returned as unacceptable for filing. This freeze will end after new licenses have been granted to winning bidders and modified licenses have been issued to non-auction participants.

12. A freeze on transfers and assignments is necessary to ensure that the Commission's reconfiguration of existing licenses is not unwound by any transfers and assignments that might materially revise the holdings that are the subject of the reconfiguration. A significant aspect of the reconfiguration process is the consideration of an incumbent's spectrum usage rights on an aggregated basis ("aggregated holdings"). If an incumbent could transfer or assign some subset of its 39 GHz licenses, the Commission's reconfiguration of the incumbent's aggregated holdings would no longer be consistent with the incumbent's actual holdings. Furthermore, the effectiveness of an incumbent's certifications and other representations with respect to its Initial Commitment might be brought into question following a transfer or assignment of some or all of its 39 GHz licenses.

13. This freeze nevertheless is subject to one exception. This freeze will not affect transfers or assignments to or among commonly controlled entities, and applications that fall into this category will

²² The Appendices to this Public Notice include, but are not limited to, a Reconfiguration Technical Guide and a Weighting Methodology Guide that detail technical steps in the processes proposed in this Public Notice. All of the Appendices are available on the Commission's Auction 103 web page at www.fcc.gov/auction/103.

²³ *Spectrum Frontiers Fourth R&O* at para. 22.

be accepted until **April 15, 2019**. In the *Spectrum Frontiers Fourth R&O*, the Commission determined that licenses held by commonly controlled entities would be treated as held by one entity for purposes of reconfiguring 39 GHz holdings (which the Bureau refers to as “consolidated holdings”).²⁴ Specifically, the Commission noted that “[f]or this purpose, we will use the definition of ‘controlling interest’ as an entity with *de jure* or *de facto* control that we use with respect to auction applications, specifically the rule prohibiting an individual or entity from having a controlling interest in more than one application to participate in the auction.”²⁵ Because these transactions would transfer or assign to other entities spectrum rights that already are part of consolidated holdings, the transactions would not result in any material change for purposes of this process.²⁶ Any 39 GHz licensees that are commonly controlled entities and intend to consolidate their licenses so that one entity is the licensee for the “consolidated holdings” should file these transfer or assignment applications as soon as possible, and no later than **April 15, 2019**.

B. Final Order of Modification

14. In the *Spectrum Frontiers Fourth R&O*, the Commission affirmed its conclusion that it had the authority under the Communications Act to modify existing licenses in a manner that would allow for a more efficient auction and to conduct an incentive auction for these bands.²⁷ Specifically, it determined that, in order to resolve the difficulties presented by the existing encumbered and non-contiguous licenses and to clear the way for assignment of a significant number of new licenses for whole blocks with contiguous frequencies within PEAs, it was necessary to employ an incentive auction, while offering incumbents that chose not to participate in the auction an alternative of modified 39 GHz licenses.²⁸

15. The Commission explained that, because some existing licenses may cover geographic areas that do not match the PEA service areas established for the 39 GHz band, an incumbent’s modified licenses may need to be reconfigured to create whole spectrum blocks providing 100 megahertz over a full PEA in some of those areas. Where such changes are unavoidable, the reconfigured licenses would maintain the overall value of spectrum usage rights by quantifying those rights by weighted MHz-pops, as measured pursuant to the procedures established by the *Spectrum Frontiers Fourth R&O*, and the incumbent would retain at most one modified license for a partial PEA.²⁹ Doing so would allow these incumbents to better provide next-generation services and help create generic blocks for new licenses that will better enable new licensees to offer next generation services and that can be assigned efficiently using an auction.³⁰

²⁴ *Id.*

²⁵ *Spectrum Frontiers Fourth R&O* at para. 22 (citing 47 CFR §§ 1.2105(a)(3) (prohibition of multiple applications) and (a)(4)(i) (definition of “controlling interest”). Pursuant to Commission rules, *de jure* control includes holding 50% or more of the voting stock of a corporation, or holding a general partnership interest in a partnership, while *de facto* control is determined on a case-by-case basis. 47 CFR §1.2105(a)(4)(i). See also *Intermountain Microwave*, Public Notice, 12 F.C.C.2d 559 (1963); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, FCC 14-50, 29 FCC Rcd 6567, 6738-39, para. 403 & n.1197 (2014).

²⁶ Further, the Commission determined that commonly controlled entities will be aggregated in the reconfiguration process. See Section V.C., *infra*; see also *Spectrum Frontiers Fourth R&O* at para. 22.

²⁷ *Spectrum Frontiers 4th R&O* at para. 9. The *Spectrum Frontiers Fourth R&O* included an order of proposed modification pursuant to Section 316. See *id.* at paras. 62, 66.

²⁸ *Spectrum Frontiers Fourth R&O* at para. 7.

²⁹ *Id.* at para. 16.

³⁰ *Id.* at para. 7.

16. Following the *Spectrum Frontiers Fourth R&O*, no petitions for reconsideration or protests of the order of modification were timely filed. Based on the record in this matter and the Commission's decision in the *Spectrum Frontiers Fourth R&O*, we conclude it is in the public interest to modify the spectrum usage rights of existing 39 GHz licenses as described therein.³¹ Ultimately, any current 39 GHz licensee that chooses to accept modified licenses will have its spectrum usage rights modified no earlier than after winning bidders are announced in Auction 103. As part of the Auction 103 Closing Public Notice that announces winning bidders, incumbent 39 GHz licensees choosing to accept modified licenses will be notified of the specific frequencies of their modified licenses.

V. QUANTIFYING EXISTING 39 GHZ LICENSES

A. Current Universal Licensing System Data

17. We list 39 GHz MHz-pops holdings based on the information available in the public ULS in Appendix B: Initial Aggregated Incumbent Holdings. The holdings have been determined by the population covered by a license within a PEA, aggregated by licensee, and consolidated for commonly controlled entities, if applicable. We use "incumbent" to refer both to a single 39 GHz licensee and to a group of commonly controlled entities that hold 39 GHz licenses. We explain in this section the process by which each incumbent's existing spectrum usage rights has been determined. These holdings will be used with respect to any option chosen as an Initial Commitment for an incumbent.³²

18. Incumbent licensees are responsible for ensuring the accuracy of the ULS data underlying these calculations of the holdings listed in Appendix B: Initial Aggregated Incumbent Holdings and for identifying any apparent discrepancies in the calculations. If an incumbent needs to update its information by filing an FCC Form³³ (such as updating its ownership information or notifying the Commission of transfers of control or assignments of these licenses that are not reflected in the current data), it should file the appropriate form(s) to make any necessary corrections as soon as possible, but no later than **April 15, 2019**. This includes any incumbent 39 GHz licensees listed as individual licensees in Appendix B that are commonly controlled entities.³⁴ We will evaluate any claims of commonly controlled entities prior to announcing the Updated Aggregated Holdings Data to ensure that those incumbents' holdings are consolidated where required.

19. If there are any administrative corrections needed, incumbents should make those administrative corrections via ULS no later than **April 15, 2019**. Incumbents should contact the Commission if they discover any discrepancies in the data reflected in the attachment that cannot otherwise be addressed either by making administrative updates in ULS or by filing an FCC Form, and should do so as soon as possible.

20. We will release the Updated Aggregated Holdings Data (identifying an updated account of each incumbent's existing 39 GHz spectrum usage rights holdings) in the Updated 39 GHz

³¹ This Public Notice is being sent by certified mail, return receipt requested, to each current 39 GHz licensee at the mailing address on file in ULS.

³² *Spectrum Frontiers Fourth R&O* at paras. 29-32.

³³ These form(s) could include, for example, an updated FCC Form 602 Ownership Disclosure form and accompanying exhibit explaining the current ownership structure, including any *de facto* control claims, FCC Form 603 (Application for Assignments of Authorization and Transfers of Control), and/or waiver requests for any late-filed forms, as appropriate.

