Dated: March 7, 1997.

Frank Ciavatieri,

Acting Director, Office of Site Remediation and Restoration.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 97–82; FCC 97–60]

Competitive Bidding Procedures

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this *Notice of Proposed Rule Making* (''NPRM''), the Commission proposes changes to its general competitive bidding rules that are intended to simplify regulations and eliminate unnecessary rules wherever possible, increase the efficiency of the competitive bidding process, and provide more specific guidance to auction participants while also giving them more flexibility.

DATES: Comments must be submitted on or before March 27, 1997, and reply comments must be submitted on or before April 16, 1997. Written comments by the public on the proposed and/or modified information collections are due March 27, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before May 20, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington DC 20554, or via the Internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Mark Bollinger, Wireless Telecommunications Bureau, (202) 416–0660. For additional information concerning the information collections contained in this *NPRM*, contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's *Notice of Proposed Rule Making* in FCC Number 97–60; WT Docket No. 97–82, adopted on February 20, 1997, and released on February 28, 1997. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. The complete *NPRM* is also available on the Commission's Internet home page (http://www.fcc.gov/).

The *NPRM* contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, the Office of Management and Budget (OMB), and other Federal agencies to comment on the information collections contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB notification of action is due 60 days from date of publication of this *NPRM* in the **Federal Register**. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: N/A.

Title: In the Matter of Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, WT Docket No. 97–82, FCC Docket No. 97–60.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 45,000.

Estimated Time for Response: 13 hours.

Total Annual Burden: 585,000 hours.

Estimated Cost to Respondents: 2,848 dollars.

Needs and Uses: The Commission's general competitive bidding rules require applicants for all auctionable services to submit: (1) Ownership information, (2) terms of joint bidding agreements, (3) gross revenue calculations, and (4) evidence of environmental impact. Furthermore, in case a licensee defaults or loses its license, the Commission retains the discretion to re-auction such licenses. If licenses are re-auctioned, the new license winners would be required at the close of the re-auction to comply with the same disclosure requirements explained above.

The information collected will be used by the Commission to determine whether the applicant is legally, technically, and financially qualified to bid in the spectrum auctions and hold a license for spectrum based services. Without such information the Commission could not determine whether to issue the license to the successful applicant and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Synopsis of Notice of Proposed Rule Making

1. The Commission seeks comment on a variety of proposals and tentative conclusions set forth below. In addition, it seeks comment on whether competitive bidding provisions that have been adopted in specific services but not included in the part 1 rules should be included in part 1 and, if so, whether any amendments to these provisions are needed in light of the proposal, discussed below, to apply these general competitive bidding rules to future auctions.

2. As the Commission has gained experience in conducting auctions, it has found that much of the auction process can be standardized and that conducting rule makings for each individual service slows down the delivery of service to the public because it may result in regulatory delays before the licensing process begins. Thus, the Commission propose that, to the extent possible, all future auctions be governed by the general competitive bidding rules adopted in this proceeding. It envisions that only a limited number of competitive bidding regulations would need to be adopted on a service-specific basis. The Commission seeks comment on whether the rules adopted in this proceeding should supersede all existing, service-specific competitive bidding rules for future auctions. It proposes that this action would affect all services that are subject to pending proceedings and any services that have existing competitive bidding rules that might apply to licenses that have not yet been auctioned or that must be reauctioned. The Commission seeks comment on whether, alternatively, it should phase in the applicability of the revised general competitive bidding rules at a future date, such that, at a

minimum, initial auctions may be completed under the existing service-specific rules. In the event the Commission decides not to apply the revised part 1 rules to supersede existing service-specific auction rules, should it nonetheless subject licenses that are reauctioned (due to defaults or if no winning bidder is otherwise declared) to these revised part 1 general competitive bidding rules? To the extent that commenters believe that service-specific rules should be maintained, they should explain which ones and why.

3. Section 1.2110(b)(1) of the rules states that the Commission ''will establish the definition of a small business on a service-specific basis, taking into consideration the characteristics and capital requirements of the particular service.'' The Commission proposes to continue the practice of soliciting comment in service-specific rule making proceedings on the appropriate small business size standard, or tiered standards, for each auctionable service. In such rule makings, the Commission would, take into consideration the characteristics and capital requirements of each service. It would in all cases, however, for purposes of future auctions, express the definition of small business purely in terms of gross revenues. The Commission further proposes that, once the small business definition for any particular service is adopted, the special provisions for which such businesses qualify would be determined by schedules set forth in the general competitive bidding rules. The Commission seeks comment on these proposals.

4. The Commission notes that some of its eligibility requirements are defined in terms of gross revenues of ''less than'' a certain amount, rather than ''not exceeding'' a certain amount. It tentatively concludes that a uniform method of measurement is preferable because it is more equitable and administratively simpler. The Commission therefore proposes that when it adopts size standards, those standards should be expressed so as to require businesses to have gross revenues ''not to exceed'' particular amounts, and that all standards already adopted be modified to conform to this method of defining size. The Commission seeks comment on this proposal. It also seeks comment on a proposal to base all small business size standards on the applicant's average gross revenues over the preceding three years, consistent with the Small Business Act, 15 U.S.C. 632(a).

5. Although the general competitive bidding rules do not define ''gross revenues,'' the Commission has adopted definitions in various services which are generally the same, but contain some distinction regarding use of audited and unaudited financial statements. In order to promote uniformity of regulations, the Commission proposes to use the broadband PCS definition for all size-based determinations for all auctionable services, with the modification that unaudited financial statements used as a basis for gross revenue calculations must be prepared in accordance with Generally Accepted Accounting Principles. This modification should ensure that all gross revenues calculations, audited and unaudited, are prepared consistently. It should also discourage bidders from manipulating unaudited financial statements to gain a competitive bidding or payment advantage. The Commission seeks comment on this proposal.

6. The Commission notes that in the *D, E, and F Block Report and Order,* 61 FR 33859 (July 1, 1996), it amended the broadband PCS rules to require that an applicant's determination of average gross revenues be based on the three most recently completed fiscal or calendar years. Should it adopt a similar rule for the general auction rules that would extend the same option of using either fiscal or calendar years to applicants in all auctionable services? The Commission also notes that prior to the *D, E, and F Block Report and Order,* broadband PCS applicants were required to state their average gross revenues as supported by audited financial statements or seek a waiver to use unaudited financial statements. This requirement was simplified in the *D, E, and F Block Report and Order* to permit the use of unaudited financial statements without seeking a waiver. The Commission seeks comment on whether the general definition of gross revenue should similarly allow the use of unaudited financial statements.

7. In determining whether an applicant meets certain size-based eligibility requirements, many of the Commission's service-specific competitive bidding rules require it to consider, *inter alia,* the gross revenues of certain investors in the applicant and the affiliates of attributable investors. ''Affiliate'' is defined by the general auction rules as an individual or entity that directly or indirectly controls or has the power to control the applicant; is directly or indirectly controlled by the applicant; is directly or indirectly controlled by a third person(s) that also controls or has the power to control the applicant; or has an ''identity of interest'' with the applicant. Some service-specific rules have adopted alternative definitions of ''affiliate.''

8. An ''attributable'' investor for purposes of size determinations has been defined differently in the rules for different services; it proposes to use a controlling interest threshold to determine whether an entity qualifies to bid as a small business. Thus, in calculating gross revenues, the Commission would include the gross revenues of the controlling principals of the applicants and their affiliates, with the term ''control'' including both *de jure* and *de facto* control of the applicant. The Commission tentatively concludes that this standard, which it recently adopted in the IVDS rules, would simplify the size attribution rules and still enable small businesses to attract adequate financing. It seeks comment on this proposal. The Commission also seeks comment on whether it should change its definition of affiliate. Should the Commission, for example, amend its definition of affiliate to provide an exception for Indian tribes, Alaska Regional or Village Corporations, as it did for broadband PCS? Also, the Commission notes that, earlier this year, the Small Business Administration amended and simplified its regulations governing the small business size standards in 13 CFR part 121, including amendment of its definition of ''affiliate''. The Commission seeks comment on whether it should amend its rules to provide a similar ''affiliate'' definition, which would include, for example, the following general principles of affiliation: (1) Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both; and (2) factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, will be considered in determining whether an affiliation exists.

