

2. Analyze technical use data to ensure that exemptions are used in accordance with requirements included in the annual authorization rulemakings.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart b, and will be disclosed only if EPA determines that the information is not entitled to confidential treatment. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203). Individual reporting data may be claimed as sensitive and will be treated as confidential information in accordance with procedures outlined in 40 CFR Part 2.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

- Estimated total number of potential respondents: 1157.

- Frequency of response:
  - Producers, importers, holders of essential use allowances, laboratory suppliers, and distributors of QPS methyl bromide (Class I, Group VI substances) are to report to EPA quarterly (45 days after the end of each quarter);

- Exporters, and persons that destroy and transform Class I controlled ODS are to report to EPA annually (45 days after the end of the control period);

- Persons wanting to trade with another Party to the Protocol, undertake interpollutant conversions, transfer allowances, import used Class I controlled substances (i.e. petition) are to submit reports to EPA on a transactional basis.

- All entities may be required to provide other such information that the Administrator may reasonably require to comply with requests from the Ozone Secretariat seeking information required by decisions taken by the Parties to the Montreal Protocol.

- Estimated total average number of responses for each respondent: 1.6.

- Estimated total annual burden hours: 2810 hours.

- Estimated total annual costs: \$269,242. This includes an estimated burden cost of \$263,662 and an estimated cost of \$5,580 for capital investment or maintenance and operational costs.

#### **Are There Changes in the Estimates from the Last Approval?**

There is a decrease of 5,560 hours in the total estimated respondent burden compared with that identified in the EPA ICR 1432.25 which is currently approved by OMB. This large decrease is primarily due to a decrease in the overall burden for compliance, specifically the hours needed to certify laboratory and QPS uses of ozone depleting substances. The prior estimate for self certification was much higher than the Agency's experience has shown it to be. The burden and cost estimates for the Agency increased largely due to increases in the average hourly wage rate caused by normal inflation. As implementation of electronic reporting via the Agency's central data exchange (CDX) expands to additional segments of the regulated community, EPA expects burden and costs to further decline. EPA anticipated that when the CDX system becomes fully utilized, all required data will be submitted and tracked electronically, thus reducing and/or eliminating reporting by paper.

#### **What is the Next Step in the Process for this ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the

technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 22, 2008.

**Drusilla Hufford,**

*Director, Stratospheric Protection Division.*

[FR Doc. E8-11986 Filed 5-28-08; 8:45 am]

**BILLING CODE 6560-50-P**

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## **FEDERAL COMMUNICATIONS COMMISSION**

[AU Docket No. 08-46; Report No. AUC-08-78-B (Auction 78); DA 08-1090]

### **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**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of AWS-1 and Broadband PCS Licenses (Auction 78). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for the auction.

**DATES:** This auction has been rescheduled from July 29, 2008, to August 13, 2008. Short-form Applications to participate in Auction 78 must be filed before 6:00 p.m. ET on June 19, 2008. The upfront payments deadline for Auction 78 is July 17, 2008, 6:00 p.m. ET. Bidding for Auction No. 78 is scheduled to begin on August 13, 2008.

**FOR FURTHER INFORMATION CONTACT:**

#### **Wireless Telecommunications Bureau, Auctions Spectrum and Access Division**

For legal questions: Scott Mackoul or Stephen Johnson at (202) 418-0660. For general auction questions: Barbara Sibert at (717) 338-2868.

#### **Mobility Division**

For Broadband PCS service rule questions: Erin McGrath (legal), Keith Harper (engineering) and Denise Walter (licensing) at (202) 418-0620.

#### **Broadband Division**

For AWS-1 service rule questions: John Spencer at (202) 418-2487. To request materials in accessible formats (Braille, large print, electronic files or audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at

(202) 418-0530 or (202) 418-0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 78 Procedures Public Notice* which was released on May 16, 2008. The complete texts of the *Auction 78 Procedures Public Notice* including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction 78 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or Web site: <http://www.BCPIWEB.com>. The *Auction 78 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/78/>.

## I. General Information

### A. Introduction

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

#### i. Background of Proceeding

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

3. On April 4, 2008, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended, the Bureau released a public notice seeking comment on competitive bidding procedures to be used in Auction 78. Interested parties submitted one comment and one reply comment in response to the *Auction 78 Comment Public Notice*, 73 FR 20664, April 16, 2008.

#### ii. Licenses To Be Offered in Auction 78

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

#### B. License Descriptions

##### i. AWS-1 Licenses

5. Auction 78 will offer 35 AWS-1 licenses for which there were no winning bids in Auction 66. These licenses consist of six Regional Economic Area Grouping (REAG) licenses, seven Economic Area (EA) licenses, and 22 Cellular Market Area (CMA) licenses shown in Table 1 of the *Auction 78 Procedures Public Notice*.

##### ii. Broadband PCS Licenses

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

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

8. The Commission adopted this eligibility restriction when it originally established the framework for broadband PCS auctions in the *Competitive Bidding Fifth Report and Order*, 59 FR 37566, July 22, 1994. Specifically, it reserved all C and F block licenses in broadband PCS as set-aside licenses for which eligibility would be limited to entrepreneurs.

9. The Commission amended the entrepreneur eligibility restrictions in 2000. Specifically, it reconfigured the license size for the C block, creating three 10 megahertz licenses out of each 30 megahertz C block license, and divided BTAs into two categories based on population: Tier 1 markets are those BTAs with populations equal to or greater than 2.5 million and Tier 2 markets are the BTAs with populations below 2.5 million. The Commission then adopted open bidding (i.e., bidding open to both entrepreneurs and non-entrepreneurs) for two of the three newly reconfigured 10 megahertz C block licenses in Tier 1 markets, and for one of the three newly reconfigured 10

megahertz C block licenses in Tier 2 markets. The remaining 10 megahertz C block licenses in Tier 1 and 2 were reserved for entrepreneurs. For 15 megahertz C block licenses, the Commission eliminated the entrepreneur eligibility requirements in Tier 1 markets, but maintained them in Tier 2 markets. The Commission also removed the eligibility restriction on all F block licenses regardless of market. The Commission stated that these rules would apply to any subsequent auctions of C or F block licenses, including any spectrum made available or reclaimed from bankruptcy proceedings in the future.