³⁴ The process for consolidating spectrum usage rights for commonly controlled entities is discussed further in Section V.C., *infra*. If any incumbents that are commonly controlled under a *de facto* control standard do not seek consolidation and we later determine that there is common control, they will be in violation of 47 CFR § 1.2105(a)(3) if they both elect to participate in the auction for new licenses.

Reconfiguration Procedures Public Notice after incumbents have had the opportunity to make any corrections.

B. Determining Current Licensees' Aggregate Holdings by PEA

21. As determined in the *Spectrum Frontiers Fourth R&O*, 2010 Census data will be used to determine the population covered by each existing 39 GHz license.³⁵ The two-by-two kilometer grid cell methodology employed to determine population in particular areas in the broadcast television spectrum incentive auction will be used to calculate the population for licenses for RSAs and for licenses covering a full or partial PEA.³⁶

22. To calculate the population using this grid cell methodology, a grid composed of two-by-two kilometer cells is superimposed on every PEA, with the population contained in each cell determined by reference to the 2010 Census and the highest concentration of the population represented by an internal point located in each cell.³⁷ The total population contained in a PEA is then calculated by summing the population of each grid cell (or portion thereof) encompassed by a PEA's geographic area.

23. When calculating an incumbent's current holdings, we will aggregate each incumbent's holdings into 100 megahertz blocks by PEA. Using the grid cell methodology, for licenses that cover the full geography of the PEA without encumbrances ("full PEA blocks"), this calculated total population of the PEA is applied to the relevant block(s). For encumbered licenses³⁸ that cover partial PEAs,³⁹ the MHz-pops covered by an incumbent's license is calculated using the grid cell methodology applied above to the portion of the PEA the original license covers geographically. The Commission system will aggregate an incumbent's MHz-pops holdings per PEA license area. Pursuant to the Commission's decision in the *Spectrum Frontiers Fourth R&O*, any licenses that cover at least 99% of the MHz-pops in a PEA will be considered as having the equivalent of an unencumbered whole block prior to the

³⁵ *Spectrum Frontiers Fourth R&O* at para. 21.

³⁶ *Id.* See also *Auction 1000 Bidding Procedures Public Notice*, 30 FCC Rcd at 8988, para. 20, see also *Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Technical Formulas for Competitive Bidding*, Public Notice, 30 FCC Rcd 11034, 11099, App. B 2.2 (WTB 2015) (*Auction 1000 Application Procedures Public Notice*).

³⁷ For each contiguous part of the country (i.e., the lower 48 states and the District of Columbia; Alaska; Hawaii; Puerto Rico; U.S. Virgin Islands; American Samoa; and Guam and the Commonwealth of the Northern Mariana Islands) a two-by-two kilometer grid will be created using an equal-area map projection, similar to the methodology used in the Mobility Fund II Challenge Process except using two square kilometer cells rather than one square kilometer cells. See Appendix A: Reconfiguration Technical Guide for more information on how the grid is created. See also *Procedures for the Mobility Fund II Challenge Process*, Public Notice, 33 FCC Rcd 1985, 2019-21 at App. A (2018) (describing the process of overlaying the uniform grid over coverage maps). Appendix B: Initial Aggregated Incumbent Holdings provides the total number of pops in each PEA resulting from using this methodology.

³⁸ In the *Spectrum Frontiers 4th NPRM*, the Commission explained that there are two types of encumbered licenses: (1) RSA licenses that do not conform to PEA boundaries; and (2) PEA licenses that are not authorized to provide service in the entire PEA, i.e., licenses that overlap geographically with pre-existing RSA licenses whose frequency assignment they must protect. See *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services et al.*, Fourth Notice of Proposed Rulemaking, 33 FCC Rcd 7674, 7675, para. 3 (2018) (*Spectrum Frontiers 4th NPRM*).

³⁹ In the *Spectrum Frontiers Fourth R&O*, the Commission defined a "partial PEA block" as a 100 megahertz channel block that covers a smaller population than the entire population in that PEA, or to an incumbent's voucher in a PEA for purposes of the auction that is less than the weighted MHz-[p]ops for the full PEA." *Spectrum Frontiers Fourth R&O* at para. 16 n.41. These partial blocks could result from circumstances such as Rectangular (continued....)

reconfiguration process.⁴⁰ Based on the current license data in ULS, Appendix B: Initial Aggregated Incumbent Holdings provides holdings data for each incumbent.

C. Consolidation of Aggregated Holdings for Commonly Controlled Entities

24. In the *Spectrum Frontiers Fourth R&O*, the Commission decided that, as part of this aggregation process, it would treat separate licenses held by entities that control or are controlled by each other and/or have controlling ownership interests in common (“commonly controlled entities”) as being held by a single entity.⁴¹ Ownership data on file in ULS indicate two groups of commonly controlled entities that are listed on a consolidated basis as a single incumbent in Appendix B: Initial Aggregated Incumbent Holdings.⁴²

25. Existing 39 GHz licensees that are commonly controlled entities may choose to consolidate their existing licenses with a single license holder prior to the Initial Commitment process. Any such 39 GHz licensees that are commonly controlled entities and intend to consolidate their licenses under one entity should file these transfer or assignment applications as soon as possible, and no later than **April 15, 2019**.

D. Methodology for Setting Relative Weights for Spectrum Holdings by PEA

26. The Commission directed that “the MHz-[p]ops in each PEA will be weighted using an index calculated using the relative prices of spectrum licenses in each PEA in other auctions” to make it possible to compare MHz-pops across PEAs.⁴³ Specifically, the Commission “direct[ed] the Wireless Telecommunications Bureau to set the weights considering the relative PEA price data prepared for and resulting from the broadcast television spectrum incentive auction, while also taking into account any additional Commission data regarding prices for millimeter wave spectrum licenses to the extent practicable.”⁴⁴

27. We propose to create an index using the weighted average of relative price indices for Auctions 102 (24 GHz), 1002 (600 MHz), and 97 (AWS-3). For Auction 1002, the broadcast incentive auction, the Commission used an index that considered relative prices from Auction 66 (AWS-1), Auction 73 (700 MHz), and Auction 97 (AWS-3).⁴⁵ We propose to include prices for PEA licenses from Auction 1002 (600 MHz) in the index since those prices are now available.

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Service Area (RSA) licenses that do not match the PEA boundaries, or partial PEA licenses, in which the licensee cannot operate throughout the entire geography of the PEA license due to a pre-existing RSA license that operates on the same channel.

⁴⁰ *Spectrum Frontiers Fourth R&O* at para. 24.

⁴¹ *Id.* at para. 22.

⁴² In evaluating the existing ownership structures reflected in existing 39 GHz licensees’ filings with the Commission, the following licensees are under common control: Cellco Partnership and Straight Path Spectrum, LLC (controlled by parent company Verizon Communications, Inc.); and Alascom, Inc., FiberTower Spectrum Holdings LLC, and Teleport Communications, LLC (controlled by parent company AT&T Inc.). We have listed all holdings for these entities under a name representing the consolidated incumbent.

⁴³ *Spectrum Frontiers Fourth R&O* at para. 19.

⁴⁴ *Id.* at para. 20.

⁴⁵ *Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, Public Notice, 30 FCC Rcd 8976, 8987, para. 18 (2015).

28. Auction 102 will be the first Commission auction with a nationwide inventory of millimeter wave spectrum to be held prior to Auction 103, which leads us to conclude that it will be helpful to incorporate Auction 102 data into the index. Although Auction 102 may not have concluded by the time the index of relative PEA weights is needed for the reconfiguration of existing 39 GHz license rights, we propose to use prices as available in Auction 102 provided that the bidding is sufficiently far along as to provide a reasonable indicator of relative prices across PEAs.⁴⁶ To ensure that bidding in Auction 102 is sufficiently advanced by the time the index is needed, we propose to require that a measure of overall activity in the auction is low. That is, we propose that the percentage of bidding units for which demand exceeds supply relative to the total number of bidding units of all of the licenses in the auction is no greater than 20%.

