

**FCC FACT SHEET\***  
**Competitive Bidding Procedures for Auction 105**  
**(Priority Access Licenses for the 3550-3650 MHz Band)**  
Public Notice – AU Docket No. 19-244

**Background:** This Public Notice would adopt application and bidding procedures for Auction 105, an auction of Citizens Broadband Radio Service licenses in the 3550-3650 MHz band. Auction 105 will assign up to seven Priority Access Licenses (PALs) in each county-based license area, for a total of 22,631 PALs nationwide. Each PAL will consist of a 10-megahertz unpaired channel. PALs are 10-year renewable licenses.

Bidding in Auction 105 is scheduled to commence on June 25, 2020. Auction 105 will offer the greatest number of spectrum licenses ever made available for bidding in a single auction and is intended to further the deployment of fifth-generation (5G) wireless, the Internet of Things, and other advanced spectrum-based services for the benefit of the public.

**What the Public Notice Would Do:**

- Adopt an ascending clock auction format for Auction 105, similar to that used in Auctions 102 and 103, in which bidders indicate their demands for generic license blocks in specific counties. The procedures for Auction 105 differ from the procedures in those previous auctions as follows:
  - There is no assignment phase in Auction 105. Priority Access Licensees will be authorized to use frequencies associated with their PALs as dynamically assigned by frequency coordinators, known as Spectrum Access Systems.
  - In order to mitigate the possibility of a bidder losing bidding eligibility in certain circumstances, Auction 105 would incorporate an “activity upper limit” that would allow a bidder to submit bids that exceed its current bidding eligibility. The bidding system would not, however, process activity that exceeded the bidder’s current bidding eligibility.
- Permit bidding on a county-by-county basis, but not adopt Cellular Market Area (CMA)-level bidding.
  - Bidders in Auction 105 will be allowed to bid for no more than four generic blocks of spectrum per county.
- Adopt bidding credit caps of \$25 million for small businesses and \$10 million for rural service providers, as well as a \$10 million cap on the overall amount of bidding credits that a small business bidder may apply to winning licenses in smaller markets.

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\* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in AU Docket No. 19-244, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*



# PUBLIC NOTICE

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## AUCTION OF PRIORITY ACCESS LICENSES FOR THE 3550-3650 MHz BAND

### NOTICE AND FILING REQUIREMENTS, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 105

**BIDDING IN AUCTION 105 SCHEDULED TO BEGIN JUNE 25, 2020**

**AU Docket No. 19-244\***

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\* This document has been circulated for tentative consideration by the Commission at its February 2020 open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s *ex parte* rules apply and presentations are subject to “permit-but-disclose” *ex parte* rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

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## I. GENERAL INFORMATION

### A. Introduction

1. By this Public Notice, we establish the procedures to be used for Auction 105, an auction of Priority Access Licenses (PALs) in the Citizens Broadband Radio Service in the 3550-3650 MHz band. Auction 105 will offer the greatest number of spectrum licenses ever made available for bidding in a single auction and is intended to further the deployment of fifth-generation (5G) wireless, the Internet of Things (IoT), and other advanced spectrum-based services.

2. The bidding for new licenses in Auction 105 is scheduled to commence on June 25, 2020. This Public Notice provides details regarding the procedures, terms, conditions, dates, and deadlines governing participation in Auction 105 bidding, as well as an overview of the post-auction application and payment processes.

### B. Background and Relevant Authority

3. In the *2015 3.5 GHz Report and Order*, the Commission made available 150 megahertz of spectrum in the 3550-3700 MHz band (3.5 GHz band) for both licensed and licensed-by-rule use.<sup>1</sup> In that order, the Commission established licensing and operating rules for the 3.5 GHz band, including the assignment of up to seven Priority Access Licenses (PALs) per geographic license area through the use of competitive bidding.<sup>2</sup> Each PAL consists of a 10-megahertz unpaired channel within the 3550-3650 MHz band.<sup>3</sup> In the *2018 3.5 GHz Report and Order*, the Commission adopted a county-based geographic

<sup>1</sup> See generally *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959 (2015) (*2015 3.5 GHz Report and Order*).

<sup>2</sup> *Id.*, 30 FCC Rcd at 3982, para. 67.

<sup>3</sup> 47 CFR § 96.25(b)(2); see also *2015 3.5 GHz Report and Order*, 30 FCC Rcd at 3988, para. 91.

license area for PALs,<sup>4</sup> as well as a 10-year renewable license term,<sup>5</sup> and it affirmed the Commission's prior decision to permit licensees to aggregate no more than four PALs per license area.<sup>6</sup>

4. On September 27, 2019, in accordance with section 309(j)(3) of the Communications Act of 1934, as amended,<sup>7</sup> we released a public notice seeking comment on certain competitive bidding procedures and various other procedures to be used in Auction 105.<sup>8</sup> We received comments from 17 parties in response to the *Auction 105 Comment Public Notice*, and 12 reply comments.<sup>9</sup> In this Public Notice, we resolve all open issues raised in *Auction 105 Comment Public Notice* and address the comments received.

5. Other Commission rules and decisions provide the underlying authority for the procedures we adopt today for Auction 105. Among other things, prospective applicants should familiarize themselves with the Commission's general competitive bidding rules,<sup>10</sup> including recent amendments and clarifications thereto, as well as Commission decisions regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.<sup>11</sup> Prospective applicants also should familiarize themselves with the Commission's rules regarding Citizens Broadband Radio Service.<sup>12</sup> In addition, applicants must be thoroughly familiar with the procedures, terms, and conditions contained in this Public Notice and any future public notices that may be released in this proceeding.

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<sup>4</sup> *Promoting Investment in the 3550-3700 MHz Band*, GN Docket No. 17-258, Report and Order, 33 FCC Rcd 10598, 10607, para. 19 (2018) (*2018 3.5 GHz Report and Order*).

<sup>5</sup> *Id.* at 10623, para. 46.

<sup>6</sup> *Id.* at 10653-54, para. 107.

<sup>7</sup> 47 U.S.C. § 309(j)(3)(E)(i) (requirement to seek comment on proposed auction procedures); *see also id.* § 309(j)(4)(F) (authorization to prescribe reserve price or minimum bid); 47 CFR §§ 1.2104(c)-(d).

<sup>8</sup> *See Auction of Priority Access Licenses for the 3550-3650 MHz Band; Comment Sought on Competitive Bidding Procedures for Auction 105; Bidding in Auction 105 Scheduled to Begin June 25, 2020*, Public Notice, 34 FCC Rcd 9215 (2019) (*Auction 105 Comment Public Notice*). A summary of the *Auction 105 Comment Public Notice* was published in the Federal Register at 84 Fed. Reg. 56743 (Oct. 23, 2019).

<sup>9</sup> These comments are available under proceeding 19-244 in the Commission's Electronic Comment Filing System (ECFS). The ECFS home page is publicly accessible at: [www.fcc.gov/ecfs](http://www.fcc.gov/ecfs). We generally note in the context of discussing particular issues whether any commenter addressed those issues. An additional filing was submitted that addressed issues that are not relevant to Auction 105, and thus outside the scope of this Public Notice; accordingly, that comment will not be addressed here. *See* Letter from Omar Afifeh, PE, Universal Electrical Contractors, to Marlene Dortch, Secretary, FCC, AU Docket No. 19-244 (filed Nov. 4, 2019).

<sup>10</sup> 47 CFR Part 1, Subpart Q.

<sup>11</sup> *See, e.g., Updating Part 1 Competitive Bidding Rules et al.*, WT Docket Nos. 14-170 and 05-211, GN Docket No. 12-268, RN-11395, 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 (2015) (*Updating Part 1 Report and Order*) (modified by Erratum, 30 FCC Rcd 8518 (2015)); *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures*, WT Docket No. 97-82, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making, 12 FCC Rcd 5686 (1997) (*Auction Procedures Consolidation Order*); Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, 15 FCC Rcd 15293 (2000) (*Part 1 Fifth Report and Order*) (modified by Erratum, 15 FCC Rcd 21520 (2000)); Seventh Report and Order, 16 FCC Rcd 17546 (2001) (*Part 1 Seventh Report and Order*); Eighth Report and Order, 17 FCC Rcd 2962 (2002); Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order, 18 FCC Rcd 10180 (2003) (*Part 1 Third R&O Second Recon/Part 1 Fifth R&O Recon*); Second Order on Reconsideration of the Fifth Report and Order, 20 FCC Rcd 1942 (2005) (*Part 1 Fifth R&O Second Recon*).

<sup>12</sup> 47 CFR §§ 96.1–96.67.

6. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time and will issue public notices to convey any new or supplemental information to applicants. In addition, we affirm the well-established authority of the Wireless Telecommunications Bureau (Bureau) and the Office of Economics and Analytics (OEA) to establish further procedures during the course of this auction.<sup>13</sup> It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auction 105. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the Commission's FCC Auctions Internet site at [www.fcc.gov/auctions](http://www.fcc.gov/auctions). Additionally, documents are available at the Commission's headquarters during normal business hours. Contact Auctions Division staff at [auction105@fcc.gov](mailto:auction105@fcc.gov) or (202) 418-0660 for guidance.

### C. Description of Licenses to Be Offered in Auction 105

7. Auction 105 will offer seven PALs in each county-based license area.<sup>14</sup> Each PAL consists of a 10-megahertz unpaired channel within the 3550-3650 MHz band. The auction will offer a total of 22,631 PALs.<sup>15</sup> PALs are 10-year renewable licenses.<sup>16</sup> A Priority Access Licensee may hold up to four 10-megahertz channel licenses (out of a total of seven) within the band in any license area at any given time.<sup>17</sup>

8. A frequency coordinator called a Spectrum Access System (SAS) will assign the specific channel for a particular licensee on a dynamic basis.<sup>18</sup> An individual PAL will not be identified by specific spectrum blocks. Although a Priority Access Licensee may request a particular channel or frequency range from an SAS following the auction, bidders should be mindful that licensees are not guaranteed a particular assignment.<sup>19</sup> Potential bidders should also understand that an SAS may dynamically reassign a PAL to a different channel as needed to accommodate a higher priority Incumbent Access user.<sup>20</sup> To the extent feasible, an SAS will "assign geographically contiguous PALs held by the same Priority Access Licensee to the same channels in each geographic area" and "assign multiple channels held by the same Priority Access Licensee to contiguous frequencies within the same License Area."<sup>21</sup> An SAS may, however, temporarily reassign individual PALs to non-contiguous channels to the

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<sup>13</sup> See generally *id.* §§ 0.21(m), 0.271(a), 0.131(r), 0.331.

<sup>14</sup> *Id.* § 96.13; *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10643, para. 82. For purposes of this auction, counties shall be defined using the United States Census Bureau's data reflecting county legal boundaries and names valid through January 1, 2017. See 47 CFR § 96.3; *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10607, para. 19 & n.71. Information regarding PALs, including a map and list of 2017 counties, can be found at <https://www.fcc.gov/35-ghz-band-overview>. We will not be issuing Priority Access Licenses in the Gulf of Mexico. See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9216, para. 2 & n.2.

<sup>15</sup> A summary of the licenses offered in Auction 105 is available in Attachment A to the *Auction 105 Comment Public Notice*. Due to the large number of licenses offered in Auction 105, the complete list of licenses to be offered in Auction 105 will be provided in an electronic format only. The separate "Attachment A" file is available on the Auction 105 website at [www.fcc.gov/auction/105](http://www.fcc.gov/auction/105).

<sup>16</sup> 47 CFR § 96.25; *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10623, para. 46.

<sup>17</sup> 47 CFR § 96.31(a); *2015 Report and Order*, 30 FCC Rcd at 3998, para. 117; *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10653-54, para. 107. Priority Access Licenses are subject to preemption. See *infra*, Part III.B.1 (Incumbency and Sharing Issues).

<sup>18</sup> *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10643-44, para. 82; 47 CFR § 96.25.

<sup>19</sup> *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10643-44, para. 82 & n.327.

<sup>20</sup> 47 CFR §§ 96.25(b), 96.59(c); *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10644, para. 83.

<sup>21</sup> 47 CFR §§ 96.25(b), 96.59(b); *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10643-44, paras. 80-82.

extent necessary to protect incumbent users from harmful interference or if necessary to perform its required functions.<sup>22</sup> On January 27, 2020, the Bureau and the Office of Engineering and Technology certified the following SASs to begin full commercial operations: CommScope, Federated Wireless, Inc., Google, and Sony, Inc.<sup>23</sup>

9. Each Priority Access Licensee must register its Citizens Broadband Radio Service Devices (CBSDs) with an SAS before operating those devices in the band.<sup>24</sup> A CBSD registration includes its geographic location, antenna height, CBSD class, requested authorization status, FCC identification number, call sign, user contact information, air interface technology, unique manufacturer's serial number, sensing capabilities (if supported), and information on its deployment profile.<sup>25</sup> An SAS relies on this information to coordinate access for Priority Access Licensees and General Authorized Access (GAA) users,<sup>26</sup> and an SAS Administrator may charge Priority Access Licensees and GAA users a reasonable fee for its services.<sup>27</sup>

## **D. Auction Specifics**

### **1. Auction Title and Start Date**

10. The auction of PALs in the 3550-3650 MHz band will be referred to as "Auction 105." Bidding in Auction 105 will begin on Thursday, June 25, 2020. Pre-bidding dates and deadlines are listed below. The initial schedule for bidding rounds in Auction 105 will be announced by public notice at least one week before bidding begins.

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

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<sup>22</sup> 47 CFR §§ 96.25(b), 96.59; *2015 Report and Order*, 30 FCC Rcd at 3390, para. 93.

<sup>23</sup> *Wireless Telecommunications Bureau and Office of Engineering and Technology Approve Four Spectrum Access System Administrators for Full Scale Commercial Deployment in the 3.5 GHz Band and Emphasize Licensee Compliance Obligations in the 3650-3700 MHz Band Under Part 96*, GN Docket No. 15-319, Public Notice, DA 20-110 (WTB/OET Jan. 27, 2020). With a final certification to operate, these four SAS Administrators may make their SASs available for commercial use for the five-year term specified in our rules. 47 CFR § 96.63(e). Amdocs, Inc. has been approved for initial commercial deployment but has not been certified for full commercial operations at this time. *See Wireless Telecommunications Bureau and Office of Engineering and Technology Approve Five Spectrum Access System Administrators to Begin Initial Commercial Deployments in the 3.5 GHz Band*, GN Docket No. 15-319, Public Notice, 34 FCC Rcd 8106 (WTB/OET 2019).

<sup>24</sup> 47 CFR § 96.23(b). General Authorized Access (GAA) users must also register their CBSDs. *See id.* § 96.33(b). CBSDs are "Fixed Stations, or networks of such stations, that operate on a Priority Access or General Authorized Access basis in the Citizens Broadband Radio Service consistent with this rule part. For CBSDs which comprise multiple nodes or networks of nodes, CBSD requirements apply to each node even if network management and communication with the SAS is accomplished via a single network interface. End User Devices are not considered CBSDs." *Id.* § 96.3.

<sup>25</sup> 47 CFR § 96.39(c). When registering with an SAS, Category A CBSDs must also transmit whether the device will be operated indoors or outdoors. *Id.* § 96.43(b). When registering with an SAS, Category B CBSDs must also transmit antenna gain, beamwidth, azimuth, downtilt angle, and antenna height above ground level. *Id.* § 96.45(d). Upon request, SASs must make available aggregated spectrum usage data to the general public, but SASs may not disclose specific CBSD registration data to the public except where such disclosure is authorized by the registrant. *Id.* § 96.55(a)(3).

<sup>26</sup> *Id.* § 96.53.

<sup>27</sup> *Id.* § 96.65(a). Upon request, the Commission will review SAS fees and can require changes to the fees if they are unreasonable. *See Id.* § 96.65(b).

## 2. Auction Dates and Deadlines

12. The following dates and deadlines apply to Auction 105:

Auction Application Tutorial Available (via Internet).....	No later than March 9, 2020
Short-Form Application (FCC Form 175)	
Filing Window Opens .....	March 26, 2020, 12:00 p.m. Eastern Time (ET)
Short-Form Application (FCC Form 175)	
Filing Window Deadline.....	April 9, 2020, 6:00 p.m. ET
Upfront Payments (via wire transfer).....	May 21, 2020, 6:00 p.m. ET
Bidding Tutorial Available (via Internet) .....	No later than June 11, 2020
Mock Auction .....	June 22, 2020
Bidding Begins in Auction 105.....	June 25, 2020

## 3. Requirements for Participation

13. Those wishing to participate in Auction 105 must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET on April 9, 2020, following the electronic filing procedures set forth in the FCC Form 175 Instructions.<sup>28</sup>
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET on May 21, 2020, following the procedures and instructions set forth in the FCC Form 159 Instructions.
- Comply with all provisions outlined in this Public Notice and applicable Commission rules.

## II. APPLYING TO PARTICIPATE IN AUCTION 105

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

14. An application to participate in Auction 105, referred to as a short-form application or FCC Form 175, provides information that the Commission uses to determine whether the applicant has the legal, technical, and financial qualifications to participate in a Commission auction for spectrum licenses.<sup>29</sup> The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, a party seeking to participate in Auction 105 must file a short-form application in which it certifies, under penalty of perjury, that it is qualified to participate.<sup>30</sup> Eligibility to participate in Auction 105 is based on an applicant's short-form application and certifications and on the applicant's submission of a sufficient upfront payment for the auction.<sup>31</sup> After bidding closes, in the second phase of the process, each winning bidder must file a more comprehensive post-auction, long-

<sup>28</sup> We direct OEA, in conjunction with the Bureau, to prepare and release detailed instructions for submitting an FCC Form 175 for Auction 105 (FCC Form 175 Instructions).

<sup>29</sup> See 47 CFR § 1.2105; see also *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, 2376-77, para. 166 (1994) (*Competitive Bidding Second Report and Order*).

<sup>30</sup> *Id.* at 2376, para. 165.

<sup>31</sup> See *infra* Part III.F (Upfront Payments).

form application (FCC Form 601) for the licenses it wins in the auction, and it must have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.<sup>32</sup>

15. A party seeking to participate in Auction 105 must file an FCC Form 175 electronically via the Auction Application System prior to 6:00 p.m. ET on April 9, 2020, following the procedures prescribed in the FCC Form 175 Instructions. If an applicant claims eligibility for a bidding credit, then the information provided in its FCC Form 175 as of the filing date will be used to determine whether the applicant may request the claimed bidding credit. Below we describe more fully the information disclosures and certifications required in the short-form application. An applicant that files an FCC Form 175 for Auction 105 will be subject to the Commission's rule prohibiting certain communications.<sup>33</sup> An applicant is subject to the prohibition beginning at the deadline for filing short-form applications—6:00 p.m. ET on April 9, 2020.<sup>34</sup>

16. An applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. Each applicant must make a series of certifications under penalty of perjury on its FCC Form 175 related to the information provided in its application and its participation in the auction, and it must confirm that it is legally, technically, financially, and otherwise qualified to hold a license.<sup>35</sup> If an Auction 105 applicant fails to make the required certifications in its FCC Form 175 by the filing deadline, its application will be deemed unacceptable for filing and cannot be corrected after the filing deadline.<sup>36</sup>

17. An applicant should note that submitting an FCC Form 175 (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct.<sup>37</sup> Submitting a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

18. Applicants are cautioned that, because the required information submitted in FCC Form 175 bears on each applicant's qualifications, requests for confidential treatment will not be routinely granted. The Commission generally has held that it may publicly release confidential business information where the party has put that information at issue in a Commission proceeding or where the Commission has identified a compelling public interest in disclosing the information.<sup>38</sup> In this regard, the Commission specifically has held that information submitted in support of receiving bidding credits in auction proceedings should be made available to the public.<sup>39</sup>

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<sup>32</sup> 47 CFR § 1.2107. We remind applicants that being deemed qualified to bid in Auction 105 does not constitute a determination that a party is qualified to hold a Commission license or is eligible for a designated entity bidding credit.

<sup>33</sup> *Id.* § 1.2105(c).

<sup>34</sup> The prohibition will end for applicants on the post-auction down payment deadline for Auction 105. *See infra* Part II.G.2 (Prohibition Applies Until Down Payment Deadline).

<sup>35</sup> 47 CFR § 1.2105(a)(2).

<sup>36</sup> *See id.* § 1.2105(b)(1).

<sup>37</sup> As more fully explained below in Part II.K (Modifications to FCC Form 175), applicants are not permitted to make major modifications to their FCC Form 175 applications after the filing deadline. *See* 47 CFR § 1.2105(b)(2). A change in the required certifications is considered a major change and would therefore not be permitted.

<sup>38</sup> *See Examination of Current Policy Concerning Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Red 24816, 24822-23, para. 8 (1998).

<sup>39</sup> *See, e.g., SAL Spectrum, LLC – Request for Confidential Treatment of Subscriber Information Provided in FCC Form 175*, Letter Order, 31 FCC Rcd 3726 (WTB 2016) (denying a request for confidentiality of the number of

19. An applicant must designate at least one individual as an authorized bidder, and no more than three, in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant.<sup>40</sup>

20. No individual or entity may file more than one short-form application or have a controlling interest in more than one short-form application.<sup>41</sup> If a party submits multiple short-form applications for an auction, only one application may be the basis for that party to become qualified to bid in that auction.<sup>42</sup>

21. Similarly, and consistent with the Commission's general prohibition of joint bidding agreements, a party generally is permitted to participate in a Commission auction only through a single bidding entity.<sup>43</sup> Accordingly, the filing of applications in Auction 105 by multiple entities controlled by the same individual or set of individuals generally will not be permitted.<sup>44</sup> As noted by the Commission in adopting the prohibition of applications by commonly controlled entities, this rule, in conjunction with the prohibition against joint bidding agreements, protects the competitiveness of our auctions.<sup>45</sup>

22. After the initial short-form application filing deadline, Commission staff will review all timely submitted applications for Auction 105 to determine whether each application complies with the application requirements and whether the applicant has provided all required information concerning the its qualifications for bidding. After this review is completed, a public notice will be released announcing the status of applications and identifying the applications that are complete and those that are incomplete because of minor defects that may be corrected. This public notice also will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies.<sup>46</sup> The public notice will include the deadline for resubmitting modified applications. To become a qualified bidder, an applicant must have a complete application (i.e., have timely filed an application that is deemed complete after the deadline for correcting any identified deficiencies), and must make a timely and sufficient upfront payment. Qualified bidders will be identified by public notice at least 10 days prior to the mock auction.

23. Below we discuss additional details regarding certain information required to be submitted in the FCC Form 175. An applicant should consult the Commission's rules to ensure that, in addition to the materials described below, all required information is included in its short-form application. To the extent the information in this Public Notice does not address a potential applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the following disclosure requirements, the applicant should review the educational materials for Auction 105 (Continued from previous page) \_\_\_\_\_

wireless, wireline, broadband, and cable subscribers submitted by an applicant for only those affiliates operating in the United States).

<sup>40</sup> See 47 CFR § 1.2105(a)(2)(iii).

<sup>41</sup> See *id.* § 1.2105(a)(3); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7579, para. 205.

<sup>42</sup> See 47 CFR §§ 1.2105(a)(3), (b)(1)(ii).

<sup>43</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7580-81, paras. 206-08.

<sup>44</sup> See 47 CFR §§ 1.2105(a)(3), (a)(4)(i), (b)(1)(ii); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7580-81, paras. 206-08. This restriction applies across all applications, without regard to the geographic areas selected. See *id.* at 7580, para. 206. The Commission adopted a limited exception to the general prohibition of the filing of multiple applications by commonly controlled entities for qualified rural wireless partnerships and individual members of such partnerships. See 47 CFR § 1.2105(a)(3). Under this limited exception, each qualifying rural wireless partnership and its individual members will be permitted to participate separately in an auction. See *id.*; see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7582, para. 210.

<sup>45</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7580, para. 206.

<sup>46</sup> 47 CFR § 1.2105(b)(2).

and/or use the contact information provided in this Public Notice to consult with Commission staff to better understand the information it must submit in its short-form application.

### **B. License Area Selection**

24. An applicant must select all the county-based license areas on which it may want to bid from the list of available counties on its FCC Form 175. An applicant must carefully review and verify its county selections before the FCC Form 175 filing deadline because those selections cannot be changed after the auction application filing deadline.<sup>47</sup> An applicant is not required to place bids on any or all of the license areas selected, but the FCC Auction Bidding System (bidding system) will not accept bids for blocks located in counties that the applicant did not select in its FCC Form 175. The auction application system, however, will provide an applicant the option to select “all counties.”