10. Table 2 of the *Auction 78 Procedures Public Notice* cross-references the general rules regarding block/eligibility status/frequencies of broadband PCS licenses in the C, D, E, and F blocks.

11. As indicated in Table 2 of the *Auction 78 Procedures Public Notice*, C1, C2, C3, and C4 block licenses in Tier 2 marked with an asterisk are generally available only to entrepreneurs at auction in closed bidding. However, when the Commission amended the entrepreneur eligibility restrictions in 2000, it also decided to no longer apply this eligibility restriction to any of these licenses that have been previously made available through closed bidding, but not won, in any auction beginning on or after March 23, 1999. Such licenses are instead to be offered in open bidding. As a result, of the 20 broadband PCS licenses available in Auction 78, 11 are open to all bidders and 9 are available only to entrepreneurs in closed bidding.

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

13. The changes requested by the commenter, however, would require modification of the Commission's rules on entrepreneur eligibility and are therefore outside the scope of this proceeding to establish procedures for conducting Auction 78. Moreover, the arguments put forth by the commenter resemble those considered and rejected by the Commission in 2004 prior to Auction 58. Absent further Commission action, the C block eligibility rules will continue to apply for Auction 78, as they did for licenses offered in Auction 71 last year.

14. Therefore, the entrepreneur eligibility requirements for the C block licenses in Auction 78 that are closed remain in effect. Consequently, the specific broadband PCS licenses to be offered in Auction 78 are described in Table 3 of the *Auction 78 Procedures Public Notice*.

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

### C. Rules and Disclaimers

#### i. Relevant Authority

16. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in 47 CFR, part 1, Subpart Q including all amendments and clarifications; rules relating to the Advanced Wireless Services and emerging technologies contained in 47 CFR, parts 27 and 101; rules relating to broadband PCS, contained in 47 CFR, part 24; and rules relating to applications, environment, practice and procedure contained in 47 CFR, part 1. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, terms) contained in the *Auction 78 Procedures Public Notice* and the Commission's decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.

17. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

#### ii. Prohibition of Collusion; Compliance With Antitrust Laws

18. To ensure the competitiveness of the auction process, 47 CFR 1.2105(c) prohibits auction applicants for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form

applications (FCC Form 175) as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

#### a. Entities Subject to Anti-Collusion Rule

19. The anti-collusion rule will apply to any applicants that submit short-form applications seeking to participate in a Commission auction and select licenses in the same or overlapping markets (i.e., CMAs, EAs, REAGs or BTAs), regardless of the service. Therefore, in Auction 78, for example, the rule would prohibit an applicant bidding for an AWS-1 EA license and another applicant bidding for a PCS BTA license within that EA from communicating absent an agreement.

20. Under the terms of the rule, applicants that have applied for licenses covering the same or overlapping markets—unless they have identified each other on their short form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii)—must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.

21. For purposes of this prohibition, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

22. Information concerning applicants' license selections will not be available to the public. Therefore, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for licenses covering any of the same or overlapping geographic areas as the licenses that it has selected in its short-form application.

23. Entities and parties subject to the anti-collusion rule should take special care in circumstances where their employees may receive information directly or indirectly from a competing applicant relating to any competing applicant's bids or bidding strategies. In situations where the anti-collusion rule views the same person as the applicant

with respect to two different entities filing competing applications, under Bureau precedent the bids and bidding strategies of one applicant are necessarily conveyed to the other and, absent a disclosed bidding agreement, an apparent violation of the anti-collusion rule occurs. The Bureau has not addressed situations where employees who do not qualify as the applicant (e.g., are not officers or directors) receive information regarding a competing applicant's bids or bidding strategies and whether that information might be deemed to be necessarily conveyed to the applicant. The Bureau notes that the exception to the anti-collusion rule providing that non-controlling interest holders may have interests in more than one competing bidder without violating the anti-collusion rule, provided specified conditions are met (including a certification that no prohibited communications have occurred or will occur), does not extend to controlling interest holders.

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

24. 47 CFR 1.2105(c)'s anti-collusion prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.

25. A commenter recommends modifying and/or clarifying the application of the anti-collusion rule and anonymous bidding procedures after the close of bidding. The commenter proposes that the anti-collusion rule be modified to remain in effect only until the Commission issues the public notice identifying the winning bidders and the high bid amounts. This request seeks amendment of 47 CFR 1.2105(c) and is therefore outside of the scope of this proceeding. The Commission has observed that prohibiting such communications between applicants during the proscribed auction period protects a valid governmental interest without infringing unduly on the First Amendment rights of auction participants.

26. The commenter also requests, in the alternative, that the Commission make clear that applicants can disclose bidding-related information that the Commission has already made public after the close of the auction but before the down-payment deadline. Information contained in a public notice announcing the winning bidders would be public upon release. It is difficult to envision a case in which communication of the bare facts contained in such public information by

an applicant could result in violation of the anti-collusion rule. The Bureau notes, however, that it is the substance and timing of specific communications that are key in determining whether there has been a violation of 47 CFR 1.2105(c). In the absence of such factual context, and given the importance of the anti-collusion rules, the Bureau declines to make further clarification.

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

#### c. Prohibited Communications

28. Applicants for the upcoming Auction 78 and other parties that may be engaged in discussion with such applicants are cautioned of the need to comply with the Commission's anti-collusion rule, 47 CFR 1.2105(c). The anti-collusion rule prohibits not only a communication about an applicant's own bids or bidding strategy, but also a communication of another applicant's bids or bidding strategy. While the anti-collusion rule provisions do not prohibit business negotiations among auction applicants, applicants must remain vigilant so as not to communicate directly or indirectly information that affects, or could affect, bids or bidding strategy, or the negotiation of settlement agreements.

29. The Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly.

30. Applicants are hereby placed on notice that public disclosure of information relating to bidder interests and bidder identities that is confidential at the time of disclosure may violate the anti-collusion rule. This is so even though similar types of information

were revealed prior to and during other Commission auctions subject to different information procedures. Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information. For example, where limited information disclosure procedures are in place, as for Auction 78, a qualified bidder's statement to the press that it has lost bidding eligibility and stopped bidding in the auction could give rise to a finding of an anti-collusion rule violation. Similarly, an applicant's public statement of intent not to participate in Auction 78 bidding could also violate the rule.

