

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 1, 2, 15, 25, 30, and 101**

[AU Docket No. 18–85; FCC 18–109]

**Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services****AGENCY:** Federal Communications Commission.**ACTION:** Final action; requirements and procedures.

**SUMMARY:** This document summarizes procedures, upfront payment amounts, minimum opening bids, dates and deadlines for the upcoming auctions of Upper Microwave Flexible Use Service (UMFUS) licenses in the 28 GHz and 24 GHz bands. The *Auctions 101 and 102 Procedures Public Notice* summarized here is intended to familiarize applicants with the procedures and other requirements governing participation in Auctions 101 and 102, and provides an overview of the post-auction application and payment processes.

**DATES:** Applications to participate in Auctions 101 and 102 must be submitted by 6:00 p.m. Eastern Time (ET) on September 18, 2018. Upfront payments for Auction 101 must be received by 6:00 p.m. ET on October 23, 2018. Bidding in Auction 101 is scheduled to begin on November 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Erik Beith or Kathryn Hinton at (202) 418–0660; for general auction questions: Auctions Hotline at (717) 338–2868; *Wireless Telecommunications Bureau, Broadband Division:* For Upper Microwave Flexible Use Service licensing and service rule questions: Nancy Zaczek at (202) 418–2487 or Tim Hilfiger at (717) 338–2578.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Public Notice (*Auctions 101 and 102 Procedures Public Notice*), AU Docket No. 18–85, adopted on August 2, 2018, and released on August 3, 2018, and a Public Notice announcing an updated list of licenses for Auction 102, released on August 9, 2018. The complete text of the *Auctions 101 and 102 Procedures Public Notice* and the subsequent August 9th Public Notice, including all attachments and any related documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 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 complete text is also available on the Commission's website at: <https://www.fcc.gov/auction/101> and <https://www.fcc.gov/auction/102>. Alternative formats are available to persons with disabilities by sending an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

**I. General Information***A. Introduction*

1. By the *Auctions 101 and 102 Procedures Public Notice*, the Commission established procedures for the upcoming auctions of 5,984 Upper Microwave Flexible Use Service (UMFUS) licenses in the 27.5–28.35 GHz (28 GHz) and 24.25–24.45 and 24.75–25.25 GHz (24 GHz) bands (collectively, the UMFUS bands).

2. The bidding in the auction for licenses in the 28 GHz band, which is designated as Auction 101, is scheduled to commence on November 14, 2018. Bidding in the auction for licenses in the 24 GHz band, which is designated as Auction 102, will be scheduled to commence after the conclusion of bidding in Auction 101. The *Auctions 101 and 102 Procedures Public Notice* provides details regarding the procedures, terms, and conditions, as well as dates and deadlines, governing participation in Auctions 101 and 102, and an overview of the post-auction application and payment processes.

*B. Background and Relevant Authority*

3. Prospective applicants should familiarize themselves with the Commission's general competitive bidding rules, including recent amendments and clarifications, as well as Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Prospective applicants should also familiarize themselves with the Commission's UMFUS service and competitive bidding requirements contained in part 30 of the Commission's rules, as well as Commission orders concerning competitive bidding for UMFUS licenses. Applicants must also be thoroughly familiar with the procedures, terms, and conditions contained in the *Auctions 101 and 102 Procedures Public Notice* and any future public notices that may be released in proceeding 18–85.

4. 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 Auctions 101 and 102. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the Commission's FCC Auctions internet site at [www.fcc.gov/auctions/](http://www.fcc.gov/auctions/). Additionally, documents are available at the Commission's headquarters, located at 445 12th Street SW, Washington, DC 20554, during normal business hours.

*C. Description of Licenses To Be Offered in Auctions 101 and 102*

5. The Commission will proceed to the assignment of 28 GHz licenses in Auction 101 and the assignment of 24 GHz licenses in Auction 102. Doing so will make 1.55 gigahertz of UMFUS spectrum available in Auctions 101 and 102, licensed on a geographic area basis. The 3,072 licenses in the 28 GHz band offered in Auction 101 will be county-based licenses. There is a total of 3,232 counties. The 28 GHz county licenses that the Commission is making available in Auction 101 are defined by 1990 boundaries. The 28 GHz band will be licensed as two 425-megahertz blocks (27.500–27.925 GHz and 27.925–28.350 GHz). For each county in which 28 GHz licenses will be available for auction, both blocks of the 28 GHz band will be available.

6. Auction 102 will offer 2,912 licenses in the 24 GHz band, and the licenses will be based on PEAs. There is a total of 416 PEAs. The lower segment of the 24 GHz band (24.25–24.45 GHz) will be licensed as two 100-megahertz blocks, while the upper segment (24.75–25.25 GHz) will be licensed as five 100-megahertz blocks. In one PEA, one 75-megahertz block will be licensed in the upper segment.

7. Each of the bands available in Auctions 101 and 102 will be licensed on an unpaired basis. A licensee in these bands may provide any services permitted under a fixed or mobile allocation, as set forth in the non-Federal Government column of the Table of Frequency Allocations in § 2.106 of the Commission's rules.

8. Summaries of the licenses to be offered in Auctions 101 and 102 are available on the Commission's FCC Auctions internet site. The 28 GHz licenses available in Auction 101 do not

include counties within the boundaries of existing active 28 GHz licenses. The complete list of licenses to be offered in these auctions is provided in electronic format only, available as separate Attachment A files for each auction at [www.fcc.gov/auction/101](http://www.fcc.gov/auction/101) and [www.fcc.gov/auction/102](http://www.fcc.gov/auction/102), respectively.

9. Active licenses in the 28 GHz band cover 1,696 full counties and one partial county. In Anchorage County, Alaska, part of the county is encumbered, and the other part will be offered in Auction 101. That county is noted with a double asterisk in Attachment A. The Commission notes that it has updated the list of licenses available in Auction 101 to reflect that the previously partitioned portion of Horry County is now part of license WPOH936 and held by Horry Telephone Cooperative, Inc.

10. The list of licenses to be offered in the 24 GHz band has been updated subsequent to the release of the *Auctions 101 and 102 Procedures Public Notice* to adjust the categories and number of generic blocks that will be available in Auction 102.

11. Specifically, on August 9, 2018, an updated list of licenses was made available which indicates that for Auction 102, in one PEA, one of the blocks in the upper 24 GHz band will have reduced bandwidth (75 megahertz). That block will be offered in an additional category, for a total of three categories of blocks in that PEA. That PEA is noted with an asterisk in the Attachment A file. In three other PEAs, one fewer block will be available in the upper 24 GHz band. Accordingly, the clock phase of Auction 102 will allow bidding for two generic 100-megahertz blocks in the lower 24 GHz segment (Category L) in every PEA and five generic 100-megahertz blocks in the upper 24 GHz segment (Category U) in most PEAs (*i.e.*, those without an incumbent licensee). In three PEAs, four 100-megahertz Category U blocks will be available instead of five. In one other PEA, four 100-megahertz Category U blocks will be available plus one 75-megahertz block in the upper 24 GHz segment (Category UI). Additional information is available in the Attachment A file on the Auction 102 website.

#### D. Auction Specifics

##### 1. Separate Auction Application and Bidding Processes

12. The Commission will offer the 5,984 licenses through two separate auctions, Auctions 101 and 102, respectively. Bidding in Auction 101 for 28 GHz band licenses is scheduled to commence on November 14, 2018.

Bidding will commence in Auction 102 for 24 GHz band licenses after the close of bidding in Auction 101.

13. The Commission also will use separate application and bidding processes for Auctions 101 and 102. In addition, the Commission will accept auction applications during separate application filing windows—one for Auction 101 and one for Auction 102. The Commission will use its standard simultaneous multiple-round (SMR) auction format for Auction 101 (28 GHz) and a clock auction format, similar to that used for the forward auction portion (Auction 1002) of the Broadcast Incentive Auction, for Auction 102 (24 GHz).

14. The filing window for Auction 102 will run concurrently with the filing window for Auction 101.

15. The Commission's rules regarding certain application requirements and certifications (*e.g.*, joint bidding agreements relating to the licenses subject to auction), the rule prohibiting certain communications, and the Commission's procedures regarding information available during the auction process will apply across both auctions. An applicant seeking to participate in both auctions must submit an application in each auction. The same applicant, filing two applications, one in each auction, is a single applicant for purposes of the rule prohibiting certain communications. Accordingly, that applicant's internal communications regarding the two auctions are not covered by the prohibition.

16. The Commission notes that, while it is applying its limited information disclosure procedures across both auctions, certain bidding information is publicly available during the bidding process, including, for each license offered in Auction 101: The amount of every bid placed, the number of bidders that placed a bid, and whether a bid was withdrawn after each round. At the end of Auction 101 (*i.e.*, after the last round of Auction 101), potential bidders in Auction 102 will have access to the public results data from each round of Auction 101, including the gross winning bid amounts. The Commission will defer the acceptance of upfront payments for Auction 102 until after the close of Auction 101. The deadline for submitting upfront payments for Auction 102 will occur before the start of bidding in Auction 102, and will be announced in a later public notice. The Commission also will apply its bidding credit cap separately to each auction. The Commission anticipates that the bidding for Auction 102 will start no earlier than four weeks after the release

of a public notice announcing the closing of Auction 101.

##### 2. Auction Title and Start Date

17. The auction of licenses in the 28 GHz band will be referred to as Auction 101–28 GHz Band. Bidding in Auction 101 will begin on Wednesday, November 14, 2018. The initial schedule for bidding rounds in Auction 101 will be announced by public notice at least one week before bidding in the auction starts. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

18. The auction of licenses in the 24 GHz band will be referred to as Auction 102–24 GHz Band. The clock phase of Auction 102 will begin no sooner than four weeks after the release of a public notice announcing the closing of Auction 101. Unless otherwise announced, bidding on all generic spectrum blocks in all PEAs will be conducted on each business day until bidding has stopped on all spectrum blocks in all PEAs. Following the conclusion of the clock phase, the Auction System will make available more detailed information about the assignment phase to the winning clock phase bidders not less than five business days before starting the assignment phase. Winning bidders from the clock phase will be given scheduling information and bidding options for the assignment phase in the Auction System.

##### 3. Auction Dates and Deadlines

19. The following dates and deadlines apply to Auction 101:

Auction Application Tutorial Available (via internet)—August 28, 2018  
Short-Form Application (FCC Form 175) Filing Window Opens—September 5, 2018; 12:00 noon ET  
Short-Form Application (FCC Form 175) Filing Window Deadline—September 18, 2018; 6:00 p.m. ET  
Upfront Payments (via wire transfer)—October 23, 2018; 6:00 p.m. ET  
Bidding Tutorial Available (via internet)—No later than November 1, 2018  
Mock Auction—November 8, 2018  
Bidding Begins in Auction 101—November 14, 2018

20. The following dates and deadlines apply to Auction 102:

Auction Application Tutorial Available (via internet)—August 28, 2018  
Short-Form Application (FCC Form 175) Filing Window Opens—September 5, 2018; 12:00 noon ET  
Short-Form Application (FCC Form 175) Filing Window Deadline—September

18, 2018; 6:00 p.m. ET

21. The remainder of the pre-auction dates and deadlines for Auction 102 will be announced in a later public notice to be released by the Bureau after the close of bidding in Auction 101. That public notice will announce when the bidding tutorial will become available, the upfront payment deadline, the date of the clock and assignment phase mock auction, and when bidding will begin in the clock phase of Auction 102.

#### 4. Requirements for Participation

22. Those wishing to participate in Auction 101 and/or Auction 102 must:

- Submit a separate short-form application (FCC Form 175) electronically for each auction in which they seek to participate prior to 6:00 p.m. ET on September 18, 2018, following the electronic filing procedures set forth in the FCC Form 175 Instructions. Detailed instructions for submitting an FCC Form 175 for Auction 101 and Auction 102 (FCC Form 175 Instructions) can be accessed at [www.fcc.gov/auction/101](http://www.fcc.gov/auction/101) and [www.fcc.gov/auction/102/](http://www.fcc.gov/auction/102/).

- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) for the particular auction by 6:00 p.m. ET on the applicable deadline, following the procedures and instructions set forth in the FCC Form 159 Instructions. Detailed instructions for submitting an FCC Form 159 for Auction 101 (FCC Form 159 Instructions) can be accessed at [www.fcc.gov/auction/101/](http://www.fcc.gov/auction/101/). The Bureau will prepare and release after the close of bidding in Auction 101 detailed instructions for submitting an FCC Form 159 for Auction 102.

- For Auction 101, the deadline for submitting upfront payments and FCC Form 159 is 6:00 p.m. ET on October 23, 2018.

- For Auction 102, the deadline for submitting upfront payments and FCC Form 159 will be announced in a later public notice.

- Comply with all provisions outlined in the *Auctions 101 and 102 Procedures Public Notice* and applicable Commission rules.

## II. Applying To Participate in Auctions 101 and 102

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

23. An application to participate in Auction 101 or Auction 102, referred to as a short-form application or FCC Form 175, provides information that the Commission uses to determine whether the applicant has the legal, technical,

and financial qualifications to participate in a Commission auction for spectrum licenses. The short-form application is the first part of the Commission's two-phased auction application process. In the first phase, a party seeking to participate in Auction 101 and/or Auction 102 must file a separate short-form application for each auction in which it seeks to participate, in which it certifies, under penalty of perjury, its qualifications. Eligibility to participate in Auction 101 and/or Auction 102 is based on an applicant's short-form application(s) and certifications and on the applicant's submission of a sufficient upfront payment for the auction(s). In the second phase of the process, each winning bidder must file a more comprehensive post-auction, long-form application (FCC Form 601) for the licenses it wins in each auction, and it must have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission. The Commission reminds applicants that being deemed qualified to bid in Auction 101 or Auction 102 does not constitute a determination that a party is qualified to hold a Commission license or is eligible for a designated entity bidding credit.

24. A party seeking to participate in Auction 101 and/or Auction 102 must file a separate FCC Form 175 electronically for each auction in which it wishes to participate via the Auction Application System prior to 6:00 p.m. ET on September 18, 2018, following the procedures prescribed in the FCC Form 175 Instructions. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 as of the filing date will be used to determine whether the applicant may request the claimed bidding credit. An applicant that files an FCC Form 175 for Auction 101 and/or Auction 102 will be subject to the Commission's rule prohibiting certain communications. The prohibition of certain communications will apply across both auctions (*i.e.*, will apply to any applicant in either Auction 101 or 102). An applicant is subject to the prohibition beginning at the deadline for filing short-form applications—6:00 p.m. ET on September 18, 2018. The prohibition will end for applicants in both auctions on the post-auction down payment deadline for Auction 102.

25. An applicant bears full responsibility for submitting an accurate, complete, and timely short-form application. Each applicant must make a series of certifications under penalty of perjury on its FCC Form 175 related to the information provided in

its application and its participation in the auction, and it must confirm that it is legally, technically, financially, and otherwise qualified to hold a license. If an Auction 101 or Auction 102 applicant fails to make the required certifications in its FCC Form 175 by the filing deadline, its application will be deemed unacceptable for filing and cannot be corrected after the filing deadline.

26. An applicant should note that submitting an FCC Form 175 (and any amendments thereto) constitutes a representation by the certifying official that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are not permitted to make major modifications to their FCC Form 175 applications after the filing deadline. A change in the required certifications is considered a major change and would therefore not be permitted. Submitting a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

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

28. With respect to a particular auction (*i.e.*, Auction 101 or Auction 102), the same party may not bid based on more than one auction application, *i.e.*, as more than one applicant. Therefore, a party may not submit more than one short-form application for Auction 101 or for Auction 102. A party that wishes to participate in both Auctions 101 and 102 must file a separate auction application for each auction—one for Auction 101 and one for Auction 102. That same party, however, may not file more than one short-form application for a particular auction (*e.g.*, may not file two short-form applications for Auction 101). If a

party submits multiple short-form applications for either auction, only one application may be the basis for that party to become qualified to bid in that auction.

