

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as

CBI) on the Notices of Commencement to manufacture received:

II. 14 NOTICES OF COMMENCEMENT FROM: 02/04/03 TO 02/10/03

Case No.	Received Date	Commencement/ Import Date	Chemical
P-01-0732	02/11/03	01/16/03	(G) Phosphate methacrylate
P-02-0167	02/05/03	12/19/02	(G) Lithium metal phosphate
P-02-0741	02/11/03	01/21/03	(S) Piperazine, polymer with 1,6-dichlorohexane
P-02-0789	02/04/03	01/26/03	(G) Ultraviolet-curable resin
P-02-0822	02/05/03	01/17/03	(G) Modified polyester of terephthalic acid, ethylene glycol and neopentyl glycol
P-02-0824	02/05/03	01/17/03	(G) Modified polyester of terephthalic acid, ethylene glycol and neopentyl glycol
P-02-0863	02/05/03	01/28/03	(G) Fluoropolymer
P-02-0997	02/11/03	01/24/03	(G) Alkaline epoxide amine adduct
P-02-1026	02/11/03	01/09/03	(G) Modified alkyd resin
P-02-1091	02/10/03	01/16/03	(G) Polymer of methacrylate and acrylate esters, peroxide-initiated
P-03-0036	02/05/03	01/16/03	(G) Acrylic acid co-polymer
P-96-1626	02/11/03	01/10/03	(S) Mix of: 3-hexene, 1-(1-methoxypropoxy)-(e), 3-hexene, 1-(1-methoxypropoxy)-(z)
P-99-0646	02/11/03	01/28/03	(G) Pentaerythritol, mixed esters with fatty acids, C8-9, branched
P-99-0686	02/07/03	10/04/02	(S) 1,3-dioxolan-2-one, 4-(hydroxymethyl)-

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: March 20, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03-7247 Filed 3-25-03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-03-49-C (Auction No. 49); DA 03-567]

Auction of Licenses in the Lower 700 MHz Band Scheduled for May 28, 2003; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payment 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 licenses in the lower 700 MHz band scheduled for May 28, 2003. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 49 is scheduled to begin on May 28, 2003.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Howard Davenport, Legal Branch, or Lyle Ishida, Auctions Operations Branch, at (202) 418-0660;

Linda Sanderson, Auctions Operations Branch, at (717) 338-2888, *Media Contact:* Lauren Kravetz at (202) 418-7944, *Commercial Wireless Division:* Policy and Rules Branch, Amal Abdallah at (202) 418-7307 or Evan Baranoff at (202) 418-7142; Licensing and Technical Analysis Branch, Joanne Epps or Keith Harper, at (202) 418-0620, *Media Bureau:* Engineering Division, Gordon Godfrey at (202) 418-2193.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 49 Procedures Public Notice* released on March 4, 2003. The complete text of the *Auction No. 49 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. 49 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. 49 Procedures Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for the upcoming auction of licenses in the Lower 700 MHz C and D blocks, (the 710-716/740-746 MHz and 716-722 MHz bands) scheduled for May 28, 2003 (Auction No. 49). On December 2, 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 for the auction of 251 licenses in the Lower 700 MHz band C block. The Bureau received five comments and five reply comments in response to the *Auction No. 49 Comment Public Notice*, 67 FR 72946 (December 9, 2002). On January 29, 2003, the Bureau released a public notice announcing a revised auction inventory to include five licenses in the Lower 700 MHz band D block. In the *Auction No. 49 Revised Comment Public Notice*, 68 FR 6452 (February 7, 2003), the Bureau sought comment on the procedural issues related to the auction of the D block licenses. In the *Auction No. 49 Revised Comment Public Notice*, the Bureau also revised the starting date for Auction No. 49. The Bureau received two comments and two reply comments in response to the *Auction No. 49 Revised Comment Public Notice*.

i. Background of Proceeding

2. On January 18, 2002, the Commission released the *Lower 700 MHz Report & Order*, 67 FR 5491 (February 6, 2002), which adopted allocation and service rules for the Lower 700 MHz Band. Specifically, the Commission reallocated the entire 48 megahertz of spectrum in the Lower 700 MHz band to fixed and mobile services and retained the existing broadcast allocation for both new broadcast services and incumbent broadcast services during their transition to digital television ("DTV"). The Commission established technical criteria designed

to protect incumbent television operations in the band during the DTV transition period, allowed low power television ("LPTV") and TV translator stations to retain secondary status and operate in the band after the transition, and set forth a mechanism by which pending broadcast applications may be amended to provide analog or digital service in the core television spectrum or to provide digital service on TV Channels 52-58.