31. Applicants for licenses for any of the same or overlapping geographic license areas must not communicate directly or indirectly about bids or bidding strategy. Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

32. A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants. Moreover, the Commission has found a violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets, and has placed auction participants on notice that the use of its bidding system to disclose market information to competitors will not be tolerated and will subject bidders to sanctions.

33. In addition, when completing short-form applications, applicants should avoid any statements or disclosures that may violate the Commission's anti-collusion rule, particularly in light of the limited information procedures in effect for Auction 78. Specifically, applicants

should avoid including any information in their short-form applications that might convey information regarding their license selection, such as using applicant names that refer to licenses being offered, referring to certain licenses or markets in describing bidding agreements, or including any information in attachments that may otherwise disclose applicants' license selections.

#### d. Disclosure of Bidding Agreements and Arrangements

34. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants for licenses covering any of the same or overlapping geographic areas after the short-form filing deadline.

#### e. Anti-Collusion Certification

35. By electronically submitting a short-form application following the electronic filing procedures set forth in Attachment C of the *Auction 78 Procedures Public Notice*, each applicant certifies its compliance with 47 CFR 1.2105(c). However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission has stated that it intends to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring. Any applicant found to have violated the anti-collusion rule may be subject to sanctions.

#### f. Antitrust Laws

36. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of the

Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short-form application. The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other. Similarly, the Bureau has long reminded potential applicants and others that even where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

g. Duty To Report Prohibited Communications; Reporting Procedure

37. If an applicant makes or receives a communication that appears to violate the anti-collusion rule, it must report such communication in writing to the Commission immediately and in no case later than five business days after the communication occurs. The Commission recently clarified that each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

38. 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form

application. Applicants are therefore required by 47 CFR 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or bidding strategy unless such communications are made to or received from parties to agreements identified under 47 CFR 1.2105(a)(2)(viii).

39. Parties reporting communications pursuant to 47 CFR 1.2105(a)(2) must take care to ensure that any such reports of prohibited communications do not themselves give rise to a violation of the anti-collusion rule. For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection. A party seeking to report such prohibited communications should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection. Such parties are also encouraged to consult with the Auctions and Spectrum Access Division staff if they have any questions about the procedures for submitting such reports. The *Auction 78 Procedures Public Notice* provides additional guidance on procedures for submitting application-related information.

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

h. Winning Bidders Must Disclose Terms of Agreements

41. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in any bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.

i. Additional Information Concerning Anti-Collusion Rule

42. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment F of the *Auction 78 Procedures Public Notice*.

iii. Incumbency Issues

a. AWS-1

43. The AWS-1 bands are now being used for a variety of government and non-government services. The 1710-1755 MHz band is currently a

government band, which is in the process of transitioning to a commercial band. The incumbents in the 2110-2150 MHz band are private services (including state and local governmental public safety services) and common carrier fixed microwave services. The 2150-2155 MHz band contains incumbents in the Broadband Radio Service (BRS). The Commission previously provided information on incumbency issues for the AWS-1 bands in the *Auction 66 Procedures Public Notice*, 71 FR 20672, April 21, 2006.

44. *Spectrum Relocation Fund*. The Commission established a reserve amount in Auction 66 in order to comply with a statutory requirement aimed at funding the relocation of federal government entities that currently operate in the 1710-1755 MHz band. In order for Auction 66 to close in compliance with the statute, the total winning bids in that auction, net of bidding credits applicable at the close of bidding, were required to equal or exceed a reserve amount of approximately \$2.059 billion. At the close of Auction 66, the net total winning bids far exceeded the reserve amount. The Bureau proposes to not establish reserve prices for the 35 AWS-1 licenses being offered in Auction 78.

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

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

b. Broadband PCS

47. While most of the private and common carrier fixed microwave services (FMS) formerly operating in the 1850-1990 MHz band (and other bands) have been relocated to available frequencies in higher bands or to other media, some FMS licensees may still be operating in the band. Any remaining FMS entities operating in the 1850-1990 MHz band, however, are secondary to PCS operations. FMS licensees, absent

an agreement with the applicable PCS entities or an extension pursuant to 47 CFR 101.79(b) of the Commission's rules, must turn in their authorizations six months following written notice from a PCS entity that such entity intends to turn on a system within the interference range of the incumbent FMS licensee. Further, broadband PCS licensees are no longer responsible for costs associated with relocating an incumbent FMS operation.

#### c. International Coordination

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

#### d. Quiet Zones

49. All licensees must protect the radio quiet zones set forth in the Commission's rules. Licensees are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone entity prior to operating within the areas described in the Commission's rules.

#### iv. Due Diligence

50. The Bureau cautions potential applicants formulating their bidding strategies to investigate and consider the extent to which these frequencies are occupied. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses being offered in Auction 78. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

51. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction 78 in order to

determine the existence of any pending legislative, administrative or judicial proceedings that might affect their decision regarding participation in the auction.

52. Applicants should also be aware that certain pending and future proceedings, including rulemaking proceedings or petitions for rulemaking, applications (including those for modification), requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction 78. Pending and future judicial proceedings may also relate to particular applicants or incumbent licensees, or the licenses available in Auction 78. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

53. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction 78. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the beginning of bidding in the auction.

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

55. Applicants may obtain information about licenses available in Auction 78, including non-Federal Government incumbent licenses that may have an effect on availability of the AWS-1 licenses, through the Bureau's online licensing databases at <http://wireless.fcc.gov/uls>. Applicants should direct questions regarding the ULS search capabilities to the FCC ULS Technical Support hotline at (877) 480-3201, option two. The hotline is available to assist with questions Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

56. In addition, to further assist potential bidders in determining the scope of the new AWS entrants' relocation obligations in the 2150-2155 MHz band, the Commission ordered BRS licensees in the 2150-2160/62 MHz

band to submit information on the locations and operating characteristics of BRS systems in that band. That information may also be found on ULS at <http://wireless.fcc.gov/uls>.

