

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6971-7]

Program Requirement Revisions Related to the Public Water System Supervision Program for the States of New Hampshire, Rhode Island, Vermont, and the Commonwealth of Massachusetts**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: Notice is hereby given that the States of New Hampshire, Rhode Island and Vermont, and the Commonwealth of Massachusetts are in the process of revising their approved Public Water System Supervision Programs to meet the requirements of the Safe Drinking Water Act (SDWA).

Massachusetts, New Hampshire, Rhode Island and Vermont have all adopted regulations establishing Administrative Penalty Authority that apply to their respective Drinking Water Programs. They have submitted documentation, along with certification from their respective State Attorney General's office, indicating that the Administrative Penalty Authority currently in effect meets the minimum requirements set forth in the 1996 SDWA Amendments. EPA has determined that the Administrative Penalty Authority currently in effect for Massachusetts, New Hampshire, Rhode Island, and Vermont are no less stringent than corresponding federal requirements, as authorized under the Safe Drinking Water Act Amendments of 1996 and final rule provided on April 28, 1998 (63 FR 23362). Therefore, EPA intends to approve the Administrative Penalty Authority requirement for Massachusetts, New Hampshire, Rhode Island, and Vermont.

In addition, the State of Rhode Island has adopted drinking water regulations for Synthetic Organic Chemicals and Inorganic Chemicals (also known as Phase V Drinking Water Regulations) that correspond to the National Primary Drinking Water Regulations promulgated by EPA on July 17, 1992 (57 FR 31776). After additional review of the submitted documentation, EPA has determined that the State program revisions for its Phase V Drinking Water Regulations are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve this Public Water System Supervision Program requirement for Rhode Island.

Furthermore, EPA has determined that Rhode Island's Revised Public Water Supply Definition is no less

stringent than the corresponding revised federal definition, as authorized under the Safe Drinking Water Act Amendments of 1996 and final rule provided on April 28, 1998 (63 FR 23362). Therefore, EPA also intends to approve this Public Water Supply Supervision Program requirement for Rhode Island.

DATES: All interested parties may request a public hearing for any of the above EPA determinations. A request for a public hearing must be submitted to the Regional Administrator at the address shown below on or before May 29, 2001. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by this date, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective on May 29, 2001.

Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination; (3) information that the requesting person intends to submit at such hearing; and (4) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 am and 4:00 pm, Monday through Friday, at the following office(s): U.S. Environmental Protection Agency, Office of Ecosystem Protection, One Congress Street, 11th floor, Boston, MA 02114.

For documents specific to that State/Commonwealth:

Massachusetts Department of Environmental Protection, Drinking Water Program, One Winter Street, Boston, MA 02108

New Hampshire Department of Environmental Services, Water Supply Engineering Bureau, P.O. Box 95, 6 Hazen Drive, Concord, NH 03302-0095

Rhode Island Department of Health, Office of Drinking Water Quality, 3 Capitol Hill, Cannon Building, Room 209, Providence, RI 02908-5097

Vermont Department of Environmental Conservation, Water Supply Division, 103 South Main Street, Waterbury, Vermont 05671-0403

FOR FURTHER INFORMATION CONTACT:

David Chin, EPA-New England, Municipal Assistance Unit, Office of Ecosystem Protection (telephone 617-918-1764) regarding the Administrative Penalty Authority determinations, or Ellie Kwong, EPA-New England, Rhode Island State Program Unit, Office of Ecosystem Protection (telephone 617-918-1592) regarding Rhode Island's Phase V Rule and Revised Public Water Supply Definition determinations.

Authority: (Section 1401 and section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR Part 142).

Dated: April 18, 2001.

Ira W. Leighton,

Acting Regional Administrator, EPA-New England.

[FR Doc. 01-10512 Filed 4-26-01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-01-40-B (Auction No. 40); DA 01-850]

Lower and Upper Paging Bands Auction Scheduled for June 26, 2001; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments 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 licenses for the lower and upper paging bands (Auction No. 40) scheduled for June 26, 2001.

DATES: Auction No. 40 is scheduled for June 26, 2001.