3. In its service rules, the Commission divided the Lower 700 MHz band into three 12-megahertz blocks, with each block consisting of a pair of 6-megahertz segments, and two 6-megahertz blocks of contiguous, unpaired spectrum. The Commission decided to divide the five blocks in the Lower 700 MHz band plan as follows: the two 6-megahertz blocks of contiguous unpaired spectrum, as well as two of the three 12-megahertz blocks of paired spectrum, were assigned over six Economic Area Groupings ("EAGs"); the remaining 12 megahertz block of paired spectrum was assigned over 734 Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"). All operations in the Lower 700 MHz band are generally regulated under the

framework of Part 27's technical, licensing, and operating rules. To permit both wireless services and certain new broadcast operations in the Lower 700 MHz band, however, the Commission has amended the maximum power limits in Part 27 to permit 50 kW effective radiated power ("ERP") transmissions in the Lower 700 MHz band, subject to certain conditions. Finally, the Commission established competitive bidding procedures and voluntary band-clearing mechanisms for the Lower 700 MHz band. On June 14, 2002, the Commission affirmed its decisions in the *Lower 700 MHz Report and Order*.

4. With respect to the MSA and RSA licenses, the Bureau notes that MSAs and RSAs are collectively known as Cellular Market Areas (CMAs). CMAs were created from the Metropolitan Statistical Areas ("MSAs") defined by the Office of Management and Budget (CMA001-CMA305), the Gulf of Mexico (CMA306), and Rural Service Areas ("RSAs") established by the FCC (CMA307-CMA734). These RSAs include parts of Puerto Rico not already in an MSA (CMA723-CMA729), U.S. Virgin Islands (CMA730-CMA731), Guam (CMA732), American Samoa

(CMA733), and Northern Mariana Islands (CMA734). The CMA designation, rather than MSA/RSA, is used in the FCC Automated Auction System and in the Universal Licensing System.

ii. Licenses To Be Auctioned

5. Auction No. 49 will offer 256 licenses in the Lower 700 MHz band C block (710-716/740-746 MHz) and D block (716-722 MHz). This auction will include 251 C block and five D block licenses that remained unsold in Auction No. 44, which closed on September 18, 2002. The C block is a 12-megahertz block consisting of a pair of 6-megahertz segments, which is licensed over various MSAs/RSAs. The D block is a 6-megahertz unpaired spectrum block, which is licensed over five 700 MHz Economic Area Groupings ("700 MHz EAGs"). A complete list of licenses available in Auction No. 49 and their descriptions is included in Attachment A of the *Auction No. 49 Procedures Public Notice*.

6. The following table contains the block/frequency cross-reference for the 710-716/740-746 MHz and 716-722 MHz bands:

Block	Frequencies	Bandwidth	Pairing	Geographic area type	Number of licenses
C	710-716, 740-746	12 MHz	2 x 6 MHz	MSA/RSA	251
D	716-722	6 MHz	unpaired	700 MHz EAG	5

Note: For Auction No. 49, licenses are not available in every market for the frequency blocks listed in the table. See Attachment A of the *Auction No. 49 Procedures Public Notice* to determine which licenses will be offered.)

A. Rules and Disclaimers

i. Relevant Authority

7. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the Lower 700 MHz band contained in title 47, part 27 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in the *Auction No. 49 Procedures Public Notice*; the *Auction No. 49 Comment Public Notices*; and 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).

8. Auction participants bidding on licenses in the 698-746 MHz spectrum band should also be familiar with the *Lower 700 MHz Notice of Proposed Rulemaking*, 66 FR 19106 (April 13, 2001), the *Lower 700 MHz Report and Order* and the *Lower 700 MHz MO&O*, 67 FR 45380 (July 9, 2002).

9. 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 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 document number (for example, FCC 01-364 for the *Lower 700 MHz Report and Order*).

ii. Prohibition of Collusion

10. 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.

11. 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. The 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. In Auction No. 49, for example, the rule would apply to any applicants bidding for the same MSA/RSA or EAG. Furthermore, the rule would apply to an applicant bidding for an EAG and another applicant bidding for an MSA/RSA within that EAG. In addition, applicants that apply to bid for all markets would be precluded from communicating with all other applicants until after the down payment deadline. However, all 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).

12. 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 and 1.2105 require 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.

13. 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. 49 Procedures Public Notice*.

iii. Interference Protection of Television Services

14. Among other licensing and technical rules, new Lower 700 MHz band licensees must comply with the interference protection requirements set forth in § 27.60 of the Commission's rules. Generally, § 27.60 establishes standards for protection of co- and adjacent-channel analog TV and DTV facilities. Thus, for example, a new licensee seeking to operate on the D block (716–722 MHz) portion of the Lower 700 MHz band must provide co-channel protection to nearby TV and DTV operations on Channel 55 and adjacent-channel protection to stations on Channels 54 and 56. New Lower 700 MHz band licensees should also be aware that incumbent broadcasters may be permitted to make certain changes to their authorized facilities. Such modified facilities may be entitled to interference protection from new Lower 700 MHz band licensees. In addition, Appendix D of the *Lower 700 MHz Report and Order* describes additional adjacent-channel interference considerations that are designed to mitigate the possibility of base-to-base interference that may arise at base receive stations that are in close proximity to high power transmitters operating on adjacent channels. Moreover, licensees intending to operate a facility at a power level of greater than 1 kilowatt must provide advance notice to the Commission and to licensees authorized in their area of operation. New Lower 700 MHz licensees also will have to comply with any additional technical requirements or interference protection requirements that may be adopted in the future as a result of pending and future rulemaking proceedings.