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

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

#### v. Use of Integrated Spectrum Auction System

59. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction 78 over the Internet using the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

#### vi. Fraud Alert

60. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction 78 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the Commission as well

as the FTC and SEC. Additional sources of information for potential bidders and investors may be obtained from: (1) the FCC by going to <http://wireless.fcc.gov/csinfo/#fraud> or by telephone at (888) 225-5322 (FCC's Consumer Call Center); (2) the FTC by telephone at (877) FTC-HELP ((877) 382-4357); and (3) the SEC by telephone at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060.

#### vii. Environmental Review Requirements

61. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's environmental rules for each such facility. The Commission's environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

#### D. Auction Specifics

##### i. Auction Start Date

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

63. Commenters request that the Bureau postpone the start of bidding in Auction 78. A commenter suggests delaying the start of Auction 78 by four or five weeks, i.e., until September 2008. A commenter contends that

participation in an FCC auction presents resource challenges for small and medium-sized companies and notes that conducting bidding during August is difficult when businesses are thinly staffed due to employee vacation schedules. The commenter also asserts that potential bidders need more time to finance licenses won in the recently-concluded 700 MHz auction (Auction 73) and resume business. A commenter supports postponing the auction, noting that a brief delay will afford potential bidders, including small and mid-sized bidders, more time to prepare.

64. The Bureau is not persuaded by the commenters' arguments that a four- or five-week postponement is warranted. Interested parties were able to begin preparations for this auction when the auction was first announced on April 4, 2008, with the release of the *Auction 78 Comment Public Notice*. Nevertheless, the Bureau finds that providing an additional two weeks prior to the start of Auction 78 will promote efficient administration of the auction and provide prospective applicants with additional time for planning and preparation.

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

##### ii. Bidding Methodology

66. The bidding methodology for Auction 78 will be simultaneous multiple round (SMR) bidding. The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.

##### iii. Pre-Auction Dates and Deadlines

67. The following dates and deadlines apply:

Auction Seminar—June 10, 2008  
 Short-Form Application (FCC Form 175) Filing Window Opens—June 10, 2008; 12:00 noon ET  
 Short-Form Application (FCC Form 175) Filing Window Deadline—June 19, 2008; prior to 6:00 p.m. ET  
 Upfront Payments (via wire transfer)—July 17, 2008; 6:00 p.m. ET  
 Mock Auction—August 11, 2008  
 Auction Begins—August 13, 2008

##### iv. Requirements for Participation

68. Those wishing to participate in this auction must: (1) Submit a short-form application (FCC Form 175)

electronically prior to 6:00 p.m. ET, June 19, 2008, following the electronic filing procedures set forth in Attachment C of the *Auction 78 Procedures Public Notice*; (2) submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, July 17, 2008, following the procedures and instructions set forth in Attachment D of the *Auction 78 Procedures Public Notice*; (3) comply with all provisions outlined in the Public Notice and applicable Commission rules.

#### II. Short-Form Application (FCC Form 175) Requirements

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

69. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction must file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments. In the second phase of the process, winning bidders must file a more comprehensive long-form application (FCC Form 601) and have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.

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

71. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically,



financially and otherwise qualified to hold a license. Applicants should read the instructions set forth in Attachment C of the *Auction 78 Procedures Public Notice* carefully and should consult the Commission's rules to ensure that, in addition to the materials described herein, all the information that is required under the Commission's rules is included with their short-form applications.

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

73. Applicants also should note that submission of a short-form application (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. An applicant cannot change the certifying official to its application. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

#### *B. License Selection*

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

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

licenses that the applicant has not selected on its short-form application.

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

76. Applicants will be required to identify in their short-form application all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.

77. Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. If an applicant has had discussions, but has not reached an agreement on the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.

78. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants, provided that: (1) The attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (2) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Further compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.

#### *D. Ownership Disclosure Requirements*

79. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on

the real party or parties-in-interest and ownership structure of the applicant. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

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

#### *E. Designated Entity Provisions*

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

##### *i. Entrepreneur Eligibility for Closed Bidding*

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

##### *a. Entrepreneur Eligibility Criteria*

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



\$125 million in each of the last two years.

b. Asset and Revenue Disclosure on Short-Form Application

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

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

ii. Bidding Credits for Small and Very Small Businesses

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

a. Bidding Credit Eligibility Criteria

87. The level of bidding credit is determined as follows: (1) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; and (2) a bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid.

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

89. Bidding credits for applicants that qualify as small or very small businesses will be available for those C block licenses that are available in open bidding and for all F block licenses. Bidding credits are not available for C

block licenses subject to closed bidding or for broadband PCS licenses in the D or E blocks.

b. Revenue Disclosure on Short-Form Application

90. An entity applying as a small or very small business must provide gross revenues for the preceding three years for each of the following: (1) The applicant; (2) its affiliates; (3) its controlling interests; (4) the affiliates of its controlling interests; and (5) the entities with which it has an attributable material relationship. Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient.

Additionally, if an applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.

iii. Attributable Interests

a. Controlling Interests

91. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control: (1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee; (2) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and (3) the entity plays an integral role in management decisions.

92. Applicants should refer to 47 CFR 1.2110(c)(2) of the Commission's rules and Attachment C of the *Auction 78 Procedures Public Notice* to understand how certain interests are calculated in determining control. For example, pursuant to 47 CFR 1.2110(c)(2)(ii)(F), officers and directors of an applicant are considered to have controlling interest in the applicant.

b. Affiliates

93. 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. 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. For more information regarding affiliates, applicants should refer to 47 CFR 1.2110(c)(5) and Attachment C of the *Auction 78 Procedures Public Notice*.

c. Material Relationships

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

95. An applicant or licensee has an impermissible material relationship when it has agreements with one or more other entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any of its licenses. If an applicant or a licensee has an impermissible material relationship, it is, as a result, (1) ineligible for the award of designated entity benefits, and (2) subject to unjust enrichment on a license-by-license basis.

96. An applicant or licensee has an attributable material relationship when it has one or more agreements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license held by the applicant or licensee. The attributable material relationship will cause the gross revenues and, if applicable, total assets of that entity and its attributable interest holders to be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (1) eligibility for designated entity benefits and (2) liability for unjust enrichment on a license-by-license basis.