### **C. Disclosure of Agreements and Bidding Arrangements**

25. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnerships, joint ventures, consortia or agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.<sup>48</sup> In connection with the agreement disclosure requirement, the applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to, any such agreements, arrangements, or understandings to which it (or any party that controls it or that controls) is a party.<sup>49</sup> If, after the FCC Form 175 filing deadline, an auction applicant enters into any agreement relating to the licenses being auctioned, the is subject to these same disclosure obligations. All applicants must maintain the accuracy and completeness of the information in their pending auction application.<sup>50</sup>

26. For purposes of making the required agreement disclosures on the FCC Form 175, if parties agree in principle on all material terms prior to the application filing deadline, then each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175,<sup>51</sup> even if the agreement has not been reduced to writing. Parties that have not agreed in principle by the FCC Form 175 filing

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.* §§ 1.2105(a)(2)(viii), (a)(4). As defined for purposes of this rule, a controlling interest includes all individuals or entities with positive or negative *de jure* or *de facto* control of the licensee. *See id.* § 1.2105(a)(4)(i). This definition is modeled on a similar term used in section 1.2110(c) (definitions for designated entities), though it differs in some respects from that rule. *Compare id.* § 1.2105(a)(4)(i) *with id.* § 1.2110(c).

<sup>49</sup> *Id.* § 1.2105(a)(2)(viii). As discussed below, an applicant may continue negotiating, discussing, or communicating with respect to a new agreement after the FCC Form 175 filing deadline, provided that the communications involved do not relate both to the licenses being auctioned and to bids or bidding strategies or post-auction market structure. *See infra* Part II.G.3 (Scope of Prohibition of Communications; Prohibition of Joint Bidding Agreements).

<sup>50</sup> *See Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, AU Docket No. 14-282, WT Docket No. 12-269, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 10794, 10806-07, para. 34 (WTB 2015) (*Prohibited Communications Guidance Public Notice*); *see also* 47 CFR §§ 1.65, 1.2105(b)(4); *Auction of Advanced Wireless Services (AWS-3) Licenses Scheduled for November 13, 2014; Notice and Filing Requirements, Reserve Prices, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 97*, AU Docket No. 14-78, Public Notice, 29 FCC Rcd 8386, 8418, para. 109 (2014) (discussing applicants' obligation to maintain accuracy and completeness of information in pending auction applications) (*Auction 97 Procedures Public Notice*).

<sup>51</sup> 47 CFR §§ 1.2105(a)(2)(viii), (c)(1).

deadline, they should not describe, or include the names of parties to, the discussions on their applications.<sup>52</sup>

27. The Commission's rules generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls or is controlled by such applicants).<sup>53</sup> For purposes of the prohibition, a joint bidding arrangement includes any arrangement relating to the licenses being auctioned that addresses or communicates, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific licenses on which to bid, and any such arrangement relating to the post-auction market structure.<sup>54</sup>

28. This prohibition applies to joint bidding arrangements involving two or more nationwide providers, as well as joint bidding arrangements involving a nationwide provider and one or more non-nationwide providers,<sup>55</sup> where at least one party to the arrangement is an applicant for the auction.<sup>56</sup> In the *Updating Part 1 Report and Order*, the Commission stated that entities that qualify as nationwide providers generally would be identified in procedures public notices released before each auction.<sup>57</sup> To that end, and consistent with our decisions in recent spectrum auctions,<sup>58</sup> we consider AT&T, Sprint, T-Mobile, and Verizon Wireless to be "nationwide providers" for the purpose of implementing our competitive bidding rules in Auction 105.

29. Under certain circumstances, a non-nationwide provider may enter into an agreement to form a consortium or a joint venture (as applicable) that results in a single party applying to participate in an auction.<sup>59</sup> Specifically, a designated entity (DE) can participate in one consortium or joint venture in an auction,<sup>60</sup> and non-nationwide providers that are not designated entities may participate in an auction

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<sup>52</sup> See generally *Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules*, Public Notice, 11 FCC Rcd 9645, 9646 (WTB 1995) (clarifying standard for determining when a disclosable agreement exists, discussed in connection with an earlier version of section 1.2105 of the Commission's rules).

<sup>53</sup> See 47 CFR § 1.2105(a)(2)(ix); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7569-77, paras. 177-98.

<sup>54</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575, para. 195.

<sup>55</sup> A "non-nationwide provider" refers to any provider of communications services that is not a "nationwide provider." See *id.*

<sup>56</sup> See 47 CFR § 1.2105(a)(2)(ix); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7571, 7573-75, paras. 182, 186, 191, 193.

<sup>57</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7571 & n.596.

<sup>58</sup> 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*, AU Docket No. 18-85, Public Notice, 33 FCC Rcd 7575, 7593, para. 44 (2018) (*Auctions 101-102 Procedures Public Notice*); *Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 103; Bidding in Auction 103 Scheduled to Begin December 10, 2019*, AU Docket No. 19-59, GN Docket No. 14-177, Public Notice, 34 FCC Rcd 5532, 5547, para. 43 (2019) (*Auction 103 Procedures Public Notice*).

<sup>59</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7573-74, 7576, paras. 187, 190, 198. While two or more non-nationwide providers may participate in an auction through a joint venture, a nationwide and a non-nationwide provider may not do so. See *id.* at 7575, para. 194.

<sup>60</sup> See *id.* at 7576, para. 198. Pursuant to section 1.2105(a)(4)(ii), a consortium is an entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities that individually are eligible to claim the same designated entity benefits under section 1.2110, provided that no member of the consortium may be a nationwide provider. 47 CFR § 1.2105(a)(4)(ii).

through only one joint venture.<sup>61</sup> A non-nationwide provider may enter into only one agreement to form a consortium or joint venture (as applicable), and such consortium or joint venture shall be the exclusive bidding vehicle for its members in the auction. The general prohibition of joint bidding arrangements excludes certain agreements, including those that are solely operational in nature,<sup>62</sup> as defined in section 1.2105(a)(2)(ix)(A)-(C) of the Commission's rules.<sup>63</sup>

30. To implement the prohibition of joint bidding arrangements, the Commission's rules require each applicant to certify in its short-form application that it has disclosed any arrangements or understandings of any kind relating to the licenses being auctioned to which it (or any party that controls or is controlled by it) is a party.<sup>64</sup> The applicant must also certify that it (or any party that controls or is controlled by it) has not entered and will not enter into any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, any other applicant or a nationwide provider.<sup>65</sup>

<sup>61</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576, para. 198. Under the Commission's rule, a joint venture means a legally cognizable entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities, provided that no member of the joint venture may be a nationwide provider. 47 CFR § 1.2105(a)(4)(iii); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575, para. 194.

<sup>62</sup> See 47 CFR §§ 1.2105(a)(2)(ix)(A), (a)(4). Under the Commission's rules, agreements that are solely operational in nature are those that address operational aspects of providing a mobile service, such as agreements for roaming, device acquisition, and spectrum leasing and other spectrum use arrangements, or device acquisition, provided that any such agreement does not both relate to the licenses at auction and address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid) or post-auction market structure. See *id.* § 1.2105(a)(4); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576, para. 197.

<sup>63</sup> See 47 CFR § 1.2105(a)(2)(ix); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575-76, paras. 195-97.

<sup>64</sup> 47 CFR § 1.2105(a)(2)(viii).

<sup>65</sup> "The short-form application must contain . . .

(viii) Certification that the applicant has provided in its application a brief description of, and identified each party to, any partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls as defined in paragraph (a)(4) of this section or is controlled by the applicant, is a party.

(ix) Certification that the applicant (or any party that controls as defined in paragraph (a)(4) of this section or is controlled by the applicant) has not entered and will not enter into any partnerships, joint ventures, consortia or other agreements, arrangements, or understandings of any kind relating to the licenses being auctioned that address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure with: any other applicant (or any party that controls or is controlled by another applicant); with a nationwide provider that is not an applicant (or any party that controls or is controlled by such a nationwide provider); or, if the applicant is a nationwide provider, with any non-nationwide provider that is not an applicant (or with any party that controls or is controlled by such a non-nationwide provider), other than:

(A) Agreements, arrangements, or understandings of any kind that are solely operational as defined under paragraph (a)(4) of this section;

(B) Agreements, arrangements, or understandings of any kind to form consortia or joint ventures as defined under paragraph (a)(4) of this section;

(continued....)

31. Although the Commission's rules do not prohibit auction applicants from communicating about matters that are within the scope of an excepted agreement that has been disclosed in an FCC Form 175,<sup>66</sup> the Commission reminds applicants that certain discussions or exchanges could nonetheless touch upon impermissible subject matters,<sup>67</sup> and that compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.<sup>68</sup>

32. Applicants should bear in mind that a winning bidder will be required to disclose in its FCC Form 601 post-auction application the specific terms, conditions, and parties involved in any agreement relating to the licenses being auctioned into which it had entered prior to the time bidding was completed.<sup>69</sup> This applies to any bidding consortium, joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the competitive bidding process, including any agreements relating to the licenses being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.<sup>70</sup>

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

33. Each applicant must comply with the applicable Part 1 ownership disclosure requirements and provide information required by sections 1.2105 and 1.2112, and, where applicable, section 1.2110, of the Commission's rules.<sup>71</sup> Specifically, in completing FCC Form 175, an applicant must fully disclose information regarding the real party- or parties-in-interest in the applicant or application and the ownership structure of the applicant, including both direct and indirect ownership interests of 10% or more, as prescribed in sections 1.2105 and 1.2112 and, where applicable, section 1.2110 of the Commission's rules.<sup>72</sup> Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

34. In certain circumstances, an applicant may have previously filed an FCC Form 602 ownership disclosure information report or filed an auction application for a previous auction in which ownership information was disclosed. The most current ownership information contained in any FCC  
(Continued from previous page) \_\_\_\_\_

(C) Agreements, arrangements or understandings of any kind with respect to the transfer or assignment of licenses, provided that such agreements, arrangements or understandings do not both relate to the licenses at auction and address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid), or bidding strategies (including the specific licenses on which to bid or not to bid), or post-auction market structure.”

47 CFR §§ 1.2105(a)(2)(viii)-(ix); *see also* *Updating Part 1 Report and Order*, 30 FCC Rcd at 7570-78, paras. 180-201.

<sup>66</sup> 47 CFR §§ 1.2105(a)(2)(viii), (a)(2)(ix)(A)-(C), (a)(2)(viii), (c)(1).

<sup>67</sup> *See Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures*, Third Report and Order and Second Further Notice of Proposed Rule Making, 13 FCC Rcd 374, 467-68, para. 163 (1997) (*Part 1 Third Report and Order*); *see generally* *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd 10794.

<sup>68</sup> 47 CFR §§ 1.2105(a)(2)(ix)(A)-(C), (a)(2)(viii); *see also* *Part 1 Report and Order*, 30 FCC Rcd at 7571, para. 181; *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10809, para. 43.

<sup>69</sup> 47 CFR § 1.2107(d); *see also* *id.* §§ 1.2105(a)(2)(ix)(A)-(C), (a)(2)(viii).

<sup>70</sup> *Id.* § 1.2107(d); *see also* *id.* §§ 1.2105(a)(2)(ix)(A)-(C), (a)(2)(viii).

<sup>71</sup> Section 1.2105 requires the disclosure on the FCC Form 175 of the applicant's ownership information as set forth in sections 1.2105 and 1.2112. *See id.* § 1.2105(a)(2)(ii)(B). In addition, each applicant should ensure that its disclosures comply with the ownership disclosure requirements in the Part 1 rules. *See generally* *Updating Part 1 Report and Order*, 30 FCC Rcd 7493.

<sup>72</sup> 47 CFR §§ 1.2105(a)(2)(ii)(B), 1.2112.

Form 602 or previous auction application on file with the Commission that used the same FRN the applicant is using to submit its FCC Form 175 will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 175,<sup>73</sup> if such information is in an electronic format compatible with FCC Form 175.<sup>74</sup> Each applicant must carefully review any ownership information automatically entered into its FCC Form 175, including any ownership attachments, to confirm that all information supplied on FCC Form 175 is complete and accurate as of the application filing deadline. Any information that needs to be corrected or updated must be changed directly in FCC Form 175.

#### **E. Foreign Ownership Disclosure Requirements**

35. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses.<sup>75</sup> Section 310 applies to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules.<sup>76</sup> In completing FCC Form 175, an applicant is required to disclose information concerning foreign ownership of the applicant. If an applicant has foreign ownership interests in excess of the applicable limit or benchmark set forth in section 310(b), it may seek to participate in Auction 105 as long as it has filed a petition for declaratory ruling with the Commission prior to the FCC Form 175 filing deadline. An applicant must certify in its FCC Form 175 that, as of the deadline for filing its application to participate in the auction, the applicant either is in compliance with the foreign ownership provisions of section 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission.<sup>77</sup>

#### **F. Information Procedures During the Auction Process**

36. Consistent with past practice in several prior spectrum license auctions,<sup>78</sup> we adopt our proposal to limit information available in Auction 105 in order to prevent the identification of bidders placing particular bids until after the bidding has closed.<sup>79</sup> More specifically, we will not make public until after bidding has closed: (1) the license areas that an applicant selects for bidding in its short-form application, (2) the amount of any upfront payment made by or on behalf of an applicant, (3) any

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<sup>73</sup> The FCC Form 175 instructions provide additional details on pre-filled information.

<sup>74</sup> Applicants are encouraged to submit an FCC Form 602 ownership report or update any ownership information on file with the Commission in an FCC Form 602 ownership report prior to starting a short-form application for Auction 105 to ensure that their most recent ownership information is pre-filled into their short application.

<sup>75</sup> See 47 U.S.C. § 310(a), (b).

<sup>76</sup> See *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133, Second Report and Order, 28 FCC Rcd 5741, 5747-48, para. 7 (2013). The Commission amended its foreign ownership rules in *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016). The rules are now codified in 47 CFR §§ 1.5000-1.5004.

<sup>77</sup> See 47 CFR §§ 1.2105(a)(2)(v), (vi). Additional information concerning foreign ownership disclosure requirements is provided in the FCC Form 175 Filing Instructions.

<sup>78</sup> See, e.g., *Auctions 101 and 102 Procedures Public Notice*, 33 FCC Rcd at 7596, paras. 50-56; *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Procedures for Competitive Bidding in Auction 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, MB Docket No. 15-146, AU Docket No. 14-252, WT Docket No. 12-269, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 8975, 9046, para. 138 (2015) (*Auction 1000 Procedures Public Notice*); see also 47 CFR § 1.2104(h); *Auction 103 Procedures Public Notice*, 34 FCC Rcd at 5546-47, paras. 35-40.

<sup>79</sup> See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9219, para. 13.

applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

37. The limited information disclosure procedures used in past auctions have helped safeguard against potential anticompetitive behavior such as retaliatory bidding and collusion.<sup>80</sup> We find nothing in the record to suggest that we depart from our now-established practice of implementing these procedures in wireless spectrum auctions. We find that the competitive benefits associated with limiting information disclosure support adoption of such procedures and outweigh the potential benefits of full disclosure.<sup>81</sup>

38. Once the bidding begins in Auction 105, under the limited information procedures (sometimes also referred to as anonymous bidding), information to be made public after each round of bidding will include for licenses in each geographic area; the supply, the aggregate demand, the price at the end of the last completed round, and the price for the next round. The identities of bidders placing specific bids and the net bid amounts (reflecting bidding credits) will *not* be disclosed until after the close of bidding.<sup>82</sup>

39. Throughout the auction, bidders will have access to additional information related to their own bidding and bidding eligibility through the Commission's bidding system. For example, bidders will be able to view their own level of eligibility, before, and during the auction.

40. After the close of bidding, bidders' county selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions will be made publicly available.

41. We warn applicants that direct or indirect communication to other applicants or the public disclosure of non-public information (e.g., reductions in eligibility, identities of bidders) could violate the Commission's rule prohibiting certain communications.<sup>83</sup> **Therefore, to the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the U.S. Securities Exchange Commission (SEC), we strongly urge that the applicant consult with the Commission staff in the Auctions Division before making such disclosure.**

#### **G. Prohibited Communications and Compliance with Antitrust Laws**

42. The rules prohibiting certain communications set forth in section 1.2105(c) apply to each applicant that files a short-form application (FCC Form 175) in Auction 105.<sup>84</sup> Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, "[a]fter the short-form 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

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<sup>80</sup> See *Auction of AWS-1 and Broadband PCS Licenses Rescheduled for August 13, 2008; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 78*, AU Docket No. 08-48, Public Notice, 23 FCC Rcd 7496, 7536, para. 157 (WTB 2008) (recognizing that limited information procedures may have overall competitive benefits from reduced opportunities for bid signaling, retaliatory bidding, or other anti-competitive strategic bidding) (*Auction 78 Procedures Public Notice*); *Auction of 700 MHz Band Licenses Scheduled for July 19, 2011; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 92*, AU Docket No. 10-248, Public Notice, 26 FCC Rcd 3342, 3372, paras. 128 (WTB 2011) (finding that the competitive benefits associated with limited information disclosure procedures support adoption of such procedures).

<sup>81</sup> See *Auction 78 Procedures Public Notice*, 23 FCC Rcd at 7536, para. 157.

<sup>82</sup> See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9220, para. 14.

<sup>83</sup> See 47 CFR § 1.2105(c); see also *infra* Part II.G (Prohibited Communications and Compliance with Antitrust Laws).

<sup>84</sup> See 47 CFR § 1.2105(c).

not an applicant, in any manner the 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[.]”<sup>85</sup>

### 1. Entities Subject to Section 1.2105(c)

43. An “applicant” for purposes of this rule includes all “controlling interests” in the entity submitting the FCC Form 175 auction application, as well as all holders of interests amounting to 10% or more of the entity, and all officers and directors of that entity.<sup>86</sup> Under section 1.2105(c), a party that submits an application becomes an “applicant” under the rule at the application deadline, and that status does not change based on later developments.<sup>87</sup>

44. We consider AT&T, Sprint, T-Mobile, and Verizon Wireless to be “nationwide providers” for the purposes of the prohibited communications rule for Auction 105.<sup>88</sup>

### 2. Prohibition Applies Until Down Payment Deadline

45. The prohibition in section 1.2105(c) on certain communications begins at an auction’s short-form application filing deadline and ends at the auction’s down payment deadline after the auction closes, which will be announced in a future public notice.<sup>89</sup>

### 3. Scope of Prohibition of Communications; Prohibition of Joint Bidding Agreements

46. Section 1.2105(c) of the Commission’s rules prohibits certain communications between applicants for an auction, regardless of whether the applicants seek permits or licenses in the same geographic area or market.<sup>90</sup> The rule also applies to communications by applicants with non-applicant nationwide providers of communications services and by nationwide applicants with non-applicant non-nationwide providers.<sup>91</sup> The rule further prohibits “joint bidding arrangements,” including arrangements relating to the permits or licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits or licenses on which to bid, and any such arrangements relating to the post-auction market structure.<sup>92</sup> The rule allows for limited exceptions for communications within the scope of any arrangement consistent with the exclusion from our rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant’s auction application.<sup>93</sup> Applicants may communicate pursuant to any pre-existing agreements, arrangements, or understandings that are solely operational or that provide for the

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.* § 1.2105(c)(5)(i).

<sup>87</sup> See *Star Wireless, LLC v. FCC*, 522 F.3d 469, 473-74 (D.C. Cir. 2008). Thus, an auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an “applicant” for purposes of the rule and remains subject to the prohibition on certain communications until the Auction 105 down payment deadline.

<sup>88</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7571 & n.596; see also *supra* Part II.C (Disclosure of Agreements and Bidding Arrangements).

<sup>89</sup> 47 CFR § 1.2105(c)(1).

<sup>90</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199; 47 CFR §§ 1.2105(a)(2)(ix), (c)(1).

<sup>91</sup> 47 CFR § 1.2105(c)(1); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199.

<sup>92</sup> See 47 CFR § 1.2105(a)(2)(ix); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575-76, para. 195.

<sup>93</sup> See 47 CFR §§ 1.2105(a)(2)(viii), (ix)(A)-(C); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-77, paras. 197-99.

transfer or assignment of licenses, provided that such agreements, arrangements, or understandings are disclosed on their applications and do not both relate to the licenses at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.<sup>94</sup>

47. In addition to express statements of bids and bidding strategies, the prohibition against communicating “in any manner” includes public disclosures as well as private communications and indirect or implicit communications.<sup>95</sup> Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.<sup>96</sup>

48. Parties subject to section 1.2105(c) should take special care in circumstances where their officers, directors, and employees may receive information directly or indirectly relating to any applicant’s bids or bidding strategies. Such information may be deemed to have been received by the applicant under certain circumstances. For example, Commission staff have found that, where an individual serves as an officer and director for two or more applicants, the bids and bidding strategies of one applicant are presumed to be conveyed to the other applicant through the shared officer, which creates an apparent violation of the rule.<sup>97</sup>

49. Subject to the limited exceptions for communications within the scope of any arrangement consistent with the exclusion from our rule prohibiting joint bidding, section 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to “their own, or each other’s, or any other applicant’s bids or bidding strategies ... .”<sup>98</sup> The *Prohibited Communications Guidance Public Notice* released in advance of the broadcast incentive auction (Auction 1000) reviewed the scope of the prohibition generally, as well as in that specific auction’s forward auction of spectrum licenses and reverse auction to relinquish broadcast licenses.<sup>99</sup> As the Commission explained therein, a communication conveying “bids or bidding strategies (including post-auction market structure)” must also relate to the “licenses being auctioned” in order to be covered by the prohibition.<sup>100</sup> Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties. The Commission consistently has made clear that application of the rule prohibiting communications has never required total suspension of essential ongoing business.<sup>101</sup> Entities subject to

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<sup>94</sup> 47 CFR §§ 1.2105(a)(2)(ix)(A)-(C); see generally *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd 10794.

<sup>95</sup> See generally *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199; *Cascade Access, LLC*, Forfeiture Order, 28 FCC Rcd 141, 144, para. 7 (EB 2013) (rejecting argument that the communication was not prohibited because it did not reveal the “substance” of Cascade’s bids or bidding strategies).

<sup>96</sup> We remind applicants that they must determine whether their communications with other parties are permissible under the rule once the prohibition begins at the deadline for submitting applications, even before the public notice identifying applicants is released.

<sup>97</sup> See, e.g., *Low Power Television-Television Translator Auction No. 81 TCCSA, Inc., d/b/a Trinity Broadcasting Network National Minority TV, Inc.*, Letter Order, 20 FCC Rcd 14648, 14648-49 (2005) (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement, which under the rule then in effect would have made an exception to the prohibition applicable).

<sup>98</sup> 47 CFR § 1.2105(c)(1).

<sup>99</sup> See *Updated Reconfiguration Procedures Public Notice* at 13, para. 33 (citing resources regarding the operation of the prohibition, including the *Auctions 101 and 102 Procedures Public Notice* and the *Prohibited Communications Guidance Public Notice*).

<sup>100</sup> *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10806, para. 32.

the prohibition may negotiate agreements during the prohibition period, provided that the communications involved do not relate to both: (1) the licenses being auctioned and (2) bids or bidding strategies or post-auction market structure.<sup>102</sup>

50. Accordingly, business discussions and negotiations that are *unrelated* to bidding in Auction 105 and that do not convey information about the bids or bidding strategies, including the post-auction market structure, of an applicant are not prohibited by the rule.<sup>103</sup> Moreover, not all auction-related information is covered by the prohibition. For example, communicating merely whether a party has or has not applied to participate in Auction 105 will not violate the rule.<sup>104</sup> In contrast, communicating, among other things, how a party will participate, including specific geographic areas selected, specific bid amounts, and/or whether or not the party is placing bids, would convey bids or bidding strategies and would be prohibited.<sup>105</sup>

51. While section 1.2105(c) does not prohibit business discussions and negotiations among auction applicants that are unrelated to the auction, each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

52. We caution applicants that bids or bidding strategies may be communicated outside of situations that involve one party subject to the prohibition communicating privately and directly with another such party. For example, the Commission has warned that prohibited “communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.”<sup>106</sup> Moreover, the Commission found a violation of the rule against prohibited communications when an applicant used the Commission’s bidding system to disclose “its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate . . . in specific markets,”<sup>107</sup> and it has placed auction participants on notice that the use of its bidding system “to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.”<sup>108</sup>

53. Likewise, when completing a short-form application, each applicant should avoid any statements or disclosures that may violate section 1.2105(c), particularly in light of the limited information procedures in effect for Auction 105. Specifically, an applicant should avoid including any information in its short-form application that might convey information regarding its county selections,

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<sup>101</sup> See, e.g., *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6770-71, para. 492 (2014) (citing *Application of Todd Stuart Noordyk for a New FM Station on Channel 260A at Manistique, Michigan*, Memorandum Opinion and Order, 16 FCC Rcd 18113, 18116-17, para. 12 (2001) (“Our rules do not require the suspension of all relations among auction participants while an auction is pending.”)).

