

- *New Business*
—Regulations
- Loans to Designated Parties [12 CFR Part 614] (Proposed)
- Disclosure to Shareholders—Annual Report [12 CFR Part 620] (Proposed)

Dated: March 3, 2000.

Vivian L. Portis,
Secretary, Farm Credit Administration Board.
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FEDERAL COMMUNICATIONS COMMISSION

[DA 00-292]

Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for May 10, 2000; Report No. AUC-0031-C (Auction No. 31)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice announces the auction and procedures governing the auction of licenses for Fixed, Mobile, and Broadcasting service in the 747-762 and 777-792 MHz bands ("Auction No. 31"), scheduled to commence on May 10, 2000. As discussed in greater detail herein, Auction No. 31 will be composed of 12 licenses in 747-762 and 777-792 MHz bands. One 20 megahertz license (consisting of paired 10 megahertz blocks) and one 10 megahertz license (consisting of paired 5 megahertz blocks) will be offered in each of six regions to be known as the 700 MHz band economic area groupings ("700 MHz band EAGs").

DATES: Auction No. 31 is scheduled for May 10, 2000.

FOR FURTHER INFORMATION CONTACT: Media Contact, Meribeth McCarrick at (202) 418-0654; Auctions Legal Branch, Howard Davenport at (202) 418-0660; Kathy Garland, Project Manager, Auctions Operations Branch at (717) 338-2888; or Craig Bomberger, Analyst, Auctions Operations Branch at (202) 418-0660; Commercial Wireless Division, Roger Noel at (202) 418-0620.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released February 18, 2000. The complete text of the public notice, including all attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, D.C. It may also be purchased from the Commission's copy contractor, International Transcription

Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857-3800. It is also available on the Commission's website at <http://www.fcc.gov>.

List of Attachments Available at the FCC

Attachment A: Summary of 700 MHz Licenses to be Auctioned, Upfront Payments, Minimum Opening Bids
Attachment B: FCC Auction Seminar Registration Form
Attachment C: Electronic Filing and Review of the FCC Form 175
Attachment D: Guidelines for Completion of FCC Form 175 and Exhibits
Attachment E: Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)
Attachment F: FCC Bidding Preference/Remote Software Order Form
Attachment G: Bid Increments and Exponential Smoothing
Attachment H: Accessing the FCC Network Using Windows 95/98
Attachment I: Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules
Attachment J: Incumbent Television Licensees on Channels 59-68

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, Mobile, and Broadcasting services in the 747-762 and 777-792 MHz bands ("Auction No. 31"). On January 10, 2000, the Wireless Telecommunications Bureau ("Bureau") released a public notice, (*See* "Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for May 10, 2000; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues," Public Notice, ("Auction No. 31 *Comment Public Notice*"), 65 FR 2956 (January 19, 2000) seeking comment on the establishment of reserve prices or minimum opening bids for Auction No. 31, in accordance with the Balanced Budget Act of 1997. (*See* 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. 31. (*See* *Auction No. 31 Comment Public Notice* at 5-6.) The Bureau received three comments and five reply comments in response to the *Auction No. 31 Comment Public Notice*.

i. Background of Proceeding

2. The 746-806 MHz band has historically been used exclusively by television stations (Channels 60 through 69). Incumbent analog television broadcasters are permitted by statute to continue operations in this band until their markets are converted to digital television ("DTV"). (*See* 47 U.S.C. 337(e); *See* also *Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service*, MM Docket No. 87-268, *Reconsideration of Fifth Report and Order*, 63 FR 15774 (April 1, 1998), 13 FCC Rcd 6860, 6887 (1998). The Budget Act directed the Commission to reallocate this spectrum for public safety and commercial use by December 31, 1997, (*See* section 337(a) of the Communications Act, 47 U.S.C. 337(a) and to commence competitive bidding for the commercial licenses on the reallocated spectrum after January 1, 2001. (*See id.* at section 337(b)(2)(a). In November 1999, Congress enacted a consolidated appropriations statute that revised the latter instruction. (*See Consolidated Appropriations*, Appendix E, section 213. *See* also 145 Cong. Rec. H12493-94 (Nov. 17, 1999). This legislation accelerated the schedule for auction of the commercial spectrum bands, and requires that the proceeds from the auction of these bands be deposited in the U.S. Treasury by September 30, 2000.

ii. Licenses To Be Auctioned

3. The licenses available in this auction consist of one 20 megahertz license (consisting of paired 10 megahertz blocks) and one 10 megahertz license (consisting of paired 5 megahertz blocks) in each of six regions to be known as the 700 MHz band economic area groupings ("700 MHz Band EAGs"). The following table contains the Block/Frequency Band Limits Cross-Reference List for each region in Auction No. 31:

747-762 AND 777-792 MHz ALLOCATIONS

License suffix	Frequencies
C	747-752, 777-782
D	752-762, 782-792

B. Rules and Disclaimers

i. Relevant Authority

4. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the 700 MHz band, contained in Title 47, part 27 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.

5. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in this public notice; the *Auction No. 31 Comment Public Notice*; Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *First Report and Order*, WT Docket No. 99–168, FCC 00–5 (released January 7, 2000) ("*700 MHz First Report & Order*"), 65 FR 3139 (January 20, 2000); Reallocation of Television Channels 60–69, the 746–806 MHz Band, ET Docket No. 97–157, *Report and Order*, 12 FCC Rcd 22953 (1998), *recon.*, 13 FCC Rcd 21578 (1998) ("*Reallocation Reconsideration*").

6. The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in 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. When ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 00–5 for the *700 MHz First Report & Order*).

ii. Prohibition of Collusion

7. 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. (*See 700 MHz First Report & Order*, at paragraphs 128–129.) This prohibition begins with the filing of short-form applications, and ends on the down payment due date after the auction. Bidders competing for licenses in the same geographic license areas 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.

8. 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. 31, for example, the rule would apply to any applicants bidding for the same 700 MHz Band EAG. 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. (*See* 47 CFR 1.2105(c). (Note that bidders with nationwide status are prohibited from entering to such agreements.) If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same geographic license areas(s). By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c). In addition, § 1.65 of the Commission's Rules 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, § 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. Protection of Television Services

9. Licensees operating on the spectrum associated with Channels 60, 61, 62, 65, 66, and 67 must comply with the co-channel and adjacent channel provisions of § 27.60 of our rules. For example, a licensee operating on any portion of the 10 megahertz block (*i.e.*, between 752 MHz and 762 MHz) that coincides with Channel 61 will have to provide co-channel protection to television stations operating on Channel 61 and adjacent channel protection to television stations operating on Channels 60 and 62; and any licensee operating on any portion of the 10 megahertz block that coincides with Channel 62 will have to provide co-channel protection to television stations operating on Channel 62 and adjacent channel protection to television stations operating on Channels 61 and 63. Licensees operating on spectrum between 747 MHz and 752 MHz (Channel 60), in addition to providing co-channel protection to Channel 60 television stations, will have to provide adjacent channel protection to television stations operating on both Channel 61 and 59. (*See* 47 CFR 90.309.)

iv. Negotiations With Incumbent Broadcast Licensees

10. As the Commission noted in the *700 MHz First Report & Order*: "The Congressional plan set forth in sections 336 and 337 of the Communications Act and in the 1997 Budget Act is to transition this spectrum from its current use for broadcast services to commercial use and public safety services." (*See 700 MHz First Report & Order* at 145; *See* also 47 U.S.C. 336–337.) Congress also has directed the Commission to auction the 36 MHz of spectrum allocated for commercial use at least six years before the relocation deadline for incumbent broadcasters in this spectrum, while adopting interference limits and other technical restrictions necessary to protect full-service analog television service during the transition to DTV. (*See* Public Law 106–113 Stat. 1501, Appendix E, Section 213; Consolidated Appropriations, Appendix E, Sec. 213. *See* also 145 Cong. Rec. at H12493–94, (Nov. 17, 1999)). In these circumstances, the Commission will consider specific regulatory requests needed to implement voluntary agreements reached between incumbent licensees and new licensees in these bands. In considering whether the public interest would be served by approving specific requests, the Commission would, for

example, consider the benefits to consumers of the provision of new wireless services, such as next generation mobile services or Internet fixed access services. The Commission would also consider whether such agreements would help clear spectrum for public safety use in these bands and could result in the provision of new wireless service in rural and other relatively underserved communities. On the other hand, the Commission would also consider loss of service to the broadcast community of the licensee. For example, the Commission would consider the availability of the licensee's former analog programming within the service area, through simulcast of that programming on the licensee's DTV channel or distribution of the programming on cable or DBS, or the availability of similar broadcast services within the service area (e.g., whether the lost service is the only network service, the only source for local service, or the only source for otherwise unique broadcast service).

v. Canadian and Mexican Border Regions

11. There are currently separate agreements with Canada and Mexico covering TV broadcast use of the UHF 470–806 MHz band. Such agreements do not reflect the additional use or services adopted in the 700 MHz First Report & Order for 746–764 and 776–794 MHz bands. (See 700 MHz First Report & Order at 146.) While the Commission staff has been involved in discussions with both countries regarding coordination of interference criteria for the use of these bands in the border areas for the additional services, agreements have yet to be reached. Therefore, until such agreements have been finalized, the Commission found it necessary to adopt certain interim requirements for licenses in these bands along the Canada and Mexico borders. (See *id.* at fn no.17.) Accordingly, licenses issued for these bands within 120 km of the borders were made subject to whatever future agreements the United States developed with those two countries. In that the existing agreements for the protection of TV stations in those countries are still in effect and must be recognized until they are replaced or modified to reflect the new uses, the Commission decided that licenses in the border areas will be granted on the condition that harmful interference may not be caused to, but must accept interference from, UHF TV transmitters in Canada and Mexico. Furthermore, the Commission pointed out that modifications may be necessary to comply with whatever provisions are

ultimately specified in future agreements with Canada and Mexico regarding the use of these bands. (See *id.* at paragraph 146.)

vi. Due Diligence

12. 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.

13. Potential bidders are reminded that there are a number of incumbent broadcast television licensees already licensed and operating in the 746–764 and 776–794 MHz bands (television Channels 60–62 and 65–67) that will be subject to the upcoming auction. As discussed herein in greater detail, the Commission made clear that geographic area licensees operating on the spectrum associated with Channels 60, 61, 62, 65, 66, and 67 must comply with the co-channel and adjacent channel provision of section 90.545 of the Commission's rules. (See 47 CFR 90.545.) In addition, geographic area licensees operating fixed stations in the 746–764 MHz band must comply with the relevant provisions for "base stations" in §§ 90.309 and 90.545 of the Commission's Rules; and licensees operating fixed stations in the 776–794 MHz band must comply with the relevant provisions for "control stations" in those sections of the rules. (See 47 CFR 90.309 and 90.545.)