9. The current part 1 rules define ''rural telephone company'' (or ''rural telco'') as any local exchange carrier, including affiliates, with 100,000 access lines or fewer. The Commission revised the definition of rural telephone company contained in the broadband PCS rules upon which the part 1 rule is based, to conform with that contained in the Telecommunications Act of 1996 (''1996 Act''). The Commission tentatively concludes that the definition of rural telco set forth in the 1996 Act should apply to all auctionable services as the term is used in section 309(j) of the Communications Act. Thus,

§ 1.2110(b)(3) would be amended so as to define the term ''rural telephone company'' as a local exchange carrier operating entity to the extent that such entity—(A) provides common carrier service to any local exchange carrier study area that does not include either (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census, or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996. The Commission seeks comment on this tentative conclusion.

10. Since the Commission began conducting spectrum auctions, installment payments have been utilized as a means of assisting small entities that are likely to have difficulty obtaining adequate private financing. Pursuant to the part 1 rules, unless otherwise specified, such installment payment plans (1) impose interest based on the rate of U.S. Treasury obligations at the time of licensing, plus a possible premium (2) allow installment payments for the full license term, (3) begin with interest-only payments for the first two years, and (4) amortize principal and interest over the remaining term of the license. Additionally, winning bidders are required to execute a promissory note and security agreement as a condition to participate in the installment payment plan.

11. Changes in the basic framework of the installment payment plans have been made in specific services as the Commission has gained experience from implementing the rules. In certain services the Commission has adopted ''tiered'' installment payment plans, which vary in terms of interest rate and payment terms, depending on the size of the licensee. While the Commission seeks to continue to offer these opportunities to small businesses, and possibly other entities, it seeks comment on ways to refine the installment payment plans to streamline without reducing their benefit to small businesses. For example, it seeks comment on whether the Commission or its designee should seek non-resource intensive means to screen applicants applying for installment payment plans to determine their credit worthiness, and if so, whether all bidders eligible for installment payments should be screened before the start of an auction, or only auction winners. If the Commission were to adopt such screening, what information or standards should serve as criteria for judging a bidder's credit worthiness? Further, the Commission seeks comment on whether it should offer higher bidding credits in lieu of installment payments for winning bidders who qualify. The Commission notes that substituting a system of larger bidding credits might eliminate the administrative and market concerns associated with installment payments, while nonetheless ensuring opportunities for small businesses to participate in auctions. On the other hand, however, installment payment plans have been a useful tool for small businesses to access capital.

12. As an alternative to offering higher bidding credits in lieu of installment payments, the Commission seeks comment on whether it should require larger down payments, such as 30 or 40 percent, to reduce the amount of a bidder's high bid that is financed by the federal government. Increasing the amount of money a bidder has at stake in the event of a default may reduce the likelihood of default and will reduce the government's risk in the event of default. The Commission also seeks comment on whether it could achieve the same goal of reducing the likelihood of default by adopting a requirement that bidders increase their upfront payment during the course of the auction once their cumulative high bids exceed their upfront payment by some multiple. For example, once a bidder's cumulative bids were more than twenty-five times its upfront payment, it would be required to deposit additional funds with the Commission. The Commission seeks comment on this proposal and how it could be implemented, including the appropriate multiplier used to trigger the supplemental upfront payment obligation.

13. In addition, the Commission proposes that the general competitive bidding rules be amended to include a schedule of installment payment plans for designated entities seeking to participate in the provision of spectrum-based services. Defining available installment payment plans in the general competitive bidding rules would give potential bidders more certainty about the special provisions available to small businesses and other entities and promote uniformity of regulation. As discussed above, the Commission believes that once a small business definition is adopted for a particular service, or other entities are identified as qualifying for installment payments, eligible businesses should be able to turn to the part 1 rules to determine the specific terms available to them. The following schedule of installment payment plans is a possible approach to implementing this concept.

Average gross revenues	Interest rate	Payment terms
Not to exceed $3 million	T-note rate	2 yrs. interest-only payments; amortize principal and interest over remaining license term.
Not to exceed $15 million	T-note rate + 1.5%	2 yrs. interest-only payments; amortize principal and interest over remaining license term.
Not to exceed $40 million	T-note rate + 2.5%	2 yrs. interest-only payments; amortize principal and interest over remaining license term.
Not to exceed $75 million [1]	T-note rate + 2.5%	Amortize principal and interest over license term.
Not to exceed $125 million [1]	T-note rate + 3.5%	Amortize principal and interest over license term.

[1] These entities have never been defined as small businesses by service-specific rules, but for broadband PCS they may have been eligible for installment payments as entrepreneurs.

The schedule set forth above is based in general on the plans adopted for the most recent auctions and, relying on past auction experience, the Commission believes these plans are appropriate. However, it recognizes that

plans with more generous terms were previously adopted for specific services. The Commission seeks comment on whether it should incorporate a schedule of installment payments into the general auction rules while still retaining the authority to modify payment terms on a service-specific basis. Further, it seeks comment on the appropriate schedule of payment terms.

14. Section 1.2110(e)(3)(i) of the rules indicates that the interest rate on installment payments will be the interest rate on Treasury obligations with maturities closest to the duration of the license term at the time of licensing. More precisely, the interest rate is established by using the coupon interest rate for Treasury notes with similar maturities, at the most recent preceding Treasury auction. The Commission notes that, in the *Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994), it indicated *both* that it agreed with those commenters that suggested that interest on installments should be charged at a rate no higher than the government's cost of money and also that the interest rate imposed for installment payments should be equal to the rate for U.S. Treasury obligations of maturity equal to the license term. The Commission recognizes that determining the interest rate for installment payment plans pursuant to § 1.2110(e)(3)(i) may not always reflect the government's cost of money but it provides an objective benchmark for the interest rate determination. The Commission believes that it would be beneficial to licensees for it to more clearly identify in the rules how the interest rate would be determined for all installment payment plans. Therefore, it proposes to codify the existing policy by specifying that the interest rate for installment payments will be determined by taking the coupon rate of interest offered in the most recent Treasury auction preceding the close of the Commission's auction. The Commission seeks comment on this proposal. Further, it seeks comment on whether it should adopt some other basis for computing interest. For example, should the Commission establish more market-based interest rates with a cost of funds component and a premium for credit risk? If so, it asks commenters to discuss how it should determine the appropriate interest premium.

15. Where the Commission uses installment payment plans, it proposes to set the interest rate for such payment plans on the date that the Public Notice is issued announcing the close of the auction and the winning bidders, based on rates established in the most recent Treasury auction with obligation of the appropriate term. Currently, § 1.2110(e)(3)(i) of the Commission's general competitive bidding rules requires that the Commission impose interest based on the rate of U.S. Treasury obligations at the time of licensing. The Commission tentatively concludes, however, that establishing the interest rate on the day that the Public Notice is released announcing the close of the auction is the most appropriate time for both licensees and the Commission. The close of the auction represents the most clearly identifiable time when an obligation to the Commission and the United States Treasury is established. Establishing the interest rate in this way also provides a uniform date on which the interest rate for all prospective licensees within a particular service is established, regardless of petitions to deny or other delays that may vary among bidders. In addition, the Commission believes that establishing the interest rate at a date earlier than the date of licensing would assist bidders in efforts to obtain financing, as interest expense would be calculable from a specific known date. Furthermore, the Commission believes that establishing the interest rate as it proposes would reduce the interest rate risk to the bidder and mitigate this risk to the capital investor. Establishing the interest rate earlier than the point of licensing would also permit the licensee to receive, review, and return the necessary note and security agreement earlier, which would also speed the licensing process. This, in turn, should hasten the development of service to the marketplace. Alternatively, the Commission could establish the interest rate for the installment payment plan in the Public Notice announcing the start of the auction, with the rate based on the most current Treasury rate on that date. This would enable both bidders and potential capital investors to better assess a bidder's prospective financial obligations during the auction. The Commission seeks comment on each of its proposals, tentative conclusions, and alternatives.

