

National Association of Water Companies
 Richard Moser, American Water Works Service Company
 Peter Cook, National Association of Water Companies (Alternate)

Natural Resources Defense Council
 Erik Olson, Natural Resources Defense Council
 Adrianna Quintero, Natural Resources Defense Council (Alternate)

Conservation Law Foundation
 David Ozonoff, School of Public Health, Boston University

American Water Works Association
 David Paris, Manchester Water Works
 John Sullivan, American Water Works Association (Alternate)

Association of Metropolitan Water Agencies
 Brian Ramaley, Newport News Waterworks
 Diane Van De Hei, Association of Metropolitan Water Agencies (Alternate)

Water and Wastewater Equipment Manufacturers Association
 Charles Reading, Jr., ITT/SafeWater Solutions
 Gary Van Stone, Calgon Carbon Corporation (Alternate)

National Rural Water Association
 Rodney Tart, Harnett County Public Utility, NC
 Randy Van Dyke, National Rural Water Association (Alternate)

National League of Cities
 Bruce Tobey, Mayor of Gloucester, Massachusetts
 Carol Kocheisen, National League of Cities (Alternate)

National Environmental Health Association

National Association of County and City Health Officials
 Chris Wiant, TriCounty Health Department

National Association of Regulatory Utility Commissioners
 John Williams, Florida Public Service Commission

Clean Water Action
 Marguerite Young, Clean Water Action
 Lynn Thorp, Clean Water Action (Alternate)

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-00-38-C (Auction No. 38); DA 00-2571]

Auction of Licenses for the 700 MHz Guard Bands Scheduled for February 13, 2001; Auction Notice and Filing Requirements for 8 Licenses in the 700 MHz Guard Bands Minimum Opening Bids and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of eight Guard Band Manager licenses in the 700 MHz Guard Bands ("Auction No. 38").

DATES: Auction No. 38 is scheduled for February 13, 2001.

FOR FURTHER INFORMATION CONTACT:

Legal questions contact Howard Davenport, Auctions Attorney, at (202) 418-0660. For general auction and bidding questions, contact Linda Sanderson, Auctions Project Manager, at (717) 338-2888 or Craig Bomberger, Auctions Analyst, at (202) 418-0660. Media Contact, Mark Rubin at (202) 418-2924. For licensing questions, contact Roger Noel, Chief, Licensing & Technical Analysis Branch, at (202) 418-0620.

SUPPLEMENTARY INFORMATION: This is a summary of a public notice released November 14, 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, 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. 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—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 F—FCC Bidding Preference/Remote Software Order Form

Attachment G—Accessing the FCC Network to File FCC Form 175

Attachment H—Summary of Documents Addressing the Anti-Collusion Rules

Attachment I—Incumbent Television Licensees on Channels 59-68

I. General Information

A. Introduction

1. This public notice announces the procedures and minimum opening bids for the upcoming auction of eight Guard Band Manager licenses in the 700 MHz Guard Bands ("Auction No. 38"). On October 13, 2000, the Wireless Telecommunications Bureau ("Bureau") released a public notice, seeking comment on the establishment of reserve prices or minimum opening bids for Auction No. 38, in accordance with the Balanced Budget Act of 1997. In addition, the Bureau sought comment on a number of procedures to be used in Auction No. 38. The Bureau received no comments in response to the *Auction No. 38 Comment Public Notice* 65 FR 63584 (October 24, 2000).

i. Background of Proceeding

2. The 746-806 MHz band has historically been used exclusively by television stations (Channels 60-69). Incumbent analog television broadcasters are permitted by statute to continue operations in this band until their markets are converted to digital television ("DTV"). The Budget Act directed the Commission to reallocate this spectrum for public safety and commercial use by December 31, 1997, and to commence competitive bidding for the commercial licenses on the reallocated spectrum after January 1, 2001. In November 1999, Congress enacted a consolidated appropriations statute that revised the latter instruction. This legislation accelerated the schedule for auction of the commercial spectrum bands. Accordingly, the Bureau held an auction that began on September 6, 2000 and concluded on September 21, 2000 (Auction No. 33).