29. A party is generally permitted to participate in a Commission auction only through a single bidding entity. The filing of applications in a single auction (*i.e.*, either Auction 101 or Auction 102) by multiple entities controlled by the same individual or set of individuals will generally not be permitted. This restriction applies across all applications in each auction (*i.e.*, Auction 101 or Auction 102), without regard to the licenses or geographic areas selected. The Commission adopted a limited exception to the general prohibition on the filing of multiple applications by commonly-controlled entities for qualified rural wireless partnerships and individual members of such partnerships. Under this limited exception, each qualifying rural wireless partnership and its individual members will be permitted to participate separately in an auction. The filing of applications in both auctions (*i.e.*, one application for Auction 101 and one application for Auction 102) by entities controlled by the same individual or set of individuals will generally only be permitted if the two applicants are identical (*i.e.*, the same entity applies as an applicant in both auctions).

30. After the initial short-form application filing deadline, Commission staff will review all timely submitted applications for Auctions 101 and 102 to determine whether each application complies with the application requirements and whether it has provided all required information concerning the applicant's qualifications for bidding. After this review is completed for a particular auction, a public notice will be released announcing the status of applications for that auction and identifying the applications that are complete and those that are incomplete because of minor defects that may be corrected. That public notice also will establish an application resubmission filing window, during which an applicant may make permissible minor modifications to its application to address identified deficiencies. The public notice will include the deadline for resubmitting modified applications. To become a qualified bidder, an applicant must have a complete application (*i.e.*, have timely corrected any identified deficiencies) and make a timely and sufficient upfront payment. Qualified bidders for each auction will be identified by public

notice at least 10 days prior to the respective mock auction.

31. An applicant should consult the Commission's rules to ensure that all required information is included in its short-form application. To the extent the information in the *Auctions 101 and 102 Procedures Public Notice* does not address a potential applicant's specific operating structure, or if the applicant needs additional information or guidance concerning the following disclosure requirements, the applicant should review the educational materials for Auctions 101 and 102 and/or use the contact information provided in the *Auctions 101 and 102 Procedures Public Notice* to consult with Commission staff to better understand the information it must submit in its short-form application.

#### *B. Authorized Bidders*

32. An applicant must designate at least one individual as an authorized bidder, and no more than three, in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant. For Auctions 101 and 102, the same individual may not be listed as an authorized bidder in more than one FCC Form 175 submitted for a particular auction. An applicant may not use an individual as an authorized bidder in one auction, if that individual is identified as an authorized bidder in the other, unless the two applicants are identical. In other words, an individual may be listed as an authorized bidder in an application filed in Auction 101 and in another application filed in Auction 102 only if both applications are filed by the same entity.

#### *C. License or License Area Selection*

33. An applicant must select all of the licenses (Auction 101) or license areas (Auction 102) on which it may want to bid from the list of available licenses or PEAs on its FCC Form 175 for the appropriate auction. Under the Commission's adopted SMR auction design for Auction 101, an applicant will identify on its auction application the licenses offered on which it may wish to bid during the auction. Under the Commission's adopted clock auction design for Auction 102, an applicant will select on its auction application all of the PEA(s) on which it may want to bid from the list of available PEAs. An applicant must carefully review and verify its license or PEA selections, as applicable, before the FCC Form 175 filing deadline because those selections cannot be changed after the auction application filing deadline. The auction system will not accept bids on licenses

or generic blocks in PEAs that were not selected on the applicant's FCC Form 175.

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

34. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnerships, joint ventures, consortia or agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. A controlling interest includes all individuals or entities with positive or negative de jure or de facto control of the licensee. The applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to, any such agreements, arrangements, or understandings into which it has entered. An applicant may continue negotiating, discussing, or communicating with respect to a new agreement after the FCC Form 175 filing deadline, provided that the communications involved do not relate both to the licenses being auctioned and to bids or bidding strategies or post-auction market structure. An auction applicant that enters into any agreement relating to the licenses being auctioned during an auction is subject to the same disclosure obligations it would be for agreements existing at the FCC Form 175 filing deadline, and it must maintain the accuracy and completeness of the information in its pending auction application.

35. If parties agree in principle on all material terms prior to the application filing deadline, each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175, even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the FCC Form 175 filing deadline, they should not describe, or include the names of parties to, the discussions on their applications.

36. The Commission's rules now generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls or is controlled by, such applicants). Joint bidding arrangements include arrangements relating to the

licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific licenses on which to bid, and any such arrangements relating to the post-auction market structure. The Commission notes that application of this prohibition requires a case-by-case determination based on the details of a specific arrangement. The Commission directs the Bureau to make such determinations expeditiously.

37. This prohibition applies to joint bidding arrangements involving two or more nationwide providers, as well as joint bidding arrangements involving a nationwide provider and one or more non-nationwide providers, where any party to the arrangement is an applicant for the auction. A non-nationwide provider refers to any provider of communications services that is not a nationwide provider. Non-nationwide providers may enter into agreements to form a consortium or a joint venture (as applicable) that result in a single party applying to participate in an auction. While two or more non-nationwide providers may participate in an auction through a joint venture, a nationwide and a non-nationwide provider may not do so. A designated entity (DE) can participate in only one consortium or joint venture in an auction, which shall be the exclusive bidding vehicle for its members in that auction, and non-nationwide providers that are not designated entities may participate in an auction through only one joint venture, which also shall be the exclusive bidding vehicle for its members in that auction. A consortium is an entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities that individually are eligible to claim the same designated entity benefits under § 1.2110 of the Commission's rules, provided that no member of the consortium may be a nationwide provider. A joint venture means a legally cognizable entity formed to apply as a single applicant to bid at auction pursuant to an agreement by two or more separate and distinct legal entities, provided that no member of the joint venture may be a nationwide provider. The general prohibition on joint bidding arrangements excludes certain agreements, including those that are solely operational in nature. Agreements that are solely operational in nature are those that address operational aspects of providing a mobile service, such as agreements for roaming, spectrum leasing and other

spectrum use arrangements, or device acquisition, as well as agreements for assignment or transfer of licenses, provided that any such agreement does not both relate to the licenses at auction and address or communicate, directly or indirectly, bidding at auction (including specific prices to be bid) or bidding strategies (including the specific licenses on which to bid or not to bid) or post-auction market structure.

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

39. The Commission has identified AT&T, Sprint, T-Mobile, and Verizon Wireless as nationwide providers for the purpose of implementing its competitive bidding rules in Auctions 101 and 102. The Commission will apply the rule prohibiting joint bidding arrangements to any applicant for Auction 101 or Auction 102. The rule prohibiting joint bidding arrangements will apply to all applicants (including any party that controls or is controlled by, such applicants) to participate in either auction, and not just to applicants for the same auction. A party wishing to participate in either auction will be required to disclose in its short-form application any bidding arrangements or understandings of any kind relating to the licenses being offered in either Auction 101 or Auction 102. The Commission will apply the agreement disclosure requirement and prohibition against joint bidding agreements such that the licenses being auctioned and licenses at auction include all of the licenses being offered in Auctions 101 and 102.

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

41. Applicants should bear in mind that a winning bidder will be required

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

#### *E. Ownership Disclosure Requirements*

42. Each applicant must comply with the applicable part 1 ownership disclosure requirements and provide information required by §§ 1.2105 and 1.2112, and, where applicable, § 1.2110, of the Commission's rules. In completing FCC Form 175, an applicant must fully disclose information regarding the real party- or parties-in-interest in the applicant or application and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in §§ 1.2105 and 1.2112, and, where applicable, § 1.2110, of the Commission's rules. Each applicant is responsible for ensuring that information submitted in its short-form application is complete and accurate.

43. In certain circumstances, an applicant may have previously filed an FCC Form 602 ownership disclosure information report or filed an auction application for a previous auction in which ownership information was disclosed. The most current ownership information contained in any FCC Form 602 or previous auction application on file with the Commission that used the same FRN the applicant is using to submit its FCC Form 175 will automatically be pre-filled into certain ownership sections on the applicant's FCC Form 175, if such information is in an electronic format compatible with FCC Form 175. The FCC Form 175 instructions provide additional details on pre-filled information. Applicants are encouraged to submit an FCC Form 602 ownership report or update any ownership information on file with the Commission in an FCC Form 602 ownership report prior to starting an application for Auction 101 or Auction 102 to ensure that their most recent

ownership information is pre-filled into their short-form applications and, for applicants seeking to participate in both Auctions 101 and 102, to reduce the number of changes that need to be made in both applications. Each applicant must carefully review any ownership information automatically entered into its FCC Form 175, including any ownership attachments, to confirm that all information supplied on FCC Form 175 is complete and accurate as of the application filing deadline. Any information that needs to be corrected or updated must be changed directly in FCC Form 175.

#### *F. Foreign Ownership Disclosure Requirements*

44. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. The provisions of section 310 apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules. In completing the FCC Form 175, an applicant will be required to disclose information concerning foreign ownership of the applicant. If an applicant has foreign ownership interests in excess of the applicable limit or benchmark set forth in section 310(b), it may seek to participate in Auction 101 and/or Auction 102 as long as it has filed a petition for declaratory ruling with the Commission prior to the FCC Form 175 filing deadline. An applicant must certify in its FCC Form 175 that, as of the deadline for filing its application to participate in a particular auction, the applicant either is in compliance with the foreign ownership provisions of section 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission. Additional information concerning foreign ownership disclosure is provided in the FCC Form 175 Filing Instructions.

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

45. The Commission will limit information available in Auctions 101 and 102. The Commission will not make public until after bidding in both auctions has closed: (1) The licenses or PEAs that an applicant selects for bidding in its FCC Form 175, (2) the amount of any upfront payment made

by or on behalf of an applicant for Auction 101 or Auction 102, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

46. Information to be made public after each round of bidding in Auction 101 will include, for each license, the number of bidders that placed a bid on the license, the amount of every bid placed, whether a bid was withdrawn, the minimum acceptable bid amount for the next round, and whether the license has a provisionally winning bid. The Auction System will indicate whether any proactive waivers were submitted in each round and the stage transition percentage—the percentages of licenses (as measured in bidding units) on which there were new bids—for the round. After the last round in Auction 101, the Commission will also make public the gross winning bid amount for each license. In Auction 102, information to be made public after each round of bidding in the clock phase will include, for each category of license in each geographic area, the supply, the aggregate demand, the price at the end of the last completed round, and the price for the next round.

47. Any information relating to either auction that is non-public under the Commission's limited information procedures will remain non-public until after bidding has closed in both auctions.

48. The Commission will make non-public information relating to Auctions 101 and 102, including the results of the respective auctions, available only after the close of bidding in Auction 102. Bidders' license and/or PEA selections, as applicable, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions concerning Auctions 101 and 102 will be made publicly available after the close of bidding in Auction 102. The Commission retains the discretion not to use limited information procedures if the Bureau, after examining the level of potential competition based on the short-form applications filed for Auction 101 and Auction 102, determines that the circumstances indicate that limited information procedures would not be an effective tool for deterring anti-competitive behavior. The identities of bidders placing specific bids or withdrawals (as applicable) and the net bid amounts (reflecting bidding credits) for Auctions 101 and 102 will not be disclosed until after the close of bidding in Auction 102. Bidders will have access to additional information related to their own bidding and bid eligibility. For

example, bidders will be able to view their own level of eligibility, before and during each respective auction, through the FCC auction bidding system.

49. The Commission 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, identities of bidders) could violate the Commission's rule prohibiting certain communications. To the extent an applicant believes that such a disclosure is required by law or regulation, including regulations issued by the SEC, the Commission strongly urges that the applicant consult with the Commission staff in the Auctions and Spectrum Access Division before making such disclosure.

#### *H. Prohibited Communications and Compliance With Antitrust Laws*

50. The rules prohibiting certain communications set forth in § 1.2105(c) apply to each applicant that files a short-form application (FCC Form 175) in Auction 101 or Auction 102. Section 1.2105(c)(1) of the Commission's rules provides that, subject to specified exceptions, after the short-form application filing deadline, all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other or any nationwide provider of communications services that is not an applicant, or, if the applicant is a nationwide provider, any non-nationwide provider that is not an applicant, in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.

51. The Commission will apply its rule prohibiting certain communications across both auctions, using the Auction 102 down payment deadline to determine when the prohibition ends for applicants in either auction. The rule prohibiting certain communications will apply to communications between every applicant to participate in either auction regarding any such applicant's bids or bidding strategies relating to either auction.

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

52. An applicant for purposes of this rule includes all controlling interests in the entity submitting the FCC Form 175 auction application, as well as all holders of interests amounting to 10 percent or more of the entity, and all officers and directors of that entity. A

party that submits an application for either auction becomes an applicant for both auctions under the rule at the application deadline, and that status does not change based on later developments. An auction applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an applicant for purposes of the rule and remains subject to the prohibition on certain communications until the Auction 102 down payment deadline.

## 2. Prohibition Applies Until Down Payment Deadline

53. Section 1.2105(c)'s prohibition on certain communications begins at an auction's short-form application filing deadline and ends at the auction's down payment deadline after the auction closes, which will be announced in a future public notice.

54. The Commission will use Auction 102's post-auction down payment deadline to determine when the prohibition ends for applicants in either auction. The prohibition on certain communications for applicants in either Auction 101 or Auction 102 will begin at the short-form application filing deadline for both auctions and will end at the down payment deadline for Auction 102.

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

55. The Commission in 2015 amended § 1.2105(c) to extend the prohibition on communications to cover all applicants for an auction regardless of whether the applicants seek permits or licenses in the same geographic area, or market. In addition, the rule now applies to communications by applicants with non-applicant nationwide providers of communications services and by nationwide applicants with non-applicant non-nationwide providers. The Commission now prohibits a joint bidding arrangement, including arrangements relating to the permits or licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific permits or licenses on which to bid, and any such arrangements relating to the post-auction market structure. The revised rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusion from the Commission's rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application.

Applicants may continue to communicate pursuant to any pre-existing agreements, arrangements, or understandings that are solely operational or that provide for the transfer or assignment of licenses, provided that such agreements, arrangements, or understandings are disclosed on their applications and do not both relate to the licenses at auction and address or communicate bids (including amounts), bidding strategies, or the particular permits or licenses on which to bid or the post-auction market structure.

56. The prohibition against communicating in any manner includes public disclosures as well as private communications and indirect or implicit communications. Consequently, an applicant must take care to determine whether its auction-related communications may reach another applicant. The Commission reminds applicants that they must determine whether their communications with other parties are permissible under the rule once the prohibition begins at the deadline for submitting applications, even before the public notice identifying the applicants is released.

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

58. Section 1.2105(c)(1) prohibits applicants from communicating with specified other parties only with respect to their own, or each other's, or any other applicant's bids or bidding strategies. A communication conveying bids or bidding strategies (including post-auction market structure) must also relate to the licenses being auctioned in order to be covered by the prohibition. Thus, the prohibition is limited in scope and does not apply to all communications between or among the specified parties.