<sup>102</sup> *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10806, paras. 33-34.

<sup>103</sup> *Id.* at 10806, para. 32.

<sup>104</sup> *Id.* at 10796, paras. 6-7.

<sup>105</sup> *Id.* at 10796-97, paras. 8-9.

<sup>106</sup> *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, Memorandum Opinion and Order, 9 FCC Rcd 7684, 7689, para. 12 (1994) (*Competitive Bidding Memorandum Opinion and Order*).

<sup>107</sup> *Mercury PCS II, LLC*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 17970, 17976, para. 17 (1997).

<sup>108</sup> *Mercury PCS II, LLC*, Memorandum Opinion and Order, 13 FCC Rcd 23755, 23760, para. 11 (1998).

such as referring to certain markets in describing agreements, including any information in application attachments that will be publicly available that may otherwise disclose the applicant's county selections, or using applicant names that refer to licenses being offered.

54. Applicants also should be mindful that communicating non-public application or bidding information publicly or privately to another applicant may violate section 1.2105(c) even though that information subsequently may be made public during later periods of the application or bidding processes.

#### 4. Communicating with Third Parties

55. Section 1.2105(c) does not prohibit an applicant from communicating bids or bidding strategies to a third-party, such as a consultant or consulting firm, counsel, or lender. The applicant should take appropriate steps, however, to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other specified parties, as that would violate the rule.<sup>109</sup> For example, an applicant might require a third party, such as a lender, to sign a non-disclosure agreement before the applicant communicates any information regarding bids or bidding strategy to the third party.<sup>110</sup> Within third-party firms, separate individual employees, such as attorneys or auction consultants, may advise individual applicants on bids or bidding strategies, as long as such firms implement firewalls and other compliance procedures that prevent such individuals from communicating the bids or bidding strategies of one applicant to other individuals representing separate applicants.<sup>111</sup> Although firewalls and/or other procedures should be used, their existence is not an absolute defense to liability if a violation of the rule has occurred.<sup>112</sup>

56. As we have noted in other spectrum auctions, in the case of an individual, the objective precautionary measure of a firewall is not available.<sup>113</sup> As a result, an individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication.<sup>114</sup> We will take the same approach to interpreting the prohibited communications rule in Auction 105. We emphasize that whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.<sup>115</sup>

57. We remind potential applicants that they may discuss the short-form application or bids for specific licenses or license areas with the counsel, consultant, or expert of their choice *before* the short-form application deadline. Furthermore, the same third-party individual could continue to give advice after the short-form deadline regarding the application, provided that no information pertaining to bids or bidding strategies, including counties selected on the short-form application, is conveyed to that individual. To the extent potential applicants can develop bidding instructions prior to the short-form

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<sup>109</sup> See, e.g., *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10798, para. 13 (describing the use of non-disclosure agreements and, for third parties that may be advising multiple applicants, firewalls).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*; see also *Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA 155) Frequency Band A*, Memorandum Opinion and Order, 13 FCC Rcd 11973, 11978, para. 12 (1998) (*Nevada Wireless Order*) (strongly encouraging applicants to implement any firewall procedures necessary and to provide information in their auction applications regarding the procedures).

<sup>112</sup> See *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10799, para. 14; *Nevada Wireless Order*, 13 FCC Rcd at 11978, para. 13.

<sup>113</sup> See *Auction 101-102 Procedures Public Notice*, 33 FCC Rcd at 7602, para. 72, citing *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10800, para. 15.

<sup>114</sup> *Id.*

<sup>115</sup> See *id.*

deadline that a third party could implement without changes during bidding, the third party could follow such instructions for multiple applicants provided that those applicants do not communicate with the third party during the prohibition period.<sup>116</sup>

58. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, even though communicating that it has applied to participate in the auction will not violate the rule, an applicant's statement to the press that it intends to stop bidding in an auction could give rise to a finding of a section 1.2105 violation.<sup>117</sup> Similarly, an applicant's public statement of intent not to place bids during bidding in Auction 105 could also violate the rule.

## 5. Section 1.2105(c) Certifications

59. By electronically submitting its FCC Form 175 auction application, each applicant for Auction 105 certifies its compliance with section 1.2105(c) of the rules.<sup>118</sup> The mere filing of a certifying statement as part of an application, however, will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted.<sup>119</sup> Any applicant found to have violated these communication prohibitions may be subject to sanctions.<sup>120</sup>

## 6. Duty to Report Prohibited Communications

60. Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate section 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.<sup>121</sup> Each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.<sup>122</sup>

## 7. Procedures for Reporting Prohibited Communications

61. A party reporting any information or communication pursuant to sections 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of section 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other parties specified

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<sup>116</sup> *Id.* at 10802, para. 20.

<sup>117</sup> *Cf. Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction*, Public Notice, 13 FCC Rcd 341, 347-48 (WTB 1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

<sup>118</sup> 47 CFR § 1.2105(a)(2)(ix). In accordance with the *Updating Part 1 Report and Order*, if an applicant has a non-controlling interest with respect to more than one application, the applicant must certify that it has established internal control procedures to preclude any person acting on behalf of the applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199.

<sup>119</sup> *Nevada Wireless Order*, 13 FCC Rcd at 11978, para. 13; *see also Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12.

<sup>120</sup> *See* 47 CFR §§ 1.2105(c), 1.2107(d), 1.2109(d).

<sup>121</sup> *Id.* § 1.2105(c)(4); *see also Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55 paras. 13-17.

<sup>122</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz bands et al.*, WT Docket No. 06-150 et al, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007); *see Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, Order, 25 FCC Rcd 521, 523, para. 8 (2010) (*Part 1 Procedural Amendments Order*); *see also* 47 CFR § 1.65; *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17550-51, para. 9.

under the rule through the use of Commission filing procedures that allow such materials to be made available for public inspection.

62. Parties must file only a single report concerning a prohibited communication and must file that report with the Commission personnel expressly charged with administering the Commission's auctions.<sup>123</sup> This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. Any reports required by section 1.2105(c) must be filed consistent with the instructions set forth in this Public Notice.<sup>124</sup> For Auction 105, such reports must be filed with the Chief of the Auctions Division, Office of Economics and Analytics, by the most expeditious means available. Any such report should be submitted by email to the Auctions Division Chief and sent to [auction105@fcc.gov](mailto:auction105@fcc.gov). If you choose instead to submit a report in hard copy, contact Auctions Division staff at [auction105@fcc.gov](mailto:auction105@fcc.gov) or (202) 418-0660 for guidance.

63. Given the potential competitive sensitivity of public disclosure of information in such a report, a party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in section 0.459 of the Commission's rules.<sup>125</sup> We encourage such parties to coordinate with the Auctions Division staff about the procedures for submitting such reports.<sup>126</sup>

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

64. Each applicant that is a winning bidder will be required to provide as part of its long-form application any agreement or arrangement it has entered into and a summary of the specific terms, conditions, and parties involved in any agreement it has entered into.<sup>127</sup> This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure.<sup>128</sup> Failure to comply with the Commission's rules can result in enforcement action.

## **9. Additional Information Concerning Prohibition of Certain Communications in Commission Auctions**

65. A summary listing of documents issued by the Commission and the Bureau/OEA addressing the application of section 1.2105(c) is available on the Commission's auction web page at [www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications](http://www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications).

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<sup>123</sup> *Part 1 Procedural Amendments Order*, 25 FCC Rcd at 522, para. 4. This process differs from filing procedures used in connection with other Commission rules and processes, which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants.

<sup>124</sup> *Id.*

<sup>125</sup> See 47 CFR § 0.459. Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with "Request for Confidential Treatment Attached" or "Not for Public Inspection." Any such request must cover all the material to which the request applies. *Id.* § 0.459(a)(1).

<sup>126</sup> See *infra* Part VI (Procedural Matters).

<sup>127</sup> 47 CFR § 1.2107(d); see also *infra* Part V.C (Long-Form Application (FCC Form 601)). Such agreements must have been entered into prior to the filing of short-form applications pursuant to section 1.2105. 47 CFR § 1.2107(d); see *id.* § 1.2105.

<sup>128</sup> 47 CFR § 1.2107(d).

## 10. Antitrust Laws

66. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.<sup>129</sup> Compliance with the disclosure requirements of section 1.2105(c)(4) will not insulate a party from enforcement of the antitrust laws.<sup>130</sup> For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application.<sup>131</sup> The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.<sup>132</sup>

67. To the extent we become aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, we may refer such allegations to the United States Department of Justice for investigation.<sup>133</sup> If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, then it may be subject to a forfeiture and may be prohibited from participating further in Auction 105 and in future auctions, among other sanctions.<sup>134</sup>

### H. Provisions for Small Businesses and Rural Service Providers

68. In the *2015 Part 1 Report and Order*, the Commission revised the designated entity rules that apply to all licenses acquired with bidding credits, including those won in Auction 105. A bidding credit represents an amount by which a bidder's winning bid will be discounted, subject to the caps discussed below.<sup>135</sup> As set forth in section 1.2110 of the Commission's rules,<sup>136</sup> and as described below, these rule revisions include, but are not limited to: (1) adopting a two-pronged standard for evaluating eligibility for small business benefits,<sup>137</sup> (2) establishing a new attribution rule for certain disclosable interest holders of applicants claiming designated entity benefits,<sup>138</sup> (3) updating the gross revenue

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<sup>129</sup> See *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures*, WT 97-82, Third Further Notice of Proposed Rulemaking, 14 FCC Rcd 21558, 21560-61, para. 4 & n.17 (1999) (quoting *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12) (“[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws.”); *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Fourth Memorandum Opinion and Order, 9 FCC Rcd 6858, 6869, para. 64 & n.134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”) (*Fourth Memorandum Opinion and Order*).

<sup>130</sup> See *Competitive Bidding Memorandum Opinion and Order*, 9 FCC Rcd at 7689, para. 12; see also Press Release, Dep't of Justice, Justice Department Sues Three Firms Over FCC Auction Practices (Nov. 10, 1998), [https://www.justice.gov/archive/atr/public/press\\_releases/1998/2068.htm](https://www.justice.gov/archive/atr/public/press_releases/1998/2068.htm).

<sup>131</sup> See, e.g., *Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6869, para. 59 & n.134.

<sup>132</sup> *Id.*

<sup>133</sup> *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, para. 226.

<sup>134</sup> See *id.*; 47 CFR § 1.2109(d).

<sup>135</sup> Applicants should note that all references to a “winning bid” discussed herein in the context of designated entity bidding credits for Auction 105 (e.g., the application of a small business discount to an applicant's winning bid) refer to the calculated license price discussed in Part IV.I (Winning Bids), below.

<sup>136</sup> 47 CFR § 1.2110.

<sup>137</sup> *Id.* § 1.2110(b)(3); see *Updating Part 1 Report and Order*, 30 FCC Rcd at 7502-10, paras. 18-34.

<sup>138</sup> 47 CFR § 1.2110(c)(2)(ii)(J); see *Updating Part 1 Report and Order*, 30 FCC Rcd at 7512-16, paras. 42-53. For purposes of this rule, a disclosable interest holder of an applicant seeking designated entity benefits is defined as any

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amounts defining eligibility for small business benefits,<sup>139</sup> (4) creating a separate bidding credit for eligible rural service providers,<sup>140</sup> and (5) establishing caps on the total amount of designated entity benefits any eligible winning bidder may receive.<sup>141</sup>

69. In Auction 105, designated entity bidding credits will be available to applicants demonstrating eligibility for a small business or a rural service provider bidding credit and subsequently winning license(s). These bidding credits will not be cumulative—an applicant is permitted to claim either a small business bidding credit or a rural service provider bidding credit, but not both.<sup>142</sup> Each applicant must also certify that it is eligible for the claimed bidding credit in its FCC Form 175. In addition to the information provided below, each applicant should review carefully the Commission’s decisions regarding the designated entity provisions as well as the Part 1 rules.<sup>143</sup>

70. In particular, we remind applicants applying for designated entity bidding credits that they should take due account of the requirements of the Commission’s rules and implementing orders regarding *de jure* and *de facto* control of such applicants.<sup>144</sup> These rules include a prohibition, which applies to all applicants (whether they seek bidding credits or not), against changes in ownership of the applicant that would constitute an assignment or transfer of control.<sup>145</sup> **Applicants should not expect to receive any opportunities to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements.** This policy will help to ensure compliance with the Commission’s rules applicable to the award of bidding credits prior to the conduct of the auction, which will involve competing bids from those that do and do not seek bidding credits, and thus preserves the integrity of the auction process. We also believe that this will meet the Commission’s objectives in awarding licenses through the competitive bidding process.<sup>146</sup>

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individual or entity holding a 10% or greater interest of any kind in the applicant, including but not limited to, a 10% or greater interest in any class of stock, warrants, options, or debt securities in the applicant or licensee. 47 CFR § 1.2110(c)(2)(ii)(J). The Commission also clarified its designated entity reporting requirements under 47 CFR § 1.2110(n).

<sup>139</sup> 47 CFR § 1.2110(f)(2); *see Updating Part 1 Report and Order*, 30 FCC Rcd at 7523-25, paras. 72-75.

<sup>140</sup> 47 CFR § 1.2110(f)(4); *see Updating Part 1 Report and Order*, 30 FCC Rcd at 7530-38, paras. 88-108.

<sup>141</sup> *See* 47 CFR §§ 1.2110(f)(2)(ii), (f)(4)(ii); *see also Updating Part 1 Report and Order*, 30 FCC Rcd at 7539-48, paras. 110-30.

<sup>142</sup> *See Updating Part 1 Report and Order*, 30 FCC Rcd at 7538, para. 108.

<sup>143</sup> *See generally Updating Part 1 Report and Order*, 30 FCC Rcd 7493; *see also, e.g., Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission’s Competitive Bidding Rules and Procedures*, WT Docket No. 05-24, Report and Order, 21 FCC Rcd 891 (2006) (*CSEA/Part 1 Report and Order*); Second Report and Order and Second Further Notice of Proposed Rule Making, 21 FCC Rcd 4753 (2006); Order on Reconsideration of the Second Report and Order, 21 FCC Rcd 6703 (2006).

<sup>144</sup> *See, e.g.,* 47 CFR §§ 1.2110 & 1.2111.

<sup>145</sup> *Id.* § 1.2105(b)(2). Pursuant to 47 CFR § 1.929(a)(2), any substantial change in ownership or control is classified as a major amendment. *See also id.* §§ 1.927(a)-(b), (h).

<sup>146</sup> The Commission’s objectives when awarding licenses through competitive bidding include “the development and rapid deployment of new technologies, products, and services for the benefit of the public . . . without administrative or judicial delays” and “promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses.” 47 U.S.C. §§ 309(j)(3)(A)-(B); *see also Use of Spectrum Bands Above 24 GHz for Mobile Radio Services et al.*, Report and

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## 1. Small Business Bidding Credit

71. For Auction 105, bidding credits will be available to eligible small businesses and consortia thereof, subject to the caps discussed below. Under the service rules applicable to the PALs to be offered in Auction 105, the level of bidding credit available is determined as follows:

- A bidder that qualifies as a “small business” – i.e., one with attributed average annual gross revenues that do not exceed \$55 million for the preceding three years<sup>147</sup> – is eligible to receive a 15% discount on its winning bid.<sup>148</sup>
- A bidder that qualifies as a “very small business” – i.e., one with attributed average annual gross revenues that do not exceed \$20 million for the preceding three years<sup>149</sup> – is eligible to receive a 25% discount on its winning bid.<sup>150</sup>

72. In adopting this two-tiered approach in the *2018 3.5 GHz Report and Order*, the Commission observed that this approach would provide consistency and predictability for small businesses.<sup>151</sup>

73. Small business bidding credits are not cumulative; an eligible applicant may receive either the 15% or the 25% bidding credit on its winning bid, but not both. The Commission’s unjust enrichment provisions also apply to a winning bidder that uses a bidding credit and subsequently seeks to assign or transfer control of its license within a certain period to an entity not qualifying for at least the same level of small business bidding credit.<sup>152</sup>

74. Each applicant claiming a small business bidding credit must disclose the gross revenues for the preceding three years for each of the following: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests.<sup>153</sup> The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that may be won by the applicant in Auction 105.<sup>154</sup> In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25% of the spectrum capacity of any license that may be won in Auction 105, the applicant must disclose the identity and the attributable gross revenues of any such disclosable interest holder.<sup>155</sup> This attribution rule will be applied on a license-by-license basis.<sup>156</sup> As a result, an applicant may be eligible for a

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Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8097-101, paras. 244-54 (2016) (*2016 Spectrum Frontiers Order*).

<sup>147</sup> See 47 CFR § 1.2110(f)(2)(i)(C).

<sup>148</sup> *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10646, para. 89.

<sup>149</sup> See 47 CFR § 1.2110(f)(2)(i)(B).

<sup>150</sup> *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10646, para. 89.

<sup>151</sup> *Id.* at 10645-46, para. 88.

<sup>152</sup> 47 CFR § 1.2111. Thus, for example, the Commission’s unjust enrichment provisions would not apply to a winning bidder that uses the 15% small business bidding credit and seeks to transfer control of its license to an entity that qualifies for either the 15% small business bidding credit or the rural service provider bidding credit. See *infra* Part II.H.2 (Rural Service Provider Bidding Credit). The provisions would apply, however, if that same winning bidder uses the 25% small business bidding credit, unless the proposed transferee also qualifies for the 25% small business bidding credit.

<sup>153</sup> 47 CFR §§ 1.2110(b)(1)(i), 1.2112(b)(1)(iv).

<sup>154</sup> See *id.* § 1.2112(b)(1)(iii).

<sup>155</sup> See *id.* § 1.2110(c)(2)(ii)(J).

<sup>156</sup> See *id.*

bidding credit on some, but not all, of the licenses for which it is bidding in Auction 105.<sup>157</sup> If an applicant is applying as a consortium of small businesses, then the disclosures described in this paragraph must be provided for each consortium member.<sup>158</sup>

## 2. Rural Service Provider Bidding Credit

75. An eligible applicant may request a 15% discount on its winning bid using a rural service provider bidding credit,<sup>159</sup> subject to the cap discussed below. To be eligible for a rural service provider bidding credit, an applicant must: (1) be a service provider that is in the business of providing commercial communications services and, together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers; and (2) serve predominantly rural areas.<sup>160</sup> Rural areas are defined as counties with a population density of 100 or fewer persons per square mile.<sup>161</sup> An applicant seeking a rural service provider bidding credit must provide the number of subscribers served as of the short-form application deadline. An applicant may count any subscriber as a single subscriber even if that subscriber receives more than one service.<sup>162</sup>

76. Each applicant seeking a rural service provider bidding credit must disclose the number of its subscribers, along with the number of subscribers of its affiliates, controlling interests, and the affiliates of its controlling interests.<sup>163</sup> The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that may be won by the applicant in Auction 105.<sup>164</sup> In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25% of the spectrum capacity of any license that may be won in Auction 105, the identity and the attributable subscribers of any such disclosable interest holder must be disclosed.<sup>165</sup> Like applicants seeking eligibility for small business bidding credits, eligible rural service providers may also form a consortium.<sup>166</sup> If an applicant is applying

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<sup>157</sup> *See id.*

<sup>158</sup> *Id.* §§ 1.2110(b)(4)(i), 1.2110(c)(6), 1.2110(k), 1.2112(b)(1)(vi).

<sup>159</sup> *2018 2.5 GHz Report and Order*, 33 FCC Rcd at 10647-48, para. 90; *see also* 47 CFR § 96.30(c)(2). The Commission determines eligibility for bidding credits, including the rural service provider bidding credit, on a service-by-service basis. *See* 47 CFR § 1.2110(f)(1); *see also* *Updating Part 1 Report and Order*, 30 FCC Rcd at 7529, para. 85.

<sup>160</sup> 47 CFR §§ 1.2110(f)(4)(i)(A)-(B).

<sup>161</sup> 47 CFR § 1.2110(f)(4)(i)(B); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7536-37, para. 104 & n.340. We decline SCE's request to further clarify how the eligibility standard for a rural bidding credit would apply to a winning bidder in a particular factual context, which is outside the scope of this proceeding. SCE Comments at 3-4. Although the Commission did establish a definition of "rural areas," in the 2015 Part 1 rulemaking, it purposely declined "to adopt a specific threshold for the proportion of an applicant's customers who are located in rural areas," electing instead to "put prospective applicants on notice that it is [the Commission's] intent that in order for an applicant to be eligible for a rural service provider bidding credit, the primary focus of its business activity must be the provision of services to rural areas." *Updating Part 1 Report and Order*, 30 FCC Rcd at 7533, para. 94 & n.312.

<sup>162</sup> For instance, a subscriber receiving both wireline and telephone service and broadband would be counted as a single subscriber. *Updating Part 1 Report and Order*, 30 FCC Rcd at 7534, para. 98 & n.326.

<sup>163</sup> *See* 47 CFR § 1.2112(b)(1)(v); *see also id.* § 1.2110(f)(4)(i)(C).

<sup>164</sup> *See id.* § 1.2112(b)(1)(iii).

<sup>165</sup> *See id.* § 1.2110(c)(2)(ii)(J).

<sup>166</sup> *See id.* §§ 1.2110(b)(4)(i), (c)(6).

as a consortium of rural service providers, the disclosures described in this paragraph, including the certification, must be provided for each consortium member.<sup>167</sup>

### 3. Caps on Bidding Credits

77. Eligible applicants claiming either a small business or rural service provider bidding credit will be subject to certain caps on the total amount of bidding credit discounts that any eligible applicant may receive.<sup>168</sup> For the reasons discussed in the *Auction 105 Comment Public Notice*, we adopt our proposals concerning bidding credit caps for Auction 105.<sup>169</sup> Specifically, we adopt a \$25 million cap on the total amount of bidding credit discounts that may be awarded to an eligible small business,<sup>170</sup> and a \$10 million cap on the total amount of bidding credit discounts that may be awarded to an eligible rural service provider. Additionally, to create parity among eligible small businesses and rural service providers competing against each other in smaller markets, no winning designated entity bidder will receive more than \$10 million in bidding credit discounts in total for licenses won in counties located within any Partial Economic Area (PEA) with a population of 500,000 or less.<sup>171</sup>

78. GeoLinks requests that we eliminate bidding credit caps or, at a minimum, that we “increase them significantly[,]” arguing that the proposed bidding credit caps will disadvantage smaller companies and rural service providers.<sup>172</sup> First, we reject GeoLinks’s suggestion that we refrain from imposing any bidding credit caps in Auction 105. The Commission decided in 2015, in a comprehensive reexamination of its competitive-bidding rules, that the amount of bidding credits a designated entity could receive in an auction would be limited.<sup>173</sup> As the Commission explained, establishing appropriate bidding credit caps “protect[s] the integrity of the [Designated Entity] program by providing opportunities for qualified designated entities, while mitigating the incentives for abuse, consistent with our statutory mandates.”<sup>174</sup> At that time, the Commission did “not foresee it likely that any subsequent auction would include a bidding [credit] cap that exceeds” the caps established for the Broadcast Incentive Auction.<sup>175</sup> As we have explained previously, using the proposed caps in past auctions would have allowed the vast

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<sup>167</sup> *Id.* § 1.2112(b)(1)(vi).

<sup>168</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7541, para. 114; see also 47 CFR §§ 1.2110(f)(2)(ii), (4)(ii).

<sup>169</sup> See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9221-22, para. 20.

<sup>170</sup> Bidding credit discounts of 15% are available to entities whose average gross revenue for the preceding three years does not exceed \$55 million, and discounts of 25% are available to entities whose average gross revenue for the preceding three years does not exceed \$20 million. See *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10647, para. 89.

<sup>171</sup> As proposed, markets that are subject to the small market bidding credit cap are PEAs 118–416, excluding PEA 412 (Puerto Rico). See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9222, para.20 & n.49. If an applicant seeking a small business bidding credit does not claim the full \$10 million in bidding credits in those smaller markets, it may apply the remaining balance to its winning bids on licenses in larger markets, up to the aggregate \$25 million cap.