29. Given price per MHz-pops data for Auctions 1002 and 97, and assuming for this purpose the availability of Auction 102 data, we propose to construct an index by first (i) converting all data to a PEA basis, (ii) computing an average price for each PEA in each auction, (iii) calculating a relative price index value for each PEA in each auction, and (iv) taking a weighted average of index values, weighting the Auction 102 data more heavily to reflect that the auction is more recent and that the millimeter wave spectrum in Auction 102 is more comparable to the frequency bands available in Auction 103. This will create the index for weighting the MHz-pops in each PEA. Finally, we will (v) calculate the weighted MHz-pops for a block in a PEA by multiplying the unweighted MHz-pops times the index value for the PEA and normalizing the results if necessary.

30. Our proposed approach would not incorporate price data from Auction 101, the only other auction of UMFUS licenses to date, into the index. The inventory for Auction 101 consists of a partial set of mostly smaller, less densely populated markets licensed on a county basis, in contrast to the other auctions we propose to use that include licenses for larger geographic areas available on a nationwide basis. Further, we propose not to use data from Auctions 66 and 73 even though they were included in the index for Auction 1002, using instead prices from more recent auctions.

31. We seek comment on this proposed approach. In particular, we seek comment on the specific auctions for which we will include data in the index, and whether we should use all available data from each auction. We further ask for input on the relative weights we will use in the weighted average in step (iv) above. Should we weight Auction 102 relatively more heavily than the lower bands, and if so, what weights are preferred?

32. As an alternative, we could use a statistical regression approach to impute prices for those PEAs for which no inventory was available in Auction 101 and, consequently, for which no results are available. Under this alternative, we would use Auction 101 prices in the available markets as the dependent variable in a regression model that includes as explanatory variables prices from the two lower band auctions that would be included in our primary proposal as well as other characteristics (e.g., income and population). This approach, which is described in Appendix C, could enable us to make use of the existing price information available from Auction 101 without creating a bias that using only data from smaller markets could introduce.

33. Under this alternative, we would construct the index as set forth above, but using an average of the Auction 101 index values and Auction 102 index values in the weighted average calculation (iv) above. This alternative methodology would not consider the data from earlier auctions of lower band spectrum licenses other than in the regression for imputing Auction 101 prices. We seek comment on whether we should weight Auction 102 relatively more heavily than Auction 101. We seek

⁴⁶ Specifically, we propose to use Auction 102 prices as of the last feasible point to do so prior to release of the Updated 39 GHz Reconfiguration Procedures Public Notice.

comment on all elements of our primary proposal, the alternatives mentioned, and any other approaches to determining an index of PEA weights.

E. Combined Incumbent Holdings

34. The Commission decided in the *Spectrum Frontiers Fourth R&O* that each incumbent's 39 GHz license holdings would be treated on a combined basis, whether aggregated by PEA for an individual licensee or aggregated and consolidated by PEA for commonly controlled entities that are treated as a single incumbent.⁴⁷ Subject to specified constraints, these combined holdings could be redistributed across PEAs, while maintaining the total weighted MHz-pops as part of the reconfiguration process that might lead to modified licenses.⁴⁸ Furthermore, the Commission decided that these combined holdings could be redistributed across PEAs in Round Zero before the start of bidding in Auction 103, again subject to specified constraints, to determine the incentive payment amounts based on holdings in each PEA.⁴⁹

35. Once the combined holdings are redistributed by weighted MHz-pops across PEAs, incumbent holdings in a particular PEA may no longer be clearly derived from any particular existing license or, in the case of consolidated licensees, from any particular existing licensee. Consequently, we will issue modified licenses based on reconfigurations of combined holdings to a single incumbent licensee, even in the case of consolidated holdings held by a group of incumbents that are commonly controlled entities. Likewise, we will make a single incentive payment for relinquished combined spectrum usage rights, regardless of the number of licenses relinquished or, in the case of consolidated holdings of a group of incumbents that are commonly controlled entities, the number of licensees relinquishing licenses.

VI. RECONFIGURING AGGREGATED 39 GHZ HOLDINGS FOR MODIFIED LICENSES

36. In the *Spectrum Frontiers Fourth R&O*, the Commission directed the Bureau to determine the best methodology for implementing a mathematical optimization to reconfigure incumbent holdings.⁵⁰ This Public Notice describes the optimization and reconfiguration. The attached Technical Guide provides additional details for implementing the reconfiguration, including the mathematical formulation of the optimization (Appendix A: Reconfiguration Technical Guide).⁵¹ The Commission further directed the Bureau to announce the methodology and process for each incumbent to propose alternative reconfigurations.⁵²

37. Prior to reconfiguration, the Commission already will have: (1) quantified the holdings provided by each existing license within each PEA in terms of MHz-pops; (2) aggregated (and, where applicable, consolidated) the holdings of incumbents; and (3) determined weights for MHz-pops in each PEA so that a single weighted MHz-pop can be considered a consistent unit across different PEAs. An incumbent's quantified and aggregated holdings in a PEA can be described in terms of the number of equivalent new licenses in the PEA by dividing the holdings in a PEA by the MHz-pops associated with a

⁴⁷ *Spectrum Frontiers Fourth R&O* at para. 22.

⁴⁸ *See id.* at paras. 22 and 25.

⁴⁹ *See id.* at paras. 22 and 39.

⁵⁰ *Id.* at para. 25.

⁵¹ *Id.*

⁵² *Id.* at para. 31. At the same time, the Commission directed the Bureau to announce the process for each incumbent to elect how to proceed. *Id.* That process is addressed in the subsequent section of this Public Notice, Section VII.B, as well as in Appendix D: Initial Commitment Technical Guide.

new license in that PEA.⁵³ The result will equal the number of whole and partial new licenses in that PEA that would provide spectrum usage rights equivalent to the incumbent's aggregated holdings in that PEA under an incumbent's existing 39 GHz licenses.

A. Reconfigurations Proposed by the Commission

38. The Commission directed the Bureau to reconfigure 39 GHz holdings of incumbent licensees. Subject to specified constraints, the Commission will implement the reconfiguration using a mathematical optimization. The optimization will consider all possible ways to reconfigure the incumbent's holdings equivalent to a partial PEA license such that in the reconfiguration, the incumbent will have at most a single modified partial PEA license while keeping constant the incumbent's total weighted MHz-pops, and then choose the reconfiguration that minimizes the unassigned weighted MHz-pops in the PEA with a partial PEA license. In a PEA where an incumbent has aggregated holdings that would result in a modified license for a partial PEA, the optimization either will increase the incumbent's holding to a full PEA license, decrease the holding to zero, or for at most one PEA, assign weighted MHz-pops that will result in a partial PEA license, as needed to maintain the incumbent's total combined holdings. Among the reconfigurations that meet these criteria, the Commission will propose the reconfiguration that assigns any modified license for a partial PEA in the PEA with the fewest remaining unassigned weighted MHz-pops.⁵⁴

B. Alternative Reconfigurations Proposed by Incumbents

39. Commission directed the Bureau to announce a methodology and process by which each incumbent may propose an alternative reconfiguration plan, provided that it satisfies certain conditions.⁵⁵ To be an acceptable alternative reconfiguration, the incumbent's plan must satisfy the following constraints: the incumbent's combined total MHz-pops holdings are kept constant; for every PEA but one, the incumbent's updated aggregate holdings in the PEA are reduced down to the greatest integer less than or equal to the incumbent's updated aggregate holdings in the PEA or increased up to the least integer greater than or equal to its updated aggregate holdings in the PEA; and for a single PEA in which the incumbent has final aggregate holdings equivalent to a partial PEA license, its holdings are increased to less than the equivalent of a new license, as needed to maintain the incumbent's combined holdings. Unlike the Commission's reconfiguration proposal, an incumbent's alternative reconfiguration need not locate any modified license for a partial PEA in the PEA with the fewest remaining unassigned weighted MHz-pops.⁵⁶

⁵³ This division could be done with either weighted or unweighted MHz-pops, since the same weight will apply to MHz-pops of both existing holdings and new licenses. We will use weighted MHz-pops, as any remainder quantity representing the equivalent of a partial PEA license will be subject to being transferred to other PEAs in the reconfiguration.

