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## Part II

# Federal Communications Commission

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**Auction of Licenses For Fixed Point-to-Point Microwave Services in the 38.6 to 40.0 GHz (39 GHz) Band; Auction Notice and Filing Requirements for 2,450 Licenses in the 39 GHz Band; Auction Scheduled for April 12, 2000; Minimum Opening Bids and Other Procedural Issues; Notice**

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-99-30-B (Auction No. 30); DA 00-112]

### Auction of Licenses for fixed Point-to-Point Microwave Services in the 38.6 to 40.0 GHz (39 GHz) Band; Auction Notice and Filing Requirements for 2,450 Licenses in the 39 GHz Band; Auction Scheduled for April 12, 2000; Minimum Opening Bids and Other Procedural Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction and procedures governing the auction of licenses for fixed point-to-point microwave services in the 38.6 to 40.0 GHz band ("Auction No. 30"), scheduled to commence on April 12, 2000. As discussed in greater detail herein, Auction No. 30 will be composed of 2,450 licenses in the 38.6-40.0 GHz bands ("39 GHz band").

Fourteen 100 megahertz licenses (paired 50 megahertz channel blocks) will be offered in each of 172 Economic Areas (EAs) and 3 EA-like areas, covering the United States, the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands and Puerto Rico.

**DATES:** Auction No. 30 is Scheduled for April 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released January 21, 2000 ("Auction Public Notice"). The complete text, including all attachments, of the *Auction Public Notice* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20035, (202) 857-3800. It is also available on the Commission's website at <http://www.fcc.gov/wtb/auctions>.

## I. General Information

### A. Introduction

1. The *Auction Public Notice* announces the procedures and minimum opening bids for the upcoming auction of licenses for fixed point-to-point microwave services in the

38.6 to 40.0 GHz band ("Auction No. 30"). On November 23, 1999, the Wireless Telecommunications Bureau ("Bureau") released a Public Notice, seeking comment on the establishment of reserve prices or minimum opening bids for Auction No. 30, in accordance with the Balanced Budget Act of 1997. See "Auction of Licenses for Fixed Point-to-Point Microwave Services in the 38.6 to 40.0 GHz ("39 GHz) Band Scheduled for April 11, 2000; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures," *Public Notice*, 64 FR 70708 (December 17, 1999) ("*39 GHz Comment Public Notice*"). See also Section 3002(a), Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 251 (1997) ("Budget Act"); 47 U.S.C. 309(j)(4)(F). In addition, the Bureau sought comment on a number of procedures to be used in Auction No. 30. See *39 GHz Comment Public Notice* at 2-3. The Bureau received seven comments and four reply comments in response to the *39 GHz Comment Public Notice*.

#### i. Background of Proceeding

2. In March 1997, the Federal Communications Commission ("Commission") released a *Memorandum Opinion and Order* that modified the interim rules for fixed point-to-point microwave services in the 39 GHz band. See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Memorandum Opinion and Order*, 62 FR 14015 (March 25, 1997) ("*Memorandum Opinion and Order*"). On November 3, 1997, the Commission released a *Report and Order and Second Notice of Proposed Rule Making* that revised the licensing and technical rules for the fixed point-to-point microwave service in the 39 GHz band, and dismissed certain 39 GHz applications and amendments thereto that had been held in abeyance. See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Report and Order and Second Notice of Proposed Rule Making*, 63 FR 6079 (February 6, 1998) ("*Report and Order and Second NPRM*"). On July 29, 1999, the Commission released a *Second Memorandum Opinion and Order* that addressed pleadings filed concerning these two Commission orders. See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Memorandum Opinion and Order*, 64 FR 59663 (November 3, 1999) ("*Second Memorandum Opinion and Order*"). In the *Second Memorandum Opinion and*

*Order*, the Commission revisits the 39 GHz band service areas, channelization plan, performance requirements, licensing rules and disposition of pending applications, and affirms application of the standard method for calculating unjust enrichment payments on a pro rata basis.

#### ii. Scheduling

3. Parties responding to the *39 GHz Comment Public Notice* raise several reasons for delaying the auction. Commenters contend that Auction No. 30 is scheduled to begin too close in time to the anticipated start date of the auction in the 746-764 MHz and 776-794 MHz bands ("700 MHz bands"). They argue that companies interested in acquiring both 39 GHz and 700 MHz band spectrum will be forced to prepare for two auctions simultaneously, effectively prohibiting small and rural telecommunications companies from participating in one of the auctions. Commenters therefore contend that Auction No. 30 should be postponed. We disagree. We believe that the proposed schedule provides sufficient time for potential bidders interested in acquiring both 39 GHz and 700 MHz band spectrum to analyze availability and due diligence issues. We therefore adopt, with a slight modification, our proposed auction schedule. Specifically, we will move the auction start date from April 11, 2000 to April 12, 2000.

#### iii. Licenses To Be Auctioned

4. The licenses available in this auction consist of fourteen 100 megahertz licenses (paired 50 megahertz channel blocks) in each of 172 Economic Areas (EAs) and 3 EA-like areas, covering the United States, the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands and Puerto Rico.

## B. Rules and Disclaimers

### i. Relevant Authority

5. Prospective bidders must familiarize themselves thoroughly with the Commission's Rules relating to the 39 GHz band, contained in Title 47, part 101 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, part 1 of the Code of Federal Regulations.

6. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in the *Memorandum Opinion and Order* in ET Docket No. 95-183, 62 FR 14015 (March 25, 1997); the *Report and Order and Second Notice of Proposed Rule Making*

in ET Docket No. 95–183, 63 FR 6079 (February 6, 1998); the *Memorandum Opinion and Order* in ET Docket No. 95–183, 64 FR 59663 (November 3, 1999).

7. The terms contained in the Commission's Rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC Auctions World Wide Web site at <http://www.fcc.gov/wtb/auctions>. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314–3070.

ii. Prohibition of Collusion

8. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications, and ends on the down payment due date. Bidders competing for the same license(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

9. The Bureau, however, cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an

investigation when warranted. In Auction No. 30, for example, the rule would apply to any applicants bidding for the same EA. Therefore, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements *before* filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. By signing their FCC Form 175 short form applications, applicants are certifying their compliance with 47 CFR 1.2105(c). In addition, 47 CFR 1.65 requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. *See* 47 CFR 1.65. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

iii. Due Diligence

10. Potential bidders should also be aware that certain applications (including those for modification), waiver requests, petitions to deny, petitions for reconsideration, and applications for review are pending before the Commission that relate to particular applicants or incumbent licensees. In addition, certain decisions reached in this proceeding are subject to judicial appeal and may be the subject of additional reconsideration or appeal. We note that resolution of these matters could have an impact on the availability of spectrum for EA licensees in the 39 GHz band. In addition, while the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

11. Potential bidders are solely responsible for investigating and evaluating the degree to which such pending matters may affect spectrum availability in areas where they seek EA licenses. To aid potential bidders, Attachment B to the *Auction Public Notice* lists matters pending before the Commission that relate to licenses or applications in the 39 GHz band. The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect spectrum availability in the 39 GHz band.

12. Copies of pleadings from pending cases relating to the 39 GHz band identified in Attachment B to the *Auction Public Notice* are available for public inspection and copying during normal reference room hours at: Office of Media Relations (OMR), Reference Operations Division, 445 Twelfth Street, SW, Room CY–C314, Washington, DC 20554.

13. In addition, potential bidders may research the Bureau's licensing databases on the World Wide Web in order to determine which frequencies are already licensed to incumbent licensees. Licensing records for the 39 GHz band are contained in the Bureau's Universal Licensing System and may be researched on the Internet at <http://www.fcc.gov/wtb/uls> by selecting the "License Search" button in the left frame. Potential bidders may query the database online and download a copy of their search results if desired. The Bureau recommends that potential bidders select the "Frequency" option under License Search, specify the desired frequency, and use the "GeoSearch" button at the bottom of the screen to limit their searches to a particular geographic area. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the bottom right-hand corner of the License Search screen.

14. The Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

15. We remind potential bidders that the National Telecommunications and Information Administration (NTIA) has reviewed the *Memorandum Opinion and Order* addressing the 39 GHz band and provides related comments. *See GHz Comment Public Notice*, Attachment B.

16. The Federal Communications Commission and the Department of Industry of Canada have signed an interim arrangement ("Arrangement") regarding sharing between broadband wireless systems in the 39 GHz band along the U.S. and Canadian border. This Arrangement applies to both new facilities and facilities in existence prior to the date of the arrangement. The full text of the Arrangement has been placed on file at the International Bureau Reference Room CY–A257, located on

the Court Yard level of 445 12th Street, S.W. Copies are also available from the International Transcription Service at (202) 857-3800 and can be downloaded from the Commission's International Bureau Internet site at <http://www.fcc.gov/ib/pnd/agree>.

17. Potential bidders should direct questions regarding the search capabilities described above to the FCC Technical Support Hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY), or via email at [ulscomm@fcc.gov](mailto:ulscomm@fcc.gov). The hotline is available Monday through Friday, from 8:00 AM to 6:00 PM Eastern Time. In order to provide better service to the public, all calls to the hotline are recorded.

#### iv. Incumbent Licensees

18. Potential bidders are reminded that there are incumbent licensees operating on frequencies that are subject to the upcoming auction. Incumbent licensees retain the exclusive right to use those channels within their self-defined rectangular service areas. The holder of an EA authorization thus will be required to implement its facilities to protect incumbents from harmful interference. Specifically, an EA authorization holder will be required to coordinate with the incumbent licensees by using the interference protection criteria in 47 CFR 101.103. However, operational agreements are encouraged between the parties. Should an incumbent lose its license, the incumbent's service area(s) will convey to the relevant EA authorization holder and it will be then entitled to operate within the forfeited rectangular service area(s) located within its EA, without being subject to further competitive bidding.

#### v. Bidder Alerts

19. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

20. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service,

subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

21. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 30 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following: (1) The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial; (2) the offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts; (3) the amount of the minimum investment is less than \$25,000; and (4) the sales representative makes verbal representations that: (i) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (ii) the investment is not subject to state or federal securities laws; or (iii) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

22. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific 39 GHz proposals may also call the FCC National Call Center at (888) CALL-FCC ((888) 225-5322).

#### vi. National Environmental Policy Act (NEPA) Requirements

23. The permittee must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a 39 GHz facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility. See 47 CFR 1.1305-1.1319. The Commission's NEPA rules require that, among other things, the permittee

consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

#### C. Auction Specifics

##### i. Auction Date

24. The auction will begin on Wednesday, April 12, 2000. The initial schedule for bidding will be announced by Public Notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

##### ii. Auction Title and Bidding Methodology

25. The title of the upcoming auction of licenses for fixed point-to-point microwave services in the 38.6 to 40.0 GHz band is: Auction No. 30. The bidding methodology for Auction No. 30 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

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

26. The following are important events and deadlines related to Auction No. 30:

- Auction Seminar: March 2, 2000.
- Short-Form Application Deadline: March 13, 2000; 5:30 p.m. ET.
- Upfront Payments (via wire transfer): March 27, 2000; 6:00 p.m. ET.
- Orders for Remote Bidding Software: March 28, 2000; 5:30 p.m. ET.
- Mock Auction: April 7, 2000.

##### iv. Auction Public Notice Attachments

27. The following is the list of attachments contained in the *Auction Public Notice*:

- Attachment A 39 GHz Licenses to be Auctioned, Upfront Payments, Minimum Opening Bids
- Attachment B Pending Cases in the 39 GHz Proceeding

Attachment C Auction Seminar Registration Form  
 Attachment D Electronic Filing and Review of FCC Form 175  
 Attachment E Guidelines for Completing the FCC 175 and 159  
 Attachment F FCC Remote Bidding Software Order Form  
 Attachment G Exponential Smoothing Formula and Example  
 Attachment H Accessing the FCC Network Using Windows 95/98  
 Attachment I How to Monitor FCC Auctions Online  
 Attachment J Listing of Documents Addressing Application of the Anti-Collusion Rules

#### v. Participation

28. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 5:30 pm ET, March 13, 2000.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6:00 pm ET, March 27, 2000.
- Comply with all provisions outlined in this Public Notice.

#### vi. General Contact Information

29. The following is general contact information relating to Auction No. 30:

- Seminar Registration and Orders for Remote Bidding Software: (888) CALL-FCC [888-225-5322] or direct (717) 338-2888. Hours of service: 8 a.m.—5:30 p.m. ET.
- Auction Legal Information: Auctions and Industry Analysis Division, Legal Branch, (202) 418-0660.
- Licensing Information: Public Safety and Private Wireless Division, (202) 418-0680.
- Electronic Filing Assistance: FCC Auctions Technical Support Hotline: (202) 414-1250 (Voice), Software Downloading (202) 414-1255 (TTY). Hours of service: 8 a.m.—6:00 p.m. ET.
- Wire transfers and refunds: FCC Auctions Accounting Branch: (202) 418-1995, (202) 418-2843 (Fax).
- FCC copy contractor for additional copies of Commission documents: International Transcription Services, Inc., 445 12th Street, SW Room CY-B400, Washington, DC 20554 (202) 314-3070.
- World Wide Web Sites: <http://www.fcc.gov/formpage>; <http://www.fcc.gov/wtb/auctions>; <http://www.fcc.gov>; <ftp://ftp.fcc.gov>.

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

30. Guidelines for completion of the short-form (FCC Form 175) are set forth on Attachment E to this Public Notice.

The short-form application seeks the applicant's name and address, legal classification, status, bidding credit eligibility, identification of the construction permit sought, the authorized bidders and contact persons.

#### A. Ownership Disclosure Requirements (Form 175 Exhibit A)

31. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 47 CFR 1.2112. Specifically, in completing Form 175, applicants will be required to file an Exhibit A providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in 47 CFR 1.2112.

#### B. Consortia and Joint Bidding Arrangements (Form 175 Exhibit B)

32. Applicants will be 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 in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. See 47 CFR 1.2105(a)(2)(viii); 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the licenses permits on which they will or will not bid. See 47 CFR 1.2105(a)(2)(ix). In cases where applicants have entered into consortia or joint bidding arrangements, applicants must submit an Exhibit B to the FCC Form 175.

33. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same market provided that (i) the attributable interest holder certify that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. See 47 CFR 1.2105(c)(4)(i) and (ii). While the anti-collusion rules do not prohibit non-auction related business negotiations

among auction applicants, bidders are reminded that certain discussions or exchanges could broach on impermissible subject matters because they may convey pricing information and bidding strategies.

#### C. Small Business Bidding Credits (Form 175 Exhibit C)

##### i. Eligibility

34. Bidding credits are available to small businesses and very small businesses as defined in 47 CFR 101.1209(b). See also 47 CFR 101.1208, 101.1209. For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling interests, and the affiliates of the applicant and its controlling interests. The Commission does not impose specific equity requirements on controlling interests. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the applicant and their affiliates will be counted in determining small business eligibility. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto control is determined on a case-by-case basis.* The following are some common indicia of control: (1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee; (2) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or (3) the entity plays an integral role in management decisions. A consortium of small businesses, or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which *individually* satisfies the definition of small or very small business in 47 CFR 101.1209. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests' affiliates. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

## ii. Application Showing

35. Applicants should note that they will be required to file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify as a small business or very small business (or consortia of small or very small businesses) for this auction. *See* 47 CFR 101.1209 and 1.2105. Specifically, for Auction No. 30, applicants applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (1) The applicant; (2) the applicant's affiliates; (3) the applicant's controlling interests; and (4) the affiliates of the applicant's controlling interests. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, and its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

## iii. Bidding Credits

36. Applicants that qualify under the definitions of small business, and very small business (or consortia of small or very small businesses) as are set forth in 47 CFR 101.1209, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. *See* 47 CFR 101.1208(a). The size of a 39 GHz band bidding credit depends on the average gross revenues for the preceding three years of the bidder and its controlling interests and affiliates: A bidder with average gross revenues of not more than \$40 million for the preceding three years receives a 25 percent discount on its winning bids for 39 GHz band licenses ("small business"). *See* 47 CFR 01.1209(b)(1)(i). A bidder with average gross revenues of not more than \$15 million for the preceding three years receives a 35 percent discount on its winning bids for 39 GHz band licenses ("very small business"). *See* 47 CFR 101.1209(b)(1)(ii). Bidding credits are not cumulative: qualifying applicants

receive either the 25 percent or the 35 percent bidding credit, but not both.

37. 39 GHz band bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. *See* 47 CFR 101.1208(b). Finally, bidders should also note that there are no installment payment plans in Auction No. 30.

### D. Other Information (Form 175 Exhibits D and E)

38. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit D) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so in Exhibit E—Miscellaneous Information—to the FCC Form 175.

### E. Minor Modifications to Short-Form Applications (FCC Form 175)

39. After the short-form filing deadline (March 13, 2000), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their construction permit selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4-A760 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Kenneth Burnley of the Auctions and Industry Analysis Division at (202) 418-0660.

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

40. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will

not be accepted and may in some instances result in the dismissal of the FCC Form 175 application. 47 CFR 1.65 amendments to pending long-form applications, however, should be filed after the auction and only by the winning bidder. The time for the filing of such amendments to the auction winners' long form applications will be announced by subsequent Public Notice.

## III. Pre-Auction Procedures

### A. Auction Seminar

41. On March 2, 2000, the FCC will sponsor a free seminar for Auction No. 30 at the Federal Communications Commission, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the 39 GHz band service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff. To register, complete the registration form included in the *Auction Public Notice* and submit it by Tuesday, February 29, 2000. Registrations are accepted on a first-come, first-served basis.

### B. Short-Form Application (FCC Form 175)—Due March 13, 2000

42. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission by 5:30 p.m. ET on March 13, 2000. Late applications will not be accepted. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

#### i. Electronic Filing

43. All short-form applications must be filed electronically. *See* 47 CFR 1.2105(a). Applications may generally be filed at any time from March 2, 2000 until 5:30 p.m. ET on March 13, 2000. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on March 13, 2000.

44. Applicants must press the "Submit Form 175" button on the "Submit" page of the electronic form to successfully submit their FCC Forms 175. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment D. Technical

support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service are 8 a.m. to 6 p.m. ET, Monday through Friday.

ii. Completion of the FCC Form 175

45. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment E of the *Auction Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments D and E of the *Auction Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

46. The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There is no fee for accessing this system.

C. Application Processing and Minor Corrections

47. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

D. Upfront Payments—Due March 27, 2000

48. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159. All upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6:00 p.m. ET on March 27, 2000. Please note that all payments must be made in U.S. dollars and all payments must be made by wire transfer. Upfront

payments for Auction No. 30 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments. Failure to deliver the upfront payment by the March 27, 2000 deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

49. Wire transfer payments must be received by 6:00 p.m. ET on March 27, 2000. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

- ABA Routing Number: 043000261
- Receiving Bank: Mellon Pittsburgh
- BNF: FCC/AC 910-0180
- OBI Field: (Skip one space between each information item)
- "AUCTIONPAY"
- TAXPAYER IDENTIFICATION NO.: (same as FCC Form 159, block 26)
- PAYMENT TYPE CODE (enter "A30U")
- FCC CODE 1 (same as FCC Form 159, block 23A: "30")
- PAYER NAME (same as FCC Form 159, block 2)
- LOCKBOX NO. #358420

**Note:** The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

50. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236-5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 30." *Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.*

ii. FCC Form 159

51. A completed FCC Remittance Advice Form (FCC Form 159) must accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to the *Auction Public Notice*.

iii. Amount of Upfront Payment

52. In the *Part 1 Order, Memorandum Opinion and Order, and Notice of*

*Proposed Rule Making*, the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned. See Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 63 FR 770 (January 7, 1998). In the *Auction Public Notice*, the Bureau adopted upfront payments for Auction No. 30. Specifically, the Bureau revised the proposed calculation of upfront payments on a license-by-license basis, using the following formula:

For licenses with populations less than or equal to 1,000,000 pops the upfront calculation is:

License population \* \$0.02 (the result rounded to the nearest hundred dollars for results of less than \$10,000 and rounded to the nearest thousand dollars for results greater than \$10,000.00) with a minimum of no less than \$2,500.00  
For licenses with populations with greater than 1,000,000 pops, the upfront calculation is: \$0.02 per pop for each of the first million pops and \$0.04 per pop for the remaining pops (the result rounded to the nearest thousand dollars).

53. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 30, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, e.g., a \$25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

54. In order to be able to place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction. Additional information regarding



upfront payments can be found in Part III.D of the *Auction Public Notice*.

#### E. Auction Registration

55. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

56. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

57. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Friday, April 7, 2000, should contact the Auctions Hotline at 1-888-225-5322 (option #2) or 717-338-2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

58. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th St., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

#### F. Remote Electronic Bidding Software

59. Qualified bidders are allowed to bid electronically or telephonically. Each bidder choosing to bid electronically must purchase remote electronic bidding software for \$175.00 by Tuesday, March 28, 2000. Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 30. A software order form is included in the Auction Public Notice.

#### G. Mock Auction

60. All applicants whose FCC Form 175 has been accepted for filing will be eligible to participate in a mock auction on April 7, 2000.

#### IV. Auction Event

61. The first round of the auction will begin on April 12, 2000. The initial round schedule will be announced in a public notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

##### A. Auction Structure

##### i. Simultaneous Multiple Round Auction

62. In the *39 GHz Comment Public Notice*, we proposed to award the 2,450 licenses in the 39 GHz band in a single, simultaneous multiple round auction. We received no comment on this issue. We conclude that it is operationally feasible and appropriate to auction all 2,450 of the 39 GHz band licenses through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction.

##### ii. Maximum Eligibility and Activity Rules

63. In the *39 GHz Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received no comments on this issue. For Auction No. 30 we will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder.

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

65. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder will be considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round. The minimum required activity level will be expressed as a percentage of the bidder's maximum

bidding eligibility, and increases by stage as the auction progresses.

##### iii. Activity Rule Waivers and Reducing Eligibility

66. Each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

67. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

68. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (see Part IV.A.4 of the Auction Public Notice). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

69. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

##### iv. Auction Stages

70. The auction will be composed of three stages, which are each defined by an increasing activity rule. The following are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.



71. **Stage One:** During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by five-fourths (5/4).

72. **Stage Two:** During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by ten-ninths (10/9).

73. **Stage Three:** During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this stage, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by fifty-fortyninths (50/49).

#### v. Stage Transitions

74. In Auction No. 30, the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 10 percent for three consecutive rounds of bidding in each Stage. However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

#### vi. Auction Stopping Rules

75. Bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses. In addition, the Bureau retains the discretion to close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this stopping rule procedure. We will notify bidders in advance of implementing any change to our simultaneous stopping rule.

76. The Bureau also retains the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

77. Further, in its discretion, the Bureau reserves the right to invoke the "special stopping rule." If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the licenses.

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

78. For Auction No. 30, via public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive

bidding. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

#### B. Bidding Procedures

##### i. Round Structure

79. The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be run in a given day.

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

##### ii. Reserve Price or Minimum Opening Bid

81. We will adopt minimum opening bids for the licenses in Auction No. 30, which are reducible at the discretion of the Bureau. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest.

82. The commenters' arguments regarding incumbency on the 39 GHz band have convinced us that some proposed minimum opening bid values may not adequately have taken into account the level of incumbency in the 39 GHz band and thus the Bureau has established minimum opening bids that more accurately reflect the level of incumbency. Accordingly, upon re-examination of the proposed formula, we will modify it as follows:

For licenses with populations less than or equal to 1,000,000 pops the minimum opening bid calculation is:

License population \* \$0.02 (the result rounded to the nearest hundred dollars for results of less than \$10,000 and rounded to the nearest thousand dollars for results greater than \$10,000.00) with a minimum of no less than \$2,500.00.

For licenses with populations with greater than 1,000,000 pops, the minimum opening calculation is: \$0.02 per pop for each of the first million pops and \$0.04 per pop for the remaining pops (the result rounded to the nearest thousand dollars).

83. As a final safeguard against unduly high pricing, minimum opening bids are reducible at the discretion of the Bureau. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid on specific licenses.

#### iii. Bid Increments and Minimum Accepted Bids

84. In Auction No. 30, we will use a smoothing methodology to calculate minimum bid increments. We will further retain the discretion to change the minimum bid increment if circumstances so dictate. The formula used to calculate this increment is included as Attachment G to the *Auction Public Notice*.

85. We adopt our proposal of initial values for the maximum of 0.2 or 20 percent of the license value, and a minimum of 0.1 or 10 percent of the license value. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate, such as raising the minimum increment toward the end of the auction to enable bids to reach their final values more quickly. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. As an alternative approach, the Bureau may, in its discretion, adjust the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment (*e.g.*, by raising the increment floor by one percent every round over the course of ten rounds). The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 30 if circumstances warrant.

#### iv. High Bids

86. Each bid will be date- and time-stamped when it is entered into the FCC computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which the Commission receives bids.

#### v. Bidding

87. During a bidding round, a bidder may submit bids for as many licenses as it wishes, subject to its eligibility, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamp of that bid reflects the latest time the bid was submitted.

88. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (1) The licenses applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids. More information on bidding is included in the *Auction Public Notice*. See Part IV.B.5 of the *Auction Public Notice*.

#### vi. Bid Removal and Bid Withdrawal

89. The Bureau will limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

90. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. For information on withdrawal procedures and the calculation of withdrawal payments is included in the *Auction Public Notice*. See Part IV.B.6 of the *Auction Public Notice*.

#### vii. Round Results

91. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

#### viii. Auction Announcements

92. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet.

#### ix. Maintaining the Accuracy of FCC Form 175 Information

93. After the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. Filers must make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554 (and mail a separate copy to Kenneth Burnley, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Kenneth Burnley, Auctions and Industry Analysis Division at (202) 418-0660.

### V. Post-Auction Procedures

#### A. Down Payments and Withdrawn Bid Payments

94. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

95. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its

upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in Part IV.B.6. of the *Auction Public Notice*. Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.

#### *B. Long-Form Application*

96. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each 39 GHz band license won through the auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

#### *C. Default and Disqualification*

97. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full

payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

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

98. All applicants that submitted upfront payments but were not winning bidders for a 39 GHz license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

99. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront

payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number ("TIN"), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Attention: Shirley Hanberry, 445 12th Street, SW, Room 1-A824, Washington, DC 20554.

100. Bidders are encouraged to file their refund information as a confidential attachment to their short-form application when submitting the FCC Form 175. Bidders can also fax their request to the Auctions Accounting Group at (202) 418-2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

**Note:** Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Michelle Bennett or Gail Glasser at (202) 418-1995.

Federal Communications Commission.

**Louis Sigalos,**

*Deputy Chief, Auctions and Industry Analysis Division.*

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