

(b) Part 1 of the Commission's Rules—Further Competitive Bidding Procedures, WT Docket No. 03–67.

(c) Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions, MM Docket no. 97–217.

(d) Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, WT Docket No. 02–68, RM–9718.

(e) Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00–230.

(2) FCC 04–168—Adopted 7/8/2004—Released 8/6/2004.

(a) Improving Public Safety Communications in the 800 MHz Band, WT Docket 02–55.

(b) Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels, ET Docket No. 00–258.

(c) Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, RM–9498.

(d) Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service, RM–10024.

(e) Petition for Rule Making of UT Starcom, Inc., concerning the Unlicensed Personal Communications Service, ET Docket No. 95–18.

(f) Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service, ET Docket No. 95–18.

(3) FCC 04–23—Adopted 2/4/2004—Released 2/12/2004.

(a) Review of Quiet Zones Application Procedures, WT Docket No. 01–319. There is no change to the estimated average burden and number of respondents at this time as it is unknown as to how many additional respondents may partake in the changes required due to the adoptions of the above noted Report & Orders.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–04–58–C; DA 04–3005; Report No. AUC–04–58–D; DA 04–3270 (Auction No. 58)]

Broadband PCS Spectrum Auction Start Date Re-Scheduled for January 26, 2005; New Pre-Auction Dates and Deadlines Established; 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 242 Broadband Personal Communications Service (PCS) licenses and announces that the auction initially scheduled to commence on January 12, 2005 is rescheduled to begin on January 26, 2005. In addition, this document announces the rescheduling of certain pre-auction events and deadlines. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 58 is scheduled to begin on January 26, 2005.

FOR FURTHER INFORMATION CONTACT: *Auctions and Spectrum Access Division (WTB):* For legal questions: Audrey Bashkin or Scott Mackoul at (202) 418–0660. For general auction questions: Jeff Crooks at (202) 418–0660 or Lisa Stover at (717) 338–2888. For service rule questions: Mobility Division, WTB, Kathy Harris or Erin McGrath at (202) 418–0620. For technical questions: Chris Miller or JoAnn Epps at (202) 418–0620.

Media Contact: Lauren Patrich at (202) 418–7944.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 58 Procedures Public Notice* released on September 16, 2004, and the public notice released October 15, 2004, rescheduling the upcoming auction and certain pre-auction events and deadlines. In light of the Commission's decision in the *Memorandum Opinion and Order*, FCC 04–249, released October 15, 2004, the Bureau rescheduled the start date and the pre-auction dates and deadlines for Auction No. 58 in order to provide additional time for bidder preparation and planning. The Bureau originally provided more than six months for bidders to prepare for Auction No. 58, which normally should provide more

than sufficient time for planning purposes. Requests to amend or waive the Commission's eligibility rules for certain broadband PCS licenses, however, created some uncertainty regarding whether such licenses would be available in open or closed bidding. Now that a final decision has been made on those matters, the Commission therefore believes a slight modification to its auction schedule is warranted. The complete text of the *Auction No. 58 Procedures Public Notice*, including attachments, as well as related Commission 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. The *Auction No. 58 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. The *Auction No. 58 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/58/>.

I. General Information

A. Introduction

1. The *Auction No. 58 Procedures Public Notice*, announces the procedures and minimum opening bids for the upcoming auction of licenses in the broadband personal communication services ("PCS") scheduled for January 26, 2005 (Auction No. 58). On June 18, 2004, in accordance with the Balanced Budget Act of 1997, the Wireless Telecommunications Bureau ("WTB") released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used for the auction of broadband PCS licenses in Auction No. 58. The Bureau released a second public notice on August 3, 2004, revising the list of licenses available and seeking comment on procedures for the auction of those licenses. The Bureau received 19 comments and five reply comments in response to the *Auction No. 35 Comment Public Notice*, 65 FR 55243, September 13, 2000, and no comments in response to the *Auction No. 58 Revised Inventory Public Notice*, 69 FR 49897, August 12, 2004.