⁵⁴ *Spectrum Frontiers Fourth R&O* at para. 25. Taking into account the process for determining the geography of the modified partial PEA license, and as detailed in Appendix A: Reconfiguration Technical Guide, the PEA with the partial PEA license is the one that contains the smallest number of weighted MHz-pops left unassigned after subtracting the MHz-pops for the area covered by the modified license. Note also that, as described in this Section, and pursuant to the *Spectrum Frontiers Fourth R&O*, the reconfiguration will take into account whether the incumbent's holdings would leave only a *de minimis* percentage of a whole new license unassigned and therefore the holdings would be rounded up and a modified license based on the holdings would be equivalent to a whole new license, leaving no white space.

⁵⁵ *Spectrum Frontiers Fourth R&O* at para. 31.

⁵⁶ *Id.*

C. Reconfigured Holdings Equivalent to a Partial PEA

40. In the *Spectrum Frontiers Fourth R&O*, the Commission determined that any modified license would be for 100 megahertz, the complete bandwidth of a new license. Accordingly, the single modified license for a partial PEA that an incumbent may receive would be a license for a part of the geographic area covered by a new license. Such licenses are “partial” in relation to the geography of a full PEA covered by a new license. Within the reduced coverage area set by its boundaries, a “partial” PEA license provides the same rights that a new license provides in the full PEA.

1. Rounding

41. The Commission concluded in the *Spectrum Frontiers Fourth R&O* that, if an incumbent’s holdings in a PEA after reconfiguration are equivalent to less than a full new license yet would cover so much of the PEA’s population that the remaining uncovered portion should be considered *de minimis*, the incumbent should be assigned a modified license that covers the full PEA.⁵⁷

42. The Commission set this *de minimis* threshold at 5% and directed the Bureau to determine whether it should be increased up to 10%.⁵⁸ We tentatively conclude that we should increase the *de minimis* threshold to 10%. Accordingly, an incumbent would receive a modified license for a full PEA if it has reconfigured holdings in the PEA that would cover 90% or more of the PEA population. In other contexts, the Commission previously has found that service area extensions of more than 10% were acceptable.⁵⁹ We believe that this approach will maximize the number of full PEA licenses, and based on our experience we believe that the benefits of offering modified licenses for the full PEAs now clearly outweigh the benefits of offering separate licenses that cover less than 10% of the PEA population, which would likely attract few, if any significant bids. We seek comment on this tentative conclusion.

2. Option to Relinquish

43. The Commission decided in the *Spectrum Frontiers Fourth R&O* that an incumbent that commits to accept modified licenses that include a modified license for a partial PEA may choose to relinquish only the spectrum usage rights relating to the modified license for a partial PEA in exchange for an incentive payment.⁶⁰ An incumbent exercising this option will not be eligible to bid for licenses in Auction 103, in contrast to an incumbent that commits to relinquishing all its spectrum usage rights pursuant to existing 39 GHz licenses.

44. An incumbent with reconfigured holdings that will result in a full PEA license due to reconfigured *de minimis* rounding, may either accept a modified license for the full PEA or relinquish the pre-rounding holdings.⁶¹ In other words, incentive payments will not be based on holdings rounded by reconfigured *de minimis* rounding.⁶²

⁵⁷ *Id.* at para. 26.

⁵⁸ *Id.*

⁵⁹ See, e.g., Houston Cellular Telephone Co., 5 FCC Rcd 7140 (Mobile Serv.Div. 1990) (19.8% cell extension is *de minimis*); Rhys G. Mussman, 3 FCC Rcd 6808, 6811 (Com.Car.Bur. 1988) (19% cell extension is *de minimis*); South Carolina Metronet, 6 FCC Rcd 968 (Mobile Serv.Div. 1991) (16.7% cell extension is *de minimis*).

⁶⁰ *Spectrum Frontiers Fourth R&O* at para. 32.

⁶¹ As already explained, the Commission adopted a 5% *de minimis* standard at a minimum for rounding up the remaining partial holding and directed the Bureau to determine whether that standard should be adjusted to a threshold between 5 and 10%. See *Spectrum Frontiers Fourth R&O* at para. 26. In this Public Notice, the Bureau proposes to set the standard at 10%.

3. Boundaries of Modified Licenses for Partial PEAs

45. The Commission decided in the *Spectrum Frontiers Fourth R&O* that the geographic boundaries of a modified license for a partial PEA will be determined by adjusting the incumbent's currently licensed area in the PEA.⁶³ The Commission specified that "[t]he proposed geographic boundaries for the partial PEA block will be as similar as possible to the incumbent's original holdings in that PEA, recognizing that the remaining partial PEA block may cover a larger or smaller percentage of pops than the existing license."⁶⁴ We describe here the proposed methodology that will be used to determine these geographic boundaries for a partial PEA, whether it resulted from a Commission reconfiguration proposal or an acceptable alternative submitted by the incumbent. An incumbent will not choose the geographic boundaries of a modified license for a partial PEA. The Commission's process will determine the geographic boundaries of the modified license even though the incumbent selects the PEA when it submits an acceptable alternative reconfiguration. The precise geographic boundaries of a modified license for a partial PEA will be determined only after an incumbent makes its Initial Commitment.

46. To determine the geographic boundaries of a modified license for a partial PEA, the system will first determine the incumbent's current geographic coverage as the union of any two-by-two kilometer grid cells included in any of the incumbent's existing licenses for the PEA.⁶⁵ The boundaries of this starting coverage area will be mapped over the same two-by-two kilometer grid cells previously used to estimate the population of the PEA. The population of all grid cells whose internal points fall within the boundary of this coverage area will constitute the baseline population covered by a modified license for a partial PEA.

47. The process then will add (or, in the case that the population in the coverage area exceeds the reconfigured holdings, subtract) two-by-two kilometer grid cells adjacent to this coverage area within the PEA until arriving at the population as close to the MHz-pops value of the incumbent's reconfigured holdings in the PEA as possible while not being under. If including (or removing) an entire layer of grid cells (*i.e.*, all two-by-two kilometer grid cells within the PEA that are immediately adjacent to this coverage area) would exceed the new target population value for this partial PEA holding, then grid cells will be added (or removed) such that the population of the cells is as close as possible to the value of the reconfigured holdings without going under. If multiple combinations of grid cells could yield the same outcome, the optimization will randomly choose one grid cell over the other. We seek comment on this proposed process.

VII. INITIAL COMMITMENTS

48. The Commission will announce the timeline for the Initial Commitment process at the same time it announces its proposed reconfiguration of 39 GHz license holdings for each incumbent. The timeline will include a window for filing the Incumbent 39 GHz Licensee Short-Form Application (FCC Form 175-A) to identify the individuals who will have authority to act as Initial Commitment Representatives for the incumbent. In addition, the timeline will include a deadline for a binding Initial

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⁶² For example, if the partial PEA holding was .96 (covering 96% of pops in the PEA), the incumbent could elect to either receive a modified license in that PEA that would cover the entire PEA, or it could choose to relinquish that partial holding for 96% of the final clock phase price in the auction.

⁶³ *Spectrum Frontiers Fourth R&O* at para. 27.

⁶⁴ *Id.*

⁶⁵ An incumbent may have multiple licenses in any one PEA and it is possible that the incumbent's licenses in the PEA together cover the full geography of the PEA. This can happen with even a single license for less than 100 megahertz in the PEA, if the incumbent currently holds 50 megahertz across the full PEA.