97. The Commission grandfathered material relationships in existence before the release of the *Designated Entity Second Report and Order*, 71 FR 26245, May 5, 2006, meaning that those preexisting relationships alone would not cause the Commission to examine a designated entity's ongoing eligibility for benefits or its liability for unjust enrichment. The Commission did not, however, grandfather preexisting material relationships for determinations of an applicant's or licensee's designated entity eligibility for future auctions or in the context of future assignments, transfers of control,

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

d. Gross Revenue Exceptions

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

99. 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 47 CFR 1.2110(b)(3)(iii) of the Commission's rules are met. 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 47 CFR 1.2110(b)(3)(iii) and supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule. Applicants seeking to claim this exemption must meet all of the conditions. Additional guidance on claiming this exemption may be found in Attachment C of the *Auction 78 Procedures Public Notice*.

e. Bidding Consortia

100. A consortium of small businesses, very small businesses, or entrepreneurs is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business, very small business, or entrepreneur. Thus, each member of a consortium of small businesses, very small businesses, or entrepreneurs that applies to participate in Auction 78 must individually meet the criteria for small businesses, very small businesses, or entrepreneurs. Each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, the affiliates of its controlling interests, and any entities having an attributable material relationship with the member. Although

the gross revenues of the consortium members will not be aggregated for purposes of determining the consortium's eligibility as a small business or very small business, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

F. Tribal Lands Bidding Credit

101. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their short-form applications. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their more detailed, long-form applications.

G. Provisions Regarding Former and Current Defaulters

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

103. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by 47 CFR 1.2110 of the Commission's rules, are not in default on any payment for Commission licenses (including down payments) and that they are not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether or not it, its affiliates, its controlling interests, and the affiliates of its controlling interests, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal

agency. Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution. These statements and certifications are prerequisites to submitting an application to participate in an FCC auction.

104. Applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline. Parties are also encouraged to coordinate with the Commission's Office of Managing Director or the Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

105. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

106. Applicants are reminded, however, that the Commission's Red

Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

#### H. Optional Applicant Status Identification

107. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 1.2110(c)(4), may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of designated entities in its auctions.

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

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

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

110. If an applicant wishes to make permissible minor changes to its short-form application, such changes should be made electronically to its short-form application using the FCC Auction System whenever possible.

111. An applicant cannot update its short-form application using the FCC Auction System outside of the initial and resubmission filing windows. In that case, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form applications in ISAS as soon as

possible. Moreover, after the filing window has closed, ISAS will not permit applicants to make certain changes, such as legal classification and bidding credit.

112. Any letter describing changes to an applicant's short-form application should be submitted by e-mail to the following address: [auction78@fcc.gov](mailto:auction78@fcc.gov).

113. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System (ECFS). Parties submitting information related to their applications should use caution to ensure that information contained in their submissions does not contain confidential information or communicate information that would violate the Commission's anti-collusion rule or limited information procedures adopted for Auction 78. A party seeking to submit information that might reflect non-public information, such as an applicant's license selections, upfront payment amount or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the anti-collusion period.

#### J. Maintaining Current Information in Short-Form Applications

114. 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Changes that cause a loss of or reduction in eligibility for a bidding credit must be reported immediately. If an amendment reporting substantial changes is a major amendment, as defined by 47 CFR 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.

115. After the short-form filing deadline, applicants may make only minor changes to their short-form applications. In addition, applicants must submit a letter, briefly summarizing the changes, by e-mail at the following address: [auction78@fcc.gov](mailto:auction78@fcc.gov). The e-mail summarizing the changes must include a subject or caption referring to Auction 78 and the name of the applicant.

### III. Pre-Auction Procedures

#### A. Auction Seminar—June 10, 2008

116. On Tuesday, June 10, 2008, the Commission will conduct a seminar for parties interested in participating in Auction 78 at FCC headquarters, located

at 445 12th Street, SW., Washington, DC. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff concerning the auction, auction procedures, filing requirements, and other matters related to this auction. To register, please provide the information listed on Attachment G of the *Auction 78 Procedures Public Notice* by fax, e-mail or telephone to the FCC by Friday, June 6, 2008.

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

117. In order to be eligible to bid in this auction, applicants must first follow the procedures set forth in Attachment C of the *Auction 78 Procedures Public Notice* to submit a short-form application (FCC Form 175) electronically via the FCC Auction System. This application must be received at the Commission prior to 6:00 p.m. ET on June 19, 2008. Late applications will not be accepted. There is no application fee required when filing a FCC Form 175, but an applicant must submit an upfront payment to be eligible to bid.

118. Applications may generally be filed at any time beginning at noon ET on June 10, 2008, until the filing window closes at 6:00 p.m. ET on June 19, 2008. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their applications multiple times until the filing deadline on June 19, 2008.

119. An applicant must always click on the SUBMIT button on the Certify & Submit screen to successfully submit its short-form application and any modifications, otherwise the application or changes to the application will not be reviewed. Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C of the *Auction 78 Procedures Public Notice*. FCC Auctions Technical Support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)).

#### C. Application Processing and Minor Corrections

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

corrected. The public notice will include the deadline for resubmitting corrected applications.

121. After the June 19, 2008, short-form filing deadline, applicants may make only minor corrections to their applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change control of the applicant, change certifying official, or change their size to claim eligibility for a higher bidding credit).

122. Applicants should be aware the Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's short-form application, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be submitted by e-mail at the following address: [auction78@fcc.gov](mailto:auction78@fcc.gov).

#### D. Upfront Payments—Due July 17, 2008

123. In order to be eligible to bid in this auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing its short-form application, an applicant will have access to an electronic version of the FCC Form 159 that can be printed and sent by fax to Mellon Bank in Pittsburgh, PA. All upfront payments must be received in the proper account at Mellon Bank by 6 p.m. ET on July 17, 2008.

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

124. Wire transfer payments must be received by 6:00 p.m. ET on July 17, 2008. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

125. An applicant must fax a completed FCC Form 159 (Revised 7/05) to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the fax cover sheet, applicants should write Wire Transfer—Auction Payment for Auction 78. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before the deadline. The applicant is responsible for obtaining confirmation from its

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

126. Please note that: (1) All payments must be made in U.S. dollars; (2) all payments must be made by wire transfer; (3) upfront payments for Auction 78 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments; and (4) failure to deliver the upfront payment as instructed by the July 17, 2008 deadline will result in dismissal of the application and disqualification from participation in the auction.