i. Background of Proceeding

2. Auction No. 58 includes licenses for A, C, D, E, and F blocks of broadband PCS spectrum. This auction will be the fifth auction of C block broadband PCS spectrum and the fourth auction of F block broadband PCS spectrum. The Commission initially designated the C and F block licenses to be held only by those entities that qualified as "entrepreneurs" under the Commission's rules. Specifically, only those entities that qualified as entrepreneurs could bid on the C and F block licenses and hold the licenses for the first five years following the date of the initial license grant. The initial C block licenses were awarded through two auctions, Auction No. 5, which ended on May 6, 1996, and Auction No. 10, which concluded on July 16, 1996. Auction No. 11, the initial F block auction, ended on January 14, 1997, and also included D and E block licenses. Auction No. 22, which concluded on April 15, 1999, made available C, E and F block licenses that had been returned to, or reclaimed by, the Commission.

3. In 2000, the Commission revised certain service and auction rules for the C and F block licenses. Among the modifications to the Commission's rules, the *C/F Block Sixth Report and Order*, 65 FR 53624, September 5, 2000, reconfigured the size of 30 megahertz C block licenses available for auction, creating three 10 megahertz licenses. The Commission also removed the entrepreneur eligibility restrictions for some C block licenses. It did so by first establishing two categories for licenses: Tier 1 being comprised of those Basic Trading Areas (BTAs) with populations that, according to the 1990 census, are equal to or greater than 2.5 million and Tier 2 being comprised of the remaining BTAs. The Commission then established "open bidding" (*i.e.*, bidding without entrepreneur eligibility restrictions) for two of the three newly reconfigured 10

megahertz C block licenses in Tier 1 and for one of the three newly reconfigured 10 megahertz C block licenses in Tier 2. The remaining 10 megahertz C block licenses in Tier 1 and 2 were reserved for entrepreneurs. Finally, with respect to available 15 megahertz C block licenses, the Commission eliminated eligibility restrictions for such licenses in Tier 1, but maintained the eligibility requirements in Tier 2.

4. Following the adoption of the *C/F Block Sixth Report and Order*, the Commission held Auction No. 35, which included 422 C and F block broadband PCS licenses. Certain of the licenses won at auction, however, were not granted because the spectrum was the subject of litigation and/or bankruptcy proceedings. Recent settlement in a number of those matters has made C and F block spectrum available again for licensing. This spectrum, along with spectrum associated with other licenses that cancelled or were otherwise returned to the Commission, is now included in the inventory for Auction No. 58.

5. Additionally, following the announcement of Auction No. 58, CTIA—The Wireless Association™ ("CTIA") filed a petition for rulemaking, or in the alternative, a request for waiver of the eligibility restrictions placed on certain C block licenses ("CTIA Petition"). This petition was placed on public notice and will be addressed in a proceeding separate from the instant one which is intended to establish procedures for the conduct of Auction No. 58. The eligibility issue raised in the CTIA Petition was also addressed in nearly all of the comments filed pursuant to the *Auction No. 58 Comment Public Notice*, as well as in the Verizon Wireless petition for reconsideration. As explained in more detail below, this issue is beyond the scope of that public notice and will be addressed separately. Accordingly,

unless the Commission decides otherwise, the current eligibility structure for C block licenses (*i.e.*, closed bidding for certain C block licenses by only those entities that qualify as entrepreneurs) will remain in effect for Auction No. 58.

ii. Licenses To Be Auctioned

6. Auction No. 58 will offer 242 broadband PCS licenses. A complete list of the licenses available in Auction No. 58 and their description is included in Attachment A of the *Auction No. 58 Procedures Public Notice*.

7. While most licenses are available to all bidders in open bidding, 119 C block licenses are available only to entrepreneurs in closed bidding. In order to qualify as an "entrepreneur," an applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, must have had gross revenues of less than \$125 million in each of the last two years and must have less than \$500 million in total assets.

8. For C and F block licenses available in open bidding, bidding credits are available to small and very small businesses, or consortia thereof, as defined in the Commission's rules. Specifically, an entity will be considered a small business if it, together with its affiliates, has less than \$40 million in average annual gross revenues for the preceding three years. An entity will be considered a very small business if it, together with its affiliates, has less than \$15 million in average annual gross revenues for the preceding three years. Small business and very small business bidding credits are not available for C block licenses won in closed bidding or for licenses in the A, D, or E blocks.