Commitment regarding the 39 GHz holdings of the applicable incumbent. The window for filing FCC Form 175-A will open no sooner than 30 days after the timeline is announced and the deadline for submitting Initial Commitments will be no sooner than 30 days after the FCC Form 175-A filing window opens. Any 39 GHz incumbent not named in a submitted FCC Form 175-A or that does not make an Initial Commitment for any reason will be considered to have committed to accepting modified licenses based on the Commission's proposed reconfiguration (Option 1), including any modified license for a partial PEA, and may not apply to bid for licenses in Auction 103.

49. The Commission will reserve a quantity of Upper 37 GHz and 39 GHz spectrum blocks in each PEA sufficient for any modified licenses that incumbents commit to accept. The quantity of spectrum blocks in these bands remaining in each PEA then will be available to be assigned as new licenses in Auction 103.

50. The final changes to the incumbents' licenses, whether modifications or cancellations based on voluntary relinquishment, will occur after winning bidders are announced in Auction 103. Nevertheless, the incumbents will be bound to fulfill their Initial Commitments following the announcement of winning bidders in Auction 103.

A. Incumbent 39 GHz Licensee Short-Form Application

51. Each incumbent will use the 39 GHz Incumbent Licensee Short-Form Application (FCC Form 175-A) to provide identifying information, information for a contact person regarding the application, the FCC Registration Numbers (FRNs) of all individual licensees represented through the application, up to three Initial Commitment Representative(s), and required certifications. The applicant may name up to three individuals as Initial Commitment Representatives authorized to make an Initial Commitment regarding the combined holdings of the 39 GHz licensees represented through the application. We will make available instructions and other educational materials prior to the opening of the FCC Form 175-A filing window.

52. Initial Commitment Representatives. The required certifications will include a certification that the applicant represents the listed licensees and is authorized on their behalf to name the Initial Commitment Representative(s) in the application. The applicant must further certify that the named Initial Commitment Representative(s) are authorized to make a binding Initial Commitment with respect to all 39 GHz licenses held by the listed licensees. To satisfy this certification, the Initial Commitment Representative(s) must have authority to: (1) propose an alternative reconfiguration as the basis for modified licenses with respect to all 39 GHz licenses held by the listed licensees; (2) commit the listed licensees to accept modified licenses as part of an Initial Commitment; (3) relinquish spectrum usage rights that would comprise a modified partial PEA license in exchange for an incentive payment; (4) commit the listed licensees to relinquishing all the spectrum usage rights pursuant to all existing 39 GHz licenses held in exchange for an incentive payment; (5) redistribute the holdings of the listed licensees in Round Zero of the auction; and (6) in any application with more than one listed licensee, designate one of the commonly controlled entities to receive any incentive payment.

53. Rule Prohibiting Certain Communications. Any incumbent 39 GHz licensee listed in an FCC Form 175-A will be considered to be an applicant in Auction 103 for purposes of Section 1.2105(c) beginning on the deadline for filing FCC Form 175-A.⁶⁶ Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the application filing deadline, "all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider [of communications services] that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the

⁶⁶ See 47 CFR § 1.2105(c).

substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline...."⁶⁷

54. Auction 103 bidding will have significant consequences for incumbent 39 GHz licenses that relinquish spectrum usage rights. Bidding for new licenses in Auction 103 will determine the amounts of incentive payments for relinquished spectrum usage rights as well as the winning bidders for new licenses. Consequently, an incumbent licensee will have a substantial interest in Auction 103 bids and bidding strategies, even if the incumbent itself does not bid for new licenses. For example, an incumbent might want new license bidders to bid in one PEA rather than another so as to increase the incumbent's related incentive payments. Even before bidding for new licenses begins, an incumbent might seek information about bidding, or seek to influence future bidding, when considering its options for its Initial Commitment. Accordingly, pursuant to the *Spectrum Frontiers Fourth R&O*,⁶⁸ we propose that applicants will be subject to the rule prohibiting certain communications whether they file an FCC Form 175-A or an FCC Form 175.⁶⁹ Any party that is an applicant in Auction 103 for either purpose will be prohibited from certain communications with any other applicant in the incentive auction, i.e., irrespective of whether the other applicant filed the same or different forms for purpose of participating in the auction.

55. The rule would apply to a covered incumbent from the deadline for filing FCC Form 175-A regardless of whether the incumbent ultimately relinquishes spectrum usage rights. Being listed on an FCC Form 175-A is a prerequisite to relinquishing spectrum usage rights in Auction 103 just as FCC Form 175 is a prerequisite to bidding on new licenses in Auction 103. Any incumbent 39 GHz licensee that is listed on an FCC Form 175-A is willing and able to relinquish existing spectrum usage rights, even if ultimately it does not do so.⁷⁰ As only incumbent 39 GHz licensees may be represented through an FCC Form 175-A, the parties subject to the prohibition based on that form will be limited and easily known. Moreover, we will identify applicants and listed licensees on FCC Form 175-A and/or applicants filing FCC Form 175 by public notice subsequent to the respective filing deadlines for the forms.

56. The Commission will detail the operation of the prohibition in future public notices setting forth the detailed procedures for Auction 103. Interested parties seeking additional guidance prior to the release of those future public notices may consult the analogous Auction 101 and 102 Procedures Public Notice, past public notices providing guidance with respect to the rule, and the authorities listed on the Commission's website.⁷¹

⁶⁷ *Id.*

⁶⁸ *Spectrum Frontiers Fourth R&O*, Appx. A (adding 47 C.F.R. § 1.2115, noting that prior rule provisions may be used to conduct either or both a forward and a reverse auction in an incentive auction).

⁶⁹ An incumbent interested in bidding on licenses in Auction 103 will file both.

⁷⁰ In contrast, an incumbent that wants only to commit to accept the modification proposed by the Commission may do so without filing an FCC Form 175-A. In that case, it will be deemed to have committed to accepting modified licenses based on the Commission's proposed reconfiguration and to keeping any modified partial PEA license.

⁷¹ See *Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auctions 101 (28 GHz) and 102 (24 GHz); Bidding in Auction 101 Scheduled to Begin November 14, 2018, Public Notice*, 33 FCC Rcd 7575, 7598-7605, paras. 57-82 (2018) (*Auction 101 and Auction 102 Procedures Public Notice*); *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000, Public Notice*, 30 FCC Rcd 10794 (WTB 2015) (*Prohibited Communications Guidance Public Notice*). A summary listing of documents addressing application of Section 1.2105(c) is available on the Commission's auction web page at (continued....)

57. The rule prohibiting certain communications prohibits those communications between applicants and nationwide providers, regardless of whether those nationwide providers are applicants in the auction.⁷² The operation of the rule requires that the Commission identify nationwide providers for purposes of the rule in connection with each auction.⁷³ Because the applicable service rules allow a 39 GHz licensee to provide flexible terrestrial wireless services, including mobile services, the Commission's identification of nationwide providers in the *Communications Marketplace Report* provides reasons to identify the same parties as nationwide providers for purposes of 39 GHz licenses and Auction 103.⁷⁴ Accordingly, consistent with the procedures adopted for Auctions 101 and 102 with respect to millimeter wave bands, we identify AT&T, Sprint, T-Mobile, and Verizon Wireless as "nationwide providers" for the purpose of implementing our competitive bidding rules in Auction 103, including Section 1.2105(c), the rule prohibiting certain communications.⁷⁵

58. **SecurID® tokens.** Initial Commitment Representatives will choose an Initial Commitment option with respect to the 39 GHz holdings of licensees listed on the applicable FCC Form 175-A and submit that choice over the Internet using the Commission's Initial Commitment System. Each Initial Commitment Representative must have his or her own SecurID® token, which the Commission will provide at no charge. An Initial Commitment Representative cannot access the Initial Commitment System without his or her SecurID token. **For security purposes, the SecurID® tokens will be mailed only to the contact person at the contact address listed on the FCC Form 175-A.** SecurID® tokens issued for other auctions or obtained from a source other than the Commission will not work for Initial Commitments.⁷⁶

B. Initial Commitment Options

59. In the Initial Commitment System,⁷⁷ the Initial Commitment Representative will commit the represented 39 GHz incumbent licensees to one of three Initial Commitments: (1) accept modified
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<https://www.fcc.gov/economics-analytics/auctions-division/auctions/summary-listing-documents-addressing-application-rule#block-menu-block-4>.