16. Under the current general competitive bidding rules, the Commission may award bidding credits (*i.e.*, payment discounts) to eligible designated entities. These general rules also provide that service-specific rules will specify the designated entities eligible for bidding credits, the licenses for which bidding credits are available, the amounts of bidding credits, and other procedures. Accordingly, the Commission has adopted separate rules governing bidding credits for various auctionable services.

17. As with installment payments, the Commission believes that the general competitive bidding rules should be amended so that the levels of available bidding credits are defined, and are uniform for all auctionable services. The Commission believes such an approach will be beneficial because potential bidders will have more information well in advance of the auction than they currently do about how such levels will be set. It believes that, once a small business definition is adopted for a particular service, eligible businesses should be able to refer to the part 1 rules to determine the level of bidding credit available to them. The following schedule is a possible approach to implementing this concept.

Average annual gross revenues	Bidding credits (percent)
Not to exceed $3 million	25
Not to exceed $15 million	15
Not to exceed $40 million	10

The Commission recognizes that these credits may differ from those previously adopted for specific services. Based on past auction experience, however, the Commission believes that the approach taken here would provide adequate opportunities for small businesses of varying sizes to participate in spectrum auctions. In addition, the Commission believes that providing slightly less generous bidding credits for larger businesses (*e.g.*, those businesses with gross revenues not exceeding $40 million) would more specifically tailor the amount of the credit to the needs of the particular applicant. The Commission seeks comment on this schedule, and it also asks interested parties to suggest alternatives. For example, does the demand for capital to implement certain services justify including businesses with average annual gross revenues exceeding $40 million on this schedule? The Commission recognizes that it has suggested that it might be appropriate in some cases to provide larger bidding credits in lieu of installment payments. The Commission is aware that in developing their auction strategy, bidders make calculations about the net present value of their bids and factor in their ability to obtain financing. Therefore, the same net effect can be achieved by giving either higher bidding credits or more generous installment payment terms. If the Commission limited the use of installment payments,

how should that action affect levels of bidding credits?

18. Under the general competitive bidding rules, a licensee seeking Commission approval of a transfer of control or an assignment of a license acquired through the competitive bidding process utilizing installment payments is required to pay the remaining principal balance as a condition of the transfer. No payment is required, however, when the proposed transferee or assignee is qualified to obtain the same installment financing and assumes the applicant's installment payment obligations. Many of the service-specific auction rules include similar provisions. However, some service-specific unjust enrichment provisions for installment payments contain certain variations from the general rule set forth in Part 1. The broadband PCS unjust enrichment rule, for example, specifies that applicants seeking to assign or transfer control of a license to an entity not meeting the eligibility standards for installment payments must pay not only unpaid principal as a condition of Commission approval but also any unpaid interest accrued through the date of assignment or transfer. This rule also provides that if a licensee utilizing installment financing seeks to make any change in its ownership structure that would result in the loss of eligibility for installment payments, it must pay the unpaid principal and accrued interest as a condition of Commission approval of the change. Finally, in recognition of the tiered installment payment plans offered to broadband PCS licensees, the rule provides that if a licensee seeks to make any change in ownership that would result in the licensee qualifying for a less favorable installment plan, it must seek Commission approval and adjust its payment plan to reflect its new eligibility status. A licensee, under this rule, may not switch its payment plan to a more favorable plan.

19. Under the Commission's general competitive bidding rules, a licensee seeking Commission approval of a transfer of control or an assignment of a license acquired through the competitive bidding process utilizing bidding credits, or proposing to take any other action relating to ownership or control that will result in loss of eligibility for such bidding credits, is required to pay the sum of the amount of the bidding credit plus interest as a condition of FCC approval. Under the broadband PCS rules, if, within the original term, a licensee applies to assign or transfer control of a license to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify must be paid to the United States Treasury as a condition of approval of the assignment or transfer.

20. The Commission proposes to amend the general unjust enrichment rules to conform them to the broadband PCS rules. It believes that these rules are preferable to the current general unjust enrichment rules because they provide greater specificity about funds due at the time of transfer or assignment and specifically address changes in ownership that would result in loss of eligibility for installment payments, which the current general rules do not address. The broadband PCS rules also address assignments and transfers between entities qualifying for different tiers of installment payments or bidding credits, thus supplying clearer guidance for auctions in which tiered installment payment plans or bidding credits are provided. The Commission seeks comment on this proposal. Further, it seeks comment on whether it should adopt an unjust enrichment provision that provides a scale of decreasing payment liability based on the number of years a license is held as it has recently done for other services. For example, should the Commission adopt a rule that provides that a business that holds a license that it obtained with a bidding credit must pay back 60 percent of its bidding credit if it transfers the license after five years; 50 percent after eight years; 40 percent after nine years; and 20 percent after ten years? The Commission also solicits comment on unjust enrichment rules as they apply to partitioning and disaggregation. If it decides to adopt partitioning and disaggregation for various services, how should the unjust enrichment rules apply when the partitioner or disaggregator is the recipient of a bidding credit or is paying on an installment payment plan? Should the Commission adopt for all auctionable services the same provisions that it adopted for broadband PCS?

21. In recent auctions, the Commission has allowed applicants to file their applications either manually or electronically. The Commission believes that requiring all applications to be filed electronically is in the best interest of auction participants as well as members of the public interested in monitoring Commission auctions.

22. The Commission therefore tentatively concludes to amend §§ 1.2105(a) and 1.2107(c) of the rules to require that all short-form and long-form applications be filed electronically beginning January 1, 1998. The Commission recognizes that there is a need for a period of time before a comprehensive electronic filing requirement becomes effective in order for bidders to prepare and be completely comfortable with this process. It believes that the effective date proposed here will provide potential bidders with adequate time in which to adapt to electronic filing requirements. The Commission seeks comment on this tentative conclusion.

23. Section 1.2105(b) of the Commission's rules addresses modifications and amendments to FCC Form 175. Specifically, § 1.2105(b)(2) provides that bidders may make minor changes or correct minor errors in the FCC Form 175 application, but major amendments may not be submitted after the initial application deadline. This section further provides that the Commission will classify all amendments as major or minor pursuant to service-specific rules. The Commission proposes to amend the general auction rules to define major amendments to FCC Form 175 uniformly for all auctionable services. It proposes at a minimum to consider any change in ownership that constitutes a change in control to be a major amendment. It also proposes to consider application amendments that show a change in an applicant's size which would affect its eligibility for small business provisions to be a major amendment. The Commission also seeks comment on which other kinds of changes should be deemed major, and which should be deemed minor. For example, how should it treat changes to the licenses selected in simultaneous multiple round auctions? In previous auctions, applicants have claimed that they made mistakes in their license selection and have requested that the Commission allow them to add or delete license selections during the resubmission period. While the Commission has generally refused to grant these requests in order to prevent collusive conduct or gaming that would reduce the competitiveness of the auction, there may be some circumstances in which the competitiveness of the auction might be enhanced by allowing applicants to add licenses to their FCC Form 175 applications. The Commission therefore ask commenters to consider whether an amendment to add licenses should be permissible as a minor amendment. If so, it also asks whether such an amendment should be permitted only until the deadline for submitting upfront payments, because after that point the risks of gaming in the auction

increase due to the availability of information concerning each bidder's eligibility. For example, should an applicant be permitted to add a license designation to its short-form application only if that license already has been designated by two or more applicants? The Commission seeks comment on each of these proposals.

24. Currently, the general competitive bidding rules do not set forth any ownership disclosure requirements for auction applicants on their short-form applications. Service-specific rules, however, require varying degrees of specific ownership information from applicants. For example, both the narrowband PCS and broadband PCS rules require detailed ownership disclosure from all auction applicants. These rules also state additional requirements for applicants claiming designated entity status. On both the short-and long-form applications for narrowband PCS, applicants must submit a list of (1) any business five percent or more whose stock, warrants, options, or debt securities are owned by the applicant, (2) any business which holds a five percent or more interest in the applicant or any business in which a five percent or more interest is held by another company which holds a five percent interest in the applicant, (3) entities holding a five percent or more interest in the applicant, and (4) partners in a partnership. Short-form applicants claiming designated entity status also are required to list all control group members and provide a calculation of gross revenues and personal net worth. Although the broadband PCS requirements are very similar to those for narrowband PCS, the Commission has recently amended the broadband PCS application requirements to make them less burdensome on applicants. Thus, broadband PCS applicants are required to disclose on both short-form and long-form applications a list of (1) any business, holding or applying for CMRS or PMRS licenses, five percent or more of whose stock, warrants, options or debt securities are owned by the applicant, (2) any party which holds a five percent or more interest in the applicant, or any entity holding or applying for CMRS or PMRS licenses in which a five percent or more interest is held by another party which holds a five percent or more interest in the applicant, (3) any person holding five percent or more of each class of stock, warrants, options, or debt securities, and (4) in the case of partnerships, the name and address of each partner. Broadband PCS applicants that claim designated entity status must also identify control group members and provide net asset and gross revenues figures. This information was necessary at the short-form stage for the C and F blocks because participation in these blocks was limited to entities below a net asset and gross revenue threshold.

25. The Commission continues to believe that detailed ownership information is necessary to ensure that applicants claiming designated entity status in fact qualify for such status, and to ensure compliance with spectrum caps and other ownership limits. Disclosure of ownership information also aids bidders by providing them with information about their auction competitors and alerting them to entities subject to the anti-collusion rules. A standard disclosure requirement, however, would avoid the variation and possible inconsistency found in the current service-specific ownership disclosure requirement. Thus, the Commission seeks comment on whether it should adopt standard ownership disclosure requirements for all auctionable services that are similar to the current rules for broadband PCS. It also seeks comment on what ownership information should be required. Finally, the Commission asks commenters to address whether ownership disclosure should vary depending on whether an applicant is applying for special provisions, such as bidding credits or installment payments.

26. In addition, the Commission also proposes to adopt a uniform reporting requirement for all applicants claiming designated entity status. Specifically, it proposes to adopt a reporting requirement similar to that in the 900 MHz SMR rules. That rule, unlike the broadband PCS rule, focuses on affiliates and their gross revenues rather than more complex control group equity structures. In keeping with its proposal to adopt the simpler controlling principals and affiliates test, the Commission proposes an analogous reporting requirement. Therefore, it proposes that applicants claiming small business status be required to disclose on their short-form application the names of each controlling principal and affiliate and gross revenues calculations for each. On their long-form applications, they would be required to disclose any additional gross revenues calculations, any agreements that support small business status, and any investor protection agreements. The Commission seeks comment on this proposal.

27. Currently, the Commission's ownership disclosure rules require applicants to file specific ownership information, in conjunction with their FCC Form 175, prior to each auction. Similarly, at the close of each auction, winning bidders are required to file ownership information on each long-form application.

28. The Commission believes that by requiring these ownership disclosure filings, it ensures that it receives all the information necessary to evaluate an applicant's qualifications. The Commission notes, however, that these requirements could result in duplicative filings. In order to streamline the application procedure at both the short-form and long-form stage, the Commission requests comment on whether it should create a central database of licensee and bidder data, which would allow bidders to avoid repeating ownership information in each application in each auction. The Commission tentatively concludes that applicants should be able to file ownership information to apply for the first auction in which they participate and that this information should then be stored in a central database which subsequently would be updated each time applicants participate in another auction. After applying for its first auction, an applicant filing for a subsequent auction would either update the ownership information in the database, or rely on the information in the database and certify that there have been no changes. The Commission believes this approach would benefit auction applicants by reducing the time spent preparing auction applications, and it would benefit the Commission by eliminating the need to review and analyze duplicative filings. The Commission seeks comment on this approach to ownership disclosure.

29. Under the broadband PCS rules, the Commission has reserved the right to conduct random audits of applicants and licensees in order to verify information provided regarding their eligibility for certain special provisions. Such entities certify their consent to audits on their short-form applications. The Commission proposes to explicitly reserve this right for all auctionable services and seeks comment on this proposal.

30. Section 309(j)(8)(C) of the Communications Act as amended by the Telecommunications Act of 1996, requires that any deposits the Commission may require for the qualification of any person to bid in an auction shall be deposited into an interest bearing account. The Communications Act further requires that within 45 days of the auction's conclusion, the deposits of successful bidders shall be paid to the Treasury,

the deposits of unsuccessful bidders shall be returned, and all accrued interest shall be transferred to the Telecommunications Development Fund. Prior to the enactment of this provision, auction deposits were submitted to a non-interest bearing account with the Department of Treasury. Bidders who completely withdrew prior to the close of the auction could, upon written request, receive a refund of their upfront payments prior to the close of the auction.

31. It is unclear whether Congress intended, by enacting this new law, to require the Commission to change its practice of refunding upfront payments to bidders who withdraw during the course of an auction. The Commission believes that its current practice of returning the upfront payments of bidders who have completely withdrawn prior to the conclusion of competitive bidding is in the public interest as it prevents unnecessary encumbrances on the funds of auction bidders, many of whom may be small businesses, after they have withdrawn from the auction. The Commission seeks comment on this practice and whether it is consistent with the Communications Act.

32. The Commission determined in the *Competitive Bidding Second Report and Order* that, upon the conclusion of the auction, a bidder must tender a significant and non-refundable down payment to the Commission over and above its upfront payment in order to provide further assurance that the winning bidder will be able to pay the full amount of its winning bid. The Commission thus required that, within five business days after being notified that it is a high bidder on a particular license, a high bidder must submit to the Commission additional funds as are necessary to bring its total deposits up to 20 percent of its high bid(s).

33. In the *Order* accompanying this *NPRM,* the Commission modified the due date for down payments to ten business days after the issuance of a Public Notice announcing winning bidders. In this *NPRM,* the Commission proposes to retain discretion to determine the down payment amount required for each service and delegate authority to the Bureau to announce this amount in a Public Notice to be issued prior to the start of the auction. In exercising this authority, as discussed above, the Bureau will seek input from the public. The Commission continues to believe that a substantial down payment is needed to ensure that licensees have the financial capability to attract the capital necessary to deploy and operate their systems, and to protect against default. The Commission believes that giving the Bureau the discretion to determine the level of down payments for each auction would be the best way to ensure that such levels remain appropriate for developing and evolving industries. The Commission seeks comment on this proposal. It also seeks comment on whether the level of down payments which it has used in the past should be raised for some services.

34. Section 1.2109(a) of the Commission's rules provides that auction winners not eligible for installment payments are generally required to make final payment on their license(s) within a certain time following award of the license(s). Section 1.2110(e) of the Commission's rules provides that all winning bidders eligible for installment payments are required to submit a second down payment within a certain time of the license grant. These payment deadlines are announced by public notice when the Commission has granted or is prepared to grant the license(s). Where a winning bidder fails to make its final auction payment for the balance of its winning bid or fails to make the second down payment in a timely manner, it is considered in default on its license(s) and subject to the applicable default payments.

35. The Commission continues to believe that the strict enforcement of payment deadlines preserves the integrity of the auction and licensing process by ensuring that applicants have the necessary financial qualifications. In this connection, the Commission believes that the *bona fide* ability to pay demonstrated by a timely first down payment is essential to a fair and efficient auction process and, thus, it does not propose to modify the approach of requiring timely submission of first down payments. The Commission nonetheless recognizes that applicants may encounter certain difficulties when trying to arrange financing and make substantial payments under strict deadlines. In circumstances which may warrant favorable consideration of a waiver request or an extension of the payment date, it must also evaluate the fairness to other licensees who made their payment in a timely fashion. Accordingly, the Commission proposes to allow winning bidders to make their final payments or second down payments within a short period after the applicable deadline, provided that they also pay a late fee. The Commission believes that, by committing substantial capital to their license acquisition in the form of an initial down payment, winning bidders have demonstrated a *bona fide* interest in becoming a licensee, but have also incurred a substantial debt to the federal government. The Commission, therefore, seeks comment on the appropriate time period to allow late second down payments and final payments. It believes that the late payment period should be short (*e.g.,* no longer than 10 business days). The Commission tentatively concludes that, if a winning bidder misses the final payment or second down payment deadline and also fails to remit the required payment (plus the applicable late fee) by the end of the late payment period, it would be declared in default and subject to the applicable default payments. The Commission seeks comment on this tentative conclusion.

36. Additionally, the Commission seeks comment on the appropriate fee to impose for late payment. Because it believes that the late payment fee should be large enough to deter winning bidders from making late payments and yet small enough so as not to be punitive, it tentatively concludes that a late payment of five percent of the amount due is consistent with general commercial practice and provides some recompense to the federal government for the delay and administrative or other costs incurred. The Commission seeks comment on this proposal and asks that commenters proposing alternative late payment fee(s) provide a rationale for the alternative fee amount(s).

37. This proposal to allow late payments is limited to payments owed by winning bidders that have had their licenses conditionally granted or where the license grant is imminent. As indicated above, the Commission does not propose to adopt a late payment period for initial down payments that are due soon after the close of the auction. It believes it is reasonable to expect that winning bidders timely remit their initial down payments, given that is their first opportunity to demonstrate to the Commission their ability to make payments towards the licenses of interest to them. Further, if a winning bidder defaults on its initial down payment on a license, the Commission can take action under § 1.2109(b) relatively soon after the auction has closed, by, for example, re-auctioning the license or offering it to the other highest bidders (in descending order) at their final bids. Similarly, the Commission does not propose to allow any late submission of upfront payments. Allowing late submission of upfront payments would slow down the

licensing process by delaying the start of an auction.

38. Under the current rules, winning bidders that are designated entities are not required to pay their second down payment until petitions to deny filed against them are dismissed or denied. In the interim, designated entity winning bidders for the same auction with no petitions filed against them are required to submit their second down payments earlier because their licenses are ready for grant.

39. The Commission seeks comment on whether it should require all designated entities that win licenses to make their second down payments at the same time. If so, one way to implement this would be for winning bidders who have petitions to deny pending against them to submit their second down payments to the Commission to be deposited into an escrow account. If the petitions to deny are granted, the bidder would be refunded the amount of the second down payment subject to any default payments owed the Commission. If the petitions to deny are dismissed or denied, the funds would be transferred from the escrow account and applied to the balance owed by the licensee. This procedure would have the effect of ensuring that all designated entities pay their down payments in a uniform fashion, thus, reducing any potential inequities that could result from differing payment dates. It would also avoid requiring a bidder with petitioned and non-petitioned licenses to make several payments to the Commission. The Commission seeks comment, however, on whether this procedure would affect the ability of bidders that are subject to petitions to deny to access capital to make their down payments. The Commission also seeks comment on whether all non-designated entities should be required to make payment in full at the same time for the same reasons discussed in connection with designated entities.

40. Section 1.2104(g) of the rules provides that when a bidder withdraws, defaults, or is otherwise disqualified from a simultaneous multiple round auction, upfront and/or down payment amounts that the bidder has on deposit with the Commission will be applied first to the bid withdrawal and default payments owed the Commission. This rule has been interpreted to encompass upfront and/or down payment funds a bidder has on deposit for licenses won at the same auction. The Commission proposes to delete the language ''simultaneous multiple round'' from § 1.2104(g) because it believes that it should apply to other auction designs with equal force as it does to a simultaneous multiple round auction. The Commission believes strict rules regarding default payments will discourage insincere bidding, maintain the integrity of the auction and ensure that licenses end up in the hands of those parties that value them the most and have the financial capacity to provide service. It seeks comment on this proposal.

41. In the *Competitive Bidding Fifth Report and Order,* 59 FR 43062 (August 22, 1994), the Commission provided that, where the default payment cannot be determined at the time of default by a broadband PCS licensee (*e.g.* because the license has not yet been reauctioned), the Commission can obtain a deposit on the default payment to be held on deposit until such time as the final default obligation can be determined. This deposit is held by the Commission until the final default payment can be established and is paid. The purpose of this provision is to maintain the integrity of the auction by discouraging defaults on the part of bidders, encouraging bidders to make secondary or back-up financial arrangements, and ensuring that default payments are made in a timely manner. The Commission seeks comment on a proposal to modify the rules to provide for a similar default deposit for all auctionable services of at least three percent (3%) of the defaulted bid amount.

42. For the broadband PCS F block auction, the Commission amended the terms of the installment payment plans to provide for late payment fees. Thus, when licensees are late in their scheduled installment payments, the Commission will charge a late payment fee equal to five percent (5%) of the amount of the past due payment. The Commission instituted this fee because it concluded that, without it, licensees may not have adequate financial incentives to make installment payments on time and may attempt to maximize their cash flow at the government's expense by paying late.

43. The Commission seeks comment on whether it should adopt, for all auctionable services, a late payment fee on any installment payment that is overdue. The late fee could be set, for example, at a rate that is equal to five percent (5%) of the overdue payment. Such payment would accrue on the next business day following the payment due date and would be payable with the next quarterly installment payment obligation. This fee would be assessed for each quarterly payment submitted late. Payments would be applied in the following order: late charges, interest charges, principal payments. Thus, a licensee who makes payment after the due date but does not make payment sufficient to pay the late fee, interest, and principal, will be deemed to have failed to make full payment and will be subject to license cancellation pursuant to the Commission's rules. The Commission tentatively concludes that such a late payment provision is necessary to ensure that licensees have an adequate financial incentive to make installment payments on time. It seeks comment on this tentative conclusion and notes that licensees would continue to have 90 days before a payment is deemed delinquent but a late payment fee would be assessed during this period.

44. Section 1.2110(e)(4)(ii) of the Commission's rules provides that interest that accrues during a grace period will be amortized over the remaining term of the license. Amortizing interest in this way has the effect of changing the amount of all future payments and requiring the Commission, or its designee, to generate a new payment schedule for the license. Changing the amount of the installment payment has, in turn, created uncertainty about the interest schedule, and increased the administrative burden by requiring formulation of a new amortization schedule.

45. Section 1.2110(e)(4)(ii) also states that in considering whether to grant a request for a grace period, the Commission may consider, among other things, the licensee's payment history, including whether the licensee has defaulted before, how far into the license term the default occurs, the reasons for default, whether the licensee has met construction build-out requirements, the licensee's financial condition, and whether the licensee is seeking a buyer under an authorized distress sale policy. Under this rule, licensees are required to come before the Commission with a filing as well as financial information such as an income statement or balance sheet, in the case of financial distress, to provide the necessary information for the Commission to make its ruling. Licensees are then required to wait for a ruling by the Commission before knowing whether a grace period has been granted or denied. This could place licensees in a position of uncertainty if they are seeking to restructure other debt contingent upon the results of the Commission's grace period ruling.

46. In order to avoid the potential problems associated with changing the amount of installment payments, the Commission proposes to amend

§ 1.2110(e)(4)(ii) to require all current licensees who avail themselves of the grace period to pay all fees, all interest accrued during the grace period, and the appropriate scheduled payment with the first payment made following the conclusion of the grace period. It seeks comment on this proposal.

47. Further, to simplify the grace period procedures, the Commission proposes to revise the method by which grace periods are provided. The Commission or its designee may not have the necessary resources to evaluate a licensee's financial condition, business plans, and capital structure proposals. Therefore, instead of considering grace period requests, the Commission could institute the following system: If a licensee did not make payment on an installment obligation within 90 days of its due date, then the licensee would automatically receive an additional 90 days to make that payment contingent upon receipt of the 5 percent late payment fee proposed above plus an additional late payment fee of 10 percent. The late payment fee that the Commission proposes here is greater than the 5 percent late payment fee that it proposes for non-grace-period late installment payments because it envisions the grace period as an extraordinary remedy and wish to encourage licensee to seek private market solutions to their capital problems before the payment due date or, at a minimum, within 90 days of the due date. Under this proposal licensees would not be required to submit a filing to receive a grace period; however, licensees would be expected to resume payments after the 90 day grace period is over. This approach would also be consistent with the standard commercial practice of establishing late payment fees and developing financial incentives for licensees to resolve capital issues before payment due dates. Payments from the licensee would be applied to late fees, interest, and principal, in that order. Any licensee that did not make full payment of all amounts, including a total late payment fee of 15 percent, within 180 days of the payment due date would have its license automatically canceled as provided in § 1.2110(e)(4)(ii). The Commission seeks comment on this method of providing for an automatic grace period.

48. The Commission also seeks comment on whether licensees that default on installment payment obligations should be subject to the default payment provisions outlined in § 1.2104(g), *i.e.*, the difference between the defaulting winner's bid and the subsequent winning bid plus 3 percent of the lesser of these amounts. Sections 1.2110(e)(1) and 1.2110(e)(2) provide that applicants eligible for installment payments will be liable for such a payment if they fail to remit either their initial or final down payment. Section 1.2110(e)(4)(iii) provides that following the expiration of any grace period without successful resumption of payment, or upon denial of a grace period request, or upon default with no such request submitted, the license of an entity paying on an installment basis will be canceled automatically. This section does not state, however, that under these circumstances the licensee will be liable for the default payment set forth in § 1.2104(g). Furthermore, the Commission has been asked to address the issue of cross default in the context of installment payments. A cross-default provision would specify that if a licensee defaults on one installment payment loan, it would also default on any other installment payment loans it holds. These provisions are standard in credit-related agreements.

49. The Commission tentatively concludes that a licensee that makes the necessary down payments but defaults on installment payments should not be exempt from the default payment provisions of § 1.2104(g). Licensees that default at any point in the auction process, either before licenses are issued or during the installment payment period, reduce the efficiency of the licensing process. A default, regardless of when it occurs, makes it necessary for the Commission to incur the costs of reauctioning the license, and the default delays the deployment or continuation of service in the affected market. The Commission believes that imposing the default payment of § 1.2104(g) on all defaulting licensees would serve to discourage defaults and encourage licensees to find private market solutions for default situations in addition to covering the cost the government must incur to reauction the license. The Commission seeks comment on this tentative conclusion and on the appropriate method for calculating default payments when defaults occur during the license term.

50. The Commission seeks comment on whether it should cross default its installment payment plan loans with other installment payment plan loans to the same licensee. If adopted, should a cross default provision apply across services? For example, if a licensee, with both SMR and broadband PCS licenses, defaults on one of its PCS licenses, should the Commission consider pursuing default remedies against all PCS and SMR licenses? Instead, should the Commission pursue default remedies against the single license only? What factors should influence its decision to pursue cross-defaults? Should cross-defaults be applied automatically or on a case-by-case basis? The Commission also seeks comment, in general, on what remedies are appropriate when licensees default.

51. Congress has directed the Commission to ''design and test multiple alternative methodologies for auction designs.'' The Commission is interested in reducing the length of the auctions without sacrificing the economic efficiency of the assignment process. It seeks comment, in general, on how it can speed the auctions (and in particular the simultaneous multiple round auctions). For example, how could the current procedural rules for simultaneous multiple round auctions be modified to meet this objective, or what new designs might be used to efficiently allocate numerous licenses?

52. The Commission believes that one way complex auctions of multiple licenses could proceed more quickly would be to modify the current simultaneous multiple round auction to allow bidding on a continuous basis within a combined bid submission/bid withdrawal period. This would give bidders immediate feedback on new high bids, withdrawn high bids and minimum accepted bids, and provide them with the opportunity to move the auction along more quickly. Under the current simultaneous multiple round auction rules, each round of bidding contains a discrete bid submission period and a bid withdrawal period. The rules permit bidders to place bids once within the submission period of the round on licenses that they are eligible to bid on, and they may withdraw high bids only during the bid withdrawal period. This requires bidders to wait until the end of the round to determine their status. An open, continuous bidding round—in which bidders would know when their bid has been exceeded and would be free to bid again—could reduce the delay inherent in the current design. Therefore, the Commission proposes to amend the general rules to provide for such ''real time'' bidding as another design feature for electronic multiple round auctions.

53. The Commission recognizes, however, that it may be difficult for bidders to react quickly enough to ensure that in each bidding round they make new high bids on the necessary percentage of their bidding eligibility to meet their activity requirement. Therefore, it proposes that after each fixed period of real time bidding (when

only standing high bids from the previous round and new high bids from the current round count in determining the bidder's activity level) the Commission would open a discrete closed bidding period, when bidders would be able to submit valid bids (bids that meet or exceed the minimum accepted bid) at the end of the ''real time'' bidding to ensure that they have the opportunity to meet their activity requirements for the round. Following the discrete closed bidding period, the Commission would post the final round results for the period and make all bids available to the public. By allowing a discrete period of time for bidders to make valid bids at the end of the round, the Commission would reduce the risks associated with real time electronic bidding.

54. Because ''real time'' auctions are a variation of the simultaneous multiple round auction design established in the rules, the Commission tentatively concludes that many of the same procedures should apply. These include: Upfront payments to determine eligibility, activity requirements that apply to each round, minimum bid increments, and a stopping rule. However, the Commission believes that separate rules would be required on certain issues. The Commission seeks comment on issues that arise when the bid submission and bid withdrawal periods are combined, such as how withdrawn bids should be treated when calculating current activity. For example, whether a bid that is placed and withdrawn in one round should count as activity, and whether a withdrawn bid will negate the status of that bid as activity in the current round as well as the status as standing high bid.

55. In addition, the Commission seeks comment on the appropriate length for the real time bidding rounds. It seeks comment on what measures it can take to assure bidders that they will have enough time to determine their bidding strategies with ''real time'' bidding. In particular, the Commission seeks comment on the impact of ''real time'' bidding on small businesses, generally, and particularly on their ability to process bid information during the course of a single round.

56. Currently, § 1.2104(d) of the rules states that the Commission may establish *suggested* minimum opening bids. In the *Competitive Bidding Second Report and Order,* the Commission noted that if only two or three applicants applied to bid for a valuable license, it might set a reservation price. A reservation price is a price below which a license subject to auction will not be awarded. The Commission provided the option of setting a reservation price in order to prevent a license from being awarded under circumstances where there would be little competition among bidders and significant incentives to collude.

57. The Commission proposes to amend § 1.2104 to specify that it may establish minimum opening bids, rather than suggested minimum opening bids. Such a rule has been adopted in service-specific rules. The Commission proposes to amend the general competitive bidding rules to allow it to establish a minimum opening bid because it believes that a minimum opening bid can serve some of the same purposes as a reservation price. A minimum opening bid increases the likelihood that the public receives fair market value for the spectrum being auctioned and can also help an auction move more swiftly. The Commission seeks comment on this proposal.

58. A bid increment is the amount or percentage by which a bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current round. The Commission determined in the *Competitive Bidding Second Report and Order* that it would reserve the right to specify minimum bid increments in dollar terms as well as in percentage terms. The Commission reasoned that imposing a minimum bid increment speeds the progress of the auction and, along with activity and stopping rules, helps to ensure that the auction comes to closure within a reasonable period of time. It did not reserve the discretion to specify maximum bid increments.

59. Whereas the minimum bid increment speeds the auction process, a maximum bid increment could prevent bidders from placing bids that are significantly higher than the minimum acceptable bid. This type of bidding is known as ''jump bidding.'' Some theoretical literature suggests that bidders could use jump bidding to manipulate the auction process and potentially reduce efficiency of the auction. Jump bidding complicates bidding strategy and denies bidders information about the number of bidders who would be willing to pay prices between the minimum acceptable bid and the jump bid. In the absence of information about the bidders who would be willing to participate at intermediate bids, other bidders might feel compelled to shade their bids more than they otherwise would. This behavior is an attempt to avoid the ''winner's curse,''—the phenomenon of a bidder winning only because he or she has overestimated the value of the license. A general principle of auction theory has it that the auction mechanisms which perform the best are those which are able to induce bidders to reveal the most information. To the extent that jump bids enable bidders to conceal information, the phenomenon moves the process away from the informational advantages of an ascending bid (multiple round) auction in the direction of a first-price sealed bid (single round) auction. The Commission seeks comment on whether it should retain the discretion to employ a maximum bid increment if it finds that jump bidding is impairing the auction process.

60. Under the current rules, if a high bid is withdrawn prior to the close of a simultaneous multiple round auction, the Commission will impose a payment equal to the difference between the withdrawn bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid. If a winning bidder defaults after the close of an auction, the defaulting bidder will be required to pay the foregoing payment plus an additional payment of 3 percent of the subsequent winning bid or its own withdrawn bid, whichever is lower.

61. To help bidders avoid mistaken bids that could expose them to liability for bid withdrawal payments, the Commission has enhanced its electronic bidding software. The software now displays a warning screen to bidders when they try to place a bid that is far in excess of the minimum accepted bid. Bidders must affirmatively override this mistaken bid warning if they wish to place the bid. For example, if the minimum accepted bid for a license is $10,000, an excessive bid warning will appear if a bidder attempts to place a bid of $100,000 or more.

62. The Commission has also recently addressed the issue of how the bid withdrawal payment rules apply to bids that are mistakenly placed and subsequently withdrawn. In *Atlanta Trunking,* the Commission stated that, while it believes that in some cases full application of the bid withdrawal payment provisions could impose an extreme and unnecessary hardship on bidders, it may be extremely difficult for the Commission to distinguish between ''honest'' erroneous bids and ''strategic'' erroneous bids. The Commission held that in cases of erroneous bids, some relief from the bid withdrawal payment requirement appears necessary. Thus, it waived the bid withdrawal rules as they apply to 900 MHz SMR and broadband PCS and applied the following

guidelines: If at any point during an auction a mistaken bid is withdrawn in the same round in which it was submitted, the bid withdrawal payment should be the greater of (a) the minimum bid increment for that license and round, or (b) the standard bid withdrawal payment calculated as if the bidder had made a bid at the minimum accepted bid. If a mistaken bid is withdrawn in the round immediately following the round in which it was submitted, and the auction is in Stage I or Stage II, the withdrawal payment should be the greater of (a) two times the minimum bid increment during the round in which the mistaken bid was submitted or (b) the standard withdrawal payment calculated as if the bidder had made a bid at one bid increment above the minimum accepted bid. If the mistaken bid is withdrawn two or more rounds following the round in which it was submitted, the bidder should not be eligible for any reduction in the bid withdrawal payment. Similarly, during Stage III of an auction, if a mistaken bid is not withdrawn during the round in which it was submitted, the bidder should not be eligible for any reduction in the bid withdrawal payment.

63. In response to a commenter's request, the Commission recently modified the broadband PCS rules for the D, E, and F blocks to establish provisions governing the withdrawal of erroneous bids. It thus incorporated the guidelines fashioned in *Atlanta Trunking* into these rules. The Commission now proposes to change §§ 1.2104 and 1.2109 of the rules such that similar provisions adopted for the broadband PCS D, E, and F block auction will apply to all auctions. The Commission seeks comment on this proposal.

64. The current auction rules allow a high bidder on a license to withdraw its bid at any point during the auction, subject to a bid withdrawal payment. The Commission has recognized that allowing bid withdrawals facilitates efficient aggregation of licenses and pursuit of efficient backup strategies as information becomes available during the course of an auction. It also is cognizant that allowing withdrawals also risks encouraging insincere bidding and allowing the use of withdrawals for anti-competitive strategic purposes, such as signaling other bidders. To guard against such abuses, the Commission put in place a withdrawal payment equal to the difference between the withdrawn bid and the amount of the winning bid the next time the license is offered by the Commission. The Commission seeks comment on whether it should exercise its authority to limit withdrawals, and if so, under what circumstances. Should the Commission consider limiting the number of withdrawals that a bidder is permitted to make in an auction, the number of rounds in which withdrawals can be made, or the number of withdrawals permitted with respect to a particular license? Are there other ways to address concern about strategic withdrawals without unduly affecting bidders' ability to efficiently aggregate licenses? For example, should the Commission consider increasing the withdrawal payment or changing its structure?

65. Under § 1.2109(b) of the rules, if a winning bidder withdraws its bid after the auction has closed or fails to remit the required down payment within the requisite period after the Commission has announced high bidders, the bidder will be deemed to have defaulted. This rule also provides that, in such event, the Commission may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. In the Order accompanying this NPRM, the Commission modified the down payment due date to ten business days after the Commission has issued a Public Notice announcing winning bidders, and accordingly adjusted the period within which the Commission has discretion to offer the defaulted license to bidders in the original auction to the same ten-day period.

66. When the Commission first adopted rules governing the licensing of defaulted licenses, it stated that ''[i]n the event that a winning bidder in a simultaneous multiple round auction defaults on its down payment obligations, the Commission will generally re-auction the license either to existing or new applicants.'' Noting that in some circumstances the costs of conducting a re-auction may not always be justified, the Commission reserved the discretion in cases in which the winning bidder defaults on its down payment obligation to offer a defaulted license to the highest losing bidders (in descending order of their bids) at their final bids if ''only a small number of relatively low value licenses are to be re-auctioned * * *.''

67. Having now developed a computerized auction system and conducted numerous auctions, the Commission believes that the costs of a re-auction, even for a small number of relatively low value licenses, would be minimal. Use of regularly scheduled quarterly auctions will also ensure rapid reauction. Further, re-offering a defaulted license to the next highest bidder (in descending order) at their final bids may not ensure that the license will be awarded to the bidder that values it the most highly. When more than one license is being auctioned, aggregation strategies may shift during the course of the auction, affecting interest of individual bidders.

68. The Commission asks commenters to address whether the Commission should (1) retain § 1.2109(b) in its current form, (2) modify the rule so that the Commission retains the discretion regardless of when a default occurs to offer the license only to the second highest bidder at its bid price (3) modify the rule so that the Commission retains discretion to offer a license on which the winning bidder has defaulted on its down payment obligation only to the second highest bidder, (4) modify the rule so that the Commission retains discretion to offer a defaulted license to the highest losing bidders (in descending order of their bids), but only at the final bid level of the second highest bidder, (5) modify the rule to require re-auction of defaulted licenses regardless of when a default occurs. Moreover, it seeks comment on whether it should modify the rule to codify the statement in the *Competitive Bidding Fifth Report and Order* that where there are a relatively small number of low value licenses, and only a short time has passed since the initial auction, the Commission may choose to offer the license to the highest losing bidder because the cost of conducting another auction may exceed the benefits. Commenters favoring this should indicate the parameters that the Commission should employ in determining which licenses might be re-offered to bidders in the original auction.