9. The following table contains the block/eligibility status/frequency cross-reference list for Auction No. 58:

Frequency block	Eligibility status		Bandwidth (MHz) (unless otherwise noted in Attachment A)	Frequency (MHz) (unless otherwise noted in Attachment A)
	Tier 1	Tier 2		
A	n/a	n/a	30	1850–1865, 1930–1945
C1	Open	Closed	15	1902.5–1910, 1982.5–1990
C2	Open	Closed	15	1895–1902.5, 1975–1982.5
C3	Closed	Closed	10	1895–1900, 1975–1980
C4	Open	Closed	10	1900–1905, 1980–1985
C5	Open	Open	10	1905–1910, 1985–1990
D	n/a	n/a	10	1865–1870, 1945–1950
E	n/a	n/a	10	1885–1890, 1965–1970
F	Open	Open	10	1890–1895, 1970–1975

10. In some cases, licenses are available for only part of a market or

may not include all of the spectrum associated with a particular frequency

block in Auction No. 58. Dark gray boxes indicate that no license of the

particular tier/frequency block combination will be available in Auction No. 58. See Attachment A of the *Auction No. 58 Procedures Public Notice* to determine which licenses will be offered.

B. Rules and Disclaimers

i. Relevant Authority

11. Prospective applicants must familiarize themselves thoroughly with the Commission's rules relating to broadband PCS, contained in Title 47, part 24, 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 applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in the *Auction No. 58 Procedures Public Notice*; the *Auction No. 58 Comment Public Notice*; the *Auction No. 58 Revised Inventory Public Notice*; the *C/F Block Sixth Report and Order*, (as well as any other prior and subsequent Commission proceedings regarding competitive bidding procedures).

12. 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 applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibition of Collusion

13. To ensure the competitiveness of the auction process, § 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. For

purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.

14. Applicants for licenses in any of 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 applicants 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. 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.

15. 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 addition, applicants that apply to bid for all markets will 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. By signing their FCC Form 175 short-form

applications, applicants are certifying their compliance with § 1.2105(c).

16. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, § 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under § 1.65.

17. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 58 Procedures Public Notice*.

iii Due Diligence

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

19. Applicants are reminded that private and common carrier fixed microwave services ("FMS") operating in the 1850–1990 MHz band (and other bands) are being relocated to available frequencies in higher bands or to other media. Applicants should become familiar with the status of FMS operation and relocation, and applicable Commission rules and orders, in order to make a reasoned, appropriate decision about their participation in Auction No. 58 and their bidding strategy.

20. Applicants 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. 58.

21. Applicants should also be aware that certain pending and future applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 58. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 58. Applicants are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

22. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned. We note that resolution of such matters could have an impact on the availability of spectrum for Auction No. 58. In addition, although the Commission may continue to act on various pending applications, informal objections petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the auction or by the time of license grant.

23. Applicants may obtain information about licenses available in Auction No. 58 through the Bureau's licensing databases on the World Wide Web at <http://wireless.fcc.gov/uls>. Applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the upper right-hand corner of the License Search screen. Applicants should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414-1250 (voice) or (202) 414-1255 (TTY), or via e-mail at ulscomm@fcc.gov.

24. 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. To the extent

the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. 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. Applicants are strongly encouraged to physically inspect any sites located in, or near, the service area(s) for which they plan to bid.

iv. Bidder Alerts

25. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 58 to deceive and defraud unsuspecting investors. 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. 58 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

v. National Environmental Policy Act Requirements

26. 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.

C. Auction Specifics

i. Auction Date

27. The auction will begin on Wednesday, January 26, 2005. 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

28. Auction No. 58—Broadband PCS.

iii. Bidding Methodology

29. The bidding methodology for Auction No. 58 will be simultaneous multiple round bidding. The

Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

30. Listed are important dates associated with Auction No. 58:

Auction Seminar—November 1, 2004.

Short-Form Application (FCC Form 175) Filing Window Opens—November 16, 2004; 9 a.m. ET.