⁷² *Updating Part 1 Competitive Bidding Rules et al.*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493, 7577, para. 199 (2015) (*2015 Part 1 Report and Order*), modified by Erratum, 30 FCC Rcd 8518 (OMD/WTB 2015).

⁷³ *2015 Part 1 Report and Order* at 7571, para. 182 n.596.

⁷⁴ See *Communications Marketplace Report*, Report, FCC 18-181, at para. 6 (Dec. 12, 2018). This is consistent with the Commission's identification of "nationwide providers" for the purpose of implementing its competitive bidding rules in Auctions 101 and 102 and the forward auction portion of the Broadcast Incentive Auction. See *Auction 101 and 102 Procedures Public Notice*, 33 FCC Rcd at 7593, para. 44; *Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Technical Formulas for Competitive Bidding*, Public Notice, 30 FCC Rcd 11034, 11070, para. 111 (WTB 2015) ("For Auction 1002, AT&T, Verizon, Sprint, and T-Mobile are considered to be 'nationwide providers.'").

⁷⁵ See *Auction 101 and Auction 102 Procedures Public Notice*, 33 FCC Rcd at 7593-94, 7598, paras. 44 and 57, n.132.

⁷⁶ Incumbents that also file FCC Form 175 to bid for new licenses in Auction 103 should refer to the procedures that will be established in other public notices for information regarding SecurID® tokens for the authorized bidders they identify on the FCC Form 175. Please note that the SecurID® tokens can be recycled, and the Commission encourages parties to return the tokens to the Commission. Pre-addressed envelopes will be provided to return the tokens once they are no longer needed.

⁷⁷ An Initial Commitment Representative may access the Initial Commitment System after activating his or her own SecurID® token.

licenses based on the Commission's proposed reconfiguration of the 39 GHz holdings of the incumbent(s); (2) accept modified licenses based on a submitted acceptable alternative reconfiguration submitted by the incumbent; or (3) relinquish all spectrum usage rights pursuant to the licensees' existing 39 GHz licenses in exchange for an incentive payment by having the licenses cancelled. To be able to bid for new licenses, an incumbent 39 GHz licensee must commit to having its existing 39 GHz licenses cancelled.

60. Option 1. If an Initial Commitment Representative selects the first option and the modified licenses will include a license for a partial PEA, the representative may choose either to keep the modified license for a partial PEA or to relinquish the spectrum usage rights for the partial PEA license in exchange for an incentive payment. If the representative elects to keep the modified partial PEA license, the *de minimis* rounding rules will apply, potentially rounding the partial PEA block up to a modified license for a full PEA block. In the case of a relinquishment, the reconfiguring incumbent will receive an incentive payment based on the actual MHz-pops of the relinquished holdings. The Commission will provide instructions subsequently regarding how a representative will provide information regarding the account to which the incentive payment should be made. Only one payment will be made for the combined holdings of an incumbent even when the incumbent is a group of commonly controlled entities that hold 39 GHz licenses.

61. Option 2. An Initial Commitment Representative also may use the Initial Commitment system to submit an acceptable alternative reconfiguration. To ensure that the alternative reconfiguration meets the necessary requirements, where an incumbent has weighted MHz-pops quantities equivalent to a partial PEA, the Initial Commitment System will allow the representative to round those holdings *either* down to the greatest integer less than or equal to the incumbent's updated holdings *or* up to the least integer greater than or equal to the incumbent's updated holdings, for all but one of those PEAs.⁷⁸ The system will notify the representative if choices made are not consistent with leaving at most one PEA with the equivalent of a partial PEA license. For example, if the representative has indicated that it wishes to round down holdings equivalent to partial PEA licenses in all but one PEA, and the remaining weighted MHz-pops would increase those holdings in the remaining PEA to more than a full PEA license, the system will require the representative to readjust its holdings.

62. Once the representative has provided input that leads to an acceptable alternative reconfiguration, it may "submit" the reconfiguration and commit the represented 39 GHz incumbent licensees to accept modified licenses based on the submitted acceptable alternative reconfiguration. If the modified licenses would include a license for a partial PEA, the representative may choose either to keep that license or to relinquish the spectrum usage rights for it in exchange for an incentive payment. If the representative elects to keep the modified partial PEA license, the *de minimis* rounding rules will apply, potentially rounding the partial block up to a modified license for a full block. If the representative elects to relinquish the partial block, the reconfiguring incumbent will receive an incentive payment based on the actual MHz-pops of the relinquished holdings. The Commission will provide instructions subsequently regarding how a representative will provide information regarding the account to which the incentive payment should be made. Only one payment will be made for the combined holdings of an incumbent even when the incumbent is a group of commonly controlled entities that hold 39 GHz licenses.⁷⁹

63. Option 3. Finally, an Initial Commitment Representative may select the third option and commit the represented 39 GHz incumbent licensees to relinquish all spectrum usage rights under their existing 39 GHz licenses in exchange for an incentive payment and having the existing licenses cancelled.

⁷⁸ See Appendix D: Initial Commitment Technical Guide.

⁷⁹ See Section V.E., above.

To be able to bid in the auction for new licenses, an incumbent must commit to cancelling all its existing 39 GHz licenses. If the representative chooses the third option, the system will give the representative an opportunity during the Initial Commitment process to reallocate, within constraints, any updated aggregated holdings per PEA that are equivalent to a partial PEA license in the Round Zero process.⁸⁰

64. In Round Zero, the Initial Commitment Representative may reallocate the incumbent's updated aggregated holdings per PEA that are equivalent to a partial PEA license among the PEAs in which it has such holdings. The reallocation will be done by transferring weighted MHz-pops among eligible PEAs. If the reallocation does not use all of the weighted MHz-pops available, the system will permit the representative to submit the proposed reallocation and will automatically apportion any unused weighted MHz-pops to the partial PEAs in the incumbent's updated aggregated holdings by PEA, starting with the lowest numbered PEA.

65. The Commission will provide instructions subsequently regarding how a representative will provide information regarding the account to which the incentive payment should be made. Only one payment will be made for the combined holdings of an incumbent even when the incumbent is a group of commonly controlled entities that hold 39 GHz licenses.

66. Appendix D: Initial Commitment Technical Guide provides additional description of the Initial Commitment System details. We will provide additional information and educational materials regarding the Initial Commitment System in advance of the opening of the Initial Commitment submission window.

C. Transition for Existing 39 GHz Licenses

67. Each 39 GHz existing licensee will hold its existing licenses until after the announcement of winning bidders for new licenses. The incumbent's binding Initial Commitment then will be put into effect as part of the post-auction transition.

68. For an incumbent with an Initial Commitment to accept modified licenses (Options 1 or 2), the modified licenses will be assigned after winning bidders are announced in Auction 103. The Initial Commitment will be made based on an applicable reconfiguration of the incumbent's combined holdings, so the number and PEA location of all the modified licenses will be known at the time of the Initial Commitment. However, the geographic boundaries of any modified license for a partial PEA will be determined only after the Initial Commitments. Moreover, frequencies for modified licenses can be assigned only after the assignment phase of the auction.⁸¹

69. Incumbents that will be assigned modified licenses already have existing licenses in the PEA and may be able to transition any existing operations to new frequencies (or geographic areas in the case of licenses that either covered or now cover only part of a PEA) before any new licenses are granted, as new licenses won pursuant to Auction 103 will not be issued until after post-auction payments are made and license applications are accepted and reviewed. We will support this transition by designating the time period after the close of the auction and before new licenses are granted as the transition period for incumbents receiving modified licenses to make the transition. Specifically, we will issue modified licenses after the close of the auction but not cancel these incumbents' authorizations on their original frequencies to allow for a limited transition period. We will cancel their original authorizations only after

⁸⁰ *Spectrum Frontiers Fourth R&O* at para. 40.

