

modify or eliminate these rules in *NPRMs* we will issue. We also conclude, however, that, for now, the other ownership rules considered in this proceeding warrant retention. We will, of course, revisit our ownership rules biennially, as directed by the 1996 Act. Our future biennial reviews will be informed by the impact of the substantial changes we made to our television "duopoly" and "one-to-a-market" rules this past August.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00-17670 Filed 7-12-00; 8:45 am]

**BILLING CODE 6712-01-U**

## FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No 95-5; FCC 00-76]

### Streamlining the Commission's Antenna Structure Clearance Procedure

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission responds to filings in WT Docket 95-5. We dismiss as moot a petition for partial reconsideration filed by the Wireless Cable Association International, Inc., deny a petition for partial reconsideration filed by Comp Comm, Inc., and grant in part and deny in part a petition for declaratory ruling filed by Teletech, Inc. In doing so, we conclude that the antenna structure registration procedures adopted in 1996 effectively allow us to meet our statutory responsibilities. In response to the petition for declaratory ruling, we provide clarification with respect to situations in which two or more parties locate facilities on the same tower. The effect is to retain in their entirety the rules adopted in a previous final rule.

**FOR FURTHER INFORMATION CONTACT:** Jamison Prime, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, (202) 418-0680.

**SUPPLEMENTARY INFORMATION:** The Memorandum Opinion and Order and Order on Reconsideration was adopted March 1 and released March 8, 2000. The document is available, in its entirety, for inspection and copying during normal business hours in the FCC Reference Center, (Room CY-A257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription

Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857-3800. In addition, it is available on the Commission's website at <http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00076.pdf>.

### Summary of the Memorandum Opinion and Order and Order on Reconsideration

1. Section 303(q) of the Communications Act of 1934, as amended, vests in the Federal Communications Commission (FCC) authority to require painting and/or lighting of antenna structures that might constitute a hazard to air navigation. Part 17 of the Commission's Rules contains the procedures the FCC uses to identify structures which might pose an air safety hazard and by which owners register their antenna structures with the FCC.

2. The Memorandum Opinion and Order and Order on Reconsideration addresses several filings the FCC received in response to the original Report and Order issued in WT Docket 95-5; a petition for declaratory ruling and a separate petition for partial reconsideration both requesting that the Commission establish a specific accuracy standard for obtaining antenna structure data to be filed with the FCC; a petition for partial reconsideration requesting that the Commission adopt relaxed procedures for Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) licensees whose licensing data differ from data submitted by antenna structure owners on whose structures the MDS and ITFS licensees are located; and a petition requesting clarification of the FCC's registration requirements in circumstances involving multiple antenna structures on building rooftops and concerning cases of two or more parties located on the same antenna tower.

3. We conclude that a specific accuracy standard is unnecessary because the requirement that antenna structure owners first obtain a study from the Federal Aviation Administration ensures reliability of the antenna structure site data and promotes air safety. Additionally, we find that the request that the FCC adopt relaxed license correction procedures for MDS and ITFS licensees whose licensing data differ from data submitted by antenna structure owners on whose structures the MDS and ITFS licensees are located is moot, and therefore we do not modify these procedures. Any discrepancies between licensing data and antenna structure registration data would have occurred

when owners of existing antenna structures (including those structures on which MDS and ITFS licensees were sited) registered with the FCC. The time period for registering these existing structures ended on June 30, 1998.

4. We uphold the procedures adopted in 1995 that require all antenna structures meeting the registration criteria—including multiple structures atop the same rooftop—to be individually registered. Because the Commission's rules require a single registration for each antenna tower, we clarify that in those situations in which an owner of a supporting tower structure permits a third party to add a surmounting antenna, we will consider the owner of the supporting tower remains the "owner" for purposes of the FCC's antenna structure registration purposes. Thus, we grant the petition that requested this clarification.

5. Accordingly, it is ordered that, pursuant to sections 4(i) and 303(q) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(q), and sections 1.2, 1.3 and 1.429 of the Commission's Rules, 47 CFR 1.2, 1.3 and 1.429, that the petitions filed in WT Docket 95-5 are granted in part and dismissed in part.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00-17668 Filed 7-12-00; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-00-36-B (Auction No. 36); DA 00-1388]

### Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Service Frequencies in the Lower 80 Channels

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of licenses for the 800 MHz Specialized Mobile Radio Service Lower 80 Channels ("Auction No. 36"). It also announces that the beginning date of Auction No. 36 will be rescheduled to November 1, 2000. It was initially scheduled for September 13, 2000.

**DATES:** Auction No. 36 will begin November 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** *Auctions and Industry Analysis Division:* M. Nicole Oden, Legal Branch

at (202) 418-0660, Kathy Garland or Bob Reagle, Auctions Operations Branch at (717) 338-2888; *Commercial Wireless Division*: JoAnn Epps, Licensing and Technical Analysis Branch at (202) 418-1342; *Media Contact*: Meribeth McCarrick at (202) 418-0654.

**SUPPLEMENTARY INFORMATION:** This is a summary of a public notice released June 23, 2000. The complete text of the public notice, including 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. 20554. 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 web site at <http://www.fcc.gov>.

**List of Attachments Available at the FCC**

- Attachment A—Licenses to be Auctioned
- Attachment B—Auction Seminar Registration Form
- Attachment C—Electronic Filing and Review of the FCC Form 175
- Attachment D—Completing the FCC Form 175
- Attachment E—Completing the FCC Form 159
- Attachment F—Remote Bidding Software Order Form
- Attachment G—Exponential Smoothing Formula and Calculation
- Attachment H—Accessing the FCC Network
- Attachment I—Summary of Documents Addressing the Anti-Collusin Rules

**I. General Information**

*A. Introduction*

1. This public notice announces the procedures and minimum opening bids for the upcoming auction of licenses for the 800 MHz Specialized Mobile Radio Service Lower 80 Channels ("Auction No. 36"). On March 23, 2000, in accordance with the Balanced Budget Act, Public Law 105-33, 111 Stat. 251 (1997) ("Balanced Budget Act") the Wireless Telecommunications Bureau ("Bureau") released a public notice seeking comment on the establishment of reserve prices or minimum opening bids and the procedures to be used in Auction No. 36. See Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Frequencies in the Lower 80 Channels Scheduled for September 13, 2000, (*Auction No. 36 Comment Public Notice*) 65 FR 17272 (March 31, 2000). The Bureau received four comments and three reply comments in response to the *Auction No. 36 Comment Public Notice*.

2. The *Auction No. 36 Comment Public Notice* announced that Auction

No. 36 would begin on September 13, 2000. In this public notice, the Bureau announces that the beginning date of Auction No. 36 will be rescheduled to November 1, 2000.

i. Background of Proceeding

3. On December 15, 1995, the Federal Communications Commission (FCC or Commission) released *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (*800 MHz First Report and Order*), 61 FR 6212 (February 16, 1996). This document established geographic area licensing, auction and service rules for the "upper 200" 800 MHz SMR channels and set forth proposals for new licensing rules and auction procedures for the "lower 230" 800 MHz SMR channels. On July 10, 1997, the Commission released a Second Report and Order in the same proceeding (*800 MHz Second Report and Order*), 62 FR 41190 (July 31, 1997), that resolved pending issues and established technical and operational rules for the "lower 230" 800 MHz SMR channels. On October 8, 1999, the Commission released a Memorandum Opinion and Order on Reconsideration (*800 MHz Order on Reconsideration*), 64 FR 71042 (December 20, 1999) that completed the implementation of a new licensing framework for the 800 MHz SMR service.

ii. Licenses To Be Auctioned

4. The licenses available in this auction consist of sixteen non-contiguous 5 channel blocks (0.25 MHz) in each of 172 Economic Areas (EAs) and 3 EA-like areas, covering the United States, possessions or territories in the Northern Mariana Islands and Guam, American Samoa, the United States Virgin Islands and Puerto Rico. These licenses are listed in this public notice under Attachment A. The following table contains the Block/Frequency Band Limits Cross-Reference List for the 800 SMR Lower 80 Channels:

**800 MHz SMR LOWER 80 CHANNELS**  
[856-860 MHz Band]

Channel block	Channel No.	Base station frequencies (channel centers)
G .....	201, 241, 281, 321, 361	856-860.0125
H .....	202, 242, 282, 322, 362	856-860.0375

**800 MHz SMR LOWER 80 CHANNELS—Continued**  
[856-860 MHz Band]

Channel block	Channel No.	Base station frequencies (channel centers)
I .....	203, 243, 283, 323, 363	856-860.0625
J .....	204, 244, 284, 324, 364	856-860.0875
K .....	205, 245, 285, 325, 365	856-860.1125
L .....	206, 246, 286, 326, 366	856-860.1375
M .....	207, 247, 287, 327, 367	856-860.1625
N .....	208, 248, 288, 328, 368	856-860.1875
O .....	221, 261, 301, 341, 381	856-860.5125
P .....	222, 262, 302, 342, 382	856-860.5375
Q .....	223, 263, 303, 343, 383	856-860.5625
R .....	224, 264, 304, 344, 384	856-860.5875
S .....	225, 265, 305, 345, 385	856-860.6125
T .....	226, 266, 306, 346, 386	856-860.6375
U .....	227, 267, 307, 347, 387	856-860.6625
V .....	228, 268, 308, 348, 388	856-860.6875

**Note:** The allocation of channels available in spectrum blocks G through V are different in the U.S./Mexico and U.S./Canada border areas than noted in the prior table. The tables that follow indicate the channels assignable in the border areas. Also note that the channels listed for the U.S./Mexico border area are offset 12.5 kHz lower in frequency than the same channel as specified in § 90.613 of the Commission's rules.

**UNITED STATES-MEXICO BORDER AREA, SMR CATEGORIES.**

[EA-Based SMR Category (83 Channels)]

Spectrum block	Offset channel Nos.
G .....	229-272-349
H .....	230-273-350
I .....	231-274-351
J .....	232-278-352
K .....	233-279-353
L .....	234-280-354
M .....	235-309-358
N .....	236-310-359
O .....	237-311-360
P .....	238-312-389
Q .....	239-313-390
R .....	240-314-391
S .....	269-318-392
T .....	270-319-393
U .....	271-320-394
V .....	228-268-308-348-388

UNITED STATES-CANADA BORDER  
AREA, SMR CATEGORIES

[Region 7 & 8]—SMR Category (172  
Channels)

Spectrum block	Channel Nos.
G .....	155-229-269-309-349
H .....	156-230-270-310-350
I .....	157-231-271-311-351
J .....	158-232-272-312-352
K .....	159-233-273-313-353
L .....	160-234-274-314-354
M .....	195-235-275-315-355
N .....	196-236-276-316-356
O .....	197-237-277-317-357
P .....	198-238-278-318-358
Q .....	199-239-279-319-359
R .....	200-240-280-320-360
S .....	225-265-305-345-385
T .....	226-266-306-346-386
U .....	227-267-307-347-387
V .....	228-268-308-348-388

### B. Scheduling

#### i. Bifurcation

5. Some commenters responding to the *Auction No. 36 Comment Public Notice* argued that there should be no overlap between Auctions No. 34 and 36. The Bureau agrees that it may be burdensome for some bidders to participate in coinciding auctions. However, there was no consensus among commenters on how to resolve this potential problem. For reasons of administrative convenience, the Bureau chooses to maintain the bifurcated schedule for Auctions No. 34 and 36.

6. In addition, for reasons of administrative convenience and effective auction management, we will change the date for Auction No. 36, moving the date back to November 1, 2000. This change will not only provide for more efficient management of the auction, it will provide additional time between Auctions No. 34 and 36 to permit all interested parties, including incumbents and small businesses, sufficient time in which to evaluate the outcome of Auction No. 34 and prepare for Auction No. 36.

#### ii. Pacific Wireless' Petition for Reconsideration

7. Pacific Wireless seeks reconsideration of the Bureau's scheduling of Auctions No. 34 and 36 prior to the conclusion of the mandatory negotiation period for the relocation of incumbent licensees from the upper 200 channels, scheduled to conclude on December 4, 2000. SBT and PCIA also support postponement of the auctions, however, they advocate delay until the completion of the involuntary relocation phase that is scheduled to commence on December 4, 2000. Pacific Wireless

contends that holding the auctions prior to December 4, 2000, contravenes the Commission's prior decisions and is contrary to the interests of incumbents. We disagree with this contention and deny Pacific Wireless's Petition for Reconsideration. The *800 MHz Second Report and Order* stated that the licensing of the lower channels would not occur until "incumbents have had the opportunity to relocate to the lower channels." As Nextel and Southern correctly note, prior to Auction No. 36, incumbents on the upper 200 channels will have had approximately 18 months to relocate their systems. Although we recognize that upper channel incumbents are currently in the second phase of the three-phase process the Commission established, we believe that 18 months provides a reasonable opportunity for incumbents to relocate.

8. We agree with those commenters who stated that going forward with Auctions No. 34 and 36 will facilitate the relocation process by providing EA licensees with additional relocation spectrum and incumbents with a more certain picture of their relocation options. Accordingly, we will not delay the start of Auction No. 36 until the close of the mandatory negotiation period for relocation of incumbent licensees on the upper 200 channels.

### C. Rules and Disclaimers

#### i. Relevant Authority

9. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the 800 MHz band, contained in title 47, part 90 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*.

10. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in this public notice; the *Auction No. 34 Comment Public Notice*, *800 MHz First Report and Order*, *800 MHz Second Report and Order*, and the *800 MHz Order on Reconsideration*.

11. 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 99-270 for the *800 MHz Order on Reconsideration*).

#### ii. Prohibition of Collusion

12. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications and ends on the down payment due date. Bidders competing for 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 authorized bidders 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. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

13. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. Applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175 short-form application. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. 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. 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. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules immediately upon learning of such violation. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment I.

#### iii. Due Diligence

14. Potential bidders should be aware that certain applications (including those for modification), waiver requests, petitions to deny, petitions for reconsideration, and applications for review are pending before the Commission that relate to particular applicants or incumbent licensees. In addition, certain decisions reached in the SMR proceeding are subject to judicial appeal and may be the subject of additional reconsideration or appeal. We note that resolution of these matters could have an impact on the availability of spectrum for EA licensees in the 800 MHz SMR general category and upper bands. While the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction. Potential bidders are solely responsible for investigating and evaluating the degree to, which such pending matters may affect spectrum availability in areas where they seek EA licenses. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 36, and encouraged to continue such research during the auction, in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction.

15. To aid potential bidders, the Commission will release a subsequent public notice listing pending matters that relate to licenses or applications that affect the 800 MHz SMR general

category and upper bands. The Commission will make available for public inspection the pleadings and related filings in those matters pending before the Commission.

16. In addition, potential bidders may research the Bureau's licensing databases on the World Wide Web in order to determine which frequencies are already licensed to incumbent licensees. Because some of our incumbent 800 MHz licensing records have not yet been converted to the Bureau's new Universal Licensing System (ULS), potential bidders may have to select other databases to perform research for the frequency(s) of interest. The research options will allow potential bidders to download licensing data, as well as to perform queries online.

17. 800 MHz band Incumbent Licenses: Licensing records for the 800 MHz band are contained in the Bureau's Land Mobile database and may be researched on the internet at <http://www.fcc.gov/wtb> by selecting the "Databases" link at the top of the page. Potential bidders may download a copy of the licensing database by selecting "Download the Wireless Databases" and choosing the appropriate files under "Land Mobile Database Files—47 CFR part 90." Alternatively, potential bidders may query the Bureau's licensing records online by selecting "Search the Wireless Databases Online."

18. 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.

19. Potential bidders should direct questions regarding the search capabilities described to the FCC Technical Support Hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY), or via email at [ulscmm@fcc.gov](mailto:ulscmm@fcc.gov). The hours of service for the hotline are 7 a.m. to 10 p.m. EST, Monday through Friday, 8 a.m. to 7 p.m. EST, Saturday, and 12 p.m. to 6 p.m. EST, Sunday. In order to provide better service to the public, all calls to the hotline are recorded.

#### iv. Incumbent Licensees

20. Potential bidders are reminded that there are incumbent licensees operating on frequencies that are subject to the upcoming auction. Incumbent licensees retain the exclusive right to use those channels within their self-defined service areas. The holder of an

EA authorization thus will be required to implement its facilities to protect incumbents from harmful interference. These limitations may restrict the ability of such geographic area licenses to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. Specifically, an EA authorization holder will be required to coordinate with the incumbent licensees by using the interference protection criteria referenced in § 90.683 and § 90.693 of the Commission's rules. However, operational agreements are encouraged between the parties. Should an incumbent lose its license, the incumbent's service area(s) will convey to the relevant authorized holder of the EA, and the authorized EA licensee will be entitled to operate within the forfeited service area(s) without being subject to further competitive bidding.

#### v. Bidder Alerts

21. 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.

22. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that a FCC auction represents an opportunity to become a FCC licensee in this service, subject to certain conditions and regulations. A FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does a 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.

23. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 36 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following: (a) 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; (b) 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; (c) The amount of the minimum investment is less than \$25,000. (d) The sales representative makes verbal representations that: (i) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (ii) the investment is not subject to state or federal securities laws; or (iii) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation. 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 800 MHz proposals may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

vi. National Environmental Policy Act (NEPA) Requirements

24. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of an 800 MHz facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that 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.

*D. Auction Specifics*

i. Auction Date

25. The auction will begin on Wednesday, November 1, 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

26. Auction No. 36—800 MHz SMR Lower 80 Channels

iii. Bidding Methodology

27. The bidding methodology for Auction No. 36 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

28. These are important dates relating to Auction No. 36:

Auction Seminar—September 18, 2000  
Short-Form Application (FCC FORM 175)—September 29, 2000; 6:00 p.m. EST

Upfront Payments (via wire transfer)—October 16, 2000; 6:00 p.m. EST

Orders for Remote Bidding Software—October 17, 2000; 5:30 p.m. EST  
Mock Auction—October 30, 2000  
Auction Begins—November 1, 2000

v. Requirements For Participation

29. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 6:00 p.m. EST, September 29, 2000.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. EST, October 16, 2000.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

30. The following is a list of general contact information relating to Auction No. 36:

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. EST

Auction Legal Information  
Auction Rules, Policies, Regulations  
Auctions and Industry Analysis  
Division, Legal Branch, (202) 418-0660; Commercial Wireless

Division, (202) 418-0620  
Licensing Information  
Rules, Policies, Regulations  
Licensing Issues  
Due Diligence  
Incumbency Issues  
Technical Support  
Electronic Filing Assistance  
Software Downloading  
FCC Auctions Technical Support  
Hotline, (202) 414-1250 (Voice), (202) 414-1255 (TTY), Hours of service: 7 a.m.-10:00 p.m. EST, Monday-Friday; 8 a.m.-7:00 p.m. EST, Saturday; 12:00 p.m.-6:00 p.m. EST, Sunday  
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 Washington, DC), (202) 418-3676 (in the Washington Area)  
FCC Internet Sites—<http://www.fcc.gov/formpage> <http://www.fcc.gov/wtb/auctions> <http://www.fcc.gov/ftp://ftp.fcc.gov>

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

31. Guidelines for completion of the short-form (FCC Form 175) are set forth on Attachment D. 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)*

32. 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)*

33. 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) and 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. See 47 CFR 1.2105(a)(2)(ix). Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an "Exhibit B" to the FCC Form 175.

34. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certify that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could broach on impermissible subject matters because they may convey pricing information and bidding strategies.

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

i. Eligibility

35. Bidding credits are available to small businesses and very small businesses as defined in 47 CFR 90.912(b). For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling interests, and the affiliates of the applicant and its controlling interests. The Commission does not impose

specific equity requirements on controlling interests. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the applicant and their affiliates will be counted in determining small business eligibility. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of control:

- 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.

36. 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 § 90.912. 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

37. 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. Specifically, for Auction No. 36, 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. 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

38. Applicants that qualify under the definitions of small business, and very small business (or consortia of small or very small businesses) as set forth in 47 CFR 90.912, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of an 800 MHz lower 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 \$15 million for the preceding three years receives a 25 percent discount on its winning bids for 800 MHz lower band licenses ("small business");
- A bidder with average gross revenues of not more than \$3 million for the preceding three years receives a 35 percent discount on its winning bids for 800 MHz lower band licenses ("very small business").

39. Bidding credits are not cumulative: qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both.

40. Bidders in Auction No. 36 should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. See 47 CFR 90.910(b). Finally, bidders should also note that there are no installment payment plans in Auction No. 36.

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

41. 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)*

42. After the short-form filing deadline (September 29, 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 or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). See 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter summarizing the changes to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-A760, Washington, DC 20554. A separate copy of the letter should be submitted to M. Nicole Oden, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-A337, Washington, D.C. 20554, briefly summarizing the changes. Questions about other changes should be directed to M. Nicole Oden at (202) 418-0660.

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

43. 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*

44. On Monday, September 18, 2000, the FCC will sponsor a free seminar for Auction No. 36 at the Federal Communications Commission, located at 445 12th Street, SW, Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the 800 MHz band service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

45. To register, complete the registration form (Attachment B) and submit it by Friday, September 15, 2000. Registrations are accepted on a first-come, first-served basis.

#### *B. Short-Form Application (FCC Form 175)—Due September 29, 2000*

46. In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission by 6:00 p.m. EST on September 29, 2000. Late applications will not be accepted.

47. There is no application fee required when filing a FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. See Part III.D.

##### *i. Electronic Filing*

48. Applicants must file their FCC Form 175 applications electronically. See 47 CFR 1.2105(a). Applications may generally be filed at any time beginning at noon on September 18, 2000 until 6:00 p.m. EST on September 29, 2000. Applicants are strongly encouraged to file early, and 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 September 29, 2000.

49. 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 7 a.m. to 10 p.m. EST, Monday through Friday, 8 a.m. to 7 p.m. EST, Saturday, and 12 p.m. to 6 p.m. EST, Sunday.

##### *ii. Completion of the FCC Form 175*

50. 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 of this public notice. 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*

51. The FCC Form 175 electronic review software may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications.

For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There is no fee for accessing this system. See Attachment C for details on accessing the review system.

#### *C. Application Processing and Minor Corrections*

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

53. As described more fully in the Commission's rules, after the September 29, 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).

#### *D. Upfront Payments—Due October 16, 2000*

54. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by a 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. EST on October 16, 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. 36 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 October 16, 2000 deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

55. Wire transfer payments must be received by 6:00 p.m. EST on October 16, 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 910-1203

OBI Field: (Skip one space between each information item)

"AUCTIONPAY"

TAXPAYER IDENTIFICATION NO.:

(same as FCC Form 159, block 26)

PAYMENT TYPE CODE (enter "A36U")

FCC CODE 1 (same as FCC Form 159, block 23A: "36")

PAYER NAME (same as FCC Form 159, block 2)

LOCKBOX NO. x358425

**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.

56. 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. 36." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

57. A completed FCC Remittance Advice Form (FCC Form 159) must be faxed to Mellon Bank in order to 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 filing 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

58. In the *Amendment of Part 1 of the Commission's Rules, Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making, (Part 1 Order, MO&O and NPRM)* 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine an

appropriate upfront payment for each license being auctioned. In the *Auction No. 36 Comment Public Notice*, the Bureau proposed upfront payments for Auction No. 36. Specifically, the Bureau proposed calculating the upfront payment on a license-by-license basis, using the following formula:

License population \* \$0.001 (the result rounded to the nearest hundred for levels below \$10,000.00 and to the nearest thousand for levels above \$10,000.00) with a minimum of no less than \$1,000.00 per license.

In this public notice, we adopt this formula.

59. 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. 36, the amount of the upfront payment will be translated into bidding units on a one-to-one basis; e.g., a \$25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

60. 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.

61. 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

62. The Commission will use wire transfers for all Auction No. 36 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 can provide the information electronically during the initial short form-filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Michelle Bennett or Gail Glasser, at (202) 418-2843 by October 16, 2000. 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 Part V.D.

E. Auction Registration

63. 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 have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

64. 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.

65. 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,

October 27, 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.

66. 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

67. Qualified bidders are allowed to bid electronically or telephonically. 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, October 17, 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. 36. If bidding telephonically, the telephonic bidding phone number will be supplied in the first Federal Express mailing of confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, a FCC Bidding Preference/Remote Software Order Form can be accessed when submitting the FCC Form 175. Bidders should complete this form electronically, print it out, and fax to (717) 338-2850. A manual copy of this form is also included as Attachment F in this public notice.

#### G. Mock Auction

68. All qualified bidders will be eligible to participate in a mock auction on Monday, October 30, 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

69. The first round of bidding for Auction No. 36 will begin on Wednesday, November 1, 2000. The initial bidding schedule will be announced in a 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

70. In the *Auction No. 36 Comment Public Notice*, we proposed to award the 2,800 licenses in the 800 MHz lower band in a single, simultaneous multiple round auction. We received no comment on this issue. We conclude that it is operationally feasible and appropriate to auction the 800 MHz lower band licenses through a single, simultaneous multiple round auction.

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

71. In the *Auction No. 36 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

72. For Auction No. 36 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. The total upfront payment does not define the total dollars a bidder may bid on any given license.

73. 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.

74. 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 Part 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.

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

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

76. 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.

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

78. 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

79. We conclude that the Auction No. 36 will be composed of three stages, which are each defined by an increasing activity rule. The following paragraphs describe the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

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

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

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

*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.

#### v. Stage Transitions

83. Auction No. 36 will start in Stage One and 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.

#### vi. Auction Stopping Rules

84. Auction No. 36 will employ a simultaneous stopping rule. Under this 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.

85. The Bureau retains the discretion to invoke the other versions of the simultaneous stopping rule. This modified version will 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 will not keep the auction open under this modified stopping rule.

86. The Bureau also retains 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 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).

87. In addition, the Bureau reserves 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. The Bureau 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. 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 will be required to maintain a higher level of bidding activity, increasing the number of bidding rounds per day.

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

88. For Auction No. 36, 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 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 in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will be included in a *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 Bureau adopts minimum opening bids for Auction 36, 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.

92. The Bureau adopts the following proposed formula to calculate minimum opening bids for each license:

License population \* \$0.001 (the result rounded to the nearest hundred for results less than \$10,000.00 and to the nearest thousand for results greater than \$10,000.00) with a minimum of no less than \$1,000.00 per license.

93. The Bureau concludes that this adopted formula best meets the objectives of our authority in establishing reasonable minimum opening bids. The Bureau has noted in the past that the reserve price and minimum opening bid provision is not a requirement to maximize auction revenue but rather a protection against assigning licenses at unacceptably low prices and that we must balance the revenue raising objective against our other public interest objectives in setting the minimum bid level. See Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, 62 FR 55251 (October 23, 1997). For the sake of auction integrity and fairness, minimum opening bids must be set in a manner that is consistent across licenses.

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

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

95. For Auction No. 36 the Bureau adopts a smoothing methodology to calculate minimum bid increments. 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 included as Attachment G.

96. The Bureau adopts the 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 circumstance 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. 36 if circumstances warrant.

#### iv. High Bids

97. 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

98. 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.

99. 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. 36.

100. 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.

101. 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.

102. The bid entry screen of the Automated Auction System software for Auction No. 36 allows bidders to place multiple increment bids. Specifically, high bids may be increased 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.

103. 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.

104. 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

105. In Auction No. 36, the Bureau will limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

106. 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.

107. 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," Part IV.B.iv.

108. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. 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 winning bid amount 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. Round Results

109. 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. 36 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.

#### viii. Auction Announcements

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

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

111. As noted in Part 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 revision of exhibits. Filers must make these changes on-line, and submit a letter summarizing the changes to: Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-A760, Washington, D.C. 20554. A separate copy of the letter should be mailed to M. Nicole Oden, Auctions and Industry Analysis Division, Room 4-A337, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Questions about other changes should be directed to M. Nicole Oden, Auctions and Industry Analysis Division at (202) 418-0660.

### V. Post-Auction Procedures

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

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

113. 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 according to 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

#### B. Long-Form Application

114. 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 800 MHz 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

115. 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

116. All applicants that submitted upfront payments but were not winning bidders for an 800 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.

117. 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. If the refund instructions were completed electronically, only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and a Taxpayer Identification Number ("TIN"). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Shirley Hanberry, 445 12th Street, S.W., Room 1-A824, Washington, D.C. 20554.

118. 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 information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information. 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.

**Margaret Wiener,**

*Deputy Chief, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau.*

[FR Doc. 00-17672 Filed 7-12-00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-00-31-H (Auction No. 31); DA 00-1486]

### Auction of Licenses in the 747-762 AND 777-792 MHz Bands Scheduled for September 6, 2000; Procedures Implementing Package Bidding for Auction No. 31

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces revised procedures to allow for package bidding for the upcoming auction of licenses for services in the 747-762 and 777-792 MHz bands ("Auction No. 31"). These procedures are designed to be efficient, and to avoid both the risk of bidders winning licenses they do not desire (*exposure problems*) and the difficulty that multiple bidders desiring the single licenses (or smaller packages) that constitute a larger package may have in outbidding a single bidder bidding for the larger package (*threshold problems*). The procedures are also designed to allow the auction to proceed

at an appropriate pace; to encourage straightforward bidding and deter gaming; and to be simple for straightforward bidders, while permitting bidders to employ flexible backup strategies.

**DATES:** Auction No. 31 is scheduled for September 6, 2000.

#### FOR FURTHER INFORMATION CONTACT:

Howard Davenport, Attorney, Auctions Legal Branch; Joel Rabinovitz, Attorney, Auctions Legal Branch, or Craig Bomberger, Analyst, Auctions Operations Branch, at (202) 418-0660. *Media Contact:* Meribeth McCarrick at (202) 418-0654.

**SUPPLEMENTARY INFORMATION:** This is a summary of a public notice released July 3, 2000 ("Auction No. 31 Public Notice"). The complete text of the *Auction No. 31 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, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857-3800. It is also available on the Commission's website at <http://www.fcc.gov/wtb/auctions>.

List of Attachments available at the FCC:

Appendix A—List of Commenters  
Attachment A—Licenses to be Auctioned  
Attachment B—FCC Auction Seminar Registration Form  
Attachment C—Electronic Filing and Review of the FCC Form 175  
Attachment D—Guideline for Completion of FCC Form 175 and Exhibits  
Attachment E—Accessing the FCC Network to Submit FCC Form 175 Applications

## I. Introduction and General Information

### A. Introduction

1. The public notice announces revised procedures to allow for package bidding for the upcoming auction of licenses for services in the 747-762 and 777-792 MHz bands ("Auction No. 31"). See 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*, 65 FR 3139 (January 20, 2000). On February 18, 2000, the Wireless Telecommunications Bureau ("Bureau") announced the procedures and minimum opening bids for Auction No. 31. See Auction of Licenses in the 747-762 and 777-792