Short-Form Application (FCC Form 175) Filing Window Deadline—November 30, 2004; 6 p.m. ET.

Upfront Payments (via wire transfer)—December 29, 2004; 6 p.m. ET.

Mock Auction—January 21, 2005.

Auction Begins—January 26, 2005.

v. Requirements for Participation

31. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, November 30, 2004.

- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, December 29, 2004.

- Comply with all provisions outlined in the *Auction No. 58 Procedures Public Notice* and applicable Commission rules.

vi. Any Filings Related to Auction No. 58

32. An electronic copy of any filings that are submitted to the Commission related to Auction No. 58, including filings made with the Commission's Office of the Secretary, should also be submitted by electronic mail to the following address: auction58@fcc.gov.

vii. General Contact Information

33. The following is a list of general contact information relating to Auction 58.

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, Monday through Friday. Auction Legal Information:

Auction Rules, Policies, Regulations Auctions and Spectrum Access Division, (202) 418-0660.

Licensing Information: Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues Mobility Division, (202) 418-0620.

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

Payment Information: Wire Transfers, Refunds
 FCC Auctions Accounting Branch,
 (202) 418-0578, (202) 418-2843 (Fax).

Telephonic Bidding:

Will be furnished only to qualified bidders.

Press Information:

Lauren Patrich (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

34. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 58 Procedures Public Notice*. All applicants must certify on their FCC Form 175 applicants under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.

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

35. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

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

36. 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 that 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.

37. 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, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Eligibility

i. Eligibility for Closed Bidding (FCC Form 175 Exhibit C)

38. In order to be eligible to bid for one or more closed C block licenses, an applicant must demonstrate that it meets the eligibility requirements of § 24.709(a) of the Commission's rules. 47 CFR 24.709(a). Specifically, as of the FCC Form 175 filing deadline, the applicant, together with its affiliates and persons or entities that hold interests in the applicant and their affiliates, must have combined total assets of less than \$500 million and must have had combined gross revenues of less than \$125 million in each of the last two years. *Id.* Applicants should make this showing in "Exhibit C" to the FCC Form 175.

39. The majority of comments filed in response to the *Auction No. 58 Comment Public Notice* address the eligibility restrictions placed on the C block licenses, referred to as set-aside licenses, reserved to only entities that qualify as entrepreneurs. Some parties advocate a change in the current rules to allow all entities to bid on the set-aside licenses. On the other hand, a number of commenters oppose any change to the eligibility structure, and at least one party advocates a change in the current structure to increase the

number of licenses limited to entrepreneurs. The requests made in comments filed to the *Auction No. 58 Comment Public Notice* to change the eligibility rules are beyond the scope of this public notice regarding the procedures for Auction No. 58. As noted above, the eligibility issue was also raised in a petition for rulemaking and a request for waiver filed by CTIA, and in the Verizon Wireless petition for reconsideration. Those petitions have been addressed separately.

40. Included in its Auction No. 58 comments, another commenter also seeks a waiver of the Commission's rules to extend the expired entrepreneur eligibility provisions of § 24.709(a)(5)(i) to allow it and other entities to participate in closed bidding in Auction No. 58. This matter has also been addressed separately.

ii. Bidding Credit Eligibility (FCC Form 175 Exhibit D)

41. Bidding credits are available to small and very small businesses, or consortia thereof, (as defined in 47 CFR 24.720(b)) that win C and F block licenses in open bidding. 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.

42. For Auction No. 58, bidding credits will be available to small businesses or consortia thereof, as follows:

- A bidder with attributable average annual gross revenues of not more than \$40 million for the preceding three years ("small business") will receive a 15 percent discount on its winning bids for C and F block licenses;
- A bidder with attributable average annual gross revenues of not more than \$15 million for the preceding three years ("very small business") will receive a 25 percent discount on its winning bids for C and F block licenses.

43. Small business bidding credits are not cumulative; a qualifying applicant receives the 15 percent or 25 percent bidding credit on its winning bid, but only one credit per license. No small and very small business bidding credits are provided for licenses in the A, E and D blocks or C block licenses available only to entrepreneurs in closed bidding.