⁸¹ *See id.* at para. 58.

the transition has been made to the new frequencies or when the original frequencies are needed for new licenses, whichever is sooner.⁸²

70. For an incumbent that commits to relinquish all 39 GHz spectrum usage rights in exchange for an incentive payment (Option 3), we will cancel the licenses providing the relinquished spectrum usage rights after the winning bidders are announced in Auction 103. This will make associated spectrum available for authorization for licenses under the new band plan, i.e., modified licenses and new licenses won at auction. We recognize that, if these incumbents have existing operations at the time of the close of the auction, they will need a transition period to continue to operate after their existing licenses are canceled and before their new licenses are issued (or until they can transition existing operations to other spectrum bands in which they hold licenses). This transition period will be accommodated through Special Temporary Authorizations (STAs).

71. *STA Process.* Incumbents that have existing operations and need continuing authority to operate as they transition to new frequencies can apply for an STA, if needed, to ensure continuity of service. An incumbent will need to explain in its STA request the nature of its existing operations and identify how much time for transition it needs and/or why it was unable to complete the transition in the initial time allotted (if applicable). Any STAs granted will authorize the incumbent to operate only on a secondary, non-interfering basis, and only up to 180 days.⁸³ These STAs will not be renewed absent extraordinary circumstances.⁸⁴ We will provide the filing deadline for these types of STA requests in the Auction 103 Closing Public Notice announcing winning bidders.

D. Incentive Payments

72. Each incentive payment will be determined based on an incumbent's weighted MHz-pops holdings in a PEA after Round Zero and the final clock phase price for a spectrum block in the same PEA at the close of the clock phase of the auction. The Commission will make a single incentive payment with respect to an incumbent's combined holdings relinquished in the incentive auction. We tentatively conclude that such single payment may be directed only to one of the commonly controlled entities; we seek comment on whether there is a need to permit the designation of a commonly controlled entity that does not already hold a 39 GHz license. We will provide instructions in a later public notice regarding how a representative for the incumbent, which may be a group of commonly controlled entities that hold 39 GHz licenses, will provide information regarding the account to which the incentive payment should be made.

73. Although, in general, winning bidders must pay their winning bids in full within approximately one month after release of the public notice announcing the close of an auction,⁸⁵ winning

⁸² If an incumbent choosing to have its licenses modified is moving to frequencies where another incumbent with modified licenses holds its original licenses, we will need to ensure only one authorization is active. In this case, the Commission would develop a plan to accommodate the transition of both incumbents, which may include granting Special Temporary Authorizations (STAs) to effectuate the transition. The Commission may also consider granting STAs if an incumbent's transition to its new modified frequencies has not been completed before the Commission is ready to grant new licenses in the same frequencies.

⁸³ Although these STAs will be secondary, incumbents should have sole use of the frequencies authorized for a period of time because the Commission will not be able to grant its first set of new licenses immediately after the auction closes, due to the additional time required for application submission, payments, and the petition to deny period, among other things.

⁸⁴ These STAs will be issued on a secondary, non-interfering basis, and therefore new licensees in these frequencies have primary operating authority. Incumbents that need additional time to transition also have the option to negotiate leases or other arrangements with the new licensee(s) authorized to operate in those frequencies.

⁸⁵ 47 CFR § 1.2107.

bid payments are recognized as auction proceeds available to be shared as incentive payments only when the licenses associated with winning bid payments are granted. Until then, the Commission holds winning bid payments and will not disburse them. Accordingly, cash incentive payments will be made only after sufficient funds are available for disbursement, i.e., winning bids have been paid and applications for new licenses related to those bids have been reviewed and granted.

74. An incumbent 39 GHz licensee with winning bids for new licenses in the auction must make any required winning bid payments before the Commission will process its application for new licenses. Pursuant to Section 309(j)(4)(A) of the Communications Act, the Commission may use alternative payment schedules and methods of calculation in competitive bidding to promote economic opportunity and competition by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants. In the *Spectrum Frontiers Fourth R&O*, the Commission found that assigning as much spectrum as possible through the auction serves the public interest and that enabling incumbents to retain equivalent rights without any additional payments would encourage them to relinquish spectrum usage rights under existing licenses.⁸⁶ Accordingly, the Commission will process applications for new licenses after collecting winning bids, net of any winning bidder's expected incentive payment so long as such treatment of the incentive payment is consistent with Federal financial management principles and guidance.

VIII. PROCEDURAL MATTERS

75. *Paperwork Reduction Act Analysis.* This Public Notice contains new information collection requirements that are subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. The Commission is currently seeking PRA approval for the new information collection requirements associated with the Incumbent 39 GHz Licensee Short Form Application (FCC Form 175-A).⁸⁷ The Office of Management and Budget (OMB), the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this Public Notice. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,⁸⁸ we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

⁸⁶ *Spectrum Frontiers Fourth R&O* at paras. 34-35. See also *id.* at para. 46, determining that assuring full incentive payments will be made encourages participation in further of the public interest. See generally *id.* at para. 43, treating new licenses equivalent to relinquished licenses differently by making any designated entity bidding credit for the incumbent inapplicable to those new licenses.

⁸⁷ Information Collection Being Reviewed by the Federal Communications Commission, 84 Fed. Reg. 4066 (Feb. 14, 2019).

⁸⁸ See 44 U.S.C. § 3506(c)(4).

76. *Supplemental Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁸⁹ the Commission has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Public Notice to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the *Spectrum Frontiers Fourth R&O*, *Spectrum Frontiers Orders*,⁹⁰ and other Commission orders pursuant to which Auction 103 will be conducted. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same deadline for comments specified on the first page of this Public Notice. The Commission will send a copy of this Public Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).⁹¹ In addition, this Public Notice and Supplemental IRFA (or summaries thereof) will be published in the *Federal Register*.⁹²

77. *Need for, and Objectives of, the Proposed Rules.* This Public Notice explains how the Bureau proposes to implement the steps described in the *Spectrum Frontiers Fourth R&O* to reconfigure incumbents' 39 GHz licenses to better match the new 39 GHz band plan and service rules adopted by the Commission and allow incumbents to make binding Initial Commitments through the Commission's Initial Commitment System. It also describes the process by which an incumbent 39 GHz licensee will have an opportunity to make a binding Initial Commitment through the Commission's Initial Commitment System to (1) have its licenses modified based on the Commission's proposed reconfiguration of its license holdings (and forgo bidding for new licenses in Auction 103); (2) have its licenses modified based on an acceptable alternative reconfiguration that the incumbent proposes, provided that it satisfies certain specified conditions (and forgo bidding for new licenses in Auction 103); or (3) commit to relinquish its licenses in exchange for an incentive payment and have its licenses cancelled, with the ability to bid for new licenses if it so chooses.

78. This Public Notice is intended to provide notice of and opportunity for interest parties to comment on the procedures described.⁹³ The proposed procedures in this Public Notice constitute the more specific implementation of the decisions contemplated by the underlying rulemaking orders, including the *Spectrum Frontiers Orders* and relevant competitive bidding orders, and are fully consistent therewith.⁹⁴ The Commission welcomes comment on all aspects of the process and specifically seeks comment on the following:

- a methodology for setting weights to apply to spectrum holdings in different Partial Economic Areas (PEAs);
- the *de minimis* standard for reconfigured holdings that cover most but not all of a PEA; and
- how to determine the geographic scope of modified licenses, if any, that cover less than a full PEA.

⁸⁹ 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁹⁰ *See Use of Spectrum Bands Above 24 GHz For Mobile Radio Services et al.*, Notice of Proposed Rulemaking, 30 FCC Rcd 11878, 11997-12003, Appx. B (2015); *2016 Spectrum Frontiers Order*, 31 FCC Rcd at 8234-42, 8262-69, Appendices E, H; *2017 Spectrum Frontiers Order*, 32 FCC Rcd at 11087-96, 11107-11, Appendices C, D, F.

⁹¹ *See* 5 U.S.C. § 603(a).

⁹² *See id.*

⁹³ *See* 47 U.S.C. § 309(j)(3)(E)(i) (requiring the Commission to seek comment on auction procedures).

⁹⁴ *See generally Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2360-75, paras. 68-159.

79. *Legal Basis.* The Commission’s statutory obligations to small businesses under the Communications Act of 1934, as amended, are found in Sections 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission’s competitive bidding rules is found in various provisions of the Communications Act of 1934, as amended, including 47 U.S.C. §§ 154(i), 301, 302, 303(e), 303(f), 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules, updated most recently in 2015, pursuant to which it has conducted auctions since the inception of the auction program in 1994 and would conduct Auctions 103.⁹⁵

80. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.⁹⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁹⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁹⁸ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹⁹

81. Regulatory Flexibility Analyses were incorporated into the *Spectrum Frontiers Orders* and in those analyses, the Commission described in detail the small entities that might be significantly affected. Accordingly, in this Public Notice, we hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *Spectrum Frontiers Orders*.¹⁰⁰

⁹⁵ See generally 47 CFR Part 1, Subpart Q; see also 47 CFR §§ 73.5000, 73.5002-.5003, 73.5005-.5009. In promulgating those rules, the Commission conducted numerous RFA analyses to consider the possible impact of those rules on small businesses that might seek to participate in Commission auctions. See, e.g., *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Notice of Proposed Rule Making, 8 FCC Rcd 7635, 7666, Appx (1993); *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, 5749-53, Appx. C (1997); *Updating Part 1 Competitive Bidding Rules; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission’s Rules and/or for Interim Conditional Waiver; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, and Third Report and Order, 30 FCC Rcd 7493, 7613-28, Appx. B (2015), modified by Erratum, 30 FCC Rcd 8518 (OMD/WTB 2015). In addition, multiple Final Regulatory Flexibility Analyses were included in the rulemaking orders which adopted or amended rule provisions relevant to this Public Notice. See *2016 Spectrum Frontiers Order*, 31 FCC Rcd at 8234-42, Appx. E; *2017 Spectrum Frontiers Order*, 32 FCC Rcd at 11087-96, Appendices C, D.

⁹⁶ 5 U.S.C. § 603(b)(3).

⁹⁷ *Id.* § 601(6).

⁹⁸ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public (continued....)

82. Based on the information available in the Commission's public Universal Licensing System (ULS), the Commission estimates there are currently 16 incumbent 39 GHz licensees.¹⁰¹ Of these incumbent 39 GHz licensees, the Commission estimates that up to 8 could be considered a "small entity" under the RFA.

83. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the reconfiguration and Initial Commitment processes to minimize reporting and compliance requirements for participating incumbent licensees, including those that are small entities. For example, incumbent 39 GHz licensees desiring to make an Initial Commitment will need to file an Incumbent 39 GHz Licensee Short-Form Application (FCC Form 175-A), which the Commission will use to provide an incumbent 39 GHz licensee (or, if applicable, a group of commonly controlled entities that hold 39 GHz licenses) with access to the Initial Commitment System in order to make an Initial Commitment regarding existing 39 GHz spectrum holdings. The information that must be provided on FCC Form 175-A is limited to that which is necessary to enable the Commission to provide incumbent 39 GHz licensees with access Initial Commitment System for purposes of making their Initial Commitments.¹⁰²

84. We do not expect that the reconfiguration and Initial Commitment processes and procedures will require small entities to hire attorneys, engineers, consultants, or other professionals because the information necessary to comply with these processes and procedures should be available and maintained as part of the customary and usual business or private practice of all incumbent 39 GHz licensees.

85. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."¹⁰³

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comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁹⁹ 15 U.S.C. § 632.

¹⁰⁰ *2016 Spectrum Frontiers Order*, 31 FCC Rcd at 8234-42, Appx. E; *2017 Spectrum Frontiers Order*, 32 FCC Rcd at 11087-96, Appendices C, D.

¹⁰¹ In Auction 30, the Commission offered 2,450 licenses in the 39 GHz band. Auction 30 closed on May 8, 2000 with 29 winning bidders winning a total of 2,173 licenses. *See 39 GHz Band Auction Closes*, Public Notice, 15 FCC Rcd 13,648 (2000). 18 of these winning bidders (winning a total of 849 licenses) claimed eligibility for a small business bidding credit. *Id.* We note that, as a general matter, the number of winning bidders that are eligible for a small business bidding credit at the close of an auction does not necessarily represent the number of small businesses currently in a service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

¹⁰² The information required on Form 175-A includes contact information, the FCC Registration Numbers (FRNs) of all individual licensees represented through the application, Initial Commitment Representatives, and various certifications.

¹⁰³ 5 U.S.C. § 603(c)(1)-(4).

86. The Commission has taken steps that should minimize any economic impact that the proposed reconfiguration and Initial Commitment processes and procedures may have on small businesses. As an initial matter, the procedures only apply to incumbent 39 GHz licensees. Moreover, the Commission has made an effort to minimize the burden on all participating incumbent 39 GHz licensees, regardless of size, by limiting the information collected on FCC Form 175-A to that which is necessary to enable the Commission to provide an incumbent 39 GHz licensee (or, if applicable a group of commonly controlled entities that hold 39 GHz licenses) with access to the Initial Commitment System in order to make an Initial Commitment regarding existing 39 GHz spectrum holdings. Finally, detailed instructions and guidance to incumbent 39 GHz licensees about filing FCC Form 175-A, including the filing deadline, will be provided in advance of the start of the FCC Form 175-A filing window, and Bureau staff will be conducting outreach to all incumbents to ensure that they are informed of their options, thereby further minimizing any burdens on incumbent 39 GHz licensees that desire to make an Initial Commitment, including those that are small entities.

87. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

88. *Deadlines and Filing Procedures.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules,¹⁰⁴ interested parties may file comments or reply comments on or before the dates indicated on the first page of this document in AU Docket No. 19-59. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.¹⁰⁵ We strongly encourage interested parties to file comments electronically.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS at <https://www.fcc.gov/ecfs>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

89. Filings in response to this Public Notice may be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

90. *E-mail:* We also request that a copy of all comments and reply comments be submitted electronically to the following address: auction103@fcc.gov.

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

¹⁰⁴ 47 CFR §§ 1.415, 1.419.

¹⁰⁵ See generally *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

92. This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁰⁶ Persons making oral *ex parte* presentations must file a copy of any written presentations or memoranda summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

93. *Contact Information.* For further information concerning this proceeding, contact the offices listed below:

Broadband Division, Wireless Telecommunications Bureau

Upper Microwave Flexible Use Service (UMFUS) questions: Simon Banyai at (202) 418-2487

Auctions Division, Office of Economics and Analytics

Auction legal questions: Erik Salovaara at (202) 418-0660

Office of Communications Business Opportunities

For questions concerning small business inquiries: (202) 418-0990

IX. ORDERING CLAUSES

94. IT IS ORDERED that, pursuant to Sections 309 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 309, 316, and the authority delegated in the *Spectrum Frontiers Fourth Report and Order*, FCC 18-180, and 47 CFR §§ 0.271, 0.331, the licenses of all 39 GHz band licensees are hereby modified as specified in the *Spectrum Frontiers Fourth Report and Order* and further explained in this Public Notice.

95. IT IS FURTHER ORDERED that applications for transfers or assignments of 39 GHz licenses other than pursuant to the exception described herein WILL NOT BE ACCEPTED during the period described in this Public Notice.

¹⁰⁶ See 47 CFR §§ 1.1200(a), 1.1206.

96. IT IS FURTHER ORDERED that a copy of this Public Notice, including the Supplemental Initial Regulatory Flexibility Analysis, SHALL BE SENT to the Chief Counsel for Advocacy of the Small Business Administration.

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