

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-02-45-B (Auction No. 45); DA 02-470]

Auction No. 45 Cellular Rural Service Areas Auction Scheduled for May 29, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of three cellular Rural Service Area (RSA) licenses scheduled for May 29, 2002 (Auction No. 45). This document is intended to familiarize prospective bidders with the Commission's rules relating to the cellular RSA and those relating to application and auction procedures.

DATES: Auction No. 45 is scheduled for May 29, 2002.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Denise Coca, Legal Branch, or Jeff Crooks, Auctions Operations Branch, at (202) 418-0660; Barbara Sibert, Auctions Operations Branch, at (717) 338-2888. Media Contact: Meribeth McCarrick at (202) 418-0654. Commercial Wireless Division: Gary Oshinsky or Amal Abdallah, Policy and Rules Branch, or Dwain Livingston,

Licensing and Technical Analysis Branch, at (202) 418-0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 45 Procedures Public Notice* released March 4, 2002. The complete text of the *Auction No. 45 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. The *Auction No. 45 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

I. General Information

A. Introduction

1. By the *Auction No. 45 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of three cellular Rural Service Area (RSA) licenses scheduled for May 29, 2002 (Auction No. 45). On February 5, 2002, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 45. The Bureau received one comment and no reply comments in response to the *Auction*

No. 45 Comment Public Notice, 67 FR 8978 (February 27, 2002).

i. Background of Proceeding

2. The Federal Communications Commission ("Commission") has been awarding cellular licenses since 1982. Cellular radio service is a mobile radiotelephone service in which common carriers are authorized to offer and provide a mobile telecommunications service for hire to the general public. On January 28, 2002, the Commission released the *Cellular RSA Report and Order*, 67 FR 11425 (March 14, 2002), which adopted rules for awarding licenses for four cellular RSAs that remain unlicensed because the initial lottery winner in those markets was disqualified. Specifically, in the *Cellular RSA Report and Order*, the Commission decided to: (i) Allow all eligible parties to apply for these initial licenses; (ii) license these markets on an RSA basis under its part 22 rules; and (iii) use its part 1 competitive bidding rules to auction these licenses.

ii. Licenses to Be Auctioned

3. Auction No. 45 will include a cellular frequency block A license in each of the following three RSA markets: 332-Polk, AR; 582-Barnes, ND; and 727-Ceiba, PR. A fourth market, 672A-Chambers, TX, was also the subject of the *Cellular RSA Report and Order* but will not be included in Auction No. 45. The following table provides the Block/Frequency Band cross-references for the licenses that will be auctioned.

Market No.	Market name	Channel block	Frequencies (MHz)	Bandwidth (MHz)
RSA332	Arkansas 9—Polk	A	824-835, 845-846.5, 869-880, 890-891.5	25
RSA582	North Dakota 3—Barnes	A	824-835, 845-846.5, 869-880, 890-891.5	25
RSA727	Puerto Rico 5—Ceiba	A	824-835, 845-846.5, 869-880, 890-891.5	25

4. One commenter suggested that RSA Market 672A be included in Auction No. 45 or, alternatively, that the Bureau delay Auction No. 45 until resolution of all proceedings relating to the application of the tentative selectee from the second lottery for Market 672A. The Bureau declines to adopt these suggestions. The Bureau does not intend to delay the auction of the three available cellular RSA licenses until final resolution of an unrelated proceeding involving a fourth RSA license. Such a delay would undermine the Bureau's primary goal of getting licenses into the hands of parties that will provide service to the public. For this reason, the Bureau believes that the public will realize a greater benefit if it

auctions the three available cellular RSA licenses as soon as practicable than if it postpones the auction until the Commission has resolved all issues connected with RSA Market 672A.

B. Rules and Disclaimers

i. Relevant Authority

5. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the cellular RSA licenses contained in title 47, part 20 and part 22 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

6. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in the *Auction No. 45 Procedures Public Notice*; the *Auction No. 45 Comment Public Notice*; the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures); the *Cellular RSA Notice*, 66 FR 14104 (March 9, 2001); and the *Cellular RSA Report and Order*.

7. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained

in its 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 Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com. When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 02-9 for the *Cellular RSA Report and Order*).

ii. Prohibition of Collusion

8. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins 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. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm). 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.

9. 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. In Auction No. 45, for example, the rule would apply to any applicants that have applied for licenses covering the same geographic areas. Therefore, applicants that apply to bid for all of the markets would be precluded from communicating with all other applicants until after the down payment deadline. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application 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).

10. 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.

11. 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. 45 Procedures Public Notice*.

iii. Due Diligence

12. Potential bidders should be aware that the Commission has granted interim operating authority (IOA) to one or more cellular operators to provide cellular service on the Channel A block pending the ultimate permanent licensing of these RSAs. The interim operator must fully cooperate with the permanent licensee in effectuating a smooth transition of service in the market to the permanent licensee without disruption of service to the public. The IOA operator must cease operations in the market on the date of initiation of permanent service or

within 30 days of written notification by the permanent licensee to the interim operator of the day and time that it intends to initiate service, whichever date occurs later.

13. Potential bidders also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA") waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, certain decisions reached in the *Cellular RSA Report and Order* and in this proceeding may be subject to judicial appeal and may be the subject of additional reconsideration or appeal. The Bureau notes that resolution of these matters could have an impact on the availability of spectrum in Auction No. 45. In addition, although 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.

14. Potential bidders are solely responsible for identifying associated risks and for 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. 45.

15. Potential bidders are advised that 47 CFR 22.942 places limits on a cellular RSA licensee holding a controlling interest in a license operating on one cellular channel block, and the amount of interest they may hold in a license for the other channel block in an overlapping CGSA. Also, any RSA licensee operating transmitters within 72 kilometers (45 miles) of the U.S.-Canadian border must coordinate with the adjacent Canadian licensee to eliminate any harmful interference as conditioned by § 22.955.

16. Licensing records for Cellular RSAs are contained in the Bureau's Universal Licensing System (ULS) and may be researched on the Internet at <http://wireless.fcc.gov/uls> by selecting "Licenses" under Search and selecting "General" from the search type drop down menu. The IOA Licenses, along with their special conditions of operation may be researched by their call signs. They are for market 582-KNKP980, KNKP986, and KNKP990; market 727-KNKQ240; and market 332-KNKP970. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using License query and downloading query results are available online by selecting the "?"

button at the bottom right-hand corner of the License Search screen.

17. 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 7:00 AM to 10:00 PM ET, Saturday, 8:00 AM to 7:00 PM ET, and Sunday, 12:00 noon to 6:00 PM ET. In order to provide better service to the public, all calls to the hotline are recorded.

18. 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. Furthermore, 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 RSA for which they plan to bid.

iv. Bidder Alerts

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

20. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that 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 an 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.

21. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 45 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.

22. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 45 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

V. National Environmental Policy Act ("NEPA") Requirements

23. 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. See 47 CFR 1.1305 through 1.1319. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or

endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

24. The auction will begin on Wednesday, May 29, 2002. 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

25. Auction No. 45—Cellular RSA

iii. Bidding Methodology

26. The bidding methodology for Auction No. 45 will be simultaneous multiple-round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

27. These are important dates relating to Auction No. 45:

Auction Seminar: April 10, 2002
 Short-Form Application (FCC FORM 175): April 17, 2002; 6:00 p.m. ET
 Upfront Payments (via wire transfer): May 6, 2002; 6:00 p.m. ET
 Mock Auction: May 23, 2002
 Auction Begins: May 29, 2002

v. Requirements For Participation

28. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6:00 p.m. ET, April 17, 2002.
- Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. ET, May 6, 2002.
- Comply with all provisions outlined in the *Auction No. 45 Procedures Public Notice*.

vi. General Contact Information

29. The following is a list of general contact information relating to Auction No. 45:

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 10:00 p.m. ET, Saturday,
8:00 a.m. to 7:00 p.m., Sunday, 12:00
noon to 6:00 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
Qualex International
Portals II, 445 12th Street, SW, Room CY-
B402, Washington, DC 20554, (202) 863-
2893, (202) 863-2898 (Fax),
qualexint@aol.com (E-mail)

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://wireless.fcc.gov/auctions>
<http://wireless.fcc.gov/uls>

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

30. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 45 Procedures Public Notice*. The short-form application seeks the applicant's name and address, legal classification, status, entrepreneur, small, or very 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.

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

31. 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)

32. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. 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. 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.

33. 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. Bidding Credit Eligibility (FCC Form 175 Exhibit C)**

34. Bidding credits are available to entrepreneurs, small businesses, and very small businesses, or consortia thereof, as defined in 47 CFR 22.229 for cellular RSA licenses. 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 of the aggregated annual gross revenues for each of 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 not more than \$40 million for the preceding three years receives a 15 percent discount on its winning bids for cellular RSA licenses;
- A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years receives a 25 percent discount on its winning bids for cellular RSA 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 cellular RSA licenses; Bidding credits are not cumulative; qualifying applicants receive either the 15 percent, 25 percent, or the 35 percent bidding credit, but not more than one of them.

ii. Tribal Land Bidding Credit

35. 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

36. *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. 45. Accordingly, the “controlling interest” standard as set forth in the part 1 rules will be in effect for Auction No. 45, even if conforming edits to the CFR are not made prior to the auction.

37. *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.

38. *Attribution for entrepreneur, small, and very small business eligibility.* In determining which entities qualify as entrepreneurs, small businesses, or very 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 the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

39. A consortium of entrepreneurs, small, or very small businesses is a “conglomerate organization formed as a joint venture between or among mutually independent business firms,” each of which *individually* must satisfy the definition of entrepreneur, small, or very small business in § 1.2110(f). 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. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for entrepreneur, small, or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

40. Applicants should note that they 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 entrepreneur, small, or very small businesses (or consortia of entrepreneurs, small, or very small businesses) for this auction.

41. Applicants should further note that 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.

42. *Entrepreneur, small, or very small business eligibility (Exhibit C).* Entities applying to bid as entrepreneurs, small businesses, or very small businesses (or consortia of entrepreneurs, small businesses, or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) the applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of entrepreneurs, small businesses, or very small businesses,

this information must be provided for each consortium member.

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

43. 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, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110 of the Commission’s rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

44. “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. 45, 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

45. Installment payment plans will not be available in Auction No. 45.

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

46. 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)

47. After the short-form filing deadline (April 17, 2002), 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 modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: auction45@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 45. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

48. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Denise Coca of the Auctions and Industry Analysis Division at (202) 418-0660.

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

49. 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

50. On Wednesday, April 10, 2002, the FCC will sponsor a free seminar for Auction No. 45 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 Automated Auction System, and the Cellular Rural Service Area spectrum and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

51. To register, complete Attachment B of the *Auction No. 45 Procedures Public Notice* and submit it by Monday, April 8, 2002. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due April 17, 2002

52. 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 6:00 p.m. ET on April 17, 2002. Late applications will not be accepted.

53. 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

54. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on April 10, 2002, until 6:00 p.m. ET on April 17, 2002. 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 of 6:00 PM ET on April 17, 2002.

55. 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. 45 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 7:00 AM to 10:00 PM ET, Saturday, 8:00 AM to 7:00 PM ET, and Sunday, 12:00 noon to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

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

ii. Completion of the FCC Form 175

57. 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. 45 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 of the *Auction No. 45 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

58. 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. 45 Procedures Public Notice* for details on accessing the review system.

C. Application Processing and Minor Corrections

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

60. As described more fully in the Commission's rules, after the April 17, 2002, 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 May 6, 2002

61. 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 May 6, 2002.

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. 45 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 May 6, 2002, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

62. Wire transfer payments must be received by 6:00 p.m. ET on May 6, 2002. 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
BENEFICIARY: FCC/Account # 910-1174

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

“AUCTIONPAY”

FCC REGISTRATION NUMBER (FRN):
(same as FCC Form 159, block 11 and/or 21)

PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A45U)

FCC CODE 1 (same as FCC Form 159, block 28A: “45”)

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.

63. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209-6045 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. 45.” Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

64. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany 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. 45 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

65. In the *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 62 FR 13540 (March 21, 1997), 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*, 65 FR 52401 (August 29, 2000), 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.”

66. In the *Auction No. 45 Comment Public Notice*, the Bureau proposed translating bidders’ upfront payments to bidding units to define a bidder’s maximum eligibility. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. 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.

67. In the *Auction No. 45 Comment Public Notice*, the Bureau proposed upfront payments on a license-by-license basis using the following formula:

$\$0.0125 * \text{MHz} * \text{License Area Population with a minimum of } \$1,000 \text{ per license. Having received no}$

comments regarding the value of the proposed upfront payments, the Bureau therefore adopts its proposed upfront payment amounts for Auction No. 45.

68. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 45 Procedures Public Notice*.

69. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) 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 be active on 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. 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 of Upfront Payments

71. The Commission will use wire transfers for all Auction No. 45 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418-2843 by May 6, 2002. 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
 FCC Registration Number (FRN)
 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.

E. Auction Registration

72. 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.

73. 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 on the FCC Form 175.

74. 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 Wednesday, May 22, 2002 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.

75. 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 replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Electronic Bidding

76. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 45. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175.

77. Please note that the SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

78. All qualified bidders will be eligible to participate in a mock auction on Thursday, May 23, 2002. The mock auction will enable applicants to become familiar with the FCC Automated Auction 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. 45 will begin on Wednesday, May 29, 2002. 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. In the *Auction No. 45 Comment Public Notice*, the Bureau proposed to award all licenses in Auction No. 45 in a single, simultaneous multiple-round auction. The Bureau received no comments on this issue. Therefore, the Bureau concludes that it is operationally feasible and appropriate to auction the Cellular Rural Service Area licenses through a single, simultaneous multiple-round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. The Bureau believes 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. In the *Auction No. 45 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

82. For Auction No. 45 the Bureau adopts this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 45 Procedures Public Notice* on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids during any given round. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the dollar amount a bidder may bid on licenses.

83. In addition, the Bureau received no comments on its proposal for a single stage auction. Therefore, in order to ensure that the auction closes within a reasonable period of time, the Bureau adopts its proposal with the following activity requirements: a bidder must either place a valid bid and/or be the standing high bidder during each round of the auction rather than waiting until the end before participating. A bidder is required to be active on one hundred (100) percent of its bidding eligibility during each round of the auction.

Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility.

iii. Activity Rule Waivers and Reducing Eligibility

84. In the *Auction No. 45 Comment Public Notice*, the Bureau proposed that each bidder in the auction would be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. The Bureau received no comments on this issue.

85. Based upon its experience in previous auctions, the Bureau adopts its proposal that each bidder be provided three 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. The Bureau is satisfied that its practice of providing three waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

86. The Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating them from the auction.

87. 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 (see Part IV.A.ii). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

88. 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.

Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.

iv. Auction Stopping Rules

89. For Auction No. 45, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses.

90. The Bureau also proposed retaining 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.

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

92. In addition, the Bureau proposed that it reserve 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. The Bureau proposed to exercise this

option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum acceptable bids for the licenses.

93. The Bureau received no comments on the subject, therefore, it adopts all of the proposals concerning the auction stopping rules. Auction No. 45 will begin under the simultaneous stopping rule and the Bureau will retain the discretion to invoke the other versions of the stopping rule. The Bureau believes that these stopping rules are most appropriate for Auction No. 45, because its experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

v. Auction Delay, Suspension, or Cancellation

94. In the *Auction No. 45 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

95. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for

situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

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

97. The Bureau 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 Bureau 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 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on 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. 45 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 45 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 45, the Bureau proposed the following license-

by-license formula for calculating minimum opening bids:

$\$0.0250 * \text{MHz} * \text{License Area Population with a minimum of } \$1,000 \text{ per license.}$ 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.

100. One commenter proposed that the Bureau lower the minimum opening bids, reasoning that lower minimum opening bids will permit more small businesses to compete in the auction. The Bureau declines to adopt this proposal because it does not agree with the premise underlying the commenter's position. Although as, the commenter asserts, one result of using minimum opening bids is acceleration of the competitive bidding process, the Bureau disagrees with the commenter's assertion that it sets the minimum opening bids at an "overly high" level to accelerate the pace of the auction. Minimum opening bids accelerate the competitive bidding process because they reduce the number of rounds in which the amounts of the bids submitted would be significantly below the amounts of the winning bids. The Bureau believes that the minimum bid levels proposed are well below the levels of the likely winning bids, and are not so high as to discourage competition. The commenter has provided no evidence to support its contention that the proposed minimum opening bids are too high. Because the Bureau is not persuaded that the proposed minimum opening bids are unreasonable, the Bureau adopts its proposal. Therefore, the Bureau believes they will not impede any party, including a small business that is willing and able to use the spectrum to provide cellular service. Moreover, the Commission has sought to provide small businesses with an opportunity to successfully compete against larger, well-financed bidders for cellular RSA licenses by defining three tiers of small businesses that are eligible for bidding credits.

101. The specific minimum opening bids for each license are set forth in Attachment A of the *Auction No. 45 Procedures Public Notice*.

102. The minimum opening bids that the Bureau adopts are reducible at its discretion. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain

any requests to reduce the minimum, opening bid on specific licenses.

iii. Minimum Acceptable Bids and Bid Increments

103. In the *Auction No. 45 Comment Public Notice*, the Bureau proposed to use a smoothing methodology to calculate minimum acceptable bids. The Bureau further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. The Bureau received no comment on this issue.

104. The Bureau adopts its proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment F of the *Auction No. 45 Procedures Public Notice*.

105. The Bureau adopts its proposal of initially setting the weighing factor at 0.5, the minimum percentage increment at 0.1 (10 percent), and the maximum at 0.2 (20 percent). The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 45 if circumstances warrant.

iv. High Bids

106. At the end of each bidding round, the Automated Auction System determines the standing high bid for each license based on the gross dollar amounts of the bids received for each license.

107. In the case of tied high bids, a random number generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

v. Bidding

108. 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. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

109. 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. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 45.

110. 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.

111. The 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.

112. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts. The Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

113. Once there is a standing high bid on a license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment*. The nine acceptable bid amounts for

each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

114. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum, opening bid. The additional bid amounts for licenses that have not yet received a bid are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded, and the minimum opening bid. Therefore, when the minimum percentage increment equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

115. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

116. See Attachment F of the *Auction No. 45 Procedures Public Notice* for more detail on the calculation of the various bid amounts.

117. 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

118. In the *Auction No. 45 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawals in no more than one round during the course of the auction. The one round in which withdrawals are utilized, the Bureau proposed, would be at the bidder's discretion. The Bureau received no comments on this issue.

119. *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. This procedure, about which the Bureau received no comments, will enhance bidder flexibility during the auction. Therefore, the Bureau adopts these procedures for Auction No. 45.

120. 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).

Note: Once a withdrawal is placed during a round, that withdrawal cannot be unsubmitted.

121. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureau continues 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, it concludes that, for Auction No. 45, adopting a limit on their use to one round is appropriate. By doing so the Bureau believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Bureau's decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of its view regarding the likelihood of any speculation or "gaming" in this auction.

122. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to one round. This round will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in this round. 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 acceptable 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. The additional bid

amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

123. *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 auctions(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.

124. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the 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

125. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 45 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

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

ix. Maintaining the Accuracy of FCC Form 175 Information

127. 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. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: auction45@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 45. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

128. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850. Questions about other changes should be directed to Denise Coca of the Auctions and Industry Analysis Division at (202) 418-0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

129. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying

winning bidders, down payments and any withdrawn bid payments due.

130. 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 entrepreneur, small, and very 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. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

131. Within ten business days after release of the auction closing 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. 45. Winning bidders that are entrepreneurs, small businesses, or very small businesses must include an exhibit demonstrating their eligibility for entrepreneur, small, and very small business bidding credits. See 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

C. Tribal Land Bidding Credit

132. 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(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

133. 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(f).

134. 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 auctions web site at <http://wireless.fcc.gov/auctions> by clicking on the *Tribal Land Credits* link.

D. Default and Disqualification

135. Any high bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its 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

136. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 45 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. 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.

137. 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, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW, Room 1-C863, Washington, DC 20554.

138. 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.

Kelly Quinn,

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

[FR Doc. 02-8255 Filed 4-4-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, April 9, 2002, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Technical Revision to Update FDIC Forms Regulation, Part 304.

Discussion Agenda

Memorandum and resolution re: Policy Statement Regarding Minority-Owned Depository Institutions.

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

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416-2089 (Voice); (202) 416-2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: April 2, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02-8391 Filed 4-3-02; 11:33 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning an Internet based survey for the review of publications developed by the National Earthquake Reduction Program.

SUPPLEMENTARY INFORMATION: Over the past 20 years, the Federal Government, originally through the Office of Emergency Preparedness and continued by the Federal Emergency Management Agency's (FEMA) National Earthquake Hazards Reduction Program (NEHRP) office, developed and produced over 120 documents to address client needs in the area of earthquake loss reduction. In order to better address the needs of users of the publications, FEMA desires to perform an internet based survey of the user community to identify the viability of the currently available publications as well as identify gaps in information in order to better serve the public need to address earthquake preparedness.