15. Potential bidders should recognize that the interference protection requirements for the Lower 700 MHz band are more stringent in certain respects relative to the interference standards that apply to the Upper 700 MHz band. These interference

obligations will remain in force until the end of the DTV transition period at which time analog TV and DTV broadcasters will be required to vacate both the Upper and Lower 700 MHz bands.

16. Potential bidders should be aware that a greater number of broadcast incumbents exist in the Lower 700 MHz band relative to the Upper 700 MHz band. The Commission has also observed that, although there is approximately the same number of analog incumbents in both the Upper and Lower 700 MHz bands, the Lower 700 MHz consists of less spectrum and, therefore, incumbent licensees are more densely situated across the band. Further, there is a significantly greater number of DTV assignments on the eight television channels in the Lower 700 MHz band, including licenses, construction permits, pending applications, and pending allotment petitions, than exist in the Upper 700 MHz band. The Commission may also permit certain Channel 60–69 broadcasters to relocate temporarily into Channels 52–58 pursuant to a voluntary clearing arrangement.

a. Negotiations With Incumbent Broadcast Licensees

17. The Commission has established a policy of facilitating voluntary clearing of the 700 MHz bands to allow for the introduction of new wireless services and to promote the transition of incumbent analog television licensees to DTV service. Generally speaking, this policy provides that the Commission will consider specific regulatory requests needed to implement voluntary agreements between incumbent broadcasters and new licensees to clear the Lower 700 MHz band early, if consistent with the public interest. The fundamentals of the Commission's voluntary clearing policy for the 700 MHz bands were established in a series of decisions beginning with the adoption of the *Upper 700 MHz First Report and Order* in January 2000. However, in light of certain differences between the Upper and Lower 700 MHz bands, the Commission decided not to extend certain aspects of its voluntary clearing policy to the Lower 700 MHz band, including the presumptions that were established in the Upper 700 MHz band for analyzing voluntary band-clearing proposals and the extended DTV construction period that was provided to certain single-channel broadcasters in connection with the arrangements for early clearing of the Upper 700 MHz band. In considering such regulatory requests, the Commission will consider whether

grant of the request would result in public interest benefits, such as making new or expanded public safety or other wireless services available to consumers or deploying wireless service to rural or other underserved communities. The Commission intends to weigh these benefits against any likely public interest costs, such as the loss of any of the four stations in the designated market area with the largest audience share, the loss of the sole service licensed to the local community, the loss of a community's sole service on a channel reserved for noncommercial educational broadcast service, or a negative effect on the pace of the DTV transition in the market.

18. Subsequent to the adoption by the Commission of its voluntary clearing policy, the Auction Reform Act of 2002 was enacted. One provision of this legislation restricts the Commission's authority to waive certain broadcast interference standards and the minimum spacing requirements for certain proposals to relocate Channel 52-69 analog operations to a Channel 2-51 DTV allotment, if such waiver "will result in any degradation in or loss of service, or an increased level of interference to any television household except as the Commission's rules would otherwise expressly permit, exclusive of any waivers previously granted."

b. Canadian and Mexican Border Regions

19. The United States has bilateral agreements with both Canada and Mexico setting forth allotment and assignment plans for TV broadcast stations covering the 698-746 MHz band (Channels 52-59). While the U.S. has identified this band for reallocation to new services, neither Canada nor Mexico has done so to date. Pursuant to these agreements, the U.S. must protect the signals of Canadian and Mexican TV broadcast stations located in the border areas, and such operations will therefore affect U.S. non-broadcast use and services in this band. Accordingly, licenses issued for this band will be subject to whatever future agreements the U. S. develops with these two countries. Furthermore, until such time as existing agreements are replaced or modified to reflect the new uses, licensees in the band will be subject to existing agreements and the condition that harmful interference not be caused to, and must be accepted from, television broadcast operations in those countries.

iv. Due Diligence

20. Potential bidders are reminded that there are a number of incumbent

broadcast television licensees already licensed and operating in the 710-716/740-746 MHz and 716-722 MHz bands that will be subject to the upcoming auction. As discussed in greater detail, the Commission made clear that geographic area licensees operating on the spectrum associated with Channels 52, 53, 54, 55, 56, 57, 58 and 59 must comply with the co-channel and the adjacent channel provision of § 27.60 of the Commission's rules. These limitations may restrict the ability of such geographic licensees to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license areas.

21. 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. 49.

22. To aid potential bidders, the Bureau will issue shortly a Due Diligence Announcement listing incumbent licensees operating in these bands. The Commission makes no representations or guarantees that the matters listed in this Due Diligence Announcement are the only pending matters that could affect spectrum availability in these services.

23. 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 judicial proceedings that may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 49, may be commenced, or may be pending, or may be subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 49. 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. To aid potential bidders, the Bureau will issue shortly a Due Diligence Announcement listing matters pending before the Commission that relate to licenses or applications in these services. The Commission makes no representations or guarantees that the matters listed in the Due Diligence Announcement are the only pending matters that could affect spectrum availability in these services.

24. In addition, potential bidders may research the licensing database for the Media Bureau on the Internet in order to determine which frequencies are already licensed to incumbent licensees. 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 EAG, MSA or RSA for which they plan to bid.*

25. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb/>. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information and Search for Application Information and downloading query results are available online by selecting the CDBS Public Access (main) button at the bottom of the Electronic Filing and Public Access list section. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. An AL/TC search under the application search link permits searching for Assignment of License/Transfer of Control groups using the AL/TC group lead application. For further details, click on the Help file.

26. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418-2662, or via e-mail at mbinfo@fcc.gov.

v. Bidder Alerts

27. 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.

28. *The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.*

29. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 49 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.

30. 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. 49 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

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

31. 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 Corps 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

32. The auction will begin on Wednesday, May 28, 2003. 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

33. Auction No. 49—Lower 700 MHz Band

iii. Bidding Methodology

34. The bidding methodology for Auction No. 49 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available, and the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

35. Listed are important dates associated with Auction No. 49:
 Auction Seminar—April 2, 2003
 Short-Form (FCC Form 175) Filing Window Opens—April 2, 2003; 12 p.m. ET

Short-Form (FCC Form 175) Application Deadline—April 11, 2003; 6 p.m. ET

Upfront Payments (via wire transfer)—May 2, 2003; 6 p.m. ET
 Mock Auction—May 22, 2003
 Auction Begins—May 28, 2003

v. Requirements for Participation

36. One commenter, Banks, requests that the Bureau limit eligibility in Auction No. 49 to parties that qualified to participate in Auction No. 44. Banks argues that such an eligibility limitation is mandated by the Auction Reform Act. Banks bases its argument on language from the Auction Reform Act, which limited the entities eligible to participate in Auction No. 44 to "those entities that were qualified entities, and that submitted applications to participate in auction 44, by May 8, 2002, as part of the original auction 44 short form filing deadline." Banks contends that this restriction on eligibility applies to the *spectrum blocks* identified rather than a specific auction of those spectrum blocks. Thus, Banks concludes that the eligibility limitation extends to any subsequent auction of those same blocks of spectrum. Banks argues that the only other possible interpretation of the Auction Reform Act is that it does not permit further auctions of the C and D block spectrum until the Commission goes forward with the auction of the remainder of the 700 MHz spectrum. Only two commenters, Qualcomm and C&S, address Banks's assertion that the Auction Reform Act limits who is eligible to participate in Auction No. 49. Both Qualcomm and C&S oppose Banks's interpretation of the Auction Reform Act. As we explain, an analysis of the Auction Reform Act establishes that Banks's reading of the statute is incorrect.

37. In the Auction Reform Act, among other things, Congress provided that the Commission not commence or conduct Auction No. 44 on June 19, 2002. In the following subsection, Congress indicated that this prohibition on conducting Auction No. 44 did not apply to the Lower 700 MHz C and D block licenses, established a restriction on the entities eligible to bid in the auction of these licenses, and established a deadline for the auction of such licenses and the deposit of the auction proceeds in the U.S. Treasury. A plain reading of these provisions shows that the limitations on who qualified to bid on the C block and the D block licenses only applied to the conduct of Auction No. 44 and not to any subsequent auction. The restriction on eligible bidders is contained in the

same subparagraph as other provisions regarding the timing of Auction No. 44, the conduct of Auction No. 44, and the deposit of the proceeds from Auction No. 44 in the U.S. Treasury. The timing provisions regarding the conduct of the auction and the deposit of the auction proceeds are significant because they indicate that Congress was only referring to one event, the conduct of Auction No. 44. Congress was not providing any instructions regarding the conduct of future auctions including the C and D block spectrum. Further, contrary to Banks's suggestion, nothing in the statute indicates that Congress was precluding in any manner a re-auction of the spectrum. Finally, Banks's interpretation of the Auction Reform Act is contrary to the statutory objectives of section 309(j) of the Communications Act. As Qualcomm notes in its comments, under Banks's interpretation of the Auction Reform Act, bidding on the licenses in Auction No. 49 would be limited to the same bidders that chose not to bid on the licenses when they were offered in Auction No. 44. This is unlikely to result in the licenses being awarded to the parties that value them most highly. Thus, absent explicit statutory language supporting Banks' interpretation, we decline to adopt the eligibility restrictions Banks suggests.

Accordingly, any entity wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, April 11, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, May 2, 2003.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

38. The following is a list of general contact information relating to Auction No. 49.

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, FCC Automated Auction System
 FCC Auctions Technical Support Hotline, (202) 414-1250(Voice), (202) 414-1255 (TTY, Hours of service: Monday through Friday 8 a.m. to 6 p.m. ET.