14. These limitations may restrict the ability of such geographic licensees to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license areas. Listed in Attachment K are the facilities of incumbent television permittees and licensees on television Channels 60–62 and 65–67 as well as on television Channels 59 and 68. However, prospective bidders should not rely solely on this list, but should carefully review the Commission's databases and records before formulating bidding strategies. Records relating to these stations are available for public inspection during regular business hours in the Reference Information Center at the Federal Communications Commission, 445 Twelfth Street, SW,

CY–A257, Washington, DC 20554. The Commission makes no representation or guarantees regarding the accuracy or completeness of the information in Attachment K. In addition, 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 databases. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

15. Potential bidders should also be aware of the following:

QUALCOMM Incorporated, Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, Service Rules for the 746–764 and 776–794 MHz Bands and Revisions to part 27 of the Commission's rules, Petition for Declaratory Ruling (filed January 28, 2000).

"Wireless Telecommunications Bureau Seeks Comment On QUALCOMM Incorporated's Petition for Declaratory Ruling Seeking 700 MHz Band License Pursuant to Ruling of U.S. Circuit Court of Appeals," *Public Notice*, DA 00–219 (released February 4, 2000); Extension of Filing Deadline for Comments to QUALCOMM Incorporated's Petition for Declaratory Ruling, *Public Notice*, DA 00–273, 65 FR 9266 (February 24, 2000).

16. Potential bidders should also be aware that certain applications (including those for modification), petitions for rulemaking, waiver requests, requests for special temporary authority ("STA"), petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to the facilities in Attachment K. We note that resolution of these pending matters could have an impact on the availability of spectrum for licensees in the 746–764 and 776–794 MHz bands. While the Commission will continue to act on pending matters, some of these matters may not be resolved by the time of auction. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 31 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 31 are strongly encouraged to continue such research during the auction.

vi. Bidder Alerts

17. 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.

18. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 31 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

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

19. 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 700 MHz proposals may also call the FCC National Call Center at (888) CALL-FCC ((888) 225-5322).

vii. National Environmental Policy Act (NEPA) Requirements

20. The licensee must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a 700 MHz facility is a federal action and the

licensee must comply with the Commission's NEPA rules for each such facility. *See* 47 CFR 1.1305 through 1.1319. The Commission's NEPA rules require that, among other things, the licensee 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 licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee 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

21. The Auction No. 31 Comment Public Notice announced that the auction would begin on May 10, 2000. Two commenters ask that the Commission complete any proceeding associated with the terms and conditions for the next C and F block PCS auction before the scheduled commencement of Auction No. 31. Although we have begun consideration of these issues by seeking comment on two petitions regarding C and F block rules, we cannot make the auction start date dependent upon the conclusion of other proceedings. The Commission is under congressional mandate to deposit the receipts from Auction No. 31 into the United States Treasury by September 30, 2000. (*See* Public Law 106-113, 113 Stat. 1501, Appendix E, section 213. *See also Consolidated Appropriations*, Appendix E, section 213. *See also* 145 Cong. Rec. at H12493-94, Nov. 17, 1999.) Therefore, all potential bidders, must make business decisions based on the environment in which they currently operate. The business decisions that these two companies must make are no different than the judgments that any other similarly situated potential bidder must make. Accordingly, the auction will begin on Wednesday, May 10, 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

22. Auction No. 31—700 MHz Band

iii. Bidding Methodology

23. The bidding methodology for Auction No. 31 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

iv. Pre-Auction Dates and Deadlines

24. The following are important events and deadlines related to Auction No. 31:

Auction Seminar: March 30, 2000
Short-Form Application (FCC FORM 175): April 10, 2000; 5:30 p.m. ET
Upfront Payments (via wire transfer): April 24, 2000; 6 p.m. ET
Orders for Remote Bidding Software: April 25, 2000; 5:30 p.m. ET
Mock Auction: May 8, 2000
Auction Begins: May 10, 2000

v. Requirements for Participation

25. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 5:30 pm ET, April 10, 2000.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 pm ET, April 24, 2000.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

26. The following is general contact information relating to Auction No. 31:

General Auction Information—General Auction Questions; Seminar Registration; Orders for Remote Bidding Software: FCC Auctions Hotline, (888) 225-5322, Press Option #2 or direct (717) 338-2888, Hours of service: 8 a.m.-5:30 p.m. ET.

Auction Legal Information—Auction Rules, Policies, Regulations: Auctions and Industry Analysis Division, Legal Branch (202) 418-0660.

Licensing Information—Rules, Policies, Regulations; Licensing Issues; Incumbency/Protection Issues: Commercial Wireless Division, (202) 418-0620.

Technical Support—*Electronic Filing Assistance; Software Downloading*: FCC Auctions Technical Support Hotline, (202) 414-1250 (Voice), (202) 414-1255 (TTY), Hours of service: 8 a.m.-6:00 p.m. ET.

Payment Information—Wire Transfers; Refunds: FCC Auctions Accounting Branch, (202) 418-1995, (202) 418-2843 (Fax).

Telephonic Bidding—Will be furnished only to qualified bidders.

FCC Copy Contractor—Additional Copies of Commission Documents: International Transcription Services, Inc., 445 12th Street, SW Room CY—B400, Washington, DC 20554, (202) 314-3070.

Press Information—Meribeth McCarrick (202) 418-0654.

FCC Forms—(800) 418-3676 (outside of Washington, DC), (202) 418-3676 (in the Washington Area), <http://www.fcc.gov/formpage>.

FCC Internet Sites—<http://www.fcc.gov/wtb/auctions>, <http://www.fcc.gov/ftp://ftp.fcc.gov>,

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

27. Guidelines for completion of the short-form (FCC Form 175) are set forth on Attachment D to this public notice. The short-form application seeks the applicant's name and address, legal classification, status, bidding credit eligibility, identification of the authorization(s) sought, the authorized bidders, and contact persons.

A. Ownership Disclosure Requirements (Form 175 Exhibit A)

28. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. 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 § 1.2112 of the Commission's rules.

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

29. 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); Bidders with nationwide bidding status are prohibited from entering such agreements) 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 particular construction permits on which they will

or will not bid. See 47 CFR 1.2105(a)(2)(ix). As discussed herein, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its application and may not continue discussions with applicants for the same geographic license area(s) after the deadline. In cases where applicants have entered into consortia or joint bidding arrangements, applicants must submit an Exhibit B to the FCC Form 175.

30. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same geographic license area provided that (i) the attributable interest holder(s) 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) & (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)

31. In the 700 MHz First Report & Order, the Commission adopted small business provisions to promote and facilitate the participation of small businesses in competitive bidding for licenses in the 700 MHz band. (See 47 CFR 27.502.)

i. Eligibility

32. Bidding credits are available to small businesses and very small businesses as defined in 47 CFR 27.502(a). 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 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 its 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:

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

33. 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 § 27.502. 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

34. 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 27.502 and 1.2105.) Specifically, for Auction No. 31, 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: (i) the applicant; (ii) the applicant's affiliates; (iii) the applicant's controlling interests; and (iv) 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

35. 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 27.502, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. (See 47 CFR 27.502) The size of a 700 MHz 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 15 percent discount on its winning bids for 700 MHz band licenses ("small business"); (See 47 CFR 27.502 and 1.2110(e)(iii)).
- A bidder with average gross revenues of not more than \$15 million for the preceding three years receives a 25 percent discount on its winning bids for 700 MHz band licenses ("very small business"). (See 47 CFR 27.502 and 1.2110(e)(ii)).

36. Bidding credits are not cumulative: qualifying applicants receive either the 15 percent or the 25 percent bidding credit, but not both.

37. Bidders in Auction No. 31 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. Finally, bidders should also note that there are no installment payment plans in Auction No. 31.

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 (April 10, 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 license selections, 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 Howard Davenport of the Auctions and Industry Analysis Division at (202) 418-0660.

F. Maintaining Current Information in Short-Form Applications (FCC Form 175)

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.

III. Pre-Auction Procedures

A. Auction Seminar

41. On March 30, 2000, the FCC will sponsor a free seminar for Auction No. 31 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 700 MHz 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 appropriate registration form and submit it by Tuesday, March 28, 2000. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due April 10, 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 April 10, 2000. Late applications will not be accepted.

43. 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

44. Applicants must file their FCC Form 175 applications electronically. (See 47 CFR 1.2105(a).) Applications may generally be filed at any time from March 30, 2000 until 5:30 p.m. ET on April 10, 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 April 10, 2000.

45. 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 C. 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

46. 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 D. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

47. The FCC Form 175 electronic review system 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. See Attachment C for details on accessing the review system.

C. Application Processing and Minor Corrections

48. 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 that have minor defects that may be corrected, and the deadline for filing such corrected applications.

49. As described more fully in the Commission's rules, after the April 10, 2000, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility). (See 47 CFR 1.2105.)

D. Upfront Payments—Due April 24, 2000

50. 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 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on April 24, 2000.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 31 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 April 24, 2000 deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Auction Payments by Wire Transfer

51. Wire transfer payments must be received by 6:00 p.m. ET on April 24, 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 910-0171
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
TAXPAYER IDENTIFICATION NO.
(same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter "A31U")
FCC CODE 1 (same as FCC Form 159, block 23A: "31")
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. # 358430

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.

52. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 209-6045 or (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. 31." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

53. 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. An electronic version of the FCC form 159 is available after submitting the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

54. 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*, 62 FR 13540 (March 21, 1997), 12 FCC Rcd. 5686, 5697-5698, paragraph 16 (1997)). In the *Auction No.*

31 Comment Public Notice, the Bureau proposed upfront payments for Auction No. 31. (See *Auction No. 31 Comment Public Notice* at 2-3.) Specifically, the Bureau proposed calculating the upfront payment based on information available in the form of a Congressional estimate of the value of the spectrum. There were no comments filed on the proposed upfront payments set forth in the *Auction No. 31 Comment Public Notice*.

55. 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. 31, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, e.g., a \$28,000,000 upfront payment provides the bidder with 28,000,000 bidding units. The total upfront payment defines the maximum number 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 that an 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.

56. 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.

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

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

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

58. The Commission will use wire transfers for all Auction No. 31 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants may either submit the information electronically after filing their short-form application or fax the Wire Transfer Instructions by April 24, 2000, to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Michelle Bennett or Gail Glasser, at (202) 418-2843. Should the payer fail to submit the requested information, the refund will be returned to the original payer. For additional information, please call (202) 418-1995.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Section V.D.

E. Auction Registration

59. 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.

60. 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.

61. 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, May 5, 2000, should contact the Auctions Hotline at 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.

62. 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., SW, 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

63. Qualified bidders are allowed to bid electronically or by telephone. If choosing to bid electronically, each bidder must purchase their own copy of the remote electronic bidding software. Electronic bids will only be accepted from those applicants purchasing the software. However, the software may be copied by the applicant for use by its authorized bidders at different locations. The price of the FCC's remote bidding software is \$175.00 and must be ordered by Tuesday, April 25, 2000. For security purposes, the software is only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 31. If bidding telephonically, the telephonic bidding phone number will be supplied in the second Federal Express mailing of confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, an FCC Bidding Preference/Remote Software Order Form can be accessed and electronically completed when submitting the FCC Form 175. This form is Attachment F.

G. Mock Auction

64. All qualified bidders will be eligible to participate in a mock auction on May 8, 2000. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

65. The first round of bidding for Auction No. 31 will begin on May 10,

2000. The initial bidding schedule will be announced in the public notice listing the qualified bidders which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

66. In the *Auction No. 31 Comment Public Notice* at 2, we proposed to award 12 licenses in the 700 MHz bands 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 the 700 MHz 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. This approach, we believe, allows bidders to take advantage of any synergies that exist among licenses and is most administratively efficient.

ii. Maximum Eligibility and Activity Rules

67. In the *Auction No. 31 Comment Public Notice* at 2-3, 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.

68. For Auction No. 31 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. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" as set forth in Section IV.A.iv), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not define the total dollars a bidder may bid on any given license.

69. 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.

70. 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 is 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 (See "Minimum Accepted Bids" in Section IV.B.iii). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions as set forth under "Auction Stages" in Section IV.A.iv and "Stage Transitions" in Section IV.A.v, we adopt them for Auction No. 31.

iii. Activity Rule Waivers and Reducing Eligibility

71. In the *Auction No. 31 Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction. We received no comment on this issue.

72. Based upon our experience in previous auctions, we adopt our proposal that each bidder 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. We are satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

73. The FCC automated 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: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

74. 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." Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

75. 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

76. In the *Auction No. 31 Comment Public Notice* at 3-4, we proposed to conduct the auction in three stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 50 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 80 percent of its current bidding eligibility. Finally, we proposed that a bidder in Stage Three, in order to maintain eligibility, would be required to be active on 100 percent of its current bidding eligibility. We received no comment on these proposals.

77. We conclude that the auction will be composed of three stages, which are each defined by an increasing activity rule. We will adopt our proposals for the activity rules as follows. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

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 50 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 two.

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 80 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 five-fourths (5/4).

Stage Three: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 100 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 final stage, reduced eligibility for the next round will be set at current round activity.

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

78. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 31.

v. Stage Transitions

79. In the *Auction No. 31 Comment Public Notice* at 3-4, we proposed that 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, we further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would 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. We received no comments on this subject.

80. We adopt our proposal. Thus, the auction will start in Stage One. Under the FCC's general guidelines the auction will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). 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. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 31.

vi. Auction Stopping Rules

81. For Auction No. 31, the Bureau proposed to employ a simultaneous stopping rule. The Bureau also sought comment on a modified version of the simultaneous stopping rule. The modified version of the stopping rule would 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 modified stopping rule. The Bureau further sought comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

82. The Bureau further proposed retaining the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau 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. We proposed to exercise this option only in circumstances such as where the

auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. (*See Auction No. 31 Comment Public Notice* at 11). We received no comment on these issues.

83. We adopt our proposals concerning the stopping rule. Adoption of these rules, we believe, is most appropriate for Auction No. 31 because our experience in prior auctions demonstrates that the simultaneous stopping rule balances the interests of administrative efficiency and maximum bidder participation. The substitutability between and among licenses in different geographic areas and the importance of preserving the ability of bidders to pursue backup strategies support the use of a simultaneous stopping rule.

84. Under the simultaneous stopping rule, 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. Under this modified stopping rule, 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.

85. 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).

86. Further, in its discretion, the Bureau reserves the right to invoke the "special stopping rule," whereby 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 Bureau 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.

vii. Auction Delay, Suspension, or Cancellation

87. In the *Auction No. 31 Comment Public Notice* at 4, we proposed that, by 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.

88. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By 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. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. 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

89. The initial bidding schedule will be announced in the public notice listing the qualified bidders which is released approximately 10 days before the start of the auction. This public notice will be included with 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 conducted in a given day. Details regarding round results formats and locations will be included in the Qualified Bidder Public Notice.

90. 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

91. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions. (See Amendment of Part of the Commission's Rules-Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of—Proposed Rule Making*, 63 FR 770 (January 7, 1998), 13 FCC Rcd. at 141, 455-456) (1998).

92. In the *Auction No. 31 Comment Public Notice* at 5-6, the Bureau proposed to establish minimum opening bids for Auction No. 31 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 31, the Commission proposed calculating the minimum opening bid based on information available in the form of a Congressional estimate of the value of the spectrum.

93. In its comments, U S West Wireless, LLC (U S West) argues that the proposed minimum opening bid amounts have failed to account for the "overly stringent" limitations adopted in the *700 MHz First Report & Order* on out-of-band emissions ("OOBE") and permissible transmit power. (See U S West Comments at 3-4). We are not

persuaded that the proposed minimum opening bids are too high. We note that in establishing OOBE, the Commission took into account the impact of limitations on interference from new commercial licensees on public safety service licensees. (See *700 MHz First Report & Order* at 103-107). The Commission stated: "[W]e recognize the need to adopt technical rules that provide adequate protection to public safety entities operating in this band. We are mindful, however that Congress also intended that we establish rules that will enable viable commercial operations here." (See *id.*). Thus, the Commission set OOBE limits that, while achieving the primary goal of protecting public safety, also struck a reasonable balance between protecting public safety and maintaining the commercial viability of this band.

94. Further, we note that no other parties commented on either the OOBE and transmit power limits or on the proposed minimum opening bids. Significantly, U S West did not submit an alternative proposal or substantiate its position with an alternate valuation or quantitative analysis. Moreover, U S West did not even comment on this issue in the service rule proceeding. Taking all of these factors into account, we will adopt the minimum opening bids, as proposed, for the licenses in Auction No. 31, 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. (See section 3002(F) of the Budget Act). Based on our experience in using minimum opening bids in other auctions, we believe that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient assignment of licenses. (See 47 U.S.C. 309(j)(3)(C)).

iii. Bid Increments and Minimum Accepted Bids

95. In the *Auction No. 31 Comment Public Notice* at 6, we proposed to use a smoothing methodology to calculate minimum bid increments. We further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate. (See *id.*). We received no comment on this issue.

96. We will adopt our proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a

license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is in Attachment G.

97. 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. 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. 31 if circumstances warrant.

iv. High Bids

98. 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. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date-and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

v. Bidding

99. 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.

100. Please note that all bidding will take place remotely either through the

automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 31.

101. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) The licenses applied for on FCC Form 175; and (ii) 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.

102. 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.

103. The bid entry screen of the automated auction system software for Auction No. 31 allows bidders to place multiple increment bids, which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license. The bidding software will display the bid increment for each license.

104. To place a bid on a license, the bidder must increase the standing high bid by one to nine times the bid increment. This is done by entering a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field in the software. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

$$\text{Amount Bid} = \text{High Bid} + (\text{Bid Mult} * \text{Bid Increment})$$

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "1" in the bid increment multiplier column and press submit.

105. For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter "1" in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

106. In the *Auction No. 31 Comment Public Notice*, we proposed bid removal and bid withdrawal rules. (*See Auction No. 31 Comment Public Notice* at 8.) With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, we proposed, would be at the bidder's discretion. We received no comment on this issue.

107. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various geographic area licenses in combination, we conclude that, for Auction No. 31, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

108. The Bureau will therefore 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.

109. *Procedures.* 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. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.* a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which we received no comments, will enhance bidder flexibility during the auction. Therefore, we will adopt these procedures for Auction No. 31.

110. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in "High Bids," Section IV.B.iv.

111. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. (*See* 47 CFR 1.2104(g) and 1.2109.) Specifically, a bidder ("Bidder X") that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid. This payment amount is deducted from any upfront payments or down payments that Bidder X has deposited with the Commission. If, in a

subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and Bidder X may request a refund of the interim three (3) percent payment. If, in a subsequent auction, the selling price for that license is less than Bidder X's withdrawn bid amount, then Bidder X will be required to make a final bid withdrawal payment, less the three percent interim payment, equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less.

vii. Special 30 MHz Nationwide Bid Withdrawal Procedure

(a) Background

112. For the licenses being offered in Auction No. 31, we noted that there may be entities whose business plans are such that they may not wish to acquire any licenses if they are unable to aggregate them all. (See *Auction No 31 Comment Public Notice* at 9.) Our current rules are designed to facilitate the aggregation of licenses, and we believe they are adequate to facilitate the aggregation of all the 10 MHz or all 20 MHz licenses or any subset thereof. The bid withdrawal provisions of our Part 1 rules could, however, potentially discourage bidders from attempting a 30 MHz nationwide aggregation in an auction where there are divergent business plans. This is because, were such a large aggregation attempt ultimately to fail, a bidder might be left with a potentially large subset of licenses that it does not wish to win given its all-or-nothing strategy. The bidder would then be forced to withdraw all of the high bids it holds and pay a bid withdrawal payment. We therefore proposed and have determined to adopt a nationwide bid withdrawal procedure for the 747–762 MHz and 777–792 MHz bands to limit the exposure of bidders seeking a 30 MHz nationwide aggregation.

(b) Discussion

113. In its comments, PSINet Inc. (PSINet) asks that we allow applicants that choose to bid for a 30 MHz nationwide aggregation to maintain the ability to also bid on regional 30 MHz aggregations and that the “Commission adopt a similar scheme for entities that desire to participate in regional 30 MHz aggregations to that proposed by the Commission for the nationwide 30 MHz aggregation.” Cisco Systems, Inc. (Cisco)

submitted reply comments in which it strongly urged the Commission to limit withdrawal penalties for regional 30 MHz bidders by adopting the bidding rule proposed by PSINet. On reply, PSINet emphasizes that the Commission should apply limited withdrawal penalties to applicants seeking to aggregate 30 MHz by obtaining both the 10 MHz and 20 MHz licenses in a region and contends that it is “extremely unlikely that an entity will win a nationwide 30 MHz aggregation.” Bell Atlantic Mobile, Inc. (BAM) takes the opposite position in its reply comments. According to BAM, we should not change long-standing auction procedures for either nationwide or regional bidders. AT&T Wireless Services, Inc.'s (AT&T) reply comments strongly suggest that the Commission should reject PSINet's request to impose reduced bid withdrawal penalties on bidders for regional, rather than nationwide, 30 MHz licenses.

114. In the *700 MHz First Report & Order*, the Commission directed the Bureau to create a modified withdrawal procedure for those bidders seeking a 30 megahertz nationwide aggregation, *i.e.*, those who have the greatest exposure under the standard bid withdrawal payment rule. (See *700 MHz First Report & Order* at 126–127.) Neither PSINet nor Cisco presents compelling reasons why the Bureau can or should apply the special rule to those bidders that face less exposure. In fact, bidders in the past auctions have successfully aggregated licenses under the existing withdrawal rules. However, the Bureau notes that the existence of all-or-nothing nationwide business plans presents a unique situation for bidders. Likewise, BAM has not persuaded the Bureau to exercise its limited discretion not to make this procedure available to 30 MHz nationwide bidders. Accordingly, the Bureau will adopt the bid withdrawal provisions as stated in this section.

115. Bidders not choosing to avail themselves of the nationwide bid withdrawal provision may still aggregate licenses subject to our standard bid withdrawal provisions. (See 47 CFR 1.2104(g).) The nationwide bid withdrawal procedure is made available to limit the exposure associated with bid withdrawal payments for those bidders whose business plans require an all-or-nothing aggregation of all licenses in the auction, while still discouraging insincere bidding. Under the nationwide bid withdrawal procedure, an applicant will be required to declare on its short-form application whether it is seeking a 30 MHz nationwide

aggregation and wishes to be subject to the nationwide bid withdrawal provisions. Instructions for doing so will be part of the electronic filing system for the short-form application.

116. An applicant that chooses to be a nationwide bidder will be required to be active in each round of bidding on all licenses (a 100 percent activity requirement). A nationwide bidder must win either the entire 30 MHz nationwide aggregation (all 12 licenses) or no licenses at all. (Note that a nationwide bidder does not necessarily have to be the standing high bidder on every license at the end of each round in order to fulfill the 100 percent activity requirement. Activity on a license in a given round is defined as a bidder either holding the high bid from the previous round or placing a valid bid in the current round.) Nationwide bidders that decide to no longer pursue the nationwide aggregation and hold any high bids may withdraw those high bids subject to the modified withdrawal payment described herein. Once a nationwide bidder withdraws a high bid from any market, it must withdraw any remaining high bids it holds from all other markets. (The automated auction system will allow a nationwide bidder only to withdraw all of its standing high bids and not any subset thereof.) The nationwide bidder will then have its eligibility reduced to zero, thus making the bidder ineligible to continue bidding for any licenses.

117. If a 30 MHz nationwide bidder withdraws, eligibility, activity rule waivers, and withdrawal round allowances will be restored to beginning auction levels for all other bidders except for any nationwide bidders that have withdrawn from the auction by either withdrawing their high bids or failing to meet the activity requirement (and thus having their high bids withdrawn for them). Without this restoration, few bidders would likely be eligible to bid on licenses withdrawn late in the auction. Upon the withdrawal of a nationwide bidder, the auction will pause for 24 hours to allow for the restoration of eligibility, activity rules waivers, and withdrawal allowances, and for the notification of all auction participants that such a withdrawal has occurred. The Bureau will contact the contact person listed on the FCC Form 175 for each qualified bidder that is eligible for the restoration of eligibility. Note that non-nationwide bidders that have already dropped out of the auction will also have their eligibility, activity rules waivers, and withdrawal allowances restored, and any nationwide bidders still in the

auction will have their activity rule waivers restored.

118. The automated auction system will not allow bidders that identify themselves as nationwide bidders to submit a group of bids that does not result in the bidder being active on all licenses in the auction. Nationwide bidders, like all other bidders in the auction, will be provided 5 activity rule waivers to preserve their maximum eligibility level in the instance that they do not meet the 100% activity requirement. In each round of bidding that a nationwide bidder fails to meet the activity rule requirement, an automatic waiver will be applied to preserve the bidder's maximum eligibility. If a nationwide bidder fails to meet the activity rule requirement and has no activity rule waivers remaining, the bidder's maximum eligibility will be reduced to zero and any high bids will automatically be withdrawn. In such a case, the system will treat the bidder as if the bidder had placed a withdrawal itself—making the bidder subject to the special withdrawal payments—and the auction will pause to allow for the restoration of eligibility, activity rules waivers, and withdrawal allowances, as described herein.

119. The bid withdrawal payment for a 30 MHz nationwide bidder that withdraws from the auction will be calculated as the difference between the sum of the standing high bids that the nationwide bidder withdraws and the sum of the subsequent winning bids on those withdrawn licenses. In addition, nationwide bid withdrawal payments will be limited to 5 percent of the aggregate withdrawn bids. The withdrawn licenses will be offered in the next round at the second highest bid price, which may be less than or equal to the amount of the withdrawn bid, without any bid increment. The FCC will serve as the "place holder" on the license until a new acceptable bid is submitted.

120. In the *700 MHz First Report & Order*, the Commission stated that nationwide bidders cannot win anything less than a nationwide 30 MHz aggregation. (See *700 MHz First Report & Order* at 127.) Thus, in the event that there is no other bidding activity in a given round so that the auction would otherwise close under the simultaneous stopping rule, but a nationwide bidder holds the high bid on licenses that comprise less than a 30 MHz nationwide aggregation, the auction will not close. Rather, the auction will proceed another round and the nationwide bidder (and all other bidders failing to meet the activity requirement) will use an activity rule waiver, if any

remain. Once all the nationwide bidder's activity rule waivers are used, its standing high bids will be withdrawn, and eligibility will be restored to other bidders, as described herein.

121. In its comments, BAM asks that if the Bureau decides to adopt a special withdrawal penalty rule for nationwide bidders, any such bidder should not be allowed to have any affiliation or bidding arrangement with any other bidder that is pursuing a regional or individual market bidding strategy. We agree with BAM on this point. In the Public Notice, we stated that any applicant who chooses nationwide bidder status will not be allowed to bid on anything other than all licenses comprising the 30 MHz nationwide aggregation. (See *Auction No. 31 Comment Public Notice* at 10.) We will not allow a bidder to do indirectly that which we have directly prohibited. Thus, any bidder who seeks nationwide bidding status shall not have any controlling interest in, or affiliate relationship with, any other applicant or any agreement of any kind relating to the licenses being auctioned.

122. AT&T raises a similar point in seeking clarification that upon withdrawal of a nationwide bidder from the auction, the eligibility of all other bidders, except "bidding partners" of the withdrawing nationwide bidder, will be restored to beginning auction levels. Since nationwide bidders are not permitted to enter into agreements regarding the licenses, AT&T's point is moot.

123. In reply comments, Omnipoint Corporation (Omnipoint) states that the bid withdrawal process for a nationwide bidder is not yet sufficiently clear. In support of its position, Omnipoint states that it is unclear whether the FCC requires nationwide bidders to exercise bid withdrawal. Contrary to Omnipoint's contention, the Commission clearly stated: "An applicant that chooses to be such a nationwide bidder would not be allowed to bid on anything other than all licenses comprising the 30 megahertz nationwide aggregation, and must win either this nationwide aggregation or no licenses at all. Thus, once such a nationwide bidder withdraws from a market, it must withdraw from all markets and will be ineligible to continue bidding for any licenses." (See *700 MHz First Report & Order* at 127.) If a nationwide bidder has standing high bids on some licenses but decides not to continue bidding on other licenses, then the bidder withdraws its standing high bids. This may be accomplished one of two ways: (i) A nationwide bidder may

withdraw standing high bids using the bidding software. The bidding software will only allow a nationwide bidder to remove all or none of its standing high bids. Once a nationwide bidder exercises this option, it is out of the auction. (ii) A nationwide bidder may decide not to bid on licenses on which it is not already the standing high bidder. Once such a bidder's activity rule waivers expire, the FCC will withdraw the standing high bids for the bidder—which has the same effect as if the bidder had withdrawn its own bids.

124. The Bureau provides the following additional information in response to Omnipoint's Reply Comments. When a 30 megahertz nationwide bidder withdraws a standing high bid, initial maximum eligibility, activity rule waivers, and withdrawal allowances for all other bidders are restored to beginning auction levels, except for those nationwide bidders that have withdrawn from the auction. Once a nationwide bidder is out of the auction, it cannot have its eligibility restored. Eligibility restoration does not affect the activity requirements of the different stages. For example, if a bidder has eligibility restored due to the withdrawal from the auction of a nationwide bidder, the bidder with restored eligibility would be subject to the activity rule of whatever stage the auction is in when the eligibility is restored. Finally, we reiterate that the activity rules for Stages I, II, and III do not apply to nationwide bidders. A nationwide bidder will not be allowed to be active on anything less than all licenses comprising the 30 megahertz nationwide aggregation. The bidder must be active on every license in every round, or employ an activity rule waiver.

125. Also, PSINet seeks clarification on two items. First, PSINet asks that the Bureau confirm that the withdrawal payment would be calculated as the difference between the sum of the withdrawn bids and the sum of the "subsequent winning bids" on the withdrawn licenses. PSI Net is correct. The withdrawal payment would be calculated based on the amount of the winning bids and not based upon the subsequent high bids in the next round of bidding. (See *Auction No. 31 Comment Public Notice* at 10.) PSI Net also seeks clarification that the withdrawal payment for a nationwide aggregation will be calculated using the sum of all twelve withdrawn bids and the sum of subsequent bids. In that regard, PSINet is incorrect. The withdrawal payment will be calculated using the sum of only the withdrawn standing high bids and the sum of the

subsequent winning bids for those licenses. (*See Auction No. 31 Comment Public Notice* at 10.)

viii. Round Results

126. 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. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 31 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

ix. Auction Announcements

127. 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 on the Internet.

x. Maintaining the Accuracy of FCC Form 175 Information

128. As noted in Section II.E., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revisions to exhibits. 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.

A separate copy of the letter should be mailed to Howard Davenport, Auctions and Industry Analysis Division, briefly summarizing the changes. Questions about other changes should be directed to Howard Davenport, Auctions and Industry Analysis Division at (202) 418-0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

129. 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 bid withdrawal payments due.

130. Within ten business days after release of the auction closing public

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 "Bid Removal and Bid Withdrawal," Section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

131. Within ten business days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each 700 MHz 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

132. 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

133. All applicants that submitted upfront payments but were not winning bidders for a 700 MHz 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.

134. 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, Shirley Hanberry 445 12th Street, SW, Room 1-A824, Washington, DC 20554.

135. Bidders are encouraged to file their refund information electronically using the Refund Information portion of the FCC Form 175, but 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 party identified in the refund information.

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.

[FR Doc. 00-5544 Filed 3-7-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Thursday, March 9, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's resolution and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, DC.

Requests for further information concerning the meeting may be directed