FOR FURTHER INFORMATION CONTACT:

Auctions and Industry Analysis Division: Erik Salovaara, Legal Branch, or Jeff Crooks, Auctions Operations Branch, at (202) 418-0660; Lisa Stover, Auctions Operations Branch, at (717) 338-2888. Commercial Wireless Division: Gary Oshinsky, Policy and Rules Branch, at (202) 418-7167, or Bettye Woodward, Licensing and Technical Analysis Branch, at (202) 418-0620. Media Contact: Meribeth McCarrick at (202) 418-0654.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 40 Procedures Public Notice* released April 9, 2001. The complete text of the

Auction No. 40 Procedures 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 E—Instructions for FCC Remittance Advice (FCC Form 159)
- Attachment F—Accessing the FCC Network to File FCC Form 175
- Attachment G—Summary of Documents Addressing the Anti-Collusion Rules

I. General Information

A. Introduction

1. By the *Auction No. 40 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of licenses for the lower and upper paging bands ("Auction No. 40") scheduled for June 26, 2001. On March 7, 2001, in accordance with the Balanced Budget Act of 1997, the Bureau released the *Auction No. 40 Comment Public Notice*, 66 FR 15254 (March 16, 2001) seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 40. The Bureau received three comments and four reply comments in response to the *Auction No. 40 Comment Public Notice*.

i. Background of Proceeding

2. In the *Paging Second Report and Order*, 66 FR 11616 (March 12, 1997), the Commission adopted rules governing geographic licensing for exclusive channels in the 35–36 MHz, 43–44 MHz, 152–159 MHz, 454–460 MHz, 929–930 MHz, and 931–932 MHz bands allocated for paging, and competitive bidding procedures for granting mutually exclusive applications for non-nationwide geographic area licenses in those bands. In order to facilitate geographic

licensing, the Commission dismissed all pending mutually exclusive paging applications and all non-mutually exclusive paging applications filed after July 31, 1996. In part, the Commission developed a standard methodology for providing protection to incumbent licensees from co-channel interference for the 929–930 MHz and 931–932 MHz paging bands to supplement the existing formulas for determining interference contours on other paging bands.

i. Licenses To Be Auctioned

3. The licenses available in Auction No. 40 include 14,000 lower paging bands (35–36 MHz, 43–44 MHz, 152–159 MHz, and 454–460 MHz) licenses, as well as 1,514 upper paging bands (929–931 MHz) licenses that were unsold in the first paging auction ("Auction No. 26"). The lower bands licenses will be awarded in each of the 175 geographic areas known as Economic Areas (EAs) and the upper bands licenses will be awarded in each of the 51 geographic areas known as Major Economic Areas (MEAs). These EAs and MEAs both encompass the United States, Guam and Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa. The tables contain the block/frequency cross-reference list for the paging bands. A complete list of licenses available for Auction No. 40 is included as Attachment A of the *Auction No. 40 Procedures Public Notice*.

Block (license suffix)	Frequency
35 MHz Lower Bands Unpaired Paging Channels	
CA	35.19–35.21
CB	35.21–35.23
CC	35.23–35.25
CD	35.25–35.27
CE	35.29–35.31
CF	35.33–35.35
CG	35.37–35.39
CH	35.41–35.43
CI	35.45–35.47
CJ	35.49–35.51
CK	35.53–35.55
CL	35.55–35.57
CM	35.57–35.59
CN	35.59–35.61
CO	35.61–35.63
CP	35.65–35.68

43 MHz Lower Bands Unpaired Paging Channels	
DA	43.19–43.21
DB	43.21–43.23
DC	43.23–43.25
DD	43.25–43.27
DE	43.29–43.31
DF	43.33–43.35
DG	43.37–43.39

Block (license suffix)	Frequency
DH	43.41–43.43
DI	43.45–43.47
DJ	43.49–43.51
DK	43.53–43.55
DL	43.55–43.57
DM	43.57–43.59
DN	43.59–43.61
DO	43.61–43.63
DP	43.65–43.67

Block (license suffix)	Frequency
152 MHz Lower Bands Unpaired Paging Channels	
EA	152.230–152.250
EB	152.830–152.850
EC	158.090–158.110
ED	158.690–158.710
FA	152.015–152.045/158.475–158.505
FB	152.045–152.075/158.505–158.535
FC	152.075–152.105/158.535–158.565
FD	152.105–152.135/158.565–158.595
FE	152.135–152.165/158.595–158.625
FF	152.165–152.195/158.625–158.655
FG	152.195–152.225/158.655–158.685
FH	152.495–152.525/157.755–157.785
FI	152.525–152.555/157.785–157.815
FJ	152.555–152.585/157.815–157.845
FK	152.585–152.615/157.845–157.875
FL	152.615–152.645/157.875–157.905
FM	152.645–152.685/157.905–157.935
FN	152.685–152.705/157.935–157.965
FO	152.705–152.735/157.965–157.995
FP	152.735–152.765/157.995–158.025
FQ	152.765–152.795/158.025–158.055
FR	152.795–152.825/158.055–158.085