Payment Information: Wire Transfers, Refunds
 FCC Auctions Accounting Branch, (202) 418-0578 or (202) 418-0496, (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: Lauren Kravetz (202) 418-7944

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

39. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 49 Procedures Public Notice*. The short-form application seeks the applicant's name and address; legal classification; status; bidding credit eligibility; identification of the license(s) sought; and 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.E (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. License Selection

40. In Auction No. 49, Form 175 will include a mechanism that allows an applicant 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 "Save all filtered licenses" option); select and save 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 other customized lists to select additional licenses.

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

41. 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.

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

42. 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. 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.

43. 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.

D. Eligibility

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

44. 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.

45. In the *Lower 700 MHz Report & Order*, the Commission determined that three levels of bidding credits were appropriate for the MSA/RSA licenses in the C block and that the licenses in the D block would be limited to two levels of bidding credits. Aloha and Cavalier urge that the Commission apply three levels of bidding credits to the EAG licenses in the D block. Because the bidding credit levels were adopted by the Commission in its Lower 700 MHz band proceeding, they were not a matter upon which the Bureau sought comment. Accordingly, for Auction No. 49, bidding credits will be available to small and very small businesses and entrepreneurs, or consortia thereof, as defined in 47 CFR 27.702 for the Lower 700 MHz band licenses:

- A bidder with attributed average annual gross revenues of not more than \$40 million for the preceding three years ("small business") receives a 15 percent discount on its winning bids for Lower 700 MHz band licenses;
- A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years ("very small business") receives a 25 percent discount on its winning bids for Lower 700 MHz band licenses;
- A bidder with attributed average annual gross revenues of not more than \$3 million for the preceding three years ("entrepreneur") receives a 35 percent discount on its winning bids for the MSA/RSA licenses in the Lower 700 MHz band. This definition applies only with respect to licenses in Block C (710–

716 MHz and 740–746 MHz) as specified in 47 CFR 27.5(c)(1).

46. A bidder that qualifies as an entrepreneur may bid on EAG licenses in Block D, but will only receive a 25 percent bidding credit on any EAG license that it wins. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent, 25 percent, or 35 percent bidding credit on its winning bid, but only one credit per license.

ii. Tribal Land Bidding Credit

47. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. See section V.E. of the *Auction No. 49 Procedures Public Notice*.

iii. Applicability of Part 1 Attribution Rules

48. *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. 49. Accordingly, the "controlling interest" standard as set forth in the part 1 rules will be in effect for Auction No. 49.

49. *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.

50. *Attribution for small, very small business and entrepreneur eligibility.* In determining which entities qualify as

small, very small businesses or entrepreneurs, 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.

51. A consortium of small businesses, very small businesses or entrepreneurs 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, very small business or entrepreneur in §§ 1.2110(f), 27.702. 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. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small business, very small business or entrepreneur 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

52. 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 small, very small businesses or entrepreneurs (or consortia of small, very small businesses or entrepreneurs) for this auction.

53. 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.

54. *Small business, very small business, or entrepreneur eligibility (Exhibit C).* Entities applying to bid as small or very small businesses or

entrepreneurs (or consortia of small or very small businesses or entrepreneurs) 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 small, very small businesses or entrepreneurs, this information must be provided for each consortium member.

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

55. 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.

56. "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. 49, 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.

F. Installment Payments

57. Installment payment plans will not be available in Auction No. 49.

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

58. 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.

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

59. After the short-form filing deadline (April 11, 2003), 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: auction49@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 49. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

60. 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 Howard Davenport of the

Auctions and Industry Analysis Division at (202) 418-0660.

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

61. 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

62. On Wednesday, April 2, 2003, the FCC will sponsor a free seminar for Auction No. 49 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 lower 700 MHz and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

63. To register, complete the registration form in Attachment B, of the *Auction No. 49 Procedures Public Notice*, and submit it by Friday, March 28, 2003. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Applications (FCC Form 175)—Due April 11, 2003

64. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on April 11, 2003. Late applications will not be accepted.

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

i. Electronic Filing

66. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on April 2, 2003, until 6:00 p.m. ET on April 11, 2003. 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 April 11, 2003.

67. 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. 49 Procedures Public Notice*. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); hours of service Monday through Friday, from 8:00 AM to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

68. 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

69. 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. 49 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. 49 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

70. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. See Attachment C of the *Auction No. 49 Procedures Public Notice* for details on accessing the review system.

71. 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. **Note:** Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications.

C. Application Processing and Minor Corrections

72. 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.

73. As described more fully in the Commission's rules, after the April 11, 2003, 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 2, 2003

74. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on May 2, 2003.

75. 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. 49 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 2, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

76. *Wire transfer payments must be received by 6 p.m. ET on May 2, 2003.* 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 # 910-1203.
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: A49U)
FCC Code 1: (same as FCC Form 159, block 28A: "49")

Payer Name: (same as FCC Form 159, block 2)

Lockbox No.: # 358425

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.

77. 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. 49." *Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.*

ii. FCC Form 175

78. 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. 49 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

79. In the *Part 1 Order*, 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*, 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." For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and 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*).

80. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice* we proposed that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids. 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.

81. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49*

Revised Comment Public Notice, the Bureau proposed upfront payments on a license-by-license basis using the following formula:

$$\$0.005 * \text{MHz} * \text{License Area Population with a minimum of } \$1,000 \text{ per license.}$$

82. The Bureau received two comments on this issue. Aloha and Cavalier support the Bureau's proposal. Accordingly, the Bureau adopts its proposed formula for determining upfront payments.

83. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 49 Procedures Public Notice*.

84. 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 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.*

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

Market No.	Block	Market name	Population	Bidding units	Upfront payment
CMA152	C	Portland, ME	300,826	18,000	\$18,000
CMA314	C	Alabama 8—Lee	196,259	12,000	12,000

If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 30,000 bidding units (18,000 + 12,000). If a bidder only wishes to bid on one, but not both, purchasing 18,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time*. If the bidder purchased only 12,000 bidding units, it would have enough eligibility for the Alabama 8—Lee license but not for the Portland, ME license.

85. 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.

86. **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

87. The Commission will use wire transfers for all Auction No. 49 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: Gail Glasser or Tim Dates, at (202) 418-2843 by May 2, 2003. 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 Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496.

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 section V.G.

E. Auction Registration

88. 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.

89. 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) and the other containing the SecurID cards, both of which are required to place bids. *These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.*

90. 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 Tuesday, May 20, 2003, 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.

91. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC 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. Remote Electronic Bidding

92. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available, and the FCC Wide Area Network 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 SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or 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. 49. 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.

93. Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

94. All qualified bidders will be eligible to participate in a mock auction on Thursday, May 22, 2003. 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

95. The first round of bidding for Auction No. 49 will begin on Wednesday, May 28, 2003. 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

96. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, we

proposed to award all licenses in Auction No. 49 in a simultaneous multiple round auction. Aloha and Cavalier agree with the Bureau's proposal. We conclude that it is operationally feasible and appropriate to auction the licenses in the Lower 700 MHz band through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of synergies that exist among licenses and is administratively efficient.

ii. Maximum Eligibility and Activity Rules

97. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised 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. One commenter, Banks, requests that the Bureau modify, or create an exception, to this procedure in conjunction with adopting new procedures that would apply when a high bidder withdraws its bid during the course of the auction. Specifically, Banks suggests that in Auction No. 49, when a bidder withdraws its standing high bid, the next-highest bidder should be offered the licenses at its last bid amount, regardless of whether the next-highest bidder has any bidding eligibility available or is even still in the auction. In support of its proposal, Banks claims that adoption of this procedure will ensure that the party that values the license most highly wins the license. As the Bureau explains, it declines to adopt Banks' proposal because it would undermine the efficacy of the Bureau's activity and eligibility rules, thereby potentially decreasing the likelihood that the license is awarded to the bidder who values it most highly.

98. The Commission's rules do not provide for the procedure suggested by Banks. Pursuant to § 1.2109(b) of the Commission's rules, however, the Bureau retains the discretion to offer licenses to the next-highest bidder if a winning bidder withdraws or defaults "after the Commission has declared competitive bidding closed." Although the Bureau has the discretion to award licenses to the next-highest bidder in such cases, the Commission has consistently indicated, "the best course is to re-auction the license." The Commission has also recognized that the circumstances for which a next-highest offer would be appropriate are narrow. Further, the Commission has

observed that re-offering a defaulted license to the next highest bidder "may not ensure that the license will be offered to the bidder who values it most highly. In particular, as the license is offered to bidders at that next highest bids, other parties can argue that they would pay more for the license if given the opportunity." Thus, even where the rules provide for a procedure similar to the one suggested by Banks, it is generally disfavored.

99. Perhaps more significantly, Banks's proposal also implicates the activity and eligibility rules that apply to the conduct of the Commission's simultaneous multiple round auctions. A bidder's eligibility at the start of an auction is based upon the upfront payment amount that is converted into bidding units, using an auction-specific dollar to bidding unit ratio. Through the upfront payment, the applicant may purchase as many bidding units as it desires, but it must have sufficient bidding units to be eligible to bid on at least one of the licenses that it selects on the FCC Form 175 ("short-form application"). The activity rules, in turn, require bidder participation throughout the auction. Each bidder must have bidding activity in each round that accounts for a specified fraction of the bidder's current eligibility, as measured in bidding units. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

100. The activity and eligibility rules serve several important functions that are necessary to an efficient auction process. The auction activity and eligibility rules encourage bidders to make early bids in the auction, as opposed to waiting until later rounds to participate. Prompt and early participation by a bidder in the auction reveals useful information to other bidders about its demand and valuations for licenses. This transparent process allows bidders to modify their strategies based on current prices. The activity and eligibility rules also help maintain the pace of the auction, which reduces costs to bidders and the Commission. By promoting an efficient auction process, these rules increase the likelihood that the winning bidder will be the party that most highly values the license. By circumventing the activity and eligibility rules, Banks' proposal to restore eligibility would undermine this efficiency.

101. Furthermore, in contrast with one of the basic principles of our auction design, Banks' proposal would permit the withdrawal of one bidder to directly affect the auction outcome for another bidder by means other than

straightforwardly outbidding it. In essence, this change would allow the withdrawing bidder to turn a license over to the holder of the second-highest bid, without the second highest bidder having to outbid the other bidders who might have an interest in the license. This would create the potential for anti-competitive strategic interaction among auction participants and abuse of the auction rules. Finally, Banks' proposal does not address whether the eligibility of other bidders, that may also have an interest, should also be restored and at what level to allow them to bid for the license. Instead, Banks' proposal makes a questionable assumption that the next highest bidder is the only bidder who would at that stage be interested in submitting a bid. Thus, Banks' proposal does not appear to increase the likelihood that the winning bidder will be the party that most highly values the license.

102. Accordingly, the Bureau rejects Banks' request and adopts its proposal that the amount of the upfront payment submitted by a bidder determines the maximum initial 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. 49 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 in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, prospective bidders are cautioned to calculate their upfront payments carefully. *The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.*

103. 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 late in the auction before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction.

104. 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 a bid in the current round (see "Bid Increments and Minimum Accepted Bids" in section IV.B.iii). The minimum required activity is expressed as a percentage of the

bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in section IV.A.iii and "Stage Transitions" in section IV.A.iv), we adopt them for Auction No. 49.

iii. Auction Stages

105. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed to conduct the auction in three stages and employ an activity rule. The Bureau further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, the Bureau proposed that a bidder in Stage Three, in order to maintain its current eligibility, would be required to be active on 98 percent of its current bidding eligibility. The Bureau received no comments on this proposal.

106. The Bureau adopts its proposals for the activity rule and stages. Listed are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

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 encompassing 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 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 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 final 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 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 activity level by using the bidding system's bidding module.

107. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Bureau adopts them for Auction No. 49.

iv. Stage Transitions

108. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. The Bureau further proposed that it would retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureau proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau received no comments on this subject.

109. The Bureau adopts its proposal. Thus, the auction will start in Stage One

and will generally 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 20 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. The Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 49.

v. Activity Rule Waivers and Reducing Eligibility

110. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed that each bidder in the auction would be provided five activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Aloha and Cavalier support the Bureau's proposal on this issue.

111. Based upon its experience in previous auctions, *the Bureau adopts its proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction.* Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license. The Bureau is satisfied that our practice of providing five 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.

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

satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

113. 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* section IV.A.iii discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

114. 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 FCC Automated Auction 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 bids or withdrawals will not keep the auction open.

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

vi. Auction Stopping Rules

115. For Auction No. 49, the Bureau proposed to employ a simultaneous stopping rule. The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

116. The Bureau further proposed retaining the discretion to keep the auction open even if no new 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 use an activity rule waiver (if it has any left) or lose bidding eligibility.

117. 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, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of rounds per day, and/or adjusting the minimum acceptable bids and bid increments for the licenses.

118. Aloha and Cavalier support the Bureau's proposal concerning the auction stopping rules. In light of the foregoing, the Bureau adopts the proposals. Auction No. 49 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. 49, because its experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

vii. Auction Delay, Suspension, or Cancellation

119. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, it 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. Aloha and Cavalier support the Bureau's proposal on this issue.

120. 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 its discretion, 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

121. 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. Each bidding round is followed by the release of 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.

122. 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 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

123. *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.

124. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 49 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 49, the Bureau proposed the following license-by-license formula for calculating minimum opening bids:

$\$0.01 * \text{MHz} * \text{License Area Population}$
with a minimum of \$1,000 per license.

125. 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.

126. Two commenters allege that the minimum opening bids are too high and ask that the Bureau revise the proposed formula to reduce the minimum opening bids. Neither commenter proposes a specific reduction to the minimum opening bids nor a specific change to the formula used to compute the minimum opening bid. Further, the commenters provide no evidence that the proposed minimum opening bids are too high.

127. Following consideration of comments received, the Bureau adopts its proposed minimum opening bids for Auction No. 49. The Bureau notes that the minimum opening bids adopted here are approximately 60% less than those used in Auction No. 44. Based on this reduction and other considerations, the Bureau believes the minimum opening bids are well below the levels of the likely winning bids, and are not so high as to discourage competition. Thus, the Bureau is not persuaded that the proposed minimum opening bids are unreasonable.

128. The minimum opening bids adopted for Auction No. 49 are reducible at the discretion of the Bureau. 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.