##### ii. FCC Form 159

127. A completed FCC Remittance Advice Form (FCC Form 159, Revised 7/05) must be faxed to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction 78 Procedures Public Notice*. An electronic pre-filled version of the FCC Form 159 is available after submitting the short-form application. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank by fax.

##### iii. Upfront Payments and Bidding Eligibility

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

129. Applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110.

130. Applicants must make upfront payments sufficient to obtain bidding eligibility on the licenses on which they will bid. The Bureau proposed, in the *Auction 78 Comment Public Notice*, that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a

bidder may place bids. Under the Bureau's proposal, in order to bid on a particular license, a qualified bidder must have selected the license(s) on its short-form application and must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses selected on its short-form application, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses the applicant selected on its short-form application, but only enough to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold provisionally winning bids at any given time.

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

##### a. AWS-1

132. For AWS-1 licenses offered in Auction 78, the Bureau proposed upfront payments as follows: (1) for licenses covering CMAs or EAs in the 50 states, upfront payment amounts will be calculated as \$0.03 per MHz per population (MHz-pop); (2) for the REAG that covers the Gulf of Mexico, the upfront payment amount will be \$20,000; and (3) for all remaining licenses, upfront payment amounts will be calculated as \$0.01/MHz-pop.

##### b. Broadband PCS

133. For broadband PCS licenses offered in Auction 78, the Bureau proposed upfront payments as follows: (1) for licenses covering BTAs in the 50 states, upfront payment amounts will be calculated as \$0.03/MHz-pop; and (2) for all remaining licenses, upfront payment amounts will be calculated as \$0.01/MHz-pop.

134. The Bureau set forth the specific proposed upfront payments and bidding units for each license in Attachment A of the *Auction 78 Comment Public Notice* and sought comment on this proposal. The Bureau did not receive any comments in response to the proposed upfront payments, or on its proposal that the upfront payment

amount would determine a bidder's initial bidding eligibility. Therefore, the Bureau adopts the upfront payments and bidding units it proposed for each license in Auction 78, which are set forth in Attachment A of the *Auction 78 Procedures Public Notice*.

135. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

136. If an applicant is a former defaulter, it must calculate its upfront payment for all licenses by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

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

137. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information listed in the *Auction 78 Procedures Public Notice* be supplied. Applicants can provide the information electronically during the initial short-form application filing window after the form has been submitted.

#### E. Auction Registration

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

139. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the short-form application and will include the SecurID(r) tokens that will be required to place bids, the Integrated Spectrum

Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

140. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, August 7, 2008, should call (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

#### F. Remote Electronic Bidding

141. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its short-form application. In either case, each authorized bidder must have its own SecurID(r) token, which the Commission will provide at no charge.

#### G. Mock Auction—August 11, 2008

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

### IV. Auction Event

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

#### A. Auction Structure

##### i. Simultaneous Multiple Round Auction

144. In the *Auction 78 Comment Public Notice*, the Bureau proposed to auction all licenses in Auction 78 in a single auction using the Commission's standard simultaneous multiple-round (SMR) auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Typically, bidding remains open on all licenses until bidding stops on every license.

145. The Bureau also sought comment on using some form of package bidding design for Auction 78. A commenter supported the Bureau's recommendation to not employ package bidding for this auction, arguing that the Auction 78 licenses have no readily identifiable inter-relationships or inter-dependencies with each other. The Bureau agrees and continues to believe that a package bidding design is not likely to offer significant advantages to bidders in Auction 78. Given the nature of the auction inventory, the Bureau concludes that the standard SMR auction format will best meet the needs of bidders in Auction 78. Therefore, the Bureau adopts its proposal to use a SMR auction format without package bidding. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction until bidding stops on every license, allowing bidders to take advantage of synergies that exist among licenses.

##### ii. Information Available to Bidders Before and During the Auction

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

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

148. The Bureau disagrees with the commenters that the results of Auction 73 demonstrate the harms of withholding bidding information were significant to the point where the balance has shifted in favor of

disclosing bidder information in Auction 78. While the Commission has previously acknowledged that revealing bidder identities may provide useful information to some bidders, there is no evidence apart from the commenter's statement that any class of bidders in Auction 73 suffered a competitive disadvantage due to the use of limited information procedures. The Bureau believes that the overall competitive benefits of limited information procedures in Auction 73—from reduced opportunities for bid signaling, retaliatory bidding, or other anti-competitive strategic bidding—far outweigh the disadvantages.

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

150. More generally, while well-prepared FCC auction participants likely will utilize all information available to them when calculating license values, including, in some cases, information revealed during the auction, the Bureau does not believe that knowing bidder identities and other bidder-related information during the auction process is an essential prerequisite to confident bidding and successful auction participation. The Bureau notes in the *Auction 78 Procedures Public Notice*, and other auction public notices, that the Bureau expects bidders to conduct careful pre-auction due diligence before bidding on a license. There is an increasing amount of external market data available on spectrum license values, as more and more licenses have been auctioned and others traded in secondary transactions, which should help auction participants and their financial backers determine their willingness to pay for licenses.

Hence, the Bureau is not persuaded that disclosure of bidder identity information during the auction is necessary to facilitate bidder license evaluation in Auction 78.

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

152. *Other Issues.* Information disclosure procedures established for this auction will not interfere with the administration of or compliance with the Commission's anti-collusion rule. 47 CFR 1.2105(c)(1) provides that after the short-form application filing deadline, all applicants for licenses in any of the same or overlapping geographic license areas are prohibited from disclosing to each other in any manner the substance of bids or bidding strategies until after the down payment deadline, subject to specified exceptions.

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

154. To assist applicants in identifying other parties subject to the anti-collusion rule, the Bureau will notify separately each applicant that has filed a short-form application to participate in a pending auction whether applicants in Auction 78 have applied for licenses in any of the same or overlapping geographic areas as the applicant. Specifically, after the Bureau

conducts its initial review of applications to participate in Auction 78, it will send to each applicant in Auction 78 a letter that lists the other applicants that have pending short-form applications for licenses in any of the same or overlapping geographic areas. The list will identify the other applicants by name but will not list their license selections. As in past auctions, additional information regarding other applicants that is needed to comply with 47 CFR 1.2105(c)—such as the identities of other applicants' controlling interests and entities with a greater than ten percent ownership interest—will be available through the publicly accessible online short-form application database.

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

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

157. The Bureau declines to create blanket immunity for statements filed with the SEC because that would violate the intent of the limited information

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

### iii. Eligibility and Activity Rules

158. The Bureau will use upfront payments to determine initial eligibility for Auction 78. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each license is assigned a specific number of bidding units listed in Attachment A of the *Auction 78 Procedures Public Notice*. Bidding units for a given license do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its short-form application as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the licenses it selected on its short-form application. The total upfront payment does not affect the

total dollar amount a bidder may bid on any given license.

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

160. A bidder's activity level in a round is the sum of the bidding units associated with any licenses covered by new and provisionally winning bids. A bidder is considered active on a license in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round.

161. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions, the Commission adopts them for Auction 78. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

### iv. Auction Stages

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

163. The Bureau has the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant, and also has other mechanisms by which it may influence the speed of an auction. The Bureau finds that two stages for an activity requirement adequately balances the desire to conclude the auction quickly with giving sufficient time for bidders to consider the status of the bidding and to place bids. Therefore, the Bureau adopts the two stages.

164. Stage One: During the first stage of the auction, a bidder desiring to

maintain its current bidding eligibility will be required to be active on licenses representing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in the use of an activity rule waiver or, if the bidder has no activity rule waivers remaining, a reduction in the bidder's bidding eligibility in the next round. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4).

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

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

166. Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, the Bureau adopts them for Auction 78.

### v. Stage Transitions

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



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

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

#### vi. Activity Rule Waivers

169. In the *Auction 78 Comment Public Notice*, the Bureau proposed that each bidder in the auction be provided with three activity rule waivers.

170. The Bureau adopts its proposal to provide bidders with three activity rule waivers.

#### vii. Auction Stopping Rules

171. For Auction 78, the Bureau proposed to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids.

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

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

bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

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

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

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

#### viii. Auction Delay, Suspension, or Cancellation

174. In the *Auction 78 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau received no comment on this issue. The Bureau adopts its proposed rules regarding auction delay, suspension, or cancellation.

#### B. Bidding Procedures

##### i. Round Structure

175. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results

formats and locations will also be included in the qualified bidders public notice.

176. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

##### ii. Reserve Price and Minimum Opening Bids

177. Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses are subject to auction (i.e., because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.

##### a. Reserve Prices

178. In the *Auction 78 Comment Public Notice*, the Bureau recommended that no reserve price be imposed in Auction 78, noting that when the PCS licenses were offered initially there was no reserve price and that the reserve price for AWS licenses was met in Auction 66. The Bureau adopts its proposal not to establish a reserve price in Auction 78.

##### b. Minimum Opening Bids

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

##### (i) AWS-1

180. For AWS-1 licenses offered in Auction 78, the Bureau proposed minimum opening bids as follows: (1) For licenses covering CMAs or EAs in the 50 states, minimum opening bid amounts will be calculated as \$0.03/MHz-pop; (2) for the REAG that covers the Gulf of Mexico, the minimum opening bid amount will be \$20,000; and (3) for all remaining licenses, minimum opening bid amounts will be calculated as \$0.01/MHz-pop.

##### (ii) Broadband PCS

181. For broadband PCS licenses offered in Auction 78, the Bureau

proposed minimum opening bids as follows: (1) For licenses covering BTAs in the 50 states, minimum opening bid amounts will be calculated as \$0.03/MHz-pop; and (2) for all remaining licenses, minimum opening bid amounts will be calculated as \$0.01/MHz-pop.

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

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

184. The Commission did not receive any comments addressing the proposal that the Bureau retains the discretion to reduce minimum opening bid amounts. The Bureau therefore adopts this proposal, noting that the Bureau retains the discretion to reduce the minimum opening bid amounts. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, i.e., before bidders lose all activity waivers. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid amount on specific licenses.

185. The specific minimum opening bid amounts for each license available in Auction 78 calculated pursuant to the procedure described herein are set forth in Attachment A of the *Auction 78 Procedures Public Notice*.

### iii. Bid Amounts

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

#### a. Minimum Acceptable Bids

187. Under the Bureau's proposed procedures, the first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will

be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

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

189. The Bureau proposed initially to set the weighting factor at 0.5, the minimum percentage (floor) at 0.1 (10%), and the maximum percentage (ceiling) at 0.2 (20%). At these initial settings, the minimum acceptable bid for a license will generally be between ten percent and twenty percent higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment E of the *Auction 78 Procedures Public Notice*.

#### b. Additional Bid Amounts

190. Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage—more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage. If, for example, the bid increment percentage is five percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) \* (1

+ 0.05), or (minimum acceptable bid amount) \* 1.05; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, or (minimum acceptable bid amount) \* 1.1, etc. The Bureau will round the results of these calculations and the minimum acceptable bid calculations using the Bureau's standard rounding procedures.

191. For Auction 78, the Bureau proposed to set the bid increment percentage at 0.05, so that any additional bid amounts above the minimum acceptable bid would each be 5 percent higher. The Bureau received no comments on this proposal and therefore adopts its proposal to begin the auction with a bid increment percentage of 0.05.

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

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

#### c. Cap on Increases in Bid Amounts

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

195. The Bureau will start the auction with a cap of \$1 million. This will limit

the amount by which minimum acceptable bids and additional bid amounts may increase. Given the inventory of Auction 78, the Bureau believes that this cap may be useful in preventing very rapid price increases on some licenses, which could potentially discourage bidder participation, inhibit price discovery, and create bid approval issues for bidders.

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

#### iv. Provisionally Winning Bids

197. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each license. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same license at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

198. In the *Auction 78 Comment Public Notice*, the Bureau proposed to use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a license in a given round (*i.e.*, tied bids). No comments were received on this proposal.

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

200. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 78.

201. A bidder's ability to bid on specific licenses is determined by two factors: (1) The licenses selected on the bidder's short-form application and (2) the bidder's eligibility. The bid

submission screens will allow bidders to submit bids on only those licenses the bidder selected on its short-form application.

202. In each round, eligible bidders will be able to place bids on a given license in one or more pre-defined bid amounts. For each license, the FCC Auction System will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

203. Until a bid has been placed on a license, the minimum acceptable bid amount for that license will be equal to its minimum opening bid amount. Once there are bids on a license, minimum acceptable bids for a license will be determined.

204. During a round, an eligible bidder may submit bids for as many licenses as it wishes, remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If a bidder submits multiple bids for the same license in the same round—multiple bids on the exact same license, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's current activity.

205. Finally, bidders are cautioned to select their bid amounts carefully because bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

#### v. Bid Removal and Bid Withdrawal

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

207. A commenter recommends allowing each bidder to withdraw an unlimited number of bids in a single round, as proposed in the *Auction 78 Comment Public Notice*, or up to three bids in more than one round. The

commenter characterizes the limitation of one bid withdrawal round as "severe restrictions" that may have seemed to be necessary in Auction 73 where combinatorial bidding was used for some licenses.

208. The Bureau is not convinced by this line of reasoning. The Commission has conducted some past auctions—particularly those with limited opportunities for license aggregation—with one or no withdrawal rounds. Therefore, the Bureau adopts its proposal.

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

210. *Bid Withdrawal*. Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw provisionally winning bids from previous rounds for licenses using the withdraw bids function in the FCC Auction System. A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

211. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the license, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. The Commission will serve as a "place holder" provisionally winning bidder on the license until a new bid is submitted on that license.

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

213. *Calculation of Bid Withdrawal Payment*. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the provisionally winning bid in the same or subsequent auction(s). If a bid

is withdrawn on a license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or subsequent auction(s).

214. 47 CFR 1.2104(g)(1) of the rules sets forth the payment obligations of a bidder that withdraws a high bid on a license during the course of an auction, and provides for the assessment of interim bid withdrawal payments. In the *Auction 78 Comment Public Notice*, the Bureau proposed to establish the percentage at fifteen percent (15%) for Auction 78 and sought comment on the proposal.

215. The Bureau received no comments on this issue and adopts its proposal. The Commission will assess an interim withdrawal payment equal to fifteen percent (15%) of the amount of the withdrawn bids. The fifteen percent (15%) interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. 47 CFR 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

#### vi. Round Results

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

#### vii. Auction Announcements

217. The Commission will use auction announcements to announce items such as schedule changes and stage transitions. All auction announcements will be available by clicking a link in the FCC Auction System.

### V. Post-Auction Procedures

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

#### A. Down Payments

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

#### B. Final Payments

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

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

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

222. Winning bidders organized as bidding consortia must comply with the long-form application procedures established in the *CSEA/Part 1 Report and Order*, 71 FR 6992, February 10, 2006. Specifically, each member (or group of members) of a winning consortium seeking separate licenses will be required to file a separate long-form application for its respective

license(s). If the license is to be partitioned or disaggregated, the member (or group) filing the long-form application must provide the relevant partitioning or disaggregation agreement in its long-form application. In addition, if two or more consortium members wish to be licensed together, they must first form a legal business entity, and any such entity must meet the applicable designated entity criteria.

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

223. Within ten business days after release of the auction closing notice, each winning bidder must also comply with the ownership reporting requirements in 47 CFR 1.913, 1.919, and 1.2112 by submitting an ownership disclosure information report (FCC Form 602) with its long-form application.

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

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

#### E. Tribal Lands Bidding Credit

226. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

227. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after winning the auction when it files its long-form

application (FCC Form 601). When initially filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the applicant will have 180 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vi).

#### F. Default and Disqualification

228. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The payments include both a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

229. The percentage of the applicable bid to be assessed as an additional payment for defaults in a particular auction is established in advance of the auction. Accordingly, in the *Auction 78 Comment Public Notice*, the Bureau proposed to set the additional default payment for this auction at ten percent of the applicable bid, consistent with Auctions 66 and 71. The Bureau received no comments on this proposal, and therefore, adopts the proposal.

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

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

231. All applicants that submit upfront payments but after the close of the auction are not winning bidders for a license in Auction 78 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

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

Federal Communications Commission.

**Gary D. Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB.*

[FR Doc. E8-12013 Filed 5-28-08; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Federal Advisory Committee Act

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of Charter Renewal.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), the purpose of this notice is to announce that the Federal Communications Commission (FCC) has renewed the charter for the "WRC-11 Advisory Committee" for a two-year period through May 23, 2010. The WRC-11 Advisory Committee is a federal advisory committee under the Federal Advisory Committee Act.

**DATES:** Renewed through May 23, 2010.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW-C305, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Alexander Roytblat, Designated Federal Official, WRC-11 Advisory Committee, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418-7501. E-mail: [Alexander.Roytblat@fcc.gov](mailto:Alexander.Roytblat@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The GSA has renewed the charter of the WRC-11 Advisory Committee (Committee) through May 23, 2010. The Committee will continue to provide to the FCC advice, technical support, and

recommended proposals relating to the preparation of United States proposals and positions for the 2011 World Radiocommunication Conference (WRC-11). The Advisory Committee has been renamed the Advisory Committee for the 2011 Radiocommunication Conference (or simply, WRC-11 Advisory Committee), and its scope of activities has been amended to address issues contained in the agenda for WRC-11. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, this notice advises interested persons of the renewal of the WRC-11 Advisory Committee.

Federal Communications Commission.

**Helen Domenici,**

*Chief, International Bureau.*

[FR Doc. E8-12011 Filed 5-28-08; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: Acquisition Services Information Requirements (3064-0072), Account Based Disclosures in Connection with Federal Reserve Regulations E, CC, and DD (3064-0084), and Prompt Corrective Actions (3064-0115).

**DATES:** Comments must be submitted on or before July 28, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods. All comments should refer to the name of the collection:

- <http://www.FDIC.gov/regulations/laws/federal/notices.html>.

- E-mail: [comments@fdic.gov](mailto:comments@fdic.gov).

Include the name of the collection in the subject line of the message.

- Mail: Leneta G. Gregorie (202-898-3719), Counsel, Room F-1064, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.