454 MHz Lower Bands Paired Paging Channels	
GA	454.0125–454.0375/ 459.0125–459.0375
GB	454.0375–454.0625/ 459.0375–459.0625
GC	454.0625–454.0875/ 459.0625–459.0875
GD	454.0875–454.1125/ 459.0875–459.1125
GE	454.1125–454.1375/ 459.1125–459.1375
GF	454.1375–454.1625/ 459.1375–459.1625

Block (license suffix)	Frequency
GG	454.1625–454.1875/ 459.1625–459.1875
GH	454.1875–454.2125/ 459.1875–459.2125
GI	454.2125–454.2375/ 459.1265–459.2375
GJ	454.2375–454.2625/ 459.2375–459.2625
GK	454.2625–454.2875/ 459.2625–459.2875
GL	454.2875–454.3125/ 459.2875–459.3125
GM	454.3125–454.3375/ 459.3125–454.3375
GN	454.3375–454.3625/ 459.3375–459.3625
GO	454.3625–454.3875/ 459.3625–459.3875
GP	454.3875–454.4125/ 459.3875–459.4125
GQ	454.4125–454.4375/ 459.4125–459.4375
GR	454.4375–454.4625/ 459.4375–459.4625
GS	454.4625–454.4875/ 459.4625–459.4875
GT	454.4875–454.5125/ 459.4875–459.5125
GU	454.5125–454.5375/ 459.5125–459.5375
GV	454.5375–454.5625/ 459.5375–459.5625
GW	454.5625–454.5875/ 459.5625–459.5875
GX	454.5875–454.6125/ 459.5875–459.6125
GY	454.6125–454.6375/ 459.6125–459.6375
GZ	454.6375–454.6625/ 459.6375–459.6625

Block (license suffix)	Frequency
929–931 MHz Upper Bands Paging Channels	
A	929.0125
B	929.1125
C	929.2375
D	929.3125
E	929.3875
F	929.4375
G	929.4625
H	929.6375
I	929.6875
J	929.7875
K	929.9125
L	929.9625
AA	931.0125
AB	931.0375
AC	931.0625
AD	931.0875
AE	931.1125
AF	931.1375
AG	931.1625
AH	931.1875
AI	931.2125
AJ	931.2375
AK	931.2625
AL	931.2875
AM	931.3125
AN	931.3375

Block (license suffix)	Frequency
AO	931.3625
AP	931.3875
AQ	931.4125
AR	931.4375
AS	931.4625
AT	931.4875
AU	931.5125
AV	931.5375
AW	931.5625
AX	931.5875
AY	931.6125
AZ	931.6375
BA	931.6625
BB	931.6875
BC	931.7125
BD	931.7375
BE	931.7625
BF	931.7875
BG	931.8125
BH	931.8375
BI	931.8625
BJ	931.9625
BK	931.9875

(Licenses are not available for each block in every market; 985 upper bands licenses were sold in Auction No. 26. See Attachment A of the *Auction No. 40 Procedures Public Notice* to determine what licenses will be offered in Auction No. 40.)

B. Rules and Disclaimers

i. Relevant Authority

4. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the paging services, contained in title 47, parts 22 and 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.

5. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in the *Auction No. 40 Procedures Public Notice*; the *Auction No. 40 Comment Public Notice*; the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000) (as well as prior Commission proceedings regarding competitive bidding procedures); the *Paging Notice*, 61 FR 6199 (February 16, 1996); the *Paging First Report and Order*, 61 FR 21380 (May 10, 1996); the *First Paging Reconsideration Order* 61 FR 34375 (July 2, 1996); the *Paging Second Report and Order*; the *Second Paging Reconsideration Order* and *Paging Third Report and Order* 64 FR 33762 (June 24, 1999); and the *Third Paging Reconsideration Order*, 66 FR 15041 (March 15, 2001).

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 at <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 99–98 for the *Paging Third Report and 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 or 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. 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. 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.

8. Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic

areas. Note that in Auction No. 40, applicants for licenses in overlapping EAs and MEAs will not be able to take advantage of these rule provisions, even though the licenses are not completely co-extensive. However, all applicants may enter into bidding agreements *before* filing FCC Form 175, as long as they disclose the existence of the agreement(s) in their FCC 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 pursuant to § 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 licenses covering the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c) of the Commission's rules.

9. 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 therefore are required to make such notification to the Commission immediately upon discovery.

10. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 40 Procedures Public Notice*.

iii. Incumbent Licensees and Due Diligence

11. Incumbent (non-geographic) paging licensees operating under their existing authorizations are entitled to full protection from co-channel interference. Geographic area licensees are likewise afforded co-channel interference protection from incumbent licensees. Adjacent geographic area licensees are obligated to resolve possible interference concerns of adjacent geographic area licensees by negotiating a mutually acceptable agreement with the neighboring geographic licensee.

12. Potential bidders are reminded that there are a number of incumbent licensees already licensed and operating

on frequencies that will be subject to the upcoming auction. Geographic area licensees must protect such incumbents from harmful interference. See 47 CFR 22.503(i). These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

13. In addition, potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of current or future agreements with Canada or Mexico. Licensees on the lower paging channels must submit a Form 601 to obtain authorization to operate stations north of Line A or east of Line C because these channels are subject to the *Above 30 Megacycles per Second Agreement* with Industry Canada. Although the upper paging channels do not require coordination with Canada, the *U.S.-Canada Interim Coordination Considerations for the Band 929-932 MHz, as amended* assigns specific 929 and 931 MHz frequencies to the United States for licensing along certain longitudes above Line A, and assigns other specific 929 and 931 MHz frequencies to Canada for licensing along certain longitudes along the U.S.-Canada border. In addition, the 929 and 931 MHz frequencies assigned to Canada are unavailable for use by U.S. licensees above Line A as set out in the agreement.

14. Potential bidders should also be aware that certain applications (including those for modification), waiver requests, petitions to deny, petitions for reconsideration, and applications for review are pending before the Commission that relate to particular applicants or incumbent licensees. In addition, certain decisions reached in the paging proceeding may be subject to judicial appeal and may be the subject of additional reconsideration or appeal. Resolution of these matters could have an impact on the availability of spectrum in Auction No. 40. In addition, 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.

15. Potential bidders are solely responsible for identifying associated risks, and investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 40.

16. Potential bidders may obtain information about licenses available in

Auction No. 40 through the Bureau's licensing databases on the World Wide Web at <http://www.fcc.gov/wtb/uls>. Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY), or via e-mail at ulscomm@fcc.gov. The hotline is available to assist with questions Monday through Friday, from 7 am to 10 pm ET, Saturday, 8 am to 7 pm ET, and Sunday, 12 noon to 6 pm ET. In order to provide better service to the public, *all calls to the hotline are recorded*. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems.

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

iv. Bidder Alerts

18. 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.

19. 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 and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

20. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 40 to

deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

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

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 proposals regarding Auction No. 40 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

v. 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.

A. Auction Specifics

i. Auction Date

23. The auction will begin on Tuesday, June 26, 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. 40—Paging.

iii. Bidding Methodology

25. The bidding methodology for Auction No. 40 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either telephonically or electronically (by computer via the Internet or the Bureau's wide area network).

iv. Pre-Auction Dates and Deadlines

26. These are important dates relating to Auction No. 40:

Auction Seminar—May 3, 2001
Short-Form Application (FCC Form 175)—May 14, 2001; 6:00 p.m. ET
Upfront Payments (via wire transfer)—June 4, 2001; 6:00 p.m. ET
Mock Auction—June 22, 2001
Auction Begins—June 26, 2001

v. Requirements For Participation

27. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, May 14, 2001.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, June 4, 2001.
- Comply with all provisions outlined in the *Auction No. 40 Procedures Public Notice*.

vi. General Contact Information

28. The following is a list of general contact information relating to Auction No. 40:

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

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

Licensing Information—Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues—Commercial Wireless Division, (202) 418-0620

Technical Support—Electronic Filing, Automated Auction System—FCC Auctions Technical Support Hotline, (202) 414-1250 (Voice), (202) 414-1255 (TTY), Hours of service: Monday through Friday 7 a.m. to 10 p.m. ET, Saturday, 8 a.m. to 7 p.m., Sunday, 12 noon to 6 p.m.