129. The specific minimum opening bids for each license available in Auction No. 49 are set forth in

Attachment A of the *Auction No. 49 Procedures Public Notice*.

iii. Minimum Acceptable Bids and Bid Increments

130. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed to use a smoothing methodology to calculate minimum acceptable bids. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum percentage based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity on a license, decreasing the time it takes for licenses receiving many bids to reach their final prices. The formula used to calculate this increment is included as Attachment F of the *Auction No. 49 Procedures Public Notice*. The Bureau further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. Aloha and Cavalier support the Bureau's position concerning minimum acceptable bids and bid increments.

131. In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts. The FCC Automated Auction System will list the nine bid amounts for each license.

132. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Attachment F of the *Auction No. 49 Procedures Public Notice*. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment*—*i.e.*, $\text{bid increment} = (\text{minimum acceptable bid}) - (\text{standing high bid})$. 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.*).

133. At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described in

Attachment F of the *Auction No. 49 Procedures Public Notice*, and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid)(1 + percentage increment) {rounded} – (minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, *etc.*)

134. 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.

135. The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if they determine circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

iv. High Bids

136. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a “standing high bid.” A “standing high bid” will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids count towards bidding activity.

137. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed to use a random number generator to select a high bid in the event of identical high bids on a license in a given round (*i.e.*, tied bids). Aloha and Cavalier support the Bureau’s proposal concerning tie bids. No commenter opposed the Bureau’s proposal. Therefore, the Bureau adopts its proposal. A Sybase® SQL pseudo-random number generator based on the Lecuyer algorithm will be used to assign a random number to each bid. The tied bid having the highest random number

will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

v. Bidding

138. During a 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 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.

139. Please note that all bidding will take place remotely either through the FCC 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. 49.

140. 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.

141. In order to access the bidding functions of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the passcode generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round *after* they have completed all of their activity for that round.

142. 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 FCC 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 bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information.

143. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in section IV.B.iii.

144. 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

145. In the *Auction No. 49 Comment Public Notice* and *Auction No. 49 Revised Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal procedures. Aloha and Cavalier agree with the Bureau’s proposal concerning bid removal and bid withdrawal. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are used, the Bureau proposed, would be at the bidder’s discretion.

146. *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 removed does not count towards bidding activity. This procedure will enhance bidder flexibility during the auction, and therefore, the Bureau adopts these procedures for Auction No. 49.

147. 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 in the FCC Automated Auction System (assuming that the bidder has not reached its withdrawal limit). 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.

148. 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, the Bureau concludes that, for Auction No. 49, adoption of a limit on the use of withdrawals to two rounds per bidder is appropriate. By doing so the Bureau believes it strikes a reasonable compromise that will allow bidders to use withdrawals. Its decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block and 800 MHz SMR auctions, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

149. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will 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.

150. If a high bid is withdrawn, the minimum acceptable bid will equal the second highest bid received for the license, which may be less than, or equal to, in the case of tied bids, the amount of the withdrawn bid. To set the additional bid amounts, the second highest bid also will be used in place of the standing high bid in the formula used to calculate bid increments. The Commission will serve as a "place holder" high bidder on the license until a new bid is submitted on that license.

151. *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 high bid in the same or subsequent auction(s). See 47 CFR 1.2104(g)(1). In the case of multiple bid withdrawals on a single license, within the same or

subsequent auction(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.

152. 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

153. Bids placed during a round will not be made public 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 for Auction No. 49 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

154. 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

155. As noted in section II.H., 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 must 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: auction49@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 49. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

156. *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 Howard Davenport of the Auctions and Industry Analysis Division at (202) 418-0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

157. 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.

158. 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 Commission for Auction No. 49 to 20 percent of its net winning bids (actual bids less any applicable small, very small business or entrepreneur bidding credits). 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," section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability,

before being applied toward down payments.)

B. Auction Discount Voucher

159. On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher ("ADV") in the amount of \$125,273,878.00. This ADV may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order. Qualcomm transferred \$10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35 and the transferee used its portion of the ADV to pay a portion of one of its winning bids in Auction No. 35. The remaining portion of Qualcomm's ADV could be used to adjust winning bids in another FCC auction, including Auction No. 49.

C. Long-Form Application (FCC Form 601)

160. 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. 49. Winning bidders that are small, very small businesses or entrepreneurs must include an exhibit demonstrating their eligibility for small, very small business or entrepreneur bidding credits. See 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

D. Ownership Disclosure Information Report (FCC Form 602)

161. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919, and 1.2112(a). We remind applicants that effective December 10, 2002, electronic filing of the Ownership Disclosure Information Report (FCC Form 602) became mandatory. Accordingly, forms filed manually will not be accepted. Winning bidders without a current Form 602 already on file with the Commission must submit a properly completed Form 602 at the time they submit their long-form applications. Further filing instructions will be provided to auction winners at the close of the auction.

E. Tribal Land Bidding Credit

162. 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.

163. 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).

164. 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://wireless.fcc.gov/auctions> and clicking on the *Tribal Land Credits* link.

F. Default and Disqualification

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

G. Refund of Remaining Upfront Payment Balance

166. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 49 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.

167. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. 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.

168. 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 Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496.

Federal Communications Commission.

Louis J. Sigalos,

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