<sup>172</sup> GeoLinks Comments at 4-5 (arguing that a smaller or rural service provider could raise sufficient capital to compete with larger providers for the same block of spectrum, and that they should not be “hamstrung” by a limit on the bidding credits that they may receive); see also GeoLinks Reply at 6.

<sup>173</sup> See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7539, para. 110. The Commission decided in 2015 that only the size—not the existence—of the cap may be determined on an auction-by-auction basis. *Id.* at 7541, para. 114.

<sup>174</sup> *Id.* at 7544, para. 119.

<sup>175</sup> *Id.* at 7541, para. 114.

majority of eligible small businesses to realize the full value of their bidding credits.<sup>176</sup> Moreover, the relatively small license areas for PALs may allow for the deployment of small scale networks as well as lower the winning bid price for individual licenses, making them more affordable for entities that are not interested in providing service in larger geographic areas. Additionally, as the Rural Wireless Association notes, bidding credit caps will help ensure that the availability of bidding credits “is not abused by entities that are not legitimate small businesses or rural service providers.”<sup>177</sup>

#### 4. Attributable Interests

##### a. Controlling Interests and Affiliates

79. Pursuant to section 1.2110 of the Commission’s rules, an applicant’s eligibility for designated entity benefits is determined by attributing the gross revenues (for those seeking small business benefits) or subscribers (for those seeking rural service provider benefits) of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant.<sup>178</sup> Typically, ownership of greater than 50% of an entity’s voting stock evidences *de jure* control.<sup>179</sup> *De facto* control is determined on a case-by-case basis based on the totality of the circumstances.<sup>180</sup> The following are some common indicia of *de facto* control:

- the entity constitutes or appoints more than 50% of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee;
- the entity plays an integral role in management decisions.<sup>181</sup>

<sup>176</sup> See *Auctions of Upper Microwave Flexible Use Licenses for Next Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auctions 101 (28 GHz) and 102 (24 GHz); Bidding in Auction 101 Scheduled to Begin November 14, 2018*, AU Docket No. 18-85, 33 FCC Rcd 4103, 4114-15, para. 32 & n.61, citing *Updating Part 1 Report and Order*, 30 FCC Rcd at 7541, para. 115 & n.367; *Incentive Auction Closing and Channel Reassignment Public Notice et al.*, MB Docket No. 16-306; AU Docket No. 14-252; WT Docket No. 12-269; GN Docket No. 12-268, Public Notice, 32 FCC Rcd 2786, Appx. B (WTB/MB 2017) (“We observe, for example, that a \$25 million cap would have allowed 95 percent of small businesses in Auction 66, 98 percent of business in Auction 73, 73 percent of small businesses in Auction 97, and 75 percent of small businesses in the Broadcast Incentive Auction to realize the full value of their bidding credits based on gross winning bid amounts.”); see also *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9221-22, para. 20,

<sup>177</sup> RWA Reply at 6.

<sup>178</sup> 47 CFR §§ 1.2110(b)(1), (f)(4)(i)(C)(1).

<sup>179</sup> 47 CFR § 1.2110(c)(2)(i).

<sup>180</sup> See *id.*; see also, e.g., *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, Fifth Memorandum Opinion & Order, 10 FCC Rcd 403, 447-49, 451, 455-56, paras. 80-82, 85-86, 95-96 (1994); *Intermountain Microwave*, Public Notice, 12 FCC 2d 559, 559-60 (1963) (*Intermountain Microwave*); *Application of Ellis Thompson Corp.*, CC Docket No. 94-136, Memorandum Opinion and Order and Hearing Designation Order, 9 FCC Rcd 7138, 7138-39, paras. 9-11 (1994); *Baker Creek Commc’ns, L.P.*, Memorandum Opinion and Order, 13 FCC Rcd 18709, 18713-14, paras. 7-8 (WTB 1998); *Northstar Wireless, LLC, SNR Wireless LicenseCo, LLC, Applications for New Licenses in the 1695-1710 MHz, 1755-1780 MHz and 2155-2180 MHz Bands*, Memorandum Opinion and Order, 30 FCC Rcd 8887, 8889-91, paras. 4-9 (2015), *aff’d on this issue and remanded on other grounds sub nom. SNR Wireless LicenseCo, LLC, et al. v. FCC*, 868 F.3d 1021 (D.C. Cir. 2017), *cert. denied*, No. 17-1058, 138 S. Ct. 2674 (2018).

<sup>181</sup> 47 CFR §§ 1.2110(c)(2)(i)(A)-(C).

80. Applicants should refer to section 1.2110(c)(2) of the Commission's rules and the FCC Form 175 Instructions to understand how certain interests are calculated in determining control for purposes of attributing gross revenues. For example, officers and directors of an applicant are considered to have a controlling interest in the applicant.<sup>182</sup>

81. Affiliates of an applicant or controlling interest include an individual or entity that: (1) directly or indirectly controls or has the power to control the applicant, (2) is directly or indirectly controlled by the applicant, (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant, or (4) has an "identity of interest" with the applicant.<sup>183</sup> The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant.<sup>184</sup> For more information on the application requirements regarding controlling interests and affiliates, applicants should refer to sections 1.2110(c)(2) and (c)(5) respectively,<sup>185</sup> as well as the FCC Form 175 Instructions.

82. An applicant seeking a small business bidding credit must demonstrate its eligibility for the bidding credit by: (1) meeting the applicable small business size standard, based on the controlling interest and affiliation rules discussed above; and (2) retaining control, on a license-by-license basis, over the spectrum associated with the licenses for which it seeks small business benefits.<sup>186</sup> For purposes of the first prong of the standard, applicants should note that control and affiliation may arise through, among other things, ownership interests, voting interests, management and other operating agreements, or the terms of any other types of agreements—including spectrum lease agreements—that independently or together create a controlling, or potentially controlling, interest in the applicant's or licensee's business as a whole.<sup>187</sup> In addition, once an applicant demonstrates eligibility as a small business under the first prong, it must also be eligible for benefits on a license-by-license basis under the second prong. As part of making the FCC Form 175 certification that it is qualified as a designated entity under section 1.2110, an applicant is certifying that it does not have any spectrum use or other agreements that would confer either *de jure* or *de facto* control of any license it seeks to acquire with bidding credits.<sup>188</sup>

83. Applicants should note that, under this standard for evaluating eligibility for small business bidding credits, if an applicant executes a spectrum use agreement that does not comply with the

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<sup>182</sup> *Id.* § 1.2110(c)(2)(ii)(F).

<sup>183</sup> *Id.* § 1.2110(c)(5).

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* §§ 1.2110(c)(2), (c)(5).

<sup>186</sup> *See id.* § 1.2110(b)(3); *see also Updating Part 1 Report and Order*, 30 FCC Rcd at 7507-10, paras. 29-34.

<sup>187</sup> *See* 47 CFR § 1.2105(a)(2)(iv); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7507-09, paras. 29-33; *see also, e.g.*, 47 CFR §§ 1.2110(c)(5)(vii)-(x) (explaining how affiliation can arise where one concern has the power to control or potentially control the other concern). As discussed below, except under the limited provisions provided for spectrum manager lessors, the Commission's decision to discontinue its policy requiring designated-entity licensees to operate as primarily facilities-based providers of service directly to the public does not alter the rules that require the Commission to consider whether any particular use agreement may confer control of or create affiliation with the applicant. *See Updating Part 1 Report and Order*, 30 FCC Rcd at 7509, para. 33.

<sup>188</sup> *See* 47 CFR § 1.2105(a)(2)(iv); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7509-10, paras. 33-34; *see also* 47 CFR § 1.2110(c)(2)(ii)(A). For instance, if an applicant has a spectrum use agreement on a particular license that calls into question whether, under the Commission's affiliation rules, the user's revenues should be attributed to the applicant for that particular license, rather than for its overall business operations, the applicant could be ineligible to acquire or retain benefits with respect to that particular license. By taking this license-by-license approach, an applicant need not be eligible for small business benefits on each of the spectrum licenses it holds in order to demonstrate its overall eligibility for such benefits. *Updating Part 1 Report and Order*, 30 FCC Rcd at 7509, para. 33.

Commission's relevant standard of *de facto* control,<sup>189</sup> it will be subject to unjust enrichment obligations for the benefits associated with that particular license, as well as the penalties associated with any violation of section 310(d) of the Communications Act and related regulations, which require Commission approval of transfers of control.<sup>190</sup> If that spectrum use agreement (either alone or in combination with the designated entity controlling interest and attribution rules described above), goes so far as to confer control of the applicant's overall business, the gross revenues of the additional interest holders will be attributed to the applicant, which could render the applicant ineligible for all current and future small business benefits on all licenses.<sup>191</sup>

#### b. Limitation on Spectrum Use

84. Under section 1.2110(c)(2)(ii)(J) of the Commission's rules, the gross revenues (or the subscribers, in the case of a rural service provider) of an applicant's disclosable interest holder are attributable to the applicant, on a license-by-license basis, if the disclosable interest holder has an agreement with the applicant to use, in any manner, more than 25% of the spectrum capacity of any license won by the applicant and acquired with a bidding credit during the five-year unjust enrichment period for the applicable license.<sup>192</sup> For purposes of this requirement, a disclosable interest holder of an applicant seeking designated entity benefits is defined as any individual or entity holding a 10% or greater interest of any kind in the applicant, including but not limited to, a 10% or greater interest in any class of stock, warrants, options, or debt securities in the applicant or licensee.<sup>193</sup> Any applicant seeking a bidding credit for licenses won in Auction 105 will be subject to this attribution rule and must make the requisite disclosures.<sup>194</sup>

85. Certain disclosable interest holders may be excluded from this attribution rule. Specifically, an applicant claiming the rural service provider bidding credit may have spectrum license use agreements with a disclosable interest holder, without having to attribute the disclosable interest holder's subscribers, so long as the disclosable interest holder is independently eligible for a rural service provider credit and the use agreement is otherwise permissible under the Commission's existing rules.<sup>195</sup> If applicable, the applicant must attach to its FCC Form 175 any additional information as may be

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<sup>189</sup> See 47 CFR § 1.9010 (defining *de facto* control for spectrum leasing arrangements); see also *Intermountain Microwave*, 12 FCC 2d at 559-60 (describing *de facto* control for non-leasing situations); 47 CFR § 1.2110(c)(2) (defining *de facto* control for designated entities); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15324, para. 61 (incorporating the *Intermountain Microwave* principles of control into section 1.2110 of the Commission's rules).

<sup>190</sup> Although in this scenario the applicant may not be eligible for a bidding credit and may be subject to the Commission's unjust enrichment rules, the applicant need not be eligible for small business benefits on each of the spectrum licenses it holds in order to demonstrate its overall eligibility for such benefits.

<sup>191</sup> This rule does not alter the requirement of full dilution in 47 CFR § 1.2110(c)(2)(ii)(A). Except where the leasing standard of *de facto* control applies under sections 1.9010 and 1.9020 of the secondary market rules, the criteria of *Intermountain Microwave* and *Ellis Thompson* will continue to apply to every Commission licensee for purposes of assessing whether it can demonstrate that it retains *de facto* control of its business venture and spectrum license. 47 CFR §§ 1.9010, 1.9020; *Application of Ellis Thompson Corporation*, Summary Decision, 10 FCC Rcd 12554, 12555-56, para. 9 (ALJ decision 1995). In the *Updating Part 1 Report and Order*, the Commission also modified section 1.9020 of its rules so as to apply the same *de facto* control standard to designated entity spectrum manager lessors that is applied to non-designated entity spectrum manager lessors. *Updating Part 1 Report and Order*, 30 FCC Rcd at 7510-11, paras. 35-39; see 47 CFR § 1.9020.

<sup>192</sup> See 47 CFR § 1.2110(c)(2)(ii)(J); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7512-16, paras. 42-53.

<sup>193</sup> 47 CFR § 1.2110(c)(2)(ii)(J).

<sup>194</sup> See *supra* Parts II.H.1 (Small Business Bidding Credit), II.H.2 (Rural Service Provider Bidding Credit).

<sup>195</sup> 47 CFR § 1.2110(c)(2)(ii)(J); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7513, para. 46.

required to indicate any license (or license area) that may be subject to this attribution rule or to demonstrate its eligibility for the exception from this attribution rule.<sup>196</sup> Consistent with the Commission's limited information procedures, the Commission intends to withhold from public disclosure all information contained in any such attachments until after the close of Auction 105.

**c. Exceptions from Attribution Rules for Small Businesses and Rural Service Providers**

86. Applicants claiming designated entity benefits may be eligible for certain exceptions from the Commission's attribution rules.<sup>197</sup> For example, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute to the applicant the personal net worth, including personal income, of its officers and directors.<sup>198</sup> The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in section 1.2110(b)(4)(iii) of the Commission's rules are met.<sup>199</sup> An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of section 1.2110(b)(4)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.<sup>200</sup>

87. An applicant claiming a rural service provider bidding credit may be eligible for an exception from the Commission's attribution rules as an existing rural partnership. To qualify for this exception, an applicant must be a rural partnership providing service as of July 16, 2015, and each member of the rural partnership must individually have fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers.<sup>201</sup> Because each member of the rural partnership must individually qualify for the bidding credit, by definition, a partnership that includes a nationwide provider as a member will not be eligible for the benefit.<sup>202</sup>

88. Finally, a consortium of small businesses or rural service providers may seek an exception from the Commission's attribution rules. Under the Commission's rules, a consortium of small businesses or rural service providers is a conglomerate organization composed of two or more entities,

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<sup>196</sup> To the extent an Auction 105 applicant is required to submit any such additional information, the applicant must not disclose details of its submission to others as it would reveal information regarding its county selection(s).

<sup>197</sup> See, e.g., 47 CFR § 1.2110(b)(4).

<sup>198</sup> See *id.* § 1.2110(c)(2)(ii)(F); see also *Part 1 Third R&O Second Recon/Part 1 Fifth R&O Recon*, 18 FCC Rcd at 10185-86, paras. 8-9. To the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant. Moreover, if an officer or director operates a separate business, then the gross revenues derived from that separate business would be attributed to the applicant, although any personal income from such separate business would not be attributed. See *Part 1 Third R&O Second Recon/Part 1 Fifth R&O Recon*, 18 FCC Rcd at 10186, para. 9.

<sup>199</sup> See *Part 1 Third R&O Second Recon/Part 1 Fifth R&O Recon*, 18 FCC Rcd at 10186-94, paras. 10-18; *Part 1 Fifth R&O Second Recon*, 20 FCC Rcd at 1945-50, paras. 9-18.

<sup>200</sup> 47 CFR § 1.2110(b)(4)(iii); see also *Part 1 Third R&O Second Recon/Part 1 Fifth R&O Recon*, 18 FCC Rcd at 10186-95, paras. 10-20; *Part 1 Fifth R&O Second Recon*, 20 FCC Rcd at 1945-50, paras. 9-18.

<sup>201</sup> See 47 CFR § 1.2110(f)(4)(i)(C)(2); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7536, para. 102. Thus, the Commission will evaluate eligibility for an existing rural wireless partnership on the same basis as it would for an applicant applying for a bidding credit as a consortium of rural service providers. See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7536, para. 102 & n.336.

<sup>202</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7536, para. 103. We also note that members of such partnerships that fall under this exception may also apply as individual applicants or members of a consortium (to the extent that it is otherwise permissible to do so under the Commission's rules) and seek eligibility for a rural service provider bidding credit. *Id.* at 7536, 7582, paras. 102-03, 210.

each of which individually satisfies the definition of small business or rural service provider.<sup>203</sup> A consortium must provide additional information for each member demonstrating each member's eligibility for the claimed bidding credit in order to show that the applicant satisfies the eligibility criteria for the bidding credit.<sup>204</sup> The gross revenue or subscriber information of each consortium member will not be aggregated for purposes of determining the consortium's eligibility for the claimed bidding credit. This information must be provided, however, to ensure that each consortium member qualifies for the bidding credit sought by the consortium.

### **I. Provisions Regarding Former and Current Defaulters**

89. Pursuant to the rules governing competitive bidding, each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 105,<sup>205</sup> but a former defaulter or delinquent may participate so long as it is otherwise qualified and makes an upfront payment that is 50% more than would otherwise be necessary.<sup>206</sup> Accordingly, each applicant must certify under penalty of perjury on its FCC Form 175 that it, its affiliates, its controlling interests, and the affiliates of its controlling interests are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency.<sup>207</sup> Additionally, an applicant must certify under penalty of perjury whether it (along with its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including down payments) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the

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<sup>203</sup> 47 CFR § 1.2110(c)(6).

<sup>204</sup> See *supra* Parts II.H.1 (Small Business Bidding Credit), II.H.2 (Rural Service Provider Bidding Credit).

<sup>205</sup> An applicant is considered a "current defaulter" or a "current delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for auction applications. See *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317, para. 42 & n.142; *Wireless Telecommunications Bureau Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements*, Public Notice, 19 FCC Rcd 21920 (2004) (*Auction Default Disclosure Public Notice*). This public notice may be found at [www.fcc.gov/auction/58](http://www.fcc.gov/auction/58).

<sup>206</sup> 47 CFR §§ 1.2105(a)(2)(xi), (xii), (b)(1), 1.2106(a). For purposes of evaluating the certifications under sections 1.2105(a)(2)(xi) and (xii), we clarify that "non-tax debt owed to any Federal agency" includes, within the meaning of the rule, all amounts owed under Federal programs, including contributions to the Universal Service Fund, Telecommunications Relay Services Fund, and the North American Numbering Plan Administration, notwithstanding that the administrator of any such fund may not be considered a Federal "agency" under the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified in relevant parts at 31 U.S.C. §§ 3716 (administrative offset), 3717 (interest and penalty on claims)); see also 47 CFR §§ 1.1901, 1.1911, 1.1912, 1.1940. For example, an applicant with a past due USF contribution as of the auction application filing deadline would be disqualified from participating in Auction 105 under the Commission's rules. 47 CFR §§ 1.2105(a)(2)(xi), (b)(1). If, however, the applicant cures the overdue debt prior to the auction application filing deadline (and such debt does not fall within one of the exclusions described in paragraph 92 of this Public Notice), then it may be eligible to participate in Auction 105 as a former defaulter under the Commission's rules. See *id.* §§ 1.2105(a)(2)(xii), 1.2106(a). For additional information on upfront payments and related forms, see *infra* Part III.F (Upfront Payments).

<sup>207</sup> 47 CFR § 1.2105(a)(2)(xi); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15317, para. 42 & n.142 ("If any one of an applicant's controlling interests or their affiliates . . . is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] FCC Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x) . . . and will not be eligible to participate in Commission auctions.").

exclusions described below.<sup>208</sup> For purposes of making these certifications, the term “controlling interest” is defined in section 1.2105(a)(4)(i) of the Commission rules.<sup>209</sup>

90. Under the Commission’s rule regarding applications by former defaulters, an applicant is considered a “former defaulter” or a “former delinquent” when, as of the FCC Form 175 deadline, the applicant or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies.<sup>210</sup> For purposes of the certification under section 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission construction permit or license or cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) the notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline, (2) the default or delinquency amounted to less than \$100,000, (3) the default or delinquency was paid within two quarters (i.e., six months) after receiving the notice of the final payment deadline or delinquency, or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.<sup>211</sup> With respect to the first exclusion, notice to a debtor may include notice of a final payment deadline or notice of delinquency and may be express or implied depending on the origin of any Federal non-tax debt giving rise to a default or delinquency.<sup>212</sup> Additionally, for the third exclusion, the date of receipt of the notice of a final default deadline or delinquency by the intended party or debtor will be used for purposes of verifying receipt of notice.<sup>213</sup>

91. In addition to this Public Notice, applicants are encouraged to review previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process.<sup>214</sup> Parties are also encouraged to consult with Auctions Division staff if they have any questions about default and delinquency disclosure requirements.

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<sup>208</sup> 47 CFR § 1.2105(a)(2)(xii).

<sup>209</sup> *Id.* § 1.2105(a)(4)(i).

<sup>210</sup> In 2015, the Commission narrowed the scope of the individuals and entities to be considered for purposes of the former defaulter rule. *Updating Part 1 Report and Order*, 30 FCC Rcd at 7568, para. 175; *see* 47 CFR §§ 1.2105(a)(2)(xii), (a)(4).

<sup>211</sup> 47 CFR §§ 1.2105(a)(2)(xii), (a)(4); *see also* *Updating Part 1 Report and Order*, 30 FCC Rcd at 7566-68, paras. 173-75. Additionally, for purposes of the certification required on an FCC Form 175, a debt will not be deemed to be in default or delinquent until after the expiration of a final payment deadline. *See, e.g., Expedited Clarification of Sections 1.2105(a) and 1.2106(a) of the Commission's Rules*, Letter Order, 19 FCC Rcd 22907 (WTB 2004). Thus, to the extent that the rules providing for payment of a specific federal debt permit payment after an original payment deadline accompanied by late fee(s), such debts would not be in default or delinquent for purposes of applying the former defaulter rules until after the late payment deadline. In addition, we provide the following regarding defaults on Commission licenses: any winning bidder that fails to timely pay its post-auction down payment or the balance of its final winning bid amount(s) or is disqualified for any reason after the close of an auction will be in default and subject to a default payment. 47 CFR § 1.2109(c). Commission staff provide individual notice of the amount of such a default payment as well as procedures and information required by the Debt Collection Improvement Act of 1996, including the payment due date and any charges, interest, and/or penalties that accrue in the event of delinquency. *See, e.g.,* 31 U.S.C. §§ 3716, 3717; 47 CFR §§ 1.1911, 1.1912, 1.1940. For purposes of the certifications required on an FCC Form 175, such notice provided by Commission staff assessing a default payment arising out of a default on a winning bid constitutes notice of the final payment deadline with respect to a default on a Commission license.

<sup>212</sup> *Updating Part 1 Report and Order*, 30 FCC Rcd at 7566, para. 173 & n.556.

<sup>213</sup> *See id.* at 7567, para. 173 & n.559.

<sup>214</sup> *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920.

92. We consider outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the “red light rule” that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States.<sup>215</sup> Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. When adopting that rule, the Commission explicitly declared, however, that its competitive bidding rules “are not affected” by the red light rule.<sup>216</sup> As a consequence, the Commission’s adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

93. We remind each applicant, however, that any indication in the Commission’s Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant’s ability to comply with the default and delinquency disclosure requirements of section 1.2105.<sup>217</sup> Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant’s lack of current “red light” status is not necessarily determinative of its eligibility to participate in an auction (or whether it may be subject to an increased upfront payment obligation). Moreover, a prospective applicant in Auction 105 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission’s red light rule,<sup>218</sup> and such review may result in the dismissal of a winning bidder’s long-form application.<sup>219</sup> We encourage each applicant to carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency.

#### **J. Optional Applicant Status Identification**

94. Applicants owned by members of minority groups and/or women, as defined in section 1.2110(c)(3),<sup>220</sup> and rural telephone companies, as defined in section 1.2110(c)(4),<sup>221</sup> may identify themselves regarding this status in filling out their FCC Form 175 applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.<sup>222</sup>

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<sup>215</sup> *Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540 (2004) (*Debt Collection Report and Order*).

<sup>216</sup> *Id.* at 6541, para. 3 & n.11 (specifically noting the current defaulter and former defaulter certifications of 47 CFR §§ 1.2105(a)(2)(x) and (xi) and stating that “[t]hese rules are not affected by the red light rule”).

<sup>217</sup> *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission’s Red Light Display System and short-form application default and delinquency disclosure requirements for auction applicants). To access the Commission’s Red Light Display System, go to: <https://apps.fcc.gov/redlight/login.cfm>.

<sup>218</sup> *Debt Collection Report and Order*, 19 FCC Rcd at 6540-42, paras. 1, 3-5; *see also* 47 CFR § 1.1114.

<sup>219</sup> Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR §§ 1.2104(g) and 1.2109(c).

<sup>220</sup> 47 CFR § 1.2110(c)(3).

<sup>221</sup> *Id.* § 1.2110(c)(4).

<sup>222</sup> For instance, designated entities are defined as small businesses (including businesses owned by members of minority groups and/or women), rural telephone companies, and rural service providers. *Id.* § 1.2110(a).