44. 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. 58 Procedures Public Notice*.

iii. Applicability of Part 1 Attribution Rules

45. *Controlling interest standard.* On August 14, 2000, the Commission released the Part 1 Fifth Report and Order, 65 FR 52323, August 29, 2000, in which the Commission, *inter alia*, adopted a “controlling interest” standard for attributing to auction applicants the total assets and/or gross revenues of their investors and affiliates in determining entrepreneur and small business eligibility for future C and F block 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. More recently, the Commission made further modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes included exempting the gross revenues of the affiliates of a rural telephone cooperative’s officers and directors from attribution to the applicant if certain specified conditions are met. The Commission also clarified that in calculating an applicant’s gross revenues under the controlling interest standard, the personal net worth, including personal income, of its officers and directors will not be attributed to the applicant.

46. The Commission will thoroughly review the information provided in applicants’ FCC Form 175 in determining eligibility for designated entity status. Eligibility for small business preferences will be determined based on the attribution rules in effect at the short-form application deadline. Accordingly, the “controlling interest” standard, as recently modified, and the Part 1 rules that superseded inconsistent service-specific rules, will apply in Auction No. 58.

47. *“Control” for purposes of controlling interest standard.* 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 indicates *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.

48. *Attribution for entrepreneur eligibility.* For purposes of determining which entities qualify as entrepreneurs for closed bidding, the Commission will consider the total assets and gross revenues of the applicant, its controlling interest holders, the affiliates of the applicant, and their controlling interest holders. The Commission does not impose specific equity requirements on parties with controlling interests. Once principals or entities with a controlling interest are determined, only the assets and revenues of those principals or entities, the applicant, and their affiliates will be counted in determining entrepreneur eligibility. Applicants for closed bidding in Auction No. 58 should not include existing C and F block licenses in their calculations of total assets; however, all other Commission licenses must be included in such calculations.

49. *Attribution for small business and very small business eligibility.* Similarly, in determining which entities qualify as small businesses or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, and the applicant and its affiliates, will be counted in determining small business eligibility.

50. A consortium of small businesses or very small businesses is a “conglomerate organization formed as a joint venture between or among mutually independent business firms,” each of which individually must satisfy one of the definitions of small business or very small business in § 24.720(b) of the Commission’s rules.

iv. Supporting Documentation

51. 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 entrepreneurs and/or small business or very small business (or consortia of small businesses or very small businesses) for this auction.

52. 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.

53. *Entrepreneur eligibility (Exhibit C).* Entities applying to bid on closed licenses 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 two years and the total assets of each of the following: (i) The applicant, (ii) the applicant’s affiliates, (iii) the applicant’s controlling interest holders, and (iv) the affiliates of the applicant’s controlling interest holders. Certification that the gross revenues for each of the preceding two years or the total assets do not exceed the applicable limit is not sufficient. The applicant must provide separately for itself, its affiliates, its controlling interest holders, and their affiliates a schedule of gross revenues for each of the preceding two years.

54. *Small business or very small business eligibility (Exhibit D).* Entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on Exhibit D 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 businesses or very small businesses, this information must be provided for each consortium member.

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

55. Each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any payment for Commission licenses (including down payments) and 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 interests, as defined by § 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Applicants must include this statement as Exhibit E to the FCC Form 175.

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

E. Transfer and Assignment Restrictions on Licenses Won in Closed Bidding

57. Licenses won in closed bidding generally may be transferred or assigned only to an entity that meets the entrepreneur financial caps or that holds another C or F block license that it acquired while meeting the entrepreneur financial caps. This restriction ends five years after the date of the initial license grant or upon notification by the licensee that it has satisfied its five-year construction requirement under 47 CFR 24.203(c), whichever comes first. Licenses won in open bidding are not subject to this restriction and may be transferred or assigned any time after grant to any qualified entity, subject to Commission consent.

F. Unjust Enrichment Payments

58. C or F block licensees that use a small or very small business bidding credit, and during the first five years of

their license term seek to assign or transfer control of a license to an entity that does not meet the eligibility criteria for a small or very small business bidding credit, or that is eligible for a lower bidding credit, will have to reimburse the U.S. Government for a percentage of the amount of the bidding credit, plus interest.