69. The Commission adopted rules to prohibit collusion in the *Competitive Bidding Second Report and Order* because it was concerned that collusive conduct by bidders prior to or during an auction could undermine the competitiveness of the bidding process and prevent the formation of a competitive post-auction market structure. In general, bidders are required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. With certain exceptions, all such arrangements must have been entered into prior to the filing of short-form applications. After such applications are filed and prior to the time that the winning bidder has made its required

down payment, all bidders are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application.

70. As the Commission's auction process has evolved, it has clarified the rules prohibiting collusion. Early on in the auction process, for example, the Commission established exceptions to the anti-collusion rules in an attempt to allow applicants greater flexibility to form agreements with other applicants and thereby acquire the capital necessary to bid successfully for licenses. Specifically, it amended the anti-collusion rules to permit a holder of a non-controlling attributable interest in an applicant to obtain an ownership interest in or enter into a consortium arrangement with another applicant for a license in the same geographic area, provided that the attributable interest holder certifies to the Commission that it has not communicated and will not communicate with the applicant or any one else information concerning the bids or bidding strategies (including which licenses an applicant will or will not bid on) of more than one applicant for licenses in the same geographic area in which it holds an ownership interest or with which it has a consortium arrangement. Additionally, Commission staff has issued public notices and letters that seek to interpret and clarify these rules.

71. The exception outlined above was adopted in order to facilitate the flow of capital to applicants by enabling parties to make investments in multiple applicants for licenses in the same geographic license areas. Having gained experience with implementing its anti-collusion rules, the Commission now believes that this exception is difficult to apply in a business setting. Entities are reluctant to invest in multiple applicants if they cannot obtain information about business plans and strategies, which often necessarily reflect bidding strategies or bids.

72. The Commission therefore proposes to modify this provision of the anti-collusion rule to permit entities to invest in multiple applicants if the original applicant withdraws from the auction. Under this proposal, a holder of a non-controlling attributable interest in an applicant would be permitted to obtain an ownership interest in or enter into a consortium arrangement with another applicant for a license in the same geographic area, provided that the original applicant has dropped out of the auction and is no longer placing bids, and the attributable interest holder certifies to the Commission that it did not communicate with the new applicant prior to the date that the original applicant withdrew from the auction. The Commission believes that this proposal will encourage entities to invest in bidders if their original applicant fails to complete the auction and will give such entities the flexibility needed to do so. Furthermore, it believes that prohibiting any communication with other applicants prior to when the original applicant withdraws from the auction will prevent investors from exerting pressure on smaller bidders to withdraw in exchange for teaming up with other larger bidders. The Commission seeks comment on this proposal.

73. In the proceeding involving service-specific auction rules for paging services, several commenters requested that the Commission establish rules that do not have a chilling effect on ongoing business acquisitions and transactions. Under the current rules, they contended, discussions between bidders for the same license area regarding a business merger or acquisition may be construed as discussions of bidding or bidding strategy—thus violating the anti-collusion rules. They proposed that the Commission grant a ''safe harbor'' for certain situations, such as in services where there are incumbent operators, permitting ongoing discussions among bidders concerning mergers, acquisitions or intercarrier arrangements to proceed during the period in which the anti-collusion rules are applicable. Some suggested a system in which respective bidder personnel certify that persons involved in such discussions are not discussing bidding strategy or otherwise divulging bidder information to each other in violation of the anti-collusion rules. Absent a showing that a certification is false, necessary discussions in the ordinary course of business would be permitted during the course of the auction. The Commission seeks comment on this proposal concerning a safe harbor for discussions of certain non-auction business matters and it seeks comment on any other changes to the rules prohibiting collusion they believe are warranted. Finally, it seeks comment on the public notices and letters issued by Commission staff seeking to interpret and clarify these rules.

74. In 1989, the Commission adopted rules permitting certain license applicants, under prescribed conditions, to construct their facilities prior to license grant. It subsequently determined that part 22 and part 90 commercial mobile radio service applicants should be subject to the same rules governing the construction of facilities prior to the grant of pending applications. The Commission later clarified that such rules would extend to successful broadband PCS bidders that had filed a long-form application. Thus, 35 days after the date of the Public Notice announcing the broadband PCS A and B Block Form 600 applications accepted for filing, the parties has filed those applications were permitted, at their own risk, to commence construction of facilities, provided that (1) no petitions to deny the application had been filed; (2) the application did not contain a request for a rule waiver; (3) the applicant complied fully with the antenna structure provisions of §§ 24.416 and 24.816 of the Commission's rules, including FAA notification, and Commission filing requirements; (4) the application indicated that the facilities would not have a significant environmental effect (*see* 47 CFR 24.413(f) and 24.813(f)); and (5) international coordination of the facilities was not required.

75. The Commission proposes to extend the pre-grant construction rules set forth in 47 CFR 22.143 to all auction winners, regardless of whether petitions to deny have been filed against their long-form applications. It further proposes to permit each auction winner to begin construction of its system, at its own risk, upon release of a Public Notice announcing the acceptance for filing of post-auction long-form applications. The Commission tentatively concludes that to do so would further the public interest by expediting, in most cases, the initiation of service to the public. It believes that allowing pre-grant construction furthers the statutory objective expressed in the Communications Act in section 309(j)(3)(A) of the rapid deployment of new technologies, products, and services for the benefit of the public. Pre-grant construction would be subject to any service-related restrictions, including but not limited to antenna restrictions, environmental requirements, and international restrictions. Finally, the Commission emphasizes that any applicant engaging in pre-grant construction activity would do so entirely at its own risk, and the Commission would not take such activity into account in ruling on any petition to deny although it acknowledges that this could result in significant economic loss to applicants. The Commission seeks comment on this proposal.

Procedural Matters and Ordering Clauses

76. The Initial Regulatory Flexibility Analysis (IRFA), as required by section 604 of the Regulatory Flexibility Act, is set forth in Appendix C of the *NPRM*. Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981). Written public comments are request on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *NPRM*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief counsel for Advocacy of the Small Business Administration in accordance with the paragraph 603(a) of the Regulatory Flexibility Act.

77. *Ex Parte Presentations.* This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

78. *Authority.* This action is taken pursuant to sections 4(i), 5(b), 5(c)(1), 303(r), and 309 (j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b), 156(c)(1), 303(r), and 309(j).

79. *Comment.* This *NPRM* contains either new or modified information collections. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following revised information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. In addition to filing comments on the new or modified collection with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via the Internet to dconway@fcc.gov.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–7233 Filed 3–20–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–93, RM–9013]

Radio Broadcasting Services; Hardinsburg, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Keith L. Reising seeking the allotment of FM Channel 245A to Hardinsburg, Indiana, as that community's first local aural transmission service. Coordinates used for Channel 245A at Hardinsburg are 38–30–42 and 86–22–22.

DATES: Comments must be filed on or before May 5, 1997, and reply comments on or before May 20, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties must serve the petitioner, as follows: Keith L. Reising, 1680 Hwy 62 NE, Corydon, IN 47112.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–93, adopted March 5, 1997, and released March 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–7253 Filed 3–20–97; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 97–92, RM–9032]

Radio Broadcasting Services; Mukwonago, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Faith Congregation proposing the allotment of Channel 287A to Mukwonago, Wisconsin, as that community's first local broadcast service. There is a site restriction 11.8 kilometers (7.3 miles) west of the community at coordinates 42–54–15 and 88–27–55.

DATES: Comments must be filed on or before May 5, 1997, and reply comments on or before May 20, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, DC. 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–92, adopted March 5, 1997, and released March 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.