59. Business discussions and negotiations that are unrelated to bidding in Auction 101 or Auction 102 and that do not convey information about the bids or bidding strategies,

including the post-auction market structure, of an applicant in either auction, are not prohibited by the rule. Moreover, not all auction-related information is covered by the prohibition. For example, communicating merely whether a party has or has not applied to participate in Auction 101 or Auction 102 will not violate the rule. In contrast, communicating, among other things, how a party will participate, including specific geographic areas selected, specific bid amounts, and/or whether or not the party is placing bids, would convey bids or bidding strategies and would be prohibited.

60. Each applicant must remain vigilant not to communicate, directly or indirectly, information that affects, or could affect, bids or bidding strategies. Certain discussions might touch upon subject matters that could convey price or geographic information related to bidding strategies. Such subject areas include, but are not limited to, management, sales, local marketing agreements, and other transactional agreements.

61. The Commission cautions applicants that bids or bidding strategies may be communicated outside of situations that involve one party subject to the prohibition communicating privately and directly with another such party. For example, the Commission has warned that prohibited communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly. The Commission has found a violation of the rule against prohibited communications when an applicant used the Commission's bidding system to disclose its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets 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.

62. When completing a short-form application, each applicant should avoid any statements or disclosures that may violate § 1.2105(c). An applicant should avoid including any information in its short-form application that might convey information regarding its license or PEA selection, as applicable, such as referring to certain licenses or markets in describing agreements, including any information in application attachments

that will be publicly available that may otherwise disclose the applicant's license or PEA selections, or using applicant names that refer to licenses being offered.

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

#### 4. Communicating With Third Parties

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

65. In the case of an individual, the objective precautionary measure of a firewall is not available. An individual that is privy to bids or bidding information of more than one applicant presents a greater risk of becoming a conduit for a prohibited communication. The Commission emphasizes that whether a prohibited communication has taken place in a given case will depend on all the facts pertaining to the case, including who possessed what information, what information was conveyed to whom, and the course of bidding in the auction.

66. The Commission's rules prohibit separate applicants for each auction (*i.e.*, within one auction) or separate applicants for either auction (*e.g.*, one applicant for Auction 101 and another

for Auction 102) from designating the same individual on their short-form applications to serve as an authorized bidder. A violation of the rules could also occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, a law firm, engineering firm, or consulting firm). In the latter case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that the applicant and its bidders will comply with § 1.2105(c). The Commission cautions that filing a certifying statement that precautionary steps have been taken will not outweigh specific evidence of an actual violation.

67. The Commission reminds potential applicants that they may discuss the short-form application or bids for specific licenses or license areas with the counsel, consultant, or expert of their choice before the short-form application deadline. The same third-party individual could continue to give advice after the short-form deadline regarding the application, provided that no information pertaining to bids or bidding strategies, including licenses or PEAs selected on the short-form application, is conveyed to that individual. To the extent potential applicants can develop bidding instructions prior to the short-form deadline that a third party could implement without changes during bidding, the third party could follow such instructions for multiple applicants provided that those applicants do not communicate with the third party during the prohibition period.

68. Applicants also should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. For example, an applicant's statement to the press that it intends to stop bidding in an auction could give rise to a finding of a § 1.2105 violation. Similarly, an applicant's public statement of intent not to place bids during bidding in Auction 101 or Auction 102 could also violate the rule.

#### 5. Section 1.2105(c) Certifications

69. By electronically submitting its FCC Form 175 auction application, each applicant for Auction 101 and Auction 102 certifies its compliance with § 1.2105(c) of the rules. If an applicant has a non-controlling interest with respect to more than one application, the applicant must certify that it has established internal control procedures

to preclude any person acting on behalf of the applicant from possessing information about the bids or bidding strategies of more than one applicant or communicating such information with respect to either applicant to another person acting on behalf of and possessing such information regarding another applicant. However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

#### 6. Duty To Report Prohibited Communications

70. Section 1.2105(c)(4) requires that any applicant that makes or receives a communication that appears to violate § 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. 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.

#### 7. Procedures for Reporting Prohibited Communications

71. A party reporting any information or communication pursuant to §§ 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of § 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other parties specified under the rule through the use of Commission filing procedures that allow such materials to be made available for public inspection.

72. Parties must file only a single report concerning a prohibited communication and must file that report with the Commission personnel expressly charged with administering the Commission's auctions. This process differs from filing procedures used in connection with other Commission rules and processes, which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants. Any reports required by § 1.2105(c) must be filed consistent with



the instructions set forth in the *Auctions 101 and 102 Procedures Public Notice*. For Auctions 101 and 102, such reports must be filed with Margaret W. Wiener, the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by email to Ms. Wiener sent to both [auction101@fcc.gov](mailto:auction101@fcc.gov) and [auction102@fcc.gov](mailto:auction102@fcc.gov). If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW, Room 6-C217, Washington, DC 20554.

73. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in § 0.459 of the Commission's rules. Filers requesting confidential treatment of documents must be sure that the cover page of the filing prominently displays that the documents seek confidential treatment. For example, a filing might include a cover page stamped with Request for Confidential Treatment Attached or Not for Public Inspection. Any such request must cover all the material to which the request applies. The Commission encourages such parties to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.

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

74. Each applicant that is a winning bidder will be required to provide as part of its long-form application any agreement or arrangement it has entered into and a summary of the specific terms, conditions, and parties involved in any agreement it has entered into. Such agreements must have been entered into prior to the filing of short-form applications. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

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

75. A summary listing of documents issued by the Commission and the Bureau addressing the application of § 1.2105(c) is available on the Commission's auction web page at <https://www.fcc.gov/summary-listing-documents-addressing-application-rule-prohibiting-certain-communications/>.

#### 10. Antitrust Laws

76. Compliance with the disclosure requirements of § 1.2105(c)(4) 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 in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another market for the other.

77. 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 a forfeiture and may be prohibited from participating further in Auction 101, Auction 102, and in future auctions, among other sanctions.

#### *I. Provisions for Small Businesses and Rural Service Providers*

78. The Commission's designated entity rules apply to all licenses acquired with bidding credits, including those won in Auctions 101 and 102. A bidding credit represents an amount by which a bidder's winning bid will be discounted. Applicants should note that all references to a winning bid in the context of designated entity bidding credits for Auction 102 (e.g., the application of a small business discount to an applicant's winning bid) refer to the calculated license price. A disclosable interest holder of an applicant seeking designated entity benefits is defined as any individual or entity holding a 10 percent or greater interest of any kind in the applicant, including but not limited to, a 10

percent or greater interest in any class of stock, warrants, options, or debt securities in the applicant or licensee.

79. In Auctions 101 and 102, bidding credits will be available to applicants demonstrating eligibility for a small business or a rural service provider bidding credit and subsequently winning license(s). Bidding credits will not be cumulative—for each auction, an applicant is permitted to claim either a small business bidding credit or a rural service provider bidding credit, but not both. Each applicant must also certify that it is eligible for the claimed bidding credit in its FCC Form 175. Each applicant should review carefully the Commission's decisions regarding the designated entity provisions as well as the part 1 rules.

80. The Commission reminds applicants applying for designated entity bidding credits that they should take due account of the requirements of the Commission's rules and implementing orders regarding de jure and de facto control of such applicants. These rules include a prohibition, which applies to all applicants (whether or not seeking bidding credits), against changes in ownership of the applicant that would constitute an assignment or transfer of control. Any substantial change in ownership or control is classified as a major amendment. Applicants should not expect to receive any opportunities to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements.

#### 1. Small Business Bidding Credit

81. For Auctions 101 and 102, bidding credits will be available to eligible small businesses and consortia thereof. Under the service rules applicable to the UMFUS licenses to be offered in Auctions 101 and 102, the level of bidding credit available is determined as follows:

- A bidder with attributed average annual gross revenues that do not exceed \$55 million for the preceding three years is eligible to receive a 15 percent discount on its winning bid.
- A bidder with attributed average annual gross revenues that do not exceed \$20 million for the preceding three years is eligible to receive a 25 percent discount on its winning bid.

82. Small business bidding credits are not cumulative; for each auction, an eligible applicant may receive either the

15 percent or the 25 percent bidding credit on its winning bid, but not both. The Commission's unjust enrichment provisions also apply to a winning bidder that uses a bidding credit and subsequently seeks to assign or transfer control of its license within a certain period to an entity not qualifying for the same level of small business bidding credit. For example, the Commission's unjust enrichment provisions would not apply to a winning bidder that uses the 15 percent small business bidding credit and seeks to transfer control of its license to an entity that qualifies for either the 15 percent small business bidding credit or the rural service provider bidding credit. The provisions would apply if that same winning bidder uses the 25 percent small business bidding credit, unless the proposed transferee also qualifies for the 25 percent small business bidding credit.

83. Each applicant claiming a small business bidding credit must disclose the gross revenues for the preceding three years for each of the following: (1) The applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that be may won by the applicant in Auction 101 or Auction 102, as applicable. In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25 percent of the spectrum capacity of any license that may be won in Auction 101 or Auction 102, the identity and the attributable gross revenues of any such disclosable interest holder must be disclosed. This attribution rule will be applied on a license-by-license basis. As a result, an applicant may be eligible for a bidding credit on some, but not all, of the licenses for which it is bidding in Auction 101 or Auction 102. If an applicant is applying as a consortium of small businesses, the disclosures described in this paragraph must be provided for each consortium member.

## 2. Rural Service Provider Bidding Credit

84. An eligible applicant may request a 15 percent discount on its winning bid using a rural service provider bidding credit, subject to a \$10 million cap. The Commission determines eligibility for bidding credits, including the rural service provider bidding credit, on a service-by-service basis. To be eligible for a rural service provider bidding credit, an applicant must: (1) Be a service provider that is in the business

of providing commercial communications services and, together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers; and (2) serve predominantly rural areas, defined as counties with a population density of 100 or fewer persons per square mile. The Commission has not adopted a specific threshold for the proportion of an applicant's customers who are located in rural areas, in order for an applicant to be eligible for a rural service provider bidding credit, the primary focus of its business activity must be the provision of services to rural areas. These eligibility requirements must be satisfied by the FCC Form 175 filing deadline. Additionally, an applicant may count any subscriber as a single subscriber even if that subscriber receives more than one service. For instance, a subscriber receiving both wireline and telephone service and broadband would be counted as a single subscriber.

85. Each applicant seeking a rural service provider bidding credit must disclose the number of subscribers it has, along with the number of subscribers of its affiliates, controlling interests, and the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that be may won by the applicant in Auction 101 or Auction 102, as applicable. To the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25 percent of the spectrum capacity of any license that may be won in Auction 101 or Auction 102, the identity and the attributable subscribers of any such disclosable interest holder must be disclosed. Eligible rural service providers may also form a consortium. If an applicant is applying as a consortium of rural service providers, the disclosures described in this paragraph, including the certification, must be provided for each consortium member.

## 3. Caps on Bidding Credits

86. Eligible applicants claiming either a small business or rural service provider bidding credit will be subject to certain caps on the total amount of bidding credits that any eligible applicant may receive. The Commission adopts a \$25 million cap on the total amount of bidding credits that may be awarded to an eligible small business in Auction 101 and Auction 102 (*i.e.*, \$25

million in each auction). The Commission adopts a \$10 million cap on the total amount of bidding credits that may be awarded to an eligible rural service provider in Auction 101 and Auction 102 (*i.e.*, \$10 million in each auction). An entity is not eligible for a rural service provider bidding credit if it has already claimed a small business bidding credit. No winning designated entity bidder will be able to obtain more than \$10 million in bidding credits in total for licenses won in markets with a population of 500,000 or less. To the extent an applicant seeking a small business bidding credit does not claim the full \$10 million in bidding credits in those smaller markets, it may apply the remaining balance to its winning bids on licenses in larger markets, up to the aggregate \$25 million cap.

## 4. Attributable Interests

### a. Controlling Interests and Affiliates

87. An applicant's eligibility for designated entity benefits is determined by attributing the gross revenues (for those seeking small business benefits) or subscribers (for those seeking rural service provider benefits) of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. Controlling interests of an applicant include individuals and entities with either de facto or de jure control of the applicant. 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 based on the totality of the circumstances. The following are some common indicia of de facto control:

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

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

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

90. An applicant seeking a small business bidding credit must demonstrate its eligibility for the bidding credit by: (1) Meeting the applicable small business size standard, based on the controlling interest and affiliation rules, and (2) retaining control, on a license-by-license basis, over the spectrum associated with the licenses for which it seeks small business benefits. Applicants should note that control and affiliation may arise through, among other things, ownership interests, voting interests, management and other operating agreements, or the terms of any other types of agreements—including spectrum lease agreements—that independently or together create a controlling, or potentially controlling, interest in the applicant's or licensee's business as a whole. Except under the limited provisions provided for spectrum manager lessors, the Commission's decision to discontinue its policy requiring designated entity licensees to operate as primarily facilities-based providers of service directly to the public does not alter the rules that require the Commission to consider whether any particular use agreement may confer control of or create affiliation with the applicant. Once an applicant demonstrates eligibility as a small business under the first prong, it must also be eligible for benefits on a license-by-license basis under the second prong. As part of making the FCC Form 175 certification that it is qualified as a designated entity under § 1.2110, an applicant is certifying that it does not have any spectrum use or other agreements that would confer de jure and de facto control of any license it seeks to acquire with bidding credits. For instance, if an applicant has a spectrum use agreement on a particular license that calls into question whether, under the Commission's affiliation rules, the user's revenues should be attributed to the applicant for that particular license, rather than for its overall business operations, the applicant could be

ineligible to acquire or retain benefits with respect to that particular license. An applicant need not be eligible for small business benefits on each of the spectrum licenses it holds in order to demonstrate its overall eligibility for such benefits.

91. Applicants should note that if an applicant executes a spectrum use agreement that does not comply with the Commission's relevant standard of de facto control, it will be subject to unjust enrichment obligations for the benefits associated with that particular license, as well as the penalties associated with any violation of section 310(d) of the Communications Act and related regulations, which require Commission approval of transfers of control. Although in this scenario the applicant may not be eligible for a bidding credit and may be subject to the Commission's unjust enrichment rules, the applicant need not be eligible for small business benefits on each of the spectrum licenses it holds in order to demonstrate its overall eligibility for such benefits. If that spectrum use agreement (either alone or in combination with the designated entity controlling interest and attribution rules), goes so far as to confer control of the applicant's overall business, the gross revenues of the additional interest holders will be attributed to the applicant, which could render the applicant ineligible for all current and future small business benefits on all licenses. The Commission applies the same de facto control standard to designated entity spectrum manager lessors that is applied to non-designated entity spectrum manager lessors.

#### b. Limitation on Spectrum Use

92. The Commission determined that a new attribution rule will apply going forward under which the gross revenues (or the subscribers, in the case of a rural service provider) of an applicant's disclosable interest holder are attributable to the applicant, on a license-by-license basis, if the disclosable interest holder has an agreement with the applicant to use, in any manner, more than 25 percent of the spectrum capacity of any license won by the applicant and acquired with a bidding credit during the five-year unjust enrichment period for the applicable license. A disclosable interest holder of an applicant seeking designated entity benefits is defined as any individual or entity holding a ten percent or greater interest of any kind in the applicant, including but not limited to, a ten percent or greater interest in any class of stock, warrants, options or debt securities in the applicant or

licensee. Any applicant seeking a bidding credit for licenses won in Auction 101 or Auction 102 will be subject to this attribution rule and must make the requisite disclosures.

93. The Commission also determined that certain disclosable interest holders may be excluded from this attribution rule. An applicant claiming the rural service provider bidding credit may have spectrum license use agreements with a disclosable interest holder, without having to attribute the disclosable interest holder's subscribers, so long as the disclosable interest holder is independently eligible for a rural service provider credit and the use agreement is otherwise permissible under the Commission's existing rules. If applicable, the applicant must attach to its FCC Form 175 any additional information as may be required to indicate any license (or license area) that may be subject to this attribution rule or to demonstrate its eligibility for the exception from this attribution rule. To the extent an Auction 101 or Auction 102 applicant is required to submit any such additional information, the applicant must not disclose details of its submission to others as it would reveal information regarding its license or PEA selection(s), respectively. The Commission intends to withhold from public disclosure all information contained in any such attachments until after the close of Auction 102.

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

94. Applicants claiming designated entity benefits may be eligible for certain exceptions from the Commission's attribution rules. For example, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute to the applicant the personal net worth, including personal income, of its officers and directors. To the extent that the officers and directors of the applicant are controlling interest holders of other entities, the gross revenues of those entities will be attributed to the applicant. If an officer or director operates a separate business, the gross revenues derived from that separate business would be attributed to the applicant, although any personal income from such separate business would not be attributed. The Commission also exempts 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 § 1.2110(b)(4)(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 § 1.2110(b)(4)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.

95. An applicant claiming a rural service provider bidding credit may be eligible for an exception from the Commission's attribution rules as an existing rural partnership. To qualify for this exception, an applicant must be a rural partnership providing service as of July 16, 2015, and each member of the rural partnership must individually have fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers. The Commission will evaluate eligibility for an existing rural wireless partnership on the same basis as it would for an applicant applying for a bidding credit as a consortium of rural service providers. A partnership that includes a nationwide provider as a member will not be eligible for the benefit. Members of such partnerships that fall under this exception may also apply as individual applicants or members of a consortium (to the extent that it is otherwise permissible to do so under the Commission's rules) and seek eligibility for a rural service provider bidding credit.

96. A consortium of small businesses or rural service providers may seek an exception from the Commission's attribution rules. A consortium of small businesses or rural service providers is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of small business or rural service provider. A consortium must provide additional information for each member demonstrating each member's eligibility for the claimed bidding credit in order to show that the applicant satisfies the eligibility criteria for the bidding credit. The gross revenue or subscriber information of each consortium member will not be aggregated for purposes of determining the consortium's eligibility for the claimed bidding credit. This information must be provided to ensure that each consortium member qualifies for the bidding credit sought by the consortium.

#### *J. Tribal Lands Bidding Credit*

97. 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 §§ 1.2107 and 1.2110(f) of the Commission's rules. A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

98. A winning bidder applies for a tribal lands bidding credit after the auction when it files its FCC Form 601 post-auction application. When initially filing the post-auction application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in a particular auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the winning bidder will have 180 days from the close of the applicable post-auction application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in § 1.2110(f)(3)(vii). For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices. Relevant documents can be viewed on the Commission's website by going to [www.fcc.gov/auctions/](http://www.fcc.gov/auctions/) and clicking on the Tribal Lands Credits link.

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

99. Each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 101 or Auction 102, but a former defaulter or delinquent may participate so long as it is otherwise qualified and makes an upfront payment that is fifty percent more than would otherwise be necessary. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for auction applications. Non-tax debt owed to any Federal agency includes all amounts owed under Federal programs, including contributions to the Universal Service Fund, Telecommunications Relay Services Fund, and the North American

Numbering Plan Administration, notwithstanding that the administrator of any such fund may not be considered a Federal agency under the Debt Collection Improvement Act of 1996. For example, an applicant with a past due USF contribution as of the auction application filing deadline would be disqualified from participating in Auctions 101 and 102 under the Commission's rules. If the applicant cures the overdue debt prior to the auction application filing deadline (and such debt does not fall within one of the exclusions described in § 1.2105(a)(2)(xii)), it may be eligible to participate in Auctions 101 and 102 as a former defaulter. Each applicant must certify under penalty of perjury on its FCC Form 175 that it, its affiliates, its controlling interests, and the affiliates of its controlling interests are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Additionally, an applicant must certify under penalty of perjury whether it (along with its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including down payments) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to certain exclusions. The term controlling interest is defined in § 1.2105(a)(4)(i) of the Commission rules.

100. An applicant is considered a former defaulter or a former delinquent when, as of the FCC Form 175 deadline, the applicant or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies. The applicant may exclude from consideration any cured default on a Commission construction permit or license or cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) The notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline; (2) the default or delinquency amounted to less than \$100,000; (3) the default or delinquency was paid within two quarters (*i.e.*, six months) after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon

resolution of the proceeding. Notice to a debtor may include notice of a final payment deadline or notice of delinquency and may be express or implied depending on the origin of any Federal non-tax debt giving rise to a default or delinquency. The date of receipt of the notice of a final default deadline or delinquency by the intended party or debtor will be used for purposes of verifying receipt of notice. A debt will not be deemed to be in default or delinquent until after the expiration of a final payment deadline. To the extent that the rules providing for payment of a specific federal debt permit payment after an original payment deadline accompanied by late fee(s), such debts would not be in default or delinquent for purposes of applying the former defaulter rules until after the late payment deadline. Any winning bidder that fails timely to pay its post-auction down payment or the balance of its final winning bid amount(s) or is disqualified for any reason after the close of an auction will be in default and subject to a default payment. Commission staff provide individual notice of the amount of such a default payment as well as procedures and information required by the Debt Collection Improvement Act of 1996, including the payment due date and any charges, interest, and/or penalties that accrue in the event of delinquency. Such notice provided by Commission staff assessing a default payment arising out of a default on a winning bid constitutes notice of the final payment deadline with respect to a default on a Commission license.

101. In addition to the *Auctions 101 and 102 Procedures Public Notice*, applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process. Parties are also encouraged to consult with the Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

102. 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 its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. The Commission's adoption of the red light

rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of §§ 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

103. The Commission reminds each applicant that its Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of § 1.2105. While the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current red light status is not necessarily determinative of its eligibility to participate in an auction (or whether it may be subject to an increased upfront payment obligation). A prospective applicant in Auctions 101 and/or 102 should note that any long-form applications filed after the close of bidding in the respective auction will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c). The Commission strongly encourages each applicant to carefully review all records and other available Federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency. To access the Commission's Red Light Display System, go to: <https://apps.fcc.gov/redlight/login.cfm/>.

#### *L. Optional Applicant Status Identification*

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

#### *M. Modifications to FCC Form 175*

##### *1. Only Minor Modifications Allowed*

105. After the initial FCC Form 175 filing deadline, an Auction 101 and/or Auction 102 applicant will be permitted to make only minor changes to its application(s) consistent with the Commission's rules. Minor amendments include any changes that are not major, such as correcting typographical errors and supplying or correcting information as requested to support the certifications made in the application. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three); the revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person; and change in the applicant's selected bidding option (electronic or telephonic). Major modification to an FCC Form 175 (e.g., change of license or PEA selection, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted after the initial FCC Form 175 filing deadline. If an amendment reporting changes is a major amendment, as described in § 1.2105(b)(2), the major amendment will not be accepted and may result in the dismissal of the application. Any change in control of an applicant will be considered a major modification, and the application will consequently be dismissed. The Commission reiterates that, even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the communication prohibitions of 47 CFR 1.2105(c) until the down-payment deadline for Auction 102, which will be established after Auction 102 closes.

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

106. Each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in Auction 101 or Auction 102. An applicant's FCC Form 175 and associated attachments for a particular auction will remain pending until the release of a public notice announcing the close of that auction. The Commission reminds Auction 101 and Auction 102 applicants that they remain subject to the § 1.2105(c) prohibition of certain communications until the post-auction deadline for making down

payments on winning bids in Auction 102. An applicant's post-auction application (FCC Form 601) is considered pending from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court. An applicant for Auction 101 or Auction 102 must furnish additional or corrected information to the Commission within five business days after a significant occurrence, or amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need for the amendment. An applicant is obligated to amend its pending application(s) even if a reported change may result in the dismissal of the application because it is subsequently determined to be a major modification.

### 3. Modifying an FCC Form 175

107. A party seeking to participate in Auction 101 and/or Auction 102 must file an FCC Form 175 electronically for each auction via the FCC's Auction Application System. During the initial filing window for both auctions, an applicant will be able to make any necessary modifications to its respective FCC Form 175 in the Auction Application System. An applicant that has certified and submitted its FCC Form 175 before the close of the initial filing window may continue to make modifications as often as necessary until the close of that window; the applicant must re-certify and re-submit its FCC Form 175 before the close of the initial filing window to confirm and effect its latest application changes. After each submission, a confirmation page will be displayed stating the submission time and submission date. The Commission strongly advises applicants to retain a copy of this confirmation page.

108. An applicant will also be allowed to modify its FCC Form 175 in the Auction Application System, except for certain fields, during the resubmission filing window and after the release of the public notice announcing the qualified bidders for an auction. An applicant will not be allowed to modify electronically in the Auction Application System the applicant's legal classification, the applicant's name, or the certifying official. During these times, if an applicant needs to make permissible minor changes to its FCC Form 175, or must make changes in order to maintain the accuracy and completeness of its application pursuant to §§ 1.65 and 1.2105(b)(4), it must make the change(s) in the Auction Application System and then re-certify and re-submit its

application to confirm and effect the change(s).

109. An applicant's ability to modify its FCC Form 175 in the Auction Application System will be limited between the closing of the initial filing window and the opening of the application resubmission filing window appropriate for each auction and between the closing of the resubmission filing window and the release of the public notice announcing the qualified bidders for an auction. During these periods, an applicant will be able to view its submitted application, but will be permitted to modify only the applicant's address, responsible party address, contact information (*e.g.*, name, address, telephone number, etc.), and bidding preference (telephonic or electronic) in the Auction Application System. An applicant will not be able to modify any other pages of the FCC Form 175 in the Auction Application System during these periods. If, during these periods, an applicant needs to make other permissible minor changes to its FCC Form 175, or changes to maintain the accuracy and completeness of its application, the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 via email to [auction101@fcc.gov](mailto:auction101@fcc.gov) for Auction 101 and [auction102@fcc.gov](mailto:auction102@fcc.gov) for Auction 102. The email summarizing the changes must include a subject line referring to Auction 101 or Auction 102, as appropriate, and the name of the applicant, for example, Re: Changes to Auction 101 Auction Application of XYZ Corp. Any attachments to the email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. An applicant that submits its changes in this manner must subsequently modify, certify, and submit its FCC Form 175 application(s) electronically in the Auction Application System once it is again open and available to applicants.

110. Applicants should also note that even at times when the Auction Application System is open and available to applicants, the system will not allow an applicant to make certain other permissible changes itself (*e.g.*, correcting a misstatement of the applicant's legal classification). If an applicant needs to make a permissible minor change of this nature, it must submit a written request by email to [auction101@fcc.gov](mailto:auction101@fcc.gov) for Auction 101, and [auction102@fcc.gov](mailto:auction102@fcc.gov) for Auction 102, requesting that the Commission manually make the change on the applicant's behalf. Once Commission staff has informed the applicant that the change has been made in the Auction Application System, the applicant must then re-certify and re-submit its FCC

Form 175 in the Auction Application System to confirm and effect the change(s).

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

112. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System. Parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate § 1.2105(c) or the limited information procedures adopted for Auctions 101 and 102. An applicant seeking to submit, outside of the Auction Application System, information that might reflect non-public information, such as an applicant's license or PEA selection(s), upfront payment amount, or bidding eligibility, should consider including in its email a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications.

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

## III. Preparing for Bidding in Auctions 101 And 102

### A. Due Diligence

114. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in Auction 101 and/or Auction 102. The Commission makes no representations or warranties about the use of this spectrum or these licenses for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. A Commission auction does not constitute an endorsement by the Commission of any

particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

115. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Commission strongly encourages each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 101 or Auction 102 license, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Commission strongly encourages each applicant to inspect any prospective sites for communications facilities located in, or near, the geographic area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

116. The Commission also strongly encourages each applicant in Auction 101 and Auction 102 to continue to conduct its own research throughout the applicable auction(s) in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in the auction(s). Each applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in an auction. The due diligence considerations mentioned in the *Auctions 101 and 102 Procedures Public Notice* do not constitute an exhaustive list of steps that should be undertaken prior to participating in Auction 101 or Auction 102. The burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

117. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the licenses available in Auctions 101 and 102. Each potential bidder is responsible for undertaking research to ensure that any licenses won in these auctions will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

118. The Commission makes no representations or guarantees regarding the accuracy or completeness of

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

#### B. Licensing Considerations

##### 1. Incumbency and Sharing Issues

119. Potential applicants in Auctions 101 and 102 should consider carefully the operations of incumbent licensees in the 28 GHz and 24 GHz bands when developing business plans, assessing market conditions, and evaluating the availability of equipment for mmW services. Active licenses in the 28 GHz band cover 1,696 full counties and one partial county; active licenses in the 24 GHz band currently cover nine PEAs and are the subject of pending applications for license modification. Detailed information about existing incumbent licenses is available publicly in the Universal Licensing System (ULS) through interactive searches (<http://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>) and database downloads (<http://wireless.fcc.gov/uls/index.htm?job=transaction&page=weekly>). Incumbent licenses can be identified by searching for active, regular licenses within the UU radio service in the 27500–28350 MHz band. Incumbent licenses in the 24 GHz band can be identified by searching for active, regular licenses within the TZ radio service. Incumbent licenses are contained in the “Market Based Services” download file.

120. In addition to incumbent licensees, potential applicants in Auctions 101 and 102 should consider carefully the implications of the Commission's sharing schemes for the 28 GHz and 24 GHz bands. In the *2018 Spectrum Frontiers Order*, the Commission decided to license FSS earth stations in the 24.75–25.25 GHz band on a co-primary basis under the provisions in § 25.136(d). This means that the 24.75–25.25 GHz band would be available only for individually licensed FSS earth stations that meet specific requirements adopted in the *2018 Spectrum Frontiers Order*, 83 FR 34478, July 20, 2018, (e.g., limitations on population covered, number of earth

station locations in a PEA, and a prohibition on earth stations in places where they would preclude terrestrial service to people or equipment that are in transit or are present at mass gatherings).

121. Accordingly, the Commission calls particular attention in Auctions 101 and 102 to the incumbency and spectrum-sharing issues concerning the 28 GHz and 24 GHz bands, respectively. Each applicant should follow closely releases from the Commission concerning these issues and consider carefully the technical and economic implications for commercial use of the UMFUS bands.

##### 2. International Coordination

122. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the upper microwave frequencies they acquire in Auction 101 and/or Auction 102 are subject to international agreements with Canada and Mexico. The Commission routinely works with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas near Canada and Mexico. Until such time as any adjusted agreements, as needed, between the United States, Mexico and/or Canada can be agreed to, operations in the upper microwave bands must not cause harmful interference across the border, consistent with the terms of the agreements currently in force.

##### 3. Quiet Zones

123. Upper microwave licensees must individually apply for and receive a separate license for each transmitter if the proposed operation would affect the radio quiet zones set forth in the Commission's rules.

##### 4. Environmental Review Requirements

124. 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 under certain circumstances may be considered a federal action, and where it is, the licensee must comply with the Commission's environmental rules for each such facility. Where applicable, these environmental rules require, among other things, that the licensee (i) consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of

Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains); (ii) assess the effect of facility construction on historic properties by following the provisions of the Commission's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process; and (iii) prepare an environmental assessment for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, designated critical habitats, historical or archaeological sites, Native American religious sites, floodplains (if the facility cannot be elevated above the base flood elevation), surface features, or migratory birds; or that includes high intensity white lights in residential neighborhoods or excessive radio frequency emission.

#### 5. Mobile Spectrum Holdings Policies

125. The Commission reminds bidders of the Commission's mobile spectrum holding policies applicable to the mmW bands. For purposes of reviewing proposed secondary market transactions, the Commission adopted in the *2017 Spectrum Frontiers Order*, 83 FR 37, January 2, 2018, a threshold of 1850 megahertz of combined mmW spectrum in the 24 GHz, 28 GHz, 37 GHz, 39 GHz, and 47 GHz bands. In the *2018 Spectrum Frontiers Order*, the Commission eliminated the pre-auction limit of 1250 megahertz that had been adopted for the 28 GHz, 37 GHz, and 39 GHz bands, consistent with the Commission's conclusion not to adopt a pre-auction limit for the 24 GHz and 47 GHz bands. Further, the Commission will conduct an *ex post* case-by-case review of the acquisition through auction of spectrum in the UMFUS bands. The Commission found that it is in the public interest to review applications for initial licenses filed post-auction on a case-by-case basis using the same 1850 megahertz threshold it uses for reviewing applications for secondary market transactions.

#### C. Bidder Education

126. Before the opening of the concurrent short-form filing windows for Auctions 101 and 102 on September 5, 2018, detailed educational information will be provided in various formats to would-be participants on the Auction 101 and Auction 102 web pages, respectively.

127. The Commission has directed the Bureau to provide various materials on the pre-auction processes in advance of

the opening of the concurrent short-form application windows for Auctions 101 and 102, beginning with the release of step-by-step instructions for completing the FCC Form 175. In addition, the Bureau will provide an online application procedures tutorial for the auctions covering information on pre-auction preparation, completing short-form applications, and the application review process.

128. The Bureau will provide separate educational materials on the bidding processes for Auction 101 and Auction 102 in advance of the start of each mock auction, beginning with release of a user guide for each bidding system, followed by online bidding procedures tutorials for the respective auctions.

129. The online tutorials will allow viewers to navigate the presentation outline, review written notes, listen to audio of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission staff, and screen shots of the online application and bidding systems. The online tutorials will be accessible on the "Education" tab of the Auction 101 and Auction 102 websites at [www.fcc.gov/auction/101](http://www.fcc.gov/auction/101) and [www.fcc.gov/auction/102](http://www.fcc.gov/auction/102), respectively. Once posted, the tutorials will be accessible anytime.

#### D. Short-Form Applications: Due Before 6:00 p.m. ET on September 18, 2018

130. In order to be eligible to bid in Auction 101 or Auction 102, an applicant must first follow the procedures to submit a short-form application (FCC Form 175) for the relevant auction electronically via the Auction Application System, following the instructions set forth in the FCC Form 175 Instructions. The short-form application for each auction will become available with the opening of the initial filing window and must be submitted prior to 6:00 p.m. ET on September 18, 2018. Late applications will not be accepted. No application fee is required.

131. Applications may be filed for Auction 101 and/or Auction 102 at any time beginning at noon ET on September 5, 2018, until the respective filing window closes at 6:00 p.m. ET on September 18, 2018. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the initial filing deadline for each auction on September 18, 2018.

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

133. The Commission cautions applicants that it periodically performs scheduled maintenance of its IT systems. During scheduled maintenance activities, which typically occur over the weekends, every effort is made to minimize any downtime to auction-related systems, including the auction application system. However, there are occasions when auction-related systems may be temporarily unavailable.

#### E. Application Processing and Minor Modifications

##### 1. Public Notice of Applicant's Initial Application Status and Opportunity for Minor Modifications

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

135. After the initial application filing deadline on September 18, 2018, applicants can make only minor



modifications to their applications. Major modifications (e.g., change of license or PEA selection, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change in the required certifications, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted. After the deadline for resubmitting corrected applications, an applicant will have no further opportunity to cure any deficiencies in its application or provide any additional information that may affect Commission staff's ultimate determination of whether and to what extent the applicant is qualified to participate in Auction 101 or Auction 102.

136. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies Commission staff in writing that another representative is authorized to speak on the applicant's behalf. Authorizations may be sent by email to [auction101@fcc.gov](mailto:auction101@fcc.gov) for Auction 101 and [auction102@fcc.gov](mailto:auction102@fcc.gov) for Auction 102.

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

137. After Commission staff review resubmitted applications for a particular auction, the Bureau will release a public notice identifying applicants that have become qualified bidders for that auction. For each auction, a *Qualified Bidders Public Notice* will be issued before bidding in the auction begins. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely filed and complete.

### F. Upfront Payments

138. In order to be eligible to bid in Auction 101 or Auction 102, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be submitted for each auction before 6:00 p.m. ET on the applicable deadline. Since the upfront payments for Auctions 101 and 102 will be deposited and managed in separate accounts in the U.S. Treasury for each auction, an applicant interested in applying for both auctions will be required to make a separate upfront payment for each auction into the appropriate account. After completing its short-form application, an applicant will have access to an electronic pre-filled version

of the FCC Form 159. An accurate and complete FCC Form 159 must accompany each payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Payers using the pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. Detailed instructions for completing FCC Form 159 for Auction 101 were made available by the Bureau on August 6, 2018, and can be accessed at [www.fcc.gov/auction/101](http://www.fcc.gov/auction/101). The Bureau will prepare and release after the close of Auction 101 detailed instructions for submitting an FCC Form 159 for Auction 102.

139. For Auction 101, the deadline for submitting an upfront payment and FCC Form 159 is October 23, 2018. The *Auctions 101 and 102 Procedures Public Notice* describes the procedures for submitting an upfront payment for Auction 101. The Bureau will announce the deadline and procedures for the submission of upfront payments for Auction 102 by public notice after bidding in Auction 101 concludes. Under this approach, an Auction 102 applicant that participated in Auction 101 could take into account the licenses it won in Auction 101 when determining the amount of its upfront payment for Auction 102.

### 1. Making Upfront Payments by Wire Transfer for Auction 101

140. Upfront payments for Auction 101 must be wired to, and will be deposited in, the U.S. Treasury. Wire transfer payments for Auction 101 must be received before 6:00 p.m. ET on October 23, 2018, but no sooner than October 1, 2018. An applicant must initiate the wire transfer through its bank, authorizing the bank to wire funds from the applicant's account to the proper account at the U.S. Treasury. No other payment method is acceptable. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers 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. Paragraph 147 of the *Auctions 101 and 102 Procedures Public Notice* lists the information needed to place an order for a wire transfer for Auction 101.

141. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must print and fax a completed FCC Form 159 (Revised 2/03) to the FCC at (202) 418-2843. Alternatively, the completed form can be scanned and sent as an attachment to an email to

[RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov). On the fax cover sheet or in the email subject header, write "Wire Transfer—Auction Payment for Auction 101." In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 101 before the deadline.

142. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete FCC Form 159. An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. The Commission repeatedly has cautioned auction participants about the importance of planning ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to the U.S. Treasury was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director's Revenue & Receivables Operations Group/Auctions at (202) 418-0578, or alternatively, Theresa Meeks at (202) 418-2945.

143. All payments must be made in U.S. dollars. All payments must be made by wire transfer. Upfront payments for Auction 101 go to an account number different from the accounts used in previous FCC auctions.

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

### 2. Upfront Payments and Bidding Eligibility

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

which to collect payments owed at the close of bidding.

146. Applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. For purposes of this classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included. For this purpose, the term "controlling interest" is defined in 47 CFR 1.2105(a)(4)(i).

147. An applicant must make an upfront payment sufficient to obtain bidding eligibility on the licenses or generic blocks on which it will bid. Generally for Auctions 101 and 102, upfront payments will be based on MHz-pops, and that the amount of the upfront payment submitted by an applicant will determine its initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round. In order to bid on a license or generic block, qualified bidders must have a current eligibility level that meets or exceeds the number of bidding units assigned to that license or generic block in a PEA. The Commission has set bidding units (and corresponding upfront payments) such that all blocks in a PEA, including any blocks with fewer than 100 megahertz of bandwidth, will be assigned the same number of bidding units based on 100 megahertz of bandwidth. 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 or at least one generic block in a PEA selected on its FCC Form 175 for Auction 101 or Auction 102, respectively, or else the applicant will not be eligible to participate in the applicable auction. An applicant does not have to make an upfront payment to cover all of the licenses or a block in all of the PEAs it selects on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with the licenses or generic blocks in a PEA on which it wishes to place bids and hold provisionally winning bids in any given round, as applicable. The total upfront payment does not affect the total dollar amount the bidder may bid on any given license or generic block.

148. The Commission adopts a tiered approach under which upfront payment amounts will vary by market population. For the county-based licenses and generic blocks that fall within PEAs 1–50, upfront payments are based on \$0.001 per MHz/pop; for those licenses and generic blocks in PEAs 51–100, upfront payments are based on \$0.0002 per MHz/pop; and for all other

licenses and generic blocks, upfront payments are based on \$0.0001 per MHz/pop. The results of these calculations are subject to a minimum of \$100 and will be rounded using the Commission's standard rounding procedures for auctions: Results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10. The upfront payments equal approximately half the minimum opening bids. A summary of the upfront payment amounts is set forth in Attachment A of the *Auctions 101 and 102 Procedures Public Notice*. The specific upfront payment amounts and bidding units for each license offered in Auction 101 will be provided in electronic format only, available as a separate "Attachment A" file at [www.fcc.gov/auction/101](http://www.fcc.gov/auction/101). Likewise, the specific upfront payment amounts and bidding units for one generic block in each PEA offered in Auction 102 will be provided in electronic format only, available as a separate "Attachment A" file at [www.fcc.gov/auction/102](http://www.fcc.gov/auction/102).

149. The Commission will assign each license and generic block in a PEA a specific number of bidding units, but does so with the number of bidding units equal to one bidding unit per \$10 of the upfront payment. The number of bidding units for a given license or generic block in a PEA is fixed and does not change during an auction as prices change. Thus, in calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on, if applicable) in any single round for a particular auction, and submit an upfront payment amount for that auction covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all of the licenses or generic blocks in PEAs, as applicable, 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.

150. If an applicant is a former defaulter, it must calculate its upfront payment for all of its selected licenses or generic blocks in PEAs, as applicable, 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.

#### G. Auction Registration

151. All qualified bidders for Auctions 101 and 102 are automatically registered for the respective auction. Registration materials will be distributed prior to the auctions by overnight delivery. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids and the Auction Bidder Line phone number.

152. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder for Auction 101 that has not received this mailing by noon on November 6, 2018, should call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auctions, and each applicant is responsible for ensuring it has received all the registration materials.

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

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

154. Bidders will be able to participate in Auctions 101 and 102 over the internet using the Commission's bidding system (Auction System). Only qualified bidders are permitted to bid. Each authorized bidder must have his or her own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. A bidder cannot bid without his or her SecurID tokens. For security purposes, the SecurID® tokens and a telephone number for bidding questions are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auctions 101 or 102. Please note that the SecurID® tokens can be recycled, and the Commission encourages bidders to return the tokens to the FCC. Pre-addressed envelopes will be provided to

return the tokens once the auction has ended.

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

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

157. As with the application system, there are occasions when other auction-related systems, including the Commission's Auction System, may be temporarily unavailable due to schedule maintenance of the Commission's IT systems.

#### I. Mock Auction

158. All qualified bidders will be eligible to participate in a mock auction for whichever auctions they are qualified (*i.e.*, Auction 101 and/or Auction 102), which will be scheduled during the week before the first day of bidding in the applicable auction. The mock auctions will enable qualified bidders to become familiar with the Auction System and to practice submitting bids prior to the auctions. The Commission strongly recommends that all qualified bidders, including all

their authorized bidders, participate to assure that they can log in to the bidding system and gain experience with the bidding procedures. Participating in the mock auctions may reduce the likelihood of a bidder making a mistake during the auctions. Details regarding the mock auctions will be announced in the *Qualified Bidders Public Notice* for Auction 101 and Auction 102, respectively.

#### J. Fraud Alert

159. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auctions 101 and 102 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

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

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

- The FCC's Consumer Call Center at (888) 225-5322 or by visiting <https://www.fcc.gov/general/frauds-scams-and-alerts-guides>
- the FTC at (877) FTC-HELP ((877) 382-4357) or by visiting <http://ftc.gov/bcp/edu/pubs/consumer/invest/inv03.shtm>
- the SEC at (202) 942-7040 or by visiting <https://www.sec.gov/investor>

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

## IV. Bidding in Auctions 101 and 102

### A. Auction 101—28 GHz

#### 1. Auction Structure

##### a. Simultaneous Multiple-Round Auction

162. The Commission will use its standard SMR auction format for Auction 101. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual licenses. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction until bidding stops on every license.

##### b. Auction Bidding System

163. All bidding will take place remotely either through the FCC auction bidding system or by telephonic bidding. There will be no on-site bidding during Auction 101. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

164. In order to access the bidding function of the FCC auction bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

165. An Auction 101 bidder's ability to bid on specific licenses is determined by two factors: (1) The licenses selected on the bidder's FCC Form 175; and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids on only those licenses the bidder selected on its FCC Form 175.

166. In each round, eligible bidders will be able to place bids on a given license in any of up to nine pre-defined bid amounts. Bidders in Auction 101 may place bids only on individual licenses—they will not be permitted to place any package bids (*i.e.*, bids for multiple licenses in a "package"). For each license, the FCC auction bidding 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 bidding system also includes an upload function that allows

text files containing bid information to be uploaded.

167. During a round, an eligible bidder may submit bids for as many licenses as it wishes (providing that it is eligible to bid on the specific licenses), remove bids placed in the current bidding round, withdraw provisionally winning bids from previous rounds, or permanently reduce eligibility. If multiple bids are submitted for the same license in the same round, the system takes the last bid entered as that bidder's bid for the round.

#### c. Availability of Bidding Information

168. 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 Auction 102 closes, the Bureau will make available complete reports of all bids placed during each round of the auction, including bidder identities.

169. As in past Commission auctions, bidders will have secure access to certain non-public bidding information while bidding is ongoing. Specifically, after each round ends, and before the next round begins, the following information will be made available to individual bidders:

- The bidder's activity, based on all bids in the previous round; and
- Summary statistics of the bidder's bidding/bid-related actions in each round, including the licenses on which it bid and the price it bid for each of those licenses, the result of each of its bids, whether it has any provisionally winning bids, and remaining activity rule waivers.

#### d. Round Structure

170. Auction 101 will consist of sequential bidding rounds, each followed by the release of round results. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released at least one week before the start of bidding in the auction. Details on viewing round results, including the location and format of downloadable round results files will be included in the same public notice. Multiple

bidding rounds may be conducted each day.

171. The Bureau will retain the 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. This will allow the Bureau to change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

#### e. Eligibility and Activity Rule

172. A bidder's initial (maximum) bidding eligibility (as measured in bidding units) for Auction 101 will be based on its upfront payment. 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 as listed in Attachment A. Bidding units assigned to each license do not change as prices rise during the auction. Upfront payments are not attributed to specific licenses. Rather, a bidder may place bids on any of the licenses selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses do 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 and therefore its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid or hold provisionally winning bids 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 selected on its FCC Form 175. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

173. The Commission will employ an activity rule that requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. An activity rule helps ensure that an auction closes within a reasonable period of time. The bidding system calculates a bidder's activity in a round as the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids. If a bidder removes bids in the current round or withdraws provisionally winning bids,

those bids no longer count towards the bidder's activity. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. 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. Specifically, the minimum required activity is expressed as a percentage of the bidder's current eligibility and increases by stage as the auction progresses. The activity rule will be 80 percent during each round of Stage One and 95 percent in Stage Two.

#### f. Auction Stages

174. The Commission will conduct Auction 101 in two stages. 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 during each round of Stage One and at least 95 percent of its current bidding eligibility in Stage Two.

175. *Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on bidding units associated with licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths ( $\frac{5}{4}$ ).

176. *Stage Two:* In each round of the second stage, 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 a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths ( $\frac{20}{19}$ ).

*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 in the FCC Bidding System.

#### g. Stage Transitions

177. Auction 101 will start in Stage One. The Bureau will have the discretion to advance the auction to the next stage by announcement in the bidding system during the auction. In exercising this discretion, the Bureau will consider a variety of measures of auction activity, including but not limited to, the percentage of bidding units associated with licenses on which there are new bids, the number of new bids, and the increase in revenue.

178. The Bureau will have the discretion to further alter the activity requirements before and/or during the auction as circumstances warrant. For example, the Bureau could decide to add an additional stage with a higher activity requirement, not to transition to Stage Two if it finds that 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 adopted herein. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC auction bidding system.

179. If the Bureau implements stages with activity requirements other than the ones listed, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by the reciprocal of the activity requirement. For example, with a 98 percent activity requirement, the bidder's current round activity would be multiplied by 50/49; with a 100 percent activity requirement, the bidder's current round activity would become its bidding eligibility (current round activity would be multiplied by 1/1).

#### h. Activity Rule Waivers

180. When a bidder's activity in the current round is below the required minimum level, the bidder may preserve its current level of eligibility through an activity rule waiver, if available. An activity rule waiver applies to an entire round of bidding, not to a particular license. Activity rule waivers can be either proactive or automatic. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round. Specifically, the Commission

will provide each bidder in Auction 101 with three activity rule waivers that may be used as set forth at the bidder's discretion during the course of the auction.

181. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

182. A bidder with insufficient activity, however, may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the *reduce eligibility* function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the adopted activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

183. Under the Commission's adopted simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively were to apply an activity rule waiver (using the *proactive waiver* function in the FCC auction bidding system) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC auction bidding system in a round in which there are no new bids or a proactive waiver will not keep the auction open.

#### i. Stopping Rule

184. For Auction 101, the Commission will employ a simultaneous stopping rule approach, which means all licenses remain available for bidding until bidding stops on every license. Specifically, bidding will close 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. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. Bidding will remain open on all licenses until bidding stops on every license. Consequently, it is not possible to determine in advance how long the bidding in Auction 101 will last.

185. In addition, the Bureau will retain the discretion to exercise any of the following stopping options during Auction 101:

Option 1. The auction will close for all licenses after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid, or no bidder places any new bid on a license for 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 will close for all licenses after the first round in which no bidder applies a waiver, no bidder withdraws a provisionally winning bid (if withdrawals are permitted in Auction 101), or no bidder places any new bid on a license that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on a FCC-held license (a license that does not have a provisionally winning bid) would not keep the auction open under this modified stopping rule.

Option 3. The auction will close using a modified version of the simultaneous stopping rule that combines Option 1 and Option 2.

Option 4. The auction will close after a specified number of additional rounds (special stopping rule) to be announced by the Bureau. If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close.

Option 5. The auction will remain open even if no bidder places any new bid, 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. The activity rule will apply as usual, and a bidder with insufficient activity will lose bidding eligibility or use a waiver.

186. The Bureau will exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close

prematurely. Before exercising these options, the Bureau is likely to attempt to change the pace of Auction 101. For example, the Bureau may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureau retains continuing discretion to exercise any of these options with or without prior announcement by the Bureau during the auction.

j. Auction Delay, Suspension, or Cancellation

187. For Auction 101, at any time before or during the bidding process, the Bureau may delay, suspend, or cancel bidding in the auction in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau will notify participants of any such delay, suspension, or cancellation by public notice and/or through the FCC auction bidding system's announcement function. If the bidding is delayed or suspended, the Bureau may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. The Bureau will exercise this authority solely at its discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

2. Bid Collection and Winner Determination Procedures

a. Reserve Price or Minimum Opening Bids

188. The Commission has established minimum opening bid amounts for Auction 101. The bidding system will not accept bids lower than these amounts. In addition, the Commission has not established an aggregate reserve price or license reserve prices different from minimum opening bid amounts for the licenses to be offered in Auction 101. A reserve price is an amount below which an item, or group of items, may not be won.

189. For Auction 101, minimum opening bid amounts will be calculated on a license-by-license basis using a formula based on bandwidth and license area population. The Commission adopts a tiered approach, under which minimum opening bid amounts will vary by market population. For the county-based licenses that fall within PEAs 1–50, minimum opening bid amounts are

based on \$0.002 per MHz/pop; for those in PEAs 51–100, minimum opening bid amounts are based on \$0.0004 per MHz/pop; and for all others, minimum opening bid amounts are based on \$0.0002 per MHz/pop. A summary of the minimum opening bid amounts is set forth in Attachment A of the *Auctions 101 and 102 Procedures Public Notice*. The specific minimum opening bid amount for each license offered in Auction 101 will be provided in electronic format only, available as a separate "Attachment A" file at [www.fcc.gov/auction/101](http://www.fcc.gov/auction/101). The results of these calculations are subject to a minimum of \$200 and will be rounded.

b. Bid Amounts

190. In each round, an eligible bidder will be able to place a bid on a given license in any of up to nine different amounts. The FCC auction bidding system interface will list the acceptable bid amounts for each license.

(i) Minimum Acceptable Bid Amounts

191. The first of the acceptable bid amounts is called the minimum acceptable bid amount. In Auction 101, 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 an activity-based 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.

192. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) is calculated based on an activity index at the end of each round. The activity index is a weighted average of (a) the number of distinct bidders placing a bid on the license in that round, 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 covering the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. For Round 1 calculations, because there is no prior round (*i.e.*, no round 0), the activity index from the prior round is set at 0. The additional

percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The result will be rounded using the Commission's standard rounding procedures for auctions. The Commission set the weighting factor initially at 0.5, the minimum percentage at 0.1 (10 percent), and the maximum percentage at 0.2 (20 percent). At these initial settings, the minimum acceptable bid for a license will be between 10 percent and 20 percent higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment B.

(ii) Additional Bid Amounts

193. The FCC auction bidding system calculates any additional bid amounts using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount is multiplied by the additional bid increment percentage, and that result (rounded) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. The Commission will set the additional bid increment percentage at five percent initially. Hence, the calculation of the additional increment amount would be (minimum acceptable bid amount) \* (0.05), rounded. The first additional acceptable bid amount equals (minimum acceptable bid amount) + (additional increment amount); the second additional acceptable bid amount equals (minimum acceptable bid amount) + (2\*(additional increment amount)); the third additional acceptable bid amount equals (minimum acceptable bid amount) + (3\*(additional increment amount)); etc.

(iii) Bid Amount Changes

194. The Bureau will retain the discretion to change the minimum acceptable bid amounts, the additional 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 the Bureau determines

that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis, and the discretion to limit (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. For example, the Bureau may set a \$100,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the activity-based formula results in a minimum acceptable bid amount that is \$200,000 higher than the provisionally winning bid on a license, the minimum acceptable bid amount would instead be capped at \$100,000 above the provisionally winning bid. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC auction bidding system during the auction.

#### c. Provisionally Winning Bids

195. The FCC auction bidding system will determine provisionally winning bids consistent with practices in past auctions. At the end of each bidding round, the bidding system will determine a provisionally winning bid for each license based on the highest bid amount received for the 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 later round. Provisionally winning bids at the end of Auction 101 become the winning bids.

196. If identical high bid amounts are submitted on a license in any given round (*i.e.*, tied bids), the FCC auction bidding system will use a pseudo-random number generator to select a single provisionally winning bid from among the tied bids. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in later 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. If the license receives any bids in a later round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

197. A provisionally winning bid will be retained until there is a higher bid on the license at the close of a later round, unless the provisionally winning bid is withdrawn. For Auction 101, a bid that was provisionally winning in a round counts toward bidding activity for

purposes of the activity rule in the later round.

#### d. Bid Removal and Bid Withdrawal

##### (i) Bid Removal

198. Each qualified bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By removing a bid within a round, a bidder effectively “unsubmits” the bid. 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 because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

##### (ii) Bid Withdrawal

199. The Commission will allow each bidder to withdraw provisionally winning bids in no more than two rounds during the course of the auction. The two rounds in which a bidder may withdraw provisionally winning bids will be at the bidder’s discretion, and there is no limit on the number of provisionally winning bids that a bidder may withdraw in either of the rounds in which it withdraws bids. Withdrawals must be in accordance with the Commission’s rules, including the bid withdrawal payment provisions specified in § 1.2104(g). Once a bid withdrawal is submitted during a round, that withdrawal cannot be unsubmitted even if the round has not yet ended.

200. 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 Bureau will retain the discretion to lower the minimum acceptable bid on such licenses in the next round or in later rounds. The Commission will serve as a placeholder provisionally winning bidder on the license until a new bid is submitted on that license.

##### (iii) Calculation of Bid Withdrawal Payment

201. Generally, the Commission imposes payments on bidders that withdraw provisionally winning bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or later auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the winning bid in the same or later auction(s). The payment will equal the lower of: (1) The difference between the net withdrawn bid and the subsequent

net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid. If there are multiple bid withdrawals on a single license and no subsequent higher bid is placed and/or the license is not won in the same auction, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any subsequent intervening withdrawn bid, in either the same or later auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any final withdrawal payment if there is a subsequent higher bid in the same or later auction(s).

202. However, if a license for which a bid had been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the FCC cannot calculate the final withdrawal payment until that license receives a higher bid or winning bid in a later auction. In such cases, when that final withdrawal payment cannot yet be calculated, the FCC imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

203. The amount of the interim bid withdrawal payment is established in advance of bidding in each auction and may range from three percent to twenty percent of the withdrawn bid amount. The Commission established an interim bid withdrawal payment of 15 percent of the withdrawn bid for Auction 101. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

### 3. Auction Results

204. After the Bureau announces the auction results, it will provide a means for the public to view and download bidding and results data.

### 4. Auction Announcements

205. The Commission and/or Bureau will use auction announcements to report necessary information to bidders, such as schedule changes. All auction announcements will be available by clicking a link in the FCC auction bidding system.

#### B. Auction 102—24 GHz

##### 1. Auction Structure

##### c. Clock and Assignment Phases

206. The Commission will conduct Auction 102 using an ascending clock

auction design with two phases. In the first phase of the auction—the clock phase—bidders will indicate their demands for generic license blocks in specific geographic areas (*i.e.*, PEAs). In the second phase—the assignment phase—winning clock-phase bidders will have the opportunity to bid for their preferred combinations of frequency-specific licenses, consistent with their clock-phase winnings, in a series of single sealed-bid rounds conducted by PEA or, in some cases, PEA group.

207. The Bureau has prepared and released, concurrent with the *Auctions 101 and 102 Procedures Public Notice*, updated technical guides that provide the mathematical details of the adopted auction design and algorithms for the clock and assignment phases of Auction 102. The *Auction 102 Clock Phase Technical Guide* details the adopted procedures for the clock phase of Auction 102. The *Auction 102 Assignment Phase Technical Guide* details the adopted procedures for the assignment phase. The information in the updated technical guides supplements the decisions in the *Auctions 101 and 102 Procedures Public Notice*. The guides may be found on the Commission's website at: <https://www.fcc.gov/auction/102>.

#### d. Generic Blocks and Bidding Categories

208. In the clock phase, the Commission will conduct bidding for generic blocks in two categories in most PEAs (*i.e.*, those without an incumbent licensee). There generally will be two generic blocks in the lower 24 GHz segment (Category L) and five generic blocks in the upper 24 GHz segment (Category U). Therefore, in each round of the clock phase, a bidder will have the opportunity to bid for up to two blocks of spectrum in Category L and for up to five blocks in Category U, in each PEA without an incumbent licensee.

209. An incumbent in the 24 GHz band, currently holds 100 megahertz in Block B in three PEAs (PEA 15—Phoenix, AZ; PEA 26—Las Vegas; PEA 76—Reno, NV) and 25 megahertz in Block G in one PEA (PEA 75—Albuquerque, NM). The Commission will auction the remaining 75 megahertz in PEA 75—Albuquerque, NM, resulting in one additional category in the upper band (Category UI), for a total of three categories.

210. Bidding in the auction will determine a single final clock phase price for the generic blocks in each category in each PEA.

#### e. Auction Bidding System

211. As is standard practice for FCC auctions, the Commission will conduct Auction 102 over the internet using the FCC auction bidding system. Bidders will also have the option of placing bids by telephone through a dedicated auction bidder line. There will be no on-site bidding during Auction 102. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes. The toll-free telephone number for the auction bidder line will be provided to qualified bidders prior to the start of bidding in the auction.

212. In order to access the bidding function of the FCC auction bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID® token and a PIN created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

213. An Auction 102 bidder's ability to bid on generic license blocks in specific PEAs is determined by two factors: (1) the PEA(s) selected on the bidder's FCC Form 175; and (2) the bidder's eligibility. The bid submission screens will allow bidders to submit bids only on categories of generic blocks in the PEA(s) the bidder selected on its FCC Form 175.

214. In the first round of the clock phase, an eligible bidder will indicate how many blocks in a bidding category in a PEA it demands at the minimum opening bid price. The bidding system will not accept bids lower than these amounts. A bidder must have sufficient eligibility to place a bid on the particular license block(s). Bidders in Auction 102 may place bids only on individual license blocks in a category in a PEA—they will not be permitted to place any package bids (*i.e.*, bids for multiple blocks in a "package"). In each subsequent round, an eligible bidder will be able to express its demand for blocks in a category in a specific PEA at the clock price or at a price between the previous round's price and the new clock price. The FCC auction bidding system also includes an upload function that allows text files containing bid information to be uploaded.

215. During each round of the clock phase, a bidder may also remove bids placed in the current bidding round. If

a bidder submits multiple bids for the same category in a PEA in a round, the system takes the last bid entered as that bidder's bid for the round.

216. After the clock phase concludes but before bidding begins in the assignment phase, the auction bidding system will provide to each clock phase winner a menu of assignment phase bidding options consisting of possible configurations of frequency-specific licenses on which it can bid in each category in each PEA in which it holds winning clock phase bids. A bidder can assign a price using a sealed bid to one or more possible frequency assignment options for which it wishes to express a preference, consistent with its winning bids for generic blocks in the clock phase. Participation in the assignment phase is voluntary.

#### f. Stopping Rule

217. The Commission will use a simultaneous stopping rule for the clock phase of Auction 102, under which all categories of blocks in all PEAs will remain available for bidding until the bidding stops on every category in every PEA. The clock phase of bidding will close for all categories of blocks in all PEAs after the first round in which there is no excess demand in any category in any PEA. Bidding will remain open on all categories of licenses in all PEAs until bidding stops on every category. Consequently, it is not possible to determine in advance how long the bidding in Auction 102 will last.

218. The assignment phase of Auction 102 will close after frequency-specific licenses in all PEAs have been assigned.

#### g. Availability of Bidding Information

219. The Commission will make public after each round of the clock phase of Auction 102, for each bidding category in each PEA: the supply; the aggregate demand; the posted price of the last completed round; and the clock price for the next round. The posted price of the previous round is, generally: the opening price if supply exceeds demand; the clock price of the previous round if demand exceeds supply; or the price at which a reduction caused demand to equal supply. The identities of bidders demanding blocks in a specific category or PEA will not be disclosed until after Auction 102 concludes (*i.e.*, after the close of bidding in the assignment phase).

220. Each bidder will have access to additional information related to its own bidding and bid eligibility. Specifically, after the bids of a round have been processed, the bidding system will advise each bidder of the number of blocks it holds after the



round (its processed demand) for every category and PEA, and of its eligibility for the next round.

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

222. After each assignment round, the bidding system will advise each bidder of its own assignment and assignment payment for each PEA or PEA group assigned in the round. The bidding system will also provide each bidder with its current total payment (gross and net) for the PEAs for which an assignment round has already completed, as well as its corresponding capped and uncapped bidding credit discounts. This information will provide the bidder a running estimate during the assignment rounds of the dollar amount it will owe at the end of the auction.

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

223. At any time before or during the bidding process, the Bureau may delay, suspend, or cancel bidding in Auction 102 in the event of a natural disaster, technical obstacle, network interruption, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau will notify participants of any such delay, suspension, or cancellation by public notice and/or through the FCC auction bidding system's announcement function. If the bidding is delayed or suspended, the Bureau may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. The Bureau will exercise this authority solely at its discretion.

#### 2. Clock Phase Bid Collection and Bid Processing Procedures

##### a. Round Structure

224. The Commission will conduct the clock phase of Auction 102 in a series of rounds, with bidding being conducted simultaneously for all spectrum blocks available in the auction. During the clock phase, the Bureau will announce clock prices for blocks in each category in each geographic area, and qualified bidders will submit quantity bids for the number of blocks they seek. Bidding rounds will be open for predetermined periods of time, during which bidders will indicate their demands for blocks at the prices associated with the current round. The round's clock price is the highest price associated with the round. The lowest price associated with a round is the posted price of the previous round. As in SMR auctions, bidders will be subject to activity and eligibility rules that govern the pace at which they participate in the auction.

225. In each geographic area, the clock price for a category of generic blocks will increase from round to round if bidders indicate aggregate demand that exceeds the number of blocks available in the category. The clock rounds will continue until, for all categories of blocks in all geographic areas, the number of blocks demanded does not exceed the supply of available blocks. At that point, those bidders indicating demand in a category in a PEA at the final clock phase price will be deemed winning bidders.

226. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding. The Bureau retains the 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. Accordingly, the Bureau may change the amount of time for bidding rounds, the amount of time between rounds, or the numbers of rounds per day, depending upon bidding activity and other factors.

##### b. Eligibility and Activity Rule

227. Bidders are required to maintain a minimum, high level of activity in each clock round in order to maintain bidding eligibility, which will help ensure that the auction moves quickly and promote a sound price discovery process. The activity requirement will be set between 92 and 97 percent of a bidder's bidding eligibility in all clock rounds. Further, the initial activity requirement will be set at 95 percent.

Failure to maintain the requisite activity level will result in a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

228. The Commission will use upfront payments to determine initial (maximum) eligibility in terms of bidding units. Each spectrum block in a PEA will be assigned a specific number of bidding units based on the number of MHz-pops in the PEA. Each block available in a PEA will have the same number of bidding units. A bidder's upfront payment will determine the maximum number of blocks as measured by their associated bidding units that a bidder can demand at the start of the auction.

229. Generally, the activity rule will be satisfied when a bidder has bidding activity on blocks with bidding units that total at least 95 percent of its eligibility in the round. If the activity rule is met, then the bidder's eligibility will not change in the next round. Bidding eligibility will be reduced as the auction progresses if a bidder does not meet the activity requirement.

230. For this clock auction, a bidder's activity in a round for purposes of the activity rule will be the sum of the bidding units associated with the bidder's processed demands. For instance, if a bidder requests a reduction in the quantity of blocks it demands in a category, but the FCC auction bidding system does not accept the request because demand for the category would fall below the available supply, the bidder's activity will reflect its unreduced demand.

231. The Bureau will retain the discretion to change the activity requirement before and/or during the auction within the 92–97 percent range, as circumstances warrant. Any changes to the activity requirement will be announced in advance via the auction bidding system, giving bidders sufficient notice to adjust their bidding strategies if needed.

232. Bidders are required to indicate their demands in every round, even if their demands at the new round's prices are unchanged from the previous round. Missing bids—bids that are not reconfirmed—are treated by the auction bidding system as requests to reduce to a quantity of zero blocks for the category. If these requests are applied, or applied partially, a bidder's bidding activity, and hence its bidding eligibility for the next round, will be reduced.

233. The Commission will not provide for activity rule waivers to preserve a bidder's eligibility in the event that its bidding activity does not meet the activity requirement in a

round. Allowing waivers would create uncertainty with respect to the exact level of bidder demand, interfering with the basic clock price-setting and winner determination mechanism. Moreover, uncertainty about the level of demand would affect the way bidders' requests to reduce demand are processed by the FCC auction bidding system.

#### c. Acceptable Bid Amounts

##### (i) Reserve Price or Minimum Opening Bids

234. The Commission established minimum opening bid amounts for Auction 102. In Round 1 of the clock phase, a bidder will indicate how many blocks in a bidding category in a PEA it demands at the minimum opening bid price. The bidding system will not accept bids lower than these amounts.

235. Minimum opening bid amounts will be calculated using a formula based on 100 megahertz of bandwidth and license area population for blocks in all categories regardless of actual bandwidth for blocks in a category in a PEA. The Commission adopts a tiered approach, under which minimum opening bid amounts will vary by market population. For PEAs 1–50, minimum opening bid amounts are based on \$0.002 per MHz/pop; for PEAs 51–100, minimum opening bid amounts are based on \$0.0004 per MHz/pop; and for all other PEAs, minimum opening bid amounts are based on \$0.0002 per MHz/pop. A summary of the minimum opening bid amounts is set forth in Attachment A of the *Auctions 101 and 102 Public Notice*. The specific minimum opening bid amount for each license offered in Auction 102 will be provided in electronic format only, available as a separate “Attachment A” file at [www.fcc.gov/auction/102](http://www.fcc.gov/auction/102). The results of these calculations are subject to a minimum of \$200 and will be rounded.

##### (ii) Clock Price Increments

236. After bidding in the first round and before each later round, the FCC auction bidding system will announce a clock price for the next round, which is the highest price to which bidders can respond during the round. For each round, the clock price for each category in each PEA will be set by adding a fixed percentage increment to the posted price for the previous round. As long as aggregate demand for blocks in a category exceeds the supply of blocks, the percentage increment will be added to the clock price from the prior round. If demand equaled supply at an intra-round bid price in a previous round, then the clock price for the next round

will be set by adding the percentage increment to the intra-round bid price.

237. The initial increment will be set at ten percent. The Commission may adjust the increment as rounds continue. The five-to-fifteen percent increment range will allow the FCC to set a percentage that manages the auction pace, taking into account bidders' needs to evaluate their bidding strategies while moving the auction along quickly. Increments may be changed during the auction on a PEA-by-PEA or category-by-category basis based on bidding activity to ensure that the system can offer appropriate price choices to bidders.

##### (iii) Intra-Round Bids

238. The Commission will permit a bidder to make intra-round bids by indicating a price between the previous round's posted price and the new clock price at which its demand for blocks in a category in a PEA changes. In placing an intra-round bid, a bidder will indicate a specific price and a quantity of blocks it demands if the price for blocks in the category in the PEA should increase beyond that price. For example, consider a round where the clock price increases from \$100 to \$110. A bidder indicated in the previous round that it demanded 3 blocks at \$100, but its demand changes from 3 blocks to 2 blocks when the price increases beyond \$105 and up to \$110. To indicate that preference, the bidder should submit an intra-round bid for 2 blocks at a price of \$105.

239. Intra-round bids are optional; a bidder may choose to express its demands only at the clock prices.

##### (iv) Bid Removal and Bid Withdrawal

240. The FCC auction bidding system allows a bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder effectively “unsubmits” the bid. 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 because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

241. Bid withdrawals, analogous to withdrawals of provisionally winning bids in an SMR auction, are not available in Auction 102. However, bidders in Auction 102 may request to reduce demand for generic blocks in a bidding category.

##### (v) No Bidding Aggregation

242. The Commission does not adopt any package bidding procedures for the clock phase of Auction 102. A bidder may bid for multiple blocks in a bidding category in a PEA and may submit bids for multiple PEAs. The assignment phase will assign contiguous blocks to winners of multiple blocks in a category in a PEA, and give bidders an opportunity to express their preferences for specific frequency blocks, thereby facilitating aggregations of licenses.

##### d. Changing Demand, Bid Types, and Bid Processing

243. For each category in each PEA, a bidder can either bid to maintain its processed demand from the previous round at the current round's clock price or bid to change its demand at a price associated with the round. A bid to change demand could involve either a decrease or an increase in the demanded quantity.

244. Bids to maintain demand are always applied during bid processing. However, if a bidder demands fewer blocks in a category than its processed demand from the previous round, the bidding system will treat the bid as a request to reduce demand that will be implemented only if aggregate demand would not fall below the available supply of blocks in the category. If a bidder demands more blocks in a category than its processed demand from the previous round, the bidding system will treat the bid as a request to increase demand that will be implemented only if that would not cause the bidder's activity to exceed its eligibility.

245. The bidding system will process bids after a round ends in order of price point, where the price point represents the percentage of the bidding interval for the round. For example, if the posted price for the previous round is \$5,000 and the clock price of the current round is \$6,000, a price of \$5,100 will correspond to the 10 percent price point, since it is 10 percent of the bidding interval between \$5,000 and \$6,000. Once a round ends, the bidding system will process bids in ascending order of price point, first considering intra-round bids in order of price point and then bids at the clock price. The system will consider bids at the lowest price point for all categories in all PEAs, then look at bids at the next price point, and so on. In processing the bids submitted in the round, the FCC auction bidding system will determine the extent to which there is excess demand for each category in each PEA in order to determine whether a bidder's

requested reduction(s) in demand can be implemented. In processing the bids submitted in the round, the FCC auction bidding system will also determine the bidding units associated with a bidder's most recent processed demand in order to determine whether the bidder's requested increase(s) in demand can be implemented.

246. For a given category in a given PEA, the uniform price for all of the blocks in the category will stop increasing when aggregate demand no longer exceeds the available supply of blocks in the category. If no further bids are placed, the final clock phase price for the category will be the stopped price.

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

- A "simple" bid indicates a desired quantity of licenses in a category at a price (either the clock price or an intra-round price). Simple bids may be applied partially. A simple bid that involves a reduction from the bidder's previous demands may be implemented partially if aggregate excess demand is insufficient to support the entire reduction. A simple bid to increase a bidder's demands in a category may be applied partially if the total number of bidding units associated with the bidder's demand exceeds the bidder's bidding eligibility for the round.

- A "switch" bid allows the bidder to request to move its demand for a quantity of licenses from the L category to the U category, or vice versa, within the same PEA. Switch bids may not be made between Category U or L and Category UI. A switch bid may be applied partially, but the increase in demand in the "to" category will always match in quantity the reduction in the "from" category.

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

249. Because in any given round some bidders may increase demands for licenses in a category while others may request reductions, the price point at which a bid is considered by the

bidding system can affect whether it is accepted. However, bids not accepted because of insufficient aggregate demand or insufficient eligibility at a given price point will be held in a queue and considered, again in order, if there should be excess supply or sufficient eligibility later in the processing after other bids are processed.

250. Once a round closes, the auction system will process the bids by first considering the bid submitted at the lowest price point and determine whether it can be accepted given aggregate demand as determined most recently and given the associated bidder's eligibility. If the bid can be accepted, or partially accepted, the number of licenses the bidder demands will be adjusted, and aggregate demand will be recalculated accordingly. If the bid cannot be accepted in part or in full, the unfulfilled bid, or portion thereof, will be held in a queue to be considered later during bid processing for that round. The FCC auction bidding system will then consider the bid submitted at the next highest price point, accepting it in full, in part, or not at all, given recalculated aggregate demand and given the associated bidder's eligibility. Any unfulfilled requests will again be held in a queue, and aggregate demand will again be recalculated. Every time a bid or part of a bid is accepted and aggregate demand has been recalculated, the unfulfilled bids held in queue will be reconsidered, in the order of their original price points (and by pseudo-random number, in the case of tied price points). The auction bidding system will not carry over unfulfilled bid requests to the next round, however. The bidding system will advise bidders of the status of their bids when round results are released.

251. After the bids are processed in each round, the FCC auction bidding system will announce, for each bidding category in each PEA: the aggregate demand; the posted price; and the clock price for the next round, to indicate a range of acceptable bids for the next round. If demand fell to equal supply during the round, the posted price will be equal to the intra-round price at which that occurred. If there is excess demand, a fixed percentage increment will be added to the clock price for the previous round, and this percentage increment will be the same for all categories in all PEAs. However, if in the round, an intra-round bid brings demand down to the point at which it is equal to supply, the increment will be added to that intra-round price. Each bidder will also be informed of its own processed demand for every category

and PEA and of its own eligibility for the next round.

#### e. Winning Bids in the Clock Phase

252. Bidders that hold processed demand in a category in a PEA at the time the stopping rule is met will become winning bidders and will be assigned frequency-specific licenses in the assignment phase.

253. The final clock phase price is the posted price of the final round. This will be the price at which a reduction caused demand for the blocks to equal the supply of blocks in the category in the PEA. For categories in PEAs where supply exceeds demand, the final clock phase price will be the opening price.

#### 3. Assignment Phase Bid Collection and Bid Processing Procedures

254. The assignment phase will determine which frequency-specific licenses will be won by the winning bidders of generic blocks during the clock phase. In the assignment phase, winning bidders will have the opportunity to bid for preferred combinations of frequency-specific licenses. A bidder can assign a price using a sealed bid to one or more possible frequency assignments for which it wishes to express a preference, consistent with its winning bids for generic blocks in the clock phase. For instance, if a bidder won two Category U blocks and one Category L block in the clock phase, then it will only be offered the option of bidding for frequency assignments with exactly two Category U licenses and for frequency assignments with exactly one Category U license. The bid prices will represent the maximum payment that the bidder is willing to pay for the frequency-specific license assignment, in addition to the final price established in the clock phase for the generic blocks. These procedures will determine the optimal assignment of licenses within each PEA based on bid amounts in the assignment phase. As a simple example, assume two bidders won one Category L block each in a given PEA in the clock phase, so each was presented with bidding options Block A and Block B. One bidder bid 10 for Block A and 0 for Block B, the other bidder bid 12 for Block A and 0 for Block B in the assignment phase. The auction system will assign Block A to the second bidder, and Block B to the first bidder.

255. Participation in the assignment phase is voluntary: A winning bidder in the clock phase of Auction 102 need not participate in order to be assigned a number of licenses corresponding to the outcome of the clock phase. Moreover, a bidder that wins multiple blocks in a

category in a PEA will be assigned contiguous blocks of licenses, even without participating in the assignment phase. A winner of a block in a category that includes only a single block will not bid for an assignment in the assignment phase.

**a. Round Structure: Sequencing and Grouping of Rounds**

256. Sequencing of rounds. The Commission will conduct assignment rounds for the largest markets first. The Commission will conduct a separate assignment round for each of the top 40 PEAs sequentially, beginning with the largest PEAs. Top 40 PEAs are PEAs 1–40. Once the top 40 PEAs have been assigned, the Commission will conduct, for each Regional Economic Area Grouping (REAG), a series of assignment rounds for the remaining PEAs within that region. The Commission will sequence the assignment rounds within a REAG in descending order of population for a PEA group or individual PEA.

257. Grouping of PEAs. To reduce the total amount of time required to complete the assignment phase, where feasible, the Commission will group into a single market for assignment any non-top 40 PEAs within a region in which the supply of blocks is the same in each category, the same bidders won the same number of blocks in each category, and all are subject to the small markets bidding cap or all not subject to the cap, which will also help maximize contiguity across PEAs. Accordingly, in markets where these criteria are met, a bidder will submit a single set of bids for assignment options that will apply to all the PEAs in the group and will be assigned the same frequency-specific licenses in each PEA.

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

**b. Acceptable Bids and Bid Processing**

259. Prior to the start of the assignment phase, the bidding system will provide each bidder with bidding options for all possible contiguous frequency assignments for each category in each PEA in which the bidder won blocks in the clock phase. In each assignment round, a bidder will be asked to assign a price to one or more of the bidding options for which it wishes to express a preference, consistent with its winning bid(s) for

generic blocks in the clock phase. The price will represent a maximum payment that the bidder is willing to pay, in addition to the base price established in the clock phase for the generic blocks, for the frequency-specific license or licenses in its bid.

260. A bidder will submit its preferences for blocks it won in the upper and lower segments separately, rather than submitting bids for preferences that include blocks in both segments. That is, if a bidder won one block in the lower segment and two blocks in the upper segment, it would not be able to submit a single bid amount for an assignment that included all three blocks. Instead, it would submit its bid for an assignment in the lower segment separately from its bid or bids for assignments in the upper segment.

261. An optimization approach will be used to determine the winning frequency assignment for each category in each PEA or PEA group. The Commission adopts procedures such that the auction bidding system will select the assignment that maximizes the sum of bid amounts among all assignments where every bidder is assigned contiguous spectrum. If multiple blocks in Category U in a PEA remain unsold, the unsold licenses will be contiguous.

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

**c. Assignment Phase Payment Calculations**

263. When all assignment rounds have completed, a bidder’s final payment is determined by summing the final clock phase prices across all licenses that it won and its assignment payments across all assignment phase markets, and then applying any applicable bidding credit discounts to the sum.

**4. Calculating Individual License Prices**

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

265. After the assignment phase, the auction bidding system will determine a net and gross post-auction price for each license that was won by a bidder by apportioning assignment payments and bidding credit discounts (only applicable for the net price) across all the licenses that the bidder won. To calculate the gross per-license price, the auction bidding system will apportion the assignment payment to licenses in proportion to the final clock phase price of the licenses that the bidder is assigned in that category and market. To calculate the net price, the auction bidding system will first apportion any applicable bidding credit discounts to each category and assignment phase market in proportion to the gross payment for that category and that market. Then, for each assignment phase market, the auction bidding system will apportion the assignment payment and the discount to licenses in proportion to the final clock phase price of the licenses that the bidder is assigned in that category for that market.

**5. Auction Results**

266. After the Bureau announces the auction results, it will provide a means for the public to view and download bidding and results data.

**6. Auction Announcements**

267. The Commission and/or Bureau will use auction announcements to report necessary information to bidders, such as schedule changes. All auction announcements will be available by clicking a link in the FCC auction bidding system.

**V. Post-Auction Procedures**

268. Shortly after bidding has ended in each auction, the Commission will issue a public notice declaring that the respective auction closed and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Form 601) for the auction.

**A. Down Payments**

269. Within 10 business days after release of the auction closing public

notices for Auctions 101 and 102, respectively, 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 the applicable auction to 20 percent of the net amount of its winning bids (gross bids less any applicable bidding credits).

#### B. Final Payments

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

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

271. The Commission's rules provide that, within 10 business days after release of the auction closing public notice for a particular auction (*i.e.*, Auction 101 or Auction 102), winning bidders must electronically submit a properly completed post-auction application (FCC Form 601) for the license(s) they won through the auction.

272. A winning bidder claiming eligibility for a small business bidding credit or a rural service provider bidding credit must demonstrate its eligibility in its FCC Form 601 post-auction application for the bidding credit sought. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notices for Auctions 101 and 102, respectively.

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

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

274. Within 10 business days after release of the auction closing public notices for Auctions 101 and 102, respectively, each winning bidder must also comply with the ownership reporting requirements in §§ 1.913, 1.919, and 1.2112 of the Commission's rules by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its FCC Form 601 post-auction application.

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

276. When a winning bidder submits an FCC Form 175, 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 winning bidder's FCC Form 175 application. A winning bidder must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the FCC Form 601 post-auction application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the auction closing public notices for Auctions 101 and 102, respectively.

#### E. Tribal Lands Bidding Credit

277. 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 §§ 1.2107 and 1.2110(f) of the Commission's rules. A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

278. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction when it files its FCC Form 601 post-auction application. When initially filing the post-auction application, the winning bidder will be required to 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 winning bidder will have 180 days from the close of the post-auction application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in § 1.2110(f)(3)(vii). For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices.

#### F. Default and Disqualification

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

280. 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. The Commission set the additional default payment for Auctions 101 and 102 at 15 percent of the applicable bid.

281. In case they are needed for post-auction administrative purposes, the bidding system will calculate individual per-license prices that are separate from final auction payments, which are calculated on an aggregate basis. The bidding system will apportion to individual licenses any assignment phase payments and any capped bidding credit discounts, since in both cases, a single amount may apply to multiple licenses.

282. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. 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 authorizations held by the applicant.

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

283. All refunds of upfront payment balances will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. Since the upfront payments for each auction will be deposited and maintained in separate accounts, the Commission will not apply a bidder's refund of its upfront payment balance from Auction 101 to its upfront payment balance for Auction 102. Bidders are encouraged to use the Refund Information icon found on the *Auction Application Manager* page or the Refund Form link available on the *Auction Application Submit Confirmation* page in the FCC Auction Application System to access the form. After the required information is completed on the blank form, the form should be printed, signed, and submitted to the Commission by mail, fax, or email as instructed in the *Auctions 101 and 102 Procedures Public Notice*.

284. If an applicant elected not to access the Refund Form through the Auction Application Manager page, the information requested in paragraph 299 of the *Auctions 101 and 102 Procedures Public Notice* must be supplied in writing and submitted by fax to the Revenue & Receivables Operations Group/Auctions at (202) 418-2843, by email to [RROGWIREFAXES@fcc.gov](mailto:RROGWIREFAXES@fcc.gov), or by mail to the Federal Communications Commission, Financial Operations, Revenue & Receivables Operations Group/Auctions, Gail Glasser, 445 12th Street SW, Room 1-C864, Washington, DC 20554. Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578 or Theresa Meeks at (202) 418-2945.

#### **VI. Supplemental Final Regulatory Flexibility Analysis**

285. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), Initial Regulatory Flexibility Analyses (Spectrum Frontiers IRFAs) were incorporated in the Notice of Proposed Rulemakings in the *2016 Spectrum Frontiers Order*, *2017 Spectrum Frontiers Order*, and *2018 Spectrum Frontiers Order* (collectively,

*Spectrum Frontiers Orders*) and other Commission orders pursuant to which Auctions 101 and 102 will be conducted. A Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auctions 101 and 102 Comment Public Notice*. The Commission sought written public comment on the proposals in NPRMs and the *Auctions 101 and 102 Comment Public Notice*, including comments on the Spectrum Frontiers IRFAs and the Supplemental IRFA. No comments were filed addressing the Spectrum Frontiers IRFAs or the Supplemental IRFA. Final Regulatory Flexibility Analyses (FRFAs) were also incorporated in the *Spectrum Frontiers Orders* pursuant to which Auctions 101 and 102 will be conducted. The Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the *Spectrum Frontiers FRFAs* to reflect the actions taken in the *Auctions 101 and 102 Procedures Public Notice* and conforms to the RFA.

286. Need for, and Objectives of, the Public Notice. The *Auctions 101 and 102 Procedures Public Notice* implements competitive bidding rules adopted by the Commission in multiple notice-and-comment rulemaking proceedings as well as establishes additional procedures to be used by the Bureau, on delegated authority, for competitive bidding in Auctions 101 and 102 for 5,984 UMFUS licenses. The rules and procedures adopted for Auctions 101 and 102 seek to balance three goals: (1) Promoting competition in the auction; (2) avoiding undue burdens on the applicants; and (3) assigning mmW band licenses as expeditiously as possible. More specifically, the *Auctions 101 and 102 Procedures Public Notice* provides an overview of the procedures, the auction dates and deadlines, requirements for participants, terms and conditions governing Auctions 101 and 102 and the post-auction application and payment processes, as well as setting the minimum opening bid amounts for each of the licenses offered in Auctions 101 and 102.

287. To promote the efficient and fair administration of the competitive bidding process for all Auction 101 and Auction 102 participants, the Commission in the *Auctions 101 and 102 Procedures Public Notice* adopted the following procedures:

- Use of separate application and bidding processes for Auctions 101 and 102, including concurrent application filing windows;
- application of the current rules prohibiting certain communications

among and between applicants in either auction;

- identification of AT&T, Sprint, T-Mobile and Verizon Wireless as “nationwide providers” for the purpose of implementing the Commission’s competitive bidding rules in Auctions 101 and 102;
- establishment of bidding credit caps for eligible small businesses and rural service providers in Auctions 101 and 102;
- use of a simultaneous multiple-round auction format for Auction 101, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion by the Bureau to exercise alternative stopping rules under certain circumstances);
- use of a clock auction format for Auction 102 under which each qualified bidder will indicate in successive clock bidding rounds its demands for categories of generic blocks in specific geographic areas;
- a specific minimum opening bid amount for each license available in Auction 101 and for generic blocks in each PEA available in Auction 102;
- a specific upfront payment amount for each license available in Auction 101 and for generic blocks in each PEA available in Auction 102;
- establishment of a bidder’s initial bidding eligibility in bidding units based on that bidder’s upfront payment through assignment of a specific number of bidding units for each license (Auction 101) or generic block (Auction 102);
- use of an activity rule that would require bidders to bid actively during the auction rather than waiting until late in the auction before participating;
- for Auction 101, a two-stage auction in which a bidder is required to be active on 80 percent of its bidding eligibility in each round of the first stage and on 95 percent of its bidding eligibility in each round of the second stage;
- for Auction 102, a requirement that bidders be active on between 92 and 97 percent of their bidding eligibility in all regular clock rounds;
- for Auction 101, provision of three activity rule waivers for each bidder to allow it to preserve eligibility during the course of the auction;
- for Auction 101, use of minimum acceptable bid amounts and additional bid increments, along with a methodology for calculating such amounts, with the Bureau retaining discretion to change its methodology if circumstances dictate;
- for Auction 102, establishment of acceptable bid amounts, including clock price increments and intra-round bids,

along with a methodology for calculating such amounts;

- for Auction 102, use of two bid types, along with a methodology for processing bids and requests to reduce demand;
- for Auction 101, a procedure for breaking ties if identical high bid amounts are submitted on a license in a given round;
- bid removal procedures;
- for Auction 101, provisions for bid withdrawals, including the establishment of an interim bid withdrawal percentage of 15 percent of the withdrawn bid;
- for Auction 102, prohibition of withdrawals;
- for Auction 102, establishment of an assignment phase that will determine which frequency-specific licenses will be won by the winning bidders of generic blocks during the clock phase; and
- establishment of an additional default payment of 15 percent under § 1.2104(g)(2) of the rules in the event that a winning bidder defaults or is disqualified after either auction.

288. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. There were no comments filed that addressed the procedures and policies proposed in the *Spectrum Frontiers IRFAs* or the Supplemental IRFA.

289. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed procedures as a result of those comments.

290. The Chief Counsel did not file any comments in response to the proposed procedures in the *Auctions 101 and 102 Comment Public Notice*.

291. Description and Estimate of the Number of Small Entities to Which the Proposed Procedures Will Apply. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one

which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

292. FRFAs were incorporated into the *Spectrum Frontiers Orders*. In those analyses, the Commission described in detail the small entities that might be significantly affected. In the *Auctions 101 and 102 Procedures Public Notice*, the Commission hereby incorporates by reference the descriptions and estimates of the number of small entities from the previous FRFAs in the *Spectrum Frontiers Orders*.

293. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities. The Commission has designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission’s two-phased auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant’s short-form application and certifications, as well as its upfront payment. The *Auctions 101 and 102 Procedures Public Notice* provides instructions for each Auction 101 and 102 applicant to maintain the accuracy of its respective short-form application electronically using the FCC Auction Application System and/or by direct communication with the Auctions and Spectrum Access Division. Small entities and other Auction 101 and Auction 102 applicants will be qualified to bid in the respective auction(s) only if they comply with the following: (1) Submission of a separate short-form application for each auction in which they wish to participate that is timely and is found to be substantially complete, and (2) timely submission of a sufficient upfront payment for at least one of the licenses offered in Auctions 101 or 102, respectively. The timely submitted payment must be accompanied by a complete and accurate FCC Remittance Advice Form (FCC Form 159), and made by 6:00 p.m. ET on October 23, 2018, for Auction 101 and on a date to be announced for Auction 102, following the procedures and instructions set forth in the FCC Form 159 Instructions. An applicant whose application is found to contain deficiencies will have a limited opportunity to bring its application into compliance with the Commission’s competitive bidding rules during a resubmission window. All qualified

bidders will automatically be registered for the auction and mailed the necessary registration materials.

294. In the second phase of the process, there are additional compliance requirements for winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the following: (1) Within 10 business days of release of the auction closing public notice for each auction (*i.e.*, Auction 101 or Auction 102), submit as a down payment sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for the applicable auction to 20 percent of the net amount of its winning bids; (2) within 10 business days after the down payment deadline submit the balance of the net amount for each of its winning bids; and (3) within 30 days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auctions 101 and 102, respectively. A winning bidder claiming eligibility for a small business bidding credit or a rural service provider bidding credit must demonstrate its eligibility in its FCC Form 601 post-auction application for the bidding credit sought.

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

296. The Commission believes that the adopted procedures to facilitate participation in Auctions 101 and 102 will result in both operational and administrative cost savings for small entities and other auction participants. For example, in order to reduce the financial burden on small entities and other potential auction participants, as well as to reduce potential exposure risk, the Commission will accept

upfront payments for Auction 102 after the close of Auction 101. Additionally, for Auctions 101 and 102, two levels of bidding credits will be available to eligible small businesses and consortia thereof up to a maximum amount of \$25 million per auction (\$50 million combined for both auctions). This application of bidding credit caps separately to each auction should provide additional opportunities for participation by small businesses. Also, public data on Auction 101 results will be made available prior to the start of bidding in Auction 102. This data should provide potential Auction 102 bidders with sufficient information to analyze and understand price levels and demand for UMFUS licenses in Auction 101.

297. In light of the numerous resources that will be available from the Commission at no cost, the processes and procedures adopted for Auctions 101 and 102 should result in minimal economic impact on small entities. For example, prior to each auction, the

Commission will hold a mock auction to allow eligible bidders the opportunity to familiarize themselves with both the processes and systems that will be used in Auctions 101 and 102. During the auctions, participants will be able to access and participate in the auctions via the internet using a web-based system, or telephonically, providing two cost effective methods of participation avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of hotlines for assistance with auction processes and procedures as well as technical support hotlines to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction bidding system. In addition, all auction participants will have access to various other sources of information and databases through the Commission that will aid in both their understanding and participation in the process. These steps coupled with the advanced communication of the bidding

procedures "rules of the road" in Auctions 101 and 102 should ensure that the auctions will be administered efficiently and fairly, with certainty for small entities as well as other auction participants.

298. Report to Congress. The Commission will send a copy of the *Auctions 101 and 102 Procedures Public Notice*, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Auctions 101 and 102 Procedures Public Notice*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Auctions 101 and 102 Procedures Public Notice* (or summaries thereof) will also be published in the **Federal Register**.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

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