ii. Licenses to Be Auctioned

3. The licenses available in this auction consist of the following licenses that remained unsold in Auction No. 33.

Market No.	Market name	Block	Bandwidth
MEA012	Pittsburgh, PA	A	2 MHz
MEA014	Columbus, OH	B	4 MHz
MEA028	Little Rock, AR	B	4 MHz

Market No.	Market name	Block	Bandwidth
MEA034	Omaha, NE	B	4 MHz
MEA037	Oklahoma City, OK	B	4 MHz
MEA048	Hawaii	B	4 MHz
MEA049	Guam and the Northern Mariana Islands	B	4 MHz
MEA051	American Samoa	B	4 MHz

The frequency allocation for the "A" Block license is 746–747/776–777 MHz. The frequency allocation for the "B" Block licenses is 762–764/792–794 MHz.

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. In particular, bidders should also familiarize themselves with the Commission's recent amendments and clarifications to its general competitive bidding rules. See Part 1 Fifth Report and Order, 65 FR 52401 (August 29, 2000).

5. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in this public notice; the *Auction No. 38 Comment Public Notice, 700 MHz Second Report and Order*, 65 FR 17594 (April 4, 2000), *700 MHz First Report & Order*, 65 FR 3139 (January 20, 2000), *700 MHz Memorandum Opinion and Order (MO&O)*, 65 FR 42879 (July 12, 2000), *Reallocation Report & Order*, 63 FR 6669 (February 10, 1998), and *Reallocation MO&O* 63 FR 63798 (November 17, 1998).

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. This prohibition begins at the short-form application filing deadline, and ends at the down payment deadline 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. 38*, for example, the rule would apply to any applicants bidding for the same MEA. 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. 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 upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

iii. Protection of Public Safety Operations

9. Section 337 (d)(4) of the Budget Act requires that the Commission establish rules insuring that public safety services licensees using spectrum reallocated pursuant to subsection (a)(1) shall not be subject to harmful interference from television broadcast licensees. The Conference Report pertaining to that section states that the Commission should ensure that public safety service licensees in the 746–806 MHz band "continue to operate free of interference from any new commercial licensees." To achieve this end, the Commission established "Guard Bands" in the 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz bands. The Commission required that entities operating in the Guard Bands adhere to the same out-of-band emission ("OOBE") criteria that was adopted for 700 MHz public safety users. In addition, these entities must coordinate their frequency use with public safety frequency coordinators and also comply

with the adjacent channel coupled power out-of-band emission limits. In addition, operations in the Guard Bands are restricted to entities that do not use a cellular system architecture.

iv. Protection of Television Services

10. Licensees operating on the spectrum associated with Channels 60, 62, 65, and 67 must comply with the co-channel and adjacent channel provisions of § 27.60 of our rules. For example, an entity operating on any portion of the 746–747 MHz Guard Band, which is contained in Channel 60, must provide co-channel protection to Channel 60, and adjacent channel protection to Channels 59 and 61.

11. *Negotiations with Incumbent Broadcast Licensees.* 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.” Congress also has directed the Commission to auction 36 MHz of spectrum, six of which are the subject of this auction, 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 and digital television service during the transition to DTV.

12. In the *700 MHz MO&O*, the Commission concluded that voluntary band clearing agreements between incumbent broadcast licensees on Channels 59–69 and new licensees in the 700 MHz bands, if properly structured, will further the broad public interest in intensive and efficient use of the spectrum and further the statutory scheme. Accordingly, the Commission provided guidance in the *700 MHz MO&O* regarding its treatment of specific regulatory requests needed to implement such voluntary agreements. This guidance includes a presumption in favor of approving such regulatory requests in certain circumstances and a recognition of the must carry obligation of cable systems with regard to broadcasts of digital television programming. The Commission established a rebuttable presumption in favor of granting regulatory requests that would: (i) Make new or expanded wireless service, such as “2.5” or “3G” services available to consumers; (ii) clear commercial frequencies that enable provision of public safety services; or (iii) result in the provision of wireless service to rural or other

underserved communities. The applicant would also need to show that grant of the request would not result in any of the following: (i) The loss of any of the four stations in the designated market area (DMA) with the largest audience share; (ii) the loss of the sole service licensed to the local community; or (iii) the loss of a community’s sole service on a channel reserved for noncommercial educational broadcast service.

13. With respect to regulatory requests for which the presumption described is not established, or is rebutted, the Commission has stated that it will weigh the loss of broadcast service and the advent of new wireless service on a case-by-case basis. In reviewing specific requests not subject to the favorable presumption, the Commission would consider as a relevant factor in its public interest determination the extent to which the station’s signal will remain available, after implementation of the agreement, to a significant number of its viewers in the licensee’s service area. For instance, the Commission would find it significant if that signal is effectively available to a significant number of current viewers through various existing distribution channels, such as cable and DBS, and implementation of the voluntary agreement would not create additional TV white or gray area.

v. Due Diligence

14. 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.

15. 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), six megahertz of which will be subject to the upcoming auction. As discussed in greater detail, the Commission made clear that geographic area licensees operating on the spectrum associated with Channels 60, 62, 65, and 67 must comply with the co-channel and adjacent channel provision of § 90.545 of the Commission’s rules. 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.

16. 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 I are the facilities of incumbent television permittees and licensees on television Channels 59–68. 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 I. 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.

17. 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 I. 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.

18. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 38 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction

No. 38 are strongly encouraged to continue such research during the auction.

vi. Bidder Alerts

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

20. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 38 to deceive and defraud unsuspecting investors.

21. 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 Consumer Center at (888) CALL-FCC ((888) 225-5322).

vii. National Environmental Policy Act (NEPA) Requirements

22. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna 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.

C. Auction Specifics

i. Auction Date

23. The auction will begin on Tuesday, February 13, 2001. 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

24. Auction No. 38—700 MHz Guard Band.

ii. Bidding Methodology

25. The bidding methodology for Auction No. 38 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

iii. Pre-Auction Dates and Deadlines

26. These are important dates relating to Auction No. 38:

Auction Seminar—January 4, 2001
Short-Form Application (FCC FORM 175)—January 12, 2001; 6:00 p.m. ET
Upfront Payments (via wire transfer)—January 26, 2001; 6:00 p.m. ET
Orders for Remote Bidding Software—January 29, 2001; 6:00 p.m. ET
Mock Auction—February 9, 2001
Auction Begins—February 13, 2001

iv. Requirements for Participation

27. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 6:00 p.m. ET, January 12, 2001.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET January 26, 2001.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

28. The following is a list of general contract information relating to Auction No. 38:

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.–6:00 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: 7 a.m.–10:00 p.m. ET, Monday–Friday; 8 a.m.–7:00 p.m. ET, Saturday; 12:00 p.m.–6:00 p.m. ET, 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: Mark Rubin (202) 418-2924.

FCC Forms: (800) 418-3676 (outside 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://www.fcc.gov>.

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

29. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D to the 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, and specific ownership information.

A. Ownership Disclosure Requirements (Form 175 Exhibit A)

30. 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)

31. 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). As discussed, 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.

32. 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 licenses in the same geographic license area provided that (i) the attributable interest holder certifies 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 touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

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

33. In the 700 MHz *Second Report & Order*, the Commission adopted small business provisions to promote and facilitate the participation of small businesses in competitive bidding for Guard Band licenses in the 700 MHz band.

i. Eligibility

34. 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 interest holders, and affiliates of the applicant and its controlling interest holders. The Commission does not impose specific equity requirements on controlling interest holders. 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.

35. 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 must satisfy 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

36. Applicants must 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. 38,

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 interest holders; and (iv) the affiliates of the applicant's controlling interest holders. 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 interest holders, and their affiliates, 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

37. 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. The size of a bidding credit in the 700 MHz guard band auction 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 Guard Band manager licenses ("small business");
- 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 Guard Band manager licenses ("very small business").

38. Bidding credits are not cumulative; qualifying applicants receive either the 15 percent or the 25 percent bidding credit, but not both. Bidders in Auction No. 38 should also 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. 38.

iv. Tribal Land Bidding Credit

39. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. See Part V.C.

D. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

40. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant (or any of the applicant's controlling interest or their affiliates, as defined by § 1.2110 of the Commission's rules, as recently amended in the *Part 1 Fifth Report and Order*) has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any federal agency. Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, 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.

41. "Former defaulters"—i.e., applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 38, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

E. Other Information (Form 175 Exhibits E and F)

42. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit E) 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 F, Miscellaneous Information to the FCC Form 175.

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

43. After the short-form filing deadline (January 12, 2001), 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 Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4-A668, Washington, DC 20554, briefly summarizing the changes. A separate copy of the letter should be submitted to Howard Davenport, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-A435, Washington, DC 20554. Questions about other changes should be directed to Howard Davenport at (202) 418-0660.

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

44. 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

45. On Thursday, January 4, 2001, the FCC will sponsor a free seminar for Auction No. 38 at the Federal Communications Commission, located at 445 12th Street, Room CY-B511/418, 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 700 MHz Guard Band

service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

46. To register, complete the registration form included as Attachment B of this public notice and submit it by 6 p.m. ET, Tuesday, January 2, 2001. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due January 12, 2001

47. 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 no later than 6:00 p.m. ET on January 12, 2001. Late applications will not be accepted.

48. 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. See Part III.D.

i. Electronic Filing

49. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time from 12 noon ET on January 4, 2001 until 6 p.m. ET on January 12, 2001. 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 January 12, 2001.

50. 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. ET, Monday through Friday, 8 a.m. to 7 p.m. ET, Saturday, and 12 p.m. to 6 p.m. ET, Sunday.

ii. Completion of the FCC Form 175

51. 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 to this public notice provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

52. 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

53. 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.

54. As described more fully in the Commission's rules, after the January 12, 2001, 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 January 26, 2001

55. 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 p.m. ET on January 26, 2001. 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. 38 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 January 26, 2001 deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

56. Wire transfer payments must be received at Mellon Bank by 6 p.m. ET on January 26, 2001. 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/ACCOUNT # 910-0180
OBI Field: (Skip one space between each information item)

“AUCTIONPAY”

TAXPAYER IDENTIFICATION NO.

(same as FCC Form 159, block 26)

PAYMENT TYPE CODE (enter “A38U”)

FCC CODE 1 (same as FCC Form 159, block 23A: “38”)

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

LOCKBOX NO. # 358420

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

57. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236-5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write “Wire Transfer—Auction Payment for Auction Event No. 38.” Applicants are strongly encouraged to confirm timely transmission and receipt of their upfront payment at Mellon Bank and can do so by contacting their sending financial institution.

ii. FCC Form 159

58. A completed FCC Remittance Advice Form (FCC Form 159) must be faxed to Mellon Bank to accompany each upfront payment wire transfer. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to the public notice. 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

59. 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. In addition, as required by the *Part 1 Fifth Report and Order*, the upfront payment amount for “former defaulters,” *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, will be fifty percent more than the normal amount required to be paid. In the *Auction No. 38 Comment Public Notice*, the Bureau proposed upfront payments for Auction No. 38 to be the same as the upfront payments used for Auction No. 33. No comments were received concerning these upfront payments. We therefore adopt our proposed upfront payment amounts for Auction No. 38 as listed on Attachment A.

60. 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. 38, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, e.g., a \$1,000,000 upfront payment provides the bidder with 1,000,000 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.

61. 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.

62. 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.

63. Any auction applicant that has previously been in default on any Commission license or has previously been delinquent on any non-tax debt owed to any Federal agency must submit an upfront payment equal to 50 percent more than that set for each particular license. See 47 CFR 1.2106. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In calculating the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

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

64. The Commission will use wire transfers for all Auction No. 38 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 must fax the Wire Transfer instructions by January 26, 2001, to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates 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

Tax ID#

(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.F.

E. Auction Registration

65. 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.

66. 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 a portion 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.

67. 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 Thursday, February 8, 2001, must 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.

68. 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 the 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 needing replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

F. Remote Electronic Bidding Software

69. 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 Monday, January 29, 2001. 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. 38. If bidding telephonically, the telephonic bidding phone number will be supplied in the Federal Express mailings 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 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

70. All qualified bidders will be eligible to participate in a mock auction scheduled for Friday, February 9, 2001. 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

71. The first round of bidding for Auction No. 38 will begin on Tuesday, February 13, 2001. 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

72. In the *Auction No. 38 Comment Public Notice*, we proposed to award eight Guard Band Manager licenses in the 700 MHz guard bands in a single stage, simultaneous multiple round auction. We received no comment on this issue. We therefore conclude that it is operationally feasible and appropriate to auction the 700 MHz Guard Band manager licenses through this auction design. Unless otherwise announced, bids will be accepted on all licenses in successive rounds of bidding.

ii. Maximum Eligibility and Activity Rules

73. In the *Auction No. 38 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 participating in Auction No. 38. We received no comments on this issue.

74. For Auction No. 38, we will adopt our proposal that the amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder participating in Auction No. 38. 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, prospective bidders are cautioned to calculate their upfront payments carefully. The upfront payment does not define the total dollars a bidder may bid on any given license.

75. In addition, we received no comments on our proposal for a single stage auction. Therefore, in order to ensure that the auction closes within a reasonable period of time, we adopt our proposal with the following activity requirements: a bidder must either place a valid bid and/or be the standing high bidder during each round of the auction rather than wait until the end before participating. Bidders are required to be active on 100 percent of their maximum eligibility during each round of the auction.

76. A bidder's activity level in a round is the sum of the bidding units associated with the licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is the high bidder at the end of the previous round, or if it submits an acceptable bid in the current round. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility to bring them into compliance with the activity rule.

iii. Activity Rule Waivers and Reducing Eligibility

77. In the *Auction No. 38 Comment Public Notice*, we proposed that each bidder in the auction would be provided two activity rule waivers that may be used in any round during the course of the auction. We received no comment on this issue.

78. Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided two 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 by providing two 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.

79. 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: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

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

81. 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 will not keep the auction open.

iv. Auction Stopping Rules

82. For Auction No. 38, the Bureau proposed to 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, or applies a proactive waiver. After the first such round, bidding closes simultaneously on all licenses.

83. The Bureau also proposed a modified version 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, 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. The Bureau further sought comment on whether this modified stopping rule should be used unilaterally.

84. The Bureau further proposed retaining the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted. 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).

85. 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. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day.

86. No comments were received on any of these issues, therefore, we adopt all of the proposals concerning the auction stopping rules. Auction No. 38 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. Adoption of these rules, we believe, is most appropriate for Auction No. 38 because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

v. Auction Delay, Suspension, or Cancellation

87. In the *Auction No. 38 Comment Public Notice*, 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.

A. 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 first registration mailing. 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 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. We received no comments, therefore, we adopt the proposal.

ii. Reserve Price or Minimum Opening Bid

91. *Background.* 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.

92. In the *Auction No. 38 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 38 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 38, 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. We received no comments, therefore, the Bureau adopts the proposal contained in the public notice, and set them forth in Attachment A.

iii. Bid Increments and Minimum Accepted Bids

93. In the *Auction No. 38 Comment Public Notice*, we proposed to apply a minimum bid increment of 10 percent to calculate minimum bid increments. We further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate. We received no comment on this issue.

94. We will adopt the proposal contained in the *Auction No. 38 Comment Public Notice*. Once there is a standing high bid on a license, there will be a bid increment associated with that bid indicating the minimum amount by which the bid on that license can be raised. For Auction No. 38, we will use a flat, across-the-board increment of 10 percent to calculate the minimum bid increment. The Bureau retains the discretion to compute the minimum bid increment through other methodologies if it determines circumstances so dictate. Advanced notice of the Bureau's decision to do so

will be announced via the Automated Auction System.

95. Bidders will enter their bid as multiples of the bid increment (i.e., with a 10 percent bid increment, a bid of 1 increment will place a bid 10 percent above the previous high bid, a bid of 2 increments will place a bid 20 percent above the previous high bid).

iv. High Bids

96. Each bid will be date- and time-stamped when it is entered into the FCC computer system. In the event of tie bids (identical gross bid amounts) for a license during a round, the earliest of the tied bids will be the standing high bid at the end of the round. 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

97. During a bidding round, a bidder may submit bids for as many licenses as it wishes, (subject to its eligibility), as well as remove bids placed in the same bidding round, or permanently reduce eligibility. 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.

98. 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. 38.

99. 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.

100. 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 verifications *after* they submit their bids.

101. The bid entry screen of the automated auction system software for Auction No. 38 allows bidders to place multiple increment bids, which will allow bidders to 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.

102. 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.

103. 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), bidders will be limited to bidding only the minimum acceptable bid. In this case 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.

vi. Bid Removal and Bid Withdrawal

104. In the *Auction No. 38 Comment Public Notice*, we proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, and based on the fact that only eight licenses will be auctioned, we proposed that bidders not be permitted to withdraw bids in any round. We received no comment on this issue. Therefore the Bureau adopts this proposal and will not permit bidders to withdraw bids in any rounds during Auction No. 38.

105. *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. 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. Once a round closes, a bidder may no longer remove a bid. No comments were received; therefore, we will adopt these procedures for Auction No. 38.

vii. Round Results

106. 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, 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 FCC account numbers for Auction No. 38 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

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

ix. Maintaining the Accuracy of FCC Form 175 Information

108. As noted in Part II.F., 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 briefly summarizing these changes to: Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4-A668, Washington, DC 20554.

109. A separate copy of the letter should be mailed to Howard Davenport, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4-A435, Washington, DC 20554. Questions about other changes should be directed to Howard Davenport, Auctions Attorney, Auctions and

Industry Analysis Division at (202) 418-0660.

A. Post-Auction Procedures

A. Down Payments

110. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license.

111. 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).

B. Long-Form Application

112. Within ten business days after release of the auction closing public notice, winning bidders must file: (i) FCC Form 601 and all required exhibits electronically via the Universal Licensing System ("ULS"); and (ii) FCC Form 602 manually pursuant to § 1.919 of the Commission's rules. Winning bidders may file a single application for all markets won at 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, more detailed filing instructions will be provided to auction winners at the close of the auction.

C. Tribal Land Bidding Credit

113. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(e). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

114. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit after winning the auction when it files its long-form application (FCC Form 601). In order for a winning bidder to be awarded a tribal land bidding credit, it must provide specific certifications regarding the servicing of tribal lands and is subject to specific performance criteria as set forth in 47 CFR 1.2110(e).

115. For additional information on the tribal land bidding credit, including

how to determine the amount of credit available, *see* Public Notice DA 00–2219, released September 28, 2000, entitled *Wireless Telecommunications Bureau Announces Availability of Bidding Credits For Providing Wireless Services To Qualifying Tribal Lands*.

D. Auction Discount Voucher

116. On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher in the amount of \$125,273,878.00. This Auction Discount Voucher may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order.

E. Default and Disqualification

117. 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).

F. Refund of Remaining Upfront Payment Balance

118. All applicants that submitted upfront payments but were not winning bidders for a 700 MHz Guard Band license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction.

119. 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, and have no remaining bidding eligibility, must submit a refund request which includes wire transfer instructions and a Taxpayer Identification Number

(“TIN”), to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1–A843, Washington, DC 20554

120. 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 Tim Dates or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

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FEDERAL TRADE COMMISSION

[File No. 001 0121]

El Paso Energy Corporation, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 22, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip Broyles, FTC/S–2105, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–2805.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final

approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 31, 2000), on the World Wide Web, at “<http://www.ftc.gov/os/2000/12/index.htm>.” A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment from the El Paso Energy Corporation (“El Paso”) and PG&E Corporation (“PG&E”) (collectively the “Proposed Respondents”) an Agreement Containing Consent Order (“the Proposed Consent Order”). The Proposed Consent Order remedies the likely anticompetitive effects in the natural gas transportation markets in the Permian Basin production area, the San Antonio-Austin area, and the Matagorda offshore production area. El Paso has also reviewed a proposed draft of complaint (the “Proposed Complaint”) that the Commission contemplates issuing. The Proposed Consent Order is designed to remedy the likely competitive effects arising from the El Paso acquisition of all of the outstanding voting shares of PG&E Gas Transmission Teco, Inc., and PG&E Gas Transmission Texas Corporation, from PG&E (the “Acquisition”).

II. Description of the Parties and the Proposed Acquisition

El Paso Energy Corporation is an integrated energy company producing, transporting, gathering, processing, and treating natural gas. With over \$21