**K. Modifications to FCC Form 175****1. Only Minor Modifications Allowed**

95. After the initial FCC Form 175 filing deadline, an Auction 105 applicant will be permitted to make only minor changes to its application consistent with the Commission's rules.<sup>223</sup> Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three) and the revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person. Major modification to an FCC Form 175 (e.g., change of county selection, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted after the initial FCC Form 175 filing deadline.<sup>224</sup> If an amendment reporting changes is a "major amendment," as described in section 1.2105(b)(2), the major amendment will not be accepted and may result in the dismissal of the application.<sup>225</sup>

**2. Duty to Maintain Accuracy and Completeness of FCC Form 175**

96. Pursuant to section 1.65 of the Commission's rules, each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in Auction 105.<sup>226</sup> Consistent with the requirements for our spectrum auctions, an applicant for Auction 105 must furnish additional or corrected information to the Commission within five business days after a significant occurrence, or amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need for the amendment.<sup>227</sup> An applicant is obligated to amend its pending application even if a reported change may result in the dismissal of the application because it is subsequently determined to be a major modification.

**3. Modifying an FCC Form 175**

97. As noted above, a party seeking to participate in Auction 105 must file an FCC Form 175 electronically via the FCC's Auction Application System. During the initial filing window, an applicant will be able to make any necessary modifications to its FCC Form 175 in the Auction Application System. An applicant that has certified and submitted its FCC Form 175 before the close of the initial

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<sup>223</sup> See *id.* § 1.2105(b)(2). Minor amendments include any changes that are not major, such as correcting typographical errors and supplying or correcting information as requested to support the certifications made in the application. *Id.*

<sup>224</sup> See *id.*; see also *Two Way Radio of Carolina, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 12035 (1999) (*Two Way Radio*) (holding that auction applicant was not allowed to change its designated entity status after application filing deadline).

<sup>225</sup> See 47 CFR § 1.2105(b)(2). Any change in control of an applicant—resulting from a merger, for example—will be considered a major modification, and the application will consequently be dismissed. The Commission reiterates that, even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the communication prohibitions of 47 CFR § 1.2105(c) until the down payment deadline for Auction 105.

<sup>226</sup> See *id.* §§ 1.65; 1.2105(b)(4). For purposes of sections 1.65 and 1.2105(b)(4), an applicant's FCC Form 175 and associated attachments will remain pending until the release of a public notice announcing the close of the auction. However, we remind Auction 105 applicants that they remain subject to the section 1.2105(c) prohibition of certain communications until the post-auction deadline for making down payments on winning bids. See *supra* Part II.G.2 (Prohibition Applies Until Down Payment Deadline). An applicant's post-auction application (FCC Form 601) is considered pending from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court. 47 CFR § 1.65.

<sup>227</sup> See 47 CFR §§ 1.65; 1.2105(b)(4). We remind each applicant of its duty to continuously maintain the accuracy of information submitted in its auction application. See, e.g., *Vermont Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14130, 14134, para. 11 (EB 2011).

filing window may continue to make modifications as often as necessary until the close of that window; however, the applicant must re-certify and re-submit its FCC Form 175 before the close of the initial filing window to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date.<sup>228</sup>

98. An applicant will also be allowed to modify its FCC Form 175 in the Auction Application System, except for certain fields,<sup>229</sup> during the resubmission filing window and after the release of the public notice announcing the qualified bidders for an auction. During these times, if an applicant needs to make permissible minor changes to its FCC Form 175 or must make changes in order to maintain the accuracy and completeness of its application pursuant to sections 1.65 and 1.2105(b)(4), then it must make the change(s) in the Auction Application System and re-certify and re-submit its application to confirm and effect the change(s).

99. An applicant's ability to modify its FCC Form 175 in the Auction Application System will be limited between the closing of the initial filing window and the opening of the application resubmission filing window, and between the closing of the resubmission filing window and the release of the public notice announcing the qualified bidders for an auction. During these periods, an applicant will be able to view its submitted application, but will be permitted to modify only the applicant's address, responsible party address, and contact information (e.g., name, address, telephone number, etc.) in the Auction Application System. An applicant will not be able to modify any other pages of the FCC Form 175 in the Auction Application System during these periods. If, during these periods, an applicant needs to make other permissible minor changes to its FCC Form 175, or changes to maintain the accuracy and completeness of its application pursuant to sections 1.65 and 1.2105(b)(4), then the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 via email to [auction105@fcc.gov](mailto:auction105@fcc.gov). The email summarizing the changes must include a subject line referring to Auction 105 and the name of the applicant, for example, "Re: Changes to Auction 105 Auction Application of XYZ Corp." Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently modify, certify, and submit its FCC Form 175 application(s) electronically in the Auction Application System once it is again open and available to applicants.

100. Applicants should also note that even at times when the Auction Application System is open and available to applicants, the system will not allow an applicant to make certain other permissible changes itself (e.g., correcting a misstatement of the applicant's legal classification).<sup>230</sup> If an applicant needs to make a permissible minor change of this nature, then it must submit a written request by email to the Auctions Division Chief, via [auction105@fcc.gov](mailto:auction105@fcc.gov) requesting that the Commission manually make the change on the applicant's behalf. Once Commission staff has informed the applicant that the change has been made in the Auction Application System, the applicant must then re-certify and re-submit its FCC Form 175 in the Auction Application System to confirm and effect the change(s).

101. As with filing the FCC Form 175, any amendment(s) to the application and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority and that the contents of the amendment or statement of fact are true and correct.

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<sup>228</sup> We advise applicants to retain a copy of this confirmation page.

<sup>229</sup> Specifically, an applicant will not be allowed to modify electronically in the Auction Application System the applicant's legal classification, the applicant's name, or the certifying official.

<sup>230</sup> This is the case because certain fields on the FCC Form 175 will no longer be changeable by the applicant after the initial filing window closes.

102. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System. Further, as discussed above, parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate section 1.2105(c) or the limited information procedures adopted for Auction 105. An applicant seeking to submit, outside of the Auction Application System, information that might reflect non-public information, such as an applicant's county selection(s), upfront payment amount, or bidding eligibility, should consider including in its email a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition on certain communications pursuant to section 1.2105(c).

103. Questions about FCC Form 175 amendments should be directed to the Auctions Division at (202) 418-0660.

### III. PREPARING FOR BIDDING IN AUCTION 105

#### A. Due Diligence

104. We remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in Auction 105. **The Commission makes no representations or warranties about the use of this spectrum or these licenses for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction.<sup>231</sup> A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.**

105. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, we encourage each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 105 license, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. We urge each applicant to inspect any prospective sites for communications facilities located in, or near, the geographic area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act (NEPA),<sup>232</sup> the National Historic Preservation Act (NHPA),<sup>233</sup> and other environmental statutes.<sup>234</sup>

106. We also encourage each applicant in Auction 105 to continue to conduct its own research throughout the auction in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction. Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in an auction. The due diligence considerations mentioned in this Public Notice do not constitute an exhaustive list of steps that should be undertaken prior to participating in Auction 105. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

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<sup>231</sup> See, e.g., *Cellco P'ship v. FCC*, 700 F.3d 534, 542 (D.C. Cir. 2012); *Celtronix Telemetry, Inc. v. FCC*, 272 F.3d 585, 589 (D.C. Cir. 2001) (citing 47 U.S.C. § 309(j)(6)(D)).

<sup>232</sup> 42 U.S.C. § 4321 *et seq.*

<sup>233</sup> 54 U.S.C. § 300101 *et seq.*

<sup>234</sup> 47 CFR Chapter 1, Part 1, Subpart I.

107. **Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the licenses available in Auction 105.** Each potential bidder is responsible for undertaking research to ensure that any licenses won in the auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

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

## **B. Licensing Considerations**

### **1. Incumbency and Sharing Issues**

109. Potential applicants in Auction 105 should consider carefully the implications of the Commission's sharing scheme for the 3550-3650 MHz band. The 3550-3700 MHz band (collectively, the 3.5 GHz band) is governed by a three-tiered spectrum authorization framework. The three tiers of authorization are: Incumbent Access, Priority Access, and General Authorized Access (GAA). SASs will facilitate sharing among the three tiers of authorized users. Incumbent users receive protection from Priority Access Licensees and GAA users, while Priority Access Licensees receive protection from GAA users. The three-tiered structure is designed to accommodate a variety of commercial uses on a shared basis with incumbent federal and non-federal uses of the band. The Citizens Broadband Radio Service includes Priority Access Licensees in the 3550-3650 MHz band and GAA users throughout the 3.5 GHz band.

110. In addition to the spectrum authorization framework, potential applicants in Auction 105 should consider carefully the operations of incumbent licensees currently in the 3550-3650 MHz portion of the 3.5 GHz band when developing business plans, assessing market conditions, and evaluating the availability of equipment for Citizens Band Radio Service operations. Each applicant should follow closely releases from the Commission concerning these issues<sup>235</sup> and consider carefully the technical and economic implications for commercial use of the 3550-3650 MHz band. Each applicant should also be aware of the exclusion zones for federal radiolocation sites posted on the National Telecommunications and Information Administration (NTIA) website.<sup>236</sup>

111. Table 1 shows the tiered structure of the 3550-3650 MHz band.

**Table 1: 3550-3650 MHz Band Tiered Structure**

<b>3550 MHz</b>	<b>3600 MHz</b>	<b>3650 MHz</b>
<b>Tier 1: Federal Radiolocation and Federal Aeronautical Radionavigation</b>		
	<b>Tier 1: Non-Federal Grandfathered</b>	

<sup>235</sup> See, e.g., GN Docket No. 17-258 and 12-354, WT Docket No. 12-354, which include Orders and Public Notices related to the commercial operations in the 3.5 GHz band.

<sup>236</sup> 47 CFR § 96.15(a)(3). The exclusion zones are shown at <https://www.ntia.doc.gov/category/3550-3650-mhz>. NTIA will notify the Commission in writing if and when the list of radiolocation sites is updated. See 47 CFR § 96.15(a)(3). See, e.g., Letter from Charles Cooper, Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration, to Ronald T. Repasi, Acting Chief, Office of Engineering and Technology, FCC and Donald Stockdale, Jr., Chief, Wireless Telecommunications Bureau, FCC (Jan. 22, 2020) (GN Docket No. 17-258).



Commission authorized operation prior to or granted an application filed prior to July 23, 2015, and if the FSS licensee constructed the subject earth station(s) within 12 months of the initial authorization.<sup>243</sup> Any new FSS (space-to-Earth) earth stations in the 3600-3650 MHz band assigned after July 23, 2015, are authorized on a secondary basis.<sup>244</sup> Regardless of primary or secondary status, all non-Federal FSS (space-to-Earth) operations in the 3600-3650 MHz band are limited to international inter-continental systems and subject to case-by-case electromagnetic compatibility analysis.<sup>245</sup>

116. GAA users may operate in the 3550-3700 MHz band,<sup>246</sup> but are not guaranteed protection from interference.<sup>247</sup> GAA users may operate on any frequencies not in use by Priority Access Licensees (in the 3550-3650 MHz band) or Tier 1 users (across the 3.5 GHz band).<sup>248</sup> The GAA tier is licensed-by-rule to permit open, flexible access to the band for the widest possible group of potential users.<sup>249</sup>

## 2. International Coordination

117. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of the Citizens Broadband Radio Service frequencies they acquire in Auction 105 are subject to current and future agreements with the governments of Canada and Mexico.<sup>250</sup> Our rules require the SAS Administrators to implement the terms of any such agreements.<sup>251</sup>

118. The Commission routinely works with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas near Canada and Mexico. Until such time as any adjusted agreements, as needed, between the United States, Mexico, and/or Canada can be agreed to, operations in the 3550-3650 MHz band must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.

## 3. Environmental Review Requirements

119. Licensees must comply with the Commission's rules for environmental review under the NEPA,<sup>252</sup> the NHPA,<sup>253</sup> and other environmental statutes.<sup>254</sup> Licensees and other applicants that propose to build certain types of communications facilities for licensed service must follow Commission procedures implementing obligations under NEPA and NHPA prior to constructing the facilities.<sup>255</sup>

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<sup>243</sup> 47 CFR § 2.106, note US107(a); *2015 Report and Order*, 30 FCC Rcd at 3973, para 37.

<sup>244</sup> 47 CFR § 2.106, note US107(b); *2015 Report and Order*, 30 FCC Rcd at 3973, para 37.

<sup>245</sup> 47 CFR § 2.106, note US245.

<sup>246</sup> 47 CFR § 96.11(a)(1); *2015 Report and Order*, 30 FCC Rcd at 4011, para. 159.

<sup>247</sup> 47 CFR §§ 96.35(c)-(d).

<sup>248</sup> 47 CFR §§ 96.11, 96.35; *2015 Report and Order*, 30 FCC Rcd at 3982, para. 67.

<sup>249</sup> 47 CFR § 96.33; *2015 Report and Order*, 30 FCC Rcd at 4011, paras. 159-60.

<sup>250</sup> *See* 47 CFR § 96.19.

<sup>251</sup> 47 CFR § 96.53(n).

<sup>252</sup> 42 U.S.C. § 4321 *et seq.*

<sup>253</sup> 54 U.S.C. § 300101 *et seq.*

<sup>254</sup> 47 CFR Chapter 1, Part 1, Subpart I.

<sup>255</sup> *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Second Report and Order, 33 FCC Rcd 3102 (2018) (amending the Commission's rules concerning the types of deployments that are subject to review pursuant to the National Historic Preservation Act and the National Environmental Policy Act).

Under the NEPA, a licensee or applicant must assess if certain environmentally sensitive conditions specified in the Commission's rules are relevant to the proposed facilities, and prepare an environmental assessment (EA) when applicable.<sup>256</sup> If an EA is required, then facilities may not be constructed until environmental processing is completed. Under NHPA, a licensee or applicant must follow the procedures in section 1.1320 of the Commission's rules,<sup>257</sup> the *Nationwide Programmatic Agreement for Collocation of Wireless Antennas* and the *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*.<sup>258</sup> Compliance with section 106 of the NHPA requires tribal consultation, and if construction of the communications facilities would have adverse effects on historic or tribally significant properties, an EA must be prepared.<sup>259</sup>

#### 4. Spectrum Aggregation Limits

120. We remind bidders of the Commission's spectrum aggregation limits applicable to the 3.5 GHz band. Priority Access Licensees may aggregate up to four PALs in any county license area at any given time.<sup>260</sup> For purposes of applying this spectrum aggregation limit on Priority Access Licensees, the criteria in section 20.22(b) will apply in order to attribute partial ownership and other interests.<sup>261</sup> The spectrum aggregation limit of 40 megahertz will ensure the availability of PALs for at least two users in the counties where there is the greatest likelihood of high demand for such spectrum.<sup>262</sup>

##### C. Bidder Education

121. Before the opening of the short-form filing window for Auction 105, detailed educational information will be provided in various formats to would-be participants on the Auction 105 web page. Specifically, we direct OEA to provide various materials on the pre-bidding processes in advance of the opening of the short-form application window, beginning with the release of step-by-step instructions for completing the FCC Form 175. In addition, OEA will provide an online application procedures tutorial for the auction, covering information on pre-bidding preparation, completing short-form applications, and the application review process.

122. In advance of the start of the mock auction, OEA will provide educational materials on the bidding procedures for Auction 105, beginning with release of a user guide for the bidding system and bidding system file formats, followed by an online bidding procedures tutorial. We recognize the importance of these materials to applicants' and bidders' comprehension of the bidding procedures we adopt herein. Accordingly, the educational materials shall be released as soon as reasonably possible to provide potential applicants and bidders with time to understand them and ask questions before bidding begins.

123. We believe that parties interested in participating in Auction 105 will find the interactive, online tutorials an efficient and effective way to further their understanding of the application and bidding processes. The online tutorials will allow viewers to navigate the presentation outline, review written notes, listen to audio of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting

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<sup>256</sup> 47 CFR § 1.1307. This assessment may require consultation with expert agencies having environmental responsibilities, such as U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency, among others.

<sup>257</sup> 47 CFR § 1.1320.

<sup>258</sup> 47 CFR Part 1, App. B and C.

<sup>259</sup> 47 CFR § 1.1307.

<sup>260</sup> 47 CFR § 96.31(a).

<sup>261</sup> 47 CFR § 96.31(b).

<sup>262</sup> 2015 Report and Order, 30 FCC Rcd at 3999, para. 119.

Commission staff, and screen shots of the online application and bidding systems. The online tutorials will be accessible in the Education section of the Auction 105 website at [www.fcc.gov/auction/105](http://www.fcc.gov/auction/105). Once posted, the tutorials will be accessible anytime.

**D. Short-Form Applications: Due Before 6:00 p.m. ET on April 9, 2020**

124. In order to be eligible to bid in Auction 105, an applicant must first follow the procedures to submit a short-form application (FCC Form 175) electronically via the Auction Application System, following the instructions set forth in the FCC Form 175 Instructions. The short-form application will become available with the opening of the initial filing window and must be submitted **prior to 6:00 p.m. ET on April 9, 2020. Late applications will not be accepted.** No application fee is required.

125. Applications may be filed at any time beginning at noon ET on March 26, 2020, until the filing window closes at 6:00 p.m. ET on April 9, 2020. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline on April 9, 2020.

126. An applicant must always click on the CERTIFY & SUBMIT button on the “Certify & Submit” screen to successfully submit its FCC Form 175 and any modifications; otherwise, the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 is provided in the FCC Form 175 Instructions. Applicants requiring technical assistance should contact FCC Auctions Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET.<sup>263</sup> In order to provide better service to the public, all calls to Technical Support are recorded.

**E. Application Processing and Minor Modifications**

**1. Public Notice of Applicant’s Initial Application Status and Opportunity for Minor Modifications**

127. After the deadline for filing auction applications, the Commission will process all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding. OEA will issue a public notice with applicants’ initial application status, identifying: (1) those that are complete and (2) those that are incomplete or deficient because of defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications and a paper copy will be sent by overnight delivery to the contact address listed in the FCC Form 175 for each applicant. In addition, each applicant with an incomplete application will be sent information on the nature of the deficiencies in its application, along with the name and phone number of a Commission staff member who can answer questions specific to the application.

128. After the initial application filing deadline on April 9, 2019, applicants can make only minor modifications to their applications.<sup>264</sup> Major modifications (e.g., change of county, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant’s legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted.<sup>265</sup> After the

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<sup>263</sup> We caution applicants that the Commission periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the weekends, every effort is made to minimize any downtime to auction-related systems, including the Auction Application System. However, there are occasions when auction-related systems may be temporarily unavailable.

<sup>264</sup> See *supra* Part II.K (Modifications to FCC Form 175).

<sup>265</sup> 47 CFR § 1.2105(b); see also *Two Way Radio*, 14 FCC Rcd at 12039, para. 8.

deadline for resubmitting corrected applications, an applicant will have no further opportunity to cure any deficiencies in its application or provide any additional information that may affect Commission staff's ultimate determination of whether and to what extent the applicant is qualified to participate in Auction 105.

129. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies Commission staff in writing that another representative is authorized to speak on the applicant's behalf.<sup>266</sup> Authorizations may be sent by email to [auction105@fcc.gov](mailto:auction105@fcc.gov).

## **2. Public Notice of Applicant's Final Application Status After Upfront Payment Deadline**

130. After Commission staff review resubmitted applications and upfront payments, OEA will release a public notice identifying applicants that have become qualified bidders for the auction. A *Qualified Bidders Public Notice* will be issued before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely filed and complete and that have made a sufficient upfront payment.

### **F. Upfront Payments**

131. In order to be eligible to bid in Auction 105, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be submitted before 6:00 p.m. ET on May 21, 2020. After completing its short-form application, an applicant will have access to an electronic pre-filled version of the FCC Form 159. An accurate and complete FCC Form 159 must accompany each payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all the information on the form, including payment amounts, is accurate. Detailed instructions for completing FCC Form 159 for Auction 105 will be released by OEA concurrently with the release of this Public Notice.

#### **1. Making Upfront Payments by Wire Transfer for Auction 105**

132. Upfront payments for Auction 105 must be wired to, and will be deposited in, the U.S. Treasury.<sup>267</sup>

133. Wire transfer payments for Auction 105 must be received before 6:00 p.m. ET on May 21, 2020.<sup>268</sup> No other payment method is acceptable.<sup>269</sup> To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules and other specific bank wire transfer requirements, such as an in-person written request before a specified time of day) with their bankers several days before they plan to make the wire transfer, and must allow sufficient time for the transfer to be initiated and completed before the deadline. The following information will be needed:

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<sup>266</sup> In no event, however, will the Commission send auction registration materials to anyone other than the contact person listed on the applicant's FCC Form 175 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 175. See *infra* Part III.G (Auction Registration).

<sup>267</sup> See Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Division P, Title I, 132 Stat. 348, 1080 (2018). For more information on calculating upfront payments, and the impact of upfront payments on bidding eligibility, see *infra* Part III.F.3 (Upfront Payments and Bidding Eligibility).

<sup>268</sup> An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the proper account at the U.S. Treasury.

<sup>269</sup> The Commission will not accept checks, credit cards, or automated clearing house (ACH) payments.

ABA Routing Number: 021030004  
Receiving Bank: TREAS NYC  
33 Liberty Street  
New York, NY 10045

BENEFICIARY: FCC  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

ACCOUNT NUMBER: 827000001001

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

APPLICANT FCC REGISTRATION NUMBER (FRN): (use the same FRN as used on the applicant’s FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: “U105”)

NOTE: The beneficiary account number (BNF Account Number) is specific to the upfront payments for Auction 105. Do not use a BNF Account Number from a previous auction.

134. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must print and fax a completed FCC Form 159 (Revised 2/03) to the FCC at (202) 418-2843. Alternatively, the completed form can be scanned and sent as an attachment to an email to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov). On the fax cover sheet or in the email subject header, write “Wire Transfer – Auction Payment for Auction 105”. To meet the upfront payment deadline, an applicant’s payment must be credited to the Commission’s account for Auction 105 before the deadline.<sup>270</sup>

135. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Form 159. An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer.<sup>271</sup> **Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to the U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account.** To receive confirmation from Commission staff, contact Scott Radcliffe of the Office of Managing Director’s Revenue & Receivables Operations Group/Auctions at (202) 418-7518 or Theresa Meeks at (202) 418-2945.

136. Please note the following information regarding upfront payments:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction 105 go to an account number different from the accounts used in previous FCC auctions.

137. Failure to deliver a sufficient upfront payment as instructed herein by the upfront payment deadline will result in dismissal of the short-form application and disqualification from participation in the auction.

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<sup>270</sup> See, e.g., *Four Corners Broadcasting, LLC – Request for Waiver of Section 1.2106(a), Closed Broadcast Auction 88*, Letter Order, 25 FCC Rcd 9046 (WTB 2010).

<sup>271</sup> See, e.g., *Spectrum Acquisitions, Inc. Application to Participate in Auction 73 – Request for Waiver of Upfront Payment Deadline*, Letter Order, 23 FCC Rcd 4765 (WTB 2008).

## 2. Completing and Submitting FCC Form 159

138. The following information supplements the standard instructions for FCC Form 159 (Revised 2/03) and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction 105. Applicants need to complete FCC Form 159 carefully, because:

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

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

Block Number	Required Information
1	LOCKBOX # - Leave Blank
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same name as in FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's 10-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
21	Applicant FRN (Complete only if applicant is different than payer) – Enter the applicant's 10-digit FRN registered in CORES.
24A	Payment Type Code - Enter "U105".
25A	Quantity - Enter the number "1".
26A	Fee Due - Amount of Upfront Payment
27A	Total Fee - Will be the same amount as 26A.
28A	FCC Code 1 - Enter the number "105" (indicating Auction 105).

### NOTES:

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

- Since credit card payments will not be accepted for upfront payments for an auction, leave Section E blank.

### 3. Upfront Payments and Bidding Eligibility

140. The Commission has authority to determine appropriate upfront payments for each license being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar licenses.<sup>272</sup> An upfront payment is a refundable deposit made by each applicant seeking to participate in bidding to establish its eligibility to bid on licenses. Upfront payments that are related to the inventory of licenses being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding.<sup>273</sup>

141. Applicants that are former defaulters must pay upfront payments 50% greater than non-former defaulters.<sup>274</sup> For purposes of classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included.<sup>275</sup>

142. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the generic blocks on which it will bid. We adopt our proposal to set upfront payments based on MHz-pops, and that the amount of the upfront payment submitted by an applicant will determine its initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round.<sup>276</sup> In order to bid for a block, qualified bidders must have a current eligibility level that meets or exceeds the number of bidding units assigned to that generic block in a county. **At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one block in one of the counties selected on its FCC Form 175 for Auction 105, or else the applicant will not become qualified to participate in the auction.** The total upfront payment does not affect the total dollar amount the bidder may bid.

143. In the *Auction 105 Comment Public Notice*, we proposed to require applicants to submit upfront payments based on \$0.01 per MHz-pop, with a minimum of \$500 per county.<sup>277</sup> No commenters objected to this proposal, and it is adopted.<sup>278</sup> The upfront payment amount per block in each county is set forth in the "Attachment A" file. The upfront payment amounts are approximately half the minimum opening bid amounts, described in Part IV.G.1, below.

144. We also adopt our proposal to assign each generic block in a county a specific number of bidding units, equal to one bidding unit per \$10 of the upfront payment.<sup>279</sup> The number of bidding units for one block in a given county is fixed, since it is based on the MHz-pops in the block and does not change during the auction as prices change. Thus, in calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to bid in any single round,

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<sup>272</sup> See *Auction Procedures Consolidation Order*, 12 FCC Rcd at 5697-98, para. 16; see also *Part 1 Third Report and Order*, 13 FCC Rcd at 425, para. 86; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-75.

<sup>273</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-76.

<sup>274</sup> See *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-18, paras. 40-43; 47 CFR § 1.2106(a); *supra* Part II.I (Provisions Regarding Former and Current Defaulters).

<sup>275</sup> For this purpose, the term "controlling interest" is defined in 47 CFR § 1.2105(a)(4)(i).

<sup>276</sup> See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9226-27, paras. 39-41.

<sup>277</sup> *Id.* at 9226, para. 39.

<sup>278</sup> The proposal was supported by the Blooston Rural Carriers. Blooston Comments at 5.

<sup>279</sup> See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 34 FCC Rcd at 9227, para. 40.

and submit an upfront payment amount for the auction covering that number of bidding units.<sup>280</sup> In order to make this calculation, an applicant should add together the bidding units for the number of blocks in counties on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.**

**Table 1: Upfront Payments, Bidding Eligibility, and Bidding Flexibility Example**

County	Bidding Units	Upfront Payment
Cook, IL	51,900	\$519,000
Lake, IN	5,000	\$50,000

If a bidder wishes to bid on one block in both of the above counties in a round, it must have selected both counties on its FCC Form 175 and purchased at least 56,900 bidding units (51,900 + 5,000) of bidding eligibility. If a bidder only wishes to bid on a block in one of these counties, but not both, purchasing 51,900 bidding units would meet the eligibility requirement for a block in either county. The bidder would be able to bid on a block in either county, but not both at the same time. If the bidder purchased only 5,000 bidding units, the bidder would have enough eligibility to bid for a block in Lake County but not for one in Cook County.

145. If an applicant is a former defaulter, it must calculate its upfront payment for the maximum amount of generic blocks in each county on which it plans to bid by multiplying the number of bidding units on which it wishes to be active by 1.5.<sup>281</sup> In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.<sup>282</sup>

#### **G. Auction Registration**

146. All qualified bidders for Auction 105 are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight delivery. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids.

147. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder for Auction 105 that has not received this mailing by noon on June 17, 2020, should call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is

<sup>280</sup> In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency, *see* 47 CFR § 1.2106(a), or has submitted an upfront payment that exceeds the total amount of bidding units associated with the licenses or license areas it selected on its FCC Form 175.

<sup>281</sup> 47 CFR § 1.2106(a).

<sup>282</sup> If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one generic block in a county, the applicant will not be eligible to participate in Auction 105. *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses et al.*, MM Docket No. 97-234, Report and Order, 13 FCC Rcd 15920, 15979-80, para. 153 (1998). The applicant, however, will retain its status as an applicant in Auction 105 and will remain subject to 47 CFR § 1.2105(c). *See Star Wireless, LLC*, Forfeiture Order, 19 FCC Rcd 18626, 18628, para. 4 & n.19 (EB 2004), *granted in part sub nom. Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007), *petition for review denied, Star Wireless, LLC v. FCC*, 522 F.3d 469 (D.C. Cir. 2008).

critical to participating in the auction, and each applicant is responsible for ensuring it has received all the registration materials.

148. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacements. To request replacement of these items, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338-2868.

#### **H. Remote Electronic Bidding via the FCC Auction Bidding System**

149. Bidders will be able to participate in Auction 105 over the Internet using the FCC Auction Bidding System (bidding system).<sup>283</sup> Only qualified bidders are permitted to bid. Each authorized bidder must have his or her own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. A bidder cannot bid without his or her SecurID tokens. **For security purposes, the SecurID® tokens and a telephone number for bidding questions are only mailed to the contact person at the contact address listed on the FCC Form 175.** Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 105. Please note that the SecurID® tokens can be recycled, and the Commission encourages bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once the auction has ended.

**150. The Commission makes no warranties whatsoever, and shall not be deemed to have made any warranties, with respect to the bidding system, including any implied warranties of merchantability or fitness for a particular purpose. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of use, revenue, or business information, or any other direct, indirect, or consequential damages) arising out of or relating to the existence, furnishing, functioning, or use of the bidding system. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the bidding system.**

151. To the extent an issue arises with the bidding system itself, the Commission will take all appropriate measures to resolve such issues quickly and equitably. Should an issue arise that is outside the bidding system or attributable to a bidder, including, but not limited to, a bidder's hardware, software, or Internet access problem that prevents the bidder from submitting a bid prior to the end of a round, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Similarly, if an issue arises due to bidder error using the bidding system, the Commission shall have no obligation to resolve or remediate such an issue on behalf of the bidder. Accordingly, after the close of a bidding round, the results of bid processing will not be altered absent evidence of any failure in the bidding system.

#### **I. Mock Auction**

152. All qualified bidders will be eligible to participate in a mock auction, which will begin on June 22, 2020.<sup>284</sup> The mock auction will enable qualified bidders to become familiar with the bidding system and to practice submitting bids prior to the auction. We recommend that all qualified bidders,

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<sup>283</sup> Telephonic bidding will not be available for Auction 105 because it would not be feasible given the number of county-based licenses and the file upload required to submit bids. However, the Auction Bidder Line will be available during the mock auction and actual auction for bidder questions. The Auction Bidder Line telephone number will be supplied in the registration materials sent to each qualified bidder.

<sup>284</sup> Only those bidders that are qualified to participate in Auction 105 will be eligible to participate in the mock auction.

including all their authorized bidders, participate to assure that they can log in to the bidding system and gain experience with the bidding procedures. Participating in the mock auction may reduce the likelihood of a bidder making a mistake during the auction. Details regarding the mock auction will be announced in the *Qualified Bidders Public Notice* for Auction 105.

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

153. At any time before or during the bidding process, OEA, in conjunction with the Bureau, may delay, suspend, or cancel bidding in Auction 105 in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.<sup>285</sup> This approach has proven effective in resolving exigent circumstances in previous auctions and we find no reasons to depart from it here. OEA will notify participants of any such delay, suspension, or cancellation by public notice and/or through the bidding system's announcement function. If the bidding is delayed or suspended, then OEA may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. We emphasize that OEA and the Bureau will exercise this authority at their discretion.

#### **K. Fraud Alert**

154. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 105 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service, Federal Trade Commission (FTC), Securities and Exchange Commission (SEC), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

155. Information about deceptive telemarketing investment schemes is available from the FCC as well as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from the following sources:

- the FCC's Consumer Call Center at (888) 225-5322 or by visiting [www.fcc.gov/general/frauds-scams-and-alerts-guides](http://www.fcc.gov/general/frauds-scams-and-alerts-guides)
- the FTC at (877) FTC-HELP ((877) 382-4357) or by visiting [www.consumer.ftc.gov/articles/0238-investment-risks](http://www.consumer.ftc.gov/articles/0238-investment-risks)
- the SEC at (202) 942-7040 or by visiting <https://www.sec.gov/investor>

156. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (202) 835-0618.

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<sup>285</sup> See 47 CFR § 1.2104(i).

#### IV. BIDDING PROCEDURES

##### A. Clock Auction Design

157. We will conduct Auction 105 using an ascending clock auction design, in which bidders indicate their demands for generic license blocks in specific counties, generally as proposed in the *Auction 105 Comment Public Notice*. Under the clock auction format we adopt, the auction will proceed in a series of rounds, with bidding being conducted simultaneously for all spectrum blocks in all counties available in the auction. During each bidding round, the bidding system will announce a per-block clock price in each county, and qualified bidders will submit, for each county for which they wish to bid, the number of blocks they seek at the clock prices associated with the current round. Bidding rounds will be open for predetermined periods of time. Bidders will be subject to activity and eligibility rules that govern the pace at which they participate in the auction.

158. In Auction 105, in each county, the clock price for a generic license block will increase from round to round if bidders indicate total demand in that county that exceeds the number of blocks available. The bidding rounds will continue until, for all counties, the total number of blocks that bidders demand does not exceed the supply of available blocks. At that point, those bidders indicating demand for a block at the final price will be deemed winning bidders. No assignment phase will be held to assign frequency-specific licenses, as was done in previous spectrum auctions that used a clock format,<sup>286</sup> because the frequencies associated with Priority Access Licensees' PALs will be dynamically assigned by SASs.<sup>287</sup> No commenting parties object to the ascending clock auction structure.

159. The specific bidding procedures that we adopt differ from our proposed procedures in that we decline to allow a bidder to elect to bid at a Cellular Market Area (CMA) level for more populous CMAs; instead, all bidding will be on a county-level only. In declining to adopt CMA-level bidding, the auction format for Auction 105 follows more closely the clock auction format used in Auctions 1002, 102, and 103. We do, however, adopt our proposal to modify the bidding activity rules that we used in our prior clock auctions to allow an "upper activity limit," which will help provide a safeguard against a bidder losing bidding eligibility under certain circumstances.

160. To reflect the procedures we adopt here, we direct OEA, in conjunction with the Bureau, to prepare and release an updated technical guide that provides the mathematical details of the adopted auction design and algorithms for Auction 105. The information in the updated technical guide, which is available in the Education section of the Auction 105 website ([www.fcc.gov/auction/105](http://www.fcc.gov/auction/105)), supplements our decisions in this Public Notice.

##### B. Generic License Blocks with County-Level Bidding

161. In accordance with the *2018 3.5 GHz Report and Order* and consistent with the rules governing Citizens Broadband Radio Service, 70 megahertz of spectrum designated for PALs in the 3550-3650 MHz band will be licensed in seven generic 10-megahertz blocks by county.<sup>288</sup> Accordingly,

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<sup>286</sup> See *Auction 1000 Procedures Public Notice*, 30 FCC Rcd at 9086-9094, paras. 236-56; *Auctions 101-102 Procedures Public Notice*, 33 FCC Rcd at 7655-7657, paras. 268-78; *Auction 103 Procedures Public Notice* 34 FCC Rcd at 5596-99, paras 218-235.

<sup>287</sup> 47 CFR § 96.13.

<sup>288</sup> 47 CFR § 96.13; *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10643, para. 82. For purposes of this auction, counties shall be defined using the United States Census Bureau's data reflecting county legal boundaries and names valid through January 1, 2017. See 47 CFR § 96.3; see also *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10607, para. 19 & n.71. Information regarding PALs, including: (1) a map and list of 2017 counties, (2) a map and list of the proposed 172 CMA-level bidding areas, and (3) an interactive map of both counties and CMA-level biddings areas, can be found at <https://www.fcc.gov/35-ghz-band-overview>. We will not be issuing Priority Access Licenses in the Gulf of Mexico. See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9216, para. 2 & n.2.

in the auction, seven generic block licenses will be available for bidding in each county, for a total of 22,631 PALs.

162. *Limit on number of blocks per bidder.* The bidding system will limit to four the quantity of blocks that a bidder can demand in any given area at any point in the auction. This implements the Commission's rules limiting the aggregation for PALs to 40 megahertz (i.e., four PALs) in any geographic area at any point in time.<sup>289</sup> Therefore, in each bidding round, a bidder will have the opportunity to bid for up to four generic blocks of spectrum per county, subject to the eligibility rules.

163. *Bidding at the county level only; no CMA-level bidding.* In the *Auction 105 Comment Public Notice*, we proposed procedures that would allow bidders to bid at a CMA level for blocks in counties that comprise more populous CMAs, but we decline to adopt that proposal and associated proposed procedures.<sup>290</sup>

164. Under our proposal, prior to the auction bidders would have been able to elect to bid on a CMA-by-CMA level for PALs in those CMAs that are classified as Metropolitan Statistical Areas (MSAs) and that incorporate multiple counties.<sup>291</sup> Those electing to bid at the CMA level would not be permitted to bid at the county level in that CMA, and vice versa.<sup>292</sup> Several commenters raise concerns that the proposed bidding procedures would complicate the auction. Verizon, for example, asserts that the CMA-level bidding proposal "would create a complex and uncertain environment that both CMA-level and county-level bidders may find difficult to navigate[.]"<sup>293</sup> Others agree, expressing concern that this supposed complexity could deter smaller entities from participating in the auction.<sup>294</sup> Still others oppose CMA-level bidding based on additional perceived disadvantages to county-level bidders, particularly smaller entities interested in serving rural counties.<sup>295</sup> Meanwhile, others claim that CMA-level bidding could lead to inefficient outcomes.<sup>296</sup>

165. Although we recognize that the bidding rules would be significantly simpler with county-level bidding only, we are not persuaded that the additional complexities created by the CMA-level

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<sup>289</sup> 47 CFR § 96.31; *see also* 2018 3.5 GHz Report and Order, 33 FCC Rcd at 10653-54, paras. 105-107; 2015 3.5 GHz Report and Order, 30 FCC Rcd at 3998, para. 117.

<sup>290</sup> *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9224-25, paras. 29-33. In conjunction with the proposal to permit CMA-level bidding, we proposed a limited exception to the "no excess supply rule." *Id.* at 9232, para. 69.

<sup>291</sup> *Id.* at 9224-25, paras. 30-31.

<sup>292</sup> *Id.* at 9224, para. 29.

<sup>293</sup> Verizon Comments at 4-5.

<sup>294</sup> *See* Southern Linc Comments at 5 (asserting that the proposed rules are so complex that "there can be little doubt that the rules alone will be sufficient to disincite new entrants and smaller bidders from competing in CMAs where CMA-level bidding is allowed."); SCE Comments at 2 ("The CMA bidding process adds significantly to the already complex bidding process of this auction . . . . The greater the complexity and inscrutability of the auction procedures, the more ordinary citizens are deterred from participating."); GeoLinks Reply at 3 (arguing that the proposal is "overly complex" and that the procedures "may lead to confusion or a lack of participation in the auction."); WISPA Comments at 5 ("CMA-level bidding combined with county-level bidding would create bidding complexity favoring those large companies that can afford to engage the limited number of economists and game theorists to advise them."); *see also* EWA Reply at 3; NCTA Reply at 4; RWA Reply at 4.

<sup>295</sup> *See* API Comments at 1-2; Blooston Comments at 4; NCTA Comments at 11; NTCA Comments at 3; RWA Comments at 3-4; SCE Comments at 2; CenturyLink Reply at 2-3; UTC Reply at 1; CCA Comments at 4-7; DSA Comments at 8-10; GeoLinks Comments at 2-4; NRECA Comments at 3-4; NA-OTI Comments at 5-8; Southern Linc Comments at 3-7; WISPA Comments at 3-6; IIoT Reply at 3-4; RWA Reply at 3-4.

<sup>296</sup> NCTA Comments at 9-11; CCA Comments at 7-9; OTI Comments at 7-8; Southern Linc Comments at 7-8; Verizon Comments at 4-5; SCE Comments at 1.

bidding procedures would be so harmful as to warrant rejection of the proposal if the record demonstrated that the benefits of CMA-level bidding outweighed the harms in this specific instance. We note, however, that no commenter describes any substantial benefits of CMA-level bidding, and several commenters assert the opposite—that the proposal would provide little benefit, even to those interested in obtaining licenses in every county within a CMA.<sup>297</sup> Commenters observe that a bidder interested in assembling aggregations of multiple counties will be able to do so without the option of CMA-level bidding, and that, as Blooston states, “county-based bidding for all counties should not be unduly burdensome to large bidders.”<sup>298</sup> Absent additional support for the benefits of our proposed procedures to implement CMA-level bidding, we see no reason to implement bidding procedures that are any more complicated than necessary.

166. Finally, T-Mobile objects to our proposed procedures for CMA-level bidding because, under the proposal, bidders not electing CMA-level bidding would have bid at the county level for counties included in a CMA that is subject to CMA-level bidding. T-Mobile argues that allowing both types of bids in the same area would make it possible for different entities to obtain licenses within a single CMA, thereby increasing the potential for interference issues across users.<sup>299</sup> T-Mobile instead suggests that we permit only CMA-level bidding in the top 50 CMAs that are also MSAs and that include more than one county, and permit only county-level bidding in all other areas.<sup>300</sup> In the *2018 3.5 GHz Report and Order*, however, the Commission decided to adopt counties as the basic licensing area for PALs blocks, and we regard T-Mobile’s suggestion to make the CMA the minimum bidding area for the top-50 CMAs as inconsistent with that decision.<sup>301</sup> In stating that a form of package bidding would be considered during the pre-auction process, the Commission did not intend to prevent bidders from bidding on individual counties within the CMAs subject to CMA-level bidding, given that package bidding is fundamentally a way to allow bidders to indicate whether a group of items should be won as a group or as individual pieces. Moreover, the T-Mobile proposal would completely prevent bidders interested in obtaining county-level licenses for fewer than all of the counties in the largest CMAs from having the opportunity to bid for those licenses individually.

167. We conclude, based on our record and in light of our experience in previous auctions, that a standard ascending clock auction with county-by-county bidding will offer adequate opportunity for bidders to aggregate licenses in order to obtain the level of coverage they desire consistent with their business plans. Furthermore, the lack of record support, even though it’s based on objections with which we disagree, suggests that we might increase the chances of a successful auction with a greater variety of

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<sup>297</sup> See Verizon Comments at 5 (“Because of its inherent drawbacks, the Commission’s proposed CMA-level bidding procedures will be of little value to sincere bidders.”); see also, e.g., WISPA Comments at 3 (“[B]idders seeking to combine counties do not need CMA-level bidding in order to assemble spectrum blocks across multiple counties.”); NA-OTI Comments at 8 (“Nor does CMA-level bidding ease any major burden on the national and regional mobile carriers most likely to select that form of bidding.”); GeoLinks Reply at 4 (“CMA-level bidding is simply not needed for bidders to obtain PALs across an aggregation of counties.”); NTCA Reply at 4 (“[P]roviders interested in aggregation of counties can still achieve such an outcome under a county-level bidding scheme[.]”); Blooston Reply at 3 (agreeing with other commenters who state that county-based bidding for all counties should not be unduly burdensome to large bidders).

<sup>298</sup> Blooston Reply at 3 (agreeing with other commenters who state that county-based bidding for all counties should not be unduly burdensome to large bidders).

<sup>299</sup> T-Mobile Comments at 2 (arguing that allowing both county-level and CMA-level bidding in the same areas would “perpetuate the precise interference protection problems the Commission was attempting to solve in allowing licensing throughout larger geographic areas[.]”).

<sup>300</sup> *Id.* at 3.

<sup>301</sup> *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10607, para. 19.

bidders if we go with the near unanimously supported county-level bidding. We agree with NCTA that a clock auction without CMA-level bidding will result in a simple, well-understood auction.<sup>302</sup>

### C. Bidding Rounds

168. As proposed, Auction 105 will proceed in a series of rounds, with bidding conducted simultaneously for all spectrum blocks for all counties available in the auction.<sup>303</sup> During each bidding round, the bidding system will announce a per-block price in each county, and qualified bidders will submit, for each county for which they wish to bid, the number of blocks they seek at the clock prices associated with the current round. Bidding rounds will be open for predetermined periods of time. Bidders will be subject to activity and eligibility rules that govern the pace at which they participate in the auction.

169. In each county, the clock price for a generic license block will increase from round to round if bidders indicate total demand in that county that exceeds the number of blocks available. The bidding rounds will continue until, for all counties, the total number of blocks that bidders demand does not exceed the supply of available blocks. At that point, those bidders indicating demand for a block at the final price will be deemed winning bidders.

170. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding.<sup>304</sup> We also adopt the proposal that the bidding schedule may be changed in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies.<sup>305</sup> Such changes may include the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.<sup>306</sup> As is typical, the bidding system will announce any such changes to the bidding schedule several rounds before the change occurs.

171. A bidder may submit its bids using the bidding system's *upload* function that allows bid files in a comma-separated value (CSV) format to be uploaded. The bidding system will not allow bids to be submitted unless the bidder selected the counties on its FCC Form 175 and the bidder has sufficient bidding eligibility.<sup>307</sup>

172. During each round of the bidding, a bidder may also remove bids placed in the current bidding round, as proposed.<sup>308</sup> If a bidder modifies its bids for blocks in a county in a round, the system takes the last bid submission as that bidder's bid for the round.<sup>309</sup>

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<sup>302</sup> NCTA Comments at 2; *see also* Blooston Reply at 9 ("By refraining from its CMA-level bidding proposal, the FCC will promote opportunities for the widest variety of applicants, including designated entities, to participate in Auction 105 and to compete on an even-handed basis."); API Comments at 2 ("Eliminating larger level bidding ... reduces rule complexity for the auction."); GeoLinks Comments at 3 (stating that implementing bidding on a county basis only would reduce burdens on both bidders and Commission staff); T-Mobile Reply at 6 (abandoning CMA-level bidding "would eliminate the complexities and special auction process required to allow a mix of CMA-level bidding and county-level bidding in the same geographic area.").

<sup>303</sup> *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9225, para. 34.

<sup>304</sup> *Id.*

<sup>305</sup> *Id.* at 9225, para. 36.

<sup>306</sup> *Id.*

<sup>307</sup> *See infra.*, Part IV. F (Activity Rule, Activity Upper Limit, and Reducing Eligibility).

<sup>308</sup> *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9234, para. 80.

<sup>309</sup> No bids may be withdrawn after the close of a round. Unlike an auction conducted using the Commission's standard simultaneous multiple-round auction format for bidding on frequency-specific licenses (as opposed to

(continued....)

#### **D. Stopping Rule**

173. We adopt our proposal to use a simultaneous stopping rule for Auction 105, under which all blocks in all counties will remain available for bidding until the bidding stops in every county.<sup>310</sup> Specifically, bidding will close for blocks in all counties after the first round in which there is no excess processed demand in any county. Consequently, it is not possible to determine in advance how long the bidding in Auction 105 will last.

174. We disagree with the American Petroleum Institute (API) that bidding should end on each county after two rounds of inactivity on that county.<sup>311</sup> A simultaneous stopping rule is intended to maximize bidders' flexibility to change their bidding strategies as information about demand becomes available, and to ensure that the spectrum is licensed to the bidder who values it the most highly. Ending bidding in some license areas while it continues in other areas would reduce this flexibility and limit auction participants' ability to pursue alternative strategies if they are priced out of their first-choice license areas. Moreover, we agree with T-Mobile that the approach suggested by API would be administratively inefficient and could prevent the timely conclusion of the auction.<sup>312</sup>

#### **E. Availability of Bidding Information**

175. We will make public after each round of Auction 105, for each county: (1) the supply, (2) the aggregate demand, (3) the posted price of the last completed round,<sup>313</sup> and (4) the clock price for the next round. The identities of bidders demanding blocks in a specific county will not be disclosed until after Auction 105 concludes (i.e., after the close of bidding).<sup>314</sup>

176. As proposed, each bidder will have access to additional information related to its own bidding and bid eligibility.<sup>315</sup> Specifically, after the bids of a round have been processed, the bidding system will inform each bidder of the number of blocks it holds after the round (its processed demand) for every county and its eligibility for the next round.

177. Limiting the availability of bidding information during the auction balances our interest in providing bidders with sufficient information about the status of their own bids and the general level of bidding in all areas and license categories to allow them to bid confidently and effectively, while restricting the availability of information that may facilitate identification of bidders placing particular bids, which could potentially lead to undesirable strategic bidding.

#### **F. Activity Rule, Activity Upper Limit, and Reducing Eligibility**

178. We adopt the proposal that bidders be required to maintain a minimum, high level of activity in each clock round in order to maintain bidding eligibility, which will help ensure that the auction moves quickly and promote a sound price discovery process.<sup>316</sup> We will set the activity (Continued from previous page) \_\_\_\_\_  
generic blocks), there are no provisionally winning bids in a clock auction. As a result, the concept of bid withdrawals as used in standard simultaneous multiple-round auctions does not apply to a clock auction.

<sup>310</sup> See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9226, para. 37.

<sup>311</sup> See API Comments at 2.

<sup>312</sup> T-Mobile Comments at 7.

<sup>313</sup> The posted price of the previous round generally is: the clock price of the previous round if demand exceeds supply; the start-of-round price of the previous round if supply exceeds demand; or the price at which a reduction caused demand to equal supply. See the *Auction 105 Technical Guide*, section 5.3 for more details.

<sup>314</sup> See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9220, para. 14; see also *supra* Part II.F (Information Procedures During the Auction Process).

<sup>315</sup> See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9220, para. 15.

<sup>316</sup> See *Id.* at 9227, para. 43.

requirement (the *activity requirement percentage*) between 90% and 100% of a bidder's bidding eligibility in all clock rounds, as proposed.<sup>317</sup> Further, we will set the initial activity requirement percentage at 95%. Failure to maintain the requisite activity level will result in a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. T-Mobile and API both recommend adopting a lower initial activity requirement.<sup>318</sup> We conclude, however, that an activity requirement below that which we adopt here would create uncertainty regarding the exact level of bidder demand, interfere with the basic clock-price setting and winner determinations, provide less helpful information to bidders, and prolong the auction unduly.

179. We will use upfront payments to determine a bidder's initial (maximum) eligibility in terms of bidding units. Each spectrum block in a county will be assigned a specific number of bidding units based on the number of MHz-pops in the county. Therefore, a bidder's upfront payment will determine the maximum number of blocks as measured by their associated bidding units that a bidder can demand at the start of the auction.

180. The activity rule will be satisfied when a bidder has bidding activity on blocks with bidding units that total at least the activity requirement percentage (set between 90 and 100%) of its eligibility in the round. If the activity rule is met, then the bidder's eligibility will not change in the next round. Bidding eligibility will be reduced as the auction progresses if a bidder does not meet the activity requirement.<sup>319</sup>

181. For this clock auction, a bidder's activity in a round for purposes of the activity rule will be the sum of the bidding units associated with the bidder's processed demands, which may not be equal to its submitted demands. For instance, if a bidder requests a reduction in the quantity of blocks it demands in a category, but the bidding system does not apply the request because demand for the category would fall below the available supply, the bidder's activity will reflect its unreduced demand.<sup>320</sup>

182. *Activity upper limit.* We adopt our proposal to allow a bidder to submit bids with associated bidding activity greater than its current bidding eligibility, noting, however, that a bidder's activity *as applied* by the auction system during bid processing will not exceed the bidder's current bidding eligibility.<sup>321</sup> Because a bidder's eligibility for the next round is calculated based on the bidder's demands as applied by the auction system during bid processing, a bidder's eligibility may be reduced even if the bidder submitted bids that meet its activity requirement for the round.<sup>322</sup> We anticipate that

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<sup>317</sup> *Id.*

<sup>318</sup> T-Mobile Comments at 10; API Comments at 3.

<sup>319</sup> For example, with an activity requirement of 95%, the eligibility of a bidder not meeting the activity requirement would be calculated as the bidder's activity multiplied by 100/95.

<sup>320</sup> Under the ascending clock auction format, the FCC auction bidding system will not allow a bidder to reduce the quantity of blocks it demands in an individual county if the reduction would result in aggregate demand falling below (or further below) the available supply of blocks in the county.

<sup>321</sup> See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9227-28, para. 44.

<sup>322</sup> This may occur, for example, if the bidder bids to reduce its demand in county A by two blocks (with 10 bidding units each) and bids to increase its demand by one block (with 20 bidding units) in county B. If the bidder's demand can only be reduced by one block in county A (because there is only one block of excess demand), the increase in county B cannot be applied, and absent other bidding activity the bidder's eligibility would be reduced. See Parts IV.I.1 and 3 (No Excess Supply Rule; and Processed Demands), for further details on bid processing. We note that, contrary to the suggestions of some commenters, this issue is unrelated to CMA-level bidding and can occur even with county-level bidding only. See T-Mobile Comments at 11 ("Like the complexities imposed by the adoption of the exception to the 'no excess supply' rule, the Commission can eliminate the need for an activity upper limit by permitting only CMA-level bidding."); see also Blooston Reply at 7 ("[A]doption of an 'activity upper limit' would not be necessary if the Commission used county-based bidding in all areas and it refrained from providing a CMA-level bidding option.")

adopting an “activity upper limit” will help a bidder avoid having its eligibility reduced as a result of submitted bids that cannot be applied during bid processing.<sup>323</sup> When submitting bids with associated bidding activity greater than its current bidding eligibility, a bidder would consider the price points associated with each of its bids to indicate the order in which it wishes the bidding system to consider its bid requests. Therefore, if bids submitted at lower price points cannot be applied as requested, thereby leaving the bidder with unused eligibility, then the system will consider the additional bids submitted at higher price points to use the otherwise lost eligibility. We emphasize, however, that a bidder may submit bids with associated bidding units exceeding 100% of its current bidding eligibility, but its processed activity can never exceed its eligibility.

183. Specifically, after Round 1 a bidder may submit bids with bidding units totaling up to an *activity upper limit* equal to the bidder’s current bidding eligibility for the round times a percentage (the *activity limit percentage*) equal to or greater than 100%. We adopt an initial activity limit percentage of 120% to apply to Round 2 and subsequent rounds.<sup>324</sup> In any bidding round, the auction bidding system will advise the bidder of its current bidding eligibility, its required bidding activity, and its activity upper limit.

184. Under the procedures we adopt, OEA retains the discretion to change the activity requirement percentage and the activity limit percentage during the auction, and to set the activity limit percentage within a range of 100% and 140%. We acknowledge commenters’ concerns that an activity upper limit that is set as high as 140% may encourage speculation that could increase prices and prolong the auction.<sup>325</sup> Given that we are incorporating an upper activity limit for the first time, we agree that adopting a more conservative initial activity upper limit of 120% is appropriate. We do not adopt Verizon’s suggestion to reduce the upper bound of the activity limit percentage to 110%,<sup>326</sup> but we retain the discretion to adjust the percentage during the auction if necessary. The bidding system would announce any such changes in advance of the round in which they would take effect, giving bidders adequate notice to adjust their bidding strategies.

185. We also recognize the concern expressed by API that the activity upper limit “would add an unnecessary layer of complexity to an already complex auction....”<sup>327</sup> We believe, however, that in this case the benefits of the proposal—namely that it reduces the risk that a bidder’s eligibility will be reduced inadvertently—outweigh that professed harm. Moreover, we believe that the educational materials that will be made available throughout the auction process will significantly reduce confusion as to the application and impact of the activity upper limit. We also believe that the activity upper limit we adopt here will be simpler for bidders to employ than the “all-or-nothing” bids that were implemented in Auction 1002 and that Verizon urges us to adopt here.<sup>328</sup> That approach was not widely used in Auction 1002—all-or-nothing bids represented less than 1% of all bids submitted in that auction—suggesting that

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<sup>323</sup> For example, depending upon the bidder’s overall bidding eligibility and the activity limit percentage, a bidder could submit an “additional” bid or bids that would be considered (in price point order with its other bids) and applied as available eligibility permits during the bid processing. See Auction 105 Technical Guide, sections 4.3 (Activity Upper Limit) and 7.1 (Processed Demand and Next Round Activity) for further details and an example.

<sup>324</sup> For Round 1, the activity upper limit will be 100% of the bidder’s initial bidding eligibility.

<sup>325</sup> See AT&T Comments at 6-7, citing Letter from Michael P. Goggin, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 17-258; AU Docket No. 19-244, at 2 (filed Sept. 16, 2019); see also CenturyLink Reply at 4.

<sup>326</sup> Verizon Comments at 7; see also CenturyLink Reply at 4.

<sup>327</sup> Blooston Reply at 6-7; see also Verizon Comments at 7 (“The Commission’s proposed ‘upper activity limit’ is unnecessarily complex and should not be adopted.”).

<sup>328</sup> Verizon Comments at 7; see also CenturyLink Reply at 4.

bidders did not view all-or-nothing bidding as a viable solution to the problem of inadvertent loss of eligibility.

186. Commenters also expressed general concern that the activity upper limit could lead to insincere bidding.<sup>329</sup> Verizon, for example, argues that “[w]ith such a large artificial eligibility cushion, certain auction participants could engage freely in insincere bidding across counties without regard for their processed demand or level of eligibility.”<sup>330</sup> Under the procedures we adopt, bidders that attempt to use the activity upper limit to place insincere bids would run the risk of winning licenses that they do not actually want. That risk significantly reduces the incentive to bid insincerely, and commenters do not provide sufficient detail about their concerns to persuade us that the potential harm they assert outweighs the benefits.

187. *Missing bids.* Under the clock auction format, a bidder is required to indicate its demands in every round, even if its demands at the new round’s prices are unchanged from the previous round. Missing bids—bids that are not reconfirmed—are treated by the auction bidding system as requests to reduce to a quantity of zero blocks for the county. If these requests are applied, or applied partially, then a bidder’s bidding activity, and its bidding eligibility for the next round, may be reduced.<sup>331</sup>

188. For Auction 105, as for other clock auctions, we do not provide for activity rule waivers to preserve a bidder’s eligibility.<sup>332</sup> We note that our adoption of an activity upper limit to permit a bidder to submit bids with bidding activity greater than its eligibility, within the precise limits set forth above, would address some of the circumstances under which a bidder risks losing bidding eligibility and otherwise could wish to use a bidding activity waiver,<sup>333</sup> while minimizing any potential adverse impacts on either bidder incentives to bid sincerely or the price-setting mechanism of the clock auction. The clock auction relies on precisely identifying the point at which demand decreases to equal supply to determine winning bidders and final prices. Allowing waivers would create uncertainty with respect to the exact level of bidder demand and interfere with the basic clock price-setting and winner determination mechanism. Moreover, uncertainty about the level of demand would affect the way bidders’ requests to reduce demand are processed by the bidding system, as addressed below.<sup>334</sup>

## **G. Acceptable Bids**

### **1. Minimum Opening Bids and Reserve Price**

189. As is typical for each auction, we sought comment on the use of a minimum opening bid amount and/or reserve price, as mandated by section 309(j) of the Communications Act of 1934, as

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<sup>329</sup> Verizon Comments at 7; Blooston Reply at 6-7.

<sup>330</sup> Verizon Comments at 7; *see also* Blooston at 6 (arguing that the activity upper limit “could invite mischievous behavior for little apparent gain”).

<sup>331</sup> *See* Parts IV.I.1 and 3 (No Excess Supply Rule for Bids to Reduce Demand; and Processed Demands) regarding partial application of bids.

<sup>332</sup> *See Auction 1000 Procedures Public Notice*, 30 FCC Rcd at 9077, para. 213; *Auctions 101-102 Procedures Public Notice*, 33 FCC Rcd at 7650, para. 245; *Auction 103 Procedures Public Notice* 34 FCC Rcd at 5591, para. 195. In previous FCC simultaneous multiple round auctions for frequency-specific licenses (as opposed to generic blocks), when a bidder’s eligibility in the current round was below a required minimum level, the bidder was able to preserve its current level of eligibility with a limited number of activity rule waivers. *See, e.g., Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Scheduled for January 14, 2014; Notice and Filing Requirements, Reserve Price, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 96*, AU Docket No. 13-178, Public Notice, 28 FCC Rcd 13019, 13060, paras. 157-60 (WTB 2013).

<sup>333</sup> *See* API Comments at 3 (arguing that waivers will allow bidders additional flexibility).

<sup>334</sup> *See* Parts IV.H.1 and 3 (No Excess Supply Rule for Bids to Reduce Demand; and Processed Demands), below.

amended.<sup>335</sup> We will establish minimum opening bid amounts for Auction 105. The bidding system will not accept bids lower than the minimum opening bids for each product. Based on our experience in past auctions, setting minimum opening bid amounts judiciously is an effective tool for accelerating the competitive bidding process.<sup>336</sup>

190. In the first bidding round of Auction 105, a bidder will indicate how many generic license blocks in a county it demands at the minimum opening bid price. We will calculate minimum opening bid amounts using a formula based on bandwidth and license area population, which is similar to our approach in many previous spectrum auctions. We will use a calculation based on \$0.02 per MHz-pop, with a minimum of \$1,000.<sup>337</sup> These minimum opening bid amounts are specified in the Attachment A files.

191. API advocated calculating minimum opening bids based on \$0.01 per MHz-pop for counties with population less than 150,000.<sup>338</sup> Harlan 2 Way Inc. requested that the minimum opening bid amount for Harlan County, Kentucky, be reduced.<sup>339</sup> We do not adopt these proposals. Based on our experience in past auctions, we conclude that the minimum opening bid amounts we set here will be an effective tool for accelerating the competitive bidding process,<sup>340</sup> and that adopting minimum opening bid amounts that are approximately half of the proposed amounts could prolong the auction unnecessarily.

192. Additionally, we establish an aggregate reserve price of \$107.99184 million for Auction 105. We agree with NTIA that the frequencies involved in Auction 105 contain “eligible frequencies” as described by the Commercial Spectrum Enhancement Act (CSEA).<sup>341</sup> As required by the CSEA,<sup>342</sup> the Commission provided notice of its intent to auction PALs to NTIA on or before September 5, 2018. NTIA, in turn, provided notice of estimated sharing costs and timelines for such sharing on December 20, 2019, more than six months prior to the scheduled start of bidding in Auction 105.<sup>343</sup> It is therefore necessary to establish a reserve price of no less than 110% of the estimated relocation or sharing costs provided by an eligible Federal entity.<sup>344</sup> NTIA’s estimated total sharing costs of \$98.1744 million<sup>345</sup> yield an aggregate reserve price of \$107.99184 million.

## 2. Clock Price Increments

193. Under the procedures we adopt, after bidding in the first round and before each subsequent round, the FCC auction bidding system will announce the start-of-round price<sup>346</sup> and the clock

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<sup>335</sup> See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9229, para. 50; see also 47 U.S.C. § 309(j).

<sup>336</sup> See, e.g., *Auction 97 Procedures Public Notice*, 29 FCC Rcd at 8440, para. 193.

<sup>337</sup> See note 347 (concerning rounding), above.

<sup>338</sup> See API Comments at 2.

<sup>339</sup> See Harlan 2 Way Comments at 1.

<sup>340</sup> See, e.g., *Auction 97 Procedures Public Notice*, 29 FCC Rcd at 8440, para. 193.

<sup>341</sup> See 47 U.S.C. § 923(g)(2)(B).

<sup>342</sup> *Id.* § 923(g)(4)(A).

<sup>343</sup> Letter from Douglas W. Kinkoph, Associate Administrator, Office of Telecommunications and Information Applications, Performing the Non-Exclusive Functions and Duties of the Assistant Secretary of Commerce for Communications and Information, NTIA to the Honorable Ajit Pai, Chairman, FCC, AU Docket No. 19-244 (filed Feb. 3, 2020) (*NTIA Letter*).

<sup>344</sup> See 47 U.S.C. § 309(j)(16)(B); 47 CFR § 1.2104(c).

<sup>345</sup> *NTIA Letter* at 2.

<sup>346</sup> The start-of-round price is also referred to as the posted price of the previous round.

price for the upcoming round—that is, the lowest price and the highest price at which bidders can specify the number of blocks they demand during the round. As long as aggregate demand for blocks in the county exceeds the supply of blocks, the start-of-round price will be equal to the clock price from the prior round.<sup>347</sup> If aggregate demand equals supply at a price in a previous round, either a clock price or an intra-round price, then the start-of-round price for the next round will be equal to the price at which demand equaled supply. If demand was less than supply in the previous round, then the start-of-round price for the next round will not increase.

194. We will set the clock price for blocks in a specific county for a round by adding a percentage increment to the start-of-round price.<sup>348</sup> The total dollar amount of the increment (the difference between the clock price and the start-of-round price) will not exceed a certain amount. We will set this cap on the increment initially at \$10 million and will retain the discretion to adjust this cap as rounds continue. We disagree with Verizon that the dollar cap we set on clock price increments will “disrupt the orderly flow of the clock price upward in some markets” and prolong the auction.<sup>349</sup> Under our procedures, staff retains the authority to adjust the cap as needed to manage the auction pace and ensure that bidding proceeds in an orderly fashion.

195. We adopt our proposal to set the clock price for blocks in a county by adding a fixed increment percentage to the start-of-round price. We will set the increment percentage within a range of 5% to 20% inclusive and will set the initial increment percentage at 10%. We may adjust the increment as rounds continue. This 5% to 20% increment range will allow us to set a percentage that manages the auction pace and takes into account bidders’ needs to evaluate their bidding strategies while moving the auction along quickly. We do not adopt API’s recommendation to apply, for counties with a population of 150,000 or less, a bid increment of only 5% for counties where there is excess demand and the price is more than double the minimum bid.<sup>350</sup> Instead, we conclude that a more flexible approach is appropriate to manage the pace of the auction and staff will retain the discretion to evaluate various bidding dynamics when determining if a change should be made.<sup>351</sup>

196. In the *Auction 105 Comment PN*, we proposed to apply a variable price increment, rather than a fixed increment, to determine the minimum acceptable bid for counties subject to CMA-level bidding.<sup>352</sup> We also asked if, as an alternative, we should apply the variable price increment to all CMAs.<sup>353</sup> No commenters assert that a variable price increment was desirable for all areas, and because we do not adopt our adopt CMA-level bidding proposal, we accordingly will not use a variable price increment.

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<sup>347</sup> Aggregate demand for a county is equal to the total number of blocks for which bidders have processed demand.

<sup>348</sup> For example, if the start-of-round price for a block in a given county is \$10,000, and the percentage increment is 20%, then the clock price for the round will be \$12,000. As in Auction 103, the result will be rounded as follows: results above \$10,000 will be rounded up to the nearest \$1,000; results below \$10,000 but above \$1,000 will be rounded up to the nearest \$100; and results below \$1,000 will be rounded up to the nearest \$10.

<sup>349</sup> Verizon Comments at 8; *see also* CenturyLink Reply at 4-5.

<sup>350</sup> *See* API Comments at 3.

<sup>351</sup> For similar reasons, we decline to adopt Verizon’s suggestion that we commit to conducting at least 6 rounds of bidding per day. Verizon Comments at 9. Commission staff will adjust the auction schedule throughout the bidding process as necessary to ensure that the auction concludes within a reasonable time period.

<sup>352</sup> *See Auction 105 Comment Public Notice*, 34 FCC Rcd at 9230-31, para. 59.

<sup>353</sup> *Id.* at 9231, para. 62.

### 3. Intra-Round Bids

197. We will permit a bidder to make intra-round bids by indicating a point between the start-of-round price and the clock price at which its demand for blocks changes. In placing an intra-round bid, a bidder would indicate a specific price and a quantity of blocks it demands if the price for blocks should increase beyond that price. For example, if a bidder has processed demand of 3 blocks at the start of the round price of \$100, but wishes to hold only 2 blocks if the price increases by more than \$10 (assuming the bid increment is greater than \$10), then the bidder will indicate a bid quantity of 2 at a price of \$110 (\$100+\$10). Similarly, if the bidder wishes to reduce its demand to 0 should the price increase at all above \$100, then the bidder will indicate a bid quantity of 0 at the start-of-round price of \$100.

198. Intra-round bids are optional; a bidder may choose to express its demands only at the clock prices. Intra-round bids give a bidder the flexibility to express its bid amounts precisely. At the same time, intra-round bids allow the auction system to use relatively large increments, thereby speeding the auction, without running the risk that an increase in the clock price will exceed the market clearing price—the point at which demand for blocks equals the available supply.<sup>354</sup>

#### H. Bids to Change Demand and Bid Processing

199. Under the ascending clock format we adopt for Auction 105, a bidder that is willing to maintain the same demand in a county at the new clock price will bid for that quantity at the clock price, indicating that it is willing to pay up to that price, if need be, for the specified quantity. Bids to maintain demand will always be applied by the auction bidding system. A bidder that wishes to change the quantity it demands in a county (relative to its demand from the previous round as processed by the bidding system) can express its demand at the clock price or at an intra-round price, but depending upon the bidder's eligibility and the aggregate demand for the county, the bidding system may not be able to apply the requested change.

200. Under the bid processing procedures we adopt here, the auction bidding system will, after each bidding round, process bids to change demand to determine the *processed demand* of each bidder in each county and a *posted price* for each county that would serve as the start-of-round price for the next round.

#### 1. No Excess Supply Rule for Bids to Reduce Demand

201. With the ascending clock auction format, the FCC auction bidding system will not apply a bid to reduce the quantity of blocks a bidder demands in an individual county if the reduction would result in aggregate demand falling below (or further below) the available supply of blocks in the county. Therefore, if a bidder bids to reduce the number of blocks for which it has processed demand as of the previous round, then the FCC auction bidding system will treat the bid as a request to reduce demand that will be applied only if the “no excess supply” rule would be satisfied.

#### 2. Eligibility Rule for Bids to Increase Demand

202. The bidding system will not allow a bidder to increase the quantity of blocks it demands in a product if the total number of bidding units associated with the bidder's demand exceeds the bidder's bidding eligibility for the round. Therefore, if a bidder bids to increase the number of blocks for which it has processed demand as of the previous round, the FCC auction bidding system will treat the bid as a request to increase demand that will be applied only if that would not cause the bidder's activity to exceed its eligibility.

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<sup>354</sup> We are not persuaded by the commenter that opposes intra-round bids on the grounds that adjusting bid increments alone is a “more effective way to move the auction along.” See API Comments at 3. Using large increments absent intra-round bidding could significantly reduce the bidding system's ability to identify market clearing prices since a bidder would not be able to precisely indicate the points at which its demands for an item change, potentially resulting in more bids assigned by pseudo-random numbers, and lowering auction efficiency.

### 3. Partial Application of Bids

203. Under the bid processing procedures we adopt, a bid that involves a reduction from the bidder's previous demands will be applied partially—that is, reduced by fewer blocks than requested in the bid—if excess demand is insufficient to support the entire reduction. A bid to increase a bidder's demands will be applied partially if the bidder's eligibility for the round is insufficient to apply the total number of bidding units associated with the bidder's increased demand.

### 4. Processed Demands

204. After a round ends, the bidding system will process bids to change demand in order of price point,<sup>355</sup> where the price point represents the percentage of the bidding interval for the round.<sup>356</sup> The bidding system will first consider intra-round bids in ascending order of price point and then bids at the clock price. The system will consider bids at the lowest price point across all counties, then look at bids at the next price point in all areas, and so on.<sup>357</sup> As it considers each submitted bid during bid processing, the bidding system will determine the extent to which there is excess demand in each county at that price point in the processing to determine whether a bidder's request to reduce demand can be applied. Similarly, the auction bidding system will evaluate the activity associated with the bidder's most recently determined demands at that point in the processing to determine whether a request to increase demand can be applied.

205. Because in any given round some bidders may request to increase demands for licenses while others may request reductions, the price point at which a bid is considered by the auction bidding system can affect whether it is applied. In addition to deciding that bids will be considered by the system in increasing order of price point, we also adopt procedures such that bids not applied because of insufficient aggregate demand or insufficient eligibility be held in a queue and considered, again in order, if there should be excess supply or sufficient eligibility later in the processing after other bids are processed.

206. Therefore, once a round closes, the auction system will process bids to change demand by first considering the bid submitted at the lowest price point and determining the maximum extent to which that bid can be applied given bidders' demands as determined at that point in the bid processing. If the bid can be applied (either in full or partially), the number of licenses the bidder holds at that point in the processing will be adjusted, and aggregate demand will be recalculated accordingly. If the bid cannot be applied in full, the unfulfilled bid, or portion thereof, will be held in a queue to be considered later during bid processing for that round. The bidding system will then consider the bid submitted at the next highest price point, applying it in full, in part, or not at all, given the most recently determined demands of bidders. Any unfulfilled requests will again be held in the queue, and aggregate demand will again be recalculated. Every time a bid or part of a bid is applied, the unfulfilled bids held in the queue will be reconsidered, in the order of their original price points (and by pseudo-random number, in the case of tied price points). The auction bidding system will not carry over unfulfilled bid requests to the next round, however. The bidding system will advise bidders of the status of their bids when round results are released.

### 5. Price Determination

207. We adopt bid processing procedures to determine, based on aggregate demand, the posted price for each county for the round that will serve as the start-of-round price for the next round. The

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<sup>355</sup> Bids to maintain demand are always applied before the bidding system considers bids to change demand.

<sup>356</sup> For example, if the start-of-round price is \$5,000 and the clock price is \$6,000, a price of \$5,100 will correspond to the 10% price point, since it is 10% of the bidding interval between \$5,000 and \$6,000.

<sup>357</sup> If there are multiple bids at a single price point, the system will process bids in order of a bid-specific pseudo-random number.

uniform price for all of the blocks in a county will increase from round to round as long as there is excess demand for blocks in the county, but will not increase if aggregate demand does not exceed the available supply of blocks.

208. If, at the end of a round, the aggregate demand for blocks in the county exceeds the supply of blocks (which is 7 for Auction 105), then the posted price will equal the clock price for the round. If a reduction in demand was applied during the round and caused demand in the county to equal supply, then the posted price will be the price at which the reduction was applied. If aggregate demand is less than or equal to supply and no bid to reduce demand was applied for the county, then the posted price will equal the start-of-round price for the round. The range of acceptable bid amounts for the next round will be set by adding the percentage increment to the posted price.

209. When a bid to reduce demand can be applied only partially, the uniform price for the county will stop increasing at that point, since the partial application of the bid will result in demand falling to equal supply. Hence, a bidder that makes a bid to reduce demand that cannot be fully applied will not face a price for the remaining demand that is higher than its bid price.

210. After the bids of the round have been processed, the FCC auction bidding system will announce clock prices to indicate a range of acceptable bids for the next round (assuming the stopping rule has not been met). Each bidder will be informed of its processed demand and the extent of excess demand for blocks in each county.

#### **I. Winning Bids**

211. Under the clock auction format for Auction 105, bidders with processed demand in a county at the time the stopping rule is met will become the winning bidders of licenses corresponding to that number of blocks. The final price for a generic block in a county will be the posted price for the final round.<sup>358</sup>

#### **J. Calculating Individual License Prices**

212. While final auction payments for winning bidders will be calculated with bidding credit caps applied on an aggregate basis, rather than to individual licenses, the bidding system will also calculate a net per-license price for each license.<sup>359</sup> Such individual prices may be needed if a licensee later incurs license-specific obligations, such as unjust enrichment payments.

213. The gross per-license price of a license will be the final price. To calculate the net price, the bidding system will apportion any applicable bidding credit discounts in proportion to the gross payment for that license.

#### **K. Auction Results**

214. The bidding system will determine winning bidders as described in Part IV.I (Winning Bids), above. After release of the public notice announcing auction results, the public will be able to view and download bidding and results data through the FCC Public Reporting System (PRS).

#### **L. Auction Announcements**

215. Commission staff will use auction announcements to report necessary information, such as schedule changes, to bidders. All auction announcements will be available by clicking a link in the bidding system.

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<sup>358</sup> This and other Auction 105 bid processing details are addressed in the *Auction 105 Technical Guide*.

<sup>359</sup> See the *Auction 105 Assignment Phase Technical Guide* for details.

## V. POST-AUCTION PROCEDURES

216. The public notice announcing the close of the bidding and auction results will be released shortly after bidding has ended in Auction 105. This public notice will also establish the deadlines for submitting down payments, final payments, and the long-form applications (FCC Form 601) for the auction.

### A. Down Payments

217. Within 10 business days after release of the auction closing public notice for Auction 105, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission to 20% of the net amount of its winning bids (less any bidding credits, if applicable).<sup>360</sup>

### B. Final Payments

218. Each winning bidder will be required to submit the balance of the net amount for each of its winning bids within 10 business days after the deadline for submitting down payments.<sup>361</sup>

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

219. The Commission's rules provide that, within 10 business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed post-auction application (FCC Form 601) for the license(s) they won through the auction.<sup>362</sup>

220. A winning bidder claiming eligibility for a small business bidding credit or a rural service provider bidding credit must demonstrate its eligibility in its FCC Form 601 post-auction application for the bidding credit sought.<sup>363</sup> Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice for Auction 105.

221. Winning bidders organized as bidding consortia must comply with the FCC Form 601 post-auction application procedures set forth in section 1.2107(g) of the Commission's rules.<sup>364</sup> Specifically, license(s) won by a consortium must be applied for as follows: (a) an individual member of the consortium or a new legal entity comprising two or more individual consortium members must file for licenses covered by the winning bids; (b) each member or group of members of a winning consortium seeking separate licenses will be required to file a separate FCC Form 601 for its/their respective license(s) in their legal business name; (c) in the case of a license to be partitioned or disaggregated, the member or group filing the applicable FCC Form 601 shall include the parties' partitioning or disaggregation agreement with the FCC Form 601; and (d) if a DE credit is sought (either small business or rural service provider), the applicant must meet the applicable eligibility requirements in the Commission's rules for the credit.<sup>365</sup>

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

222. Within 10 business days after release of the auction closing public notice for Auction 105, each winning bidder must also comply with the ownership reporting requirements in sections 1.913,

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<sup>360</sup> See 47 CFR § 1.2107(a).

<sup>361</sup> 47 CFR § 1.2109(a); see *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 907-09, paras. 43-46.

<sup>362</sup> 47 CFR § 1.2107(c).

<sup>363</sup> *Id.* § 1.2112(b).

<sup>364</sup> *Id.* § 1.2107(g); see also *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 911-12, paras. 51-52; *Updating Part 1 Report and Order*, 30 FCC Rcd at 7535, para. 101.

<sup>365</sup> 47 CFR § 1.2107(g); see also *id.* §§ 1.2110 (b)(4)(i), (c)(6); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7535-36, 7574, 7583-86, paras. 101-03, 190, 214-26.

1.919, and 1.2112 of the Commission's rules by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its FCC Form 601 post-auction application.<sup>366</sup>

223. If a winning bidder already has a complete and accurate FCC Form 602 on file in the FCC's Universal Licensing System (ULS), then it is not necessary to file a new report, but the winning bidder must certify in its FCC Form 601 application that the information on file with the Commission is complete and accurate. If the winning bidder does not have an FCC Form 602 on file, or if the form on file is not complete and accurate, then the winning bidder must submit a new one.

224. When a winning bidder submits an FCC Form 175, ULS automatically creates an ownership record. **This record is not an FCC Form 602, but it may be used to pre-fill the FCC Form 602 with the ownership information submitted on the winning bidder's FCC Form 175 application.** A winning bidder must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the FCC Form 601 post-auction application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notice.

#### E. Tribal Lands Bidding Credit

225. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85% is eligible to receive a tribal lands bidding credit as set forth in sections 1.2107 and 1.2110(f) of the Commission's rules.<sup>367</sup> A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

226. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction when it files its FCC Form 601 post-auction application. When initially filing the post-auction application, the winning bidder will be required to inform the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the winning bidder will have 180 days from the close of the post-auction application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in section 1.2110(f)(3)(vii).<sup>368</sup> For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices.<sup>369</sup>

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<sup>366</sup> 47 CFR §§ 1.913, 1.919, 1.2107(f), 1.2112.

<sup>367</sup> *Id.* §§ 1.2107, 1.2110(f); *2016 Spectrum Frontiers Order*, 31 FCC Rcd at 8101, para. 253.

<sup>368</sup> *See Id.* § 1.2110(f)(3)(ii)-(vii).

<sup>369</sup> *See generally Extending Wireless Telecommunications Services to Tribal Lands*, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 11794 (2000); *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 4775, 4778-79, para. 10 (2003); *Third Report and Order*, 19 FCC Rcd 17652 (2004); *see also Wireless Telecommunications Bureau Announces Enhancements to the Universal Licensing System to Help Winning Bidders of FCC Auctions File for Tribal Land Bidding Credits*, Public Notice, 16 FCC Rcd 5355 (2001); *Wireless Telecommunications Bureau Releases Additional Information Regarding the Procedures for Obtaining a Tribal Lands Bidding Credit and List of Tribal Lands*, Public Notice, 15 FCC Rcd 24838 (2000); *Wireless Telecommunications Bureau Announces Availability of Bidding Credits for Providing Wireless Services to Qualifying Tribal Lands: Tribal Lands Bidding Credits to Be Available Beginning in Auction No. 36 (800 MHz Specialized Mobile Radio (SMR) Lower 80 Channels) and in Future Auctions*, Public Notice, 15 FCC Rcd 18351 (2000). Relevant documents can be viewed on the Commission's website by going to [www.fcc.gov/auctions](http://www.fcc.gov/auctions) and clicking on the Tribal Lands Credits link.

## F. Default and Disqualification

227. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make a full and timely final payment, or is otherwise disqualified) is liable for default payments as described in section 1.2104(g)(2).<sup>370</sup> A default payment consists of a deficiency payment, equal to the difference between the amount of the bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.<sup>371</sup>

228. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. We adopt our proposal to set the additional default payment for Auction 105 at 20% of the applicable bid for winning bids.<sup>372</sup> The bidding system will calculate individual per-license prices that are separate from final auction payments, which are calculated on an aggregate basis.<sup>373</sup>

229. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount.<sup>374</sup> In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, then the Commission may declare the applicant and its principals ineligible to bid in future auctions and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.<sup>375</sup>

## G. Refund of Remaining Upfront Payment Balance

230. All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. Bidders are encouraged to use the **Refund Information** icon found on the *Auction Application Manager* page or the **Refund Form** link available on the *Auction Application Submit Confirmation* page in the FCC Auction Application System to access the form. After the required information is completed on the blank form, the form should be printed, signed, and submitted to the Commission by mail, fax, or email as instructed below.

231. If you have elected not to access the Refund Form through the *Auction Application Manager* page, the Commission is requesting that all information listed below be supplied in writing.

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

<sup>370</sup> 47 CFR § 1.2104(g)(2).

<sup>371</sup> API's proposal to impose a total default payment of 20% or the minimum bid amount (whichever is greater) is inconsistent with section 1.2104(g)(2) of the competitive bidding rules, which expressly state that a default payment consists of both a deficiency payment (described in 47 CFR § 1.2104(g)(2)(i)) and an additional payment (described in 47 CFR § 1.2104(g)(2)(ii) and (iii)). See API Comments at 3.

<sup>372</sup> See *Auction 105 Comment Public Notice*, 34 FCC Rcd at 9235, para. 85.

<sup>373</sup> See *supra* Part IV.J (Calculating Individual License Prices). These prices determine the defaulted bid amount on individual licenses.

<sup>374</sup> 47 CFR §§ 1.2109(b)-(c).

<sup>375</sup> *Id.* § 1.2109(d).

The refund request must be submitted by fax to the Revenue & Receivables Operations Group/Auctions at (202) 418-2843, by email to [RROGWIREFAXES@fcc.gov](mailto:RROGWIREFAXES@fcc.gov), or by mail to:

Federal Communications Commission  
Financial Operations  
Revenue & Receivables Operations Group/Auctions  
Scott Radcliffe  
45 L Street, NE, 3<sup>rd</sup> Floor  
Washington, DC 20554

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Scott Radcliffe at (202) 418-7518 or Theresa Meeks at (202) 418-2945.

## VI. PROCEDURAL MATTERS

232. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>376</sup> a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 105 Comment Public Notice* released in September 2019. The Commission sought public comment on the proposals in the *Auction 105 Comment Public Notice*, including comments on the Supplemental IRFA. No comments were filed addressing the Supplemental IRFA. This Public Notice establishes the procedures to be used for Auction 105 and supplements the Initial and Final Regulatory Flexibility Analyses completed by the Commission in the *2017 NPRM and 2018 3.5 GHz Report and Order*, and other Commission orders pursuant to which Auction 105 will be conducted.<sup>377</sup> This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA.<sup>378</sup>

233. *Need for, and Objectives of, the Rules.* This Public Notice implements auction procedures for those entities that seek to bid to acquire licenses in Auction 105. Auction 105 will be our first auction of mid-band spectrum in furtherance of the deployment of fifth-generation (5G) wireless, the Internet of things (IoT), and other advanced spectrum-based services. The Public Notice adopts procedural rules and terms and conditions governing Auction 105, and the post-auction application and payment processes, as well as setting the minimum opening bid amounts for Priority Access Licenses (PALs) in the 3.5 GHz (3550-3650) band that will be offered in Auction 105.

234. To promote the efficient and fair administration of the competitive bidding process for all Auction 105 participants, we adopt the following procedures proposed in the *Auction 105 Comment Public Notice*:

- use of anonymous bidding/limited information procedures which will not make public: (1) the licenses or license areas that an applicant selects for bidding in its auction application (FCC Form 175); (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 105; (3) an applicant's bidding eligibility; and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid, until after bidding has closed;
- establishment of bidding credit caps for eligible small businesses and rural service providers in Auction 105;

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<sup>376</sup> 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).

<sup>377</sup> *See Promoting Investment in the 3500-3700 MHz Band et al.*, GN Docket No. 17-258 et al., Notice of Proposed Rulemaking and Order Terminating Petitions, 32 FCC Rcd 8071, 8100, Appx. B (2017) (*2017 NPRM*); *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10674-86, Appx. B.

<sup>378</sup> *See* 5 U.S.C. § 604.

- adjustment of the bidding schedule as necessary in order to manage the pace of Auction 105;
- use of a simultaneous stopping rule where all blocks in all counties will remain open for bidding until bidding has stopped in every county;
- provision of discretionary authority to OEA, in conjunction with the Bureau, to delay, suspend, or cancel bidding in Auction 105 for any reason that affects the ability of the competitive bidding process to be conducted fairly and efficiently;
- use of a clock auction format for Auction 105 under which each qualified bidder will indicate in successive clock bidding rounds its demands for generic blocks in specific counties, and associated bidding and bid processing procedures to implement the clock auction format;
- use of an activity rule, which requires a bidder to bid actively during the auction on a high percentage of its bidding eligibility, including a modification that would allow a bidder to submit bids, but not to be assigned bids, that exceed its bidding eligibility;
- use of an activity rule that does not include a waiver of the rule to preserve a bidder's eligibility;
- a requirement that bidders be active on between 90% and 100% of a bidder's bidding eligibility in all clock rounds;
- a specific minimum opening bid amount for generic blocks in each county available in Auction 105;
- a limit of four generic license blocks of spectrum per county that a bidder can demand at any point in Auction 105;
- a specific upfront payment amount for generic blocks in each county available in Auction 105;
- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each generic block;
- establishment of acceptable bid amounts, including clock price increments and intra-round bids, along with a proposed methodology for calculating such amounts;
- a proposed methodology for processing bids and requests to reduce demand subject to the no excess supply rule for bids to reduce demand;
- use of bid processing procedures that the auction bidding system will use, after each bidding round, to process bids to determine the processed demand of each bidder and a posted price for each county that would serve as the start-of-round price for the next round; and
- establishment of additional default payments of 20% for bids pursuant to section 1.2104(g)(2) of the rules in the event that a winning bidder defaults or is disqualified after the auction.

235. The procedures for the conduct of Auction 105 constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 30 of the Commission's rules and the underlying rulemaking orders, including the *2015 3.5 GHz Report and Order* and *2018 3.5 GHz Report and Order*, and relevant competitive bidding orders, and are fully consistent therewith.<sup>379</sup>

236. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically address the procedures and policies proposed in the Supplemental IFRA.

237. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the

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<sup>379</sup> See generally *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2360-75, paras. 68-159.

Commission is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed procedures as a result of those comments.<sup>380</sup> The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 105 Comment Public Notice*.

238. *Description and Estimate of the Number of Small Entities to Which the 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 rules and policies adopted herein.<sup>381</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>382</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>383</sup> 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.<sup>384</sup>

239. As noted above, Regulatory Flexibility Analyses were incorporated into the *2017 NPRM* and *2018 3.5 GHz Report and Order*. These orders provide the underlying authority for the procedures proposed in the *Auction 105 Comment Public Notice* and are adopted herein for Auction 105. In those regulatory flexibility analyses, we described in detail the small entities that might be significantly affected. 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 *2017 NPRM* and *2018 3.5 GHz Report and Order*.<sup>385</sup>

240. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission’s two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.<sup>386</sup> Eligibility to participate in bidding is based on an applicant’s short-form application and certifications, as well as its upfront payment. In the second phase of the process, winning bidders file a more comprehensive long-form application. Thus, an applicant which fails to become a winning bidder does not need to file a long-form application and provide the additional showings and more detailed demonstrations required of a winning bidder.

241. We do not expect that the processes and procedures adopted in this Public Notice will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 105 and comply with the procedures we adopt because of the information, resources, and guidance we make available to potential and actual participants. The Commission cannot quantify the cost of compliance with the procedures; however, we do not believe that the cost of compliance will unduly burden small entities that choose to participate in the auction. We note that the processes and

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<sup>380</sup> 5 U.S.C. § 604(a)(3).

<sup>381</sup> *Id.*

<sup>382</sup> *Id.* § 601(6).

<sup>383</sup> *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 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.”

<sup>384</sup> 15 U.S.C. § 632.

<sup>385</sup> See *2017 NPRM*, 32 FCC Rcd at 8100, Appx. B (2017); *2018 3.5 GHz Report and Order*, 33 FCC Rcd at 10674-86, Appx. B.

<sup>386</sup> See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376-77, paras. 163-66.

procedures are consistent with existing Commission policies and procedures used in prior auctions. Thus, some small entities may already be familiar with such procedures and have the processes and procedures in place to facilitate compliance resulting in minimal incremental costs to comply. For those small entities that may be new to the Commission's auction process, the various resources that will be made available, including, but not limited to, the mock auction, remote electronic bidding, and access to hotlines for both technical and auction assistance, should help facilitate participation without the need to hire professionals. For example, we intend to release an online tutorial that will help applicants understand the procedures for filing the auction short-form applications (FCC Form 175). We also intend to offer other educational opportunities for applicants in Auction 105 to familiarize themselves with the FCC Auction Application System and the bidding system. By providing these resources as well as the resources discussed below, we expect small business entities that use the available resources to experience lower participation and compliance costs.

242. *Steps Taken to Minimize the 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 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.”<sup>387</sup>

243. We have taken steps to minimize any economic impact of our auction procedures on small entities businesses through, among other things, the many free resources we provide to potential auction participants. Consistent with the past practices in prior auctions, small entities that are potential participants will have access to detailed educational information and Commission personnel to help guide their participation in Auction 105, which should alleviate any need to hire professionals. More specifically, small entities and other auction participants may seek clarification of or guidance on complying with competitive bidding rules and procedures, reporting requirements, and using the bidding system. Additionally, an FCC Auctions Hotline will provide to small entities one-on-one access to Commission staff for information about the auction process and procedures. Further, the FCC Auctions Technical Support Hotline is another resource that provides technical assistance to applicants, including small business entities, on issues such as access to or navigation within the electronic FCC Form 175 and use of the bidding system. Small entities and other would-be participants will also be provided with various materials on the pre-bidding process in advance of the short-form application filing window, which includes step-by-step instructions on how to complete FCC Form 175. In addition, small entities will have access to the web-based, interactive online tutorials produced by Commission staff to familiarize themselves with auction procedures, filing requirements, bidding procedures, and other matters related to an auction.

244. We also make various databases and other sources of information, including the Auctions program websites and copies of Commission decisions, available to the public without charge, providing a low-cost mechanism for small businesses to conduct research prior to and throughout the auction. Prior to and at the close of Auction 105, we will post public notices on the Auctions website, which articulate the procedures and deadlines for the auction. We make this information easily accessible and without charge to benefit all Auction 105 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules.

245. Prior to the start of bidding, eligible bidders will be given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Eligible bidders will have access to a user guide for the bidding system, bidding file formats, and an online

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<sup>387</sup> 5 U.S.C. §§ 603(c)(1)-(4).

bidding procedures tutorial in advance of the mock auction. Further, we intend to conduct Auction 105 electronically over the Internet using a web-based auction system that eliminates the need for small entities and other bidders to be physically present in a specific location. These mechanisms are made available to facilitate participation in Auction 105 by all eligible bidders and may result in significant cost savings for small entities that use these alternatives. Moreover, the adoption of bidding procedures in advance of the auction, consistent with statutory directive, is designed to ensure that the auction will be administered predictably and fairly for all participants, including small businesses.

246. Another step taken to minimize the economic impact for small entities participating in Auction 105 is the Commission's adoption of bidding credits for small businesses. In accordance with the service rules applicable to the PALs to be offered in Auction 105, bidding credit discounts will be available to eligible small businesses and small business consortiums on the following basis: (1) a bidder with attributed average annual gross revenues that do not exceed \$55 million for the preceding three years is eligible to receive a 15% discount on its winning bid or (2) a bidder with attributed average annual gross revenues that do not exceed \$20 million for the preceding three years is eligible to receive a 25% discount on its winning bid. Eligible applicants can receive only one of the available bidding credits—not both.

247. The total amount of bidding credit discounts that may be awarded to an eligible small business is capped at \$25 million. In addition, we adopt a \$10 million cap on the overall amount of bidding credits that any winning small business bidder may apply to winning licenses in counties located within any PEA with a population of 500,000 or less. Based on the technical characteristics of the 3550-3650 MHz band and our analysis of past auction data, we anticipate that our caps will allow the majority of small businesses to take full advantage of the bidding credit program, thereby lowering the relative costs of participation for small businesses.

248. These procedures for the conduct of Auction 105 constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 96 of the Commission's rules and the underlying rulemaking orders, including the *2015 Report and Order* and *2018 3.5 GHz Report and Order*, and relevant competitive bidding orders, and are fully consistent therewith.<sup>388</sup>

249. *Report to Congress.* The Commission will send a copy of the *Auction 105 Procedures Public Notice*, including the Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act.<sup>389</sup> In addition, the Commission will send a copy of the *Auction 105 Procedures Public Notice*, including the Supplemental FRFA to the Chief Counsel for Advocacy of the SBA. A copy of the *Auction 105 Procedures Public Notice*, and Supplemental FRFA (or summaries thereof), will also be published in the Federal Register.<sup>390</sup>

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

**General Auction 105 Information**

General Auction Questions  
Auction Process and Procedures

**FCC Auctions Hotline**

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

<sup>388</sup> See generally *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2360-75, paras. 68-159.

<sup>389</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>390</sup> See *id.* § 604(b).

**Auction 105 Legal Information**

Auction Rules, Policies, Regulations, including  
Reports of Section 1.2105(c) Violations and  
Application Major Modifications

**Auctions Division, OEA**

(202) 418-0660  
Mary Lovejoy (Attorney)

**3.5 GHz Information**

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

**Mobility Division, WTB**

(202) 418-1991  
Jessica Quinley (Attorney)

**Technical Support**

Electronic Filing  
FCC Auction System (Hardware/Software  
Issues)

**FCC Auctions Technical Support Hotline**

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

**Payment Information**

Wire Transfers  
Refunds

**FCC Revenue & Receivables Operations  
Group/Auctions**

Scott Radcliffe at (202) 418-7518,  
or Theresa Meeks at (202) 418-2945, or  
(fax) (202) 418-2980, or email to  
[RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov)

**Auction Bidder Line**

Will be furnished only to qualified bidders

**Press Information**

Cecilia Sulhoff, at (202) 418-0587

**FCC Forms**

(800) 418-3676 (outside Washington, DC)  
(202) 418-3676 (in the Washington area)  
[www.fcc.gov/formpage.html](http://www.fcc.gov/formpage.html)

**Accessible Formats**

Braille, large print, electronic files, or  
audio format for people with disabilities

**Consumer and Governmental Affairs Bureau**

(202) 418-0530 or (202) 418-0432 (TTY)  
[fcc504@fcc.gov](mailto:fcc504@fcc.gov)

**Small Businesses**

Additional information for small and  
disadvantaged businesses

**Office of Communications Business  
Opportunities**

(202) 418-0990  
[www.fcc.gov/ocbo/](http://www.fcc.gov/ocbo/)

**FCC Internet Sites**

[www.fcc.gov](http://www.fcc.gov)  
[www.fcc.gov/auction/105](http://www.fcc.gov/auction/105)

251. Action by the Commission, February 28, 2020: [reference to individual statements.]

**APPENDIX****Commenter Short Names**

<b>Short Name</b>	<b>Name of Filer</b>
API	American Petroleum Institute
AT&T	AT&T Inc.
Blooston	Blooston Rural Carriers
CCA	Competitive Carriers Association
CenturyLink	CenturyLink
DSA	Dynamic Spectrum Alliance
EWA	Enterprise Wireless Association
GeoLinks	California Internet, L.P. DBA GeoLinks
Harlan 2 Way	Richard Torstrick, Mike Brock
IIoT	Industrial Internet of Things Coalition
NA-OTI	New America's Open Technology Institute
NCTA	NCTA – The Internet & Television Association
NRECA	National Rural Electric Cooperative Association
NTCA	NTCA—The Rural Broadband Association
RWA	Rural Wireless Association, Inc.
SCE	Southern California Edison
Southern Linc	Southern Communications Services, Inc. d/b/a Southern Linc
T-Mobile	T-Mobile USA, Inc.
UTC	Utilities Technology Council
Verizon	Verizon
WISPA	The Wireless Internet Service Providers Association