G. Installment Payments

59. Installment payment plans will not be available in Auction No. 58.

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

60. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit F) 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 G.

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

61. After the short-form filing deadline (6 p.m. ET November 30, 2004), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, 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 Spectrum Access Division, at the following address: auction58@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 58. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

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

62. Section 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. 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. An electronic copy of any filings that are submitted to the Commission related to Auction No. 58, including filings made with the Commission's Office of the Secretary, should also be submitted by electronic mail to the following address: auctions58@fcc.gov.

III. Pre-Auction Procedures

A. Auction Seminar

63. On Monday, November 1, 2004, the FCC will sponsor a seminar for Auction No. 58 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, auction conduct, the FCC Automated Auction System, auction rules, and the broadband PCS rules.

64. For individuals who are unable to attend, Audio/Video of this seminar will be Web cast live from the FCC's Audio/Video Events page at <http://www.fcc.gov/realaudio/>. A recording of the Web cast will also be available for playback from the FCC's A/V Archives Page following the meeting.

B. Short-Form Application (FCC Form 175)—Due November 30, 2004

65. 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 p.m. ET on November 30, 2004. Late applications will not be accepted.

66. 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

67. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at 9 a.m. ET on November 16, 2004, until 6 p.m. ET on November 30, 2004. 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 November 30, 2004.

68. 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. 58 Procedures Public Notice*. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

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. 58 Procedures Public Notice*.

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. 58 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.

D. Upfront Payments—Due December 29, 2004

73. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159

that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on December 29, 2004. Failure to deliver the upfront payment by the December 29, 2004, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

74. Wire transfer payments must be received by 6 p.m. ET on December 29, 2004. 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.

75. Applicants must fax a completed FCC Form 159 (Revised 2/03) 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. 58." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

ii. Amount of Upfront Payment

76. 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 50 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*).

77. The amount of the upfront payment will 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.

78. For Auction No. 58 the Commission adopts upfront payments on a license-by-license basis using a formula based on bandwidth and license area population: \$0.05 * MHz * License Area Population.

79. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 58 Procedures Public Notice*.

80. 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. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

81. 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.

iii. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

82. The Commission will use wire transfers for all Auction No. 58 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, at (202) 418-2843 by December 29, 2004. 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.

E. Auction Registration

83. 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.

84. 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.

85. Qualified bidders that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified bidder that has not received both mailings by noon on Wednesday, January 5, 2005, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction, and each qualified bidder is responsible for ensuring it has received all of the registration material.

86. 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

87. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are

permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. 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. 58. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number.

G. Mock Auction

88. All qualified bidders will be eligible to participate in a mock auction on Friday, January 21, 2005. 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.

IV. Auction Event

89. The first round of bidding for Auction No. 58 will begin on Wednesday, January 26, 2005. 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

90. The Bureau will award all licenses in Auction No. 58 in a simultaneous multiple round auction. The Bureau concludes that it is operationally feasible and appropriate to auction the PCS licenses 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

91. The amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder.

92. 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. 58 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, applicants 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.

93. 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.

94. 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* "Minimum Acceptable Bids and Bid Increments" 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. 58.

iii. Auction Stages

95. The Commission will conduct the auction in two stages and employ an activity rule. 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. Finally, in each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 95 percent of its current bidding eligibility.

96. The Bureau reserves the discretion to further alter the activity requirements

before and/or during the auction. We also note that the Bureau has other mechanisms by which it may influence the speed of an auction. When determining the bidding schedule, the Bureau takes into consideration the desirability of concluding the auction reasonably swiftly, and the Bureau also attempts to ensure that bidders have sufficient time for placing bids during rounds and for analysis between rounds. For Auction No. 58, the Bureau has already taken steps to adjust bid increments in a manner that should help speed the auction: the Bureau has proposed a maximum percentage increment of 0.3 (30%). This relatively high maximum percentage increment will allow licenses for which there is greater demand—*i.e.*, those receiving many bids—to rise in price faster than if a lower maximum percentage increment were used. Additionally, the minimum opening bids adopted by the Bureau should help to avoid a protracted auction.