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

II. 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 *Auction No. 40 Procedures Public Notice*. The short-form application seeks the applicant's name and address, legal classification, status, small business bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. 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, as discussed in section II.D (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

30. The Commission determines whether there are mutually exclusive applications for any given license by reviewing all of the Form 175's submitted to determine whether more than one party has applied for a given

license. In the event that review of all the Form 175's accepted for filing determines that only one party has applied for a given license(s), those license(s) will be removed from the auction. In such cases, the party that applied for the given license(s) will be permitted to file a long-form application.

31. In Auction No. 40, Form 175 will include a mechanism that allows an applicant to filter the 15,514 licenses by paging service, frequency band, market area, and/or channel block/license suffix to create customized lists of licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the customized list by using the "Select All" option; select individual licenses separately from the list; or create a second customized list without selecting any of the licenses from the first list. Applicants also will be able to select licenses from one customized list and then create a second customized list to select additional licenses.

A. Ownership Disclosure Requirements (FCC 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 FCC 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 (FCC 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). 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 applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline. 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 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. Eligibility

i. Small Business Bidding Credit Eligibility (FCC Form 175 Exhibit C)

35. In the *Paging Second Report and Order*, the Commission adopted small business bidding credits to promote and facilitate the participation of small businesses in competitive bidding for licenses in the paging service. In the *Second Paging Reconsideration Order and Paging Third Report and Order*, the Commission subsequently increased the size of the bidding credits.

36. Bidding credits are available to small businesses, or consortia thereof, (as defined in 47 CFR 1.2110(c) and 22.217(a)). A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average annual gross revenues for the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests:

- A bidder with attributed average annual gross revenues of more than \$3 million but not more than \$15 million

for the preceding three years receives a 25 percent discount on its winning bids for paging licenses;

- A bidder with attributed average annual gross revenues of not more than \$3 million for the preceding three years receives a 35 percent discount on its winning bids for paging licenses.

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

ii. Tribal Land Bidding Credit

38. 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.

iii. Applicability of Part 1 Attribution Rules

39. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various part 1 orders would result in discrepancies and/or redundancies between certain of the new part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the part 1 proceeding. Part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 40. *Accordingly, the "controlling interest" standard as set forth will be in effect for Auction No. 40, even if conforming edits to the CFR are not made prior to the auction.*

40. *Control.* 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 *de facto* 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.

41. *Attribution for small business eligibility.* In determining which entities

qualify as small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. 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 their affiliates will be counted in determining small business eligibility.

42. A consortium of 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 business in § 1.2110(f) and § 22.223(b) of the Commission's rules. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. Although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

43. Applicants will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small businesses (or consortia of small businesses) for this auction.

44. Submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

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

45. 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 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. If any of an applicant's controlling interests holders or their affiliates, as defined by § 1.2110 of the Commission's rules (as recently amended in the *Part 1 Fifth Report and Order*) have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, the applicant must include such information as part of the same attached statement. 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.

46. "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. 40, provided that they are otherwise qualified. However, as discussed *infra* in Section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

E. Installment Payments

47. Installment payment plans will not be available in Auction No. 40.

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

48. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(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 on Exhibit F (Miscellaneous Information) to the FCC Form 175.

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

49. After the short-form filing deadline (May 14, 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 or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). See 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Suite 4-A669, Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Erik Salovaara of the Auctions and Industry Analysis Division at (202) 418-0660.

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

50. 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

51. On Thursday, May 3, 2001, the FCC will sponsor a free seminar for Auction No. 40 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the paging and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

52. To register, complete the registration form, Attachment B of the *Auction No. 40 Procedures Public Notice*, and submit it by Tuesday, May 1, 2001. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due May 14, 2001

53. 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 no later than 6 p.m. ET on

May 14, 2001. Late applications will not be accepted.

54. 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

55. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on May 3, 2001, until 6 p.m. ET on May 14, 2001. 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 May 14, 2001.

56. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. 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 of the *Auction No. 40 Procedures Public Notice*. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); the hours of service Monday through Friday, from 7 am to 10 pm ET, Saturday, 8 am to 7 pm ET, and Sunday, 12 noon to 6 pm ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

57. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the Form 175 Homepage.

iii. Completion of the FCC Form 175

58. 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 the *Auction No. 40 Procedures 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 the *Auction No. 40 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iv. Electronic Review of FCC Form 175

59. The FCC Form 175 electronic review system may be used to locate 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 of the Auction No. 40 Procedures Public Notice* for details on accessing the review system.

C. Application Processing and Minor Corrections

60. 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; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

61. As described more fully in the Commission's rules, after the May 14, 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 June 4, 2001

62. 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. ET on June 4, 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. 40 go to a lockbox number different from the lockboxes 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 June 4, 2001, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

63. Wire transfer payments must be received by 6 p.m. ET on June 4, 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/AC 910-1174
OBI Field: (Skip one space between each information item)

"AUCTIONPAY"

TAXPAYER IDENTIFICATION NO.:

(same as FCC Form 159, block 12)

PAYMENT TYPE CODE (enter "A40U")

FCC CODE 1 (same as FCC Form 159, block 24A: "40")

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

LOCKBOX NO. #358405

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.

64. Applicants must fax a completed FCC Form 159 (Revised 2/00) 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. 40." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

65. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank with each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 40 Procedures Public Notice*. 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

66. 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 appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "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, be required to pay upfront payments fifty percent greater than non-“former defaulters.”

67. Bidders' upfront payments will be translated to bidding units on a bidding unit for dollar basis. In order to bid on a license, otherwise qualified bidders who applied for that license on Form 175 must make a sufficient upfront payment to have an eligibility level that meets or exceeds the number of bidding units assigned to that license.

68. The bidding units for each license will equal the license's upfront payment on a bidding unit for dollar basis. The bidding unit level for each license will remain constant throughout the auction. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 40 Procedures Public Notice*.

69. 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.

70. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on 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.

71. 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 order to calculate 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 applicable 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 for Upfront Payments

72. The Commission will use wire transfers for all Auction No. 40 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, all pertinent information should 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: Tim Dates or Gail Glasser, at (202) 418-2843 by June 4, 2001. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. 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
Taxpayer Identification Number
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.E.

A. Auction Registration

73. 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.

74. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

75. 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, June 21, 2001 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.

76. Qualified bidders should note that lost bidder identification numbers or SecurID cards 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 replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Bidding

77. This is the first auction that the Commission will conduct over the Internet. Telephonic bidding and access via the Bureau's wide area network will also be available, as in prior auctions. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the Bureau's wide area network. In either case, each bidder must have their own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant will be issued at least two SecurID cards, and up to a maximum of three cards. For security purposes, the SecurID cards are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that the SecurID card is tailored to a specific auction, so a SecurID card obtained from a source other than the FCC will not work for Auction No. 40. The telephonic bidding phone number will be supplied in the first Federal Express mailing of the confidential bidder identification number. Your bidding preference—electronic or telephonic—is specified on the FCC Form 175.

G. Mock Auction

78. All qualified bidders will be eligible to participate in a mock auction on Friday, June 22, 2001. The mock auction will enable applicants to become familiar with the electronic system prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

79. The first round of bidding for Auction No. 40 will begin on Tuesday,

June 26, 2001. 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

80. All licenses in Auction No. 40 will be awarded in a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach allows bidders to take advantage of any synergies that exist among licenses and is administratively efficient.

ii. Maximum Eligibility and Activity Rules

81. The amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility (*see* "Amount of Upfront Payment" in Part III.D.iii). The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" in Part IV.A.iii), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollars a bidder may bid on any given license.

82. 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 current eligibility during each round of the auction.

83. 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* "Bid Increments and 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 stages as the auction progresses.

iii. Auction Stages

84. Auction No. 40 will be conducted in three stages and employ an activity rule. In each round of Stage One, a bidder desiring to maintain its current eligibility will be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility will be required to be active on at least 90 percent of its current bidding eligibility. Finally, in Stage Three, in order to maintain eligibility, a bidder will be required to be active on 98 percent of its current bidding eligibility. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

85. The procedures for each stage are:
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 bidder's current activity (the sum of bidding units of the bidder's standing high bids and valid bids during the current round) by five-fourths (5/4).

Stage 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 bidder's current activity (the sum of bidding units of the bidder's standing high bids and valid bids during the current round) by ten-ninths (10/9).

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 bidder's current activity

(the sum of bidding units of the bidder's standing high bids and valid bids during the current round) by fifty-fortyninths (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 system's bidding module.

iv. Stage Transitions

86. Auction No. 40 will start in Stage One and it 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). In addition, 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.

v. Activity Rule Waivers and Reducing Eligibility

87. In Auction No. 40, 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.

88. The FCC Automated Auction System assumes that bidders with insufficient activity 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.

89. 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 bidding system. 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.iii discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

90. 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 system) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new valid bids or withdrawals will not keep the auction open.

vi. Auction Stopping Rules

91. For Auction No. 40, the Bureau 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.

92. The Bureau also will retain discretion to implement a modified version of the simultaneous stopping rule. The 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.

93. The Bureau will retain discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will

either lose bidding eligibility or use an activity rule waiver (if it has any left).

94. In addition, the Bureau reserves the right to declare that the auction will end after a designated 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, 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, and/or adjusting the amount of the minimum bid increments for the licenses.

vii. Auction Delay, Suspension, or Cancellation

95. 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. 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

96. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which will be released approximately 10 days before the start of the auction and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. The Bureau

will consider all relevant factors, including but not limited to the number of licenses in the auction, when determining the number of bidding rounds per day. Details regarding round results formats and locations will also be included in the public notice listing qualified bidders.

97. 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

98. *Background.* The Balanced Budget Act of 1997, codified at 47 U.S.C. 309(j)(4)(f), 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 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 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.

99. In the *Auction No. 40 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 40 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 40, the Bureau proposed the following formula for minimum opening bids:

- For a license being auctioned by MEA, the minimum opening bid will be 20% of the average gross high bid received in Auction No. 26 in the same MEA.

- For a license being auctioned by EA, the minimum opening bid will be the EA population multiplied by 20% of the gross average dollars per population received in Auction No. 26 for the corresponding MEA.

100. The Bureau will set a "floor" for minimum opening bids at \$1000 for licenses in the upper paging bands (929–931 MHz) and \$500 for the licenses in the lower paging bands (35–36 MHz, 43–44 MHz, 152–159 MHz, and 454–460 MHz).

101. In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

102. All the parties filing comments and replies addressed the minimum opening bids proposed in the *Auction No. 40 Comment Public Notice*. As a preliminary matter, none of the parties contended that having minimum opening bids in Auction No. 40 is contrary to the public interest. Several parties expressly endorsed the use of minimum opening bids as an effective auction tool. Accordingly, pursuant to the Balanced Budget Act, the Bureau adopts its proposal to use minimum opening bids in Auction No. 40.

103. All the comments and replies propose that some or all the minimum opening bids be lower than those proposed in the *Auction No. 40 Comment Public Notice*. One commenter proposes that for lower paging bands markets with a population of less than 1 million, the Bureau use \$200, rather than \$500, as an absolute minimum opening bid. Another proposes a "floor price" of \$50, at least for licenses in the lower paging bands. A third asserts that minimum opening bids should be set based on the filing fee for additional site licenses under the former licensing system. One reply comment proposes that the floor be reduced to \$200 for all licenses.

104. After reviewing the comments and replies, the Bureau has concluded that it should adopt its original proposal and the minimum opening bids listed in the *Auction No. 40 Comment Paging Notice*. The specific minimum opening bid for each license is set forth in Attachment A to the *Auction No. 40 Procedures Public Notice*. The Bureau believes that parties unable or unwilling to make the proposed absolute minimum opening bids most likely will be unable or unwilling to use the licenses to provide service to the public. The commenters' observations regarding the extent of incumbency, proposals to grant licenses based on incumbency, and concerns about the transition from site specific licensing to geographic area licensing, were the subject of prior rule making proceedings and are not within the scope of auction procedures.

105. The minimum opening bids for Auction No. 40 are reducible at the

discretion of the Bureau. 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 request to reduce the minimum opening bid on specific licenses.

iii. Bid Increments and Minimum Accepted Bids

106. In Auction No. 40, the minimum accepted bid will be set as the minimum opening bid or the standing high bid plus a defined increment. Bidders will be able to place any of nine higher bids, each higher bid being equal to the minimum accepted bid plus one to nine times the defined increment. The defined increment will be based on a percentage of the standing high bid or, if no standing high bid had been placed, on the minimum opening bid. At the outset of the auction, we will use twenty percent of the standing high bid or minimum opening bid to calculate the increment. We retain the discretion to change the percentage used to calculate the defined increment if circumstances so dictate and to set a floor for the increment used to calculate the minimum acceptable bid at an absolute dollar amount.

107. Finally, in Stage III of Auction No. 40, we will have discretion to use a smaller percentage to calculate the increment used in setting acceptable bids higher than the minimum accepted bid. In all other respects, such as rounding, the smaller defined increment would be calculated in the same manner as the defined increment used to set the minimum accepted bid. Some commenters advocated that the Bureau should use ten percent (10%) or less should it exercise this discretion in Stage III and use a smaller percentage to calculate acceptable bids higher than the minimum accepted bid. We conclude that there is no need to so restrict our discretion. Advanced notice of the Bureau's decision to exercise its discretion with regard to acceptable bids in any manner will be announced via the Automated Auction System.

iv. High Bids

108. An implementation of the Lecuyer pseudo-random generator will be used to determine the standing high bidder in the case of tie high bids. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid. As noted in the *Auction No. 40 Comment Public Notice*, we have adopted this method of breaking ties for this auction because,

unlike prior auctions, bidders in Auction No. 40 will be able to bid via the Internet. Breaking ties by reference to the timing of the bids, as in prior auctions, is inappropriate in Auction No. 40 because bidders may access the Internet at widely varying speeds.

v. Bidding

109. During a bidding round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), 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.

110. Please note that all bidding will take place remotely either through the Automated Auction System 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. In the past, four to five minutes have been necessary to complete a bid submission. Due to the large number of licenses in Auction No. 40, bidders may require more time to submit their bids than in past auctions.) There will be no on-site bidding during Auction No. 40.

111. 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 allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

112. The FCC Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations *after* they submit their bids.

113. In each round, eligible bidders will be able to place acceptable bids on a given license in any of ten different amounts. The Automated Auction System interface will list as acceptable bids for each license a minimum acceptable bid and nine higher bids. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. In the rounds after an acceptable bid is placed on a license,

the minimum acceptable bid for that license will be equal to the standing high bid plus a defined increment. (If a high bid on a license was withdrawn, however, the Commission will specify the minimum acceptable bid.)

114. Finally, bidders are cautioned in selecting their bid amounts because, as explained in the following section, bidders who withdraw a standing high bid from a previous round, even if mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

115. 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 bidding system, 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.

116. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, 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).

117. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various licenses in combination, we conclude that, for Auction No. 40, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals.

118. 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 minimum accepted bid in the next round will be the prior round's second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid. To set additional acceptable bids, the second highest bid price also will be used in place of the standing high bid in the formula used to calculate the increment between bids. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

119. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auction(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

120. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the Commission's rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be

assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

121. Information relating to the bids during Auction No. 40 will be disclosed after each round of bidding closes, including all bids and withdrawals placed in each round, the identity of the bidder placing each bid or withdrawal, and the net and gross amounts of each bid or withdrawal.

122. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes the Bureau will post the results of the round for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 40 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

123. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

ix. Maintaining the Accuracy of FCC Form 175 Information

124. As noted in Part II.G., 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: Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4-A669, Washington, DC 20554.

125. A separate copy of the letter should be mailed to Erik Salovaara, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4-B457, Washington, DC 20554. Questions about other changes should

be directed to Erik Salovaara at (202) 418-0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

126. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders, down payments and any withdrawn bid payments due.

127. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable small business bidding credits). See 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Part IV.B.vi. (Payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

128. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 40. Winning bidders that are small businesses must include an exhibit demonstrating their eligibility for small business bidding credits. See 47 CFR 1.2112(b), 24.709(c)(2)(i). Further filing instructions will be provided to auction winners at the close of the auction.

C. Tribal Land Bidding Credit

129. 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.

130. 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). When filing the long-form application, the winning bidder will be required to

advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(e).

131. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's web site by going to <http://www.fcc.gov/wtb/auctions> and clicking on *Information on Tribal Land Bidding Credits*.

D. Default and Disqualification

132. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction spectrum associated with 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).

E. Refund of Remaining Upfront Payment Balance

133. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 40 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

134. 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 you have completed the refund instructions electronically, then 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, SW., Room 1-A824, Washington, DC 20554.

135. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their 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. 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,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 01-10492 Filed 4-26-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3164-EM]

Maine; Amendment No. 3 to Notice of an Emergency Declaration Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Maine, (FEMA-3164-EM), dated March 20, 2001, and related determinations.

EFFECTIVE DATE: April 16, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Maine is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 20, 2001: