

FCC FACT SHEET^{*}
Auction 107 – 3.7 to 3.98 GHz
Public Notice – AU Docket No. 20-25

Background: This Public Notice would establish the procedures for Auction 107, the auction of new flexible-use overlay licenses in the 3.7–3.98 GHz band, which is part of what is known as the C-band. Auction 107 is the Commission’s second scheduled auction of mid-band spectrum, which is intended to further the deployment of fifth-generation (5G) wireless, the Internet of Things (IoT), and other advanced spectrum-based services for the benefit of the public. The bidding for new licenses in Auction 107 is scheduled to commence on December 8, 2020. This Public Notice would provide details regarding the procedures, terms, conditions, dates, and deadlines governing participation in Auction 107 bidding, as well as an overview of the post-auction application and payment processes.

What the Public Notice Would Do:

- Establish clock phase categories for each Partial Economic Area (PEA), which will be determined based on the specific clearing deadline to which incumbent earth stations are subject, i.e., Phase I or Phase II. In the 46 PEAs where certain blocks are subject to the Phase I deadline, there will be two categories of generic blocks: Category A consisting of the five 20-megahertz sub-blocks between 3.7–3.8 GHz that are subject to the Phase I deadline, and Category BC consisting of the nine sub-blocks between 3.8–3.98 GHz that are subject to the Phase II deadline. In the remaining 360 PEAs where there are no blocks subject to the Phase I deadline, there will be a single bidding category, Category ABC, consisting of all fourteen 20-megahertz blocks between 3.7–3.98 GHz.
- Establish bidding procedures for the clock and assignment phases of the auction, in particular:
 - Auction 107’s clock phase would allow bidding on generic blocks in each PEA in successive clock bidding rounds.
 - Auction 107’s assignment phase would allow bidding for frequency-specific license assignments, which will allow for interim and final frequency-specific assignments of contiguous blocks within each PEA.
- Establish upfront payment and minimum opening bid amounts for the 5,684 new flexible-use overlay licenses for spectrum in the 3.7–3.98 GHz band throughout the contiguous United States.
- Establish 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.

* 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. 20-25, 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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FCC-CIRC2008-01

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AUCTION OF FLEXIBLE-USE SERVICE LICENSES IN THE 3.7–3.98 GHz BAND FOR NEXT-GENERATION WIRELESS SERVICES

NOTICE AND FILING REQUIREMENTS, MINIMUM OPENING BIDS, UPFRONT PAYMENTS, AND OTHER PROCEDURES FOR AUCTION 107

BIDDING IN AUCTION 107 SCHEDULED TO BEGIN DECEMBER 8, 2020

AU Docket No. 20-25*

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* This document has been circulated for tentative consideration by the Commission at its August 6, 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 107, the auction of new flexible-use overlay licenses in the 3.7–3.98 GHz band (the “3.7 GHz Service”). Auction 107 is the Commission’s second scheduled auction of mid-band spectrum, which is intended to further the deployment of fifth-generation (5G) wireless, the Internet of Things (IoT), and other advanced spectrum-based services across the country.

2. The bidding for new licenses in Auction 107 is scheduled to commence on December 8, 2020. This Public Notice provides details regarding the procedures, terms, conditions, dates, and deadlines governing participation in Auction 107 bidding, as well as an overview of the post-auction application and payment processes.

B. Background and Relevant Authority

3. In the *3.7 GHz Report and Order*, the Commission made available 280 megahertz of spectrum in the 3.7–3.98 GHz band for licensed use.¹ In that Order, the Commission proposed to modify the licenses and market access authorizations of incumbent Fixed Satellite Service (FSS) operators, transmit-receive earth station licensees, and Fixed Service (FS) licensees to clear the 3.7–4.0 GHz band for new flexible-use terrestrial operations in the contiguous United States.² Among other things, the Commission authorized both fixed and mobile operations in the 3.7–3.98 GHz band using geographic area licensing, established licensing and operating rules for the new 3.7 GHz Service, and decided to use its competitive bidding rules to assign 3.7 GHz Service licenses.³

¹ See generally *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020) (*3.7 GHz Report and Order*).

² *Id.* at 2394-408, 2463-66, 2488-89, paras. 124-53, 321-28, 409.

³ *Id.* at 2372-90, paras. 59-109.

4. On March 3, 2020, in accordance with section 309(j)(3) of the Communications Act of 1934, as amended,⁴ we released a public notice seeking comment on certain competitive bidding procedures and various other procedures to be used in Auction 107.⁵ We received comments from seven parties in response to the *Auction 107 Comment Public Notice*, including five reply comments.⁶ In this Public Notice, we resolve all open issues raised in the *Auction 107 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 107. Among other things, prospective applicants should familiarize themselves with the Commission's general competitive bidding rules,⁷ including recent amendments and clarifications thereto, as well as Commission decisions regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.⁸ Prospective applicants also should familiarize themselves with the Commission's rules regarding the 3.7 GHz Service.⁹ 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.

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 generally applicable information to applicants. In addition, we affirm the well-established authority of the Wireless Telecommunications Bureau (WTB) and the Office of Economics and Analytics (OEA) to establish further procedures during the course of this auction.¹⁰ It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auction 107. 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. Additionally, documents are

⁴ 47 U.S.C. § 309(j)(3)(E)(i) (requiring Commission to seek comment on proposed auction procedures); *see also id.* § 309(j)(4)(F) (authorizing Commission to prescribe reserve price or minimum bid); 47 CFR § 1.2104(c)-(d).

⁵ *See Auction of Flexible-Use Service Licenses in the 3.7–3.98 GHz Band for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 107*, AU Docket No. 20-25, Public Notice, 35 FCC Rcd 2601 (2020) (*Auction 107 Comment Public Notice*). A summary of the *Auction 107 Comment Public Notice* was published in the Federal Register at 85 Fed. Reg. 23287 (Apr. 27, 2020).

⁶ These comments are available under proceeding 20-25 in the Commission's Electronic Comment Filing System (ECFS). The ECFS home page is publicly accessible at www.fcc.gov/ecfs. We generally note in the context of discussing particular issues whether any commenter addressed those issues.

⁷ 47 CFR Part 1, Subpart Q.

⁸ *See, e.g., Updating Part 1 Competitive Bidding Rules et al.*, WT Docket Nos. 14-170 and 05-211, GN Docket No. 12-268, 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*).

⁹ *See generally* 47 CFR Part 27, Subpart O.

¹⁰ *See generally id.* §§ 0.21(m), 0.271(a), 0.131(c), 0.331.

available at the Commission's headquarters during normal business hours when the building is open to the public.¹¹ Contact Auctions Division staff at auCTION107@fcc.gov or (202) 418-0660 for guidance.

C. Description of Licenses to Be Offered in Auction 107

7. Auction 107 will offer 5,684 new flexible-use overlay licenses for spectrum in the 3.7–3.98 GHz band throughout the contiguous United States subject to clearing requirements.¹² The 280 megahertz of spectrum available in Auction 107 will be licensed on an unpaired basis in three blocks divided into 20-megahertz sub-blocks by partial economic area (PEA) in the contiguous states and the District of Columbia (PEAs 1–41, 43–211, 213–263, 265–297, 299–359, and 361–411).¹³ Specifically, the A Block will cover 100 megahertz from 3.7–3.8 GHz in five 20-megahertz sub-blocks: 3700–3720 MHz (A1), 3720–3740 MHz (A2), 3740–3760 MHz (A3), 3760–3780 MHz (A4), and 3780–3800 MHz (A5). The B Block will cover 100 megahertz from 3.8–3.9 GHz in five 20-megahertz sub-blocks: 3800–3820 MHz (B1), 3820–3840 MHz (B2), 3840–3860 MHz (B3), 3860–3880 MHz (B4), and 3880–3900 MHz (B5). The C Block will cover 80 megahertz from 3.9–3.98 GHz, and four 20-megahertz sub-blocks will be licensed for flexible use: 3900–3920 MHz (C1), 3920–3940 MHz (C2), 3940–3960 MHz (C3), and 3960–3980 MHz (C4). The 20 megahertz at 3980–4000 MHz will be a guard band and not available for auction. 3.7 GHz Service licenses will be issued for 15-year, renewable license terms.¹⁴ A licensee in the 3.7–3.98 GHz band may provide any services permitted under terrestrial fixed or mobile allocations, as set forth in the non-Federal Government column of the Table of Frequency Allocations in section 2.106 of the Commission's rules.¹⁵

8. On June 1, 2020, WTB announced that incumbent satellite operators had, in aggregate, made sufficient commitments to clear the 3.7–4.0 GHz band on the accelerated timeline described in the *3.7 GHz Report and Order*, thereby triggering accelerated clearing of the band.¹⁶ As a result, licenses in the A Block in 46 of the top 50 PEAs—PEAs 1–4, 6–10, 12–19, 21–41, and 43–50—will be subject to the Phase I accelerated relocation deadline, and licenses in the B and C Blocks in the 46 PEAs and in the A, B, and C Blocks in the remaining 360 PEAs will be subject to the Phase II accelerated relocation deadline.¹⁷

D. Auction Specifics

1. Auction Title and Start Date

9. The auction of licenses in the 3.7–3.98 GHz band will be referred to as “Auction 107.” Bidding in Auction 107 will begin on Tuesday, December 8, 2020. Pre-bidding dates and deadlines are

¹¹ See *FCC Announces Updated Restrictions on Visitors to its Facilities*, Public Notice (OMD Mar. 12, 2020), <https://docs.fcc.gov/public/attachments/DOC-363007A1.pdf>.

¹² *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2602, para. 2.

¹³ *3.7 GHz Report and Order*, 35 FCC Rcd at 2377-80, paras. 72-80. We will not issue flexible-use overlay licenses for Honolulu, Anchorage, Kodiak, Fairbanks, Juneau, Puerto Rico, Guam-Northern Mariana Islands, U.S. Virgin Islands, American Samoa, and the Gulf of Mexico (PEAs 42, 212, 264, 298, 360, 412–416). *Id.* at 2380, para. 80.

¹⁴ *Id.* at 2384-85, paras. 90-91. As described in section IV.C (License Authorizations for Interim and Final Assignments), below, licenses in the 46 PEAs may be issued as paired interim and final licenses, which taken together, provide authorization for a block over the full 15-year license term.

¹⁵ See *id.* at 2370, para. 54; see also 47 CFR § 2.106.

¹⁶ *Wireless Telecommunications Bureau Announces Accelerated Clearing in the 3.7–4.2 GHz Band*, GN Docket No. 18-122, Public Notice, DA 20-578 (WTB June 1, 2020).

¹⁷ See *3.7 GHz Report and Order*, 35 FCC Rcd at 2413, para. 168; section IV.A.2 (Generic License Blocks and Bidding Categories), below.

listed below. The initial schedule for bidding rounds in Auction 107 will be announced by public notice at least one week before bidding begins.

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

2. Auction Dates and Deadlines

11. The following dates and deadlines apply to Auction 107:

Auction Application Tutorial Available (via Internet).....No later than August 21, 2020

Short-Form Application (FCC Form 175)

Filing Window OpensSeptember 9, 2020, 12:00 p.m. Eastern Time (ET)

Short-Form Application (FCC Form 175)

Filing Window Deadline.....September 22, 2020, 6:00 p.m. ET

Upfront Payments (via wire transfer).....November 2, 2020, 6:00 p.m. ET

Bidding Tutorial Available (via Internet)No later than November 13, 2020

Mock AuctionDecember 3, 2020

Bidding Begins in Auction 107.....December 8, 2020

3. Requirements for Participation

12. Those wishing to participate in Auction 107 must:

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. ET on September 22, 2020, following the electronic filing procedures set forth in the FCC Form 175 Instructions.¹⁸
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET on November 2, 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 107

A. General Information Regarding Short-Form Applications

13. An application to participate in Auction 107, 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.¹⁹ 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 107 must file a short-form application in which it certifies, under penalty of perjury, that it is qualified to participate.²⁰ Eligibility to

¹⁸ We direct OEA to prepare and make publicly available detailed instructions for submitting an FCC Form 175 for Auction 107 (FCC Form 175 Instructions) in the Education section of the Auction 107 website at www.fcc.gov/auction/107.

¹⁹ 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*).

²⁰ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376, para. 165.

participate in Auction 107 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.²¹ After bidding closes, in the second phase of the process, each winning bidder must file a more comprehensive post-auction, long-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.²²

14. A party seeking to participate in Auction 107 must file an FCC Form 175 electronically via the Auction Application System prior to 6:00 p.m. ET on September 22, 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 107 will be subject to the Commission's rule prohibiting certain communications.²³ An applicant is subject to the prohibition beginning at the deadline for filing short-form applications—6:00 p.m. ET on September 22, 2020.²⁴

15. 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.²⁵ If an Auction 107 applicant fails to make the required certifications in its FCC Form 175 by the filing deadline, then its application will be deemed unacceptable for filing and cannot be corrected after the filing deadline.²⁶

16. 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.²⁷ 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.

17. 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.²⁸ In this regard, the

²¹ See section III.F (Upfront Payments), below.

²² 47 CFR § 1.2107. We remind applicants that being deemed qualified to bid in Auction 107 does not constitute a determination that a party is qualified to hold a Commission license or is eligible for a designated entity bidding credit.

²³ *Id.* § 1.2105(c).

²⁴ The prohibition will end for applicants on the post-auction down payment deadline for Auction 107. See section II.G.2 (Prohibition Applies Until Down Payment Deadline), below.

²⁵ 47 CFR § 1.2105(a)(2).

²⁶ See *id.* § 1.2105(b)(1).

²⁷ As more fully explained below in section 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.

²⁸ 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).

Commission specifically has held that information submitted in support of receiving bidding credits in auction proceedings should be made available to the public.²⁹

18. 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.³⁰

19. No individual or entity may file more than one short-form application or have a controlling interest in more than one short-form application.³¹ If a party submits multiple short-form applications for an auction, then only one application may form the basis for that party to become qualified to bid in that auction.³²

20. Similarly, and consistent with the Commission's general prohibition on joint bidding agreements, a party generally is permitted to participate in a Commission auction only through a single bidding entity.³³ Accordingly, the filing of applications in Auction 107 by multiple entities controlled by the same individual or set of individuals generally will not be permitted.³⁴ As noted by the Commission in adopting the prohibition on applications by commonly controlled entities, this rule, in conjunction with the prohibition against joint bidding agreements, protects the competitiveness of our auctions.³⁵

21. After the initial short-form application filing deadline, Commission staff will review all timely submitted applications for Auction 107 to determine whether each application complies with the application requirements and whether the applicant has provided all required information concerning 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.³⁶ 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.

²⁹ 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 wireless, wireline, broadband, and cable subscribers submitted by an applicant for only those affiliates operating in the United States).

³⁰ See 47 CFR § 1.2105(a)(2)(iii).

³¹ See *id.* § 1.2105(a)(3); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7579, para. 205.

³² See 47 CFR § 1.2105(a)(3), (b)(1)(ii).

³³ See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7580-81, paras. 206-08.

³⁴ 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 on 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.

³⁵ See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7580, para. 206.

³⁶ 47 CFR § 1.2105(b)(2).

22. 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 described disclosure requirements, the applicant should review the educational materials for Auction 107 (see the Education section of the Auction 107 website at www.fcc.gov/auction/107) 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

23. An applicant must select all the license areas on which it may want to bid from the list of available PEAs on its FCC Form 175. An applicant must carefully review and verify its PEA selections before the FCC Form 175 filing deadline because those selections cannot be changed after the auction application filing deadline.³⁷ 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 PEAs 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 PEAs."

C. Disclosure of Agreements and Bidding Arrangements

24. 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.³⁸ 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.³⁹ If, after the FCC Form 175 filing deadline, an auction applicant enters into any agreement relating to the licenses being auctioned, then it is subject to these same disclosure obligations. All applicants must maintain the accuracy and completeness of the information in their pending auction application.⁴⁰

³⁷ *Id.*

³⁸ *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 applicant. *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)(2).

³⁹ *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* section II.G.3 (Scope of Prohibition on Certain Communications; Prohibition on Joint Bidding Agreements), below.

⁴⁰ 47 CFR § 1.65; *see also id.* § 1.2105(b)(4); *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, AU Docket No. 14-252 et al., Public Notice, 30 FCC Rcd 10794, 10806-07, para. 34 (WTB 2015) (*Prohibited Communications Guidance Public Notice*); *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, 8418-19, para. 109 (2014) (discussing applicants' obligation to maintain accuracy and completeness of information in pending auction applications) (*Auction 97 Procedures Public Notice*).

25. 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 175,⁴¹ even if the agreement has not been reduced to writing.⁴² Parties that have not agreed in principle by the FCC Form 175 filing deadline should not describe, or include the names of parties to, the discussions on their applications.⁴³

26. 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).⁴⁴ 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.⁴⁵

27. This prohibition applies to joint bidding arrangements involving two or more nationwide providers,⁴⁶ as well as joint bidding arrangements involving a nationwide provider and one or more non-nationwide providers,⁴⁷ where at least one party to the arrangement is an applicant for the auction.⁴⁸ 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.⁴⁹ To that end, and consistent with our decisions in recent spectrum auctions,⁵⁰ we consider AT&T, T-Mobile, and Verizon to be "nationwide providers" for the purpose of implementing our competitive bidding rules in Auction 107.⁵¹

⁴¹ 47 CFR § 1.2105(a)(2)(viii), (c)(1).

⁴² See *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).

⁴³ See *id.*

⁴⁴ See 47 CFR § 1.2105(a)(2)(ix); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7569-77, paras. 177-99.

⁴⁵ See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575, para. 195.

⁴⁶ *Id.* at 7571, 7573, paras. 182, 186.

⁴⁷ A "non-nationwide provider" refers to any provider of communications services that is not a "nationwide provider." See *id.*

⁴⁸ See 47 CFR § 1.2105(a)(2)(ix); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7574-75, paras. 191-193.

⁴⁹ *Updating Part 1 Report and Order*, 30 FCC Rcd at 7571, para. 182 n.596.

⁵⁰ See, e.g., *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 and 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*).

⁵¹ In the *Auction 107 Comment Public Notice*, we proposed to identify Sprint as a fourth nationwide provider. *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2604, para. 9. On April 1, 2020, T-Mobile announced that it had completed its pending merger with Sprint to create the New T-Mobile, which combined entity will operate

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28. 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.⁵² Specifically, a designated entity (DE) can participate in one consortium or joint venture in an auction,⁵³ and non-nationwide providers that are not designated entities may participate in an auction through only one joint venture.⁵⁴ 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.⁵⁵ The general prohibition on joint bidding arrangements excludes certain agreements, including those that are solely operational in nature,⁵⁶ as defined in section 1.2105(a)(2)(ix)(A)-(C) of the Commission's rules.⁵⁷

29. To implement the prohibition on 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.⁵⁸ 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.⁵⁹

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under the name T-Mobile. See Press Release, T-Mobile, T-Mobile Completes Merger with Sprint to Create the New T-Mobile (Apr. 1, 2020), <https://www.t-mobile.com/news/t-mobile-sprint-one-company>. Accordingly, we identify the combined entity, T-Mobile, as a single nationwide provider for the purpose of implementing our competitive bidding rules in Auction 107.

⁵² 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.

⁵³ See *id.* at 7576-77, 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).

⁵⁴ See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-77, 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.

⁵⁵ *Updating Part 1 Report and Order*, 30 FCC Rcd at 7576-77, para. 198.

⁵⁶ See 47 CFR § 1.2105(a)(2)(ix)(A). 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, 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.

⁵⁷ 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.

⁵⁸ 47 CFR § 1.2105(a)(2)(viii).

⁵⁹ "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

(continued....)

30. 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 175,⁶⁰ the Commission reminds applicants that certain discussions or exchanges could nonetheless touch upon impermissible subject matters,⁶¹ and that compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.⁶²

31. 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.⁶³ 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.⁶⁴

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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;

(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.

⁶⁰ 47 CFR § 1.2105(a)(2)(viii), (a)(2)(ix)(A)-(C), (c)(1).

⁶¹ *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.

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

⁶³ 47 CFR § 1.2107(d); *see also id.* § 1.2105(a)(2)(ix)(A)-(C), (a)(2)(viii).

⁶⁴ *Id.* § 1.2107(d); *see also id.* § 1.2105(a)(2)(ix)(A)-(C), (a)(2)(viii).

D. Ownership Disclosure Requirements

32. 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.⁶⁵ 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.⁶⁶ Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

33. 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 Form 602 or previous auction application on file with the Commission that used the same FCC Registration Number (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 175,⁶⁷ if such information is in an electronic format compatible with FCC Form 175.⁶⁸ 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

34. 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.⁶⁹ 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.⁷⁰ 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), then it may seek to participate in Auction 107 as long as it has filed a petition for declaratory ruling with the Commission prior to the FCC Form 175 filing deadline.⁷¹ An applicant must certify in its FCC Form 175 that, as of the deadline for filing its

⁶⁵ 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.

⁶⁶ 47 CFR §§ 1.2105(a)(2)(ii)(B), 1.2112.

⁶⁷ The FCC Form 175 Instructions provide additional details on pre-filled information.

⁶⁸ 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 107 to ensure that their most recent ownership information is pre-filled into their short-form application.

⁶⁹ *See* 47 U.S.C. § 310(a), (b).

⁷⁰ *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.

⁷¹ 47 CFR § 1.2105(a)(2)(vi).

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.⁷²

F. Information Procedures During the Auction Process

35. Consistent with past practice in several prior spectrum license auctions,⁷³ we adopt our proposal to limit information available in Auction 107 in order to prevent the identification of bidders placing particular bids until after the bidding has closed.⁷⁴ 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 applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

36. The limited information procedures used in past auctions have helped safeguard against potential anticompetitive behavior such as retaliatory bidding and collusion.⁷⁵ 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.⁷⁶

37. Once the bidding begins in Auction 107, 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.⁷⁷

38. 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, both before and during the auction.

⁷² See *id.* § 1.2105(a)(2)(v), (vi). Additional information concerning foreign ownership disclosure requirements is provided in the FCC Form 175 Instructions.

⁷³ See, e.g., *Auction 103 Procedures Public Notice*, 34 FCC Rcd at 5546-47, paras. 35-40; *Auctions 101 and 102 Procedures Public Notice*, 33 FCC Rcd at 7596-98, 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 et al., Public Notice, 30 FCC Rcd 8975, 9046, para. 138 (2015) (*Auction 1000 Procedures Public Notice*); see also 47 CFR § 1.2104(h).

⁷⁴ See *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2607, para. 17.

⁷⁵ 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. 08-46, 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, para. 128 (WTB 2011) (finding that the competitive benefits associated with limited information disclosure procedures support adoption of such procedures).

⁷⁶ See *Auction 78 Procedures Public Notice*, 23 FCC Rcd at 7536, para. 157.

⁷⁷ See *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2607, para. 17.

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

40. 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.⁷⁸ **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 and 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

41. 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 107.⁷⁹ 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 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"⁸⁰

1. Entities Subject to Section 1.2105(c)

42. 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.⁸¹ 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.⁸²

43. We consider AT&T, T-Mobile, and Verizon to be "nationwide providers" for the purposes of the prohibited communications rule for Auction 107.⁸³

2. Prohibition Applies Until Down Payment Deadline

44. 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.⁸⁴

⁷⁸ See 47 CFR § 1.2105(c); see also section II.G (Prohibited Communications and Compliance with Antitrust Laws), below.

⁷⁹ See 47 CFR § 1.2105(c).

⁸⁰ *Id.* § 1.2105(c)(1).

⁸¹ *Id.* § 1.2105(c)(5)(i).

⁸² 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 107 down payment deadline.

⁸³ See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7571, para. 140 & n.596; see also section II.C (Disclosure of Agreements and Bidding Arrangements), above; note [[51]], above.

⁸⁴ 47 CFR § 1.2105(c)(1).

3. Scope of Prohibition on Certain Communications; Prohibition on Joint Bidding Agreements

45. 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.⁸⁵ 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.⁸⁶ 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.⁸⁷ 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.⁸⁸ Applicants may communicate pursuant to any pre-existing agreements, arrangements, or understandings relating to the licenses being auctioned that are solely operational or that provide for the 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.⁸⁹

46. 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.⁹⁰ Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant.⁹¹

47. 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.⁹²

⁸⁵ See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7577, para. 199; 47 CFR § 1.2105(a)(2)(ix), (c)(1).

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

⁸⁷ See 47 CFR § 1.2105(a)(2)(ix); *Updating Part 1 Report and Order*, 30 FCC Rcd at 7575-76, para. 195.

⁸⁸ 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.

⁸⁹ See 47 CFR § 1.2105(a)(2)(ix)(A)-(C); see generally *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd 10794.

⁹⁰ See *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).

⁹¹ 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.

⁹² 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

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48. 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”⁹³ 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.⁹⁴ 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.⁹⁵ 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.⁹⁶ Entities subject to 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.⁹⁷

49. Accordingly, business discussions and negotiations that are *unrelated* to bidding in Auction 107 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.⁹⁸ 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 107 will not violate the rule.⁹⁹ 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.¹⁰⁰

50. 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.

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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).

⁹³ 47 CFR § 1.2105(c)(1).

⁹⁴ See generally *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd 10794.

⁹⁵ *Id.* at 10806, para. 33.

⁹⁶ 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.”)).

⁹⁷ *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10806-07, paras. 33-34.

⁹⁸ *Id.* at 10806, para. 32. CTIA encourages the Commission to “provide additional guidance related to its prohibited communications rules to ensure nationwide providers and auction applicants are able to meaningfully participate in technical working group efforts envisioned by the Commission in the C-Band Order.” CTIA Reply at 2. As CTIA acknowledges, however, the Commission has previously clarified that, “absent communication both relating to the licenses being auctioned and communicating or addressing bids or bidding strategies or post-auction market structure, broad industry discussions regarding setting technical standards for the spectrum band for which licenses will be auctioned do not constitute communications prohibited by Section 1.2105(c).” *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10807, para. 35.

⁹⁹ *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10796, paras. 6-7.

¹⁰⁰ *Id.* at 10796-97, paras. 8-9.

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.

51. 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.”¹⁰¹ 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,”¹⁰² 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.”¹⁰³

52. 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 107. Specifically, an applicant should avoid including any information in its short-form application that might convey information regarding its PEA selections, 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 PEA selections, or using applicant names that refer to licenses being offered.

53. 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

54. 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.¹⁰⁴ 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.¹⁰⁵ 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

¹⁰¹ *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*).

¹⁰² *Mercury PCS II, LLC*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 17970, 17976, para. 17 (1997).

¹⁰³ *Mercury PCS II, LLC*, Memorandum Opinion and Order, 13 FCC Rcd 23755, 23760, para. 11 (1998).

¹⁰⁴ 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).

¹⁰⁵ *Id.*

separate applicants.¹⁰⁶ 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.¹⁰⁷

55. As we have noted in other spectrum auctions, in the case of an individual, the objective precautionary measure of a firewall is not available.¹⁰⁸ 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.¹⁰⁹ We will take the same approach to interpreting the prohibited communications rule in Auction 107. 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.¹¹⁰

56. 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 PEAs 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 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.¹¹¹

57. 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.¹¹² 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.¹¹³ Similarly, an applicant's public statement of intent not to place bids during bidding in Auction 107 could also violate the rule.

¹⁰⁶ *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).

¹⁰⁷ See *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10799, para. 14; *Nevada Wireless Order*, 13 FCC Rcd at 11978, para. 13.

¹⁰⁸ See, e.g., *Auction 101 and 102 Procedures Public Notice*, 33 FCC Rcd at 7602, para. 72 (citing *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10800, para. 15).

¹⁰⁹ *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10800, para. 15.

¹¹⁰ See *id.*

¹¹¹ *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10802, para. 20.

¹¹² We decline SES's request to "clarify that Auction 107 bidders will not violate the Commission's anti-collusion rules by entering into discussions with the [Relocation Payment] Clearinghouse about . . . repayment obligations." SES Comments at 5. As noted above, application of the rule prohibiting certain communications requires a case-by-case determination based on the details of a specific communication. See *Prohibited Communications Guidance Public Notice*, 30 FCC Rcd at 10800, para. 15; see also *3.7 GHz Report and Order*, 35 FCC Rcd at 2452, para. 282 n.666 ("Because all applicants' communications with the Clearinghouse will be public . . . applicants must take care that their communications with the Clearinghouse do not violate the prohibition against communications by revealing bids or bidding strategies.").

¹¹³ 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.").

5. Section 1.2105(c) Certifications

58. By electronically submitting its FCC Form 175 auction application, each applicant for Auction 107 certifies its compliance with section 1.2105(c) of the rules.¹¹⁴ 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.¹¹⁵ Any applicant found to have violated these communication prohibitions may be subject to sanctions.¹¹⁶

6. Duty to Report Prohibited Communications

59. 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.¹¹⁷ 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.¹¹⁸

7. Procedures for Reporting Prohibited Communications

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

61. 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.¹¹⁹ 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.¹²⁰ For Auction 107, 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

¹¹⁴ See 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, then 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.

¹¹⁵ *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.

¹¹⁶ See 47 CFR §§ 1.2105(c), 1.2107(d), 1.2109(d).

¹¹⁷ *Id.* § 1.2105(c)(4); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17553-55, paras. 13-17.

¹¹⁸ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al.*, WT Docket No. 06-150 et al., Second Report and Order, 22 FCC Rcd 15289, 15395, paras. 285-86 (2007); *Procedural Amendments to Commission Part 1 Competitive Bidding Rules*, WT Docket No. 10-18, 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.

¹¹⁹ *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.

¹²⁰ *Id.*

should be submitted by email to the Auctions Division Chief and sent to auction107@fcc.gov. If you choose instead to submit a report in hard copy, contact Auctions Division staff at auction107@fcc.gov or (202) 418-0660 for guidance.

62. 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.¹²¹ We encourage such parties to coordinate with the Auctions Division staff about the procedures for submitting such reports.¹²²

8. Winning Bidders Must Disclose Terms of Agreements

63. 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.¹²³ 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.¹²⁴ Failure to comply with the Commission's rules can result in enforcement action.

9. Additional Information Concerning Prohibition on Certain Communications in Commission Auctions

64. A summary listing of documents issued by the Commission and OEA/WTB 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.

10. Antitrust Laws

65. 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.¹²⁵ Compliance

¹²¹ 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). On July 7, 2020, the Commission announced that the hand-delivery filing location at FCC Headquarters: Open Window Counter, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554, was permanently closed, effective immediately. *FCC Announces Closure of Filing Window at FCC Headquarters and Permanent Change in the Location and Hours for Receiving Hand-Carried Filings*, Public Notice (OMD July 7, 2020). Because hand-delivery of confidential materials is no longer possible, the public is directed to submit such materials in accordance with the procedures described in that public notice and in *Amendment of the Commission's Rules of Practice and Procedure*, Order, DA 20-562 (OMD May 28, 2020).

¹²² See section VI (Procedural Matters), below.

¹²³ 47 CFR § 1.2107(d); see also section V.C (Long-Form Application (FCC Form 601)), below. 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.

¹²⁴ 47 CFR § 1.2107(d).

¹²⁵ See *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures*, WT Docket No. 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*, PP Docket No. 93-253, Fourth

(continued....)

with the disclosure requirements of section 1.2105(c)(4) will not insulate a party from enforcement of the antitrust laws.¹²⁶ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application.¹²⁷ 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.¹²⁸

66. 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.¹²⁹ 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 107 and in future auctions, among other sanctions.¹³⁰

H. Provisions for Small Businesses and Rural Service Providers

67. In the *Updating Part 1 Report and Order*, the Commission revised the designated entity rules that apply to all licenses acquired with bidding credits,¹³¹ including those won in Auction 107. A bidding credit represents an amount by which a bidder's winning bid will be discounted, subject to the caps discussed below.¹³² As set forth in section 1.2110 of the Commission's rules,¹³³ 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,¹³⁴ (2) establishing a new attribution rule for certain disclosable interest holders of applicants claiming designated entity benefits,¹³⁵ (3) updating the gross revenue amounts defining eligibility for small business benefits,¹³⁶ (4) creating a separate bidding credit

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Memorandum Opinion and Order, 9 FCC Rcd 6858, 6869, para. 59 & n.134 (1994) (“[A]pplicants will also be subject to existing antitrust laws.”) (*Fourth Memorandum Opinion and Order*).

¹²⁶ 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.

¹²⁷ See, e.g., *Fourth Memorandum Opinion and Order*, 9 FCC Rcd at 6869, para. 59 & n.134.

¹²⁸ *Id.*

¹²⁹ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, para. 226.

¹³⁰ See *id.*; 47 CFR § 1.2109(d).

¹³¹ See generally *Updating Part 1 Report and Order*, 30 FCC Rcd 7493.

¹³² Applicants should note that all references to a “winning bid” discussed herein in the context of designated entity bidding credits for Auction 107 (e.g., the application of a small business discount to an applicant's winning bid) refer to the calculated license price discussed in section IV.D (Calculating Individual “Per-License” Prices), below.

¹³³ 47 CFR § 1.2110.

¹³⁴ *Id.* § 1.2110(b)(3); see *Updating Part 1 Report and Order*, 30 FCC Rcd at 7507-10, paras. 29-34.

¹³⁵ 47 CFR § 1.2110(c)(2)(ii)(J); see *Updating Part 1 Report and Order*, 30 FCC Rcd at 7512-16, paras. 42-52. For purposes of this rule, 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. 47 CFR § 1.2110(c)(2)(ii)(J). The Commission also clarified its designated entity reporting requirements under 47 CFR § 1.2110(n). See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7562-63, paras. 162-67.

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

for eligible rural service providers,¹³⁷ and (5) establishing caps on the total amount of designated entity benefits any eligible winning bidder may receive.¹³⁸

68. In Auction 107, 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.¹³⁹ 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.¹⁴⁰

69. 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.¹⁴¹ 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.¹⁴² **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.¹⁴³

1. Small Business Bidding Credit

70. For Auction 107, 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 3.7 GHz

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

¹³⁸ *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.

¹³⁹ *See Updating Part 1 Report and Order*, 30 FCC Rcd at 7538, para. 108; *see also* 47 CFR § 1.2110(f)(4)(i).

¹⁴⁰ *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).

¹⁴¹ *See, e.g.,* 47 CFR §§ 1.2110, 1.2111.

¹⁴² *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 id.* § 1.927(a)-(b), (h).

¹⁴³ 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 3.7 GHz Report and Order*, 35 FCC Rcd at 2373-76, paras. 64-70.

Service licenses to be offered in Auction 107,¹⁴⁴ 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 five years¹⁴⁵—is eligible to receive a 15% discount on its winning bid.¹⁴⁶
- 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 five years¹⁴⁷—is eligible to receive a 25% discount on its winning bid.¹⁴⁸

71. In adopting this two-tiered approach in the *3.7 GHz Report and Order*, the Commission observed that this approach would provide consistency and predictability for small businesses.¹⁴⁹

72. 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.¹⁵⁰

73. Each applicant claiming a small business bidding credit must disclose the gross revenues for the preceding five years for each of the following: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests.¹⁵¹ 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 107.¹⁵² 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 107, the applicant must disclose the identity and the attributable gross revenues of any such disclosable interest holder.¹⁵³ This attribution rule will be applied on a license-by-license basis.¹⁵⁴ As a result, an applicant may be eligible for a bidding credit on some, but not all, of the licenses for which it is bidding in Auction 107.¹⁵⁵ If an

¹⁴⁴ See Letter from Jovita Carranza, Administrator, U.S. Small Business Administration, to Gary D. Michaels, Deputy Chief, Auctions Division, FCC (May 19, 2020) (approving the Commission’s proposed small business size standards for the auction of licenses in the 3.7 GHz Service).

¹⁴⁵ 47 CFR § 27.1402(a)(1)(i); *cf. id.* § 1.2110(f)(2)(i)(C).

¹⁴⁶ *Id.* § 27.1402(a)(2).

¹⁴⁷ *Id.* § 27.1402(a)(1)(ii); *cf. id.* § 1.2110(f)(2)(i)(B).

¹⁴⁸ *Id.* § 27.1402(a)(2).

¹⁴⁹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2376, para. 68.

¹⁵⁰ 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* section II.H.2 (Rural Service Provider Bidding Credit), below. 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.

¹⁵¹ 47 CFR §§ 1.2110(b)(1)(i), 1.2112(b)(1)(iv).

¹⁵² *See id.* § 1.2112(b)(1)(iii).

¹⁵³ *See id.* § 1.2110(c)(2)(ii)(J).

¹⁵⁴ *Id.*

¹⁵⁵ *See id.*

applicant is applying as a consortium of small businesses, then the disclosures described in this paragraph must be provided for each consortium member.¹⁵⁶

2. Rural Service Provider Bidding Credit

74. An eligible applicant may request a 15% discount on its winning bid using a rural service provider bidding credit,¹⁵⁷ 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.¹⁵⁸ Rural areas are defined as counties with a population density of 100 or fewer persons per square mile.¹⁵⁹ An applicant seeking a rural service provider bidding credit must provide the number of subscribers served as of the short-form application deadline.¹⁶⁰ An applicant may count any subscriber as a single subscriber even if that subscriber receives more than one service.¹⁶¹

75. 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.¹⁶² 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 107.¹⁶³ 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 107, the identity and the attributable subscribers of any such disclosable interest holder must be disclosed.¹⁶⁴ Like applicants seeking eligibility for small business bidding credits, eligible rural service providers may also form a consortium.¹⁶⁵ If an applicant is applying as a consortium of rural service providers, then the disclosures described in this paragraph, including the certification, must be provided for each consortium member.¹⁶⁶

3. Caps on Bidding Credits

76. Eligible applicants claiming either a small business or rural service provider bidding credit will be subject to specified caps on the total amount of bidding credit discounts that they may

¹⁵⁶ See *id.* §§ 1.2110(b)(4)(i), 1.2110(c)(6), 1.2110(k), 1.2112(b)(1)(vi).

¹⁵⁷ See *3.7 GHz Report and Order*, 35 FCC Rcd at 2376, paras. 69-70; see also 47 CFR § 27.1402(b). 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.

¹⁵⁸ 47 CFR § 1.2110(f)(4)(i)(A)-(B).

¹⁵⁹ *Id.* § 1.2110(f)(4)(i)(B); see also *Updating Part 1 Report and Order*, 30 FCC Rcd at 7536-37, para. 104.

¹⁶⁰ 47 CFR § 1.2110(f)(4)(i)(A).

¹⁶¹ 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.

¹⁶² 47 CFR § 1.2112(b)(1)(v); see also *id.* § 1.2110(f)(4)(i)(C).

¹⁶³ See *id.* § 1.2112(b)(1)(iii).

¹⁶⁴ See *id.* § 1.2110(c)(2)(ii)(J).

¹⁶⁵ See *id.* § 1.2110(b)(4)(i), (c)(6).

¹⁶⁶ *Id.* § 1.2112(b)(1)(vi).

receive.¹⁶⁷ For the reasons discussed in the *Auction 107 Comment Public Notice*, we adopt our proposals concerning bidding credit caps for Auction 107.¹⁶⁸ Specifically, we adopt a \$25 million cap on the total amount of bidding credit discounts that may be awarded to an eligible small business,¹⁶⁹ 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 markets with a population of 500,000 or less.¹⁷⁰

77. Moise requests that we increase the small business bidding credit cap to at least \$200 million, arguing that the higher cap “is the only way to ensure that non-national service providers can offer meaningful competition to the largest carriers.”¹⁷¹ We decline Moise’s request to increase the small business bidding credit cap in Auction 107, and reject the argument that a higher cap will ensure that non-national service providers can compete with the largest carriers. In establishing the DE program, the Commission sought to provide “meaningful opportunities for *bona fide* small businesses and rural service providers to *participate at auction*,”¹⁷² not to ensure that small businesses and rural service providers can “offer meaningful competition to the largest carriers.”¹⁷³ To further this end, 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.¹⁷⁴ As the Commission explained, “the imposition of a cap, if properly designed, will help the very entities that we seek to benefit, as well as provide some level of assurance that bidding activity by small businesses and rural service providers is consistent with their relative business size and plans.”¹⁷⁵ As we have explained previously, using the proposed caps in past auctions would have allowed the vast majority of eligible small businesses to realize the full value of their bidding credits.¹⁷⁶ As such, we are not convinced we should increase such caps for Auction 107.

¹⁶⁷ 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).

¹⁶⁸ See *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2606, paras. 13-14.

¹⁶⁹ Bidding credit discounts of 15% are available to entities whose average gross revenues for the preceding five years does not exceed \$55 million, and discounts of 25% are available to entities whose average gross revenues for the preceding five years does not exceed \$20 million. See *3.7 GHz Report and Order*, 35 FCC Rcd at 2374-76, paras. 67-68.

¹⁷⁰ *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2606, para. 14. If an applicant seeking a small business bidding credit does not claim the full \$10 million in bidding credits in those smaller markets, then it may apply the remaining balance to its winning bids on licenses in larger markets, up to the aggregate \$25 million cap.

¹⁷¹ Moise Comments at 5.

¹⁷² See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7539, para. 109 (emphasis added).

¹⁷³ See Moise Comments at 5.

¹⁷⁴ See *Updating Part 1 Report and Order*, 30 FCC Rcd at 7539-44, paras. 110-21.

¹⁷⁵ *Id.* at 7540, para. 111.

¹⁷⁶ See, e.g., *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 19-244, Public Notice, 35 FCC Rcd 2140, 2166, para. 78 (2020) (citing *Auctions 101 and 102 Procedures Public Notice*, 33 FCC Rcd at 4114-15, para. 32 & n.61 (“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.”)). Moreover, no bidder in Auction 103 will receive a bidding credit discount greater than approximately \$9,820,572.

(continued....)

4. Attributable Interests

a. Controlling Interests and Affiliates

78. 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.¹⁷⁷ Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant.¹⁷⁸ Typically, ownership of greater than 50% of an entity's voting stock evidences *de jure* control.¹⁷⁹ *De facto* control is determined on a case-by-case basis based on the totality of the circumstances.¹⁸⁰ 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; and
- the entity plays an integral role in management decisions.¹⁸¹

79. 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.¹⁸²

80. 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.¹⁸³ 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.¹⁸⁴ For more information on the

(Continued from previous page) _____
See 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 Closes; Winning Bidders Announced for Auction 103, AU Docket 19-59, Public Notice, Attach. B, 35 FCC Rcd 2015, 2032-34 (OEA/WTB 2020).

¹⁷⁷ 47 CFR § 1.2110(b)(1), (f)(4)(i)(C)(1).

¹⁷⁸ *Id.* § 1.2110(c)(2)(i).

¹⁷⁹ *Id.*

¹⁸⁰ *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 and 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).

¹⁸¹ 47 CFR § 1.2110(c)(2)(i)(A)-(C).

¹⁸² *Id.* § 1.2110(c)(2)(ii)(F).

¹⁸³ *Id.* § 1.2110(c)(5).

¹⁸⁴ *Id.*

application requirements regarding controlling interests and affiliates, applicants should refer to sections 1.2110(c)(2) and (c)(5) respectively,¹⁸⁵ as well as the FCC Form 175 Instructions.

81. 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.¹⁸⁶ 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.¹⁸⁷ 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.¹⁸⁸

82. 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 Commission's relevant standard of *de facto* control,¹⁸⁹ then 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.¹⁹⁰ 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, then the gross revenues of the additional

¹⁸⁵ *Id.* § 1.2110(c)(2), (c)(5).

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

¹⁸⁷ *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.

¹⁸⁸ *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.

¹⁸⁹ *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).

¹⁹⁰ 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.

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.¹⁹¹

b. Limitation on Spectrum Use

83. 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.¹⁹² 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.¹⁹³ Any applicant seeking a bidding credit for licenses won in Auction 107 will be subject to this attribution rule and must make the requisite disclosures.¹⁹⁴

84. 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.¹⁹⁵ If applicable, the applicant must attach to its FCC Form 175 any additional information as may be 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.¹⁹⁶ 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 107.

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

85. Applicants claiming designated entity benefits may be eligible for certain exceptions from the Commission's attribution rules.¹⁹⁷ For example, in calculating an applicant's gross revenues under the controlling interest standard, the Commission will not attribute to the applicant the personal net

¹⁹¹ 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 1995). In the *Updating Part 1 Report and Order*, the Commission also modified section 1.9020 of its rules to apply the same *de facto* control standard to designated entity spectrum manager lessors that it applies 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.

¹⁹² 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.

¹⁹³ 47 CFR § 1.2110(c)(2)(ii)(J).

¹⁹⁴ *See* sections II.H.1 (Small Business Bidding Credit), II.H.2 (Rural Service Provider Bidding Credit), above.

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

¹⁹⁶ To the extent an Auction 107 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 PEA selection(s).

¹⁹⁷ *See, e.g.*, 47 CFR § 1.2110(b)(4).

worth, including personal income, of its officers and directors.¹⁹⁸ 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.¹⁹⁹ 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.²⁰⁰

86. 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.²⁰¹ 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.²⁰²

87. 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, each of which individually satisfies the definition of small business or rural service provider.²⁰³ 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.²⁰⁴ 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

88. 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

¹⁹⁸ 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 *id.* at 10186, para. 9.

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

²⁰⁰ 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.

²⁰¹ 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 *id.* at 7536, para. 102 & n.336.

²⁰² *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.

²⁰³ 47 CFR § 1.2110(c)(6).

²⁰⁴ See sections II.H.1 (Small Business Bidding Credit), II.H.2 (Rural Service Provider Bidding Credit), above.

delinquent is not eligible to participate in Auction 107,²⁰⁵ 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.²⁰⁶ 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.²⁰⁷ 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 exclusions described below.²⁰⁸ For purposes of making these certifications, the term “controlling interest” is defined in section 1.2105(a)(4)(i) of the Commission rules.²⁰⁹

89. 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.²¹⁰ 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

²⁰⁵ 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.

²⁰⁶ 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 (USF), 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 107 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 [[89]] of this Public Notice), then it may be eligible to participate in Auction 107 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 section III.F (Upfront Payments), below.

²⁰⁷ 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.”).

²⁰⁸ 47 CFR § 1.2105(a)(2)(xii).

²⁰⁹ *Id.* § 1.2105(a)(4)(i).

²¹⁰ 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).

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.²¹¹ 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.²¹² 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.²¹³

90. 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.²¹⁴ Parties are also encouraged to consult with Auctions Division staff if they have any questions about default and delinquency disclosure requirements.

91. We consider outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission has previously 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.²¹⁵ 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.²¹⁶ 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.

²¹¹ 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.

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

²¹³ *Id.* at 7567, para. 173 & n.559.

²¹⁴ *See Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920.

²¹⁵ *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*).

²¹⁶ *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”).

92. 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 1.2105.²¹⁷ 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 107 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,²¹⁸ and such review may result in the dismissal of a winning bidder's long-form application.²¹⁹ 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

93. Applicants owned by members of minority groups and/or women, as defined in section 1.2110(c)(3),²²⁰ and rural telephone companies, as defined in section 1.2110(c)(4),²²¹ 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.²²²

K. Modifications to FCC Form 175

1. Only Minor Modifications Allowed

94. After the initial FCC Form 175 filing deadline, an Auction 107 applicant will be permitted to make only minor changes to its application consistent with the Commission's rules.²²³ 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 PEA 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.²²⁴ If an amendment reporting changes is a "major amendment," as

²¹⁷ *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>.

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

²¹⁹ 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).

²²⁰ 47 CFR § 1.2110(c)(3).

²²¹ *Id.* § 1.2110(c)(4).

²²² 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).

²²³ *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.*

²²⁴ *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).

described in section 1.2105(b)(2), the major amendment will not be accepted and may result in the dismissal of the application.²²⁵

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

95. 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 107.²²⁶ Consistent with the requirements for our spectrum auctions, an applicant for Auction 107 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.²²⁷ 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

96. As noted above, a party seeking to participate in Auction 107 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 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.²²⁸

97. An applicant will also be allowed to modify its FCC Form 175 in the Auction Application System, except for certain fields,²²⁹ 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).

98. 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

²²⁵ 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 107.

²²⁶ 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 107 applicants that they remain subject to the section 1.2105(c) prohibition on certain communications until the post-auction deadline for making down payments on winning bids. See section II.G.2 (Prohibition Applies Until Down Payment Deadline), above. 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.

²²⁷ 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).

²²⁸ We advise applicants to retain a copy of this confirmation page.

²²⁹ 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.

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 auction107@fcc.gov. The email summarizing the changes must include a subject line referring to Auction 107 and the name of the applicant, for example, "Re: Changes to Auction 107 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.

99. 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).²³⁰ 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 auction107@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).

100. 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.

101. 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 107. An applicant seeking to submit, outside of the Auction Application System, information that might reflect non-public information, such as an applicant's PEA 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).

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

III. PREPARING FOR BIDDING IN AUCTION 107

A. Due Diligence

103. 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 107. **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**

²³⁰ 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.

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.²³¹ 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.

104. 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 107 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),²³² the National Historic Preservation Act (NHPA),²³³ and other environmental statutes.²³⁴

105. We also encourage each applicant in Auction 107 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 107. 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. For example, applicants should pay particular attention to the framework adopted in the *3.7 GHz Report and Order* that requires new overlay licensees to pay a specified share of accelerated relocation payments as well as relocation expenses to reimburse incumbents for the reasonable costs of transitioning out of the lower 300 megahertz of the band in the contiguous United States.

106. **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 107.** 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.

107. 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.

²³¹ 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)).

²³² 42 U.S.C. § 4321 *et seq.*

²³³ 54 U.S.C. § 300101 *et seq.*

²³⁴ 47 CFR Chapter 1, Part 1, Subpart I.

B. Licensing Considerations

1. Transition of Incumbent Operations

108. Potential applicants in Auction 107 should consider carefully the process for transitioning incumbent operations out of the 3.7–3.98 GHz band when developing business plans, assessing market conditions, and evaluating the availability of equipment for 3.7 GHz Service operations. Each applicant should follow closely releases from the Commission concerning these issues²³⁵ and consider carefully the technical and economic implications for commercial use of the 3.7–3.98 GHz band.²³⁶

2. International Coordination

109. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican borders should be aware that the use of the 3.7 GHz Service frequencies they acquire in Auction 107 are subject to current and future agreements with the governments of Canada and Mexico.²³⁷

110. 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 3.7–3.98 GHz band must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.

3. Environmental Review Requirements

111. Licensees must comply with the Commission's rules for environmental review under the NEPA,²³⁸ the NHPA,²³⁹ and other environmental statutes.²⁴⁰ 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.²⁴¹ Under 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 when applicable.²⁴² If an environmental assessment is required, then facilities may not be constructed until environmental processing is completed. Under NHPA, a licensee or applicant must

²³⁵ See, e.g., *3.7 GHz Report and Order*, 35 FCC Rcd at 2391-467, paras. 110-331; see generally GN Docket No. 18-122.

²³⁶ We decline SES's request to adopt license conditions reflecting the relocation payment obligations incurred by winning bidders in Auction 107, see SES Comments at 2-3, which is outside the scope of this proceeding and unnecessary in light of the conditions established in the *3.7 GHz Report and Order*. See *3.7 GHz Report and Order*, 35 FCC Rcd at 2571, 2391, 2415-16, 2419, paras. 29, 110, 179, 187; see also T-Mobile Reply at 5 ("The Commission should reject SES's requests because they are beyond the scope of this Public Notice. . . . SES actually requests modification of service rules, which were adopted in the Report and Order in this proceeding and will ultimately be contained in the Commission's rules.").

²³⁷ See 47 CFR § 27.57(c).

²³⁸ 42 U.S.C. § 4321 *et seq.*

²³⁹ 54 U.S.C. § 300101 *et seq.*

²⁴⁰ 47 CFR Chapter 1, Part 1, Subpart I.

²⁴¹ 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 NHPA and NEPA).

²⁴² 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.

follow the procedures in section 1.1320 of the Commission's rules,²⁴³ the *Nationwide Programmatic Agreement for Collocation of Wireless Antennas* and the *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*.²⁴⁴ 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 environmental assessment must be prepared.²⁴⁵

4. Mobile Spectrum Holdings Policies

112. We remind bidders of the Commission's mobile spectrum holdings policies applicable to the 3.7–3.98 GHz band. Specifically, the Commission did not impose a pre-auction bright-line limit on acquisitions of the 3.7–3.98 GHz band.²⁴⁶ Instead, the Commission incorporated into the spectrum screen the 280 megahertz of spectrum available in the 3.7–3.98 GHz band.²⁴⁷ The Commission will also perform case-by-case review of the long-form license applications filed as a result of Auction 107.²⁴⁸

C. Bidder Education

113. Before the opening of the short-form filing window for Auction 107, detailed educational information will be provided in various formats to would-be participants on the Auction 107 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, which OEA will make available in the Education section of the Auction 107 website at www.fcc.gov/auction/107. 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.

114. In advance of the start of the mock auction, OEA will provide educational materials on the bidding procedures for Auction 107, beginning with release of a user guide for the bidding system and bidding system file formats, followed by an online bidding procedures tutorial.²⁴⁹ 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.

115. We believe that parties interested in participating in Auction 107 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

²⁴³ *Id.* § 1.1320.

²⁴⁴ *Id.* Part 1, Appendices B and C.

²⁴⁵ *Id.* § 1.1307; see also *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 20-75 (June 10, 2020) (clarifying that no environmental assessment has to be filed if the parties enter into a memorandum of agreement to resolve all adverse effects).

²⁴⁶ *3.7 GHz Report and Order*, 35 FCC Rcd at 2381, para. 83.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ As in Auctions 102 and 103, there may be separate materials prepared for the clock and assignment phases of Auction 107.

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 107 website at www.fcc.gov/auction/107. Once posted, the tutorials will be accessible anytime.

D. Short-Form Applications: Due Before 6:00 p.m. ET on September 22, 2020

116. In order to be eligible to bid in Auction 107, 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 September 22, 2020. Late applications will not be accepted.** No application fee is required.

117. Applications may be filed at any time beginning at noon ET on September 9, 2020, until the filing window closes at 6:00 p.m. ET on September 22, 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 September 22, 2020.

118. 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.²⁵⁰ 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 Applicants’ Initial Application Status and Opportunity for Minor Modifications

119. 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 an electronic copy will be sent by email 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 contact information of a Commission staff member who can answer questions specific to the application.

120. After the initial application filing deadline on September 22, 2020, applicants can make only minor modifications to their applications.²⁵¹ Major modifications (e.g., change of PEA 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.²⁵²

²⁵⁰ 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.

²⁵¹ See section II.K (Modifications to FCC Form 175), above.

²⁵² 47 CFR § 1.2105(b); see also *Two Way Radio*, 14 FCC Rcd at 12039, para. 8.

After the 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 107.

121. 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.²⁵³ Authorizations may be sent by email to auction107@fcc.gov.

2. Public Notice of Applicants' Final Application Status After Upfront Payment Deadline

122. After Commission staff reviews 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

123. In order to be eligible to bid in Auction 107, 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 November 2, 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. Instructions for completing FCC Form 159 for Auction 107 are provided below.

1. Making Upfront Payments by Wire Transfer for Auction 107

124. Upfront payments for Auction 107 must be wired to, and will be deposited in, the U.S. Treasury.²⁵⁴

125. Wire transfer payments for Auction 107 must be received before 6:00 p.m. ET on November 2, 2020.²⁵⁵ No other payment method is acceptable.²⁵⁶ 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:

²⁵³ 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 section III.G (Auction Registration), below.

²⁵⁴ 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 section III.F.3 (Upfront Payments and Bidding Eligibility), below.

²⁵⁵ 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.

²⁵⁶ 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
45 L Street, NE, 3rd Floor
Washington, DC 20001

ACCOUNT NUMBER: **827000001002**

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: “**U107**”)

NOTE: The beneficiary account number (BNF Account Number) is specific to the upfront payments for Auction 107. Do not use a BNF Account Number from a previous auction.

126. 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. On the fax cover sheet or in the email subject header, write “Wire Transfer – Auction Payment for Auction 107”. To meet the upfront payment deadline, an applicant’s payment must be credited to the Commission’s account for Auction 107 before the deadline.²⁵⁷

127. 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.²⁵⁸ 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.²⁵⁹ **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.

128. 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 107 go to an account number different from the accounts used in previous FCC auctions.

²⁵⁷ 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).

²⁵⁸ Among other things, the Commission cautions each applicant to plan ahead regarding any potential delays in its or its financial institution’s ability to complete wire transfers due to the COVID-19 pandemic.

²⁵⁹ 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).

129. 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.

2. Completing and Submitting FCC Form 159

130. 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 107. 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 (FCC Form 601), and correspondence about an application may cause processing delays.**

131. 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 "U107".
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 "107" (indicating Auction 107).

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.
- No signature is required on FCC Form 159 for auction payments
- Since credit card payments will not be accepted for upfront payments for an auction, leave Section E blank.

3. Upfront Payments and Bidding Eligibility

132. 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.²⁶⁰ 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.²⁶¹

133. Applicants that are former defaulters must pay upfront payments 50% greater than non-former defaulters.²⁶² 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.²⁶³

134. 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.²⁶⁴ 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 PEA. **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 PEAs selected on its FCC Form 175 for Auction 107, 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.

135. In the *Auction 107 Comment Public Notice*, we proposed to require applicants to submit upfront payments based on \$0.015 per MHz-pop.²⁶⁵ U.S. Cellular supports this proposal,²⁶⁶ whereas Verizon argues that upfront payments should be reduced to \$0.010 per MHz-pop to achieve parity with Auction 105.²⁶⁷ We decline to reduce upfront payment amounts for all PEAs. To maintain consistency

²⁶⁰ 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.

²⁶¹ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2377-79, paras. 169-76.

²⁶² 47 CFR § 1.2106(a); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15316-18, paras. 40-43; section II.I (Provisions Regarding Former and Current Defaulters), above.

²⁶³ For this purpose, the term “controlling interest” is defined in 47 CFR § 1.2105(a)(4)(i).

²⁶⁴ See *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2608, paras. 21-23.

²⁶⁵ *Id.* at 2608, para. 21.

²⁶⁶ U.S. Cellular Comments at 4.

²⁶⁷ Verizon Comments at 14. Verizon argues that “[a] lower barrier to entry will increase competition and promote economic opportunity for all bidders facing economic headwinds this year—without jeopardizing the integrity of the auction.” *Id.* at 15; see also Verizon Reply at 7; Letter from William H. Johnson, Senior Vice President, Verizon, to

(continued....)

with the tiered approach to minimum opening bids we adopt below,²⁶⁸ however, we modify our proposal to adopt a tiered approach under which upfront payment amounts will vary by market population. In setting upfront payments, as well as minimum opening bids, it is appropriate to reflect an approximation of relative value of licenses among markets. We conclude that calculating upfront payments using the tiers and per MHz-pop dollar amounts we adopt here is a reasonable approximation of relative value and, in this case, would better serve our goals in setting upfront payments, compared to our original proposal. In particular, this modification is consistent with our experience in past auctions that the top PEAs by population are generally subject to the greatest level of demand and account for a substantial fraction of total auction revenues.²⁶⁹ Although we do not adopt Verizon's proposal, we note that calculating upfront payments in this way will reduce upfront payment amounts for less-densely populated license areas, which will likely facilitate participation by applicants interested in those areas.²⁷⁰ Moreover, the total of the upfront payment amounts for one 20-megahertz block in all 406 PEAs available in Auction 107 is approximately two-thirds of the corresponding total of the amounts proposed in the *Auction 107 Comment Public Notice*, which is roughly equivalent to Verizon's proposal.

136. Accordingly, we adopt upfront payments for a generic block in a PEA based on \$0.015 per MHz-pop for PEAs 1–50, \$0.0030 per MHz-pop for PEAs 51–100, and \$0.0015 per MHz-pop for all other PEAs, subject to a minimum of \$500.²⁷¹ The upfront payment amount per block in each PEA is set forth in the “Attachment A” file. The upfront payment amounts are approximately half the minimum opening bid amounts, described in section IV.A.7.a, below.

137. We also adopt our proposal to assign each generic block in a PEA a specific number of bidding units, equal to one bidding unit per \$10 of the upfront payment.²⁷² The number of bidding units for one block in a given PEA 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, and submit an upfront payment amount for the auction covering that number of bidding units.²⁷³ In order to make this calculation, an applicant should add together the bidding units for the number of blocks in PEAs 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.**

(Continued from previous page) _____
Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, AU Docket No. 20-25, at 2 (filed June 10, 2020)
(Verizon June 10 *Ex Parte*).

²⁶⁸ See section IV.A.7.a (Minimum Opening Bids and Reserve Price), below.

²⁶⁹ See, e.g., *Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002*, AU Docket No. 14-252, GN Docket No. 12-268, Public Notice, 29 FCC Rcd 15750, 15770, para. 51 (2014) (*Auction 1000 Comment Public Notice*).

²⁷⁰ See Verizon Comments at 14-15.

²⁷¹ The results of the upfront payment calculations will be rounded as follows: Results above \$10,000 will be rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 will be rounded to the nearest \$100; and results below \$1,000 will be rounded to the nearest \$10.

²⁷² See *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2608, para. 22.

²⁷³ 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 license areas it selected on its FCC Form 175.

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

PEA	Bidding Units	Upfront Payment
PEA058 — Bloomington, IN	6,400	\$64,000
PEA064 — South Bend, IN	5,700	\$57,000
<p>If a bidder wishes to bid on one block in both of the above PEAs in a round, it must have selected both PEAs on its FCC Form 175 and purchased at least 12,100 bidding units (6,400 + 5,700) of bidding eligibility. If a bidder only wishes to bid on a block in one of these PEAs, but not both, purchasing 6,400 bidding units would meet the eligibility requirement for a block in either PEA. The bidder would be able to bid on a block in either PEA, but not both at the same time. If the bidder purchased only 5,700 bidding units, the bidder would have enough eligibility to bid for a block in PEA064 but not for one in PEA058.</p>		

138. If an applicant is a former defaulter, it must calculate its upfront payment for the maximum amount of generic blocks in each PEA on which it plans to bid by multiplying the number of bidding units on which it wishes to be active by 1.5.²⁷⁴ In order to calculate the number of bidding units to assign to former defaulters, the Commission will calculate the number of bidding units a non-former defaulter would get for the upfront payment received, divide that number by 1.5, and round the result up to the nearest bidding unit.²⁷⁵

G. Auction Registration

139. All qualified bidders for Auction 107 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.

140. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder for Auction 107 that has not received this mailing by noon on November 25, 2020, should call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all the registration materials.

141. In the event that a SecurID® token is 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 a replacement. To request a replacement, call the Auction Bidder Line at the telephone number provided in the registration materials or the Auction Hotline at (717) 338-2868.

²⁷⁴ See 47 CFR § 1.2106(a).

²⁷⁵ If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one generic block in a PEA, the applicant will not be eligible to participate in Auction 107. *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 107 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).

H. Remote Electronic Bidding via the FCC Auction Bidding System

142. Bidders will be able to participate in Auction 107 over the Internet using the FCC Auction Bidding System (bidding system). In addition, bidders will have the option of placing bids by telephone through a dedicated auction bidder line. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of 10 minutes. The toll-free telephone number for the auction bidder line will be provided to qualified bidders prior to the start of bidding in the auction.

143. 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 will be issued three SecurID® tokens. A bidder cannot bid without his or her SecurID® token. In order to access the bidding function of the bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a *bid summary* for each round after they have completed all their activity for that round. **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 107. Please note that the SecurID® tokens can be recycled, and the Commission requests that bidders return the tokens to the FCC. Pre-addressed envelopes will be provided to return the tokens once the auction has ended.

144. 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.

145. 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

146. All qualified bidders will be eligible to participate in a mock auction for the clock phase, which will begin on December 3, 2020.²⁷⁶ 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, 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

²⁷⁶ Only those bidders that are qualified to participate in Auction 107 will be eligible to participate in the mock auction.

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 107.

147. After the clock phase of the auction concludes, a separate mock auction for the assignment phase will be held for those qualified bidders that won generic blocks in the clock phase.

J. Auction Delay, Suspension, or Cancellation

148. At any time before or during the bidding process, OEA, in conjunction with WTB, may delay, suspend, or cancel bidding in Auction 107 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.²⁷⁷ This approach has proven effective in resolving exigent circumstances in previous auctions and we find no reason 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 WTB will exercise this authority at their discretion.

K. Fraud Alert

149. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 107 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.

150. 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
- the FTC at (877) FTC-HELP ((877) 382-4357) or by visiting www.consumer.ftc.gov/articles/0238-investment-risks
- the SEC at (202) 942-7040 or by visiting www.sec.gov/investor

151. 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.

²⁷⁷ See 47 CFR § 1.2104(i).

IV. BIDDING PROCEDURES

152. We will conduct Auction 107 using an ascending clock auction design with two phases. The first phase of the auction—the clock phase—will consist of successive clock bidding rounds in which bidders indicate their demands for a number of generic license blocks in specific categories and PEAs. In the second phase—the assignment phase—winning clock phase bidders will have the opportunity to bid for their preferred combinations of frequency-specific license assignments, consistent with their clock phase winnings, in a series of single sealed-bid rounds conducted by PEA or, in some cases, PEA group. Commenters support this general framework for an ascending clock auction.²⁷⁸

153. We direct OEA, in conjunction with WTB, to prepare and release, concurrent with this Public Notice, updated technical guides that provide the mathematical details of the adopted auction design and algorithms for the clock and assignment phases of Auction 107. The information in the updated technical guides, which are available in the Education section of the Auction 107 website (www.fcc.gov/auction/107), supplements our decisions in this Public Notice.²⁷⁹

A. Clock Phase

1. Clock Auction Design

154. During the clock phase of Auction 107, bidders will indicate their demands for generic license blocks in up to two bidding categories in specific geographic areas—in this case, PEAs. Under the clock auction format we adopt, the auction will proceed in a series of rounds, with bidding conducted simultaneously for all spectrum blocks in all PEAs available in the auction.²⁸⁰ During each bidding round, the bidding system will announce a per-block clock price for each product—a category in a PEA—and qualified bidders will submit, for each product 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.

155. In Auction 107, for each product, the clock price for a generic license block will increase from round to round if bidders indicate total demand for blocks in that product that exceeds the number of blocks available. The bidding rounds will continue until, for all products, 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 product at the final price will be deemed winning bidders.

156. Following the clock phase, the assignment phase will offer clock phase winners the opportunity to bid an additional amount for licenses with specific frequencies. All winning bidders, regardless of whether they bid in the assignment phase, will be assigned licenses for contiguous blocks within each PEA.

2. Generic License Blocks and Bidding Categories

157. Under the approach that we adopt, the clock phase categories will be determined based on the specific clearing deadline to which incumbent earth stations are subject, i.e., Phase I or Phase II, consistent with the alternative approach on which we sought comment in the *Auction 107 Comment Public Notice*.²⁸¹ All commenters that address bidding procedures strongly favor this alternative approach, and assert that it will reduce the need for bidders to switch bidding across categories, facilitate

²⁷⁸ See, e.g., AT&T Comments at 1-2; U.S. Cellular Comments at 3-4; T-Mobile Comments at 1.

²⁷⁹ The Auction 107 Clock Phase Technical Guide details the adopted procedures for the clock phase of Auction 107. The Auction 107 Assignment Phase Technical Guide details the adopted procedures for the assignment phase.

²⁸⁰ See *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2611, para. 36.

²⁸¹ See *id.* at 2610, para. 35.

contiguous assignment, and accelerate the auction.²⁸² We agree. The commenters argue that the essential difference between the blocks is whether they will be subject to the Phase I deadline, and that consequently, the blocks should be categorized for clock phase bidding accordingly.²⁸³

158. In the 46 PEAs where certain blocks are subject to the Phase I deadline and others only to the Phase II deadline, we will conduct clock phase bidding for two categories of generic blocks based on whether the Phase I or Phase II deadline applies to the specific blocks. Accordingly, in the 46 PEAs where certain blocks are subject to the Phase I deadline, the first category of generic blocks will consist of the 20-megahertz sub-blocks between 3.7–3.8 GHz. This category, designated Category A, will comprise the five blocks subject to the Phase I deadline. The second category of blocks, Category BC, will consist of the nine blocks that are subject to the Phase II deadline.²⁸⁴ In the remaining 360 PEAs where there are no blocks subject to the Phase I deadline there will be a single bidding category, designated ABC, consisting of all of the 14 20-megahertz blocks between 3.7–3.98 GHz.²⁸⁵ The approach we proposed in the *Auction 107 Comment Public Notice*, in contrast, would have conducted bidding for two categories (A and BC) in all 406 PEAs.²⁸⁶

159. In each bidding round, a bidder will have the opportunity to bid for the quantity of generic blocks it demands in each bidding category available in each PEA. Bidding in the clock phase will determine a single price for all the generic blocks in each category in each PEA.

²⁸² See, e.g., Verizon Comments at 4 (“[The alternative approach] does not require bidders to consider switching between categories (as they would have to do more often under the A/BC Approach). This simplification will speed up the auction and minimize the risk that a bidder ends up with demand trapped in a category it does not really prefer.”); see also U.S. Cellular Comments at 7 (“[Under the alternative approach] [e]very bidder in the 360 Phase II PEAs therefore would be guaranteed the technical benefits of contiguous blocks, including faster data rates, lower latency, and improved spectral efficiency.”); AT&T Comments at 3-4; CCA Comments at 2-3; CTIA Reply at 4; T-Mobile Comments at 2.

²⁸³ See, e.g., CCA Comments at 2 (“The Phase II A block licenses and the BC block licenses are sufficiently interchangeable that they can constitute a single group for purposes of bidding in the clock phase”); see also U.S. Cellular Comments at 6-7; Verizon Comments at 3; AT&T Comments at 2-3; T-Mobile Comments at 2.

²⁸⁴ As explained in section IV.C (License Authorizations for Interim and Final Assignments), below, a winner of a Category A block in the 46 PEAs with blocks subject to the Phase I deadline will be assigned one of the five blocks subject to the Phase I deadline (A1–A5) as an interim assignment, but may be assigned any of the blocks in the band (A1–C4) as a final assignment. A winner of a Category BC block will be assigned one of the blocks in the band (A1–C4) as a final assignment and will not be assigned any block subject to the Phase I deadline.

²⁸⁵ In the *Auction 107 Comment Public Notice*, we suggested the names P1 and P2 to refer to the alternative categories. Under the procedures we adopt, Category A corresponds directly to the alternative Category P1. In the 46 PEAs, Category BC corresponds to alternative Category P2, and ABC corresponds to alternative Category P2 in the remaining PEAs. We adopt this nomenclature that differs from the suggested alternative strictly for technical implementation purposes. The essential characteristic of the clock phase bidding categories we adopt is the same as in the alternative approach: that clock phase bidding will not force bidders to bid in separate categories in PEAs where all blocks are available only in Phase II.

²⁸⁶ See *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2610, para. 32.

3. Bidding Rounds

160. As proposed, Auction 107 will consist of sequential bidding rounds, each followed by the release of round results. We will conduct bidding simultaneously for all spectrum blocks in all bidding categories for all PEAs available in the auction. In the first bidding round of Auction 107, a bidder will indicate, for each product, how many generic license blocks it demands at the minimum opening bid price.

161. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding.²⁸⁷ 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.²⁸⁸ 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.²⁸⁹ As is typical, the bidding system will announce any such changes to the bidding schedule several rounds before the change occurs.

162. A bidder may submit its bids using the bidding system's *upload* function, which allows bid files in a comma-separated value (CSV) format to be uploaded. A bidder may also submit bids through the auction bidding system user interface or using the telephonic bidder line.²⁹⁰ In all cases, the bidding system will not allow bids to be submitted unless the bidder selected the PEAs on its FCC Form 175 and the bidder has sufficient bidding eligibility.²⁹¹

163. During each round, a bidder may also remove bids placed in the current round, as proposed.²⁹² If a bidder modifies its bids for blocks in a PEA in a round, the system takes the last bid submission as that bidder's bid for the round.²⁹³

4. Stopping Rule

164. We adopt our proposal to use a simultaneous stopping rule for the clock phase of Auction 107, under which all blocks in both categories in all PEAs will remain available for bidding until the bidding stops in every PEA.²⁹⁴ Specifically, in the clock phase, bidding will close for blocks in all PEAs after the first round in which there is no excess processed demand in any product. Consequently, it is not possible to determine in advance how long the bidding in Auction 107 will last.

5. Availability of Bidding Information

165. We will make public after each clock round of Auction 107, for each category in each PEA: (1) the supply, (2) the aggregate demand, (3) the posted price of the last completed round,²⁹⁵ and

²⁸⁷ *Id.* at 2611, para. 38.

²⁸⁸ *See id.*

²⁸⁹ *Id.*

²⁹⁰ For more information on how to submit bids, see the Auction 107 Clock Phase Bidding System User Guide.

²⁹¹ *See* section IV.A.6 (Activity Requirement and Activity Upper Limit), below.

²⁹² *See Auction 107 Comment Public Notice*, 35 FCC Rcd at 2611, para. 40.

²⁹³ 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 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.

²⁹⁴ *See Auction 107 Comment Public Notice*, 35 FCC Rcd at 2611, para. 41.

²⁹⁵ 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 107 Clock Phase Technical Guide for more details.

(4) the clock price for the next round. The identities of bidders demanding blocks in a specific category or PEA will not be disclosed until after Auction 107 concludes (i.e., after the close of bidding).²⁹⁶

166. As proposed, each bidder will have access to additional information related to its own bidding and bid eligibility.²⁹⁷ 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 product and its eligibility for the next round.

167. 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.

6. Activity Requirement and Activity Upper Limit

168. *Activity requirement.* 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.²⁹⁸ As proposed in the *Auction 107 Comment Public Notice*, we will set the activity requirement (the *activity requirement percentage*) between 90% and 100% of a bidder's bidding eligibility in all clock rounds.²⁹⁹ 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. No commenters addressed these activity rule procedures.³⁰⁰

169. We will use upfront payments to determine a bidder's initial (maximum) eligibility in terms of bidding units. Each spectrum block in a PEA will be assigned a specific number of bidding units based on the number of MHz-pops in the PEA. 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.

170. 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 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.³⁰¹

171. 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

²⁹⁶ *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2612, para. 42; see also section II.F (Information Procedures During the Auction Process), above.

²⁹⁷ See *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2612, para. 43.

²⁹⁸ See *id.* at 2612, para. 45.

²⁹⁹ See *id.* at 2612, para. 46.

³⁰⁰ Bidders that do not place any bids in the first round of the auction will have their eligibility reduced to zero, and will be eliminated from bidding during the remainder of the auction.

³⁰¹ 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.

demands in a product, but the bidding system does not apply the request because demand for the product would fall below the available supply, the bidder's activity will reflect its unreduced demand.³⁰²

172. *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 bidding system during bid processing will not exceed the bidder's current bidding eligibility.³⁰³ Because a bidder's eligibility for the next round is calculated based on the bidder's demands as applied by the auction bidding 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.³⁰⁴ We anticipate that 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.³⁰⁵

173. One commenter supports the activity upper limit,³⁰⁶ but two others oppose it.³⁰⁷ Opponents of the upper limit appear to misinterpret the way the procedure will be implemented—importantly, these commenters do not appear to recognize that the additional bidding flexibility will never result in a bidder being assigned more bidding units than its eligibility permits. One of the opposing commenters claims, and the other agrees, that because a larger bidder can have more free eligibility under the activity rule than a smaller bidder (100% of eligibility minus the activity requirement percentage is a larger number if eligibility is greater), the activity upper limit further disadvantages smaller bidders.³⁰⁸ We disagree. Although it is true that the standard activity rule gives a bidder with greater eligibility more flexibility to increase its bidding activity, the activity upper limit does not give any bidder the ability to increase its bidding eligibility. Further, it provides a bidder that does not have sufficient free eligibility—more likely to be a smaller bidder—with a safeguard against losing eligibility, which is a safeguard that a larger bidder may not need. In this way, it provides a relative advantage to a bidder with less eligibility, rather than disadvantaging smaller bidders as the commenters assert. A commenter also argues that the activity upper limit could "enable insincere bidding and prolong the auction," but it does not explain that conclusion.³⁰⁹ The stopping rule depends on the processed demand and, as noted, a bidder's processed activity cannot exceed its eligibility and the activity upper limit will never allow a bidder to increase its eligibility. Moreover, all bids that a bidder submits, regardless of whether the bidder's submitted activity exceeds its eligibility, are binding commitments on the bidder's part. Accordingly, absent convincing arguments against the proposal, we adopt our proposal to implement an activity upper limit.

³⁰² 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 a product if the reduction would result in aggregate demand falling below (or further below) the available supply of blocks in the product.

³⁰³ See *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2613, para. 47.

³⁰⁴ This may occur, for example, if the bidder bids to reduce its demand in PEA X by two blocks (with 10 bidding units each) and bids to increase its demand by one block (with 20 bidding units) in PEA Y. If the bidder's demand can only be reduced by one block in PEA X (because there is only one block of excess demand), the increase in PEA Y cannot be applied, and absent other bidding activity the bidder's eligibility would be reduced. See sections IV.A.8.a and d (No Excess Supply Rule for Bids to Reduce Demand; and Processed Demands), for further details on bid processing.

³⁰⁵ 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 the Auction 107 Clock Phase Technical Guide for further details and an example.

³⁰⁶ See U.S. Cellular Comments at 4-5.

³⁰⁷ See Moise Comments at 14-15; Verizon Comments at 14; Verizon Reply at 7-8.

³⁰⁸ See Moise Comments at 16-17; Verizon Reply at 7-8.

³⁰⁹ See Verizon Reply at 7-8.

174. When submitting bids with associated bidding activity greater than its current bidding eligibility, a bidder should consider the price points³¹⁰ 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 although a bidder may submit bids with associated bidding units exceeding 100% of its current bidding eligibility, its processed activity can never exceed its eligibility. Thus, if a bidder submits bids with associated bidding units exceeding the bidder's current eligibility, the bidding system will not apply all of those bids.

175. Specifically, after Round 1, a bidder may submit bids with bidding units totaling up to its *activity upper limit*, which is 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.³¹¹ 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.

176. 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%.³¹² 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.

177. *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 bids that request to reduce to a quantity of zero blocks for the product. If these bids are applied, or applied partially, then a bidder's bidding activity, and its bidding eligibility for the next round, may be reduced.³¹³

178. For Auction 107, as for other clock auctions, we do not provide for activity rule waivers to preserve a bidder's eligibility.³¹⁴ 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 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, while minimizing any potential adverse impacts on either

³¹⁰ See section IV.A.8.d (Processed Demands) for a definition of price point.

³¹¹ Verizon suggests instead an initial activity limit percentage of 110% given that the activity upper limit has not yet been tested. Verizon Comments at 14. We decline to accept the suggestion but note that we will monitor the use of the activity upper limit and make adjustments during the auction if we believe it advisable to do so.

³¹² Verizon urges us "to reduce the maximum activity upper limit from 140 percent to 120 percent." Verizon Comments at 14. We decline to accept the suggestion but note that we will monitor the use of the activity upper limit and make adjustments during the auction if we believe it advisable to do so.

³¹³ See sections IV.A.8.a and c (No Excess Supply Rule for Bids to Reduce Demand; and Partial Application of Bids) regarding partial application of bids.

³¹⁴ See *Auction 1000 Procedures Public Notice*, 30 FCC Rcd at 9077, para. 213; *Auctions 101 and 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).

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.³¹⁵

7. Acceptable Bids

a. Minimum Opening Bids and Reserve Price

179. 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 amended.³¹⁶ We will establish minimum opening bid amounts for Auction 107. 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.³¹⁷

180. In the first bidding round of Auction 107, a bidder will indicate how many generic license blocks in a PEA 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. Several commenters address the proposed minimum opening bid amounts.³¹⁸ We are persuaded by T-Mobile and CCA to adopt a tiered approach, under which minimum opening bid amounts will vary by market population. For PEAs 1–50, minimum opening bid amounts are based on \$0.03 per MHz-pop; for PEAs 51–100, minimum opening bid amounts are based on \$0.006 per MHz-pop; and for all other PEAs, minimum opening bid amounts are based on \$0.003 per MHz-pop, subject to a minimum of \$1,000.³¹⁹ As with upfront payments, we conclude that calculating minimum opening bid amounts using these tiers and per MHz-pop dollar amounts is consistent with our experience in past auctions that the top PEAs by population are generally subject to the greatest level of demand and account for a substantial fraction of total auction revenues.³²⁰ Moreover, calculating minimum opening bids in this way is likely to promote a speedy auction by starting the bidding in each market closer to the final price. Thus, we expect that this tiered approach, which reduces minimum opening bid amounts for less-densely populated markets, will encourage auction participation, particularly in rural areas, without unduly prolonging the competitive bidding process.³²¹ These minimum opening bid amounts are specified in the Attachment A file.

³¹⁵ See sections IV.A.8.a and d (No Excess Supply Rule for Bids to Reduce Demand; and Processed Demands), below.

³¹⁶ *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2614, para. 53; see also 47 U.S.C. § 309(j).

³¹⁷ See, e.g., *Auction 97 Procedures Public Notice*, 29 FCC Rcd at 8440, para. 193.

³¹⁸ U.S. Cellular supports the proposed minimum opening bid amounts based on \$0.03 per MHz-pop. U.S. Cellular Comments at 4. T-Mobile and CCA suggest the tiered approach that we adopt. See T-Mobile Comments at 4; CCA Comments at 3. Verizon supports the proposed minimum opening bid amounts but suggests that if the Commission adopts a tiered approach, it should increase the minimum opening bid amounts in the larger PEAs, rather than reduce them in the smaller PEAs as T-Mobile and CCA propose. See Verizon Reply at 6-7.

³¹⁹ See note [[271]] (concerning rounding), above.

³²⁰ See, e.g., *Auction 1000 Comment Public Notice*, 29 FCC Rcd at 15770, para. 51.

³²¹ See T-Mobile Reply at 4 (arguing that “the auction will not be unnecessarily prolonged by adjusting the minimum opening bids in smaller markets, where there is a need for mid-band spectrum to help bridge the digital divide.”); see also *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2614, para. 54.

b. Clock Price Increments

181. 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 price³²² and the clock price for each product 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 product exceeds the supply of blocks, the start-of-round price will be equal to the clock price from the prior round.³²³ 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.

182. We will set the clock price for blocks in a specific product for a round by adding a percentage increment to the start-of-round price.³²⁴

183. We adopt our proposal to set the clock price for blocks in a PEA by adding a fixed increment percentage to the start-of-round price.³²⁵ 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.

c. Intra-Round Bids

184. As proposed, 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.³²⁶ 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 three blocks at the start-of-round price of \$100, but wishes to hold only two 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 two at a price of \$110 (\$100+\$10). Similarly, if the bidder wishes to reduce its demand to zero should the price increase at all above \$100, then the bidder will indicate a bid quantity of zero at the start-of-round price of \$100.

185. 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 bidding 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.

8. Bids to Change Demand, Bid Types, and Bid Processing

186. Under the ascending clock auction format we adopt for Auction 107, a bidder that is willing to maintain the same demand in a product at the new clock price will bid for that quantity at the clock price, indicating that it is willing to pay up to and including that price, if need be, for the specified

³²² The start-of-round price is also referred to as the posted price of the previous round.

³²³ Aggregate demand for a product is equal to the total number of blocks for which bidders have processed demand.

³²⁴ For example, if the start-of-round price for a block in a given product 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.

³²⁵ We received no comments on this proposal.

³²⁶ No commenters addressed this proposal.

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 product (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 product, the bidding system may not be able to apply the requested change.

187. In order to facilitate bidding for multiple blocks in a product, bidders will be permitted to make two types of bids: simple bids and switch bids.³²⁷

- A "simple" bid indicates a desired quantity of blocks in a product at a price (either the clock price or an intra-round price). Simple bids may be applied partially. A simple bid that involves a reduction from the bidder's previous demands may be implemented partially if aggregate excess demand is insufficient to support the entire reduction. A simple bid to increase a bidder's demand in a category may be applied partially if the total number of bidding units associated with the bidder's full increase in demand exceeds the bidder's bidding eligibility for the round.
- A "switch" bid, applicable in PEAs in which there are blocks in both A and BC categories, allows the bidder to request to move its demand for a quantity of blocks from the A category to the BC category, or vice versa, within the same PEA. A switch bid may be applied partially, but the increase in demand in the "to" category will always match in quantity the reduction in the "from" category.

188. These bid types will allow bidders to express their demand for blocks in the next clock round without running the risk that they will be forced to purchase more spectrum at a higher price than they wish. When a bid to reduce demand can be applied only partially, the uniform price for the category will stop increasing at that point, since the partial application of the bid results in demand falling to equal supply. Hence, a bidder that makes a simple bid or a switch bid that cannot be applied fully will not face a price that is higher than its bid price for the remaining demand.

189. As proposed, we do not adopt any package bidding procedures for the clock phase of Auction 107.³²⁸ A bidder may bid for multiple blocks in a bidding category in a PEA and may submit bids for multiple PEAs. As set forth below, under the procedures we adopt for the assignment phase, the assignment phase will assign contiguous blocks to winners of multiple blocks in a PEA and give bidders an opportunity to express their preferences for specific frequency blocks, thereby facilitating aggregations of licenses.

190. Under the bid processing procedures we proposed and adopt here, the auction bidding system will, after each bidding round, process bids to change demand to determine the *processed demand* of each bidder for each product and a *posted price* for each product that would serve as the start-of-round price for the next round.³²⁹

a. No Excess Supply Rule for Bids to Reduce Demand

191. 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 a product if the reduction would result in aggregate demand falling below (or further below) the available supply of blocks in the product. Therefore, if a bidder submits a simple bid 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. Similarly, if a

³²⁷ *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2616, para. 66.

³²⁸ *See id.* at 2616, para. 67; *see also* U.S. Cellular Comments at 5 (supporting the Commission's proposal not to incorporate any package bidding procedures into Auction 107).

³²⁹ No commenters addressed these proposed procedures.

bidder submits a switch bid to move its demand for a quantity of blocks from the A category to the BC category within the same PEA, the FCC auction bidding system will treat the bid as a request that will be applied only if the “no excess supply” rule would be satisfied for the A category in the PEA.

b. Eligibility Rule for Bids to Increase Demand

192. 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 submits a simple bid 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.

c. Partial Application of Bids

193. Under the bid processing procedures we adopt, a bid (simple bid or switch 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 switch bid may be applied partially, but the increase in demand in the “to” category will always match in quantity the reduction in the “from” category. A simple bid to increase a bidder’s demand will be applied partially if the total number of bidding units associated with the bidder’s demand exceeds the bidder’s bidding eligibility for the round.

d. Processed Demands

194. After a round ends, the bidding system will process bids to change demand in order of price point,³³⁰ where the price point represents the percentage of the bidding interval for the round.³³¹ 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 products, then look at bids at the next price point in all products, and so on.³³² As it considers each submitted bid during bid processing, the bidding system will determine the extent to which there is excess demand in each product at that 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.

195. 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 of price point, if there should be excess demand or sufficient eligibility later in the processing after other bids are processed.

196. Therefore, once a round closes, the auction bidding 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

³³⁰ Bids to maintain demand are always applied before the bidding system considers bids to change demand.

³³¹ 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.

³³² If there are multiple bids at a single price point, the system will process bids in order of a bid-specific pseudo-random number.

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.

e. Price Determination

197. We adopt bid processing procedures to determine, based on aggregate demand, the posted price for each product for the round that will serve as the start-of-round price for the next round. The uniform price for all of the blocks in a product will increase from round to round as long as there is excess demand for blocks in the product but will not increase if aggregate demand does not exceed the available supply of blocks.

198. If, at the end of a round, the aggregate demand for blocks in the product exceeds the supply of blocks, 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 product 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 product, 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.

199. When a bid to reduce demand can be applied only partially, the uniform price for the product 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.

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

9. Winning Bids in the Clock Phase

201. Under the clock auction format for Auction 107, bidders with processed demand for a product at the time the stopping rule is met will become the winning bidders of licenses corresponding to that number of blocks and will be assigned specific frequencies in the assignment phase. The final clock phase price for a generic block in a product will be the posted price for the final round.³³³

B. Assignment Phase

202. The assignment phase will determine which frequency-specific licenses will be won by the winning bidders of generic blocks during the clock phase. In the assignment phase, winning bidders will have the opportunity to bid for preferred combinations of frequency-specific licenses. A bidder can indicate a price using a sealed bid for one or more possible frequency assignments for which it wishes to express a preference, consistent with its winning bids for generic blocks in the clock phase. The bid prices will represent the maximum payment that the bidder is willing to pay for the frequency-specific license assignment, in addition to the final price established in the clock phase for the generic blocks. The

³³³ This and other Auction 107 bid processing details are addressed in the Auction 107 Clock Phase Technical Guide.

procedures we adopt will determine the optimal assignment of licenses within each assignment category in each PEA based on bid amounts in the assignment phase.

203. Although we sought comment on an assignment phase approach that would assign licenses separately within each clock phase bidding category, we are persuaded by commenters to adopt an alternative approach for PEAs with blocks in two clock phase categories that allows for final frequency-specific assignments of contiguous blocks within each PEA.³³⁴ Accordingly, we adopt procedures for the 46 PEAs where certain blocks are subject to the Phase I deadline that will make a separate interim assignment of contiguous blocks within Category A, i.e., those blocks subject to the Phase I deadline, and will make a separate final assignment of contiguous blocks for all of a bidder's clock phase winnings whether in Category A and/or BC.³³⁵ In the 360 PEAs where there are no blocks subject to the Phase I deadline, the assignment phase procedures will make one assignment for all of a bidder's clock phase winnings in Category ABC, consisting of all of the 14 20-megahertz blocks between 3.7–3.98 GHz. Procedures to implement this approach are set forth in more detail below.

204. Commenters supporting this approach argue that it is critical that the final assignment procedures provide for contiguous frequency blocks for all winners of multiple blocks in order to facilitate wideband channels that will allow for the efficient deployment of high-capacity, low-latency services.³³⁶ CTIA asserts that contiguous C-band assignments are essential because Auction 107 “is the only mid-band spectrum opportunity today that will enable bidders to obtain the wide channel bandwidths that are indispensable to achieving the faster connections and lower latency that 5G promises.”³³⁷ Commenters argue that the approach we proposed in the *Auction 107 Comment Public Notice* in contrast would have other unintentional negative effects, including encouraging bidders to employ bidding strategies in the auction that could have the anti-competitive effect of blocking contiguous assignments for competitors and reducing auction revenues due to uncertainty among bidders over whether they would be able to assemble contiguous frequency blocks.³³⁸ Moreover, Verizon argues that forcing a winning

³³⁴ See, e.g., CCA Comments at 4 (“[T]he Commission should conduct an assignment round that accounts for all of the spectrum in a market, including Blocks A, B, and C, and should avoid any approach that will necessarily result in non-contiguous spectrum.”); Verizon Comments at 6 (“To facilitate the rapid and efficient deployment of spectrum for new services, the Commission should modify the assignment phase to (1) assign all winning bidders ‘final’ frequency assignments that satisfy contiguity objectives across product categories within a PEA”); AT&T Reply at 4 (“The single most important factor that the Assignment Rounds must address . . . is to guarantee all bidders the full contiguity of all spectrum won after the Phase II deadline.”); T-Mobile Comments at 5 (“[W]inning bidders of spectrum in the lower 100 megahertz in the top 46 PEAs may wish to ensure that all spectrum for which they are ultimately licensed is contiguous – regardless of initial clearing deadlines; a winning bidder for the lower 100 megahertz of C-band spectrum should have the opportunity to ensure that it is authorized for adjacent spectrum in the upper 180 megahertz in the same PEAs.”); see also CTIA Reply at 5; U.S. Cellular Reply at 3.

³³⁵ This approach is also logically consistent with our decision to adopt the bidding categories set forth in the *Auction 107 Comment Public Notice* as an alternative to our proposal in that, in the 360 PEAs with no blocks subject to the Phase I deadline, all blocks make up a single clock phase bidding category ABC and therefore cannot be given separate assignments in the A and BC portions of the band, as we had proposed.

³³⁶ See, e.g., CTIA Reply at 2 (“CTIA . . . highlight[s] the unanimous record support, including from wireless service providers of all sizes, for . . . the . . . alternative, simplified proposal for establishing bidding categories and the across-the-board support for contiguous spectrum assignments. The record reflects unanimous agreement that the Commission should establish product categories based on specific clearing deadlines, i.e., Phase I or Phase II, and should adopt procedures that facilitate contiguous spectrum assignments.”). No reply comments were received that opposed commenters’ suggestions to conduct the assignment phase in this way.

³³⁷ CTIA Reply at 5 (citing Letter from Jeffrey A. Marks, Head of Regulatory Affairs, Nokia to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-25 (filed Mar. 31, 2020) (Nokia *Ex Parte*)).

³³⁸ See, e.g., Verizon Comments at 8.

bidder to rely on the secondary market to reconfigure non-contiguous assignments would create significant tax liabilities, further reducing potential auction revenues, and would delay implementation of the spectrum while parties negotiated secondary market agreements.³³⁹ In light of the substantial support for ensuring contiguous frequency blocks for final assignment of all licenses in the assignment phase, which would improve the efficiency of the use of the auctioned spectrum and which our proposed approach would not have permitted, and the absence of any opposition to the commenters' approach, we find it in the public interest to adopt the assignment phase bidding procedures that we set forth here.

205. Participation in the assignment phase is voluntary; a winning bidder in the clock phase of Auction 107 need not bid in order to be assigned contiguous licenses corresponding to the outcome of the clock phase. Moreover, under the approach we adopt, a bidder that wins multiple blocks in Category A in one of the 46 PEAs with blocks subject to the Phase I deadline will receive an interim assignment for contiguous blocks of licenses in conjunction with a final assignment for contiguous blocks, which could include blocks in any of the 14 available blocks in the PEA, even without bidding in the assignment phase. More specifically, to provide each winning bidder with frequency-specific licenses based on its interim and final assignments, the bidding system will match interim and final assignments as follows: First, any blocks that appear both in a bidder's interim and final assignment will be matched together. Then, considering all remaining blocks in the bidder's interim assignment (from lowest to highest), each will be matched with the lowest available block in the bidder's final assignment.³⁴⁰

1. Sequencing and Grouping of PEAs

206. *Sequencing of rounds.* We adopt the proposal to conduct assignment rounds for the largest markets first.³⁴¹ This sequencing will enable bidders to establish a "footprint," making it easier for a bidder to incorporate frequency assignments from previously assigned areas into its bid preferences for other areas, and recognizes that a bidder winning blocks in multiple PEAs may prefer contiguous blocks across adjacent PEAs.

207. Specifically, we will conduct a separate assignment round for each of the top 20 PEAs sequentially, beginning with the largest PEAs. Once the top 20 PEAs have been assigned, we will conduct, for each Regional Economic Area Grouping (REAG), a series of assignment rounds for the remaining PEAs within that region.³⁴² We will sequence the assignment rounds within a REAG in descending order of population for a PEA group or individual PEA.

208. *Grouping of PEAs.* To reduce the total amount of time required to complete the assignment phase, we will group for assignment any non-top 20 PEAs within a REAG in which the same bidders won the same number of blocks in each clock phase category, and all are subject to the small markets bidding cap or all are not subject to the cap. This approach will also help maximize contiguity across PEAs. Accordingly, where these criteria are met, a bidder will submit a single set of bids for

³³⁹ Verizon Comments at 8 ("By the time a post-auction swap is consummated, each P1 license holder would have been operating—and therefore amortizing the original cost of—each P1 license for at least two years, thereby creating significant built-in gain to be recognized in any post-auction swap (even assuming zero post-auction appreciation in license value—which appreciation would generate even more taxable gain on the exchange, and more income tax liability).").

³⁴⁰ See section IV.C (License Authorizations for Interim and Final Assignments), below for a description of how interim and final frequency assignments will be licensed.

³⁴¹ See *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2618, para. 82.

³⁴² Top 20 PEAs are PEAs 1–20. The six REAGs are: Northeast, Southeast, Great Lakes, Mississippi Valley, Central, and West. T-Mobile supports this approach and notes that separate assignment rounds for the top 20 PEAs, rather than the top 40 PEAs as had been done in the past, was faster and worked well in Auction 103. T-Mobile Comments at 6.

assignment options that will apply to all the PEAs in the group and will be assigned the same frequency-specific licenses in each PEA.

209. In addition, we will conduct the bidding for the different REAGs in parallel. That is, bidding for assignments in multiple PEAs or PEA groups will take place during the same timed bidding round. This will also help reduce the length of the assignment phase.³⁴³

2. Acceptable Bids and Bid Processing

210. Under the procedures we adopt, prior to the start of the assignment phase, the bidding system will provide each clock phase winner with bidding options for all possible contiguous frequency assignments for blocks won in the clock phase. More specifically, in the 46 PEAs with blocks subject to the Phase I deadline, a winner of Category A blocks will have options for all possible contiguous interim assignments for the quantity of A blocks it won and all possible contiguous final assignments of all blocks it won in the clock phase regardless of the clock phase bidding category.³⁴⁴ In the 360 PEAs where there are no blocks subject to the Phase I deadline, a clock phase winner will have one set of options for all possible contiguous assignments for its clock phase winnings in Category ABC, consisting of all of the 14 20-megahertz blocks between 3.7–3.98 GHz.

211. As noted, the approach we adopt differs from the assignment phase approach on which we sought comment,³⁴⁵ but was strongly favored by all commenters that addressed the issue.³⁴⁶ The procedures we now adopt will provide for contiguous final assignments across all categories of blocks in every PEA for all bidders, unlike our proposed approach.

212. Under the procedures we adopt, in each assignment round, a bidder will be asked to assign a price to one or more of the bidding options for which it wishes to express a preference, consistent with its winning bid(s) for generic blocks in the clock phase.³⁴⁷ The price will represent the maximum payment that the bidder is willing to pay, in addition to the base price established in the clock phase for the generic blocks, for the frequency-specific license or licenses in its bid.

³⁴³ Although we do not commit to a round schedule at this point, we note that Verizon urges us to conduct the auction quickly. *See* Verizon Comments at 15 (“The Commission should start with three rounds per day, but it should transition to a six round per day schedule by the third day. The assignment phase should have seven rounds per day throughout, not just in the individual major PEA rounds.”).

³⁴⁴ A bidder will not see a separate set of bidding options for generic BC blocks won. They will be assigned as part of the final joint assignment of A and BC blocks. For example, suppose that, in one of the 46 PEAs subject to the Phase I deadline, a bidder won three Category A blocks and four Category BC blocks. Then, the bidder will be assigned three blocks in the interim assignment and seven blocks in the final assignment. The bidder will have three bidding options for the interim frequency assignment (A1–A3, A2–A4, and A3–A5) and eight bidding options for the final frequency assignment (A1–B2, A2–B3, A3–B4, A4–B5, A5–C1, B1–C2, B2–C3, and B3–C4).

³⁴⁵ *See Auction 107 Comment Public Notice*, 35 FCC Rcd at 2619, para. 86.

³⁴⁶ A bidder will not see a separate set of bidding options for generic BC blocks won. They will be assigned as part of the final joint assignment of A and BC blocks. *See, e.g.,* CCA Comments at 4; T-Mobile Comments at 7; AT&T Reply at 4 (“[The alternative assignment phase] approach imposes minimal burdens on bidders, but produces substantial public interest benefits by promoting creation of large combined spectrum blocks with increased efficiency.”); CTIA Reply at 6-7; Verizon June 10 *Ex Parte* at 2 (“A dual assignment phase will allow this spectrum to be put to its highest use during all phases of the C-band transition. The final assignment across all 280 MHz in every PEA will provide the opportunity for contiguous spectrum holdings desired for 5G. An interim assignment in just those 46 Phase I PEAs where winning bidders will access spectrum in December 2021 will at the same time allow early access without compromising the ability to obtain a final wideband channel.”); *accord* U.S. Cellular Reply at 3; *see also* Nokia *Ex Parte* at 1 (“C-Band auction winners [need] to be able to deploy 5G services in contiguous blocks of spectrum after Phase 2 in order to realize the full potential of 5G.”).

³⁴⁷ The Auction 107 Assignment Phase Technical Guide provides further mathematical details.

213. We will use an optimization approach to determine the winning frequency assignment for each assignment category in each PEA or PEA group. We adopt procedures such that the bidding system will select the assignment that maximizes the sum of bid amounts among all assignments in which each bidder's assignment is contiguous.³⁴⁸

214. Further, the additional price a bidder will pay for a specific frequency assignment (above the final clock phase price) will be calculated consistent with a generalized "second price" approach—that is, the winner will pay a price that would be just sufficient to result in the bidder receiving that same winning frequency assignment while ensuring that no group of bidders is willing to pay more for an alternative assignment in which every bidder is assigned contiguous spectrum.³⁴⁹ This price will be less than or equal to the price the bidder indicated it was willing to pay for the assignment. Determining prices in this way encourages bidders to bid their full value for the assignment, knowing that if the assignment is selected, they will pay no more than would be necessary to ensure that the outcome is competitive.³⁵⁰

3. Information Available to Bidders During the Assignment Phase

215. After the clock phase concludes but before bidding begins in the assignment phase, the bidding system will provide to each assignment phase bidder a menu of bidding options consisting of possible configurations of frequency-specific licenses on which it can bid.³⁵¹ These bidding options will be consistent with the bidder's clock-phase winnings. The bidding system will also announce the order in which assignment rounds will take place and indicate which PEAs will be grouped together for bidding. The bidding system will provide clock phase winning bidders with this information as soon as possible and will announce a schedule of assignment phase rounds that will commence no sooner than five business days later.

216. After each assignment round, the bidding system will inform each bidder of its own assignment and assignment payment for each assignment category for each PEA or PEA group assigned in the round. The bidding system will also provide each bidder with its current total payment, which is calculated as the sum of the bidder's total clock payment across all PEAs and the bidder's assignment payments for the PEAs for which an assignment round has already completed. This information will provide the bidder a running estimate during the assignment rounds of the dollar amount it will owe at the end of the auction. A bidder that is claiming a bidding credit will also be informed about its current bidding credit discount and whether the discount has been capped.

4. Final Payment Calculations

217. When all assignment rounds have been completed, a bidder's final payment takes into account the sum of final clock phase prices across all licenses that it won, the sum of all of the bidder's assignment payments, and any claimed bidding credits.³⁵² Specifically, if a bidder is not claiming a bidding credit, its final payment is determined by summing the final clock phase prices across all licenses that it won and its assignment payments across all PEAs or PEA groups.

218. If a bidder claims a bidding credit, a bidding credit discount is calculated by applying the bidder's bidding credit percentage to the sum of the bidder's clock payments and assignment payments,

³⁴⁸ Furthermore, if there are multiple blocks in a category that remain unsold, the unsold licenses will be contiguous.

³⁴⁹ See the Auction 107 Assignment Phase Technical Guide for mathematical details.

³⁵⁰ The pricing approach is a version of a Vickrey-Clarke-Groves mechanism. It is described in the Auction 107 Assignment Phase Technical Guide.

³⁵¹ See section IV.B.2 (Acceptable Bids and Bid Processing), above.

³⁵² See the Auction 107 Assignment Phase Technical Guide for mathematical details.

capping the bidding credit discount if it exceeds the applicable caps for small businesses, rural service providers, and small markets. The resulting bidding credit discount is subtracted from the sum of the bidder's clock payments and assignment payments to determine the final payment for a bidder with a bidding credit.

C. License Authorizations for Interim and Final Assignments

219. We agree with commenters that the assignment phase procedures we adopt will promote continued U.S. leadership in 5G³⁵³ by enabling bidders to aggregate licenses for “the wide channel bandwidths that are indispensable to achieving the faster connections and lower latency that 5G promises.”³⁵⁴ At the same time, our approach provides for interim assignments of contiguous spectrum licenses for A block frequencies in the PEAs subject to the Phase I deadline to authorize operations at the earliest time possible under the transition adopted in the *3.7 GHz Report and Order*.³⁵⁵ This approach, however, presents some logistical challenges for the Commission's Universal Licensing System, given that the notion of interim and final license assignments departs from the typical post-auction licensing process in which each license assigned by auction is represented, after long-form review, by the award of one license authorizing operations on specified frequencies for a term consistent with the Commission's rules, which in the case of the 3.7 GHz Service, is 15 years from the date of issuance. In order to achieve the significant public interest benefits of authorizing operations in the 46 PEAs subject to the Phase I deadline on interim frequency assignments for a limited period while also authorizing operations to follow the interim period on final frequency assignments that allow for wide-channel aggregation across all blocks available in the 3.7 GHz Service, we conclude that we will condition the 3.7 GHz licenses awarded post-auction for the interim and final frequency assignments deadline to permit this result.³⁵⁶

220. For a given frequency block in the 46 PEAs with blocks subject to the Phase I deadline, the interim and final authorizations may be awarded via either a single standard license authorization (where both the interim and final assignments are for the same frequency block(s)) or through a two-license paired authorization (including an interim assignment and a final assignment of different specific frequency blocks) that collectively provides authority for the full 15-year license term. In the paired authorization approach, the interim assignment of the pair would expire on the earlier of December 5, 2025, or the date the relevant PEA is confirmed cleared, with no option for renewal, and the resulting final license would provide for operation after the interim authorization expires until the remainder of the 15-year term.³⁵⁷ These paired authorizations together provide the full range of interim and final rights

³⁵³ See Verizon Comments at 7; Letter from William H. Johnson, Senior Vice President, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, AU Docket No. 20-25, at 3 (filed Apr. 17, 2020); Verizon June 10 *Ex Parte* at 1.

³⁵⁴ CTIA Reply at 5.

³⁵⁵ See generally *3.7 GHz Report and Order*, 35 FCC Rcd at 2391-467, paras. 110-331.

³⁵⁶ While the Commission has never previously issued licenses with the precise type of provision we envision here, in the 3.5 GHz proceeding, the Commission rejected arguments that it was required to issue “static” frequency assignments and instead issued licenses for operations on 10 megahertz, with the specific frequencies determined by a Spectrum Access System. See, e.g., *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, 3985-86, paras. 80-83 (2015); cf. *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306, GN Docket No. 12-268, Public Notice, 32 FCC Rcd 890, 915-17, paras. 55-59 (MB 2017) (issuing temporary licenses as a supplement to permanent licenses already issued to broadcasters, in order to facilitate DTV transition).

³⁵⁷ The B1–C4 blocks in a PEA will be confirmed cleared consistent with the process for validation of a space station operator's Certification of Accelerated Relocation that it satisfied the Phase II clearing deadline, as described in section 27.1412(g) of the Commission's rules. 47 CFR § 27.1412(g). It is possible, however, that space station operators may fail to meet the Phase II deadline and could potentially continue to operate until the final relocation deadline of December 5, 2025. Tying expiration of the interim assignment to the earlier of December 5, 2025, or the

(continued....)

over the license term. To ensure consistent treatment of licenses for frequencies in the A block, paired interim and final licenses will be conditioned to clarify that if they are transferred/assigned, they must be transferred/assigned together, in the same manner.³⁵⁸

221. The assignment phase results will dictate whether a particular winning bidder may be awarded a single or paired license authorizations. For example, if a winner of clock phase Category A blocks (in the 46 PEAs subject to the Phase I deadline) is assigned to the same frequencies for both interim and final assignments, a single authorization will be issued providing both interim and final rights for those A block frequencies. If the winner of the interim assignment for specific frequencies in the A block does not also win the final assignment for the same frequencies in that block, a paired authorization will be issued to the bidder for an interim assignment in blocks A1–A5 and final assignment in blocks A1–C4 that together provide interim and final rights. In all other cases where one or more clock phase Category A blocks are not won and therefore no interim assignment is made,³⁵⁹ the winner of a final assignment will be issued a single authorization conveying final rights.³⁶⁰ That is, in the event a Category A generic block is unsold and therefore interim rights are not assigned to a bidder, interim rights revert to the licensee holding the final authorization for that frequency block.

222. The diagram below illustrates our approach to awarding licenses based on interim and final assignments. In this example, where Phase I rights are available in a PEA, bidder 1’s interim frequency assignment is for blocks A1–A3 and its final frequency assignment is for blocks A1–A5. For blocks A1, A2, and A3, a single authorization will be issued to bidder 1 for each block conveying both interim and final rights. Bidder 2’s interim frequency assignment is for blocks A4–A5, its final frequency assignment is for blocks B1–B5, and A4 (interim rights) is paired with B1 (final rights) whereas A5 (interim rights) is paired with B2 (final rights). Bidder 2 receives a pair of authorizations conveying interim rights for A4 and final rights for B1, another pair of authorizations conveying interim rights for A5 and final rights for B2, and then single authorizations for each block conveying only final rights for B3–B5. Bidder 3 receives single authorizations for each block conveying only final rights for C1–C4.

	Phase I - Category A					Phase II – Category BC								
	A1	A2	A3	A4	A5	B1	B2	B3	B4	B5	C1	C2	C3	C4
Interim				2*	2**	x	x	x	x	x	x	x	x	x
Final	1	1	1	1	1	2*	2**	2	2	2	3	3	3	3

D. Calculating Individual “Per-License” Prices

223. While final auction payments for winning bidders will be calculated with bidding credit caps and assignment payments applied on an aggregate basis, rather than to individual license authorizations (single or paired), the bidding system will also calculate a “per-license” price for each license authorization.³⁶¹ Such individual prices may be needed if a licensee later incurs license-specific obligations, such as unjust enrichment payments.

224. After the assignment phase, the auction bidding system will determine a net and gross

(Continued from previous page) _____
 date the PEA is confirmed cleared, avoids the possibility that an interim assignment in an A1–A5 block might expire prior to clearing being completed in the B1–C4 blocks, which otherwise might require an operator to shut down existing operations in order to transition to its final assignment frequencies that are not yet cleared.

³⁵⁸ There is no restriction on spectrum leasing for either of the paired authorizations.

³⁵⁹ For example, if the bidder wins only BC or ABC blocks in the PEA in the clock phase.

³⁶⁰ The resulting final license will provide for operation on the earlier of December 5, 2025 or the date the relevant PEA is confirmed cleared.

³⁶¹ See the Auction 107 Assignment Phase Technical Guide for details on how these prices are calculated.

post-auction price for each license authorization (or paired authorization, if the authorization comprises both an interim and final frequency assignment) that was won by a bidder by apportioning assignment payments and bidding credit discounts (only applicable for the net price) across all the license authorizations or paired authorizations that the bidder won. To calculate the gross per-license price, the auction bidding system will apportion the assignment payment to authorizations in proportion to the final clock phase price of the blocks that the bidder is assigned in that assignment category and PEA (or PEA group). To calculate the net price, the auction bidding system will first apportion any applicable bidding credit discounts to each PEA or PEA group in proportion to the gross payment for that market. Then, for each PEA or PEA group, the auction bidding system will apportion the assignment payment and the discount to licenses in proportion to the final clock phase price of the blocks that the bidder is assigned in that assignment category for that PEA (or PEA group).

E. Auction Results

225. The bidding system will determine winning bidders as described in section IV.A.9 (Winning Bids in the Clock Phase), 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).

F. Auction Announcements

226. 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.

V. POST-AUCTION PROCEDURES

227. The public notice announcing the close of the bidding and auction results will be released shortly after bidding has ended in Auction 107. 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

228. Within 10 business days after release of the auction closing public notice for Auction 107, 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).³⁶²

B. Final Payments

229. 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.³⁶³

C. Long-Form Application (FCC Form 601)

230. 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.³⁶⁴

231. A winning bidder claiming eligibility for a small business bidding credit or a rural service provider bidding credit must demonstrate its eligibility for the bidding credit sought in its FCC Form 601

³⁶² See 47 CFR § 1.2107(a).

³⁶³ *Id.* § 1.2109(a); see *CSEA/Part 1 Report and Order*, 21 FCC Rcd at 907-09, paras. 43-46.

³⁶⁴ 47 CFR § 1.2107(c).

post-auction application.³⁶⁵ Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice for Auction 107.

232. 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.³⁶⁶ 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.³⁶⁷

D. Ownership Disclosure Information Report (FCC Form 602)

233. Within 10 business days after release of the auction closing public notice for Auction 107, each winning bidder must also comply with the ownership reporting requirements in sections 1.913, 1.919, and 1.2112 of the Commission's rules by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its FCC Form 601 post-auction application.³⁶⁸

234. 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.

235. 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. Default and Disqualification

236. 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).³⁶⁹ 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.

³⁶⁵ *Id.* § 1.2112(b).

³⁶⁶ *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.

³⁶⁷ 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.

³⁶⁸ 47 CFR §§ 1.913, 1.919, 1.2107(f), 1.2112.

³⁶⁹ *Id.* § 1.2104(g)(2).

237. 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 107 at 15% of the applicable bid for winning bids.³⁷⁰ The bidding system will calculate individual per-license prices that are separate from final auction payments, which are calculated on an aggregate basis.³⁷¹

238. 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.³⁷² 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.³⁷³

F. Refund of Remaining Upfront Payment Balance

239. 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.

240. 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 (capable to accept ACH payments)
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)

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, or by mail to:

Federal Communications Commission
Financial Operations
Revenue & Receivables Operations Group/Auctions
Scott Radcliffe
45 L Street, NE, 3rd Floor
Washington, DC 20001

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.

³⁷⁰ See *Auction 107 Comment Public Notice*, 35 FCC Rcd at 2620, para. 91.

³⁷¹ See section IV.D (Calculating Individual “Per-License” Prices), above. These prices determine the defaulted bid amount on individual licenses.

³⁷² 47 CFR § 1.2109(b)-(c).

³⁷³ *Id.* § 1.2109(d).

VI. PROCEDURAL MATTERS

241. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),³⁷⁴ a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 107 Comment Public Notice* released in March 2020. The Commission sought public comment on the proposals in the *Auction 107 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 107 and supplements the Initial and Final Regulatory Flexibility Analyses completed by the Commission in the *3.7 GHz NPRM*, *3.7 GHz Report and Order*, and other Commission orders pursuant to which Auction 107 will be conducted.³⁷⁵ This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA.³⁷⁶

242. *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 107. Auction 107 will be our second 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 107, and the post-auction application and payment processes, as well as sets the minimum opening bid amounts for flexible-use overlay licenses in the 3.7–3.98 GHz band (3.7 GHz Service) that will be offered in Auction 107.

243. To promote the efficient and fair administration of the competitive bidding process for all Auction 107 participants, we adopt the following procedures proposed in the *Auction 107 Comment Public Notice*:

- use of anonymous bidding/limited information procedures which will not make public: (1) the 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 107; (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 107;
- adjustment of the bidding schedule as necessary in order to manage the pace of Auction 107;
- use of a simultaneous stopping rule in Auction 107, under which all blocks in both categories in all PEAs will remain available for bidding until the bidding stops in every PEA;
- provision of discretionary authority to OEA, in conjunction with WTB, to delay, suspend, or cancel bidding in Auction 107 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 107 under which each qualified bidder will indicate in successive clock bidding rounds its demands for categories of generic blocks in specific PEAs, and associated bidding and bid processing procedures to implement the clock auction format;

³⁷⁴ 5 U.S.C. § 603. The RFA, 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).

³⁷⁵ See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band et al.*, GN Docket No. 18-122 et al., Order and Notice of Proposed Rulemaking, Appx. B, 33 FCC Rcd 6915, 6990-7003, paras. 1-51 (2018) (*3.7 GHz NPRM*); *3.7 GHz Report and Order*, Appx. B, 35 FCC Rcd at 2563-75, paras. 1-56.

³⁷⁶ See 5 U.S.C. § 604.

- 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 product available in Auction 107;
- a specific upfront payment amount for generic blocks in each product available in Auction 107;
- 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 methodology for calculating such amounts;
- a methodology for processing bids and requests to reduce and increase demand subject to the no excess supply rule for bids to reduce demand and the eligibility rule for bids to increase 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 product that would serve as the start-of-round price for the next round;
- establishment of an assignment phase that will determine which frequency-specific licenses will be won by the winning bidders of generic blocks during the clock phase; and
- establishment of additional default payments of 15% 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.

244. The procedures for the conduct of Auction 107 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 *3.7 GHz Report and Order*, and relevant competitive bidding orders, and are fully consistent therewith.³⁷⁷

245. *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 IRFA.

246. *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 Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the SBA and to provide a detailed statement of any changes made to the proposed procedures as a result of those comments.³⁷⁸ The Chief Counsel did not file any comments in response to the procedures that were proposed in the *Auction 107 Comment Public Notice*.

247. *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.³⁷⁹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization,"

³⁷⁷ See generally *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2360-75, paras. 68-159.

³⁷⁸ 5 U.S.C. § 604(a)(3).

³⁷⁹ *Id.*

and “small governmental jurisdiction.”³⁸⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.³⁸¹ 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.³⁸²

248. As noted above, Regulatory Flexibility Analyses were incorporated into the *3.7 GHz NPRM* and *3.7 GHz Report and Order*. These orders provide the underlying authority for the procedures proposed in the *Auction 107 Comment Public Notice* and are adopted herein for Auction 107. 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 *3.7 GHz NPRM* and *3.7 GHz Report and Order*.³⁸³

249. *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.³⁸⁴ 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 that fails to become a winning bidder does not need to file a long-form application or provide the additional showings and more detailed demonstrations required of a winning bidder.

250. 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 107 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 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 107 to familiarize themselves with the FCC Auction Application System and the bidding system. By providing these resources as well as the

³⁸⁰ *Id.* § 601(6).

³⁸¹ *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.”

³⁸² 15 U.S.C. § 632.

³⁸³ See *3.7 GHz NPRM*, Appx. B, 33 FCC Rcd at 6991-94, paras. 8-13; *3.7 GHz Report and Order*, Appx. B, 35 FCC Rcd at 2564-67, paras. 9-14.

³⁸⁴ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376-77, paras. 163-66.

resources discussed below, we expect small entities that use the available resources to experience lower participation and compliance costs.

251. *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.”³⁸⁵

252. We have taken steps to minimize any economic impact of our auction procedures on small entities 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 107, 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 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 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.

253. 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 entities to conduct research prior to and throughout the auction. Prior to and at the close of Auction 107, 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 107 applicants, including small entities, thereby lowering their administrative costs to comply with the Commission’s competitive bidding rules.

254. 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 bidding procedures tutorial in advance of the mock auction. Further, we intend to conduct Auction 107 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 107 by all eligible bidders and may result in significant cost savings for small entities that use them. 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.

255. Another step taken to minimize the economic impact for small entities participating in Auction 107 is the Commission’s adoption of bidding credits for small businesses. In accordance with the service rules applicable to the 3.7 GHz Service licenses to be offered in Auction 107, bidding credit

³⁸⁵ 5 U.S.C. § 604(a)(6).

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 five 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 five 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.

256. 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 markets with a population of 500,000 or less. Based on the technical characteristics of the 3.7–3.98 GHz 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. The Commission declined to adopt a small business bidding credit cap of at least \$200 million requested by one commenter, Moise Advisory, because, as the Commission previously explained, the proposed \$25 million cap in past auctions would have allowed the vast majority of eligible small businesses to realize the full value of their bidding credits.

257. These procedures for the conduct of Auction 107 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 *3.7 GHz Report and Order* and relevant competitive bidding orders, and are fully consistent therewith.³⁸⁶

258. *Report to Congress.* The Commission will send a copy of the *Auction 107 Procedures Public Notice*, including the Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act.³⁸⁷ In addition, the Commission will send a copy of the *Auction 107 Procedures Public Notice*, including the Supplemental FRFA to the Chief Counsel for Advocacy of the SBA. A copy of the *Auction 107 Procedures Public Notice*, and Supplemental FRFA (or summaries thereof), will also be published in the Federal Register.³⁸⁸

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

General Auction 107 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

Auction 107 Legal Information

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

Auctions Division, OEA

(202) 418-0660
Erik Beith (Attorney)
Daniel Habib (Attorney)

3.7 GHz Service Information

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

Mobility Division, WTB

(202) 418-1991
Anna Gentry (Attorney)

³⁸⁶ See generally *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2360-75, paras. 68-159.

³⁸⁷ See 5 U.S.C. § 801(a)(1)(A).

³⁸⁸ See *id.* § 604(b).

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

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

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

Small Businesses

Additional information for small and
disadvantaged businesses

**Office of Communications Business
Opportunities**

(202) 418-0990
www.fcc.gov/ocbo/

FCC Internet Sites

www.fcc.gov
www.fcc.gov/auction/107

260. Action by the Commission, [[Month XX]], 2020: [[XX]].

- FCC -

APPENDIX**Commenter Short Names**

Short Name	Name of Filer
AT&T	AT&T Services, Inc.
CCA	Competitive Carriers Association
CTIA	CTIA—The Wireless Association
Moise	Moise Advisory
SES	SES Americom, Inc.
T-Mobile	T-Mobile USA, Inc.
U.S. Cellular	United States Cellular Corporation
Verizon	Verizon