97. The Commission adopts its proposals for the activity rules and stages. Listed are the activity levels for each stage of the auction. The Bureau 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 95 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 twenty-nineteenths (20/19).

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.

98. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 58.

iv. Stage Transitions

99. The auction will generally advance to the next stage (*i.e.*, from Stage One to Stage Two) 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 will retain the discretion to change stages unilaterally by announcement during the auction.

100. Thus, 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 Commission believes that these stage transition rules are appropriate for use in Auction No. 58.

v. Activity Rule Waivers and Reducing Eligibility

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

102. 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 further bidding in the auction.

103. 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.

104. 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

105. For Auction No. 58, the Bureau will employ a simultaneous stopping rule, and retain discretion to invoke 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.

106. In addition, the Bureau reserves the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau may 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.

vii. Auction Delay, Suspension, or Cancellation

107. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

108. The initial schedule of bidding rounds 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.

109. 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

110. In establishing minimum opening bids for Auction No. 58, the Bureau adopts the following license-by-license formulas based on bandwidth and license area population.

Population \geq 2,000,000: \$0.50 * MHz * License Area Population.
 Population \geq 500,000: \$0.25 * MHz * License Area Population.
 Population < 500,000: \$0.15 * MHz * License Area Population.

111. The Bureau adopts the minimum opening bids proposed in the *Auction No. 58 Comment Public Notice* and the *Auction No. 58 Revised Inventory Public Notice*. By comparing the minimum opening bids proposed in Auction No. 58 only to those of Auction No. 35, commenters have not adequately substantiated their argument that the minimum opening bids are excessive. On average, for the licenses for spectrum that was available in Auction No. 35, the Auction No. 58 minimum opening bids are significantly lower than the net amount of winning bids from Auction No. 35.

112. The minimum opening bids we adopt for Auction No. 58 are reducible at the discretion of the Bureau. We emphasize, 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 requests to reduce the minimum opening bid on specific licenses.

113. The specific minimum opening bids for each license available in Auction No. 58 are set forth in Attachment A of the *Auction No. 58 Procedures Public Notice*.

iii. Minimum Acceptable Bids and Bid Increments

114. In Auction No. 58 we will 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. 58 Procedures Public Notice*. We will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.3 (30%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 30% depending upon the number of bids for the license. The Bureau will retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.

115. 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.

116. 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. 58 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.*, bid increment = (minimum acceptable bid) – (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.*).

117. 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. 58 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.*).

118. 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.

119. 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 it determines that 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

120. 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 are counted as activity for purposes of the activity rule.

121. In the event of identical high bids on a license in a given round (*i.e.*, tied bids) a Sybase® SQL pseudo-random number generator will be used to assign a random number to each 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

122. 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.

123. 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, five to ten minutes are necessary to complete a bid submission).

124. A bidder's ability to bid on specific licenses in the first round of the auction is determined by three factors:

(i) The licenses applied for on FCC Form 175 and (ii) the eligibility restrictions on those licenses, if any, and (iii) 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.

125. In order to access the bidding function 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 password 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.

126. 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.

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

vi. Bid Removal and Bid Withdrawal

128. For Auction No. 58 the Commission adopts bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Commission will limit each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are used would be at the bidder's discretion.

129. *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 toward bidding activity. These procedures will enhance bidder flexibility during the auction.

130. 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 submitted during a round, that withdrawal cannot be unsubmitted.

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

132. *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). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).

133. 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. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

134. 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. 58 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

135. 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.

V. Post-Auction Procedures*A. Down Payments and Withdrawn Bid Payments*

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

137. 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. 58 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business 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. Final Payments

138. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

139. 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. 58.

D. Ownership Disclosure Information Report (FCC Form 602)

140. 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.

E. Tribal Land Bidding Credit

141. 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, and separate from, any other bidding credit for which a winning bidder may qualify.

F. Default and Disqualification

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

143. All applicants that submit upfront payments but are not winning bidders for a license in Auction No. 58 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 the 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.

144. 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, 445 12th Street, SW., Room 1-C864, Washington, DC 20554.

145. 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.

Federal Communications Commission.

Gary Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

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FEDERAL RESERVE SYSTEM**Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB**

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed